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# Property Devolution, Sharia, and the Making of the Modern Middle East

Beshara Doumani

Allow me to begin with a provocation: Historical practice is, in many ways, a deeply imperialist one. As members of one of the earliest and most powerful of the modern academic disciplines, historians played an important role in the cultivation of specific time/space/agent narrative architectures (or story lines) that were productive of imperial conquests, settler colonial projects, and the nationalist identity/territory/sovereignty matrix on which modern political orders were built.<sup>1</sup>

Of course, all modern disciplines – their conceptual vocabularies, enduring questions, and methods of answering them – developed through a centuries-long tension between enabling the dark side of the world and, simultaneously, producing critical knowledge about it. The basic features of the modern world, such as capitalism, as well as the core knowledge regimes used to understand and shape it, such as the ideas of race and territorial nationalism, were formed on the borderlands of colonial encounters.<sup>2</sup> Hence, the colonial irony and the colonial paradox. The colonial irony is that liberal, humanist, rational, scientific, and universalist thought is implicated and forged in the super-heated violence of genocide, ethnic cleansing, racialized capitalism, and massive ecological destruction. The colonial paradox is: The very analytical vocabulary of critique is, in itself, a product of the colonial encounter.<sup>3</sup>

Historical practice steeped in positivist epistemology and the scientific method has traditionally viewed time as linear and homogeneous, and space as an empty container at the center of which stood the West and a newly reconstructed juridical species: the human individual. But far from ushering in a universal legal, much less social equality, the category of the human and its associated notion of absolute private property rights underpinned modes of inclusion and exclusion that characterized colonial encounters and the global capitalist economy.<sup>4</sup> Such a historical practice can be said to be imperialist in three related ways: it renders the past into a single external temporal order, it claims a monopoly over that past, and it insists on the right to appropriate the theoretical and methodological resources of any other discipline (such as economics, sociology, and anthropology) in order to write purposeful narratives about the past.

Such a historical practice, moreover, is necessarily one of specialization and exclusion. How else, it is argued, can one construct purposeful narratives given the immensity of the past and the limitations to what can be known? This question, of course, elides the relationship between narrative and power that produces areas of visibility and invisibility in the fabric of time and space. Put differently, the specialized monographs of historians are like pinpricks into a dark fabric that focus the eye on points of lights like stars in the sky, thus rendering the rest as areas of invisibility. Somewhat akin to the “dark matter” of physics, which accounts for at least two thirds of the mass of the universe, these areas of invisibility constitute the soup in which visible fields of analysis are held in place. As Michel-Rolph Trouillot famously wrote: “That some peoples and things are absent of history, lost, as it were, to the possible world of knowledge, is much less relevant to the historical practice than the fact that some peoples and things are absent in history, and that this absence itself is constitutive of the process of historical production.”<sup>5</sup>

An additional layer of complications faces those who work not on the West, but on the Rest: The notion of a temporal rupture caused by the encounter with the West is so pervasive that it has imprinted the very institutional development of fields of knowledge production about the Other. In terms of imposing its own physics of time and space, this encounter is akin to the in-escapable gravitational pull of a black hole, within which space collapses and beyond which no light (the ultimate metric of time) can escape. It is no exaggeration to say that almost all historical work in Middle East, Islamic, and Ottoman Studies – regardless of approach, methodology, topic, or time period – revolves around the event horizon of this black hole. This has created enormous zones of invisibility with profound intellectual and political consequences.

My work has tried to exceed the colonial frame by focusing on times, places, and agents who have been erased or marginalized in dominant practices of knowledge production. My first book writes Palestinians into history during the Ottoman period through a study of relations between merchants and peasants in the long neglected central hill regions. The history of capitalist transformation is told through the social lives of olive oil, soap, cotton, and textiles.<sup>6</sup>

This talk is drawn from my recent book, which historicizes, for the first time, how ordinary people who lived in the Eastern Mediterranean (بلاد الشام: *Bilād al-Shām* or Greater Syria) during the early modern and modern periods, organized and reproduced family life and kinship relations through property devolution strategies.<sup>7</sup> Specifically, it looks at how transfers of wealth from one generation to the next were enacted in local sharia courts (محكمة شرعية: *mahkama shari‘iyya*) in the contexts of Islamic legal traditions, Ottoman imperial governance, and local political economy. The findings point towards alternative space/time/agent architectures for narrating the making of the modern Middle East.

## Historicizing the Family

Since the formation of a large public sphere in the mid- to late-19<sup>th</sup> century, the topics of women, family, and religion have been, and continue to be, hotly debated across the globe. What is the place of women in society? What should the ideal family look like? Who are the kin who count when devolving property from one generation to the next? And what are the proper roles of religion and the state in the governance of family life? The political stakes inherent in these questions are enormous, for they shape modes of inclusion and exclusion in the organization of modern societies.

It is a truism that ideological mobilization in pursuit of desired futures requires the construction of politically convenient – thus, largely mythological – pasts. The hotter the debates among competing ideologies, such as during the Cold War and the anti-colonial struggles following the Second World War, the greater the irrelevance of grounded historical knowledge; if only because such knowledge usually produces contingent, messy, and inconvenient pasts. It is not surprising, therefore, that the considerable and rigorous literature on history of the family in Europe and the United States published over the past seven decades, has produced startling and largely unexpected results subversive of basic assumptions. For example, we now know that the nuclear family is not a product of the industrial revolution; it predominated long before. The age of marriage prior to industrialization was late, not early, as commonly believed. Family size was small not large, and mobility was substantial, not limited. Wage work and urbanization in the 19<sup>th</sup> century did not lead to the demise of the extended family. On the contrary, it led to an increase in co-residence with extended kin producing what David Sabeian and Simon Teuscher called a “kinship hot society.”<sup>8</sup> Horizontal class relations did not displace kinship; rather they were shaped by kinship practices. Kinship relations were cemented by sharply increased rates of repeated endogamous marriages, especially between cross-cousins, among the propertied intellectual and professional classes that viewed cousin marriage as an artifact of traditional societies. Put crudely, they practiced the opposite of what they preached and believed themselves to be.<sup>9</sup> These are but some of the findings that shattered the crystalline structure connecting capitalism and democracy to conjugal relations based on affective ties between individuals and positing this connection as the defining hallmark of Western societies.

This is about the West. When it comes to the Rest, the ideological fog is thicker and the amount of research is much thinner. The fog is thicker because of the common belief that family is for the West and kinship is for the Rest,<sup>10</sup> the assumption being that family as a collection of individuals is a more advanced form of social organization (read capitalism and democracy) than kinship structures based on



the collectivity (read tradition and authoritarianism). The research is thinner because the study of kinship was relegated to anthropologists who focused on what they perceived as the primitive Other in “exotic” regions; as well as to modernization theory sociologists, who blamed “traditional” kinship structures and religious institutions for the lack of economic and political development.

