

# Christian Waqf in the frame of Muslim Shari'a: A polemic on destination and beneficiaries of waqf.

SOUAD SLIM

Many definitions had been given to explain the institution of waqf. All insist on the non transactional nature of the property transformed into waqf and on its destination for pious end.

According to Claude Cahen "The permanent waqf is a foundation made by the owner of a property as a pious deed, guaranteed by the law, an irrevocable benefice made for designated beneficiaries".<sup>1</sup>

The Article waqf in the Encyclopedie de l'islam give other details: "The word waqf may be applied to two distinct concepts. It may refer to the juridical act by which property is made over to a religious or charitable foundation. The owner renounces his right of disposal and stipulates that any income be used for worthy and authorized ends".<sup>2</sup> This judicial acts includes the stopping of all transactions with regard to the property which has become, as it were, arrested (waqf) or imprisoned (habus).

It may no longer subject to sale, legacy, mortgage, donation or division leading to subsequent appropriation; yet it may be leased for the short or long term and it may be exchanged.<sup>3</sup>

Those definitions give us an idea of the beneficiaries of waqfs, who are divided into two categories:

1. Individuals: such as the descendants of the donator. This kind of family waqf was termed waqf dhurri in the legislation.
2. Public institutions: mosques, hospitals, schools, caravan serails etc...

In this case the waqf corresponds generally to the donation made by Christians to their churches.

Besides these usual donations, the object for which waqfs were founded were almost innumerable. Many waqfs were founded for the supply of money to the needy, loans for orphan girls, the payment of

debts for imprisoned debtors, the provision of excursions for children in springtime, the burial of indigents... while others were founded in aid of the armed forces.<sup>4</sup>

The waqf institutions of the Christian as well the Muslim communities reached the peak of their expansion during the ottoman period. Throughout this period the waqf as an institution was an essential element in the structure of landholding in the provinces, in the distribution of the means of production and of income among the different social classes and in the general organization of society.

It was mainly in the historical field that research on the waqf was the most conclusive regarding the social and economic history of urban cities and rural countryside. The variety of sources available on this subject points out the different themes essential to the study of any society: economics, laws, demography, social and moral attitudes... Purchase deeds, sharecropping, judgments, trials and all sorts of bookkeeping practices have constituted a stepping stone for the study of social classes, prices, production, taxes... in the cities as well as in countryside.

This traditional religious institution, often archaic, shows strong persistence in its organization and management. But we sometimes, notice that through certain initiatives, the modernization and the development of its structures and managements has been introduced. The present spread of waqf lands in Lebanon and the Middle East hasn't been the object of accurate or official statistics. This subject has often remained a taboo as the holders have often been unwilling to disclose the effective reality of this patrimony. Nevertheless, several limited evaluations have been undertaken; they were mainly aimed at improving waqf productivity. Any project or plan to modernize this institution in view of benefiting the largest number must inevitably be based on accurate statistical studies concerning this type of land.

<sup>4</sup> Gibb and Brown. Islamic society and the west Vol II, p. 167.

<sup>1</sup> Cahen, Claude, L'islam des origines au début de l'empire ottoman. P. 175.

<sup>2</sup> Encyclopédie de l'islam article on waqf.

<sup>3</sup> Hariz, Selim, Al waqf p. 8.

The study of these documents within the framework of a multidisciplinary research could prove to be very useful for the revival of these estates. These documents hold the secrets of the prosperity of this institution.

Social historical research on waqfs is one way of studying different social classes in the ottoman provinces at that time. Different categories are mentioned in the waqf documents. In the countryside peasants, craftsmen, wardens and shepherds as a class apart from the notables of different grades emirs, muqaddams and sheikhs. The clergy also is quoted according to its different titles: Shammas, qis, Khuri, ra'is, mudabbir, mutran, rahib, mutawahhid.

In the cities also, the different social strata are listed according to their professions: al tajir, al Najjar, al haddad, al sayigh, or their functions: al wakil, al qadi, al mutawalli, etc... These different categories maintained among themselves relations which were not always stable. As in all traditional societies, this balance of power did not refer always to different categories. It was mainly between the notables and the clergy that the interests and pacts were either made or broken according to different circumstances. It was during the second half of the eighteenth century that the peasants rebellions called "amiyyat" occurred. They were essentially provoked by the increase in taxation and by the rise of bidding on the lease- farming tributes in the provinces of Mount- Lebanon. In this context of popular uprisings the clergy supported the peasant levies. It was the clergy who, with the bourgeoisie profited from the decline of the local notables and became a new rising social force in the country.

