

Charity and the Family

It was a hot day in Ramadan of 2009, and I had just finished interviewing a prominent member of the Supreme Islamic Legal Council (SILC). We had chatted about the difference between a waqf and an NGO, Decree 18/1955,¹ the building of a new mosque, the largest in downtown Beirut, and had broached the relation of the head of the Sunni shari‘a courts to the grand mufti. It had been a good and illuminating interview, and I was getting ready to leave when the secretary brought the lawyer a fax that had just arrived. He turned to me and said, “So you were asking about the grand mufti. Here you go!”

The fax was an angry letter from a certain Muhammad Rashid Qarduhi, who was refusing to attend any Ramadan *iftār* (break-of-fast meal) where the grand mufti would be present because the grand mufti “had signed some documents for his [own] son.” Qarduhi also derided the way the mufti referred to his own son as “shaykh” Raghīb, since the son does not have religious scholarly credentials. To punctuate his derision, Qarduhi appended a satirical parenthetical “God bless . . .” to the mufti’s son’s name. Qarduhi also sent ten documents to “prove the embezzlement of Islamic waqf funds.” The first document showed the mufti’s son’s connection to a company that goes by the name G(5) Trade and Consultants. The rest of the documents were contracts with G(5) from Dar al-Fatwa for restoration work of waqf buildings, for a total of around \$300,000. “These documents prove how the father signs for his son (God bless . . .),” the cover letter ended.

1. The decree that organizes the Muslim “sect” and its organizations (Dar al-Fatwa and the waqf directorates).

The scandal of the grand mufti's nepotism reverberated far and wide and was exacerbated by the mufti's silence on the topic. It occupied newspapers, the web, and various members of the Sunni community. It elicited an open letter from the former prime minister Salim al-Hoss, urging the grand mufti to either sue the author of the tracts for defamation or step down. An auditor was solicited to examine the accounting of the transactions. The grand mufti dealt with the crisis through a silence that infuriated the community. "You have to respond to these hideous [*shani`a*] accusations . . . and if you do not provide a potent retort [*al-radd al-mufhim*], then people will rightly see that the silence about these accusations for all this time is proof of their accuracy and truth," wrote al-Hoss (*al-Akhbar*, 2 February 2010, 2). The scandal is not "just" about nepotism; it is one incident in a long-time friendship turned antagonistic between the grand mufti and the author of the tract (and various opponents of the mufti). However, the fact that one of Qarduhi's most effective attacks, which eventually cost the grand mufti his position, came to be couched in such terms shows the potency of this discourse.

Yet, what might seem heinous today was a well-established ethics of care for one's family in the past. As my archive showed, the transmission of waqf revenues from father to son was until the early twentieth century the main avenue of transmission of such revenues, even in waqfs dedicated to mosques, schools, and other "public" facilities, as I show in detail below. Furthermore, as we saw in chapter 1 with the waqf of Mustafa Agha Qabbani, which was dedicated to his daughter 'A'isha and her descendants before reaching the poor upon the extinction of this lineage, it was acceptable for founders to dedicate a waqf's revenues to their family as a pious deed; even more, such an act was one of the *most* pious deeds. Indeed, in nineteenth-century Beirut waqf practices, sites of beneficence were not confined to "public" goals, be they poverty relief, mosques, madrasas, or fountains. Of the 135 waqfs founded between 1843 and 1912, 56 percent named family beneficiaries (Adada 2009, 141) before the waqf reached its perpetual beneficiaries (usually the poor),² as did the waqf of Mustafa Agha Qabbani in 1854. The sensibility reflected in the scandal over the mufti's nepotism, thoroughly chronicled in my notebook, which divorced giving to family from piety especially when it involved public resources, found echoes in an event in my archive of the Qabbani waqf. There, court decisions document the descendants of Mustafa Agha fighting over the waqf in the mid-1920s in order to revert it back to their own private property. To these descendants too, a waqf dedicated to family was no longer a pious deed that brought rewards to their ancestor; it had become just a piece of land, its pious aims irrelevant.

How did giving to family as an act of piety become an impossibility, or even more, nepotism? I ask this question not "in praise of nepotism" (Bellow 2003), nor to legitimize the mufti's actions, nor with a nostalgia for previous modes of

2. Percentage based on Adada's (2006) tables 26 and 27.

giving and care.³ I follow this line of inquiry to historicize the particular framing of corruption and nepotism in a facile opposition to merit, which gives the illusion that once corruption, nepotism, and, more broadly in Lebanon, clientelism and sectarianism are eliminated, democracy, the rule of law, and a more just society will ensue. I take my cue from anthropologies of corruption that have argued that “corruption” is not a result of so-called weak states, but that it is endemic to modern bureaucratic states (Haller and Shore 2005, 11) or the rule of law. Historicizing the notion of corruption in the Ottoman Empire, Cengiz Kırılı (2015) notes that corruption in its financial meaning was “invented” during the Tanzimat with the creation of the state official whose only compensation was from a salary. Before that, there had been no clear distinction between the personal pockets of the officials and the state’s coffers, so gifts to the officials that had been considered part of their salary became recast as bribes.

Questioning corruption is a politically fraught endeavor everywhere and especially in Lebanon, where state resources are so often squandered through clientelistic networks without even providing reliable basic services (such as electricity, internet, schools) (e.g., Leenders 2012). Yet, for these same reasons, the question of corruption is also particularly relevant because it asks us to understand the effects of this ethic of care under very different political-economic conditions with a different understanding of the state and the social contract, where the (Ottoman) state did not provide for its citizens and where the principle of equality did not hold sway. If nepotism and clientelism are not pre-modern holdouts, but produced by the very structures that claim to provide equality to all, then eradicating them might not be a possibility; instead, the more interesting scholarly focus becomes the analysis of the work both accusations and practices of corruption do.

I propose that the answer to this question of the rising unease with giving to family, especially if giving involves resources now deemed public, hinges on changing conceptions of charity, religion, and economy based upon and reproducing novel understandings of the public and private spheres. Starting in the nineteenth century, a waqf’s charitable purpose of supporting the founder’s family was brought into question.⁴ Despite their designation as “family waqfs,” these waqfs benefited families only as intermediary beneficiaries before the extinction of these families and the waqfs’ reversion to perpetual charitable purposes like helping the poor, which, given the life expectancy in the medieval and early modern periods,

3. Indeed, as anthropologists have shown, family is not simply about unconditional love, solidarity, and reciprocity. It is as much a site of power struggles and the reproduction of hierarchies (Abu-Lughod 1986; Joseph 1994), of heavy expectations and obligations, and of rivalries and latent hostilities (Peletz 2001). This appears in Doumani’s work (2017) on the waqfs of Tripoli and Nablus, where lawsuits among kin are one of his main archives.

4. Because it reflects broader modern understandings of the private and the public, the questioning of the validity of family waqfs occurs across the world, even under very different forms of rule. See, for example, Kozłowski (1985) for British India; and Yahaya (2020) for British and Dutch Southeast Asia.

happened quite quickly (Hoexter 1998b, 479). These family waqfs also followed the same *fiqh* regulations as other waqfs that went directly to the poor.⁵ Such “family waqfs” became constructed, in both scholarship and popular discourse, as a deviation from truly “charitable waqfs.” This chapter first excavates this privileging of the family as an act of piety, and thus historicizes the assumption that giving to strangers is “altruistic”⁶ and pious, whereas giving to one’s family is “selfish” and thus not truly pious. It then traces the suppression and afterlives of an ethic of care of the family as piety against the hegemony of an ethic of merit and a new grammar of family that overlays family with the private sphere. This new grammar thus refigures the act of giving to one’s family in the public into “nepotism.” By subjecting charitable waqfs and family waqfs to different legislation, French Mandatory powers later produced in yet another way the private/public division essential to modern states and the rule of law. In this process, because the family waqf was considered to be part of the economy (as we discussed in chapter 2) arguments as to its economic effects came to be considered even by religious scholars, who in their debates over the validity of family waqf introduced statistical styles of reasoning into the Islamic tradition. My analysis, as in the previous chapters, develops in four moments, starting with the Ḥanafī tradition just before the nineteenth century reforms, followed by the Ottoman reforms, French Mandate debates, and postcolonial practices.

OTTOMAN LATE ḤANAFĪ CHARITY: THE PRIMACY OF THE FAMILY

Spending on Family as Piety

Like their Jewish and Christian counterparts, Islamic notions of charity in my medieval and early modern library differ from modern ones in their relation to the

5. Studies of waqf have noted this point from early on, like Anderson (1951, 296) and Cahen (1961, 47), and it has been confirmed by studies of early waqf manuals (e.g., Hennigan 2004, xivn5). Manuals discuss family beneficiaries along with expenditures on a particular mosque as examples of extinguishable beneficiaries and their effect on the perpetuity of the waqf (see, e.g., al-Khassaf 1999, 18, 112) rather than as examples of “selfish” giving to family as opposed to altruistic giving to strangers (Kozłowski 1985, 60). Even as historians acknowledge that legal texts do not make a distinction between these two kinds of waqfs, they maintain this distinction since these waqfs had very different “social and economic consequences,” especially due to their scale (McChesney 1991, 9). Historians therefore usually take as their subject either charitable waqfs (e.g., McChesney 1991; Hoexter 1998a; van Leeuwen 1999) or family waqfs (e.g., Layish 1983; Powers 1989; Reiter 1995; Doumani 2017). In this chapter, I will linger on the significance of the lack of legal differences between family and charitable waqfs in order to examine assumptions about charity and the family and how they overlap with the private/public distinction.

6. These are salient debates in the anthropological literature on the gift, which I will engage below. On the question of selfishness versus altruism, see Parry (1986, 466–69); on the care of strangers versus kin, see Bornstein (2012, 145–70).

family.⁷ Let us start with the Christian definition because its assumptions structure contemporary understandings of charity in the Anglophone world but also de-exceptionalize the medieval and early modern Islamic understanding. A first definition of *charity* in the Oxford English Dictionary is “Christian love, which implies both God’s love of man, man’s love of God and his neighbour, and especially to his fellow-men.” In this view, such love was expressed through piety, whose meaning and expression underwent significant changes from its Greco-Roman incarnation. Indeed, piety in Greek, as Augustine notes, referred to the worship of God, dutifulness towards parents, and, in popular talk, works of charity (Garrison 1992, 12). While Augustine restricted “true” piety to the worship of God, the association of piety with duty towards the family continued during the medieval period (Garrison 1992, 12). The association of piety with family appears in the relation between church office and family, whereby popes favored their families and “nephews” in their appointments (Reinhard 2002, 1031). As historian Wolfgang Reinhard notes, the very term nepotism, “designating relatives of popes who enjoyed significant favoritism” (2002, 1030), arose only in the seventeenth century as the practice of care of the family through and in government was coming under attack.⁸ Before that, as he details, care of the family was considered piety and an expression of charity (along with being the way government operated through the hereditary principle).

In a second, “secularized” definition of charity in the OED, God disappears since charity is “benevolence to one’s neighbours, especially to the poor; the practical beneficences in which this manifests itself as a feeling or disposition or as action (almsgiving).” Yet, the connotation of charity as religious giving remains even today (Scherz 2014, 7).

In both the Christian and secularized English definitions of charity, and in Hanafi ones, sites of benevolence receive considerable mention. The poor are the recipients of charity par excellence in the definitions above. This is the case also of Islamic charity, *ṣadaqa*,⁹ as Ibn ‘Abidin clearly states that “the place of charity [in principle/originally] is the poor” (“maḥall al-ṣadaqa [fi al-aṣl] al-fuqarā’”). That is why, he explains, when one says, “I made a *ṣadaqa*,” there is no need to specify that it is for the poor and that the *ṣadaqa* goes to the poor (*Hāshiya*, 3:365–66).¹⁰ Yet the grammar of *ṣadaqa* in the Islamic legal tradition differs because it is associated

7. Scholars of Islam have noted many continuities between the Muslim *ṣadaqa*, the Jewish *ṣedaqa*, and Christian alms (s.v. “*ṣadaka*” in *El2*). For an example of modern notions, the US Internal Revenue Service defines charitable organizations that are worthy of support and tax exemption as those excluding private interests and the family (<https://www.irs.gov/charities-non-profits/charitable-organizations/inurement-private-benefit-charitable-organizations>).

8. I owe this reference to Yazan Doughan (2018), whose work on *fasād* (corruption) and *wāṣṭa* (the practice of using the mediation of a person to get something from another person/entity) examines in detail the logic of this practice and its entwinement with different regimes of care.

9. For an excellent introduction to the historical development of *ṣadaqa*, see *El2*.

10. I discuss below the possibility of giving to the rich as *ṣadaqa*.

with voluntariness and *qurba* (the intent of bringing the benefactor closer to God), which surface in relation to other forms of spending and giving.¹¹

Ṣadaqa's voluntariness is highlighted in its opposition to zakat (almsgiving) and *nafaqa* (support or maintenance). Zakat is often termed *ṣadaqa* and is required of every Muslim who can afford it and should be distributed to the Muslim poor. Over the years, however, *ṣadaqa* came to imply *voluntary* giving, as opposed to zakat, obligatory giving.¹² *Nafaqa* denotes spending in general terms, but in legal manuals, it usually follows divorce and refers to the rights of others on one's spending. *Nafaqa* consists of "food, shelter, and clothing" and is required for another person related through "three things: marriage, *qarāba* (nearness of kin),¹³ and ownership" (Ibn 'Abidin, *Hāshiya* 2:644). Hence *nafaqa* usually refers to the required maintenance of one's wife, one's near of kin, and one's slaves.¹⁴ Beyond these requirements, spending on near of kin counts as an act of piety if performed with the right intent: in submission to God, seeking his rewards.

