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**“*Boy and Girl on Equal Terms*”:
Women, *Waqf*, and Wealth Transmission in Mamluk Egypt**

Julien Loiseau *

The role of women in Mamluk society has undergone a major reassessment in the last two decades (Rapoport 2007). Recent studies have highlighted women as autonomous agents in the field of economics, having a handle on their wealth during marriage as well as at the time of divorce (Rapoport 2005), and, for the wealthiest of them, acting as investors (Petry 1991, 2004). The wide range of source material preserved from the Mamluk period in Egypt and Syria allows scholars to undertake inquiries that would be out of reach for any other Medieval Islamic society. Even the privacy of couples could be studied in well-documented cases, thanks to biographical data and autobiographic texts (Rapoport 2013). The problem of women’s invisibility that one has to address in many Islamic contexts is not an issue while dealing with Mamluk Egypt and Syria.

This paper is a contribution to our growing knowledge of the social history of women in Mamluk society, based on the bulk of legal documents preserved in Cairo, be they endowment deeds or acts of sale (Amin 1981). Carefully studied, these documents can shed some light on the accumulation of wealth and its transmission in Cairene families, provided that one keeps in mind that only a part of the picture is enlightened henceforth. Investments and asset strategies were manifold during the life time of a wealthy individual: most of them remain in the shadow, while the available documentation only provides snapshots of some of his/her choices.

As a general rule, one can mainly evidence assets that are endowed as *waqf* and subsequently registered in endowment deeds (*waqfiyya*). Most private properties (*milk*) that were subject to inheritance rules, elude the analysis due to the lack of documentation. However, there are exceptions, as for instance when a pious foundation kept sale deeds related to properties that finally fell into its assets in its archives. Hence, the tentacular *waqf* of Sultan al-Ashrāf Qānṣūh al-Ghawrī (r. 1501-1516) was directly involved in the preservation of hundreds of legal documents pertaining to private properties and *waqf* assets finally diverted by the Sultan. Sale deeds preserved thus far sometimes offer insight into family structure and composition, when the sale is subsequent to an inheritance distribution (Loiseau 2003). However, it is worth noting that one can learn a great deal about family and asset management through the analysis of these

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endowment deeds, considering that *waqf* was a major channel for wealth transmission in the Mamluk period (Loiseau 2013/1). In practice, the legal distinction between charity (*khayrī*) and family (*ahlī*) endowments was blurred at that time (Sabra 2005). One can even wonder if wealthy individuals only kept immovable assets in private property (*milk*) while facing death or tried to escape the law of inheritance by any means (Powers 1990, 23-24).

Be that as it may, legal documents from Mamluk Cairo offer the opportunity to better understand the position of women in wealth transmission during the Mamluk period, especially in the ninth/fifteenth century, considering the growing number of documents that were preserved and the broader spectrum of the Cairene society that they highlight in the last century of Mamluk rule. There is no equivalent for this documentation in other parts of the Mamluk realm, with the exception of the earliest Ottoman registers evidencing late Mamluk Damascene pious foundations and households (Winter 2004). However, the bulk of documents available in the Egyptian National Archives (Dār al-wathā'iq al-qawmiyya) and Waqf Ministry (Wizārat al-awqāf) is too large to allow an exhaustive inquiry. The following analysis and comments result from sample surveys of the legal documents, most of them dating from the first half of the ninth/fifteenth century, and pertaining to the assets and pious foundations of the so-called “people of the State” (*ahl al-dawla*), that is, the military officers and civil servants of the Mamluk State. Social practice in wealth transmission will also be compared to the legal standards of the time, as evidenced by a mid-ninth/fifteenth century notarial handbook, the *Jawāhir al-‘uqūd wa mu‘īn al-quḍā wa l-muwaqqi‘īn wa l-shuhūd* of al-Asyūfī (d. 880/1475).

I. Inheritance rules put into practice: a case study

Islamic law of inheritance was based on two principles: testamentary freedom as established by Quran 2.180 and other verses related to bequest (*waṣīyya*) on the one hand; and compulsory rules of inheritance distribution defined by Quran 4.8, 11-12, and 176, the so-called “inheritance verses”, on the other. Both ways of transmission were fused in Islamic jurisprudence on the ground of two *ḥadīths* attributed to the Prophet: “A bequest may not exceed one-third of the estate” (“*Lā tajūza al-waṣīyya bi-akthar min thulth al-tarika*”) and “No bequest to an heir” (“*Lā waṣīyya li-wārith*”). Testamentary freedom was limited to not favor any heir at the expense of the others. At least two-thirds of the estate had to be divided according to fractional shares (*farā'id*) granted to various categories of heirs: not only sons and daughters, but also parents, spouses, brothers, and sisters (Schacht 1993, Pavlovitch and Powers 2015). Hence the legal “science of inheritance” (*‘ilm am-mawārith*) was also called “science of the shares” (*‘ilm al-*

farā'id), the calculation of which varied from case to case, depending on the presence or absence of surviving son(s). The most well-known principle under it was the granting of a share worth that of two daughters to the son(s) of the deceased (*“li-l-dhakar mithl ḥaẓẓ al-unthatayn”*). However, the favored position of the agnates (*al-‘aṣaba*) was balanced by the attribution of fractional shares to various categories of female relatives. Hence, one might be cautious before inferring any specific effect of the Islamic law of inheritance on the position of women in wealth transmission, especially in a context characterized by high mortality, frequent divorce, and remarriage. The following case study illustrates the contrasting consequences of the “science of shares” on family estates.

The archives (*daftarkhānah*) of the Egyptian Waqf Ministry preserve three sale deeds pertaining to the same property, a mill located in Cairo, sold in four different occasions during the ninth/fifteenth century: after 801/1398 (the exact date of the first sale is missing), then in 815/1412, 858/1454 and 873/1469, before being transferred to the Sultan al-Ashraf Qānṣūh al-Ghawrī in 907/1502 (Loiseau, 2003)¹. In every instance, the sale was subsequent to inheritance, the property of the mill being divided among heirs before one of them bought the shares of his relatives and sold the mill undivided. This documentary coincidence offers the opportunity to put the “science of shares” in practice in four different family contexts.