Thus, even though most social science and humanities writings in Middle East, Ottoman, and Islamic studies, routinely invoke family and the sharia (شريعة: Islamic law) in support of this or that argument about the legacies of the past and the possibilities of the future, we actually know little about the histories of family formation and everyday legal practices, especially for the pre-20<sup>th</sup> century period. For instance, Orientalist, modernization theory, nationalist, and Islamist constructions of this region’s past (which still dominate both the academy and public discourse) depend heavily on the assumption that family and religion constitute the bedrock of Middle Eastern societies, and that a specific family type – evident by the common prefixes “Arab,” “Muslim,” or “Mediterranean,” and understood to mean patriarchal, extended, and patrilocal – captures the essence of these societies.<sup>11</sup>

For instance, Orientalists view non-Western cultures prior to the encounter with Europe as traditional monoliths held together by rigidly authoritarian and misogynist religious traditions and family structures (*That is what makes them different from us*). Arab nationalists assume – indeed, insist – on a linguistic and cultural homogeneity within recently constructed political communities, and considers the family to be the indivisible building block of this homogeneity (*That is what makes us a people*). Islamists claim that prior to the calamities of western intervention, there prevailed a golden era of Islamic justice characterized by a harmonious balance in family life between moral and legal norms (*That is why we must live by the sharia*).

These assumptions, similar to those that undergird the notions of the traditional joint Hindu family and the traditional extended Chinese family, render the past into a static backdrop against which the lively stories of modernity can be narrated. These stories, invariably, are about how externally-generated, top-down forces – structural transformations caused by an expanding world capitalist economy; encounters with secular, individual-based Western culture; and interventions by newly established colonial and postcolonial states – produced deformed modernities in the non-western world. These forces, modernization theory tells us, for example, come to undermine the traditional family without bringing about the rise of a genuine “modern” nuclear family; thus resulting in a pathology of arrested or mutated political, economic, and social development. The deformed modernity of the Arab/Muslim family, for instance, is cited as an explanation for the inferior status of women, authoritarian political culture, absence of the rule of law, lack of entrepreneurial spirit, and so on.<sup>12</sup>

Thus, the perennial questions in public discourse in Muslim Majority societies since the late 19<sup>th</sup> century are: *How (or should) the Arab or Muslim family be modernized? How (or should) the sharia be reformed?* These questions assume the existence of a traditional family type and of an authentic or uncontaminated sharia prior to the encounter with the “West.” But what if there is no such thing as a Muslim or Arab family type or an authentic pre-colonial sharia? What if legal practices and kinship organization, especially when it comes to the relationship between property and gender, are contingent and vary widely? How would we, then, have to rethink the basic assumptions about the making of the modern Middle East?

## A Puzzle and Points of Entry

I set out to historicize family and the sharia through a comparative study of two provincial regions, Nablus (Palestine) and Tripoli (Lebanon), over a two-century period (1660–1860), by asking the following question: how did property devolution, as a conscious and strategic social act and a set of kinship and legal practices, reproduce and transform family life in historical time? The research is based primarily on an immersive reading, for over a decade, of the entire corpus of Islamic sharia court registers (سجلات المحكمة الشرعية: *sijillat al-mahkama al-shar‘iyya*) containing over 15,000 unindexed, unsearchable, handwritten documents. These documents cover a wide range of transactions that one would expect to find in a legal institution that acted both as a public records office and a civil court.

To my knowledge, this is the first study primarily based on a comparative analysis of two collections of sharia courts registers over such an extended period of time. I thought that data points from two urban centers would make for more robust historical generalizations. But in the course of my research I stumbled across an unexpected and stubborn puzzle: There are dramatic, long term, and systematic differences between Nablus and Tripoli in the ways family was understood, organized and reproduced, even though these are two nearby and similar cities located in the same cultural (Eastern Mediterranean), legal, religious, and political (Ottoman imperial) zone. For example, females are always included in inter-vivos property devolution strategies in Tripoli, but they are usually excluded in Nablus. What accounts for this difference and how does this finding move us towards a decolonized time/space/agent architecture that exceeds, subverts, and suggests alternatives to the dominant colonial frame for understanding the making of the modern Middle East?

The most obvious way for historians to explore new ways of investigating and

reconstructing a past is to theorize different spatial and temporal points of entry, as well as to experiment with methodologies and sources. On a synchronic spatial grid, I chose the provincial cities of Nablus and Tripoli and their hinterlands, because the notion of “regional social spaces” is crucial to escaping the telos of three concepts – civilization, empire, and nation – whose dominance as spatial constructs is directly related to their usefulness for powerful political projects. A focus on political economy of these subnational spaces (as opposed to the far more common studies of imperial centers such as Istanbul, Cairo, and Damascus) opens a window on a long-hidden world of rich diversity and texture. It also allows for counterintuitive connections and trajectories that are peripheral to stories about the colonial encounter, but absolutely fundamental to the production and re-production of everyday life in ways that continue to shape our present and future.

On a diachronic temporal grid, I chose a scale of two centuries, in order to provide a before/after perspective on the period of Egyptian rule (1831–1840) over the Eastern Mediterranean, conventionally viewed as the watershed moment that ushered in the modern era, in much the same way that Napoleon’s invasion of Egypt in 1798 is seen as the rupture of modernity for the Middle East in general. A long-term view is also necessary, because family life is best measured by generations not decades, and because the diverse trajectories of local political economies and social formations raise unsettling questions not just about the nature of the transition from “early modern” to “modern,” but also about the usefulness of these concepts in the study of Europe’s Others.<sup>13</sup>

My thematic point of entry for historicizing family and sharia is an examination of the common practice of inter-vivos property devolution: a purposefulness and strategic social act. Who to pass wealth to, when, and how are not simply technical legal questions. They have implications for the organization of property, gender, and kinship relations; for the epistemological foundations of law and society, and for the formation of modern technologies of governance by centralizing states. Family is a product of all three dynamics and, simultaneously, the idiom through which they are made legible, contested, and transformed.<sup>14</sup>

### **Archives as Object and Subject: Kin *in/and* the Sharia Court**

This research is based on several sources, such as the central Ottoman archives, family papers, and fatwa collections (opinions by jurisconsultants). But the core sources are registers (سجل: *sijill*) of the sharia court, which operated in the cities and towns of the Ottoman empire from the Balkans to the Arabian Peninsula and from North Africa to the borders of Persia. The sharia court was the most

important institution of Ottoman state governance on the local level as well as the guardian of property and power relations that reinforced local class and other privileges. It is, so to speak, where the imperial rubber hit the road.

The “people” (أهالي: *ahālī*) of Nablus and Tripoli, commoners and elites alike, attached great importance to the court as a public records office and as an adjudicator of disputes. The daily interactions and contestations in local courts over the centuries were recorded in registers – a living and active archive that can be seen as akin to a depository of the textual memory of urban communities. This communal textual memory both mediated and constituted a discrete socio-legal space whose inhabitants, especially propertied individuals, came to share a common sense of community and territorial belonging. Attempts by modern states to cultivate a territorially based national identity through the establishment of a state archives, can be seen as a top-down version of a largely bottom-up phenomenon of creating Ottoman subjects, primarily through the sharia court.