Besides its voluntariness, *ṣadaqa* is associated with *qurba*. The term itself comes from the verb root *ṣ-d-q*, which means "to be truthful." *Ṣadaqa* signifies then "the truthfulness of the slave [of God] in his worship" (al-'Ayni, *Ramz* 1:85), and its mandatory component, the zakat, is an "integral part of religious ritual" (Hallāq 2009, 231).¹⁵ This hints at the main characteristic of *ṣadaqa*, drawing its donor closer to God. *Ṣadaqa* is discussed with gifts (sing., *hiba*) in an attempt to distinguish them, because both involve the transfer of property without compensation. *Ṣadaqa* differs by its motive, "ibtighā' wajh allāh ta'ālā" (al-'Ayni, *Ramz* 2:186) ("to please God . . . in the hope of a reward in the hereafter. . . . It must, that is, constitute a *ḥurba*, an act performed as a means of coming closer to God" [EI2]). *Ṣadaqa* is then primarily distinguished from *zakat* and gifts and from its Christian and Jewish counterparts by its intentionality and the *qurba* intention behind it.

In my library, discussions in the waqf chapter of fiqh manuals do not always elaborate on the *qurba* purpose of waqf.¹⁶ If the definitions of waqf according to

11. Hadith collections and the Islamic law manuals in my library do not address *ṣadaqa* in a separate chapter (*kitāb*). They usually tackle it within sections on zakat (alms), waqf, *nafaqa*, and gifts (*hiba*).

12. There is a disagreement on whether this is a modern understanding, as the Qur'an and many fiqh manuals use *ṣadaqa* for *zakat* in many places (s.v. "ṣadaka" in EI2).

13. Based on Muhammad Asad's translation of "dhawī al-qurbā" in Qur'an 2:177 (2003, 46), I use "near of kin" instead of "next of kin" because the Arabic word implies proximity.

14. Here, one's near of kin are one's parents and one's children. For more detail on *zakat* and *nafaqa*, see Mattson (2003).

15. *Zakat* has a connotation of return, "of paying out of the growth of one's property with a view to purifying that property" (Hallāq 2009, 231). See also Bonner (2003).

16. While *qurba* is discussed as an essential element of the waqf in most Hanafi fiqh manuals, Ibn Nujaym, in his legal maxims classic, *al-Ashbāh wa al-Naẓā'ir*, considers the intent of *qurba* as a "bonus" rather than essential for the validity of waqfs (1999, 20). He notes that waqf-making does not need a statement of intent because it is not an act of worship, since it is valid if done by a non-Muslim. However, he continues, if the founder intends *qurba*, he receives rewards, and if he does not make

Abu Hanifa or his students do not include an explicit mention of qurba,¹⁷ nonetheless qurba is implicit in the term *taṣadduq* which denotes an act whose aim is qurba, as discussed above. Ibn Nujaym and Ibn ‘Abidin, however, dwell on qurba in the meaning, reasons, and conditions of waqf making. Most prominently, Ibn Nujaym mentions, citing al-Sarakhsi, that “the reason behind waqf making is the will of the commendable soul to do good to his ‘beloved’ [*birr al-aḥbāb*] in this world, and to get nearer to the Almighty in the hereafter [*al-taḥarrub ilā rabb al-arbāb*]” (Ibn Nujaym, *Baḥr*, 5:188). While waqf is not solely an act of worship (“lays mawḍū‘an li’l-ta‘abbud biḥ”), like prayer and pilgrimage are—which, as we discussed in chapter 3, do not necessitate proper intent because they can be done only for worship—it incurs, with the right intent, the reward of closeness to God (Ibn ‘Abidin, *Ḥāshiya*, 3:358).¹⁸

Before turning to the question of family and ṣadaqa recipients, a remark on the use of the term *family* is necessary. Because the argument advanced in this chapter hinges on the inclusion or exclusion of family from charity, the question of what type of family it is that waqf and Islamic law privilege is irrelevant. Whether ṣadaqa injunctions and waqf practices favor the nuclear family, patrilineal descendants, or cognatic groups matters less than the sheer presence of any part of the family in the (worthy) recipients of ṣadaqa. Therefore, I will continue to use *family* to denote any of these groups.

Furthermore, rather than engaging in the debates on the relation between the nuclear family and capitalism (Engels and Leacock 1972; Smith and Wallerstein 1992) and the effect of waqf on the production of such families (a debate compellingly addressed by Doumani [2017]), I am interested in contributing to discussions on the supposed deleterious effects that family ties and identities have on building noncorrupt democratic states—a debate that is at the center of contemporary Lebanese politics, as I further discuss in the conclusion of this chapter.

Regardless of the form family takes, it appears in discussions of ṣadaqa in the Islamic tradition. Both the Qur’an and hadith enjoin privileging family members as the primary recipients of charity. In the Qur’an, for instance, a key verse describing the principles of piety places spending on one’s family immediately after the basic beliefs in God, Judgment Day, the angels, revelation, and the prophets. “Truly

an express intent, he does not receive such rewards. Nonetheless, in his discussion of the waqf of the *dhimmī*, Ibn Nujaym (*Baḥr*, 5:188) specifies that the charitable purpose needs to be a qurba for “us and for them,” implying that even for non-Muslims, waqf is a qurba in their tradition.

17. As might be recalled from chapter 1, for Abu Hanifa, waqf is “the confinement of a ‘ayn [the corpus of a specific object, or the principal, to use endowment terminology] to the ownership of the waqf founder, and the gift of its *manfa‘a* (yield or usufruct) to some charitable purpose” (al-‘Ayni, *Ramz* 1:343). For his students it is “the confinement of the corpus [of a specific property] [‘ayn] to the ownership of God . . . and the gift of its yield or usufruct [*manfa‘a*] to some charitable purpose [*al-taṣadduq b-il-manfa‘a*].”

18. I elaborate later in this section on the necessity of this intent in discussions of the waqfs of non-Muslims.

pious [*al-birr*] is he who spends his substance upon his near of kin” (Qur’an 2:177). The family (*dhawī al-qurbā*) comes first in pious spending, followed only afterwards by orphans (*al-yatāmā*), the needy (*al-masākīn*), the traveler/wayfarer (*ibn al-sabīl*), and beggars (*al-sā’ilīn*). Many hadiths echo the Qur’an regarding the piety of spending on one’s family: for instance, “when a Muslim spends on his family [*ahlih*] seeking reward for it from Allah, it counts for him as ṣadaqa” (Muslim 2005). Another hadith introduces an even more radical suggestion—that spending should start with oneself—after one has fulfilled one’s obligations to family. “Start with your own self and spend it on yourself [*taṣaddaq ‘alayhā*], and if anything is left, it should be spent on your family [*ahl*], and if anything is left [after meeting the needs of the family], it should be spent on relatives [*qarāba*], and if anything is left from the family, it should be spent like this, like this” (Muslim 2005). These are but a few examples of a central theme in the Qur’an and Islamic ethics: the care of the family, and especially parents. In these ethics, the dichotomy between care of family (as an extension of the self and thus as selfish) and care of strangers (as selfless and thus altruistic) does not appear.

These general injunctions of giving to family as acts of piety take a different form in the manuals of my *fiqh* library. It is surprising in its absence, either as an injunction or as admonition. The question of whether making one’s family the beneficiary of a waqf counts as a valid ṣadaqa that will fulfill the goal of the waqf as a qurba is never discussed. Instead, in the late Ḥanafī canon, three categories of beneficiaries might threaten a waqf’s validity: the self, the wealthy,¹⁹ and non-Muslims. Jurists debate whether dedicating the usufruct to one of these three categories of beneficiaries counts as a ṣadaqa and hence provides for a valid waqf. This absence of family from noncharitable beneficiaries suggests that, in this period, naming family as waqf beneficiaries was not seen as suspicious or different from naming particular individuals.

The first category of possible noncharitable waqf beneficiaries involves the self. Al-‘Ayni, for example, discusses the permissibility of making oneself the beneficiary of one’s waqf during one’s lifetime and among other beneficiaries (*Ramz*, 1:346). He reports two opinions: the dominant one, Abu Yusuf’s, which allows the practice and has been adopted so as to encourage the making of waqfs; and al-Shaybani’s, which declares that this stipulation makes the waqf invalid. The justification for this invalidation of the waqf is that such a stipulation prohibits qurba. Qurba, according to al-‘Ayni, occurs through relinquishing ownership rights—the rights to sell, bequeath, pawn—and here the right to usufruct seems to be among those. Keeping the right of usufruct counters complete relinquishing and hence invalidates the waqf. Ibn Nujaym however disputes this opinion and

19. “The wealthy” (*al-aghniyā*) refers to anyone who pays *zakat* because they have a certain amount of savings held for a year. However, this technical meaning of *wealthy* should not imply that these waqfs were dedicated to people who are well-off; rather just that they were dedicated to those who would not be eligible for *zakat*.

argues that in fact waqfing involves the “relinquishing of ownership to God to get close to him, so the founder’s stipulation of some or all the revenues for himself consists of dedicating what now belongs to God to himself, rather than dedicating what belongs to himself for himself” (*Baḥr*, 5:368). Ibn Nujaym also quotes a prophetic tradition that disputes the noncharitableness of giving to oneself: “a man’s spending on himself is a ṣadaqa” (*Baḥr*, 5:368).

The second category of possible noncharitable waqf beneficiaries is the wealthy. The wealthy could be any particular person and not necessarily kin. They surface very early in Ibn Nujaym’s chapter on waqf, right after the second waqf definition that he quotes, that of Abu Hanifa’s students: the confinement of a res as if it was the ownership of God. Ibn Nujaym then adds to that definition, quoting the elaboration of Ibn al-Humam (d. 1457 [861]), a leading Mamluk scholar writing prior to the Ottoman conquest: “and spending of the usufruct on whomever he wishes” (“ṣarf manfa‘atiḥā ‘alā man aḥabb”).²⁰ Ibn al-Humam explains his liberal interpretation of waqf recipients with the fact that “gifting the usufruct to any wealthy person the founder chooses, without the intention of qurba, is valid, even if, for the waqf to be valid, its ultimate beneficiaries need to be a qurba as it is a condition for perpetuity, at which points the waqf [for a wealthy person] becomes equivalent to the waqf for the poor or a mosque. However, it remains a waqf even before extinction of the wealthy, *without it being an act of charity*” (quoted in Ibn Nujaym, *Baḥr*, 5:187; italics added).²¹ Giving to a wealthy person, it would appear, is *not* charity.

However, Ibn Nujaym elaborates on this opinion and adduces another position: “One could say that the waqf benefiting the wealthy constitutes a ṣadaqa of the usufruct because the ṣadaqa is as valid for the rich as it is for the poor . . . and giving ṣadaqa to the rich is a kind of qurba that is different from the qurba of giving to the poor” (Ibn Nujaym, *Baḥr*, 5:187). Ibn Nujaym seems clear that giving to the rich is charity, albeit inferior to giving to the poor.²² More debates ensue in the centuries and commentaries that follow. A commentator on a different text argues that “if the qurba from giving to the rich was a kind of qurba that was sufficient for a waqf, the waqf that benefits the rich would be valid without it needing to benefit

20. I have translated ‘alā man aḥabb as “on whomever he wishes” even though the same root, ḥ-b-b, appears above in the sense of “the beloved” in the discussion of the purpose of waqf-making to “do good to his ‘beloved’ [aḥbāb] in this world.” The waqf-maker’s beloved are not those whom he knows and loves, as a literal translation might imply. Ibn ‘Abidin explains that the aḥbāb are “those to whom he wishes to do good, from a near of kin or an unrelated poor person” (*Ḥāshiya* 3:358). Note that the near of kin are not problematized as a recipient of charity.

21. “Al-waqf yaṣuḥḥ li-man aḥabb min al-aghniyā’ bilā qaṣd al-qurba, wa huwa wa in kān lā budd fi ākhirih min al-qurba ka-sharṭ al-ta’bid wa huwa bidhālik ka’l-fuqarā’ wa maṣāliḥ al-masjid lakinnahu yakūn waqfan qabl inqirāḍ al-aghniyā’ bilā taṣadduq.”

22. This opinion echoes the statement in the *Encyclopedia of Islam* entry for ṣadaqa that, for Muslim jurists, it can be given to the wealthy. However, the statement there that the jurists are unanimous about this position seems exaggerated, as we can see in this discussion.

the poor as its endpoint” (Ibn ‘Abidin, *Hāshiya*, 3:357). However, this argument is picked up by Ibn ‘Abidin in his gloss and challenged.

The correct answer is that the waqf is a ṣadaqa from beginning to end, as it is necessary to state clearly that it is a ṣadaqa in perpetuity or through what stands in place of that perpetuity [*lā budd min al-taṣrīḥ aw mā yaqūm maqāmah*], but if the founder makes its first beneficiaries specific [*mu‘ayyan*], he would be excluding these revenues from the poor . . . so it is a waqf from the beginning and spending its revenues on a specified beneficiary does not take away this charitable quality. (*Hāshiya*, 3:357–58)

Later in the text, Ibn ‘Abidin explains what he means by “what stands in the place of perpetuity”:

The stipulation to spend the revenues on a specified beneficiary [*mu‘ayyan*] is like [*bi-manzilat*] the exclusion of the spending [of the waqf revenue] on the poor, so the specified beneficiary stands in the place of the poor [*qā’iman maqāmahum*], so the spending on the particular [wealthy] becomes in all significance a ṣadaqa [*fī ma’nā al-ṣadaqa*] because the particular takes the place of the poor. (*Hāshiya*, 3:417)

In other words, through a formalistic syllogistic move, Ibn ‘Abidin deemed giving to specified wealthy extinguishable beneficiaries as charity.