The first deed records how Ḥamza b. Qadīd al-Qalamṭāwī purchased the shares of the mill property that were held by the other heirs of his deceased father. Qadīd al-Qalamṭāwī was a Mamluk emir and the governor of Alexandria, who died in 801/1398². The father of three daughters and eight sons that he had from three different wives, Qadīd had to deal with the death of his eldest son, Aḥmad. Thus, he had the inheritance rights of his surviving heirs confirmed legally by the *qāḍī* in 797/1395: this division was recalled by the first sale deed. The calculation of the fractional shares in this document was based on two principles: the property was divided into 24 parts (*sahm*), each part further into 323 portions (*juz'*). In the presence of his surviving sons, the three widows of the deceased were collectively entitled to one-eighth of his inheritance (i.e., 3 parts on 24): one part (*sahm*) of the mill's property was granted to each of them. The children collectively inherited the 21 remaining parts: 1 part (*sahm*) and 34 portions (*juz'*) for each of the 3 daughters; and 2 parts and 68 portions for each of the 8 sons.

¹ Wizārat al-awqāf, docs. 517 *jadīd*, 533 *jadīd* and 555 *jadīd*: Amīn 1981, n^{os} 344, 386, 619. Partial edition in Maḥfūẓ Ḥannā 1977, Appendices, vol. 1, 86-93; Amīn 1981, Appendices, 407-422; Loiseau 2003, 302-314 (with French translation).

² Maqrīzī, *Sulūk*, vol. 3.3, 976.

However, the earliest death of one of the latter gave right to his mother, sisters, and brothers to his share (i.e., 2 parts and 68 portions): one-sixth (119 portions) was granted to his mother, the remaining being divided among his 3 sisters (35 portions each) and his 7 brothers (70 portions each). Finally, the widows inherited 3 parts and 119 portions together, and the daughters 3 parts and 207 portions, which meant that the female relatives of the deceased collectively received 29% of the inheritance.

In 858/1454, a Cairene *faqīh* named Abū l-Hadī Muḥammad b. Muḥammad al-Ṭulūnī al-Malikī sold the same mill that had been bought by his father from Ḥamza b. Qadīd in 815/1412. His deceased father had four heirs: his wife and three sons, one of them born from another wife who he had divorced previously. In this deed as in the following, the calculation of the fractional shares was based on the division of the property into 24 parts (*sahm*), with the use of fractions of part when needed. In the presence of the surviving sons, the widow inherited one-eighth of the property (3 parts), with the sons sharing the remaining (7 parts each). Later on, the death of the one of the sons benefited his mother (for one-sixth) and his uterine brother (for five-sixth), his half-brother being excluded from his inheritance as a consequence of the previous repudiation of his mother. Finally, Abū l-Hadī Muḥammad, who had inherited 12 parts, a half and a third of a part (i.e., 53.47 % of the asset) from his father and his brother, bought the remaining shares from his mother and half-brother. In this case, the only female relative of the two deceased, their wife and mother, inherited 4 parts and one-sixth of part, that is, 17.36 % of the inheritance, before her surviving son bought her share.

In 873/1469, one of the sons of Zayn al-Dīn Ghāzī al-Maghribī, the merchant who bought the mill in 858/1454, sold it again. The entire property fell in his hands after a long process, that began after the death of his father in 859/1455. Zayn al-Dīn Ghāzī left two wives, two daughters, and three sons, one of them born from a third wife, divorced at that time. In the presence of the surviving sons, his widows, Maryam and Bulbul, inherited collectively one-eighth of the property: each of them receiving one part and a half. The children inherited the remaining 21 parts: 2 parts, a half and an eighth of a part for each of the two daughters, Khadīja and Āmina; 5 parts and a fourth of a part for each for the three sons, ‘Umrān, ‘Abd al-‘Azīz, and Muḥammad. Following the death of ‘Abd al-‘Azīz, his mother Bulbul gained the right to one-sixth of his inheritance, his sister Āmina to half of it, his half-sister Khadīja and his two half-brothers ‘Umrān and Muḥammad to one-sixth divided into three shares, the half-brothers’ share worth double that of the half-sister. The remaining share on ‘Abd al-‘Azīz’s inheritance, worth one-sixth, was granted to his uterine half-sister, Fāṭima, the daughter of Bulbul, and her new husband Sālim. Later on, the death of Muḥammad, one of the two surviving sons of Zayn

al-Dīn Ghāzī, gave not only his half-sisters and half-brother (Khadīja, Āmina, ‘Umrān, the three surviving children of Zayn al-Dīn Ghāzī) the right to their shares, but also to his mother Zaynab (previously divorced by his father and hence excluded from his inheritance), and to his uterine half-sisters, ‘Āisha and Fāṭima, daughters of Zaynab, and her new husband Abū l-Ṭayyib. Muḥammad’s mother and uterine half-sisters each received one-sixth of his inheritance. Later on, the property was further divided first following the death of Fāṭima, Bulbul’s daughter from her second marriage, and then again, following the death of ‘Āisha and Fāṭima, the daughters Zaynab had from her second marriage. These events gave rights to their mothers, and also allowed their fathers to get part of the property that was previously owned by the first husband of their wives. At the end, 13 different heirs had rights to parts of the property. When ‘Umrān, the last surviving son of Zayn al-Dīn Ghāzī, bought the other heirs’ shares in order to sell the mill again, the two widows of his father, the latter’s divorced wife and two daughters together held 63.21% of the property. The female relatives of Zayn al-Dīn Ghāzī finally inherited almost two-thirds of his inheritance.

