

Family Waqf in Fez: Property, Charity, and the Neoliberal Turn

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Abstract

This thesis explores the discourse of family waqf (endowments) and charity in the city of Fez. It specifically looks at the contradictions and discourses produced by the confluence of charity, neoliberal policies, and the people's imaginations of the “developed” future. It traces the historical and legal story of the family waqf from the colonial context, the nation-state building, and the neoliberal moment. It argues against nostalgic readings of family waqf as an “everlasting charity” to explore different conceptualizations of charity and waqf beyond static and nostalgic readings of Islamic endowments. These transformations are not to be read as opposites to Islam, but rather as “messy” and contradictory.

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A family waqf property in the old medina of Fez, photograph taken by the author.

Introduction

“The cloak of secrecy shrouding the fieldwork experiences of successful predecessors inspires fantasies,” Lila Abu-Lughod wrote in her *Veiled Sentiments* (2016, p.9).

During my ethnographic work, many of my interlocutors were perplexed by the choice of my topic - family waqf in Fez. The oft-repeated reactions were vacillating between “family waqf is full of problems” or “you did not find anything else to work on.” I patiently traced the circulation of these perceptions on waqf during my fieldwork, as the former is enmeshed in a complex legal, social, and economic web. Before embarking on my fieldwork journey, I romanticized family waqf as belonging to “the good old days” where extended families lived together and the poorest ones in the ladder were provided with care and charity that were stemming from family waqf. However, my fieldwork experience has expunged this nostalgia to the past that permeates the history textbooks, most notably in the ones I found in Wael Hallaq’s *The Impossible State* (2012). In his work, ample space is allotted to a romanticization of pre-modern networks of solidarity such as the ones located in family waqf.

Although my fieldwork obliterated this unwarranted nostalgia to pre-modern forms of care, I am still interested in looking at the epistemology and grammar used in describing charity and the waqf today in contemporary Fez. I will look at the “new epistemology,” to use Wael Hallaq’s words, which emerged from these changes in the conceptualization of charity and religion within the family. However, unlike Hallaq, I will not be reading it as a solely “epistemic rupture,” as I am more interested in the in-between discourses produced and the continuities and reforms within the tradition itself (Hallaq, 2019).

Unlike public *waqf* which is clear in its dedication to the public welfare, family *waqf* is often synonymous with private *waqf*, which blurs the lines between the public and private. Family *waqf*, according to the Moroccan code of endowments, is any form of endowment that is dedicated to the founder's family, mostly male heirs (2010, p.27). Regardless of the type of *waqf* whether private or public, the property is always put out of commercial use, perpetually assigned to charity, and is therefore "inalienable and imprescriptible" (Harroucha & Chaouni, 2023, p.3906). This "inalienability" characteristic of the *waqf* has been a subject of heated debate between pro-abolitionists of the *waqf* and those who cannot profit financially from the endowment. Previously, however, it was subject to colonial scrutiny and criticism, as I demonstrate in the upcoming chapters of this thesis.

As today's grammar and terminology differentiates between public charity and care and private charity, family *waqf* often raises more questions on whether it is a charitable institution, a religious tradition, or it is mainly concerned with preserving the property within the family and earning a social and political prestige within the city. This liberal distinction between the private/public *waqf* has a *longue durée* and can be traced to the colonial regime differentiating between dormant and productive capital to the postcolonial state in its nation-building process. As such, changes at the level of the economy and the effects of neoliberalization through privatization can be traced at the level of the *waqf*, more particularly family *waqf*. The overarching question I attempt to answer in this thesis is: what are the discourses produced upon conflating calculative economics with a religious institution such as that of the family *waqf*? Additionally, I ask further questions such as: what are the social inequalities and contradictions produced in the family *waqf* today? How is this liberal distinction between the private and the public at the level of charity approached by the state and the people? How is there a new conceptualization of what is charitable and religious? These are some of the questions that navigate the terrains and waters of this research project.

There is a preponderant body of literature on the waqf in general, and the family waqf, in particular. As the waqf opens many ventures to study, research on waqf ranges from theological, legal, urban, economic, and political works. One of the most known legal and historical scholars on the waqf in Morocco is Abderrazzak Sbihi (2017) who documented the different legal and historical changes between the different codes of endowments as well as the benefits of the waqf and its importance in the Islamic civilization. An anthropological account of the *Waqf* that takes a *longue durée* approach and traces the precolonial, colonial, and contemporary practices of the Waqf is Nada Moumtaz's *God's Property* (2021). Moumtaz works on the *Waqf* in Lebanon through the lens of rupture and continuity to better trace the different transformations of the *Waqf* in Beirut. In her work, she explores the different legal changes that the French mandate introduced in the system of *waqfs*. She later examines in the book the post-colonial moment and the different anxieties of including the *Waqf* system and its epistemological and religious baggage within a more modern and secular form of governance. These works locate the various moments of legal and historical transformations in the waqf, which can unravel further concomitant changes in both the perception and practice of the waqf.

On the existence of the waqf property in the city, Randi Deguilhem (2008) advances that endowments played a significant role in shaping the urban infrastructure and the configuration of urban spaces. In her work on the Great Mosque of Tangier (2005), Susan Gillson Miller characterizes the mosque, which is a public form of waqf, as an important urban agent in the characterization of the public space. She traces the different legal loopholes in the management of the institution of waqf both by the colonial administration, and later, the postcolonial state. The way the latter playfully tames the legal discourse on the waqf has opened real estate to the market in the form of investment projects that do not ideally represent the intent of the waqf as a pious institution of charity. Rim Yassine Kassab (2024) illustrates colonial changes in the institution of the waqf and how they benefited from the waqf's revenues to implement their

own urban projects. A collaboration was carried between the City Planning Service and the habous institution to bring the habous district project planned by French urban planners and architects into life (Kassab, 2024, p.12).

Other studies conducted on the waqf come from an economic perspective that seeks to separate between the economy and religion such as “Waqf as a Socio-Economic Institution” by Mohamad Aslan Haneef (2018) where he inquires about the possibility of reviving the institution of the *waqf*, as it can be considered a “third or voluntary” sector of the economy. On this note, Haneef advances “Like it or not, to many people, the religious-economic divide is ingrained in our current system” (p.72). He calls for a reform of the institution and a reinforcement of the historical divide in Muslim countries in their dual jurisdiction systems between secular and religious affairs (p.73). In my theoretical approach to the family waqf, I come against this secular divide between religion and the economy.

In my theoretical approach to the family *waqf*, I acknowledge the nuances of this *waqf*, how it is not only a “religious” institution, but how it also reflects the changes on the level of charity, which were ineluctable given that the waqf takes place under a very different architecture of the state, law, and religion. Hence why, I approach family waqf as a “total” institution using Marcel Mauss’s term, as it straddles the religious, economic, and moral spheres (Moumtaz, 2018, p.7). Contrary to most of these readings of family *waqf* and the discourse of development whether in relation to the economy or regarding the renewal of Islamic institutions, I read family *waqf* and its different configurations and politics as part and parcel of the economy driven by neoliberal policies that aim towards privatizing the *waqf* or completely obliterating the *waqf* through modern legal changes in the most recent code of endowments issued in 2010 by the Ministry of Endowments and Religious Affairs. The agents of these transformations in the family *waqf* are the family members primarily affected by the legal and economic changes.

Within the family, there are different hierarchies and power relationships, as females often do not inherit the *waqf*. Such an injustice has been at the forefront of counter-resistant movements against the *waqf*'s inheritance and management system. On the other hand, there are families who either resist the state expropriation of their properties or collaborate with the private sector to facilitate investments and overcome “the inalienability” aspect of the *waqf*. In this respect, Mona Atia’s theory of “pious neoliberalism” (2011) can be productive in looking at the intersection of these forces and the discourse of piety.

Mona Atia uses pious neoliberalism to refer to mainstream narratives of religiosity in which religion and Islamic charity dovetail with neoliberalism in the hope of finding solutions to different social problems. Additionally, it is a discursive combination of economic rationale and religion that encourages individuals to pursue material ends in the purpose of strengthening their relationship with God (2011, p.2). Atia’s work dwells on the effects of neoliberalism in shaping and changing the social geography. Further, her work also stresses the heterogeneity of neoliberalism and capitalism, as it “morphs into specific geographic contexts,” despite its global diffusion (Atia, 2011, p.15). Following Atia’s pious neoliberalism, I do not read neoliberalism and religion as clashing forces, but I opt for reading the contradictions and multiple facets of the two discourses. Also, I locate how this neoliberal rhetoric is voiced through the family *waqf* discourse, its limitations, incompleteness, and the other discourses it produces (Clarke, 2007, 242). To not overshadow the pertinent role of religion and Islamic law in shaping laws, policies, and ideologies, I also look at the “Islamization” of neoliberalism and the “neo-liberalization” of Islam in the context of family *waqf* and property within the urban space of the city of Fez.