The encounter between kin and court was a mutually constitutive one. By routinely resorting to the sharia court to enact legally sophisticated property devolution practices, kin defined the role of the court as a social institution and shaped its archives. At the same time, kin were required to compress complex and messy family circumstances into a limited number of available legal channels, which were further bound by rules of presentation, evidence, and witnessing. Meanwhile, the qadi (قاضي: judge) could shape outcomes by deciding what issue was at stake and what party was positioned as the plaintiff and which one as the defendant. The analysis, therefore, must constantly shift back and forth between what court documents can tell us about family life in these two cities and what they reveal about the stories that are likely to be authorized by the sharia court registers as technologies of power and sources of authority.

The structuring discursive power of Islamic legal norms, the procedural imperatives of a state-sanctioned institution, and the active authority of the qadi set the parameters and the ground rules for negotiations of power and property relations between kin in court as well as the construction of kinship as a set of legal and cultural understandings. That is, notions of family, property, and sexual difference – the core set of understandings that govern relations between kin – were not simply brought in by litigants and then deposited or reflected in the archives of the sharia courts. Rather, these notions were constituted and transformed in the very process of the encounter between kin and court. Indeed, the very conceptualization of property devolution as a social act takes into account what is required legally and institutionally to make these performances possible in the first place. The sharia court is, therefore, both the object and subject of study. That is, I examine the mutually constitutive relationship between *kin and court*, as well as the social history of family life as seen in the encounters between *kin in court*.<sup>15</sup>

Towards that end, this study employs a combination of quantitative and qualitative methodologies in order to harness the productive tension between structure and agency. Quantitatively, I searched for patterns in these documents, such as who sued whom over what in litigation between kin, or which groups were included or excluded in family trusts. This is a form of archival mining that is typical of conventional empirical historical research. At the same time, the patterns revealed not only “facts” about family, but also about the court as a legal institution in the context of Ottoman imperial rule and local political economies and social structures. Qualitatively, therefore, I reconstructed longitudinal case studies of a single individual or family through in-depth textual reading of legal documents looking for motivations, subjectivities, and values through what I call “the topography of imperfections” in legal texts. That is, I used the tools of literary criticism and legal history to examine which stories each text reveals about its own making. Since the quantitative and qualitative approaches inhabit very different epistemic registers, a persistent theoretical challenge is: how can one historicize deeply embedded legal traditions practiced in the name of Islam as a religion while, at the same time, crafting a narrative of social change over time?

## The Waqf as a Family Charter

This study examines property devolution practices as enacted in two types of legal transactions: family waqf (وقف ذري: *waqf dhurri*) endowments and lawsuits between kin. Due to space constraints, lawsuits (دعوى: *da'wa*) will not be discussed. Suffice it to say that lawsuits are fundamental to the (re)alignment of gender, generational, and property relations in light of changing economic realities, life cycles, absence of male children, sudden death of heads of household, marriage problems, and other circumstances. Kin were not shy about suing each other in court, and women were, more often than men, litigants in cases that involved inheritance and/or beneficiary status in a waqf endowment.

Waqf is an endowment or trust that transforms a person's private property into God's property, so it can no longer be bought and sold; and then allocates the revenues of these properties for charitable purposes. The family waqf is also ultimately charitable, but only after the extinction (إنقراض: *inqirād*) of those among the endower's descendants who are designated as beneficiaries. During this theoretically infinite detour, the control of the collection and distribution of the revenues, as well as all decisions over upkeep, rental, and lease of the revenue-producing properties, remain in the hands of the endower followed by her most senior and/or capable of beneficiaries.



Waqf is perhaps the most iconic and studied legal institution in Muslim societies. And I would be remiss not to mention here that the French and British colonial authorities in South Asia, the Middle East, and North Africa railed against the waqf as a hinderance to capitalism and as a trust fund for the enemies of modernization; a thesis accepted by many scholars who blame the waqf for the economic “backwardness” and “decline” of Muslim societies.<sup>16</sup> At the other end of the spectrum, we find many Islamist and some post-colonial scholars who view the waqf as the moral core of Islamic civilization and a signal example of its superiority.<sup>17</sup> Both perspectives privilege the colonial frame at the expense of historical contingency, local diversity, and pre-colonial modes of inclusion and exclusion. Much of the literature on waqf, in any case, focuses on the large charitable endowments considered to be key to imperial rule, the organization of urban life, and economic networks.<sup>18</sup> Far less studied are the much more numerous family waqfs which, during the period under study, constituted 75 to 98% of all endowments in Tripoli and Nablus, respectively. The family waqf, this study contends, was absolutely fundamental to the organization and reproduction of family life, gender, and kinship relations, primarily through custom-designed strategies of wealth management and property devolution.

The family waqf is the most flexible, expressive, and enduring legal instrument for governing long-term property relations between kin. Its built-in toolbox of options and preferences allowed individuals to custom design, so to speak, their property devolution strategies. Choices included the timing and purpose of the endowment, the types and amounts of properties to endow, whom to include or exclude as beneficiaries of the revenues generated by the endowed properties, the particular conditions (شروط: *shurut*) attached that govern the distribution of revenues, the setting aside of funds for annual enactments of specific pious rituals, the designation of charitable venues following the extinction of the endower’s progeny, and a hierarchy of preferences in terms of who was to administer the waqf. Taken together, these choices express, among other things, the endower’s vision of what constituted family, how it should be reproduced, and its proper place in the material and spiritual worlds.

The family waqf, therefore, is a sensitive barometer of how family was understood and organized. During its golden age from the 17<sup>th</sup> to the late 19<sup>th</sup> centuries, the family waqf in Bilad al-Sham was a key component of strategies not only to express piety and contribute materially and spiritually to the general welfare of the community; but also to lay the cornerstone of a discrete “family” with a surname by establishing a patrimony and setting up mechanisms for its devolvement to one’s biological descendants and nearest kin. The family waqf, therefore, can be analyzed as a family charter that governs not only property relations between kin, but also the moral-disciplinary order of kinship.



## A Tale of Two Waqfs

In order to highlight the differences in property devolution strategies between Tripoli and Nablus, this section compares the waqf designs of two individuals, Husayn al-Husayni (حسين الحسيني) and Abdel Wahid Kahmmash (أحمد خمّاش), who lived around the same time. Both belonged to scholar/businessmen families that climbed up the social pyramid during the second half of the 17<sup>th</sup> century and accumulated wealth and prestige throughout the 18<sup>th</sup> and much of the 19<sup>th</sup> centuries. Both men held positions in mosques and the sharia court, frequently served as witnesses, and worked as reciters of the Qur'an, among other things. The design of their family waqfs, however, differed dramatically when it came to the types of properties seen as constituting a family's material foundations, the patterns of inclusion and exclusion of beneficiaries, and the place of charity and good deeds in the cultivation of relations with the religious establishment and in the accumulation of rewards for the afterlife. In short, they had different visions of what family is and how it ought to be organized.