The wealthy also appear in the discussion of invalid classes of recipients like the blind, Qur’anic reciters, poets, the inhabitants of Baghdad, Arabs, the Muslims, and “the people” (*al-nās*). Thus a waqf that benefits “the Muslims,” for example, is invalid according to al-Khassaf, because they are innumerable and include the wealthy along with the poor, and so are eternal beneficiaries that would not allow the waqf to reach the poor (1999, 107, 232).²³ By contrast, a waqf for one’s poor neighbors or for a named individual and his or her family is valid: for the first because of their poverty and for the second because they are numerable and extinguishable and the waqf would eventually reach the poor. Here again, then, wealth is not an issue for recipients so long as they are one stop before the endpoint of the waqf.

The last discussion of noncharitable waqf beneficiaries occurs around the waqfs of non-Muslims. If the founder is not a Muslim, what counts as a qurba for this founder? Ibn Nujaym advances that the waqf needs to be a qurba “for us and for them” (*Baḥr*, 5:189). For instance, the waqf of a Jew on a synagogue is considered invalid because it is not a qurba for “us,” and the waqf of a Christian or a Jew to support the hajj is also considered invalid because it is not a qurba for “them.” The

23. Note that this invalidity does not apply to waqfs dedicated to facilities that can be used *and are needed* by the rich and the poor, such as inns (*ribāṭ*), caravanserais (*khān*), cemeteries, canals, bridges, mosques, and mills. Thus, need (*hāja*) becomes an important criterion in determining whether the perpetual beneficiaries are valid, and later jurists start to argue that blindness stands in the way of gainful employment and so the blind should be assumed to be poor, making the waqf for the blind valid (Ibn ‘Abidin, *Hāshiya*, 3:430).

waqf of a Christian or a Jew for any poor, even if they are disbelievers (as long as they are not engaged in warfare against Muslims), is considered a qurba.

In these discussions of waqf beneficiaries who invalidate the qurba in waqf-making, the family is never raised as a topic of attention. The absence of the family in discussions of invalid and noncharitable beneficiaries points to its unproblematic status in the practice of waqf foundation. The injunctions of being charitable to one's near-of-kin coupled with the taken-for-granted charitableness of making waqfs benefiting one's family highlight a regime of care and giving that privileges both the near and the familiar. This regime of giving differs from now-dominant models of charitable giving, like humanitarianism, which, as Erica Bornstein concisely puts it, "assert radical and abstract notions of equality in which all humans are worthy of rights and the care of strangers is privileged to the care of kin" (2012, 146). Bornstein contrasts this model with what she terms "relational giving" in India, where giving to family is privileged, and giving to strangers requires a discursive, affective, and even behavioral transformation of strangers into kin. Giving to family is duty, sometimes perceived as a burden, but it is also "the social life that sustains and rewards" (2012, 149). Giving to kin, in the cases that Bornstein discusses, however, remains quite distinct from charitable giving like the *dan*, a form of free gift. Furthermore, Bornstein highlights how giving to strangers is transformed into the first kind of model and thus keeps the distinction between kin and others, even though it parochializes liberal humanitarian models of giving. In the case of the waqf, giving to family moves beyond duty (when it goes beyond the legally required) and can become charity. It thus further blurs the clear liberal distinction between giving to the family in the private sphere as duty and to anonymous strangers in the public as charity.

Family as the Logic of Charity

Family, then, was a legitimate and even privileged beneficiary of charity and waqf in the late Hanafi Ottoman tradition. This privileging of the family is epitomized in one Beirut waqf that today is seen as an exemplary "charitable waqf": the 'Umari Mosque, the main mosque of the city in the nineteenth century. This might appear like an argument that such "public" waqfs still had a "personal dimension," as Gregory Kozlowski wrote about Indian waqfs (1985, 25). However, we need instead to rethink the "public" and the "private" because the "personal" was no simple dimension and was not restricted to private persons. Family was the very logic of transmission of charity in these endowments.

Based on accounting documents sent from Beirut to Istanbul, the waqf's main expenditures appear to be repairs and salaries (see appendix 2). Repairs, as the jurists had called for, come as a first priority, as they guarantee the continuous existence of the revenue-bearing object and the waqf itself (al-Khassaf 1999, 92). In the case of al-'Umari, they were the biggest expense. Offices follow, and they consist of the various employed positions necessary for the mosque's upkeep

and operation. Offices constitute a considerable expense, usually at least a third of the waqf's regular expenditures. Finally, lanterns and their oil, rugs, pitchers for ablutions, and similar commodities and consumables necessary for the running of the mosque form another type of expenditure. To examine the role of the family in these expenditures, I analyze the variety of offices and the logic of their transmission from one officeholder to another. Such appointments were documented in the archive of the shari'a court in Beirut and in the center in Istanbul. The logic of family could have also directed the distribution of charitable funds in the expenditures of repairs and mosque equipment, as many crafts were passed on from fathers to sons within a system of apprenticeships and guilds.

Following the transmission of offices from holder to holder reveals the channels along which charity is distributed across the limits of tenure and reveals that the primary route of transmission is from father to son,²⁴ with supplementary criteria (such as merit, experience, and character) also coming into play. I followed the transmission of these offices through documents held at the Ottoman state archives. Indeed, the Treasury held detailed waqf accounting ledgers (first as *Hazine/Muhasebe Defterleri* and after 1882 [1300] as *Esas-i Cihat Defterleri*) arranged by city, recording the details of the main waqfs, such as offices, names of officeholders, salaries, dates and types of appointments, and documents delivered to the officeholders for their appointments.²⁵ These "*muhasabe*" registers constituted a "base record" or summary/index of positions, but they also included pointers to the various documents that supplemented this base record.

For Beirut, the base record of the register dated 1786 originally listed six waqfs, including three mosques, a madrasa, and a Sufi lodge. Later on, at various dates, a few different hands added the waqfs of ten other mosques and Sufi lodges. In the first list, the *câmi-i kebîr-i 'Umari* listed the largest number of offices: a supervisor, a *khaṭīb*,²⁶ two imams (prayer leaders), a Ḥanafī professor, seven callers to prayer, a reader of the Qur'anic chapter *yāsīn* after the noon prayer, a caretaker (*qayyim*), an imam for the afternoon prayer (*imâm-i 'asr*), and two *türbedâr*s (caretakers of the burial grounds—in this case, the "mausoleum" that supposedly entombs a few hairs of the Prophet). This totaled seventeen offices just for the 'Umari Mosque. The 1786 and the 1882 base records detailed changes in six of the seventeen offices: a *khaṭīb*, two imams, two burial ground caretakers, and the Ḥanafī professor. The earliest "update" after the original positions listed in the 1786 register came in 1850 (28 S 1266 [12 January 1850]), the date when the mosque's administration was transferred to the Imperial Waqf Ministry, implying that

24. Most of these offices, like imams and *khaṭīb*s, can be held only by men.

25. Exhaustive surveys of waqfs are also included in the land surveys, carried at the time of conquest and updated at the enthronement (*culûs*) of a new sultan. BOA.TT393 (1520 [926 AH]) is the earliest exhaustive record of the waqfs of Bilad al-Sham.

26. The person in charge of making the *khuṭba*, the sermon preceding the Friday prayer and other special prayers.

beforehand, the administration was occurring at the local level, without interference from the capital. It was only in 1870 that the Ottoman state issued new regulations for appointments to offices, so I assume that appointment letters before then continue in the late Ḥanafī tradition.

It appears from the 1786 and the 1882 base records for Beirut's 'Umari Mosque that the logic of appointment to offices was articulated around the family. When an office became vacant, as upon the death of its holder, it was filled by his (usually eldest) son, after his competence was established. The appointments mentioned in the 1786 and the 1882 base records fall into two categories: those where the name of the new holder shows that he is the son of the older one,²⁷ and those where the names of new holders seem unrelated to the older one. Appointments of the second type might imply that offices did not necessarily stay within a family and that these appointments can be used to disprove the pervasiveness of family logic. However, the sultan-signed appointment letters (*berât-i 'âli*),²⁸ which described the details of the new appointments, explain that the new (unrelated) officeholder was appointed either in the absence of heirs of the original holder or in case of their incompetence, as I will elaborate below.²⁹ The family remains then the primary determinant, supplanted only in its absence or because of incompetence. That said, competence is a necessary condition for appointment in Beirut in this period, even though in larger cities, many of these positions were passed on to minors or traded (more below). The necessity of competence as a limit to family logic appears in Ibn 'Abidin's criticism of the practice of appointment of children to positions as administrators, teachers, and personnel in charitable institutions. The illustrious jurist explicitly denounced the argument that "the bread of the father belongs to his son" as useless (*lā yafīd*) because it changes the rule of law (*ḥukm al-shar'*). Following such practice stems from "ignorance and following a customary practice that contradicts the explicit truth [*al-'āda al-mukhālifa li-ṣariḥ al-ḥaqq*]," and the appointment of minors is unreasonable (*lā yu'qal*), and the ruling of the Ḥanafī judge as to its validity is pure error (*khaṭa' mahḍ*). In exasperation, Ibn 'Abidin ends this section of his commentary with "There is no might nor power except in God!" (*Hāshiya*, 3:385).

27. The classical naming practice in these documents was "X, son of Y." In the case of Beirut, it seems that family names were commonly used, so many times the name mentioned would be "X, son of Y Surname," which makes tracing patrilineal family connections easier. Family connections through marriage are harder to get at without deep family histories of these families.

28. Why and how *berats* were issued is itself a topic worthy of investigation as a window onto legal authority. For instance, VGM 515.177 mentions that the *khaṭīb* had received a *berat* from the qadi of Beirut in 1712 [1124], while the new officeholder received a *berat* from the sultan. Why and when does an office claimant refer to the qadi or to Istanbul? These questions fall beyond the scope of this book. I owe this point to a discussion with Guy Burak.

29. Appointment letters do not describe how competence was determined and by whom. In the section "Nineteenth-Century Reforms," I discuss the institution of exams and the composition of examination committees.

It might appear at first glance that my documentation of the logic of the family and the way it operates even in “public offices” is yet another example of what Max Weber describes as patrimonialism, as documented, for instance, by Carter Findley (1989) in civil offices of the Ottoman Empire. In his description of the recruitment, training, and promotion of scribal officers at the Ottoman Porte before the Tanzimat, Findley details the way apprentices started at a very young age to be attached to a scribe, but given the highly specialized language of their work, they were expected to come from “from homes where needed skills were known and presumably taught to them” (1989, 55). When one did not come from such a family, one had to attach oneself to an expert and develop links of patronage that would then allow for placement. Findley recognizes that family and close personal relations were the main organizational principles in the Ottoman Empire (in addition to guilds and semiautonomous religious groups) and warns the reader that these were not necessarily less efficient than modern bureaucracy. However, he still sees this logic as problematic, often referring to it as “favoritism” and “nepotism” (1989, 49, 55, for example), because all civil servants were ultimately at the mercy of the absolute power of the sultan, leading to factionalism and intrigue.

Contrary to this view, as Pierre Bourdieu and many others show, families remain important spaces for the transmission of knowledge, especially embodied knowledge. Rather than seeing modern rationalized bureaucracy and patrimonialism as opposites, with the first representing equal opportunity based on merit, and the other reproducing inequality by distributing underserved favors to kin, I suggest that they are logics that serve different groups. Modern rational bureaucracies replace one type of relationality (families) with another (mostly based on networks related to class, gender, race, education, and so on) and are, thus, far from the “equal opportunity” myth. While modern bureaucracies might allow for more upward mobility, they are nonetheless on a continuum with patrimonialism. Furthermore, occupation requires not only knowledge of content but also bodily dispositions and sensibilities, which are very often inculcated in families through education from a young age (even if they can also be transformed through disciplines of the self).

While the principle of family right to office might lead to the assumption that most of these offices remained within one family, this was not the case (see table 2 in appendix 2). Within one office, and for all offices except the *türbedâr*, appointments move in and out of families. First, the different life spans and expectations in the pre-modern period and up to the end of the nineteenth century precluded the assurance of having surviving offspring.³⁰ In addition, and as will be discussed below, competence intersected with the familial right to office and was a necessary criterion for appointment. Therefore, the logic of transmission to

30. Miriam Hoexter notes that “many families eventually died out, and in the course of time, many properties . . . found their way to the ultimate charitable beneficiaries of originally family *awqāf*” (1995, 138).

family served as a guiding principle, not as an iron rule. Rather than a perpetuation of privilege, it provided security for the precarious lives of many of these officeholders.

The operation of the logic of family in office transmission in a small town like mid-nineteenth-century Beirut differs quite dramatically from that described by Ottoman historian Madeline Zilfi for the highest offices of the religious class (*ilmiye*) in pre-Tanzimat Istanbul. Through a study of the highest echelons of religious positions (*şeyhülislâms* and *kazasker*) in the eighteenth century, Zilfi shows that most officeholders had fathers who were also in such positions and who used their appointment privileges (of novices) to ease their sons into the religious hierarchy with “scant regard to the son’s own merit or ineptitude” (1983, 358). While candidates trying to enter the religious hierarchy as novices were required to submit to interrogation by the *şeyhülislâm* to judge “their scholarly competence,” sons of ‘*ulama*’ were exempted from that questioning (1983, 340). Furthermore, to Zilfi, family connection (being the son of a *molla* [member of the legal-religious administration, in English rendered as *mullah*], i.e., being a Mollazade) guaranteed undue privilege to these scholarly families and allowed for the creation of an ‘*ulama*’ “aristocracy” (1983, 358).