Another interesting theory from which to look at the family endowments that are part of both religion and the economy is Tariq Rahman's (2022). He looks at what he terms "landscapes of *Rizq* (provision)" in which the worldly and otherworldly navigate in the context of developers and investors in Lahore. Borrowing these notions of the worldly and otherworldly to look at how the family waqf differentiates between the two aspects and how the families mark a separation or a combination of both will open up new windows to look at the theorization of the family *waqf* as both an institution that enhances charity, piety, and social care, whilst at the same time a one that strives for wealth accumulation and, in some cases, abolishment of the waqf itself. How a "non-capitalist value" such as charity can be a "vehicle of capitalist accumulation" is the main concern of my thesis project (Rahman, 2022, p.258).

As for the methodology, this study is the outcome of fourteen interviews conducted with both the beneficiaries of the family waqf, the ones who are deprived of the revenues, as well as state representatives within the Municipality of Endowments. Interviews varied from one hour to three hours and were usually held either in cafes or in the houses of the interlocutors between April and May 2024. The themes broached during the interview varied between legal "problems" of the family waqf, conceptions of charity in today's Fez, the future of the family waqf in modernity, to name a few. The limitation I faced in this research whilst interviewing different families was that there were some individuals who eschewed from answering the amount of profits they get from the waqfs, name the party that expropriated their property, and openly share their opinions regarding the management of the habous and its modern administrations. All interviews were conducted in the Moroccan dialect, *darija*. The names of the interviewees were changed to protect their privacy. All the interviewees agreed to share their data for the sake of this project.

In order to suture the people's discourse to that of the state, I undertook one month of archival research at the Municipality of Fez where I read the different correspondences and press exchanged between the beneficiaries of the waqf and the administration. These documents were read as stories that sketch a different reality of social relationships within the family beyond what my interlocutors described. Participant observation, as an ethnographic method, was used within the waqf administration to observe the people and the public servants encounters as well as to listen to the people's complaints and stories.

Thus, in what follows, I divide the thesis into three chapters. In the first chapter titled *Setting up the Family Waqf*, I succinctly provide a historical and urban context to the waqf, how the people define family waqf today in Fez, and what are the social inequalities that persist in the institution. The second chapter *Property Rights between Maṣlaḥa 'āma and Maṣlaḥa Khāsa* looks at the colonial regime's reforms and changes that have affected the institution of family waqf till today as well as traces the paradigm of the public/private benefit in both the colonial regime and the postcolonial nation-state. Lastly, the third chapter *The Death of the Family Waqf in a Neoliberal Moment* advances that family waqf should not be conceptualized from a humanitarian point of view, as it goes beyond humanitarian understandings of charity. It further looks at the discourses produced in relation to the family waqf when neoliberalism and religion are tweaked together.

Chapter 1. Setting up the Family Waqf

In this chapter, I contextualize the research scale of this thesis, the city of Fez. I briefly provide a contextualization to the city and its different dimensions. I advance that the family waqf is a socially dying institution and practice despite of the different modernization attempts such as including women in the shares of the waqf. In the second section, I look at this gender dimension and how family waqf is a form of inequality for many women because it circumvents the Islamic law of Inheritance.

1.1. A Historical and Urban Story

“The Islamic system of endowments has been a great inspiration to the West,” my interlocutor, Hassan, proudly reiterated during our interview. After lengthy discussions on how the family waqf is laced with problems and obstacles, Hassan, then, stops and tells me about an article that he had recently read on the waqf system. Additionally, he tells me if the British have started adopting it, then it means “we are on the right direction.” Instead of giving the biggest share to the eldest in the family, the waqf system could equally distribute the revenues of the property, and keep the latter exempt from any damage. Indeed, the Islamic waqf is often put in comparison to either pre-modern practices¹ or Christian and Jewish forms of endowments;

¹ Irfan Ahmed Shaikh (2018) provides some illustrations of these practices found in systems such as that of the Roman legal system, which included the concept of the sacred object. As such, the religious temples are inalienable, as they are based on this concept of the sacred. However, it is worthy of note here, that there are

however, as some scholars stress, “waqf is very much different from any of these pre-Islāmic models and must as such be acknowledged as an institution that is distinctly Islāmic” (Shaikh, 2018, p.1218).

Indeed, a comparative paradigm could be productive in unravelling how the waqf constitutes a form of care economy or gift economy that travels from one context to another, producing different forms of subjectivities, social relationships, and urban geographies. However, reducing the system merely to a secular understanding of philanthropy or charity can result in homogenizing the system of the waqf and ignoring the specific historical and religious contexts of its production. Therefore, it is important to carve some space for a definition of the waqf and its different historical and urban characteristics. Etymologically, the word *Waqf* (/wɒkf/) comes from the Arabic verb وَقَفَ (/waqafa/), which literally means “to stop.” The oft-cited story of how the system of waqf has heralded in Islam is based on a narration where the Prophet Muhammad, upon the companion Omar’s inquiries of what to do with large plots of land, asked him to make the land plots a waqf, thus making it inalienable and stopping its revenues eternally for charity (Shaikh, 2018, p.1216). The waqf, therefore, represents a “post-Qur’anic institution developed by jurists and governments over centuries” (Sait, 2006, p.168). Different Islamic schools of law (*Madhāhib*) vary in their approach to the waqf. One of the prominent legal historians of the waqf in the context of Morocco, Abderrazzak Sbihi, advances that the Maliki *madhāb* holds a stronger stance towards the waqf, as can be patently traced in the long history of the existence of Islamic endowments in countries such as Morocco (2017, p.3).

According to the Moroccan code of religious endowments that was issued in 2010 by the Ministry of Religious Endowments and Islamic Affairs, there are three forms of waqf. The first

Jewish and Christian endowments that exist in North African countries, such as Morocco. Synagogues and Churches also constitute a public waqf in Morocco.

one, public waqf, is defined in article 50 as any endowment whose benefits are dedicated to the welfare and good of the public such as mosques, Sufi lodges, shrines, cemeteries, to name a few (p.14). On the other hand, the family waqf (*al-waqf al-’ahlī*) is divided into two forms of endowments, private and shared ones. Article 108 from the code of endowments defines the family waqf as a form of endowment dedicated to the founder’s family whereas the shared form of waqf is the one that intersects with both public and private waqfs, as it is dedicated to someone for a charitable cause (27). In this thesis, my focus is particularly on family waqf, its historical and legal specificities, and its lived realities beyond static and ahistorical readings² of Islamic endowments.

“Waqf increasingly influenced and shaped numerous infrastructural aspects in cities” (Deguilhem, 2008, p.928). As the scale of this research remains that of the city, it is worthy of note to highlight how the waqf “introduced an element of cohesiveness into the urban scene” (Miller, 2005, p.267), and more particularly, in the city of Fez, which has often been described as, using Titus Burckhardt’s words, “the city of Islam” (1992). Historians such as Susan Gilson Miller approach the city using both dimensions of the social and the sacred, “in a city in which sacred and social were intertwined, the network of religious buildings in the Moroccan city formed the skeleton of the urban body” (2005, p.266). Even though waqf properties in the city of Fez constitute “most of the land tracts in the form of real estate (Sait, 2006, p.173), it is only recently that a study on the number of properties that belong to the habous³ in the city of Fez were located. Using a geographic information system, Rachid Harroucha and Abdel-Ali Chaouni (2023) identified 688 habous property units that belong to the city of Fez, and they classified them as ranging from mosques, Sufi lodges, hotels, *madrasas* (traditional Islamic

² I speak more about these nostalgic readings in the introduction.

³ I use waqf and habous interchangeably as both verbs in Arabic literally mean “to stop”. Habous tends, however, to be used more in the North African context.

schools), to name a few. The collection of data was possible only because these properties belong solely to the Waqf administration. My focus, however, in this project is on the “private” habous; that of the families in Fez. Most of my interlocutors’ properties range from urban bare lands, commercial shops, and housing buildings. Furthermore, most of their buildings can be located in the old medina of Fez⁴, which often constitute old traditional houses, riyāds⁵, and palaces.