### Tripoli: Husayn's Design

The endowment by Sayyid Hajj Husayn Çelebi al-Husayni on August 2, 1802 nicely illustrates the possibilities of the waqf as a family charter.<sup>19</sup> Husayn was a well-to-do merchant, urban landlord, and entrepreneur in the soap trade and commercial production of olive oil and citrus. As the patriarch of his extended family, he viewed the endowment of a waqf as the culminating moment of a long life of patient accumulation of properties, of piety, of emotional and material investments in marriage and household, and of moral debts he owed friends and relatives who stood by him. At the time of the endowment, his father and uncles were all dead and he had only female siblings. Advanced in years, he had already experienced the pain of outliving his oldest son, and was committed to taking care of his deceased son's daughters, both of whom were in their legal majority at the time of the endowment; as well as his wife, his remaining children (a son and a daughter), and his nephew (his sister's son), for whom he felt a special affinity or responsibility.<sup>20</sup>

The challenge he faced was how to integrate all of these dimensions of his life – social and material capital, kinship and affective ties, piety and spirituality – and how to transform them into an institutionalized legacy that expressed his beliefs, values, and vision of family. The seriousness by which he faced this challenge is abundantly evident in the waqf's complex and mathematically elegant structure that flows in cascades of twos and threes. Husayn endowed all twenty-one

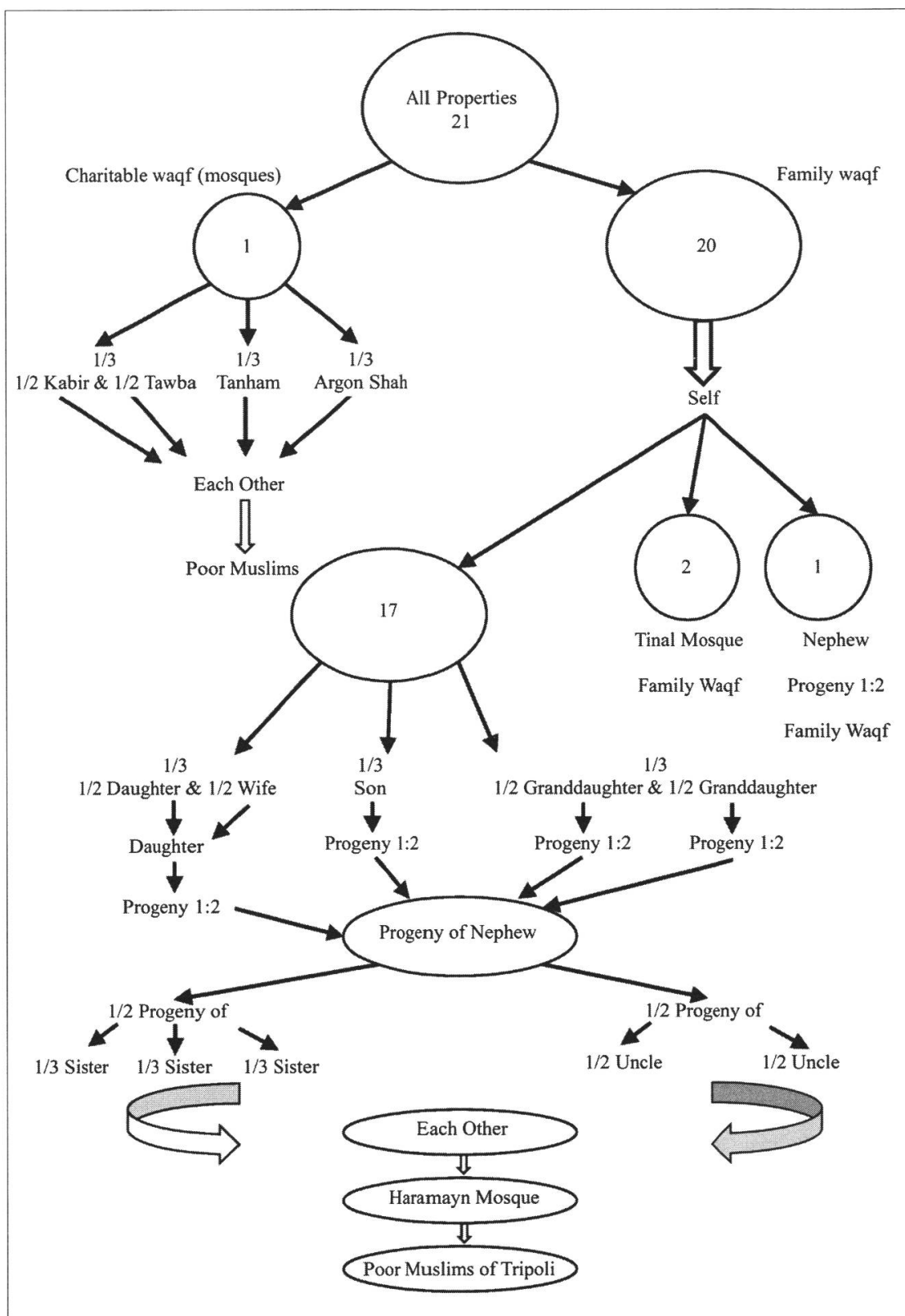


Fig. 1: Flow Chart of Al-Husayni Waqf, 1802.

of his most important properties, with the notable exception of his residence. The list of properties began with the most profitable: irrigated mulberry orchards located outside the walls of the city and dedicated to feeding silk worms. Together, these properties amount to what I call a “constitutive” waqf; that is, an endowment rich and diverse enough sustain generation after generation of beneficiaries in perpetuity (Fig. 1).

Briefly summarized, the following features are key to Husayn’s family charter. First, he designated his son and his daughter as equal beneficiaries, which deviates from the most important principle of post-mortem Islamic rules of inheritance (علم الفرائض: *ilm al-farā’id*), which states that the male is to receive twice the share of the female.<sup>21</sup> Second, he included his granddaughters and nephew as beneficiaries even though neither would have been eligible for post-mortem inheritance. Third, Husayn set aside a considerable percentage of the revenues for funding a number of annual good deed (مبارات: *mabarrāt*), whose rewards can be deposited, in a manner of speaking, into a spiritual bank account for the afterlife. Like the rest of the endowment, these were also arranged in a symmetrical structure. They included payment for:

1. Recitation of the entire Qur’an every Friday of the year in the presence of the beneficiaries.
2. Bread to be distributed to beneficiaries every single Friday of the year.
3. Food for the waqf’s beneficiaries on the five holy nights of the year.<sup>22</sup>
4. Recitation of the popular *Yā’ Sīn* (يس) verse of the Qur’an each day of the year.
5. Reed mats and lighting oil lamps for several mosques.

Aside from custom designing a family charter and accruing rewards in the afterlife, Husayn’s endowment and good deeds established a spatial and temporal grid for gathering and experientially connecting the kin who count, served as a reminder that his endowment is the source of both their physical and spiritual nourishment, and established his family as a pillar of piety in the community. The situation in Nablus could not be more different.

### Nablus: ‘Abd al-Wahid’s Design

On the face of it, the Khammāsh family is very similar to the Al-Husaynis of Tripoli. The leading male members were also scholar/businessmen involved in soap production, urban real estate, and service in the sharia court. The design of their family waqfs, however, differed dramatically when it came to the types of properties seen as constituting a family’s material foundations, the patterns of inclusion and exclusion of beneficiaries, and relations with the religious estab-

lishment. In short, they had different visions of what family is and how it ought to be organized.