The mill was sold again in 873/1469, and this time, was bought by one of the descendants of Muḥammad al-Ṭūlūnī, who initially bought it from Ḥamza b. Qadīd in 815/1412. Yaḥyā b. Ḥasan b. Muḥammad al-Ṭūlūnī remained its sole owner until his death, the date of which is unknown. According to his will, the deceased made a bequest worth a third of his inheritance (the highest proportion allowed according to the *ḥadīth* previously quoted). Since he died without children, the share granted to his only widow could not exceed one-fourth of his inheritance after the deduction of the bequest: Ṣabr Jamīl (whose name suggests that she was his freed slave), inherited one-sixth of the property. In absence of any other heir, the remaining, that is, half of Yaḥyā’s inheritance, was granted to the Public Treasury (Bayt al-māl). However, the deed which documented the transfer of half of the property to Sultan al-Ashrāf Qānṣūh al-Ghawrī in 907/1502, suggests that Yaḥyā’s bequest was also granted to his widow, in contradiction to the law of inheritance and the *ḥadīth* “No bequest to an heir.” One cannot otherwise understand how his widow held half of the mill property when it was transferred to the Sultan (Loiseau 2003, 289-291). In this last instance, thanks to a legal trick, the only female relative of the deceased was granted 50% of his inheritance.

The preservation of these three sale deeds pertaining to the same mill, sold four times and divided in four successive inheritances during the ninth/fifteenth century, sheds light not only on four different family configurations, but also on the effects of the Islamic law of inheritance. If, in the same generation, the “science of shares” undoubtedly favored the sons of the deceased

over his daughters, the granting of fractional shares (*farā'id*) to his wife/wives, sister(s), and half-sister(s) protects the interests of his female relatives. The high mortality rate that prevailed in the ninth/fifteenth century Egypt due to the occurrence of the plague once every five or six years (Shoshan 1981) increased the mechanical effects of the law especially when children died before their parents. The reintegration of a divorced wife among the heirs following the death of her son, or the rights to inheritance transferred to the new husband of a widow through her dead children, might not be the most surprising observations. In two cases out of the four discussed above, the female relatives of the deceased finally held half or more than half of his inheritance. In Mamluk Egypt, high child mortality rates on the one hand, and high divorce and remarriage rates on the other (Rapoport 2005), reveal how protective of women the Islamic law of inheritance may have been.

II. The *waqf* as an alternative channel of wealth transmission

By the Mamluk period, the *waqf* had already had a long history over six centuries as a legal institution. In its earliest form, the *waqf* consisted of family foundations, the founder of which granted his/her descendants with the usufruct or with the rent of the family house. Only after the former's extinction did the foundation benefit a charitable purpose, such as the support of "the poor and the destitute" (*al-fuqarā' wa l-masākīn*), under the supervision of legal authorities (Henningan 2004). The development of charitable foundations devoted to the financial support of public institutions such as mosques and hospitals (in Egypt, as early as during Ibn Ṭūlūn's reign, 868-905), and the immobilization of agricultural lands to this end (in Egypt since the fourth/tenth century), gave the *waqf* an unprecedented collective and public dimension (Behrens-Abouseif, 2002). However, even at the time of its highest development, when most urban facilities and a significant part of the land and buildings in Islamic cities were endowed as *waqf*, the institution never lost its private dimension (Garcin 1998, Sabra 2005). By the Mamluk period, the main legal distinction was no longer between charitable (*khayrī*) and family (*ahlī*) foundations, but rather between *waqfs* under the supervision of legal authorities (the Shāfi'ī Chief *qāḍī* or his deputies) and *waqfs* managed by a private administrator (*nāẓir khāṣṣ*)³. In the second case, founders and their descendants were able to retain their control over the *waqf* and its revenues, and to use it as an alternative, albeit legal, channel of wealth transmission.

³ Maqrīzī, *Khīṭaṭ*, vol. 4.1, 175-178.

In the ninth/fifteenth century Egypt, similar patterns were used by civil servants and military officers of the Mamluk State while establishing a pious foundation. Whatever the charitable purpose of the endowment was (be it the support of pious institutions, of urban facilities, or various donations to the poor), the founder usually foresaw that his/her foundation would, in due course, generate surplus income and prescribed a way for its administrator (*nāẓir*) to allocate it. Were *waqfs* actually in surplus once pious expenses were met? The ninth/fifteenth century historian al-Maqrīzī claimed it for two Sultanic foundations in Cairo, the *waqf* of Sultan al-Nāṣir Muḥammad for the Friday mosque that he had founded in the Citadel in 718/1318, and that of Sultan al-Zāhir Barqūq for the funerary *madrasa* that he had founded in Bayn al-Qaṣrayn in 786/1384⁴. Jean-Claude Garcin and Mustapha A. Taher, in their careful study of the *waqf* established in the 1430s by Jawhar al-Lālā, a powerful eunuch at the Mamluk court, succeeded in demonstrating that the income awaited from the foundation's assets was far higher than the expenses expected to be paid for its charitable purposes (Garcin & Taher, 1995).

Be that as it may, in the stipulations (*shurūṭ*) of his/her *waqf*, the founder systematically allocated the full amount of the expected surplus income to himself/herself during his/her lifetime, while appointing himself/herself as the administrator of the foundation. The possibility for the founder to be a beneficiary of part, or all, of the revenues of his/her *waqf* was only admitted by some jurists of the Ḥanafī school of law, as al-Asyūfī recalls in his notarial handbook⁵. There is nothing surprising in the preference given by civil servants and military officers of the Mamluk State to the Ḥanafī jurisdiction. For most of the wealthy members of the Mamluk elites, the *waqf* was only an option in the management of their estate, along with its full property (*milk*), and never an irreversible one. The division of estates in two halves, one endowed in the *waqf*, the other kept in *milk*, was very usual (Loiseau 2010, vol. 2, 562-566). Even legal mutation (*munāqala sharʿiyya*) of an asset from the *waqf* back to the *milk* was admitted, provided that the founder was also the administrator of his/her foundation⁶. Historians usually emphasize two reasons to explain the use of the *waqf* by elite members in the management of their estate, notwithstanding its role in their social and political influence or in their search for salvation. The first one, that is, the fear of the confiscation of estates, does not seem to have been a key element in the Mamluk period. Indeed, no legal obstacle had ever prevented the Sultan, or even a powerful officer, from seizing assets, be they *waqf* or *milk*.