Through my archival analysis at the Municipality of Endowments in Fez, I noticed that one cannot contextualize the city and its waqf properties without a mention of the class element. In fact, as I explain in the upcoming chapters, most of the Fassi families have occupied important political positions in the *Makhzen*⁶, as they claim to be the descendants of the Prophet Muhammad. Such a claim has made them further close to the state, as the royal family (the Alawites) in Morocco also claim to descend from the same genealogical line. This can explain the reason for which many old Fassi families own a preponderant number of properties in the city, even if not all of them carry the same economic status today⁷. On this note, Hassan started citing me the richest names in Morocco and how many of them belong to the city of Fez, and in agony, he complained that most of these Fassi families migrated to cities such as Casablanca. Such a tone represents most of what Manon Istasse describes in her ethnography of Fez as

⁴ The French Protectorate built “la ville nouvelle” (the new city) two kilometres away from the old medina and rendered the old medina solely a neighborhood. For more on this, see Manon Istasse’s *Living in a World Heritage Site* (2019).

⁵ A riyād is a traditional house that is often converted into a guesthouse in Fez. Not all traditional houses and palaces are riyāds, as I show in my discussion of Hassan and Ahmed’s family waqfs in the old medina.

⁶ *Makhzen* refers to the deep state in the Moroccan context.

⁷ Not all Fassi families might have financial resources; however, they all carry a social and religious prestige because of their descent. One of the incidents that occurred to me in the waqf administration was that someone asked a public servant for help in some matters related to the waqf and said that he also belongs to the “chorfa” like the one working in the administration, which easily evoked the latter’s sympathy.

“most informants finally agreed about a past Golden Age that is now over: for them, Fez is no longer what it was” (2019, 2.3).

This nostalgia, according to my interlocutors, is only expressed in relation to the fact that many people migrated from the rural areas to Fez and Fassis themselves quit the city for other more economically active cities (Istasse, 2019, 2.3). However, I could not trace this nostalgia in relation to the waqf and the interlocutors’ families. Most of my interlocutors do not have nostalgic images of the waqf and openly express their discontent with the family waqf. In his *Reforming Modernity* (2019), Wael Hallaq’s discussion echoes a nostalgia to pre-modern institutions, education, and forms of solidarity. Whilst I do agree with Hallaq that the nineteenth century heralds the beginning of the end⁸ of “the cultural, institutional, and intellectual world called “Islam,” a world that had forged a place among empires and intellectual and material cultures on its own terms” (Hallaq, 2019, p.3), I disagree with the discourse of excessive nostalgia to pre-modern institutions and their romanticization. Similarly, through my fieldwork, even if “modern progress is virulently present” with regards to the family waqf, I did not trace this “nostalgia” that Hallaq extensively dwells on in his work (Ibid., p.36). Against Hallaq’s reading of tradition and modernity, Talal Asad’s framework allows for a more active conceptualization of Islamic tradition where shifts, changes, and contradictions constitute and form the tradition. Concurrently, it also debunks the immutability of Islamic beliefs and understandings as well as does not portray Islamic traditions in a total breach with modernity (Mahmood, 2004).

As I was asking my interlocutors whether family waqf is a modern institution or not, I was surprised by the answer of one of my interlocutors who I used to occasionally see at the waqf

⁸ Here, Hallaq speaks about the epistemic rupture that was caused by first colonialism and then later the modern state. For example, the obliteration of traditional forms of Islamic education.

administration. Aziz described the family waqf as a “*fitna*”⁹ to the upcoming generations. I was perplexed by his answer and asked him to elaborate more on what he meant. He replied that modernity’s times are different from the past, and it is the time of technology and progress. “Who is going to make a waqf today? Who will have this idea in today’s rapid world?” these two rhetorical questions were numerous asked during my interviews. For most of my interviewees, family waqf does not represent a modern institution; therefore, it should die. As I was asking the waqf administration about the decrease in the number of the waqfs, they told me that only few people today turn their properties into waqfs, and those people either do not have children and want it to go to al-Qarawiyyin Mosque, or they have daughters and do not want other relatives to inherit with them. The only interlocutor who thinks that the waqf is a modern institution has many projects in mind for his waqf properties, and he expects the future of the waqf to be that of investments and development. Through my interviews and fieldwork, I concluded that family waqf is a socially dying institution and is not as popular as it used to be. Many people are asking for its abolition, and more particularly, women who are at the forefront of these demands.

1.2. Inheritance and Gender

Malika, a schoolteacher, whose family owns an agricultural land in the outskirts of Fez is one of the leading female voices against the family waqf and its social inequalities. Malika’s male cousins used to cultivate the land and take its revenues for a long time without sharing anything with their female sisters or female cousins. Malika narrates the stories of one of her male cousins who takes “the share of the lion,” to use her words, in the land. This cousin, Malika tells me, has female sisters who are extremely ill and who cannot work, to the extent that one of them relies on external donations from people outside of the family. “It is her father’s land,

⁹ *Fitna* could be literally translated to a trial. It generally refers to obstacles, problems, hardships.

and she begs people outside for help? How can this abjection be just?” Malika asks me with frustration and anger. I kept nodding throughout the whole interview with Malika, and I told her about my encounter with a public servant at the waqf administration who told me that women have their husbands and brothers who can look after them. He told me to not put this gender disparity as an inequality in my work. Another interviewee, Ali, told me that this is the God’s *Shr*¹⁰. Malika, then, inquired about my response to the public servant’s comment. Before my answer, she reacted and told me, “What about women who do not have husbands or brothers?”

Malika’s male relatives were thinking of doing the property liquidation with the help of the waqf administration. As she narrates, because of their exclusion of all the females, she went to a lawyer who informed her about a *dahir*¹¹ that was issued on the 8th of October 1977. This *dahir* comes against the wish of the waqf founder to solely include males. It includes females, too, when the waqf turns into an inheritance because of the property liquidation procedure. As she received the confirmation from the lawyer, she then filed an appeal against the courtroom’s decision, and the property liquidation operation stopped for a while till she worked hard to include all the female relatives thanks to this *dahir* that was issued during the reign of King Hassan II. Because of her stance, Malika told me that some of her male cousins disturbed her and even threatened her many times on the phone. Now, they are in a legal dispute in the courtroom, as her male cousin filed a complaint against her because of the “activism” that she did, which got many females in the family asking for their rights of the land.

Aside from Malika, Ali’s waqf, which I explain extensively in the upcoming chapter, is also stopped for women who either got divorced or whose husbands died. When I asked Ali about

¹⁰ By this, he means God’s path reflected in the Qur’an, the Prophetic tradition, and Islamic law generally.

¹¹ I tend to use the word *dahir* throughout the thesis, which means royal decrees in Arabic.

the women in the family, he sarcastically answered that “it is not his business,” and if they want something, they could go to the administration. I further asked Ali about how fair it is to exclude women from their waqf’s shares, he then told me about how the founder was a religiously strict man and that he would not have done it if it is not for religion’s sake. Then, he digressed from this topic to that of inheritance, and he complained about the current Moroccan minister of Justice’s¹² reforms of family law and attempts of re-thinking the Islamic inheritance system. Further, Ali said that “the women themselves do not want these changes, as they are God’s given.” But Malika had another approach to these reforms. For her, these women as well as feminist organizations¹³ are asking for women’s rights. Additionally, there is no Shari’a law in the waqf, as for her, this latter playfully circumvents Islamic laws of inheritance. “God is against injustice,” you should have responded to all the men whom you interviewed.

Generally speaking about the waqf’s circumvention of inheritance laws, it is important to note that there are some cases where “the wāqif can legally cut out Qur’anic inheritors of his choosing, potentially even all, in service of a non-relative; he can support one family member over another to whom the Qur’an gives equal treatment, for instance, an elder son over a younger one, or offspring from one wife over those from another” (Shaikh, 2018, pp.1224-1225).

Malika theorizes about women’s rights from an internal Islamic point of view. For her, the problem is Man’s made, not created by God. As such, her theorization is reminiscent of many

¹² Abdellatif Ouahbi has been widely attacked by the conservatists and Islamists for his progressivist views regarding the Moroccan Family Code (Moudawana).

¹³ Feminist organizations such as the Democratic Association of Women of Morocco (ADFM) has been asking for the abolition of the family waqf because of its women’s exclusion.

female scholars who advance that the “systematic exclusion of women and their invalidation as interpretive communities...has political causes and dangerous consequences” (Rddad, 2018, p.12). Additionally, “the monopolizing male tradition of interpretation of religious texts validates the relegation of women to a secondary political and social position” (Rddad, 2018, p.13). Malika’s female cousins, like many other women who at the forefront of family waqf’s injustices, are constantly asking the waqf administration to mediate between them and their male counterparts. Through my archival research at the waqf administration, I got the chance to read different letters and correspondences of females who need financial assistance; and therefore, appeal to the help of the waqf administration. Ali’s waqf, for example, has females asking for financial assistance, thus conforming with the first founder’s wish¹⁴; however, uneven social relations within the family and the gender hierarchy constitute obstacles to the equal distribution of shares within the family.