It is important to note, however, that this aristocracy did not acquire property rights in appointments to judgeships and other positions in the religious hierarchy. Such positions were yearly appointments, between which the *mollas* “languished” sometimes many years, even though they increasingly had access to grants against the supervision of lesser judgeship (1983, 353–54) that allowed them to live during these “out” times. In eighteenth-century Istanbul, the logic of the family ensured the creation of a class that had access to these positions (with some possibility for outsiders to get into that class, but with much difficulty). That is markedly different from the positions at the ‘Umari Mosque in the second half of the nineteenth century, which were for life and inheritable but nonetheless moved much more outside of one family.

Logic of Appointment: Family and Supplementary Reasoning

Examining the base records’ supporting documents with their more detailed descriptions of appointments provides a deeper understanding of the logic of transmission of these rights and duties in the moment before modernizing reforms. Though it is true that family forms the overarching logic under which offices are transmitted, that logic is nonetheless entwined with other requirements. For example, when the transmission of office necessitates the fulfillment of duties like teaching or leading prayers, certain competencies and traits of character become necessary. The transmission of one office in particular—the Hanafi professorship—provides a good example of an interruption of the family-based logic, where the other criteria for eligibility and the choice of the new holder were explicitly mentioned in the appointment letters.

The Ḥanafī professorship was made a permanent office in 1856 [1273] in the ‘Umari Mosque, after a petition by various ‘ulama’ and notables from Beirut. The petition names Shaykh Muhyi al-Din al-Yafi as a possible inaugural professor and presents the following credentials for his appointment in the position: his assiduous devotion in teaching at the mosque and his being among the most esteemed and magnificent ‘ulama’ (“min ajall al-‘ulamā”).³¹ The shaykh became the mufti of Beirut sometime between 1848 and 1858 [1265–1275] and was a member of the Sufi Khalwatiyya³² before becoming its leader in Damascus, housed in a lodge named after him (Wali 1993, 250).³³

In this case, the appointment letter specified supporting criteria outside family connection: competence, character, and duration of experience in the position. The last criterion, experience, represents an official sanctioning of an ongoing performance of a task and finds echo in various parts of the law. A legal maxim states that “the old order of things should be maintained” (“al-qadīm yutrak ‘alā qidāmih”).³⁴ For instance, the continuous cultivation of a piece of land endows one with rights to that land (Mundy and Smith 2007, 29). In the offices of the ‘Umari Mosque, Shaykh Muhyi al-Din al-Yafi was favored because he had been teaching for some time. While he had no qualified or suitable sons, the person appointed after him was the person who occupied the same position of mufti. Other appointment letters often refer to the length of service, officeholders having served “for a long time,” in the case of the imam (VGM299.340, 1853 [1269]).

Following length of service, the second criterion mentioned in the appointment letters is a demonstration of the potential appointee’s ethical behavior. These letters discuss the uprightness, righteousness, and integrity of the officeholder, and hence appraise his moral character. This concern constitutes a common theme in Islamic law that is dealt with extensively for witnesses³⁵ and is discussed for jurists

31. BOA.I.MVL 371/16311.

32. The memory of Sufi practices in Beirut seems to have been completely eradicated and made the exclusive realm of more “Islamic” cities like Tripoli and Damascus. The history of these practices, references to which abound in the Ottoman archive, and their eradication from practice and memory remains to be written. Fakhuri (2018) begins this project based on shari’a court records.

33. Wali mentions that al-Yafi was mufti for a short period and moved in his later years to Damascus (1993, 250). If al-Yafi was indeed in Damascus at the time of his appointment, the question of offices becoming in practice mere rights to revenue without the performance of the duties associated with the position arises. Given the long petition for giving al-Yafi the position however, it seems unlikely that he would have been an “absentee” officeholder. After all, absenteeism could be a cause for dismissal from office in fiqh discussions (Ibn ‘Abidin, *Hāshiya*, 3:407), even if, in practice, it seems to be more widespread. At the same time, the transfer of the office to Fakhuri, and not the son of al-Yafi, might imply that actually Fakhuri had been holding the professorship.

34. I borrow the translation from Meier (2016, 23).

35. In Islamic law, testimony is the primary kind of evidence, an “embodiment of ‘presence,’ of the testifying human witness, [which] stood opposed to the dangerously open interpretability, and the human absence and alienation of the written text” (Messick 1993, 205).

and judges. “The human links involved in witnessing also are comparable to those in the transmission of hadiths, the traditions of the Prophet. Both represent crucial types of knowledge,” whose trustworthiness depends on the “integrity of the transmission links, represented by the human relayers” (Messick 2002, 232). Even if a person had witnessed certain events, the acceptance of that person’s testimony ultimately depended on that person’s moral character; hence, the determination of that character is a crucial factor for the judges. In the case of jurists, their authority derives as much from the qualifications of their knowledge (epistemic authority) as their moral character (moral authority) (Hallaq 2009, 44–45). Knowledge of the law cannot be separated from the embodiment of the values it advocates; knowledge is tied to its carrier. *‘Adāla* (rectitude or justness) and the importance of “instilling a deep sense of morality” emphasized a sense of knowledge as embodiment of the ethics of the law. “Piety itself [is] an integral part of this [legal] knowledge, for piety dictated behavior in keeping with the Qur’an and the good example of the predecessors’ customs [*sunan*]” (Hallaq 2009, 44). The assessment of the rectitude and moral character of candidates reflects their responsibilities in transmitting and performing the knowledge they possess.

Finally, the most frequent criterion supporting appointments, mentioned in almost every appointment letter or summary, is competence (*al-ahliyya*). Shaykh ‘Abd al-Rahman al-Nahhas’s “competence at *khaṭāba* [performing the *khuṭba*] was proven in an exam” in 1851 [1268].³⁶ It appears that determining competence does not rely on the holding of *ijāzāt* (diplomas),³⁷ but rather on the results of examination. A testing system appears in place as early as 1851, nearly two decades prior to the promulgation of the Appointment to Offices Regulations (Tevcih-i Cihāt Nizāmleri) (1870 [8 Za 1286]).

In both the library and the archive then, the family was not problematized as a recipient of charity. While some jurists considered rich family recipients to be a temporary phase of that waqf that did not fulfill the charitable purposes of the waqf, others considered care of the family beyond the legally required spending done with the intent to be close to God as an act of charity, whether the family was rich or not. Further, even in waqfs dedicated to mosques and other institutions that served a wider public, revenues were seen as rights of various recipients (imams, caretakers, etc.) who could transmit them to their children as long as the latter had the required aptitudes, from knowledge to character, and experience.

36. VGM 299,340.

37. On the *ijāza* system, especially under the Mamluks, see Makdisi (1981) and Berkey (1992) for two differing interpretations of the importance of the institution and that of the teacher in granting diplomas. The absence of the scholarly genealogy and the *ijāza* of the law professor echoes the observation of Guy Burak that the state appointment system seems to have competed with the traditional institution of the *ijāza*. Burak notes that biographical dictionaries of Ottoman scholars contain many fewer references to *ijāzas* than Mamluk ones (2015, 34–38).

NINETEENTH-CENTURY REFORM: SHIFTING PRIORITIES IN THE LOGIC OF APPOINTMENT

Increased state control of waqf revenues, the creation of the Waqf Ministry, and the ensuing accounting reforms brought about systematization in the realm of accounting as well as the appointment to offices. The latter came to be regulated by the above-mentioned law, the 1870 Appointment to Offices Regulations. At first the 1870 Regulations confirmed the logic of family supplemented by merit, while taking steps towards dislodging it, but a later revision of the Regulations shifted the priority in appointment to merit. The codified manuals, on the other hand, perpetuated the logic of the family.

The 1870 Appointment to Offices Regulations maintained the priority of family transmission of offices, with continuity and competence as supporting criteria. The first article states: “When the holder of an office pertaining to a seized or semi-autonomous waqf dies, his son whose competence and capacity are confirmed is appointed to this office.” In the basic case of an officeholder dying and leaving a competent son, the rule of transmission documented in my archive—the competent son inherits his father’s position—is enshrined in the Regulations. In the more complicated cases, the law unsettles the priority of the family in transmission. To whom is an office transmitted when the officeholder dies without sons? Or if he leaves only minor sons?³⁸ What if his sons are incompetent?

Article 10 of the Regulations, on office transmission in the absence of heirs, crystallizes the new priorities in the logic of transmission. Among eligible candidates, the most competent receives the office. If many candidates are equally competent, the law first gives priority to the “near of kin” of the deceased officeholder (“müteveffâya karâbeti olân”). In the absence of such near of kin, the law gives priority to candidates who do not hold any other office, and thirdly to candidates found to be poor (“fakr hâli bulunân”). As a last resort, if none of the candidates is of kin, free of other offices, or poor, a drawing of lots breaks the tie. This article indicates the beginning of the change in the logic of appointments, from one based on family ties towards one based on an abstract meritocratic ethic of competence.

The 1870 Regulations also systematized the protocol for testing competence. Article 8 draws a distinction between scholarly offices (such as professors, imams, and *khaṭībs*) and manual offices (such as caretakers of the mosques). For the former, examination determines competence; for the latter, physical ability (*vucûdca iqtidâr*). Both types of offices require a declaration from those responsible for the waqf about the competence of the future holders, and this brings us back to the primacy of testimony as evidence in the fiqh. Examinations, like written evidence, can be falsified, while testimony of competence from the knowledgeable and the upright carries with it the moral and epistemic authority of the testifier.

38. Islamic law defines a minor (*ṣaghīr*) in terms of biological maturity, but distinguishes biological maturity from mental maturity (*rushd*).

The Appointment to Offices Regulations were subject to many revisions that altered the priority of family and competence in appointments. In its final version of August 1913 [2 N 1331], the priority previously accorded to family was superseded by the criterion of competence, as eligibility to take the examination was extended to whoever wished to compete for the office even when the officeholder left a competent son. The successful candidate was simply the most competent. Only in the case of a tie between two or more applicants of equal competence would the son of the former officeholder be given priority. Thus, while family remained an operative principle in determining appointments to office, its former centrality was supplanted by competence as the foundations of an ethics of meritocracy were being laid slowly but surely.³⁹

Such a move that eliminates the hereditary right to office could be analyzed as part of the rationalization of the Ottoman state and the creation of a modern bureaucracy, as we saw above in Carter Findley's Weberian analysis (1989) where such a transition reflects a move from patrimonialism to rational modern bureaucracy. In the Weberian ideal of modern bureaucracy, offices are hierarchically organized, with distinct and specific functions, whereby officials are free and recruited based on qualifications, receive salaries, and have no proprietary rights in offices. While this discourse of rationalization is certainly hegemonic and adopted by reformers and states in modernization projects (through the creation of a hierarchy in cadres, strict rules about family connections in hires, etc.), as will be even clearer in our discussion of the French Mandate, I suggest it as a discourse that lacks analytic purchase. Indeed, an analysis based on "rationalization/bureaucratization" abstracts merit and knowledge outside their social world and embodiment and thus presents merit as an "objective" category. It assumes that the ethic of merit and that of family are opposed and that family is an interference in a world that could be based on merit alone. However, as the continuation and even proliferation of nepotism and corruption charges in the modern world show, family, patron-client, mentor-mentee, and a host of other social relations cannot be severed in the operation and assessment of merit.

The discussion of appointments to offices in the nineteenth-century codified waqf manuals of our late Hanafi library echoes its commentaries; the manuals include discussions of the stipulations of beneficiaries with a nineteenth-century twist. Both Ömer Hilmi and Qadri Pasha discuss stipends (*waṣā'if*) when elaborating on founder stipulations regarding administrators. Both administrators and stipend holders (*arbāb al-waṣā'if*) are often specified by stipulation and receive a certain portion of waqf revenues either against services or as entitlements. Therefore, administrators and stipend holders mostly appear in articles specifying who can appoint them and how they can transmit their entitlements. Most of

39. The Appointment to Offices Regulations in their multiple iterations apply only to offices held without a stipulation of the founder. The stipulations of the founder retained the same force of law they have in waqf doctrine in that domain, unlike in the stipulations for expenditures.

these articles emphasize the need for a judge's appointment, unless the recipient is clearly identified and uncontested (named person, one competent son in a named position) and can be seen as an attempt of the central state to control appointments or to rein in the sale of offices. That said, in both Ömer Hilmi's and Qadri Pasha's manuals, the logic of the family appears in appointments of administrators upon the death of the current one. Even in the absence of a stipulation from the founder as to the administrator, the judge is to prioritize competent and deserving kin ("ahl ve mustahiqq evlâdı ve ahl-i beytinden") over any "stranger" (*ecnebi*), that is a non-family member (Ömer Hilmi, Article 296) (echoed in Qadri Pasha's Article 161).

Regarding the appointment of stipend holders, the two manuals diverge. Qadri Pasha does not discuss how the administrator or the qadi is to assess and appoint stipend holders. Ömer Hilmi includes a discussion of appointments to offices and echoes very much the position of the first iteration of the Appointments to Offices Regulations. He dedicates two sections totaling eleven articles to offices (*jihât*). These sections follow a section on stipends (*wazâ'if*), which are defined by Ömer Hilmi as payments stipulated by the founder to certain persons from the revenues of a waqf in return for services rendered ("khidmet muqâbilesinde olân") or without work required (Article 359). The presence of a section on stipends, distinct from offices, might be surprising at first, since stipends should include offices as the latter are also a right to revenue. Ömer Hilmi specifies that offices are a particular kind of stipend for services in "charitable foundations [*müessesât-i hayriyye*] such as those of imams, *khaṭıbs*, professors" (Article 375), which require specialized knowledge. The distinction he creates enshrines a distinction between these offices and other stipends and may reflect the beginning of their differentiation and mapping onto different regulations. As with the Appointments to Offices Regulations, Ömer Hilmi affirms merit as an essential condition for appointment. Article 376 states that "it is illegal to appoint to an office someone who does not have the competency for the position." Nonetheless, a few articles later, Ömer Hilmi reinscribes the logic of the family. Article 378 plainly states that if an officeholder dies leaving a competent adult descendent, that descendent should be the recipient of the office. Ömer Hilmi seems then to remain much closer to the prioritization of the family, even though his emphasis on merit (as a first article in appointments) signals the rise in importance of an ethic of merit.