⁴ Maqrīzī, *Khiṭaṭ*, vol. 4.1, 318 and vol. 4.2, 686.

⁵ Asyūfī, *Jawāhir al-ʿUqūd*, vol. I, 254. Peters 2002.

⁶ See for instance the *waqf* of the Mamluk emir Quṭlūbughā al-Shaʿbānī: Wizārat al-awqāf, doc. 1143 *qadīm* (Amīn 1981, n° 325).

Moreover, in different instances, the Sultan knew how to use lawful means to achieve his ends (Loiseau 2010, 297-302 and Loiseau 2012). The second reason usually emphasized is the fear of the division and dispersal of estates due to the application of the Islamic law of inheritance and the consequences of the fractional shares (*farā'id*). Even if it could not take into account all situations, it deserves further attention.

Founders systematically prescribed the way in which the administrator had to allocate the surplus income after their death, in the stipulations (*shurūṭ*) of their *waqf*. The most common options, which were not mutually exclusive, were the following: investing the surplus in buying new assets to be added to the foundation; spending the surplus in additional charitable purposes; and allocating the income saved by the foundation to private beneficiaries. Islamic jurisprudence did indeed allow founders to freely designate the right holders (*mustaḥiqqūn*) of their *waqf* provided that the latter had the legal capacity to own, insofar excluding slaves but not freed men or women (Peters 2002). The *waqf* was not only an option for the management of an estate in the lifetime of the founder but was also a legal means to transfer the usufruct or income of a foundation's assets to the beneficiaries that he/she freely designated in the endowment deed, thereby escaping the law of inheritance and its adverse effects. In contradiction with the latter, the founder had the capacity to exclude some categories of legal heirs entitled to fractional shares from the benefit of his/her foundation. He/she was also free to divide the surplus income of his/her foundation among the various categories of his/her legal heirs without following the legal prescriptions of the fractional shares.

With respect to *waqf*, legal options were manifold. One may wonder, however, to what extent the *waqf* was actually used as an alternative to the law of inheritance by the wealthiest families in Mamluk Egypt.

The first piece of evidence is provided by the choice of the *waqf* administrator (*nāẓir*). In most ninth/fifteenth century endowment deeds on which this study is based, founders planned to act as administrators of their foundation during their lifetime. After their death not one but two or several co-administrators had to be designated. The first one had to be chosen systematically from among the founder's descendants on the grounds of legal capacity. According to the usual wording, the "most upright" (*al-arshad*) of them, be they men or women, would have to act as the administrator of the foundation: here the "most upright" likely means the eldest individual among the founder's descendants. A co-administrator was also designated to watch out for the running of the foundation in case of none of the former would have been in legal capacity to act in such a manner. His identity also suggests that he was intended to be in position to protect

the interests of the foundation and of the founder's descendants better against coercion or confiscation. Indeed, founders did not designate individuals but office-holders as co-administrators after their death, whoever they were. Legal authorities of the country, the chief *qāḍī* and his deputies, were usually entrusted with this responsibility. However, from the second half of the eighth/fourteenth century onwards, most of the newly established *waqfs* were entrusted to administrators who were chosen from among holders of civil or military offices of the Mamluk State rather than to *qāḍīs* (Loiseau 2010, vol. 2, 434-444). The designation of at least two co-administrators of the foundation, one powerful office-holder (often holding the same office than did the founder in his heyday) on the one hand, and the eldest representative of the founder's descendants on the other, suggests that the issue of the *waqf*'s perpetuation was balanced by the concern for the offspring's interests. When the foundation was intended to hand over part of the founder's wealth to his/her descendants, who was best positioned to take care of their interest if not the latter's representative?

A second clue is provided by the overlap in the narrative sources of ninth/fifteenth century Egypt of the legal terms used for inheritance on the one hand, and for *waqf* on the other. Here is a quotation from one of the most knowledgeable authors of the time with respect to legal issues, the Shāfi'ī chief *qāḍī* and historian Ibn Ḥajar al-ʿAsqalānī (1372-1449):

“In Rajab 815 [October 1412], the brother of [the late] Jamāl al-Dīn al-Ustādār and the latter's family complained about the wrongdoings they suffered from [the late Sultan] al-Nāṣir Faraj, who deprived them from their *waqfs*. Hence Ṣabr al-Dīn Ibn al-Admi [the Ḥanafī chief *qāḍī*] ordered by judgment the cancellation of what al-Nāṣir did establish, along with the restoration of Jamāl al-Dīn's *waqf* in its former condition, and the installment of its surplus income to the heirs (*waratha*) of Jamāl al-Dīn”⁷.

Stating that the legal heirs of a wealthy deceased individual were as such the beneficiaries of his *waqf* does not raise any issue for the author. This is also confirmed by the endowment deed of Jamāl al-Dīn as it was restored by judgment, in that it recalls how the heirs (*waratha*) of the founder (*wāqif*) attested in the presence of witnesses that they were compelled by the late Sultan to waive their rights to the *waqf* although the latter was their inheritance (*mawrathuhum*)⁸. One already knows, thanks to Ibn Khaldūn (1332-1406), that the Mamluks (“the Turks”) used to

⁷ Ibn Ḥajar, *Inbāʾ al-Ghumr*, vol. 2, 516. On the office of *ustādār*, see Loiseau 2010, 206-208 and Igarashi 2017. On the affair of Jamāl al-Dīn's *waqf*, see Loiseau 2010, 294-310.

⁸ ʿUthmān, *Wathīqat waqf Jamāl al-Dīn*, l. 421.

found *waqf* in such a way that the surplus income from their foundations would benefit to the “poor among their offspring” (*al-dhuriyya al-ḍi‘āf*)⁹. However, this attitude was not limited to the military aristocracy facing the issue of the near-impossibility to hand over both position and wealth to their free-born sons. Using *waqf* as a channel for wealth transmission was a widely shared social practice among the elites of Mamluk Egypt. From such a perspective, *waqf* deeds could evidence what family looked like in the intents of their founders, the relatives they wished preferably to care for, or the room granted to women, be they their wives or daughters, in the transmission of their wealth.