The Khammāsh family's five successive endowments over a six-decade period (1806, 1826, 1848, 1858, and 1869) reveal an extended, multi-generational household in continuous transformation through the classic consolidation, fission, and reconsolidation phases.<sup>23</sup> They begin with a medium-sized joint endowment by two brothers who lived with their families in their father's house. Consistent with the Nabulsi preference for organizing kin and property along the model of the branch, each of the endowers of the first waqf passed on his share to his children and their descendants, males having twice the share of females. To concentrate this property within the male line of each branch, the endowers stipulated that the shares of their daughters and any future female children they may have could not be passed on to their children and had to revert to their two brothers and their progeny. They further stipulated that the shares of their female children as well as the right to reside in the house were to be immediately rescinded for any daughter who entered marriage. This is a consequential condition, because marriage was nearly universal. Each successive waqf over the next six decades excluded females further until they were excluded altogether and no longer mentioned in the endowments.

Typical for Nablus, but in stark contrast to Tripoli, the family residence is the centerpiece of the waqf endowment, for it served as the headquarters of a family branch that often was indistinguishable from joint economic enterprises by brothers and cousins. Over time, the large and diverse portfolio of endowed properties by Abd al-Wahid Khammāsh resulted in a compound of adjacent structures composed of houses, water wells, shops, bakeries, warehouses, bath house, stables, soap factory, pottery works, gardens, and coffee shops, among others things. The spatial grid of the dense array of properties, linked by hidden passages, staircases and hallways and then radiating outwards to commercial hubs, gardens, and mills at the very edge of the city – both produces and reflects the power relations and hierarchies of an octopus-like complex, the head of which is the endower and his male descendants.

*Mabarrāt*, good deeds financed by a percentage of waqf revenues, were entirely missing from the waqf endowments by the Khammāshs, very much in contrast with the waqf of Husayn al-Husayni in Tripoli. Rather, discipline was maintained through a system of escalating punishments. If any beneficiary violated the conditions of the waqf as laid out by the endower he (there were no “she” at this point) would be forever excluded from the waqf unless he repented (يتوب: *yatūb*). Upon repentance, he would regain his lost share after one year, during which it would be distributed equally to the other beneficiaries. If repentance was followed by a second infraction, so warned the waqf, the guilty party was to be permanently excluded.

## House (دار: *dār*) versus Orchard (بستان: *bustān*)

In both Tripoli and Nablus, there is a laser focus on vertical property devolution. This effectively excludes spouses, parents, and agnates who make up the largest pool of potential legal inheritors, were post-mortem Islamic rules of inheritance shares (*‘ilm al-farā’id*) to apply. The pervasiveness of this overall pattern of inclusion and exclusion in hundreds of family waqfs endowed over a two-century period clearly shows that inter-vivos property devolution favored one’s children within the conjugal family, not the traditional extended family popularly imagined as the bedrock of Arab, Muslim, or Eastern Mediterranean societies.

When it comes to gender and property, however, the similarity between Tripoli and Nablus ends. With rare exceptions, all the family waqfs of Nablus and Tripoli from 1660 to 1860 invoked one of four basic patterns of designating beneficiaries, Pattern One being most inclusive of females and Pattern Four, the most exclusive (Table 1). Generally speaking, the family waqfs of Tripoli and Nablus inhabit the opposite ends of the spectrum. Almost 100% of those in Tripoli, and consistently so over the centuries, include females as beneficiaries, and one-third of them, like Husayn’s waqf, fit Pattern One. In Nablus, over 90% of family waqfs exclude females to one degree or another, and there is a major shift by the 1830s toward complete exclusion. The family waqfs of Abd al-Wahid Khammāsh start with Pattern Three in the early part of the 19<sup>th</sup> century and end with Pattern Four by mid-century.

It is true that the waqf is but one element in the overall system of property devolution, which also includes, among other things, marriage strategies, wills, and gifts. Moreover, only a part of the population, albeit a substantial one, endowed waqfs, and the average life span of any one waqf varied considerably, some lasting for centuries and many others for only a generation or two. One cannot assume that the conditions attached to waqfs became lasting arrangements. Still, the clauses of inclusion and exclusion attached to waqf documents reveal different visions of family life that did have consequences, if only because they constituted the terrain over which family members negotiated their internal power and property relations. This is attested to by the large numbers of lawsuits about waqf endowments in the sharia courts and the dominance of waqf as a topic in fatwa collections of jurists.

There are also other dramatic differences in family waqf endowments between Nablus and Tripoli that are systematic and enduring. For example, joint waqfs by brothers and/or male cousins were common in Nablus, but unheard of in Tripoli. Females endowed about half of all waqfs in Tripoli, but only 10% of those in Nablus (and none after 1840). The house is always the focus of property devolution

Tab. 1: *Basic Patterns in Designating Beneficiaries in Family Waqfs*

Steps	Pattern one	Pattern two	Pattern three	Pattern four
One	Self	Self	Self	Self
Two	Male/female children 1:1	Male/female children 2:1	Male/female children 2:1	Male children only
Three	Same	Same	Children of male children	Male children of male children
Four	Same	Same	Same	Same
Five	[Mabarrāt]	[Children of brother(s)]	[Progeny of female children]	[Male children of females]
Six		[Nearest agnates]	[Children of brother(s)]	[Male children of brother(s)]
Seven		[Mabarrāt]	[Nearest agnates]	[Male children of nearest agnates]
Last	Charitable ends	Charitable ends	Charitable ends	Charitable ends

[ ] = Conditions sometimes added to basic pattern

in Nablus, while in Tripoli, it is irrigated orchards. What explains these different property devolution practices and forms of gendering property?

## The Political Economy of Difference

There are a number of answers to this question that I discuss elsewhere.<sup>24</sup> But the core assumption here, buttressed by much of the voluminous literature on family history, is that there is a strong correlation between political economy and techniques and relations of production, on the one hand, and kinship organization, gendered division of labor, and practices of property devolution, on the other. This is not to suggest a mechanical relationship between the two, but it did matter that in Tripoli, the major source of wealth was privately owned and irrigated urban orchards, managed through co-cultivation contracts; while in Nablus, it was access, primarily through money-lending contracts (سَلَم: *salam*) to the surplus of peasants who had usufruct cultivation rights over government owned (ميرى: *mīrī*) dry farming lands. Crudely put, the former militated for a large