While the ethic of merit started to take precedence over the ethic of care of the family, particularly in these offices that were now under the administration of the Waqf Ministry as seen in the Appointments to Offices Regulations, none of the manuals openly questioned or defended the charity of dedicating waqfs to family members, be they particular individuals or the founder's family. However, the appearance of the family in discussions of beneficiaries that could invalidate the waqf—while affirming the charitable character of these family waqfs—points to possible debates around that question.

For Qadri Pasha, the fixing of the family as a charitable beneficiary occurs in discussions of stipulations of founders for beneficiaries. While late Ḥanafī Ottoman commentaries discussed the self, the rich, and the non-Muslim only as potentially uncharitable beneficiaries before arriving at the conclusion that these did not invalidate waqfs, here the family is included in these questionable charitable purposes that need to be specified. Therefore, Qadri Pasha opens his first article of the section on stipulations of beneficiaries (Article 103) by stating that stipulating some or all of the waqf's revenue to the founder *and his family* is valid. As discussed above, earlier manuals restrict this discussion of stipulating waqf revenues to the founder, with a section discussing the validity of the "waqf for the founder himself" ("al-waqf 'alā nafs al-wāqif") (Ibn 'Abidin, *Hāshiya*, 3:387), while the sections on the children or the poor of his near of kin are discussions about who falls under such a category of beneficiaries, without needing to affirm its validity. In addition, sometimes but not systematically, Qadri Pasha refers to these waqfs as family waqfs. For instance, Article 108 begins with this hypothetical statement: "If the founder establishes his waqf as a family waqf" ("idhā ansha' al-wāqif waqfan ahliyyan"). The article, however, considers the validity of different ways of distributing revenues among sons and daughters, a common issue in fiqh manuals. Despite containing some traces of the rise of an ethic of merit, these codified waqf manuals continue to reaffirm the value and validity of the ethic of care of the family in charitable endeavors.

The rise of a new ethic of merit in appointment helped produce a distinction between public and private as the waqfs that were under state supervision came under the Appointment to Offices Regulations, whereas those that had stipulated beneficiaries and administrators continued in the older logic of transmission. As discussed in chapter 2, the Ottoman center subjected different kinds of waqfs to different regulations and introduced the new Waqf Ministry as an actor with jurisdiction over seized and semiautonomous waqfs, taking away from the jurisdiction of judges and legally differentiating between waqfs. However, in these seized waqfs, the criterion for state seizing was not articulated around kinds of beneficiaries but around the corrupt practices of their administrators and the absence of such caretakers.

These regulations created confusion among administrators and judges as to jurisdiction. In a study of these reforms in Damascus, Astrid Meier (2002) uncovers a response by a waqf director classifying waqfs to determine which fell under these new state regulations: waqfs endowed for the common good and pious purposes with the remainder going to descendants, waqfs for descendants with stipulations for other people and purposes, and waqfs going only to descendants. The waqf director argued that these last two categories are "waqf only in name, not in essence." They are like "absolute property [*milk*]" with restrictions as to the sale of the assets (Meier 2002, 216). As Meier notes, waqfs were no longer treated as one legal category, and a "new dividing line ran clearly along the private/public

dichotomy” (2002, 216). Yet, the classification of the director did not resemble any of the waqf categories discussed in the *fiqh*. The waqf director differentiated between these waqfs benefiting particulars based on whether the intermediary beneficiaries (before the waqf reaches the poor as an ultimate recipient after the extinction of these intermediary recipients) were purely familial, familial and particulars, or mostly charitable with some familial. Such distinctions did not exist in the *shari‘a*, where discussions of beneficiaries were centered on their perpetuity and extinction. In this way, the director began to distinguish “true” waqfs from waqfs that are closer to *milk* and thus unfit to be termed waqf, indicating the possibility of their exclusion from waqf rules. Yet, the director’s categorization does not match waqf categorization in regulations, either. While it does not present proof of the operationalization of a legal distinction between family versus charitable waqf, the director’s categorization can signal the beginning of the questioning of the validity of waqfs dedicated to family, a questioning underway in French Algeria and that would bloom under the French Mandate in Lebanon.

FRENCH MANDATE DEBATES: FAMILY WAQF AS ECONOMY NOT CHARITY

The privileging of on an ethic of merit over the logic of family in the now public (i.e., state-administered) offices of charitable works seems to come from the same place as the arguments for “good administration” that the Ottoman Waqf Ministry used to seize many of these waqfs.⁴⁰ The differentiation of examination and its minute regulation certainly reflected and embodied the claim of good administration. Be that as it may, the Ottoman state never questioned the legitimacy of family waqfs. The French Mandatory powers that succeeded it in Beirut had had a different experience with waqf (chapter 1) and had an explicit program of “modernization” of waqfs and other institutions, which included restricting family waqfs. Indeed, as the French High Commissioner reported to the League of Nations, a legislative organ of the state (the Supreme Waqf Council)⁴¹ had carried out some studies “with the aim to modernize as much as possible, and to adapt to needs, the very special law of waqf.” These studies aimed, among others, to “make disappear certain institutions like the family waqfs” (Ministère français 1926, 106). In its “needs” to govern, and to govern waqf in particular, the colonial state, as I will illustrate in this section, subjected waqf to new understandings of religion and economy, which constructed family waqfs as self-interested and thus uncharitable.

However, was waqf an area that the French colonial power could claim to modernize? As I discussed in chapter 2, the charter of the Mandate distinguished

40. For an expanded version of this section, see Moumtaz (2018).

41. The archives of the heir of the Supreme Waqf Council, the Supreme Legal Islamic Council, would be a great source to elaborate on this debate further. Unfortunately, I have not had access to them.

between two realms: “personal status” (marriage, divorce, inheritance), the realm of religion where the various religious traditions had legal sovereignty, and “real status,” the realm of the economy regulated by state law. To be modernized, then, to be subjected to the laws of economy, waqfs—at least some of them—had to be stripped of the “religious element” (Anderson 1951) that also appeared in the description of these waqfs as “religious property” by Decree 753. Therefore, the project of modernizing waqfs involved two interrelated processes: on the one hand, there was the categorization of waqfs dedicated to mosques, Sufi lodges, and education (so-called charitable waqfs) as “religious,” while on the other, there was the categorization of waqfs dedicated to families (the so-called family waqfs) as nonreligious, and therefore abolishable as waqfs. The French High Commissioner’s reports to the League of Nations articulated an argument paralleling this approach. The legality of the abolition of family waqfs, he claimed, can be decided only by Muslim jurists, among whom, he was pleased to report, there is a group supporting this position from within the Islamic tradition. That would be no small feat, as these reforms would “bring into the domain of civil law, and with the approval of the highest religious council under the Mandate, rules considered up to this day as intangible and forming an integral part of Muslim religious law” (Ministère français 1926, 109).

A proposal calling for the abolition of the institution, forwarded to the Syrian parliament in December 1937 (see Mudiriyyat al-Awqaf al-‘Amma 1938), spearheaded a public debate on the family waqf in French Mandate Syria and Lebanon.⁴² The author of the proposal was the then-director of Islamic waqfs, Hasan al-Hakim.⁴³ A staunch anti-colonialist who participated in the anti-French Syrian Revolt of 1925–27, he was accused of sedition by the French and fled to Egypt and Palestine. After the general amnesty, he returned to Damascus in 1937 and occupied several posts in the government before becoming prime minister (Al-Jundi 1960, 183). It would not be unreasonable to suggest that his presence in Egypt in the 1920s, at the very time when debates about the abolition of family waqfs were occurring (Baer 1958), had an influence on his proposal.

The bill elicited strong reactions and divided the ‘ulama’; even the so-called reformist ones were clearly divided. The main voice of opponents of the bill, who wanted to preserve family waqfs and whom I will term waqf conservationists, was that of the Scholars’ Association in Damascus (Jam‘iyyat al-‘Ulama’ bi-Dimashq),

42. The year 1937 is certainly not the first time the abolition of the family waqf was brought up in French Mandate Lebanon and Syria, as can be inferred from the 1926 report of the high commissioner referred to at the beginning of this section, which mentions the aim to “make disappear certain institutions like the family waqfs” (Ministère français 1926, 106). However, the Supreme Council seems to have tabled the study for reasons relating to jurisdiction, as we learn in the 1928 report (Ministère français 1928, 77). This earlier study must have not reached the public.

43. Al-Hakim was born in Damascus 1886. He participated in the Arab government of King Faysal (Al-Jundi 1960, 183).

led by Muhammad Kamil al-Qassab. One of the most vocal supporters of the bill, or waqf abolitionists, was shaykh Ramiz al-Malak, an Azharite scholar from Tripoli. In epistles, newspaper articles, and fatwas,⁴⁴ these scholars fleshed out their arguments and scrutinized those of their opponents, explicitly referencing and borrowing from arguments developed in Egypt.⁴⁵ Let us examine their arguments.

Extracting Family Waqf from Religion

The first move of the waqf abolitionist attack on family waqfs involved the extraction of waqfs from the sphere of religion. Certain Muslim reformers argued that waqfs, like that of Mustafa Agha, which were dedicated to the families of founders, did not belong to the sphere of religion and thus did not need to follow “religious law.” To support the claim that the family waqf was not a *religious* institution, waqf abolitionists presented arguments that both reflected and advanced an understanding of religion, *dīn*, as a discrete sphere of social life. They favored a literalist reading of the Qur’anic text, which would require the word *waqf* itself to appear in the Qur’an and to be condoned in order for the practice to be considered Islamic.⁴⁶ In a section entitled “Are the Proofs for Waqf Based in Religion?” (“Asl al-Waqf Hal Huwa min al-Din”), a waqf abolitionist from Syria quotes former Egyptian waqf minister Mohamed Aly Allouba, also a waqf abolitionist, as saying that the “current waqf regime, a national catastrophe,”⁴⁷ is “far from religion” (Allouba in Alwani n.d., 4). To illustrate his point, the former waqf minister notes the absence of any Qur’anic injunctions on waqf, which, in his view, means that waqf is not a religious concept or institution, but a civil one.

For waqf conservationists, the literalism of waqf abolitionists, as in their assertion that there was no mention of waqf in the Qur’an, was “bizarre” (*gharīb*) coming from those who “claim to understand the Qur’an and how to derive rules from it”⁴⁸ (Bakhit 1928, 5). They reminded waqf abolitionists of the limited number of

44. The Institut français du Proche Orient (IFPO) in Damascus holds a bound collection of many articles and pamphlets that served as the main object of my analysis. I learned of the debate and the collection from Randi Deguilhem-Schoem (1986) and from her presentation at the IFPO in Beirut in 2009, entitled “Réveil de l’opinion publique en Syrie Mandataire: Des pamphlets de la Jam’iyyat al-‘Ulamā’ comme outil de résistance politique.”

45. The late nineteenth and early twentieth centuries were a period of great movement of people because of political volatility (and porous borders), in addition to the usual travel for studying under particular teachers and in institutions like al-Azhar. See, for example, Skovgaard-Petersen (1997, 119); Commins (1990); and Zaman (2012).

46. Robert Gleave (2012) argues that all classical Islamic legal theory is literalist in the sense that it accepts the notion that a word or a sentence has an inherent meaning, a position one might call “weak literalism.” However, jurists disagree as to whether this literal meaning should be privileged and preclude any search for intent, a position one might call “strong literalism.” I use *literalism* here in the strong sense.

47. This is a paraphrase of Mohamed Aly Allouba’s formulation.

48. In this quote Bakhit is talking about his opponent, Allouba (and not about waqf abolitionists in general). However, such arguments are repeated by other waqf conservationists, as seen in the following paragraphs.

legal verses (*āyāt al-aḥkām*) and the finitude of the Qur'an, which cannot include the infinity of occurrences (*hawādith*). Instead, the Qur'an provides universal principles (*qawā'id kullīyya*) used to derive rules for particular occurrences.

This countermove reaffirmed the waqf conservationists' epistemic authority, as deriving law was not open to anyone but rather required proper training and knowledge of Islamic legal theory and the Islamic sciences. Taking up this epistemic challenge, most waqf abolitionists, rather than reject classical legal methodology and styles of reasoning outright, acknowledged that the validity of family waqfs should be based on the Qur'an, the Sunna, consensus, and analogy. A Damascus administrator of a family waqf, Hamdi al-Samman, for example, opened a pamphlet with the following statement: "Islamic legal rulings are derived from the book of God, the Sunnah of his Prophet (peace be upon him), the consensus of the scholars (may they be blessed and forgiven), and analogy" (n.d.a, 1). However, what we witness from waqf abolitionists is a transformation in the way these methods are put to practice.