Most of the archives belonging to the different waqfs include many legal conflicts. Some of my interlocutors, like Idriss, have more than two hundred conflicts in the courtroom either with family members or with individuals who were supposed to only temporarily occupy some of the commercial shops¹⁵, and eventually claimed the places as theirs, especially when there is a lack of proper property registration.

In brief, this chapter attempts to give a historical and urban contextualization of the waqf in the city of Fez, the research scale of this project. It advances the argument that the social waqf is socially dying despite the modernization attempts such as including women in the waqf’s revenues upon its dissolvment. Many people think that it is not a modern institution and

¹⁴ Ali’s waqf founder included women in the waqf, as I explain in detail in the third chapter.

¹⁵ In the past, his grandfather and later father rented the shops without the use of any contracts.

therefore should be abolished¹⁶. I could not trace any nostalgia in their discourse in relation to family waqf, the “good old days,” and living with extended families, especially that some of them did live in such an environment in their childhoods. In the second section, I succinctly shed light on some of the social inequalities persistent in the institution of the family waqf, most importantly issues of gender disparity and injustice within the family.

¹⁶ It is important, here, to note that I am not advocating for its abolishment. I am only focusing on people’s theorizations and definitions of the family waqf. The desire to abolish family waqf mainly stems from the long complex bureaucracy of the family waqf, the many conflicts within the family it can generate, and how economically dormant it can be.

Chapter 2. Property Rights between *Maṣlaḥa ‘āma* and *Maṣlaḥa Khāsa*

In this chapter, I look at how the trope of *maṣlaḥa ‘āma* (public interest) / *maṣlaḥa khāsa* (private interest) was used and abused by the French colonial regime in Morocco and subsequently exercised by the postcolonial state as a coercive tool to break the inalienability of waqf property and expropriate it. In the first section, I look at the rhetoric used by the French colonial powers in their management of the family waqf. In the second section, I trace how this colonial rhetoric has been adopted by the modern nation-state and how these policies are lived by different families in Fez.

2.1. French Colonialism and Modern Conceptions of Property

“Everything was in chaos and the French came to organize it,” one of my interlocutors continuously reiterated during our conversation on family waqf. By everything, my interlocutor, Mohammed, was referring to the management of habous property in Morocco. Mohammed does not have a full-time position at the Municipality of Endowments, but he occasionally works in the habous administration to help planners, investors, and even the staff at the administration exactly know the specificities of the land, as he used to previously occupy the position of a *Shaykh* of a tribe. He proudly informs me that even today’s modern planners and experts will not know the local characteristics of the land, as they tend to ignore the local traits and collective laws of the land and the communities occupying it. At first blush, Mohammed’s statement about the French organization of the habous might sound provocative as it evokes a recurrent colonial discourse propagated by the French colonial powers. However, looking at the French rhetoric in their management of the habous as well as the postcolonial nation state’s modernization of the waqf institution can unravel further realities on the

reformism of religious institutions and the re-conceptualization of what is religious as well as charitable.

The recurrent trope of *maṣlaḥa ʿāma* (public interest) / *maṣlaḥa khāsa* (private interest) can be both traced in the colonial discourse as well as the state rhetoric on the management of the family waqf. Reading different kinds of correspondences between the waqf's heirs and the administration of the habous imparts that the use of the public/private good has often been used as a camouflage to conceal politics beyond the simple management of the waqf property. In this chapter, I advance that the secularization of religion and the introduction of calculative economics into the realm of charity and endowments resulted in a reconceptualization of what is considered *maṣlaḥa ʿāma* (public interest) / *maṣlaḥa khāsa* (private interest).

Harking back to my interview with Mohammed, I asked him to further shed light on the role of the French administration in the management of endowments, and he replied that “people woke up when there was the introduction of property registration laws.” Leafing through colonial literature produced on the waqf in Morocco, one eminently notices how the French colonial powers inveighed against the system of waqf. Further, they deftly vacillated in their writings between a description of pre-colonial chaotic Morocco and the ideology of economic progress that can modernize the country. Joseph Luccioni (1982) extensively worked on the system of “Pious Foundations” in Morocco as well as other North African countries. Luccioni, following the commentary provided by Mohammed, notes that: “the Moroccan state has always ignored the notion of the budget as well as that of the public service¹⁷” (p.6). Further, he proceeds with highlighting the germane role that the habous play in the Moroccan society: “everything in Morocco that includes institutions or services of a spiritual, intellectual, social, economic, or humanitarian kind solely depended on the habous. We, then, understand the

¹⁷ All the translations in this thesis are made by the author.

prestige and the importance of the Pious Foundations in all different aspects of society” (p.9). Luccioni, like other French scholars and academics at the time, sought to disparage the preponderant influence of the *habous* in the society through forwarding a trenchant critique towards the “unmodern” management of the *habous* and its existence outside of the colonial system.

As the *habous* system’s management was carried out in pre-colonial Morocco by local and collective communities, it represented a heterogeneous institution where education, health, and religious services were all provided. However, this was considered for the French powers to be solely the role of the state (Luccioni, 1982, p.6). This dilemma resulted in the centralization of endowments in Morocco and their institutionalization. As Luccioni explains, the *waqfs*, then, became part of the *makhzen* and their management have been reserved to small “*nidas*” (municipalities) around the country whose head was usually appointed by the Sultan (Ibid., p.37). In other cities, endowments could not be fully controlled by the *makhzen* and therefore local customs persisted in cities such as Taza, Taroudant, to name a few (Ibid., p.38). The intrusion of the colonial powers into the management of *waqf* property in Morocco resulted in institutionalizing property beyond customary law, kinship, or the social space created by the family and collective communities. Indeed, Bessaoud Omar (2013) writes that the French colonial system in different North African countries imposed a property conception by introducing a new body of regulations and bureaucratic procedures that are foreign to the local systems of management and rule in the communities. Based on the Napoleonic Code, the *dahirs*¹⁸ of 1913 and 1915 introduced new modalities of access to the land and urban property that are based on the individualization of rights through single modes of securing property as

¹⁸ *Dahirs* stand for royal decrees.

well as reserving the right of property management to domain, cadastral, and municipal services (p.23).

As Mohammad was saying, the introduction of a private property regime in the form of an “ownership model” which “assumes an individual owner, a delimited object of property, and the absolute rights of the owner to exclude” (Moumtaz, 2021, p.5), exacerbated social inequalities by dismissing the property rights of the families who had circulated the oral word through the presence of witnesses. Indeed, through my archival research on family endowments, I noticed that many families who have an old heritage of waqf properties lack a registration of the property in their names, especially since the pre-modern ways of documentation were restricted to the oral instead of the written.

Joseph Luccioni (1982) documents the difficulties the colonial regime faced because of the inalienability of the habous property. He describes the situation as the following: “as for the European colony that was increasing year after (more than 9000 in 1890), the colony was particularly interested by commerce. To establish themselves, foreign merchants had to use the existing properties, which belonged primarily to the Habous” (p.160). He adds to it that “Shari’a Law does not authorize the alienation of the habous properties” (p.160). To overcome this inalienability dimension of the habous property, the procedure of “property liquidation” has been introduced. As the colonial regime requested that the state takes the role in providing the “public” services that were lacking in pre-colonial Morocco, the paradigm of “public/private benefits” was used to justify the institutionalization of the waqf as well as the rendering of the family waqf solely to the private sphere. The public benefit resides in the economic development and progress of the country: hence, family waqf constitutes “an obstacle to any rational and profitable exploitation of the general economy of the country” (Ibid., p.6). Additionally, family waqf, according to the colonial regime, only “encourages

laziness” (Ibid., p.6), as the beneficiaries of the family property continuously rely on the revenues of the waqf.

The argument of the family waqf and its inalienability that are posited against economic progress and development has “evolutionary and moral undertones” (Moumtaz, 2018, p.179). It is reminiscent of Mohammad’s commentary on the French helping the country to develop beyond tribal conflicts and conflicts over the land and the property to a modern administration. It, further, reiterates a previously colonial trope of ‘Maroc utile and Maroc inutile’ in which there are tribes and rural revolts and simultaneously lands that are under the control of the state. This classification that opposes familial charity with public charity can be telling of the “modern liberal desire to establish an absolute separation of public and private interests and functions, as well as about colonial legacies” (Alkan, 2023, p.22). Since the colonial regime framed the family waqf as an economically unproductive property and constructed family charity as “self-interested and thus uncharitable,” one can still patently trace the continuity of this division between *maṣlaḥa ‘āma* (public interest) / *maṣlaḥa khāsa* (private interest) in the discourse adopted by the postcolonial modern nation-state.