Economically, the waqf had always been considered a stagnant and inactive source of wealth. In fact the waqf obeys neither the market laws, nor the movement of riches and mean of production. The waqfs that were flourishing in the past did not stay that way in all regions. However, they constituted an essential heritage for an eventual policy of communal and economic development. The study of the history of waqfs is essential for understanding the economic history of Lebanon. The large variety of waqf archives in monasteries and bishoprics shed light on the history of prices and on different kind of agricultural products.

The concept of arrested religious property, known as waqf in Islamic Sharia'a law in the writings of various

Muslim jurists, corresponds to the definition of church property which appears in the records of church councils from the start of the fourth century. This institution, during successive Muslim dynasties, was managed by Muslim cities court of justice. Under the Sharia'ah law and especially during the ottoman period, Christian religious and charitable institutions saw remarkable growth and prosperity. The tradition of monastic life was ascetic; it aimed at the freeing of the soul from its servitude to the cares of the earthy body. Over the centuries the piety of the faithful brought an enormous accumulation of landed wealth into the possession of monasteries whose members were sworn to voluntary poverty. Even today one may see the extent of this wealth in the great monastic houses that were built throughout the region, usually in remote places, and always on sites well placed from which to contemplate the natural world and its creator.

During the ottoman period the administration of those lands was subject throughout to a double jurisdiction. The Christian minorities of the empire remained subject to their own laws in matters of religion and personal statute. On the local scale, the registers were marked kept and maintained in the courts of justice at the administrative centers of each wilaya. The Ulama either the qadi or the mufti were responsible for dispensing justice according to Islamic Shari'a law. Deeds, trials, procedures, accounting register of Christians monasteries could be kept also in the Islamic court of Justice. The monasteries and bishoprics also plaid a customary and informal role in the administration and destination of the revenues which depend on its law and rules. We have three perspectives to understand the different interpretations:

One Christian related to the canon law of the Byzantine church, one Islamic connected with the Quranic text and Sunnah tradition and one Anthropological view dealing with communal customs.

**The Christian origin of waqf** should have had a continuous connection with properties and donations dedicated to pagan and Jewish temples. The legislation of Christianity by the Emperor Constantine in 312 allowed Christians to recover churches and other property belonging to them. An organized and coherent corpus of laws was passed to facilitate the expansion and unity of the new religion. Special laws gave to the Corpus Christianorum later called Eccle-

sia the right to receive donations and legacies. Good were assigned to the Church. Fiscal immunities granted to ecclesiastical property displayed the emperor's concern to encourage liberality towards the church, which was now endowed with a privileged status that the pagan cults had never attained. This favorable attitude was the start of close and mutually supportive relations between the church and the Byzantine state. Emperors and notables continued to make donations to the church and to pass laws favoring the growth of ecclesiastical property.<sup>5</sup> Many holy councils decreed detailed laws to protect church property forbidding priests and bishops from acquiring land for themselves and from selling church property. Many articles stipulated that monasteries and convents might not be converted into temporal residences for the use of princes and nobles and nor into hostelries. Those articles insist on the fact that the land property must not be exploited for the profit of nobles and their relatives.<sup>6</sup>

The church fathers praised almsgiving and criticized property in their teachings. This led them to violent diatribes against greed of rich and nobles. They saw property as unjust from its origin and by its very nature. Numerous institutions for relief and mutual aid had been created. Hospitals, asylums, hostelries and funerary services were dedicated to the relief of the poor. Christianity accomplished a revolution in social values by giving dignity to the wretched. This assistance practiced on a wide scale affected the spread of Christianity and the social and political makeup of the cities.<sup>7</sup>

Those many rules and decrees for the protection of church property could inform us that many spoliations and abuses had been committed especially at the level of connivance between clergy and notable. Some of the clergy aimed in transferring church property to the notables at gaining the support of governors and officials for their own promotion in the ecclesiastical hierarchy.

During the Ottoman period, crucial changes occurred at the level of the administration of waqf and the principal beneficiaries. Indeed, any public manifestation of the Christian faith was regarded by the authorities as a form of proselytism. Since town

and village churches became run down and difficult to repair, orthodox believers began to frequent remote cliff top chapels and monasteries. Every important feast of the church became an excuse and an opportunity to take flight into depopulated rural country areas and mountainous places. The celebration of the office could take place there more freely and in a far more secure atmosphere. The vigils and feasts which preceded and followed the liturgies were also occasions for the faithful to meet, discuss current affairs and comment on the great problems of the hour.

These foundations based on vast waqf estates, played a very important role on several levels. On the religious level, they did much to conserve and perpetuate the faith of the church.