Waqf abolitionists sometimes dismissed the school's consensus, claiming that waqf conservationists based their arguments on the "opinions of Frick or Frack or a hadith transmitted by John Doe" ("lā 'alā ra'y fulān wa 'illatān"⁴⁹ aw ḥadīth Hayyān bin Bayyān") (Samman n.d.b). Scholarly arguments were thus reduced to "opinions,"⁵⁰ and the scholars who made them were stripped of their authority and identity. Most commonly, we find waqf abolitionists selecting opinions from the various *madhhabs*, taking certain arguments out of their original contexts, where they were often rebutted immediately following the quotes used. After establishing that waqf was a contested issue (*mas'ala khilāfiyya*), Tripolitan Azharite and waqf abolitionist Ramiz Malak assessed various proofs for the validity of family waqf according to different *madhhabs*, referencing and quoting their jurists. Malak here uses the tradition as a resource, accepting the multiplicity of truths on unsettled matters, and he picks and chooses whatever arguments fit his position that family waqfs are invalid.

While drawing on the *madhhabs* in their arguments, waqf abolitionists accorded primacy to a literalist understanding of the Qur'an and hadith. In this reimagined legal edifice, the Qur'anic inheritance injunctions gained a new import. It was not sufficient that some hadiths support waqf; now, the institution needed to not contradict the Qur'anic law of inheritance. Indeed, waqf abolitionists argued, since the institution of family waqf contradicts the laws of inheritance as clearly expounded in the Qur'an, it is a sin and a heretical innovation⁵¹ that should be

49. "Fulān wa 'illatān" is an expression that denotes "this person or that person" in the Levantine dialect.

50. As will be explicit in the rebuttal of the waqf conservationists, "ra'y" is used pejoratively to describe falling prey to one's desires (*ahwā'*) because *madhhabs* rejected *ra'y* as a method of deriving law.

51. The argument that waqf is a *bid'a*, an innovation, was cited by two waqf abolitionists as one of the grounds for the abolition of the family waqf. For example, Tripolitan scholar Muhammad Rahim

abolished; “changing God’s law and His religion and using tricks to hide that [sin] behind a veneer of good deeds are among the gravest sins” (Muhammad b. ‘Abd al-Wahhab, in Nasif 1928). It did not matter to them that inheritance laws apply only after one’s death (Bakhit 1928, 7) or during a death-sickness,⁵² and that these laws can be circumvented by gifts or sales before a death-sickness (Bakhit 1928, 13).

Waqf abolitionist arguments for restricting what counts as “religious” to injunctions explicitly stated in the Qur’an and hadith did not go unchallenged. Waqf conservationists counterattacked, challenging the attempt to limit the shari‘a to a particular sphere of religion and emphasizing a very different understanding of *dīn*, as discussed in chapter 2. Waqf conservationists argued that even if waqf were a civil institution and not a religious one, it would still need to follow the shari‘a because the shari‘a encompasses all of a Muslim’s life. Even “transactions among men, which are common to the nation, from sales to purchases, to leases, commissions, donations, wills, and charitable acts . . . are still among the acts of a legally responsible Muslim and cannot be changed except based on rules of the shari‘a” (Makhluf 1932, 16–17). In this way, waqf conservationists opposed the “proposition to consider waqf as a civil institution” (Bakhit in Sekaly 1929, 432), showing that “the family waqf is not a pure civil system” (Makhluf 1932, 16). The argument here resists the attempt by waqf abolitionists to limit the shari‘a to a particular sphere and presents the Islamic tradition as a guide to the totality of a Muslim’s life.

Assessing Waqf According to the Laws of the Economy

Unconvinced by waqf conservationist arguments, waqf abolitionists proposed, in a second move, that since waqf is not a religious institution, it should follow economic law. Waqf abolitionists invoked economic expertise and reasoning to argue that waqf is harmful to the country’s economy, using terms that evoke an image of the nation as possessing an economy governed by economic laws and measurable through statistics. Expressions such as “the country’s economy” (*iqtiṣādiyyāt al-bilād*)⁵³ (Samman n.d.b) or a decrease in “the country’s credit”⁵⁴ (Allouba in Bakhit 1928, 33) point to conceptions of the economy and credit as separate

presents the *bid’a* argument as the second reason for why the family waqf should be abolished (Rahim in Bakhit 1926, 3). However, this is a minor argument (dismissed by waqf conservationists based on hadiths that show that some family waqfs were founded at the time of the Prophet). The main debate in this first move was about whether the family waqf is a “civil institution,” as I demonstrate here.

52. I use “death-sickness,” a translation of *marāḍ al-mawt*, to denote a legally defined illness that has particular legal effects. On the concept, see further Yanagihashi (1998). The rules of inheritance limit how one can dispose of one’s estate during a death-sickness.

53. Note that the term I am translating as “economy” is not the common *iqtiṣād* but *iqtiṣādiyyāt* (it would be worthwhile, but beyond the scope of this book, to investigate when the term was first used in the sense we use it today). Be that as it may, Hans Wehr (1960) renders *iqtiṣādiyyāt* (or economics) as “the economy.”

54. “The country’s credit” is the translation of *al-thiqā al-māliyya* by Cassi Bey in *L’Égypte Contemporaine* (Allouba 1927) and is contemporaneous with the debate analyzed in this section on the French Mandate debates. I therefore use it instead of the literal translation “financial trustworthiness.”

attributes of the nation. Waqf abolitionists posited the effects of waqf on the economy as natural consequences of the economy's laws. (If more land is transformed into waqf, Egypt will lose its credit, argues Allouba [cited in Sekaly (1929, 407)].) They argued that waqf was contrary to the "principles of political economy" (Rida 1903, 731), supporting arguments of harm to the economy by "official statistics" (Allouba 1927, 392, 395, 397) and tables with data, because "nothing is more eloquent than official statistics" (Allouba 1927, 397). Elsewhere, Allouba laments that the "government has not compiled any official statistics (pertaining to certain waqfs). In my opinion, they reach 400,000 feddans. . . . We also know that the area of arable land in Egypt is 5,200,000 feddan" (1927, 392). Waqfs thus constitute 8 percent of all arable land in the country. We see here the transformation of waqfs into "data," analyzed in terms of one variable, their area, compared to a composite, the total area of arable land, in order to assess the effect of waqf on Egypt's prime economic resource. It is through such statistics, analyzed with reference to economic laws, that waqf abolitionists came to assess harm to the economy.

Waqf abolitionists argued that, because of their inalienability, waqfs "stand in the way of freedom of transaction" (Samman n.d.a, 3). Since they cannot be sold except under exceptional circumstances, they are "immobilized." By contrast, "free property is active, alive, fertile; it changes hands; it can easily find its most suitable owner, the one who will know best how to exploit it [*la faire valoir*]" (Saad 1928, 76). According to this understanding of property and of the market, free circulation of assets is the basis of economic progress; it is only through circulation that land will find its most appropriate owner, the one who can exploit it best. These arguments assume that humans have a moral duty to exploit the land, that one should perform labor, a particular kind of labor that increases the fruits of the earth. They are the same arguments that labor is what creates value, which John Locke advanced to justify the dispossession of the indigenous people of the Americas, since they did not till the land and make it valuable (1989, 298).

The argument for freedom of circulation and for alienability thus has moral and evolutionary undertones. Restoring the freedom to dispose of patrimony, waqf abolitionists argued, will push beneficiaries "who have been used to idleness and indolence into labor and responsibility, and they will strive to improve their lot of waqf lands and to increase their revenues. . . . This will turn these beneficiaries into active, productive, and useful organs in the body of their nation after having been paralyzed and decayed" (Samman n.d., 2–3). This concern for continuous improvement and accumulation runs very much counter to the logic of waqf exchange and administration in the late Ottoman Ḥanafī tradition, as I will describe in chapter 5 with the Ottoman opposition to the exchange of waqfs just for improvement.

The other main economic critique of waqf was made by waqf abolitionists on the basis of property rights. The institution of waqf is built on the separation of the right of use, the right of usufruct, and the right of alienation. For instance, in Mustafa Agha's case, as discussed in chapter 1, on one piece of land, there were

two different waqfs: the land, originally Mustafa Agha's, whose rent went to Aisha and her descendants; and the houses built on that land, whose revenues supported her husband's family.⁵⁵ This led to a high degree of complexity in property rights, rather than their concentration in the hands of one person. The multiplicity of right holders on one piece of land contradicted an essential assumption in modern understandings of private property as the "sole and despotic dominion which *one man* claims and exercises over the external things of the world," to use Blackstone's often quoted definition of property (1766, 2:2). In addition, beneficiaries had only usufruct rights and could not, for example, borrow money using the waqf as collateral (waqfs cannot be mortgaged).⁵⁶ Waqf abolitionists argued that this prohibition decreased the total "credit" of the country.

In the same way that claims of expertise and authority by waqf conservationists compelled waqf abolitionists to argue on the grounds of tradition and to use opinions from the *madhhabs*, the appeal to economic expertise by waqf abolitionists drew waqf conservationists toward economic reasoning. Thus, despite the claims of some waqf conservationists that the "real authority [*marja*'] in such an affair is the esteemed scholars" (Jam'iyyat al-'Ulama' bi-Dimashq 1938b, 4), we find them using economic reasoning in addition to invoking other shari'a-based values and benefits of family waqf. Indeed, the Scholars' Association in Damascus argued that one of the advantages of waqfs is that their revenues allow for the "creation of commercial enterprises . . . and exploitation [of the waqf] in the most developed ways that modern civilization and working nations have prescribed" (Jam'iyyat al-'Ulama' bi-Dimashq 1938a, 34). In addition, Bakhit argues that putting all these waqfs on the market will "create a decline in the value [of real estate] and decrease the value of public wealth, and this will create a real estate crisis and a more general one, which we don't need" (1928, 37).

Reforming the Shari'a Based on the Laws of the Economy

We have thus far covered the first two arguments used by waqf abolitionists: that family waqf is not part of the sphere of religion, and thus is not to be assessed by religious law, and that it brings economic harm. The continued existence of family waqf and the legislation that would manage it were now called into question.

State law, without shari'a justification, might abolish or restrict waqf, as had happened in Algeria in 1858⁵⁷ (and would eventually happen for family waqfs in Egypt in 1946 and in Syria in 1949 [s.v. "waḳf," *El2*]). However, because these scholars were arguing from within the tradition, they were concerned with reforming the

55. Waqf deeds from the private collection of the Qabbani family.

56. While a waqf may not be mortgaged, beneficiaries did use their entitlements to shares in waqf revenue as collateral.

57. As I discuss in chapter 1, page 50, in Algeria, based on French ordinances, waqfs became alienable in 1844 in transactions between Muslims and Europeans and in 1858 in transactions between and among Muslims (Janssens 1951, 16).

shari‘a itself and with providing shari‘a justifications for reforms to be enacted as state law. Their argument attempted to bring parts of the shari‘a into the realm of the economy by assessing shari‘a rules and legal determinations based on the laws of the economy, as discussed above. However, claims for the necessity of reforming the shari‘a were based on arguments from the Islamic tradition. To accomplish this reform of the shari‘a, waqf abolitionists like Samman proposed that the shari‘a itself requires the avoidance of harm.

In a third move, invoking legal maxims such as “do not inflict harm or repay one injury with another” (“lā ḍarar wa lā ḍirār”) and “bring about benefits and repel harms” (“jalb al-maṣāliḥ wa dar‘ al-mafāsīd”), waqf abolitionists argued that the harm created by the waqf institution should be averted and benefits accrued through the abolition of family waqf. Such maxims about harm and benefit have been a staple in modern reform movements (see, for example, Hourani 1962; and Hallaq 1997), and they exemplify the use of the concept of benefit, *maṣlaḥa*, to justify reforms of the shari‘a. For instance, in his fatwa, Muhammad Rahim’s last argument for allowing the sale of family waqf is that “even if family waqf is not a heretical innovation [*bid‘a*] and even if all the jurists [*aṣḥāb*] of the *madhhab* have discussed it and the opinions on its validity and its invalidity are of equal strength, its contemporary consequences—namely, enmity and rancor, the severing of family ties [*qaṭī‘at al-raḥm*], and embezzlement by administrators—are sufficient to make preponderant [*tarjīḥ*] the opinion of those who claim the family waqf’s invalidity [*buṭlānīh*]” (Rahim, in Bakhit 1926, 7). Based on the *current* harms that the waqf is producing, Rahim argues that family waqf should be invalidated.

Does this use of the concept of benefit, *maṣlaḥa*, by waqf abolitionists constitute a rearticulation or an extension of practices of the Ottoman Ḥanafī legal tradition? In the hypothetical example above, Rahim is exercising *tarjīḥ*, the weighing of different opinions on a single matter to determine the soundest one (Hallaq 2001, 127). The legal reasoning used in this exercise, as Hallaq explains, might marshal textual evidence, experience and expertise, customary practices, necessity and social need, or, simply, numbers (2001, 139–44). Rahim argues for the invalidity of family waqf on the grounds of necessity or social need, so, in this case at least, he invokes benefit and necessity to assess valid opinions within a *madhhab*, all of which are based on sound sources and hence are valid. It is noteworthy that Rahim does *not* say, “Even if the opinion on the invalidity of family waqf is weak, family waqfs should be invalidated because of the harm [they cause],” for such a claim would actually cause benefit to transcend textual evidence or analogy (*qiyās*).⁵⁸ In Rahim’s example, then, benefit and necessity still operate as secondary principles under the main sources of the law and are not independent legal norms. We do not

58. In order to make a weak opinion preponderant, a jurist must reassess and reinterpret the evidence (Hallaq 2001, 139). Alternatively, the state can implement as state law a weak opinion; see, for example, the use of the *ṣayḥūlislām* by the Ottomans to render a weak opinion on the validity of cash waqfs the dominant opinion in Ottoman lands (Mandaville 1979).

observe here the use, by waqf abolitionist scholars, of benefit as an independent measure for the assessment of harm, or what Wael Hallaq calls “religious utilitarianism,” which “amplified the concept of public interest to such an extent that it would stand on its own as a legal theory and philosophy” (1997, 214).