III. The chosen family: a standard form

If an exhaustive inquiry is still to be made in the endowment deeds preserved in Cairo, it is worth noting that in respect of beneficiaries entitled to the surplus income of the foundations, the same form is more or less found in the ninth/fifteenth century *waqfiyyāt* of the so-called “people of the State” (*ahl al-dawla*), be they civil servants or military officers¹⁰. This common form is not the result of the standardization of notarial deeds, considering that its stipulations are not to be found in any of the 23 models for *waqf* deeds included by al-Asyūṭī in his notarial handbook¹¹. One must rather assume that family values were commonly shared at that time among Mamluk elites of various backgrounds. One knows that a common inclination toward monogamy was also shaping families among the ninth/fifteenth century elites (Rapoport 2013). It would not be surprising to note that the same families shared a common concern for their relatives.

This documentary standard is illustrated below through the stipulations of the *waqf* established in 845/1441 by the Mamluk emir Qarāqujā al-Ḥasanī, *amīr ākhūr kabīr* or Sultan’s great constable (Ibrāhīm ‘Alī 1959)¹²:

.١٧٧ [...] وما فضل بعد ما عين صرفه فيه من ريع الموقوف المذكور
.١٧٨ . المحدود فيه يتناوله المقرّ الأشرف الواقف المشار إليه فيه أعزّ الله تعالى أنصاره لنفسه الكريمة حرّسها

⁹ Ibn Khaldūn, *Ta’rīf*, 279.

¹⁰ See for instance Dār al-wathā’iq doc. 7/47 (Amīn 1981, n° 51), doc. 9/51 (Amīn 1981, n° 55), doc. 10/58 (Amīn 1981, n° 63), doc. 11/66 (Amīn 1981, n° 72), doc. 13/83 (Amīn 1981, n° 88), doc. 17/106 (Amīn 1981, n° 111); Wizārat al-awqāf, doc. 68 jadīd (Amīn 1981, n° 342), doc. 64 jadīd (Amīn 1981, n° 343), doc. 140 jadīd (Amīn 1981, n° 350), doc. 938 qadīm (Amīn 1981, n° 352), doc. 606 jadīd (Amīn 1981, n° 355), doc. 189 jadīd (Amīn 1981, n° 356), doc. 92 qadīm (Amīn 1981, n° 367).

¹¹ Among al-Asyūṭī’s 23 models, only the “*ṣūrat waqf insān ‘alā nafsihi*” shares some wordings, related to degree of kinship, with the above mentioned form: Asyūṭī, *Jawāhir al-‘Uqūd*, 300-302.

¹² Wizārat al-awqāf, doc. 92 qadīm (Amīn 1981, n° 367).

١٧٩. الله تعالى أيام حياته أحياه الله تعالى حياة طيبة من غير مشارك له في ذلك ولا في شيء منه فإذا توفاه الله تعالى
١٨٠. بعد عمر طويل يكون ذلك مصروفاً لأولاده الذكر والأنثى في ذلك سواء لا يفضل ذكر على أنثى ولا أنثى
١٨١. على ذكر ثم من بعدهم لأولادهم كذلك من ولد الظهر ومن ولد البطن ثم لأولاد أولادهم كذلك ثم لأنسألهم
١٨٢. وأعقابهم كذلك طبقة بعد طبقة ونسلاً بعد نسل تحجب الطبقة العليا أبداً منهم الطبقة السفلى الى حين
١٨٣. إنقراضهم يستقل به الواحد منهم أجمعين إذا انفرد ويشترك فيه الإثنان فما فوقهما عند الاجتماع على أنه
١٨٤. من توفي منهم وترك ولداً أو ولد ولد أو أسفل من ذلك من ولد الولد على الحكم والترتيب المشروحين فيه
١٨٥. إنتقل نصيبه من ذلك لولده ثم الى ولد ولده وإن سفل على الحكم والترتيب المشروحين فيه فإن لم يكن
١٨٦. له ولد ولا ولد ولا أسفل من ذلك لا من ولد الظهر ولا من ولد البطن إنتقل نصيبه من ذلك
١٨٧. لأخوته وأخواته المشاركين له في الإستحقاق من أهل هذا الوقف مضافاً الى ما يستحقونه من ذلك
١٨٨. فإن لم يكن له أخوة ولا أخوات فلمن هو من درجته وذوي طبقة من أهل هذا الوقف
١٨٩. فإن لم يكن كذلك فالى أقرب الطبقات إلى المتوفى من أهل هذا الوقف وعلى أنه
١٩٠. من توفي منهم أجمعين قبل دخوله في هذا الوقف وإستحقاقه لشيء من منافعه وترك ولداً أو ولد ولد
١٩١. أو أسفل من ذلك من ولد الولد على الحكم والترتيب المشروحين فيه آل الوقف إلى حال لو كان
١٩٢. المتوفى حياً باقياً لا يستحق ذلك أو شيء منه قام ولده أو ولد ولده وإن سفل مقامه في الإستحقاق
١٩٣. واستحق ما كان أصله يستحقه من ذلك إن كان حياً باقياً يتداولون ذلك بينهم كذلك سلفاً عن خلف
١٩٤. إلى حين إنقراضهم فإذا انقرضوا بأسرهم وأبادهم الموت عن آخرهم ولم يبق منهم أحد
١٩٥. وملت الأرض منهم أجمعين يكون ذلك مصروفاً لعتقاء الواقف المشار إليه فيه من الفحول
١٩٦. والخصي والإناث من سائر الجنوس بالسوية بينهم ثم من بعدهم لأولادهم كذلك ثم من بعدهم لأولاد أولادهم
١٩٧. كذلك ثم لأنسألهم وأعقابهم كذلك على الحكم والترتيب المشروحين في حق أولاد الواقف المشار
١٩٨. إليه فيه وأولادهم وذريتهم ونسلهم وعقبهم يتداولون ذلك بينهم كذلك سلفاً عن خلف إلى حين انقراضهم
١٩٩. فإذا انقرضوا بأسرهم وأبادهم الموت عن آخرهم ولم يبق منهم أحد وملت الأرض منهم أجمعين وتعدّر
٢٠٠. الصرف إلى من عين له الصرف فيه صرف ريع الموقوف فيه الموصوف المحدود بأعاليه للفقراء والمساكين
٢٠١. والأرامل والأيتام والمتصفيين بالفقر والفاقة أهل الحاجة المقيمين بمكة المشرقة ومدينة الطيبة