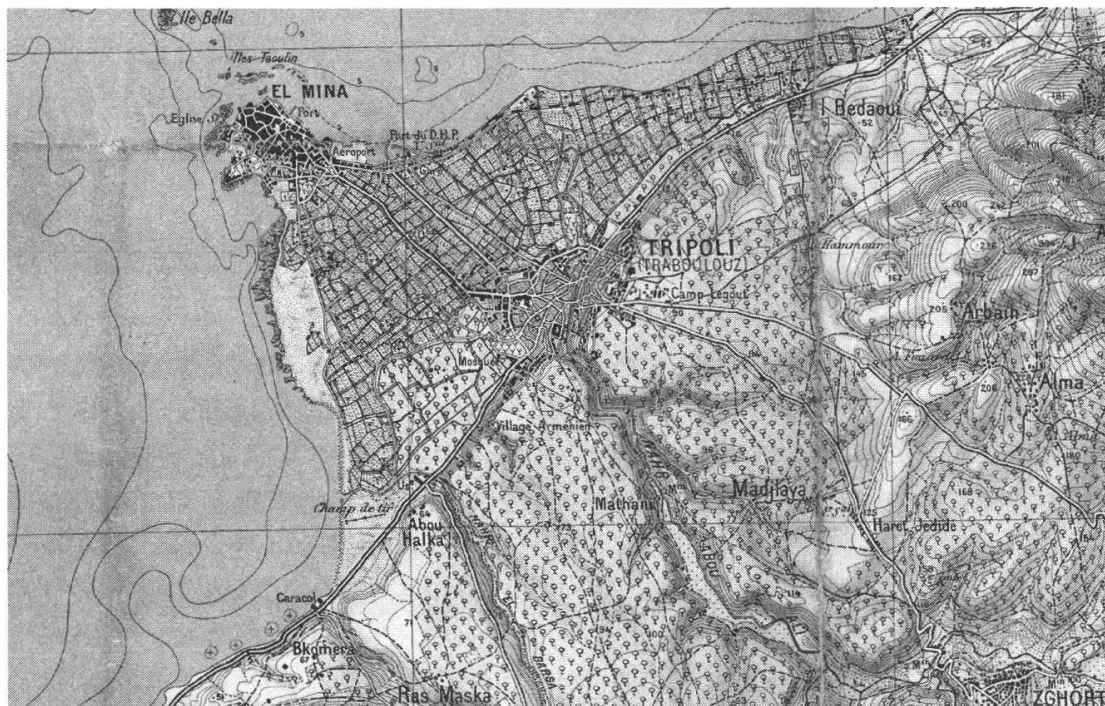


Fig. 2: Orchards and olive groves in Tripoli's Green Zone, circa 1933. (Service géographique de l'armée [travaux sur le terrain de 1931]; Institut géographique national, Paris, 1933)

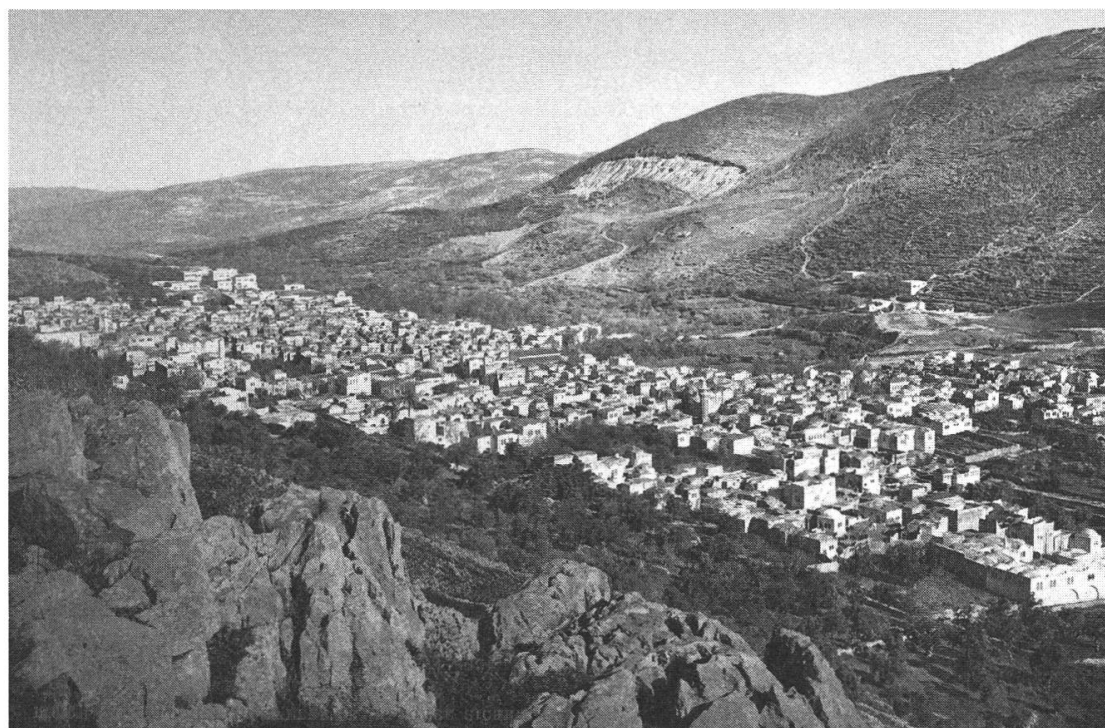


Fig. 3: Nablus, 1898. (Library of Congress Prints and Photographs Division. "Vale of Napulus." LOT 13424, no. 092, [www.loc.gov/item/2001699271](http://www.loc.gov/item/2001699271))

middle class and inclusion of women in property devolution strategies, while the latter facilitated the concentration of wealth and the exclusion of women.

## Tripoli: The Mulberry Tree

River-fed urban irrigated agriculture, whether in interior oasis cities such as Damascus or coastal ones such as Tripoli, was a powerful force in shaping local social formations, political relations, cultural dynamics, and spiritual life. During the 1660–1860 period, Tripoli had the largest and most sophisticated urban agricultural sector of all of the coastal cities along the Eastern Mediterranean. The huge several kilometers square green zone, subdivided into multitudes of orchards (*bustān*, pl. *basātīn*), was a powerhouse for the commercial production of silk (and later citrus) for local, regional, and European (mostly French) markets. For centuries, the white mulberry tree, the leaf of which is the only food the silk worm deigns to eat, dominated this landscape, and absorbed the energies of large swaths of the population of Tripoli and its nearby villages. Trees constituted the backbone of family properties, for they could be owned separately from the land (as was the case with water, as well) on which they were planted, the latter being mostly endowed as waqf. This irrigated urban green zone supported a large and diverse middle class characterized by the signal importance of the conjugal family and gender-inclusive property devolution strategies.

If investment in trees was the key path to social mobility and the mainstay of a middle class in Tripoli, it was even more so for females, especially when coupled with silk production which depended largely on female labor. Consistently throughout the two centuries under study, we find that women were active in the orchard business as owners, contractors, investors, and/or managers. Like men, they negotiated co-cultivation contracts, primarily *mughārasa/munāṣaba* (مناصبة/مغارسة), to realize the productive potential of their trees.<sup>25</sup> Land and trees were located within a short walking distance from the owners' homes, and women, like men, had direct access to the information needed to calibrate capital investment and market conditions, to contract and manage labor, to supervise the production process, and to organize the marketing of silk or citrus.

This, for example, is precisely what 'Atika (عاتكة), daughter of Mustafa Ibn Baqara (مصطفى ابن بقرة), did in the late 17<sup>th</sup> century. Sometime before 1685, she endowed an orchard of mulberry trees as a family waqf and appointed herself as the sole beneficiary and administrator.<sup>26</sup> This change in the legal status of her property provided added layers of protection: waqfs cannot be confiscated in case of indebtedness, and they are less vulnerable to counterclaims by agnates in the absence of a male heir. She then rented one half of the orchard to Hasan ibn

al-Hajj Mansour al-Dallal (الدلال حسن ابن الحاج منصور), for a period of twelve years, at the end of which he would own half the trees he planted and nurtured. 'Atika did not rent the other half, which was a smart move on her part as it allowed her to minimize the claims and dependency that could be generated by a long tenancy. She could also make more profit if she performed part of the work herself (which was not unusual) and/or if she acted as her own contractor who then hired seasonal groups or teams of workers.