This is not to say, however, that waqf conservationists did not criticize the waqf abolitionists’ assessment of harm and benefit. To the contrary, scholars such as Bakhit highlighted the complex and contested nature of *maṣlaḥa* in legal theory, pointing out, first, that the fact that waqf causes harm does not justify changing its legal norm from recommended to prohibited or reprehensible, because jurists do not consider harm to be absolutely unacceptable. Acts deemed obligatory or recommended may include harm, but their benefit exceeds their harm. Waqf abolitionists, however, were aware of the complexity of the assessment of harm and benefit. As Samman argues:

Each action has both advantages and disadvantages, causes benefits and harms, and it is agreed that actions whose benefits are greater than their harms are considered beneficial and must be performed and executed. It has also been proven by experience [*bi’l-tajriba*] that the harms and disadvantages [*sayyi’āt*] of maintaining family waqfs are beyond measure, and its benefits minimal. (n.d.a, 3)

In this argument, the question returns to the assessment of the balance of harm and benefit, as discussed above, but in fact, this was not the waqf conservationists’ main line of argument. Rather, more prevalent among these scholars was the assertion that the harms attributed to waqf are inessential and accidental (*min al-‘awāriḍ*) (Makhluḥ 1932, 40),⁵⁹ and they have no effect on the nature of waqf and its legality. The problem with family waqfs does not stem from the institution itself, but from the individuals who administer them. For instance, to show the absurdity of the argument that the misuse and negative consequences of waqf are reason for its abolition, Bakhit compares waqf to marriage. Despite the possibility of “husbands acting unjustly towards their wives, or wives violating their marital duties” (Bakhit 1926, 30), he analogizes that marriage is a recommended act, and nobody would question its validity despite these possible harms, which are much more widespread than those of the family waqf.

Most importantly, waqf conservationists reminded their opponents of the superiority of divine revelation over human reason and hence reaffirmed traditional legal methodology, particularly the role of benefit in it. They argued that

59. Makhluḥ admonishes the “reprehensible intent” behind founding waqfs: “pride, showing off, causing harm, prohibiting those who have priority” (1932, 40), and he compares the founders of such waqfs to Muslims who take up learning without practicing what they preach and to Muslims who pray and fast in order to obtain worldly advantages (by being recognized as a Muslim) rather than with the intent to submit to God’s law and seek the good as He defines it. “These goals [*aghrād*] do not change the original legislation on waqf [*lā tukhrij al-waqf ‘an aṣl waḍ’ih*]. One should teach people God’s rules, and stop them from these prohibited purposes, through restraints [ordered] by the Sultan [*bi-wāzi’ al-sulṭān*], and if that does not exist, through a group of Muslims, and if that does not exist, then through advice and guidance [*al-nuṣḥ wa’l-irshād*]” (1932, 40).

humans should trust God the Legislator who knows best what brings benefit to humans, thereby suggesting that humans are unable to assess harms and benefits *against revelation*. In a passage exemplary of this argument, a grand mufti of Egypt, Muhammad Hasanayn Makhluf, writes: “Whatever benefits or harms are the basis of the rules of the shari‘a cannot be determined solely by human reason” (“mā yunāṭ bih al-aḥkām al-shar‘iyya min al-maṣāliḥ wa al-mafāsid lā tastaqill bih ‘uqūl al-baṣar”) (1932, 20). This position suggests a clear hierarchy in the derivation of law: revealed rules should be obeyed even if they bring harm, because there may be benefits that humans cannot comprehend. “There is no doubt that the Legislator’s intent behind waqf is the will to do good, and the fact that one fears ill from those who administer it does not necessitate the prohibition of the founding of waqfs” (Bakhit 1926, 31).

Here, we see clearly that waqf conservationists were *not* arguing that human reason cannot assess harm and benefit but rather reasserting the supremacy of revelation over arguments based on benefit. This reassertion exposes the threat that waqf abolitionists posed to the principles of Islamic jurisprudence (*uṣūl al-fiqh*), despite their affirmation of these principles. Yet, as we saw in Rahim’s use of benefit, waqf abolitionist scholars most often used benefit in line with classical legal theory.

By contrast, the argument that legislation should be based on benefit as an independent legal norm was put forward by waqf abolitionists who were state agents. In explaining the need for family law legislation, the parliamentary committee argued that “the legislator is responsible for realizing benefit [*taḥqīq al-maṣlaḥa*]” (Mudiriyyat al-Awqaf al-‘Amma 1938, 2). Under the modern state and with the rise of economic reasoning and its authority, as we will see further in the next chapter, *maṣlaḥa*, or benefit, became centered around progress and the nation-state’s economy (the welfare of the population). The waqf conservationists’ rejection of this use of benefit constitutes a rejection of the modern state’s prioritization of “public benefit” as (economic) progress and a cleaving to a definition of *maṣlaḥa* that is much more expansive. Thus, while waqf conservationists’ use of economic reasoning manifested their acknowledgement that economics occupies a domain of truth outside of the shari‘a, these scholars nonetheless maintained a hierarchy whereby the truth of revelation trumps that of economic reasoning.

While the threefold argument ended with waqf conservationists reasserting their authority in defining the proper use of *maṣlaḥa*, it was waqf abolitionists who found themselves in the position to legislate on waqf in the postcolonial Lebanese state. Their views formed the basis of colonial and postcolonial legislation on family waqf,⁶⁰ most importantly the 1947 Family Waqf Law. However, the waqf

60. In his book on family waqf legislation in Lebanon and its sources, eminent Lebanese legal scholar and judge Zuhdi Yakan includes the report of the Legal Commission explaining the grounds of its proposed family waqf reform: “The current waqf regime does not agree very much with the contemporary system, which is distinct from previous eras because of the liberation of parcels from various shackles that hinder their development, productivity, and use” (1964, 15). These are very much the economic arguments used by waqf abolitionists, as discussed above.

abolitionists' views were adopted not only on epistemological grounds but also by marshalling the powers of the modern state and its legal sovereignty. Waqf abolitionists "won" because the state adopted legislation based on their arguments, and it was this legislation that opened space for the heirs of Mustafa Agha to attempt to revert his waqf to private property, irrespective of its original pious purpose.

Arguments about what practices are part of "religion" or about the place of statistical reasoning and economic proof in Islamic law paved the way for legislation that assigned religion to one sphere while carving out another sphere for the economy and its laws. The adoption of the waqf abolitionist position and its enactment as state law may have silenced this debate, but it did not eradicate the different logics embodied by waqfs and the ethic of the family that I describe above. Let us turn to the postcolonial moment to examine in detail the conditions set by the 1947 Family Waqf Law and how the ethic of the family continues to survive in discourses on family care, in embodied carriers, and in family waqfs that have survived mostly through disputes and lawsuits, like the waqf of Mustafa Agha.

POSTCOLONIAL RUPTURES AND CONTINUITIES: AN ENSHRINED ETHIC OF MERIT

Legislating the End of Family Waqf

Conceptually, the 1947 Family Waqf Law solidified the modern grammar of family waqf and charitable waqf through the superposition of these two categories onto different legislations. The law did not only affect future family waqf foundation, but it also applied to existing family waqfs. Concerning new family waqfs founded after its promulgation, the law's main innovation was to restrict the perpetuity of family waqfs, their irrevocability, and the percentage of possessions that a founder could actually make into a family waqf. The foundation of family waqfs that benefited families up to their extinction before reverting to the poor became invalid. Family waqfs could be founded only for two generations (Article 8), after which the family waqf reverted to the ownership of the founder's heirs (Article 10).⁶¹ This "temporary waqf" was contrary to the late Hanafi canon's most dominant opinion that required waqfs to be perpetual and dedicated the revenues of waqfs whose family beneficiaries became extinct to the poor. Regarding existing waqfs, the 1947 law allowed their consensual subdivision (*qisma*) among beneficiaries (Article 17), dictated the exchange (*istibdāl jabrī*) of some family waqfs (Article 22), and permitted the liquidation (*taṣfiya*) of ruined family waqfs. The message was

61. For those familiar with US and UK trust law, such a provision is similar to the Rule Against Perpetuities, which sought to prohibit founders' "rule beyond the grave" and to help keep property in circulation; see, for example, Gray (2003). The prohibition against perpetual dynastic trusts plays an important role in taxing wealth transmission.

clear: these family waqfs were not truly charitable or religious; they were therefore not inalienable and should revert back to private property.

Consensual subdivision, forced subdivision, and liquidation of family waqfs introduced by the law entail different jurisdictions and end products in terms of “ownership.” In the case of a consensual subdivision of a family waqf, the waqf does not cease to exist; instead of having beneficiaries divide the fruits of the waqfed object (say, the rental revenues of a building), these beneficiaries subdivide that object according to their shares. This way, there would be no need for an administrator to manage and fructify the waqf, and each beneficiary would be the administrator of his or her own share. As for the forced exchange and liquidation of family waqfs, the waqfs cease to exist and revert to the private property of the beneficiaries in exchange for a lump sum paid for the ownership of the right of alienation (*raqaba*) (Article 20). In terms of jurisdiction, consensual subdivision and forced exchange would, and still do, fall under the auspices of the DGIW. The process of liquidation of family waqfs is carried out by civil courts. The Qabbani waqf dispute over its reversion to private property, which I mention in the introduction of this chapter, revolved exactly around jurisdiction.

Understood as such, the 1947 law was effective in “modernizing” family waqf or, to be more accurate, in almost eradicating the foundation of any new family waqfs. By eliminating the perpetuity of family waqf and allowing its subdivision and revocation, the particularity of waqf as practiced in Beirut (and the Ottoman Empire at large) was completely obliterated. Compared to the waqf’s purpose of creating rewards in eternity for the founder, the reinvented family waqf, which could be dismantled after two generations, was unrecognizable; it was an altogether different concept. It was now closer to a bequest, except that it was executable the moment it was drafted rather than upon the death of the founder. Indeed, the 1947 Family Waqf Law introduced one of the legal determinations governing bequests (that a bequest cannot exceed a third of one’s possessions) into the law of waqf, even if it left the founder free to choose beneficiaries for this third (contra the rule of bequests that there is “no bequest for an heir—except with the approval of all heirs”). “An owner can make into a waqf no more than a third of his possessions, whether to the benefit of his heirs, other people, or a charitable purpose” (Article 37). For anything that exceeds the third, the following article specifies, the offspring of the founder, his wife, and his parents need to receive shares from the waqf in accordance with inheritance law.

From the day that the law was promulgated and up until the late 2000s, the archive of the shari‘a court shows no new family waqfs being founded. But then suddenly, three new family waqfs appear on record, one in June 2006, the other two in 2009. These are too few to form a trend and to be read as the fruition of the efforts of some Muslim organizations to revive waqf as a practice, especially since these efforts were not targeted at family waqf to start with. However, my conversations with founders and in the court, and my observations at court, recorded in

my notebook, suggest that such family waqfs constitute continuities of the ethic of care of the family by individuals for whom the practice of family waqf remained alive for a variety of reasons. While these might be numerically insignificant, and do not at all represent a “revival” of family waqfs, they do provide nonetheless a lens to examine the actualization of the 1947 Family Waqf Law as well as the discourse on the ethic of care of the family.

Judges between State Law and Fiqh Regulations

The 1947 law attempted to foreclose certain possibilities, such as the foundation of family waqfs that could last for longer than two generations. While most family beneficiaries usually extinguished in a relatively short period of time, a few such waqfs in Beirut have survived many generations.⁶² The text of the law points to the debates around such a decision and the possibility of contestation of such a law. Article 6 specifies: “Shari‘a judges are prohibited from hearing a deposition for the creation of a new family waqf that would be contrary to the provisions of this law.” The existence of an article prohibiting shari‘a judges from founding waqfs against this state law, based on the late Ḥanafī position that waqfs, including those dedicated at first to families, should be perpetual, actually acknowledges its contested and contestable nature.

How did shari‘a judges relate to the state-issued 1947 Family Waqf Law? How did they negotiate their location in the state and the authority it afforded to them—as well as its requirement of loyalty and submission to certain of its rules that contradict the fiqh and their training and authority as religious scholars? Clarke (2012) argues that these two diverging roles of the judge make him a tragic hero and discusses different strategies for negotiating these two opposite roles. Judges usually choose one role or the other through, for example, temporal distinctions (Clarke 2012, 112). Two of the new family waqfs from the archive, supplemented with observations and discussions from my notebook, present a good illustration of this negotiation, in addition to providing some insights on the tensions and anxieties around the logic of family.

The first new family waqf consists of three apartments on the fifth, sixth, and seventh floors of a building in one of the most expensive stretches in Beirut, featuring unobstructed sea views in proximity to the American University of Beirut.⁶³ The founder of the waqf preserved for himself the right of usufruct of all apartments during his lifetime, then transferred that of the fifth-floor apartment to one of his sons and one of his daughters, that of the sixth floor to two other sons, and the seventh floor to another daughter. Subsequently, their respective heirs would inherit that right of usufruct. The deed then specifies that after ninety-nine years from the date of foundation, the waqf would revert to the Directorate General of

62. As we saw in the transmission of offices at the ‘Umari mosque and as Hoexter shows in her study of the Haramayn waqf (see note 30 above).

63. MBSS.S2006/1027.

Islamic Waqfs. The deed therefore abides by the two-generation limit set forth by the 1947 Family Waqf Law (Article 7), but instead of reverting the ownership of the waqf to the founder and his heirs after that period, as the law suggests, the deed turns the first post-1947-law family waqf into a perpetual charitable waqf under the administration of the DGIW.