During my interviews with the beneficiaries of family waqfs or those deprived of the waqf revenues, most of my interlocutors enthusiastically expressed their desire to either start the procedure of the “property liquidation” or that the long procedure quickly ends so that they can take their share from the inheritance. Property liquidation is a procedure that turns the family waqf into inheritance where the distribution of the revenues is done in accordance with the Islamic law of inheritance. Sometimes the people who benefit from the waqf ask for its termination and other times the Ministry of Endowments is behind the procedure. When I asked the Municipality of Endowments in Fez the reason behind the death of the *waqf*, they replied

that the process of property liquidation is done when the *waqf* becomes “sterile.” It means the *waqf* is either a source of conflicts within the family or does not bring any profits or revenues. Such a claim reminded me of how the profitability of the *waqf* was historically the main concern of the French colonial powers who argued that the *waqf* institution was uneconomic and inefficient; and therefore, a “cause of backwardness” (Sait, 2006, p.159). There is, then, a dormant and an active *waqf* depending on the capital it generates. Indeed, Nada Moumtaz (2018) argues that even religious scholars have taken positions that call for the abolition of family endowments because of “class interests, economic interests, and political calculations” (p.49). Additionally, she demonstrates how notions of “modernity” and “progress” of the French orientalist were adopted by waqf-abolitionists who labeled these institutions as well as practices of charity as “dark ages” (2018, p.49).

2.2. State Expropriation of Waqf Property and Urban Projects

The trope of *maṣlaḥa ‘āma* / *maṣlaḥa khāsa* is then transferred to the postcolonial nation-state discourse on family waqf. As I was reading the press between the municipality of endowments and the beneficiaries of the family waqf, I noticed that the expression “*maṣlaḥa ‘āma*” is constantly used by the state to justify its expropriation of property. “Public benefit” has become centered around progress, the nation’s economy, and state-development projects whereas the “private benefit” is reserved solely for the families’ rights of waqf property. Additionally, the ‘public’ echoes altruism and an expanded form of care for the society whereas the ‘private’ signals self-interest and selfishness (Alkan, 2023, p.49). This can also explain the legal protection each one receives in the face of the state’s expropriation.

Whereas the public endowment is a charity in the form of social or religious services that is dedicated to the public, the family endowment, according to modern legislation systems, is more of a private one that is solely reserved for the family members of the *waqf* founder. The separation of the private and the public is a new conceptualization in modern juristic and legal systems since charity, in Islamic law, does not differentiate between the public and the private (Moumtaz, 2018). As the *waqf* is “private,” it is not considered as religious as public endowments that receive higher protection as indicated in article 59 of the Code of Endowments, which restricts the state’s expropriation of religious buildings and cemeteries that are used by the public. Such an expropriation does not guarantee protection and security for other real estate properties and buildings and gives more space for the authorities than the people in their management (Sbihi, 2017, p.121). Contrary to modern legislations, premodern law protected “*waqf* property against state confiscation, taxation, inheritance laws (to a varying degree), and market transactions” (Alkan, 2023, p.49).

As the Ministry of the Endowments is part of the state, I had to ask the functionaries and public servants at the Municipality of Endowments in Fez the reasons for which the state expropriates and why there is a preference of public benefits over the property rights of the people. Surprisingly, the municipality complained about the state expropriation of *habous* property in the city of Fez and they distanced themselves from the state by continuously repeating: “*Dawla Katākhūd Mnā*” (the state takes from us). As *waqf* properties have their own legal management and system, they are often conceptualized by the people as belonging to a third sector that is independent from the state when they are part of the state. When the state expropriates a *waqf* property that belongs to a family, the Ministry of Endowments takes the side of the beneficiaries and goes to the civil courtroom to ask for a fair financial compensation for the families. According to my interlocutors, the Ministry of Endowments always benefits from the

financial compensation given by the state. Therefore, just like the waqf's heirs, it also confronts and comes against another Ministry or other state's bodies in the civil courtroom. Islamic law and jurisprudence are not usually followed in the secular and civil courtrooms, but the discourse is more around modern properties, the state, and *maṣlaḥa 'āma*. In this regard, Islamic and customary law sit uncomfortably with modern law and modern legislations.

Leafing through the different correspondences between the Municipality of Endowments and the beneficiaries of a family waqf in Fez, one can eminently see how *maṣlaḥa 'āma* is used to unwarrantedly expropriate properties and lands sometimes even without the knowledge of the waqf's heirs. One case where a national railway company asked the Municipality of Endowments to expropriate and include in the state's property three plots of land that were close to the train station in Fez. The project undertaken by this railway company necessitated the expropriation of the land plots even if they constituted an inalienable and imprescriptible waqf. The family's heirs did not accept the expropriation of the state, especially that the financial compensation given to them did not do the plots of land justice, as they are located in the center of the city. Negotiations on the amount of the financial compensation can take years and the Ministry of Endowments, as it always benefits from the third of the financial compensation, whether through property liquidation or state expropriation, always sides with the heirs of the waqf as a legal representative in the civil courtroom. Another state expropriation was done to expand a neighborhood in Fez. The justification of the expropriation was done by citing article 12 of the 3rd of April 1951 Dahir, which conforms with the expropriation of property for *maṣlaḥa 'āma*. The initial demand for the expropriation started in the 1970s based on a law that is the product of colonial French legislation.

Whether the family endowment leads to a *maṣlaḥa ‘āma* (public interest) or a *maṣlaḥa khāsa* (private interest) has become the recent debate in scholarly circles surrounding religious endowments. These two notions of interest organize social relationships within the family, as *maṣlaḥa khāsa* is what is supported even by *waqf* abolitionists who trace the history of endowments linearly and progressively; therefore, showing how the *waqf* and the organization of social relationships within the family have become a hurdle to the economy and the modern nation-state’s logic that is entrenched even in discourses of charity. The debate between legal jurists that Nada Moumtaz analyzes in her article “Is the Family Waqf a Religious Institution?” ends with the ideology of the state winning over scholars who advocate for the continuity of family endowments. For her, the state adopted legislation based on their arguments, which allowed many heirs of endowments to sell property irrespective of the founder’s wish to make it inalienable and immobile. What is considered “religious” in today’s modern world is marginalized in the state to the peripheries as well as separated from the other spheres such as the economy and its laws (Moumtaz, 2018, p.71).

Most of the people defined *maṣlaḥa ‘āma* as the state’s benefit to which they all agreed to have the priority. Different ministries expropriated properties of these families and the latter either received a small amount of money or are still waiting for their financial compensation. Whilst I was expressing to one of my interlocutors my nostalgia to the past where property rights, were not encroached upon, as it is the case today with the modern state, he unexpectedly replied to me that “Ykhrjū Bnādm mn Dārū ü Makāynch lī Yahdār” (they could take people out of their houses, and no one would say anything). Against a nostalgic reading of the past, Hassan evoked the years of Lead¹⁹ and the state-sponsored violence that accompanied the years after obtaining

¹⁹ Years of Lead (1956-1999) represent a dark chapter in the Moroccan history where civilians were shot during protests in the time of Hassan II following the independence of Morocco from French colonialism.

independence from the French rule. Back then, Hassan said, there were no property rights, and you could not speak against any injustice; however, now, it is a different time where I can easily make a complaint against the public servants or the head of the Municipality of Endowments.

Other informants such as Malika were unhappy about the way the laws obfuscate finding quick and fair solutions to problems surrounding the family waqf today. It is only forty years after the state expropriated their property that they were able to take half of the amount agreed upon earlier. For Malika, the administration keeps tarrying the procedures, which further complicates it. Malika's family waqf has already been liquidated and it is an inheritance now; however, as they want to build a housing project, they need the financial capital; therefore, the best solution, according to her, was to collaborate with the Ministry of Endowments in the building of this project. Upon my complaints of administrations and institutions today, she enthusiastically replied that "awqaf protect us, awqaf help us...." By "awqaf (plural of waqf in Arabic)," she was referring to the Municipality of Endowments as well as the Ministry, which for her, constitute a shield against the state.

Idriss did not find this expropriation to be a marker of authoritarianism or the state's hegemony towards its citizens, he said that it is normal to expropriate because the state knows what is best for the citizens. He, then, warned me not to fall into this trap of accusing the state to be hegemonic in this regards, as more "democratic" countries such as France do that as well. "Droit de préemption" (pre-emption rights) can be exercised by the state in different European countries including France to prioritize *maṣlaḥa'āma* that is often represented by the state. In economic history, the private is often reserved for the families whereas the public is where "wage employment is found" (Alkan, 2023, p.52). This sharp division between the public and

the private benefits has been carried out by the nation-state to develop the nation's economy and progress through building state-development and expansionist projects in cities. Even if in Islamic law, "a family waqf was no different than a charitable waqf" (Ibid., p.51). Further, this expropriation as well the persistence of some colonial laws and dahirs till today is one of the reasons people have a distrust in founding family waqfs today (Sbihi, 2017).