This was also a fortunate move in terms of timing, for the late 17<sup>th</sup> century turned out to be an excellent moment for investing in mulberry trees and silk production. After a five decades-long absence due to French government anger at the treatment of French merchants in Tripoli, French merchants came back to Tripoli in 1667. They focused on the white silk, much desired in France as background to gold and silver threads for military insignia, among other things. Moreover, and in the same year as 'Atika's appearance in court (1685), Louis XIV of France ordered the lifting of all customs on silk directly imported from the East to the port of Marseille. Finally, the price of silk was rising. Indeed, and unbeknownst to 'Atika and Hasan, the price of silk would make a leap in the early 18<sup>th</sup> century, precisely at the time when their trees would be at their prime.

The capacious legal framework that governed the transubstantiation of a relationship into a calculable commodity through a tenancy contract allowed for flexible arrangement between parties, both male and female, that are not bound by long term social, political, or kinship ties. In the context of the political economy of the Green Zone, it also helped facilitate the participation of a broad spectrum of actors, not the concentration of holdings. Hence, the greater possibilities of inclusive property devolution practices in Tripoli. We should not be surprised, therefore, that among the financial guarantors of 'Atika were other women. One was her own sister, and the other was Zainab (زينب), her paternal cousin.<sup>27</sup>

## Nablus: Moneylending and the Rural Surplus

In Nablus, by contrast, the commercial and manufacturing livelihoods of the urban population – especially merchants, shopkeepers, and artisans – depended largely on the agricultural surplus of peasants with usufruct cultivation rights over government (*mīrī*) land. The transfer of that surplus was legally realized primarily through the forward purchase (*salam*) moneylending contract.<sup>28</sup> This surplus was unevenly appropriated; the lion's share went to the large merchant households operating centralized family firms that carved distinct social and physical spaces both in the city, in the form of large residential compounds; and in the hinterland, in the form of spheres of influence in clusters of villages they

specialized in dealing with. The spheres of influence were constructed through multi-generational patron-client networks. The networks were volatile male spaces that required carefully nurtured and, sometimes, violently sutured political and social alliances between heads of rich and powerful urban families, on the one hand; and leaders of armed rural-based extended families and clans who controlled the rain-fed and state-owned lands that produced the olive oil, grains, legumes, cotton, and other commodities, on the other.

All property relations are gendered to one degree or another, but the situation in Nablus was highly polarized along the male/female axis. The political economy of the Nablus region gave rise to what one might call the commercial family firm, which was vertically integrated, centralized, ruled by partner brothers or male paternal cousins, and transmitted through their male line of descent. Family firms were risky and highly competitive enterprises, for they were constructed and reproduced in a decentralized political environment characterized by multiple territorially based centers of power and frequent political upheavals. The capital resources and reputation needed for daily operations were tightly controlled and jealously defended, since it took generations for successful networks to strike deep roots. The concentration of family resources, in turn, required a high degree of internal discipline, mobilization, and stratification along gender and age lines. In terms of property devolution and marriage strategies, this came at the expense of younger brothers, females, and children in their legal minority. The women of Nablus, very much unlike those of Tripoli, were virtually excised from the primary economic life of the city.

### **So What? Why Should We Care?**

Are the property devolution practices in Tripoli representative of coastal towns and interior oases that depend primarily on urban agriculture? Would those of Nablus be typical of the market towns whose lifeblood is the surplus of rain-fed hinterlands? Are local political economies really so determinative of how wealth was transferred from one generation to the next? If so, does that mean that the wide diversity of the social spaces that constitute the Ottoman Empire render a general history of family life impossible? And what implications, if any, does this historical study have for how we understand the formation of the modern Middle East as well as current debates about property, gender, kinship and Islamic law? There are no ready answers on the empirical level. Family history is still a very young field of knowledge production in Middle East, Islamic, and Ottoman studies. And although there is a long tradition of local histories, only a few of the dozens of provincial regions in the Ottoman domains have been investigated in



depth. Indeed, we lack the most basic economic, social, demographic, and cultural data for these regions. And, of course, we have little idea about family life of the poor who did not own immovable property; or the kinship, gender, and property relations among slaves, pastro-nomads, and peasants, especially before the modern techniques of governance – such as census counts, military conscription, and individual-based tax rolls – became the norm around the mid-19<sup>th</sup> century.

It may be of little consolation to some in the social sciences, but at least on the theoretical and methodological levels, it can be argued that the primary importance of in-depth regional and family history studies lies not only in how typical they may or may not be, but in the new questions and insights they can lead to in terms of what it means to do history. Studies of a single individual, family, or village can transform an entire field, thus rearranging earlier puzzles and adding many more.<sup>29</sup> In any case, the historically contingent and diverse configurations over space and time of the kinship/property/gender matrix between Nablus and Tripoli cast doubt on prevalent assumptions about family and sharia in the past, on whose shoulders stand a range of claims about Islam, women, and modernity, the three prestige zones of knowledge production on the Middle East.

Ultimately, the hope is that the theoretical and methodological moves in this study will lead some to ask new questions and to innovate new ways of answering them. The systematic and long-term differences between Nablus and Tripoli, for instance, de-center the colonial encounter position in historical narratives as the external rupture which ushers in the modern period. They also trouble the common spatial geography of modernity, which pits coastal cities (and especially its minority communities) as beach heads of Westernization against interior cities as bastions of tradition. Moreover, it is clear that the integration of Tripoli and Nablus into the world capitalist economy during the 1660–1860 period, produced divergence, not uniformity. In Nablus, this led to dramatic concentration of power and property in older males who formed joint households as brothers and cousins based on exclusion of women and younger siblings to a much greater degree than the early modern period. In Tripoli, we find a surprising consistency in the inclusion of women and even more equality in the transfer of wealth to females along with the expansion, overtime, of an urban middle class based on agricultural production.

In short, what ordinary people do matters, even those who live in provincial regions. The daily legal practices of Husayn al-Husayni and Abd al-Wahid Kham-māsh and millions like them across the empire over the centuries, constituted families, communities, and regional political economies and social formations. They were also constitutive of the spiritual sensibilities, normative values, and beliefs that shaped subjectivities and informed everyday life. Indeed, it is possi-

ble to argue that the accretion of property devolution practices over the centuries in provincial regions, where the overwhelming majority of Ottoman inhabitants lived, was a major factor in shaping the material, legal, and moral order of the Ottoman Empire in early modern and modern times. Putting everyday life of these long-overlooked individuals and communities at the center of analysis, contributes to decolonizing historical narratives by breaking through structural silences and opening new ways of seeing.