Translation:

“As for the surplus that comes from the income of the *waqf* assets mentioned and delineated above, after payment of the established expenses, his august Highness the founder mentioned in [this deed] (May Almighty God strengthen his victories!) grants it to his generous person (May Almighty God preserve him!) during his life time (May Almighty God make him living a delightful life!), without any associate for that or for part of that. If Almighty God recalls him in His Mercy after a long time, [the surplus income] will be repaid to his children, boy and girl on equal terms, neither the boy being privileged over the girl nor the girl over the boy; then, after them, in the same way to their children, be they from male or from female descent; then in the same way to the children of their children; then in the same way to their lineages and offspring, age group after age group and lineage after lineage, the higher age group always preceding the lower age group, until the moment they become extinct. The one among them who finds himself alone recovers the whole. The last two of them share it upon meeting. If one of them dies while leaving a child, or a child of child, or heir below that among his descent, according to the rule and order reported in [this deed], his part from [the surplus income] is given to his child, then to the child of his child, or heir below, according to the rule and order reported in [this deed]. If [the deceased] has no

child, nor child of child, nor heir below that, neither from male descent nor from female descent, his part from [the surplus income] is given to his brothers and sisters who share the same rights with him among the people of this *waqf*, in addition to what they are entitled to. If [the deceased] has neither brother nor sister, it is given to the persons who belong to the same degree and age group among the people of this *waqf*. If there is no one, it is given to the age group among the people of this *waqf* which is the closest to the deceased. If one among all of them dies before entering the *waqf* and getting any right to part of its benefits, and leaves a child, or a child of child, or heir below that among his descent according to the rule and order reported in [this deed], the *waqf* goes back to the situation in which the deceased was still alive and had still no right to it or to part of it: hence his child, or the child of his child, or heir below that, takes his place in terms of right and receives what he would have initially been entitled to if he was still alive. They grant it to each other in the same way between themselves, the predecessors before the successors, until they become extinct. If they all become extinct, if death makes them disappear until the very last, if none of them remains and if the earth is deprived of them all, [the surplus income] will be repaid to the freed men of the founder mentioned in [this deed], be they male, castrate, or female of all races, on equal terms among them, then after them, in the same way to their children, then after them in the same way to the children of their children, then in the same way to their lineages and offspring, according to the rule and order reported in regard with the rights of the children of the founder mentioned in [this deed] and of their children, descent, lineages, and offspring. They grant it to each other in the same way among themselves, the predecessors before the successors, until the moment they become extinct. If they all become extinct, if death makes them disappear until the very last, if none of them remains and if the earth is deprived of them all, or if there is an impediment to the payment of what has to be paid to someone, then the income of the foundation's assets, described and delineated above, will be repaid to the poor and the destitute, the widows, the orphans and the weak, known for their poverty and destitution, the people who are in need among the residents of Mecca the Honored and Medina the Perfumed."

The *waqf* deed of Qarāqujā al-Ḥasanī clearly illustrates the standard form that was commonly used by ninth/fifteenth century Cairene elites. If, in several cases, the founder adapted it to his/her own specific family situation, the recurrence of this form in its main disposition is all the more significant with respect to the Islamic law of inheritance. It reveals substantial discrepancies between the legal family as defined by the "science of shares," and the chosen family as highlighted by *waqf* practice.

IV. Chosen family vs. Legal family

The form commonly used by the “people of the State” while dealing with the attribution of the *waqf*’s surplus income to their relatives, obviously ignores several categories of legal heirs: the mother, sister(s), and the wife/wives. The interests of these three categories of female relatives were protected by the law, by granting fractional shares (*farā'id*) of the inheritance. As shown above, the wife/wives of a deceased was/were entitled to one-eighth of his wealth in case the latter left a son, and to one-fourth if he died without male descendant.

Wives seemed to have been the main losers in the transmission of wealth through the *waqf*. One can argue that pious foundations were dealing with these matters at a time subsequent to the death of their founder. Hence, there would have been nothing surprising in the exclusion of the founder’s ascendants and spouses from the sharing of the surplus income from his *waqf*, which would have entirely been intended for his descendants. However, Cairene families faced high mortality rates during the ninth/fifteenth century, leading to frequent instances of widowhood and remarriage. The exclusion of his wife/wives from this channel of transmission may have been a way for the founder to avoid the transfer of part of his wealth to her/their future children and husband. As illustrated above, the granting of fractional shares can easily led to such effects that might have been considered adverse by the family chief. Significantly enough, some founders adjusted the form quoted above to associate their wife/wives with the surplus income of their *waqf* for the latter’s lifetime, excluding the descendants they might later have with another husband. In his *waqf* deed established in 827/1427, the Mamluk emir Taghrī Birdī al-Maḥmūdī stipulated the granting to his wife al-Sayyida Narjis (probably his freed slave) of one-eighth of his foundation’s surplus income after his death, attributing the remaining seven-eighths on equal terms to their two children, Muḥammad and Fāṭima. In this instance, the income that is partially granted to the widow exactly amounts to the fractional share that she would have been legally entitled to in case of inheritance. However, in contradiction to the law, her part would have to be repaid after her death to the sole children she had with the founder, excluding any descendants she may have later with another husband¹³. Such stipulations were also common among military households in late Mamluk Damascus (Winter 2004, 314-315). How unusual it might have been for the reverse not to be excluded. In his *waqf* deed established in 833/1430, the Mamluk emir Asanbughā al-Ṭayyarī stipulated the granting after his death to his wife of half of his foundation’s surplus income: after her own death, her part would have to

¹³ Wizārat al-awqāf, doc. 606 jadīd (Amīn 1981, n° 355). Partial edition in Loiseau 2013/1, Appendix 2.

be divided among all her children, irrespective of whether they were descents of the founder, in accordance with the law of inheritance¹⁴. The fact that Asanbughā's wife, Fāṭima, was a free-born Muslim and not his freed slave, might have played a role in the compliance to the law.