This binary of public/private benefits has also affected the way people define charity today and how they approach the institution of the family waqf, as I show in the next chapter on charity and investments in the family waqf. Overall, this chapter has attempted to bring to the fore a trope that is continuously used today, which is that of *maṣlaḥa 'āma* (public interest) / *maṣlaḥa khāsa* (private interest). This trope has been adopted by the modern nation-state in its emulation of the colonial regime's economic development and progress agenda. Simultaneously, I tried to demonstrate how this reconceptualization of what is public and private has also affected what people think of as religious and charitable.

Chapter 3. The Death of the Family Waqf in a Neoliberal Moment

In this chapter, I advance that family waqf is based more on the ethics of merit rather than care. Against humanitarian readings of charity, waqf's care is entangled in a legal terminology of shares and rights. Additionally, in the second section, I look at how neoliberal drives seek to dismantle the inalienability of waqf property, and therefore, signal the death of the waqf in the city of Fez.

3.1. A Reconceptualization of Charity within the Family

I was at the Municipality of Endowments in Fez when one of the public servants came up to me and asked me what my research is exactly about. I answered that I am interested in charity in the discourse of the waqf, and he bluntly inquired about my discipline. I informed him that I come from the discipline of social sciences, and he wryly proffered not to use the term charity, but rather look at it as donations because the latter can include various forms of charity whether *ṣadaqa* (charity), *zakat* (almsgiving), *hiba* (gifts), to name a few. My lack of a background in 'Ulūm Sharī'a (Islamic legal studies), according to the public servant, will only fall in homogenizing the waqf as a heterogenous system of care. During my fieldwork, whenever I asked someone about charity in family waqf, they would look at me perplexed, as if charity is not necessarily the right word to use when referring to the waqf within the family. The terminology I often correlated with family charity was that of compassion and solidarity; however, upon undertaking my fieldwork, I noticed that there has been a reconceptualization of what is considered charitable within the family. In this chapter, I look at these transformations in the approach towards family charity, the discourse of neoliberal development in family waqf, and what my interlocutors understand by the “death of the family

waqf.” I still tend to use charity as the umbrella term to understand these donations and the distribution of revenues within the family; however, if I mention any other form of donation beyond *ṣadaqa* (charity), I make sure to specifically refer to it by its exact name in its own theological framework, as the public servant continuously reminded me.

As I was approaching the families, I had two important dimensions in my mind related to family waqf: the worldly and the otherworldly. I was expecting a certain balance between the two, or the dominance of the otherworldly over the worldly. By the worldly, I mainly refer to the ideology of profits, the economy of real estate and property, the discourse of development whereas the otherworldly was hitching more towards what Mona Atia (2013) calls “building a house in heaven”; that is, piety, religiosity, and various other notions of the afterlife. My interlocutor, Malika, upon asking her questions about charity in the family, she surprisingly interrupted me by saying: “when there is money, there is no religion.” I further asked her what she exactly means by her statement, and she replied that there are many conflicts within the family over the different resources of the waqf and there is not a share based on who needs help, but more of who is legitimate enough to take the biggest share in the revenues. On this, Tatjana Thelen (2021) looks at how care reproduces the paradigm of inclusion/exclusion²⁰ and strengthens these inequalities instead of obliterating them. Indeed, for Malika, within the space of the family, she cannot speak of a charity that is based on need and solidarity, but that of merits and rights. Malika’s waqf has been through the property liquidation phase and is now solely an inheritance. From a waqf to an inheritance, the number of people who received their

²⁰ In times of famine, *Cherifian* families had access to the state’s charity more than other families, as they belong to the Prophet’s descent; hence, their “blood is more noble” than others, which can speak about how care is also built on the paradigm of exclusion/inclusion. Another reason for this is that the Sultan provided this care to further legitimize his authority and sovereignty. For more on this, see Antoine Perrier’s article titled “Šaraf, charité et pauvreté: aperçu d’une histoire sociale des chorfa au Maroc (années 1860-années 1930)” [Sharaf, Charity, and Poverty: An Overview of the Social History of the Chorfa in Morocco (years 1860-1930)].

shares were not all part of the family, Malika complained to me. As you start this procedure of dissolving the waqf, some people²¹ you do not know start showing and asking for their shares. As it dissolves, it turns into state-charity since the waqf administration always take advantage of its 30% share in the profits of the waqf. By state-charity, the redistributive ends of the waqf turn those administrative profits into other charitable projects within the cities whether schools, mosques, public baths, to name a few. Therefore, for Malika, whether she and the other heirs will receive some *ḥasanāt* (charitable deeds) is up to God. It is considered an ever-lasting charity (*ṣadaqa jāriya*) for the *makhzen*; however, the fact that the charity itself is not in total breach with their own family waqf makes Malika think that it is very probable that she and the heirs will take advantage of both the worldly and the otherworldly dimensions of the waqf.

Harking back to the first encounter with the public servant, I asked him whether charity dies when the family waqf dies²². Such a statement according to him, was not palatable. Out of help, he reiterated, “I am warning you not to have a superficial reading of family waqf in your thesis.” For the public servant, the waqf never dies in the sense that the 30% that the waqf administration takes redistributes it in other forms of charitable projects. Hence, the first wish of the founder of the waqf is preserved, as it continues to be sustained in state-led charitable projects. As there are many “property-liquidation” procedures, most family waqfs are incrementally turning to state-led projects that move beyond the first wish of the waqf founder. Looking at many cases of family waqf and their charitable discourses, one can patently trace how there was this “transformation that involves, rather than a withdrawal of welfare states, a change in their focus from employment-based social security to social assistance...” (Alkan, 2023, p.4). Against readings that correlate the retreat of the welfare state with the neoliberal

²¹ By this, I mean distant relatives.

²² By dying, I refer to the property liquidation procedure when the waqf is no longer an inalienable and imprescriptible property, but it is rather composed as an inheritance.

turn²³, I advance that what is considered a valid charity in the discourse of the waqf today is more a state-led charity. Additionally, charity, for most of my interlocutors, is something that is private and is “more flexibly regulated and can be freely given to almost anybody, at any time, and to serve any need” (Ibid., p.20).

In another interview, Samir, a merchant in Fez, tethered the discourse of charity in the family waqf solely to the goods of the afterlife. For him, someone founds a family waqf with the intention that, at the end, the revenues will go to the al-Qarawiyyine mosque, and therefore, the waqf will constitute an everlasting charity. In any *rasm al-tahbīs*²⁴, after citing the people who will benefit from the waqf properties within the family, it invariably follows up with saying that “upon the extinction of the people in mention, the revenues will go to the mosque of al-Qarawiyyine.” Therefore, for Samir, the money that goes to the mosque is invested in reading the Qur’an, paying religious scholars, or helping in the rehabilitation projects of the mosque and its surroundings²⁵. The waqf, then, turns from a private family property that is immovable into a public state-managed property that can be movable in the form of books, cash money, to name but a few. Waqf, here, could be seen from the lens of gift-economies; that is, the circulation of gifts as acts of piety that aim for the “otherworldly salvation” (Rahman, 2022, p.298). These gifts blur the boundaries between the public and the private, especially at the moral level (intentions). Following the public servant’s conceptualization of charity in the family waqf, Hilal Alkan (2023) adds, “if the intentions and deeds are “good”, such distinctions can be withheld without any negative ethical consequences” (p.10).

²³ I see neoliberalization and the increase in charity provided also by the state to go hand in hand.

²⁴ *Rasm al-tahbīs* refers to the document that proves that the founder turned the property as a waqf.

²⁵ There is also a library that belongs to the mosque, a water fountain inside the mosque, and other urban places surrounding al-Qarawiyyine.