One consequence of this frequentation of the monasteries was that the monks took in hand the whole religious life of rāyas, a notable phenomenon both in Asia Minor and the Syrian provinces during the Ottoman era. Everyone knew the importance of Balamand in relation to Tripoli, and that of Saydnāyā to Damascus. Believers who frequented these monasteries were generous in giving to them, especially if they would be buried nearby. The three monasteries of Kūrah, saydat al Natūr, St James Diddih, and Our lady of Balamand shelter the graves of families from the city of Tripoli to this day.

### **Islamic origin of waqf**

According to tradition, the Islamic waqf stems from the prophet and the first caliphs, although the rulings of Islamic judicial schools diverged on certain details of waqf. Certain 'ulama derived the concept of waqf from charitable institutions already existing in conquered lands, such as in the Byzantine empire and in Medina. The Islamic origins of the waqf must be sought in the beneficent impulse so characteristic of Islam. A tradition of the Sunnah links the origin of the waqf to a verse of the Qur'an naming it sadaqah muharramah.<sup>8</sup> The practice of waqf was a development of the Islamic obligation of almsgiving known as Al Zakat. The fuqaha dated this institution to the prophet although they found nothing in the Qur'an to authorize it.<sup>9</sup> Compared with other practices, the

5 Pietri Charles „Constantin et l'inflexion chrétienne de l'empire „ Histoire du Christianisme, Vol 2, p. 212.

6 Kassab, Hanania. Recueil des lois de l'église p. 676- 680.

7 Haydar, Nadim. „Al Awqaf“, Periodical al Noor, 1980, p. 10.

8 Encyclopedia de L'islam article on waqf. According to Shafi'i tradition.

9 Barnes, John Robert, An introduction to religious foundations in the Ottoman Empire p. 154.

traditional justification of the waqf was very tenuous, although jurists affirmed that the companions of the prophet and the first caliphs practiced it. In a tradition of Anas Ibn Malik, it is reported that the prophet wished to buy some gardens from the Banu Najjar on which to build a mosque, but the latter refused the price offered and gave the land for the love of god.<sup>10</sup>

In the absence of any legal text relating to waqf throughout the first century of Islam, the Sunnah assimilated the customs and laws in force in pre-Islamic Arabia and the recently conquered provinces. The Sunnah of local tradition and of Medina in particular, was codified by the consensus of the region's Muslim community, and this consensus came to serve as legal principles.<sup>11</sup>

Legislation therefore received a fixed juridical form in the eleventh century. The Arabs found in the conquered lands the basis of a system of public support in churches, convents, orphanages, hospitals. The early jurists may have had this kind of property in mind as the realization of the charity prescriptions contained in Islam. Legal precedent was readily found in Justinian's legislation governing *Piae Causae*, which accorded point for point with the conditions respecting the creation of family waqfs. The Byzantine legislation was incorporated into the corpus of Islamic law by the celebrated Hanafi jurist and first chief qadi of the Abbasid dynasty Abu Yusuf Al Ya'qub.<sup>12</sup>

We see here the adoption by Islam of local legislation, especially Byzantine in the provinces and of the primitive customs of Medina in Arabic. Many decisions suggested the interaction between the Islamic waqf and the notion of church property.

First the problem of irrevocability of waqf was introduced by Abu Yusuf and its administration. They were managed by Muftis or Qadis. For the property of the church, it was also inalienable and placed under the bishop's authority. Draconian legislation made its sale difficult.<sup>13</sup>

Second: The acceptance by Abu Yusuf of the Sunnah of local tradition facilitated the establishment of family waqf, a practice born of communal custom and the desire to continue pre-Islamic convention regarding the division of inheritances. Abu Yusuf's initiative in introducing the al dhurri waqf contrave-

ned the legal provisions of his master Abu Hanifah and the teaching of several other traditional jurists of that period: It were quite contrary to Koranic inheritance law.<sup>14</sup>

Third issue concerned a problem that occurred later with the Ottoman dynasty. During this period cash waqf or waqf al Nuqud were widespread and popular throughout the lands that had previously been Byzantine provinces. Waqf al Nuqud meant the establishment of a trust with money, the income of which would pay the salary of a teacher or a preacher. Most military and religious officials ruled in favor of their validity and no one spoke out against them. The use of waqf al Nuqud marked a revolution in Shari'ah endowment law. Its legislation rationalized on the basis of customary practice, was a prime example of positive law in action within the Islamic system of law. However, there are few examples of this practice in the Syrian provinces until the eighteenth century. Ibn Abidin the Syrian scholar in his *Radd al Mukhtar* wrote in 1660 „waqf of dirhams is practiced in Turkish land and not in our lands.<sup>15</sup>