In most cases, however, founders exclusively privileged their own descendants in the sharing of the surplus income from their *waqfs*, at the expenses of their wife/wives and of the children that the latter may have after remarriage. A second discrepancy between legal and chosen family is highlighted by ninth/fifteenth century *waqf* deeds: the explicit equality in the sharing of the *waqf*'s benefits between sons and daughters (“*al-dhakar wa l-anthā fī dhalika sawā*”), and later on between descendants from male offspring (“*walad al-ẓahr*”) and descendants from female offspring (“*walad al-baṭn*”). One must recall that the Islamic law of inheritance granted to the son(s) of the deceased a share worth that of two daughters. This departure from the legal norm is all the more significant in that it was in explicit contradiction with Islamic jurisprudence on the *waqf*. Most jurists, with a notable exception of a few Ḥanafī authors, usually considered that women were excluded from the right holders (*mustahiqqūn*) of foundations established for the benefit of the founder's descendants (“*waqf ‘alā ‘aqbī*”)¹⁵. Moreover, in the three models for a *waqf* deed dealing with the attribution of surplus income, provided by al-Asyūṭī in his handbook, the author explicitly stated that the sharing between the descendants of the founder has to be made “according to the rule of the legal fractional share which grants to the boy the part of two girls” (“*baynahum ‘alā ḥukm al-farīḍa al-shar‘iyya li-l-dhakar mithl ḥaẓẓ al-unthatayn*”)¹⁶. Models for a *waqf* deed were included in various *fatāwā* compilations of the same period, and they recalled the same requirement (Rapoport 2007, 20). In ninth/fifteenth century Cairo, the use of the *waqf* as a channel of wealth transmission alternative to the law of inheritance was in clear contradiction of legal norms pertaining to gender.

Providing a historical explanation for this major discrepancy is challenging. One knows that in a rather different legal and cultural context, that of Mālikī Maghrib in the eighth-ninth/fourteenth-fifteenth centuries, pious foundations were often used to exclude female descent from wealth transmission. In several cases, women were only granted part of the *waqf*'s surplus income after the extinction of the entire male descent of the founder (Powers 1993, 385-386; Powers 2002). The larger room made for women in Mamluk households has already been addressed as a legacy of the Turkish background of the Mamluks (Abd al-Raziq 1973). The

¹⁴ Dār al-Wathā‘iq, doc. 13/83 (Amīn 1981, n° 88).

¹⁵ Asyūṭī, *Jawāhir al-‘Uqūd*, I, 254-255.

¹⁶ Asyūṭī, *Jawāhir al-‘Uqūd*, I, 263, 271, 301.

Mamluks would have imported into Egypt and Syria habits inherited from Eurasian nomadic and semi-nomadic societies where women enjoyed larger autonomy either in private or in public realms. Be that as it may, dealing with wealth transmission, such a cultural explanation does not resist further analysis. As a woman born and raised in the Caucasus mountains, from where her brother, the grand emir Barqūq, made her come to Egypt and convert to Islam, Princess ‘Ā’isha should have retained the habits of her native background. In her *waqf* deed established in 817/1414, however, she stipulated that the surplus income of her foundation would have to be granted to the extent of one-third to her granddaughter Fāṭima and to the extent of two-thirds to her grandson Muḥammad; and after their death, it would have to be repaid to the sole descendants of Muḥammad, in equal terms between boys and girls¹⁷. ‘Ā’isha’s stipulations offered a combination of compliance to, and departure from, the legal norms for inheritance that can be compared to the choices of a civil servant of Syrian background, ‘Abd al-Basīṭ b. Khalīl. In his *waqf* established in 829/1425, the powerful administrator of the army (*nāẓir al-jaysh*) granted the surplus income from his foundation on equal terms between his two sons and unique daughter. If the latter got married, however, the shares of her brothers would be worth double hers; after their death, finally, the surplus would be divided on equal terms among the sole descendants of the founder from male offspring (“*walad al-ẓahr*”)¹⁸. ‘Abd al-Basīṭ b. Khalīl did not belong to the Mamluk aristocracy of a foreign background. However, he obviously shared with the Mamluk princess a close conception of family. Such a convergence of views on wealth transmission might have been explained by the growing number of marriage alliances between civil servants and members of the military aristocracy, and the partial merging of these two *milieus*. The larger room made by the ninth/fifteenth century elites for their female descendants in wealth transmission, through the sharing on equal terms between boys and girls of the *waqf*’s surplus income, might be addressed as a cultural issue, provided that it would not be restricted to the Mamluk foreign aristocracy. The entire Egyptian society witnessed, at that time, a tendency in favor of a greater equality between genders in wealth transmission (Rapoport 2007, 18).

The chosen family of the ninth/fifteenth century *waqf* deeds presents a third discrepancy to the legal norms of inheritance, which can be closely related to the formation and identity of Mamluk households. The freedom enjoyed by the founder in the designation of the right holders (*mustahiqqūn*) of his/her foundation, with the requirement of their legal capacity as a unique

¹⁷ Wizārat al-awqāf, doc. 140 jadīd (Amīn 1981, n° 350).

¹⁸ Wizārat al-awqāf, doc. 189 jadīd (Amīn 1981, n° 356)

restriction, allows him/her to include within the “people of the *waqf*” individuals who did not belong to his/her kin. In the ninth/fifteenth century *waqf* deeds of Cairene elites, founders often stipulated, in case of extinction of their descendants, to grant their freed men and women (‘*utaqā*’) the surplus income of their foundation¹⁹. The same assessment can be made of the late Mamluk Damascene *waqfs* (Winter 2004, 302-306, 309-310). The fact was normalized to the extent that, in the introduction of his notarial handbook, al-Asyūṭī recalls that “the people of the State”, following “the custom (‘*āda*) of the previous kings and sultans”, usually endowed their *waqf* “to the benefit of their descent and of their freedmen, then of the poor and the destitute, the widows, the orphans and the people in need”²⁰. Al-Asyūṭī does not include, however, in any of his models for a *waqf* deed, stipulations related to the freed men and women of the founder. One may assume that such a departure from the legal norms of inheritance prevents him from doing so.