Corollary with these readings of charity in the family waqf, Ahmed demarcated a line between voluntary charity and the care provided in the family waqf. The first one is more flexible and can take the form of *ṣadaqa* (charity) or a *zakat* (almsgiving) whereas the second one is obligatory and based on the ethics of merit rather than of mere care. Ahmed described his family as belonging to two widely separated social classes. The ones at the bottom of the social ladder get the same share of the revenues as the ones at the top of the social hierarchy. Even if they could be exempt from taking the annual revenue of the family waqf, they still receive it because it is a form of “*baraka*” for them. The “*baraka*” of the grandfathers entails religious and spiritual blessings of the ancestors. The revenues are deducted from various properties including the rent of commercial shops in the old medina. Ahmed is the one in charge of the distribution of the revenues and he continuously told me that one can never hoard any wealth because of the small amount of waqf profits. Annually, he gives two hundred Moroccan dirhams to men and thirty Moroccan dirhams to women. If a family member has three boys and two girls, they could get, for example, 660 Moroccan dirhams. The small amount comes from the fact that the number of beneficiaries has accrued in comparison to the past number of beneficiaries. During COVID-19, however, members of the family who were not capable of sustaining themselves financially had a recourse to the waqf’s revenues that Ahmed hoards in the bank. They only received their share as usual, which was not sufficient for them. As such, Ahmed had a recourse to the more privileged economic classes of the family, which agreed to offer a *zakat* (almsgiving), as it coincided with the month of Ramadan²⁶. “Family comes first,” this is how Ahmed addressed his wealthy relatives, as this is even stressed in *Surah Al-Baqarah* in the Qur’an: “Truly pious is he who spends his substance upon his near of kin” (p.177). In her study on charity and giving in India, Erica Bornstein (2012) coins the expression “relational

²⁶ Ramadan is a time of giving alms among Muslims. Zakat has its own regulations and temporal restrictions. For more on this topic, look at Amy Singer’s *Charity in Islamic Societies* (2008).

giving” to refer to how giving to the family is more favored and privileged than giving to strangers, as the latter “requires a discursive, affective, and even behavioral transformation of strangers into kin” (as cited in Alkan, 2023, p.163). In asking Ahmed about charity within the family, he separated charity from the waqf and narrated other stories of charity within the family.

Every Friday’s sermon in the mosque, the Imam offers prayers on the king, the crown prince, the royal family in general as well as “*muḥabīsīn*.” *Muḥabīsīn* comes from the Arabic verb *ḥabasa*, which literally means “to stop.” The Imam refers to all the founders of waqf in the country in his prayers. Such a statement was proudly reiterated many times from both the family waqf’s heirs and the public servants at the local waqf administration in Fez. The informal activities of the waqf were ignored by Ahmed when we were discussing charity in family waqf. Through the informal activities or what is often referred to as “care economies,” I could trace family charity in waqf property. Ahmed’s family owns seven commercial shops that they have been renting since they could ever remember. The rent paid by the merchants varies from one hundred Moroccan dirhams to two hundred Moroccan dirhams; therefore, it is not as profitable as they would like it to be. They cannot change the price, according to Ahmed, because it has been the fixed price of the rent, even without the existence of a contract that specifies the time provided for the merchant to temporarily occupy the shop. Affordable housing, too, is another form of care that is provided by the family waqf. Despite most of my interlocutors’ wishes to gain more profitability and dissolve some of these forms of charity, the system of the waqf itself as a property that is inalienable forcefully creates these redistributive ends. Through my archival research at the Municipality of Endowments, I concluded that even the families who ask for “a property liquidation,” the legal procedure to do so is often complex and requires years to be processed.

In her article titled “Non-Compassionate Care: A View from an Islamic Charity Organization,” Amira Mittermaier (2021) looks at how some charitable organizations look at charity as obligatory and dutiful rather than an act that stems out of compassion. Further, she argues against a reading of charity that conforms with liberal humanitarian understandings of charity, more particularly, focusing on “the liberal illusion of compassion.” Whilst I follow her reading in disentangling family charity from notions such as compassion and solidarity, I do not look at family waqf as a charity that is solely done for the “otherworldly salvation,” but I rather locate it in the discourse of legal rights and “fair shares.” “Am I legitimate enough? Is it a fair share,” these are the two often asked questions that revolve around the family waqf in contemporary Fez.

The argument I have advanced so far in this section is that because of property liquidation procedures, charity within the family waqf often turns into a state-led charitable project. Simultaneously, my interlocutors understand charity more of an individual and private practice that does not necessarily exist within the waqf itself, but outside of it. Additionally, through reading the different correspondences between the waqf administration and the heirs of the waqf, I advanced another argument, which is that the family waqf is based on the ethics of merit rather than those of care and goes beyond humanitarian understandings of charity. The absence of the traceability of notions of compassion and solidarity when speaking about the family waqf could only speak of how there is the paradigm of inclusion/exclusion within the waqf. This paradigm is nurtured by genealogical and blood lineages politics²⁷ rather than social needs and poverty. The closest one in the lineage to the founder of the waqf is the one who is

²⁷ Antoine Perrier (2023) has extensively worked on the politics of lineage and genealogy in the Moroccan context. In Fez, there are many people who claim to have a *Cherifian* descent; that is, belonging to the lineage of the Prophet Muhammad. The Alawite dynasty, of which is the current monarchy, also claims to have a *Cherifian* descent. As such, most of these Fassi families were close to the *Makhzen* and occupied important political positions.

the most legitimate to taking advantage of the revenues of the property. However, when the closest in the lineage are women, they are often deprived from the waqf property, as explained in the first chapter on inheritance and inequalities.

3.2. Investments and the Discourse of Development in Religion

“Pious neoliberal subjects, then, are driven towards material success in the present life and spiritual life in the afterlife” (Atia, 2013, p.4).

I was sitting in Amina’s house when she called the real estate developer to inquire about how old is their family waqf. From the legal documents present in the waqf administration, the family waqf of Malika dates to, at least, seven hundred years ago. However, their properties no longer constitute a waqf because the family demanded the procedure of “property liquidation” and the equal distribution of shares within their family. I asked Amina the reason they wanted to dissolve the waqf, and she replied that they have many lands and properties “stopped,” immovable, and inalienable, which hurdle any investment or development project. Therefore, dissolving the waqf, in her case, was the best option to invest and bring more profits to the family. As Amina’s family does not have the economic capital to build these projects on their urban lands, they had a recourse to the local waqf administration for solutions. Since the administration always takes the third of any “property liquidation” procedure, they have decided to build a housing project within the city of Fez. Amina’s family proposed to be included in this project as well and since they do not have the economic capital, the administration asked them to partner with the private sector. The private sector can be individual investors, companies whether national or foreign, agencies, to name but a few. As such, they have agreed to partner with the private sector and offer them half of their land in return for free construction work on their land. The private-public partnerships have started permeating the discourse of family waqfs and their development discourse. My approach in

this thesis is not to look at Islam and neoliberalism as opposites, but rather see them through Mona Atia's expression "pious neoliberalism." As Atia describes the latter, "...together they produce "a pious neoliberalism" that transforms Islamic charity and neoliberalism as they narrate an Islamic solution to social problems" (2013, p.1).

In my reading of neoliberalism in the family waqf, I approach it as "the introduction of economic rationality and calculative reason into domains from which they were previously limited or excluded" (Rudnycky, 2011). Processes such as privatization, marketization, and individualization could be traced in contemporary family waqf (Zencirci, 2024, p.5); however, some of my interlocutors like Idriss think of the future of the waqf as that of investments, profits, and development. Idriss enthusiastically expressed his gratitude to his old ancestors for marking the properties they own as waqfs in the city of Fez. The discourse of inalienability, here, "was essential to allowing... several other waqfs to maintain their status" (Moumtaz, 2023, p.157). There were many problems over expropriation, false ownership claims, and administrative issues in-between to which Idriss accuses of decreasing the number of properties he must own today. "We own half of Fez," that is how Idriss proudly describes the preponderance of his family's properties in the city. Therefore, the projects he has in mind are numerous and require the help as well as the consent of the waqf administration in the city, as they easily access the private sector and attract investment projects as well.

These neoliberal drives that are incrementally increasing in the discourse of the waqf do not solely fill a lacuna in the literature on family waqf in Fez, but they do have a strong impact on the everyday lives of these families. Throughout the whole interview, Ahmed was urging me to find solutions to the many problems he was informing me about. My research, according to him, is an endeavor to find solutions to these problems associated with the family waqf and its future. Ahmed's family waqf constitutes of around seven rented commercial shops, an old

house in the old medina, and a land plot. For this latter, he cannot build anything on it, as next to the piece of land, one of their shops that a female merchant rents monthly for an exceedingly small amount of money. The female merchant resists quitting her shop even if Ahmed promises to subsequently help her financially. There is no contract signed between the two, as Ahmed explained to me, he only follows what his father and grandfather did previously. The project Ahmed's family aims for is a building that consists of commercial shops and offices for rent. Because of this project, two merchants who were already active in their shops left, and there is only one female remaining who resists the destruction of the shop in which she has been exercising her commercial activities for a long period of time. Secondly, Ahmed informed of another project in which his family will be cooperating with the private sector, as they do not have the financial capabilities to carry it on their own. The project is a guest house in the old medina in Fez, as it represents a space of tourism and will eventually bring profits to the family. The reason many of these projects take too long to be brought into reality is because of the nature of the waqf itself. Indeed, as Hilal Alkan writes, "the waqf system was inimical to these goals because it had created a considerable amount of inalienable property" (2023, p.52). Whilst one cannot generalize and conceptualize all charitable property as submitting to this inalienability discourse and thus resisting any expropriation or obliteration, there are historically charitable endowments that have become "private capital" because of legal loopholes and the state's economic policies of neo-liberalization and urban expansion. If property is embedded and enmeshed in social relations as well as in different hierarchies such as gender relations, household organization, and political structures (Thelen, 2017, p.159), then even private property coexists with other forms of property (Moumtaz, 2023, p.157). Waqf property, despite presenting an alternative form of "care" economy is still imbricated within capitalism and neoliberal rationality; however, at the same time, it "continues to channel profits to redistributive ends" (Moumtaz, 2023, p.158).