The Islamic legislation had established many conditions to make donation of waqf valid. One of those conditions concerned the Christians foundations. A Christian waqf is valid only if it established for purposes of charity, religion or public interest. A pious or humanitarian end (*Kourba*) is the absolute condition of waqf. This principle is unanimously admitted by Hanafi 'Ulama. The waqf must be made in the way of god in order to be pleasing to him and to come closer to him. Without this pious intention it has no validity. It follows that foundations made by non-Muslims are only valid if their aim is not contrary to Islam- for example if they are not destined for churches or monasteries. Therefore, during the Ottoman era, Christian waqf were all founded and named in favour of the poor of the church or of the monastery. The concern for the needy and the destituted is stressed even in the naming of waqfs. The name (*fuqara*) could be justified by the fact that it was legally accepted by Islamic law as *qurbah* which means it corresponds to both the Muslim and Christians faiths. So in all archives such as inventories, deeds, accounting books we have the label poor (*fuqara*) preceding

10 Al Bukhari, al wasaya.

11 Barnes Top. Cit p. 19

12 Ibid p. 154

13 Waqf article in Encyclopedia de L'Islam.

14 Barnes John Robert opcit p. 19.

15 Mandaville Jon E. Usurious piety: the cash waqf controversy in the Ottoman empire International journal of Middle Eastern Studies 1979 p. 289- 308.

any of the foundations; for example the poor of the Room community, the poor of monastery of Balamand, the poor of the church St. George.

So in the frame of Islamic law the principal beneficiaries of waqf in the Christian foundations are the poor.

**The anthropological Interpretation:** This idea traces the origin of the waqf to the institution of public property in the primitive cultures of Africa and Asia. In such cultures, lands belonging to no one in particular were held by the community as the heritage of its ancestors. The essential aim of this custom was to perpetuate the group by reinforcing both ties between its living members and fidelity towards its forefathers through a supposed identification between the community and the land. Land that was identified in this way with the group's cultural and ethnic identity could not be transferred to individual ownership. It could not be disposed of except for the sake of survival in times of disaster.<sup>16</sup> In the frame of Islamic Shari'a the waqf appeared also as a form of common property dependant on the community. Land conquered by force ('anwatan) was never considered as privately owned either in theory or in practice. The right of ownership was accorded neither to individual Muslims nor to non Muslims. By the very fact of conquest, this land became the common property of all Muslims and was subject to kharaj. Kharaj lands were held in alienable trust for all Muslims. The assignment of such land as al tamlik naturally conferred only limited rights of ownership. The only right accorded to the Imam was that of leasing the usufruct in the name of the bayt al mal while retaining full ownership of the land itself.

Quite often the most determined opposition to the sale of a monastery or church waqf estates comes from the inhabitants of the nearest village. They are the ones who throughout history, benefited the most from these waqfs on the economic level as well as on the educational and religious levels. The waqf is a part of their heritage and a part of their village life. Some of them think that the total or a part of the income generated by the sale of the church waqf should be reinvented in the village. Municipalities associations and clubs often consider themselves accredited to use waqf land to enlarge roads, open sports

16 Khudr, Georges. Al waqf Al Nahar (14 January 1994).

field etc... Thus the church waqf are also in danger of becoming village waqfs similar to musha' lands (collective properties of a village located outside residential areas).

In the Maronite point of view, the idea usually upheld is that the waqf is considered as sacred land. This idea consider that liquidation of monastic properties would be a triple blunder consisting of a denial of the past, an easy misjudgment of the present and an alienation of the future. The waqf land was humanized and protected from the greed of conquerors who occupied the Near east. This allowed the idea of homeland to spread and defeat the totalitarian empire and also to defend the value of national community solidarity in opposition to the umma conception of a monoreligious sacred community.<sup>17</sup>

The waqf is seen here as a materialization of collective identity both national and confessional. During the Lebanese civil war, 1975- 1990, this amalgam between confessional maronite and national Lebanese identity was common to the conservative Christian parties.

According to popular belief and conservative circles, the waqfs represents a sacred land that is bound to the place it is located in. Only the institutions (churches, Parishes, monasteries) given to the waqf by the initial donator could profit from its revenues. In case there was no indication, the revenues should go to the benefit of the donator's village. That is why conflicts occur sometimes between parishioners or their representatives and the ecclesiastical superiors (bishops or hygoumenes) when the latter try to liquidate or replace waqf estates in their villages.