#### Notes

- 1 This article is adapted from a keynote address delivered on June 5, 2019 to the 5<sup>th</sup> meeting of the Swiss Congress of Historical Studies, held in Zurich, Switzerland. I thank Simon Teuscher for the invitation and his hospitality.
- 2 Timothy Mitchell, "The Stage of Modernity," in Timothy Mitchell (ed.), *Questions of Modernity*, Minneapolis 2000, 3–34.
- 3 Frederick Cooper, *Colonialism in Question. Theory, Knowledge, History*, Berkeley 2005, 3.
- 4 See Samera Esmeir, *Juridical Humanity. A Colonial History*, Stanford 2012.
- 5 Michel-Rolph Trouillot, *Silencing the Past. Power and the Production of History*, Boston 1995, 48–49.
- 6 Beshara Doumani, *Rediscovering Palestine. Merchants and Peasants in Jabal Nablus, 1700–1900*, Berkeley 1995.
- 7 Beshara Doumani, *Family Life in the Ottoman Mediterranean. A Social History*, Cambridge 2017.
- 8 David Sabeen, Simon Teuscher, Jon Mathieu (eds.), *Kinship in Europe, 1300–1800*, New York 2007 (paperback edition 2010).
- 9 Ibid. (see note 8), 20. See the informative review essay: Gadi Algazi, "Bringing Kinship (Back) in", *Mediterranean Historical Review* 25/1 (2010), 83–92.
- 10 I borrowed this phrase from David Sabeen.
- 11 For the historiography of family history in the Middle East and Europe, see Beshara Doumani (ed.), *Family History in the Middle East. Household, Property, and Gender*, Albany 2003, Chapter One.
- 12 Hisham Sharabi, *Neopatriarchy. A Theory of Distorted Change in Arab Society*, New York 1988.
- 13 Beshara Doumani, "The Limits of Knowledge Production as a Subversive Practice. The "Early Modern" in Ottoman Studies", *Journal of the Ottoman and Turkish Studies Association* 7/1 (2020), 80–86.
- 14 I sometimes use kinship and family interchangeably to muddy up the distinction between East and West. Having said that, I understand kinship not as normative or actual configurations of blood relations, but as a set of practices to manage relationships between people about things in the context of local political economies and social structures, as well as forms of imperial governance and legal and cultural traditions.
- 15 The sharia court registers of Nablus and Tripoli are still kept in the offices of the court in both cities. For further information on status and history of these archives, see Doumani (see note 7), Appendix.
- 16 An example is Timur Kuran, *The Long Divergence. How Islamic Law Held Back the Middle East*, Princeton 2011.
- 17 For example, Wael Hallaq, *The Impossible State. Islam, Politics, and Modernity's Moral Predicament*, New York 2014.



- 18 For example, Richard Van Leeuwen, *Waqfs and Urban Structures. The Case of Ottoman Damascus*, Leiden 1999.
- 19 Tripoli Islamic Court Registers (TICR), 29: 122–123.
- 20 This information about Husayni's life and speculation about his affective motivation are based on months of detective work which revealed scattered clues in the archives. A custody document, for example, reveals that Husayni was orphaned in 1748 and was raised by his older sister whose son he later favored. The probate inventory of Husayni's father, Sayyid 'Abdullah (السيد عبد الله), was registered on December 12, 1748.) TICR, 10: 123. The custody appointment is registered on December 18, 1748. TICR 10: 124.
- 21 It may seem from the flow chart that the daughter's share is half that of the son's, and equal to that of the mother. But that is not the intention here and this arrangement is understood to be temporary. In waqf endowments, lifetimes are the currency of temporality. An almost universal condition in family waqfs is that the distribution of revenues to beneficiaries does not begin until after the endower's death. Since the mother is very old at the time of the endowment, the expectation is that her lifetime is about to end, which is why the endower made it a condition that her share would revert to the daughter, and, eventually, to the daughter's descendants. Effectively, this equalizes the shares between the sister and brother and their progenies. Reinforcing this interpretation is the fact that one-third of family waqf endowments in Tripoli assign equal shares to male and female children.
- 22 These are Mawlid al-Nabawī (المولد النبوي: Prophet's birthday), 29 Rajab (رجب), mid-Sha'bān (شعبان), and the two nights of the 'Eid (عيد).
- 23 Nablus Islamic Court Registers (NICR): 6: 348; 8: 287; 11: 121–123; 12: 226–228; and 15: 234–236, respectively.
- 24 Doumani (see note 7), Chapter 6.
- 25 These long-term contracts between an owner of land and/or trees and a farmer who planted and/or tended trees until they reached maturity varied widely depending on the types of trees, availability of water and so on. Generally speaking, at the end of the contract the farmer retains half of the land and/or trees as his property. See, for example, Abdul-Karim Rafeq, "Al-'Alaqa al-zira'iyya fi Bilad al-Sham fi al-'ahd al-'uthmani bayna al-madhahib al-fiqhiyya wa al-waqi'", (العلاقات الزراعية في بلاد الشام في العهد العثماني بين المذاهب الفقهية والواقع) *Dirasat Tarikhiyya* 43–44 (1992), 120–139.
- 26 TICR 3: 8.
- 27 This information is culled from a lawsuit, registered May 7, 1687, that pits Muhsina against the mother of Zainab, her paternal cousin, over ownership of the Baqara family home. TICR 3: 143.
- 28 Beshara Doumani, "Le contrat salam et les relations ville-campagne dans la Palestine ottomane", *Annales HSS* 61/4 (2006), 901–924.
- 29 Such as, for example, the works of Carlo Ginzburg, Natalie Zemon Davis, and David Sabeau, among others.

## Résumé

### Transmission de la propriété, sharia, et l'émergence du Moyen Orient moderne

L'examen comparatif des stratégies de transmission de la propriété et des modèles de genres dans des contextes d'économico-politiques locaux observe comment les transferts de fortune d'une génération à l'autre ont façonné le Moyen-

Orient moderne. Se basant sur les archives des cours de droit islamique et d'autres sources produites également au niveau local, Doumani soutient que le modèle de famille musulmane ou arabe, si central dans les récits des orientalistes, des nationalistes et des islamistes, n'existe pas. Au contraire, on constate des différences régionales considérables, y compris dans une même zone culturelle, dans la manière dont la famille était perçue, organisée et reproduite. Ces découvertes remettent en cause des présupposés dominants dans les discours publics sur l'Islam, les femmes et la modernité dans le Moyen-Orient.

*(Traduction: K. Crousaz)*

## **Zusammenfassung**

### **Eigentumsübertragung, Scharia und die Entstehung des modernen Nahen Ostens**

Diese vergleichende Untersuchung von Eigentumsübertragungen und Geschlechterordnungen im Kontext lokaler politischer Ökonomien analysiert, auf welche Weise generationenübergreifende Vermögenstransfers den modernen Nahen Osten geprägt haben. Basierend auf Archivmaterial islamischer Gerichtshöfe und anderer lokaler Quellen argumentiert Doumani, dass es «die muslimische oder arabische Familie», die in orientalistischen, nationalistischen und islamistischen Narrativen so oft bemüht wird, nicht gibt. Vielmehr ist die Art und Weise, wie «Familie» verstanden, organisiert und reproduziert wurde, regional extrem unterschiedlich, auch innerhalb des gleichen Kulturkreises. Die Ergebnisse stellen gängige Annahmen öffentlicher Diskussionen über den Islam, Frauen und die Modernität des Nahen Ostens infrage.

*(Übersetzung: A. Rathmann-Lutz)*