The waqf deed bore the signature of Judge Muhammad ‘Assaf, who, as the main judge having jurisdiction over waqf at the time,⁶⁴ drafted the waqf deed. Judge ‘Assaf, as he was commonly called, had been my main entry point into the court, especially because he wrote his thesis on waqf exchanges after his studies at the Beirut Shari‘a College. He also taught at the college about the Personal Status Code that formed the basis of most deeds and judgments in the court. Being a waqf expert, Judge ‘Assaf had strong opinions about waqf-related legislation and processes, and I listened carefully to his views on all things waqf.

Instead of the two-generation waqf reverting to the ownership of the founder and his heirs, Judge ‘Assaf reconciled the demands of state law for a non-perpetual family waqf and the shari‘a’s requirement for a perpetual waqf and pious purpose. Instead of allowing the reversion to private property, which would be against the dominant late-Ottoman Hanafi view, Judge ‘Assaf fit the desire of the founder to found a family waqf into a common *shar‘i* practice: the waqf that had specific beneficiaries before reverting to the general charitable purpose. He therefore reconciled the demands of the state-issued Family Waqf Law with the shari‘a’s. One should note, however, that Judge ‘Assaf’s work-around might not appeal to everyone, as it actually also worked for the benefit of the DGIW, a gesture that other judges or founders might not be very keen on.⁶⁵ His way around state-issued legislation points to the continuing importance of debates about orthodoxy and the proper and most authoritative views on waqf founding, exchange, administration, and more general practices.

Like Judge ‘Assaf, other judges in the court engaged with the Family Waqf Law. But, while ‘Assaf avoided the state-issued rule against perpetuity by making the waqf a charitable one at the end of two generations, the other judges adopted more ambiguous stances.

The second post-1947-law family waqf only specified the first generation of beneficiaries.⁶⁶ Jurists considered such a waqf valid when some expression in the deed explicitly indicates perpetuity (such as “I made this into a waqf in perpetuity”) or directed the waqf after the death of the beneficiary to the poor, but it was nonetheless surprising to see the deed not mention any eternal charitable beneficiary (setting it apart from all waqf deeds that I had encountered in the court).

64. Judges have specialized jurisdictions: some do inheritances, other marriages, and so on. For a lively description of the court, see Clarke (2018, 111–15).

65. One should remember the competition between Dar al-Fatwa/the DGIW and the courts, discussed in chapter 2.

66. MBSS.S2009/268.

It was an unusual waqf in many other ways. First, the waqf deed did not include a specific object, like a certain lot or an amount of money; what was waqfed was the “contents of the Fransabank account” of the founder. And, additionally, it did not elaborate on the ways the money should be fructified or even include a clause stipulating that only profits accrued could be spent, in order to ensure the perpetuity of the waqf. On a less unusual note, it was framed as a will (*waṣiyya*).⁶⁷ Indeed, in addition to the performative utterances that make waqf and the most common verbs used in waqf deeds “I waqfed, confined, and perpetuated” (*waqaftu, habbastu, abbadtu*), this waqf deed started with “I willed” (*awṣaytu*). Although conditioning the waqf on the fulfillment of a future condition (*ta’liq*)—for instance, if I have a boy, I will found a waqf—or specifying a future time when the waqf will become effective invalidates the waqf (see, for example, Article 8 of Qadri Pasha’s manual), founding a waqf as part of one’s will is the only case where the fiqh allows such a conditioning. However, in this case, the waqf is considered part of the bequest, and follows the stipulations of wills.

The Furtive Persistence of an Ethic of the Family

The founder of this second family waqf established in 2009 was a faculty member of the Shari‘a College in Beirut. I had met the professor-founder early in my research because I had asked for his help seeking permission to enroll in some of the classes at the college. I had discussed my project with him in order to explain why I wanted to audit these classes. But when, in the course of my research in the court archive, I encountered the waqf that he had founded, I was surprised. He had not mentioned that he had founded such a waqf. I set up a meeting with him. Although he was gracious and answered my questions, he was not keen on discussing the waqf.

Our meeting was short. When he founded the waqf, he explained, he had been thinking about his sister after the death of his brother—“In our society, a woman suffers if she does not have money or property”—and he decided to dedicate a waqf to her, so she could live “in dignity.” Although the founder of this family waqf couched the reasons behind his waqf in a social analysis about the place of women in society, the responsibility that he expressed towards his sister embodies the injunctions discussed earlier in the chapter of an ethic of care of the family—after all, he did not found a waqf to support aging women in general.

Furthermore, while the founder elaborated his foundation in terms of care for his sister, he brought up, unsolicited, the issue of bequests, inheritance, and

67. Even though I use “wills” as a translation of *waṣiyya* for expediency, the translation obscures the many differences between wills in the United States and Europe and the particularities of the *waṣiyya* in Islamic law, such as the facts that it is restricted to one third of one’s possessions and that it cannot be done for an heir.

waqf; anxieties about the charitable character of such a waqf (and questions about its contradicting the law of inheritance) surfaced. After answering my question about the particular form (*ṣiġha*) of the waqf deed, he explained the socioeconomic and moral basis behind his urge to care for his sister, but then went on to what seemed to me, back then, as proof of his familiarity with the law of waqf. “Anyone who is sane of mind can make all of his possessions into waqf,” he interjected. While this statement does indeed show the founder’s familiarity with the law of waqf, the way he volunteered it points to the contested nature of his foundation under the current legal regime of waqf. He was not only challenging the restriction of the 1947 law on the amount of possessions that could be made into waqf but also justifying the validity of his endeavor. The running arguments about the contradictions between founding a family waqf and the laws of inheritance yielded anxieties about family waqf foundation as a charitable endeavor.

These anxieties over one’s charitableness and the way they push subjects to reassert their charitable intent was made even more apparent in a non sequitur. The founder brought up a piece of land that he owned in an upscale “modern” neighborhood and said that he was thinking of making it into a mosque. The suspicion around the charitableness of family waqf incited the founder to assert his willingness to give of what is dear to him, to show his piety, echoing the Qur’anic injunction “Never shall you attain true piety unless you spend on others out of what you cherish yourselves” (3:92). Not only was the professor-founder giving a very valuable piece of land, but he was also considering giving it to what today represents religious piety par excellence, a mosque, as we saw in chapter 1.

The ethic of the family and the anxieties around it, as exemplified by this founder of a new family waqf, do not only surface among subjects familiar with the practice of family waqf. They also appear in mundane conversations, as I recorded in my notebook during my work at the shari‘a court’s archive, which was manned single-handedly by Abu Ali, the court’s archivist.

Abu Ali has occupied this position for some twenty-five years. He remembers when the court was in a different location, as well as the various makeovers at the current location. Abu Ali ranted regularly about a particular aspect of the last renovation that Saudi Prince al-Walid bin Talal sponsored in 2007: it had robbed him of his metal shelving system and replaced it with cheap particleboard shelves that were like cardboard and broke easily and harbored insects and roaches. During a visit in the summer of 2011, Abu Ali’s pleas had been answered and new metal-frame shelves filled the three-by-four-meter room. This was *his* archive, these were *his* registers. He knew the archive inside out, and he was a combination of help desk, gossip central, and memory of the court.

Abu Ali told me he was going to retire soon and was expecting his son to take over his office. Ali, the son in question, was a handsome, gym-going nineteen-year-old attending college. He harbored dreams of going to Australia, where a friend's family could help him enroll at a university or make a living. In front of me, Abu Ali always sang his son's praises: how fast he had learned about the archive, how good a son he was. However, when I was working in the back, I could catch glimpses of Abu Ali gently rebuking his son, as he seemed unable to stay put: a cigarette break here, going to buy stamps there, or hanging out with some of the court functionaries everywhere.

One day, as I was close to the door making some copies, I witnessed a conversation between Abu Ali and a lawyer. She stood up straight at the side of the doorway as she engaged in small talk with Abu Ali, asking the standard questions about his health and family. She wore makeup, with the court-mandated scarf nonchalantly thrown over her head, half covering her fresh coiffure. When Abu Ali started explaining that he was about to retire, but that his son was most likely going to be taking over his position, she exclaimed, "What's wrong with that?" ("eh, shū fiya?").

But nobody had said that there was anything wrong with that. The lawyer's defensive outburst indexed the association of nepotism with the logic of family in public office. The lawyer then told Abu Ali how her father had passed away as she had been completing her compulsory training before the bar examination. He was a famous lawyer who had important clients. After he passed away, many of his clients trusted her and tried working with her despite her young age and lack of experience. She worked very hard, she explained, and was able to prove her skills and retain all the clients. The lawyer drew a parallel between herself and Ali, without distinguishing between the public nature of his office and her private law practice. While her father had helped her, she could not have been a successful lawyer without her competence. In her argument, we see enacted the very logic of family that was at work in the transmission of offices: that family privilege had to be accompanied and confirmed by merit.

Such moments, the "so what" moments, however, remain fleeting in a legally enshrined association of corruption with the privileging of family in public office. This is not to say that preferential treatment/favoritism (*muḥābā*) was an acceptable practice for late Ottoman jurists: it is a complex legal issue in sales, inheritance, and divorce with varying legal effects. However, the distinction lies in the conceptualization of the positions of waqf administrator or mosque caretaker or archivist as inheritable rights and their not being articulated along the same private/public distinction (favoritism was as much an issue for jurists in "private law", such as in inheritance). The passing of such positions to family did not count as favoritism. Conversely, Abu Ali's attempt to place his son is considered today evidence of corruption rather than an ethic of care of one's family. The discourse of corruption reverberated and became more pronounced the higher up the

socioeconomic ladder the people in question were. As we saw in the opening scene of this chapter, even the mufti of the republic was not spared. Indeed, the accusations of corruption leveled at the mufti led to the filing of lawsuits by Qarduhi and other religious scholars, the arrest of the business partner of the mufti's son, a petition calling for the mufti to resign, and eventually the election of a new grand mufti. The corruption charges were used in a much larger political fallout and disagreement between the grand mufti and the Sunni Future movement, which had originally championed the mufti. One can read the nepotism accusations as cards played in a political game, but the effectiveness of these accusations shows the entrenchment of the modern grammar of family.

CONCLUSION

In this chapter, I started by describing late Ottoman understandings and practices of charity that privileged the family and were anchored in the Islamic tradition. This approach to charity favored the family as the primary recipient of charity, as appears in the prevalence of waqf foundations for the family. Even more, this family-centered charity, I showed, was pervasive even in those waqfs that had "public" beneficiaries, like mosques, as their personnel and administrators held offices transmitted through families. However, I argued that this logic of the family did not stand in contradiction to the logic of abstract merit; rather it was conditional on merit, character, and experience. It enacted, therefore, ideals of knowledge as transmitted within families and of social relations as centered around it, rather than just a "blind" favoring of the family in a patrimonial state. I then traced the beginning of the transformation of this approach to charity through the legislative efforts of the modernizing Ottoman state. The primacy of the family over merit started to be reversed with state legislation on appointments to offices. With a new education system in place, exams and tests became primary for the assessment of candidates—the family only factoring in to distinguish equal candidates.

I then followed the devaluing of the family as a legitimate recipient of charity, through debates between Muslim reformers of various trends and new legislation. The debate happened during the French Mandate and centered on whether family waqfs were really part of religion, when compared to the true charitable waqfs dedicated to mosques and other charitable works. I showed how this debate introduced a statistical style of reasoning with the tradition, whereby jurists accepted the authority of economic sciences to assess harm to the economy. When the newly created Lebanese state took over the legislation on family waqfs as part of its claim to sovereignty, family waqfs were deemed to be not "really charitable" through an understanding of charity that privileged "public," rather than family, recipients. New family waqfs were limited to two generations, and old ones could be divided among beneficiaries as private property. In that way, most waqfs were relegated to the sphere of the economy, and only "truly charitable endowments"

that privileged public good were deemed to belong to the sphere of religion. This division of waqfs into “religious” and “economic” subsumed waqfs to the new architecture of the modern state, with its constant attempts to separate the spheres of religion and economy. It helped uproot an institution that perpetuated ties that bound people as families and with God and the dead, allowing for the family to be governmentalized and for new forms of belonging, new desires, and new commitments. However, the tension between these two approaches to the family persists today. Drawing on narratives of contemporary family waqf founders and the discourse around the support of one’s family read against the recent scandal of the nepotism of the Lebanese Sunni grand mufti, the last section showed how the discourse of the “care of the family” and the ethic of merit are rearticulated in the postcolonial moment. The ethic of care of the family came to be limited to the “private,” even if disrupted fleetingly.

The logics of family and merit I described here still constitute the idiom of political discussion and academic analysis on state formation in Lebanon and the Middle East. Reflecting assumptions of modernization theory, some social scientists and the media often present “family and sectarian identities” hand in hand and in opposition to modern ideals of democracy and meritocracy. Of late, scholarship has started to interrogate the assumptions of these claims and the work they do (Joseph 1997; Makdisi 2000; Obeid 2011). In an article describing municipal elections in a border village in Lebanon, anthropologist Michelle Obeid questions the argument that family connections stand in the way of democratization. She shows how “the idiom of *‘ā’ila* [family] is malleable and shaped and reshaped by the sociopolitical environment in which it is embedded, allowing it to be unifying, divisive, or a principal idiom of democracy” (2011, 254). By discussing the workings of the logic of family, this chapter stands in such a lineage of research, outlining the various articulations of family and merit, rather than assuming a progressive move from family to merit. It has historicized the association of giving to the family with nepotism and reminded us that an abstract logic of merit obscures the social relations necessary in the making of merit. After this chapter that showed how waqf was subjected to and helped produce these new understandings of family and divisions between the public and the private, the last chapter will dwell on the way these new divisions rearticulated the notion of public benefit and, with it, the waqf’s benefit.