#### **Economic role of monasteries**

For centuries pious foundations among both Christians and Muslims have served as a kind of social safety net, and as a guarantee of economic recovery during periods following violent conflicts and natural catastrophes such as earthquakes, plagues, and wars. Two specific examples will illustrate the points. In the 17<sup>th</sup> century, the waqfs of Tripoli were the main base for the rebuilding of the city and its socio-demographic fabric in the wake of its destruction by the wars between the Maan emirs and the muqata'gis from the Sifah family.<sup>18</sup> Likewise for more than four

17 Barnes John Robert op cit p. 28.

18 Ziadeh, Khaled, Tarikh al Muqata'at al lubnaniyat fi al Qarn al thamin 'ashar p. 205- 320.

centuries the monastery of our Lady of Balamand was a place of refuge for the inhabitants of Kurah and Tripoli. Greek Orthodox families fleeing wars, epidemics and earthquakes would often stay for several months in this monastery. During his period of forced leisure, the guests would read the monastery manuscripts inscribing marginal notes that described the events of the time and dated the length of their stay.<sup>19</sup>

On the economic level, Waqf responded to the needs of market economy which was represented in Mount-Lebanon mainly by the predominance of mulberry- growing and silk manufacture. From the 18<sup>th</sup> century, the monasteries became centers for gathering harvests and allocating labor. Lands acquired by purchase or donation were intensively exploited. The Monks who had previously worked on the land, tended to give up their work to sharecropping peasants and turn to diverse activities.<sup>20</sup>

The peasants received land, tools plants and seed from the monastery and gave in exchange half of their yield in the case of silkworms or one third of yield for vineyards. The sharecroppers, who were often indebted to the monasteries, awaited the sale of their crops to free themselves from their financial obligations. They could on the other hand, stock up with food supplies throughout the year, giving payment at the end of the season.

The land acquired by religious institutions were redistributed the peasants who worked them and delivered their crops to the monasteries. After being gathered the produce of the surrounding areas would be sold throughout the country by the ordinary channels of commerce. Certain monasteries functioned as commercial companies. They had agents in all the towns and villages of the region, whose business was to dispose of the monasteries' produce. The latter wasn't limited to silk and agricultural staples but included other food products such as wine, oil and raisins and also religious books which are printed in some of the convents.<sup>21</sup>

19 Colophons of Balamand Monastery Manuscripts in catalog of Balamand manuscripts, p. 59.

20 Slim, Souad, *Le métayage et l'impôt au Mont -Liban aux XVIII et XIX siècles*, Dar al Mashreq, Beirut, p.33.

21 Abu Nohra Joseph, *Contribution à l'étude du rôle des monastères dans l'histoire rurale du Liban. Recherche sur les archives du couvent St. Jean de Khonchara et de cinq autres couvents maronites et melchites 1710-1960*. Ph.D. thesis Strasbourg 1893- p. 159.

On the fiscal and financial level the economic growth of the monasteries and their relative prosperity, in addition to their spiritual and religious functions, conferred on them a financial and political dominance in the country. Because of their wealth and importance, the monasteries acted as bankers for both credits and deposits. The trust which they inspired among the people in general and their relatively neutral position, at a distance from the country's political conflicts, make them safe havens were Christian notables, financiers, Townes, and merchants could deposit their fortunes during difficult periods. The chronicles of the period tell us that the Greek Catholic inhabitants of Zahleh deposited their savings at the monastery of St. John Khinshara, while the Greek orthodox deposited theirs at St. Elie Shuwayyah. In 1794, however, the soldiers of the Amir Bashir II during their war against the Abil-lama' and the people of Zahleh, pillaged both these monasteries seizing their deposits.<sup>22</sup>

The monasteries also advanced loans to their sharecroppers and other inhabitants of their neighboring villages. These credits might be given to tide them over until the harvest season, but more importantly they were made for the payment of taxes levied by the local and central authorities in becoming the central landowners the monasteries became in their own areas the chief tax collectors too. They came into direct contact with the state and collected taxes from all the people living on their lands. Land registers and receipts of payment by persons and by areas has been preserved in the monasteries providing ample proof of the fiscal role played by the religious authorities in both rural and urban areas.<sup>23</sup> These authorities acted as intermediaries between the state and the peasants in the collection of taxes, the latter were thereby spared visits by the soldiery of the governors who would often organize paramilitary campaign to replenish their treasuries.

In plus of being intermediaries between people, the state and the market economy, waqfs monasteries proved to be capable of changing their vocation in order to meet with the needs of the conjuncture.

22 Al Ma'luf, 'Isa Iskandar, *Tarikh Madinat Zahlah*, 1911, P. 135.

23 Slim, Souad, op cit p. 219.