In her article titled “Gucci and the Waqf: Inalienability in Beirut’s Postwar Reconstruction,” Nada Moumtaz (2023), through her extensive fieldwork on the waqf in the Lebanese context, suggests approaching the concept of inalienability and its concomitant resistance to neoliberalism as not existing outside of hegemonic economies. Since the waqf constitutes an “alternative economic model,” it does not survive, according to Moumtaz, by “resisting capitalist markets but by participating in them” (p.158). Through my archival research at the Municipality of Endowments, however, I came across a case study in which this concept of inalienability does indeed constitute an obstacle to the privatization of the waqf.

The case study is a family property whose founder was part of the *makhzen* (the state) and occupied many important political positions even before colonialism as a minister. He later worked under Sultan Mohammed V before finally becoming a Pasha²⁸ in the city of Casablanca. The waqf is located in the old medina of Fez and represents an old palace. In their *rasm al-tahbīs*, the founder²⁹ explicitly wishes to stop the palace for the “males and the males of the males till their extinction³⁰”; however, he simultaneously dedicated some of the revenues to both the servants who were living with the family in the palace as well as to women who either got divorced or whose husbands died. As I was interviewing one of the grandchildren of the waqf founder, he recounted several stories from his childhood. Ali told me how when his the waqf founder died, no one left the palace, and everyone stayed. All the servants who were living before his death stayed and were looked after in their food and clothing. Anyone in the family, including the servants, who is incapable of sustaining themselves can always come back to live in their grandfather’s palace. I asked Ali whether there are any servants left in the

²⁸ By this, I mean the mayor of the city of Casablanca.

²⁹ The one who built the palace is different from the one who has made it a waqf. It is the son of the former who made the palace a waqf.

³⁰ Here, I am literally translating the recurrent expression found in these waqf documents.

palace and he told me that most of them died, and others left. As for the women, none of them is in the palace today as well.

Leafing through archival documents of Ali's family waqf, one eminently notices the amount of investment offers they have been receiving to render the palace more economically active and profitable. A company that works on cultural and touristic investments asked the waqf administration to rent the Palace to enhance the Moroccan culture and architecture through what they referred to as "the rehabilitation of an important asset of the Moroccan heritage." In the letter sent to the administration, they mentioned how there are western companies, especially a one French company, which tried to buy the Palace. Therefore, a national company should be favored, as it will stand against "*taghalghul al-ajnabi*" (foreign dominance), which could consequently foster the Moroccan economy and the sector of tourism. Ali told me that they occasionally rent the Palace for small gatherings such as weddings and concerts; however, as his cousins were previously living in the Palace, they could not rent it frequently. Ali listed me a number of known companies that wanted to invest in the palace; however, as he told me, they all subsequently got the refusal of the waqf administration. It is true that because of the inalienability of the waqf that the palace is intact of any destruction or modern changes in its architecture, thus preserving Moroccan heritage; however, Ali objects to the absence of the financial capabilities required to contribute to the palace's rehabilitation.

Upon his comment, I asked him whether he would love to ask for dissolving the waqf through the "property liquidation" procedure and he resolutely answered me that "of course, we would love to. We would not do it with open hearts; however, we would love to see the palace alive³¹."

³¹ By alive, he means that if a company or investor takes the palace, they will take care more of it. It will, then, bring more profits to help in its rehabilitation.

When I first entered the palace for the interview, I noticed the presence of some tourists; therefore, I assumed that the companies that have been asking for investing in the palace have succeeded in doing so; however, upon asking Ali whether they are cooperating with another party, he responded that it is solely a “small family business.” To help change the lamps in the palace or repaint some of its walls, they have started renting five rooms for tourists. As it is a family waqf, it remains encumbered by the long and complex bureaucratic procedures that hurdle any easy access to external parties whether companies or individual investors. At the end, Ali enthusiastically informed me about how some rumors dictate that all big traditional houses and palaces in the old medina will be part of a royal project for tourism in Fez. Neoliberal and private projects aim to redirect waqf towards alienability more through the unrestricted circulation of the property. In the case of Ali’s waqf, the palace currently blurs the lines between alienability and inalienability as it contains both “an inalienable right of ownership and an alienable right of use” (Moumtaz, 2023, p.159). This alienable right of use often serves as a source of income to help sustain the waqf itself; however, social relationships and bureaucratic procedures make this sustenance complex and difficult to maintain.

In brief, in this chapter, I trace how public-private partnerships in the realm of the family waqf have become persistent, as they tend to find solutions to social problems. The changes and imaginations of the people in relation to the family waqf encompass “a pro-business, consumption-driven economy focusing on ... promoting unregulated markets and unfettered competition and extending market logics into all components of social life” (Atia, 2013, p.7). Lastly, I discuss the most important constituent that demarcates property as waqf, which is inalienability. I advance that these neoliberal drives aim to break this inalienability of the waqf; and therefore, contribute to the incremental decrease in waqf properties that belong to the families in Fez. This decrease signals the end of the waqf, as I illustrated in the first chapter on the lived realities of the family waqf in Fez.

Conclusion

I started thinking about family waqf when I came across a large body of literature that echoes a strong nostalgia to pre-modern forms of solidarity and collectivities. At certain moments, I was only regurgitating what these scholars were writing without having any empirical basis to back my argument. Indeed, these are the assumptions I carried with me to the field; however, surprisingly, these nostalgic tunes to a “past that I have never seen or lived” were incrementally vanishing as I was doing fieldwork. This does not mean that the waqf is not a productive institution that has marked the Islamic civilization at large and it remains an internal and grassroots system of charity and philanthropy; however, the theorizations of the people I interviewed, and the many problems, contradictions, imaginations only posit the religious tradition as active and changing against orientalist readings of static and ahistorical traditions in Islam.

Presumably, the family waqf is on the decrease, as either many families are dissolving their waqfs or the family waqf is metamorphosing into a public waqf. These sharp divisions of the public/private marked my fieldwork experience, as many people would ask me whether I am interested in family waqf or in the public waqf. These opposites of the private/public also permeate the discourse on charity, as I was surprised to know that charity, for most of the people I interviewed, is more individual and private than collective. Simultaneously, notions of care, charity, and solidarity were never associated with the waqf in the terminology and grammar used by the families. What was even more surprising to me was how these waqf properties were approached as merely traces of the past, ancestors, and old times. Therefore, they are not conceptualized as modern institutions which can make the family develop as well as the nation progress. They are seen as a confluence of Islamic law, customary law, and

modern systems of legislation, which more often obfuscates the laws, *dahirs*, and procedures families have to follow in their waqf management.

Additionally, the idea that one has many properties; therefore, one could become “richer” was continuously reiterated, as the inalienability of the waqf property constitutes an obstacle to its easy circulation. These problems over the development of the economy could be traced to the French colonial powers who made sure to instigate what Wael Hallaq calls “the theology of progress” in the minds of the people; therefore, undermining any other institutions that do not bring any economic capital to the “nation.” People have many projects in mind as well as they invariably expressed their eagerness to collaborate with the private sector to enhance the economy, the tourism sector, and the city of Fez, which can all point towards the gradual death of the family waqf in the city of Fez. This can be telling of the changes brought by modernity, neoliberal thinking, and the ideology of progress and development. Many of these people do not use “a pious” grammar with regards to the family waqf, something which was against my expectations in the pre-fieldwork phase.

Overall, this thesis does not necessarily declare the death of the family waqf, as even if it sustains, my interest is focused more on how the people imagine this institution and what can it tell us about the bigger changes in relation to Islamic tradition and modernity. It can be telling as well of how people imagine the future and their expectations as well as the contradictions and uncomfortable confluence of colonial laws, Islamic law, and civil law. It is also worthy of mention to stress the fact that I do not claim this research to be the ultimate truth on family waqf in the city of Fez, as there are always other realities and other possibilities to explore outside of the space I occupied and the people I encountered.

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