One knows that Islamic ethics exhort masters at a certain point in their lives to free their slaves and give them material support as a pious action. However, besides the case illustrated above of the freed female servants who were married to their master, the collective inclusion of freed men and women among the virtual right holders of the *waqf* says something else about their status in Mamluk households: that of a second family. As women did in some Maghribian family endowments, freed slaves were entitled to the surplus income of the foundation in second position only, in case of the extinction of the founder’s descendants. However, in due time, they were supposed to be involved in the *waqf* of their former master in exactly the same way in which his/her children had been, with respect to gender distribution as well as with rights transmission from one generation to another. One already knows that slave soldiers (*mamlūk*) were often considered and treated by their master as if they were his children; that they were retaining part of his name in their *nisba* as a family name; that since the late eighth/fourteenth century, they were his sole heirs in the realm of power struggles and leadership, considering the near-impossibility for Mamluk emirs to hand over their position to their free-born sons (Loiseau 2014). However, the assimilation of freed slaves as a second family of their former master was not restricted to the specific case of slave soldiers. Besides the issue of power transmission, wealth transmission reveals the extent to which the whole freed men and women

¹⁹ See for instance Dār al-Wathā’iq, doc. 7/47 (Amīn 1981, n° 51), doc. 11/66 (Amīn 1981, n° 72), doc. 13/83 (Amīn 1981, n° 88); Wizārat al-awqāf, doc. 68 jadīd (Amīn 1981, n° 342), doc. 71 jadīd (Amīn 1981, n° 341), doc. 938 qadīm (Amīn 1981, n° 352).

²⁰ Asyūṭī, *Jawāhir al-‘Uqūd*, I, 256.

of the household, regardless of whether they were *mamlūks*, eunuchs, female, or male servants, were virtually assimilated as second heirs of their former master.

Such stipulations did not always remain nominal. The limitation in the number of children, due to the decline of polygamy, added to the disastrous effects of the plague to make the moment when “death makes [the descent] disappear until the very last” occur sooner than expected. The Mamluk emir Qarāqujā al-Ḥasanī and his unique child ‘Alī died from the plague on the same day of the year 853/ 1449 and were buried the day after in the same grave. A few months later, according to the stipulations of his *waqf* deed as quoted above, minutes copied on its back reveals the names of the foundation’s right holders in the absence of any surviving relatives. There were 20 of his freed slaves: 12 *mamlūks*, 3 eunuchs, and 5 female servants, among whom Umm Sayyidī ‘Alī, the mother of his son ‘Alī he freed but did not marry. In the case of Qarāqujā’s *waqf*, only eight years passed between the endowment of the foundation and the entry of the emir’s freed slaves among the beneficiaries of its surplus income (Loiseau 2013/2).

V. Conclusion

The place of women in Mamluk society has to be reevaluated in terms of holding and transmission of wealth. The ninth/fifteenth century was a time of high mortality rates due to the regular occurrences of plague, resulting in the early deaths of children, frequent widowhood, and remarriage. In such a context, the Islamic law of inheritance proved to be particularly protective for the female relatives of a male deceased, through the granting of fractional shares (*farā'id*) of his inheritance to his mother, spouse(s), daughters, sisters, and half-sisters. At the same time, *waqf* endowments were almost systematically used by elite members, be they men or women, to hand over part of their wealth to private beneficiaries that they freely designated. The analysis of the stipulations (*shurūṭ*) by which the founders decided on the allocation of the surplus income expected from their *waqf*, reveals how close their choices and strategies were in dealing with the transmission of their wealth.

The same standard form was used extensively to this end in endowment deeds, with very few variations besides its adaptation to the personal family situation of the founder. This form does not result from the standardization of notarial deeds as evidenced by al-Asyūṭī’s handbook, in which nothing comparable can be found, but rather from a convergence of views on family and wealth transmission in the milieu of the “people of the State” (*ahl al-dawla*). While dealing with the allocation of surplus income expected from pious foundations, endowment deeds showed several discrepancies in their adherence to the legal norms on inheritance, suggesting

that the *waqf* was extensively used to correct or to avoid some of the effects of the Islamic law of inheritance.

The use of *waqf* as an alternative, albeit legal, channel of transmission raised several issues in the context of the place of women in wealth holding. Male founders tried almost systematically to avoid the transfer of a part of their wealth, if not to their wife/wives, at least to the children and descendants that their wife/wives might have after their death through remarriage. Almost all founders, both men and women, showed concern for their descendants; they did not favor sons over daughters or descendants from their male offspring over the descendants from female offspring. Such equality between the genders in wealth transmission, that is, boys and girls being considered on equal terms, was a strong departure from the legal norms of inheritance, considering that the law granted to the son of the deceased a share worth that of two daughters. The same gender equality was applied to the freed slaves of the founder, be they eunuchs, or male or female servants, while becoming right holders of his/her *waqf* after the extinction of his/her descendants.

The bulk of legal documents from the ninth/fifteenth century preserved in Cairo do not only evidence endowments established by male founders. The *waqf* endowed in 817/1414 by ‘Ā’isha, the sister of the late Sultan al-Zāhir Barqūq, illustrates the place of women in wealth holding and transmission²¹. Its assets consisted of a cistern (*ṣahrīj*) adjacent to the fountain (*sabīl*) of Barqūq’s *madrasa* in Cairo, in half of the agricultural lands of the village of Maṭariyya in the northern district of Cairo, and in seven stores located outside the Gate of the Conquests (Bāb al-futūḥ) in the northern part of the city. The income expected from lands and stores would have to support the functioning costs of the cistern, the salaries of its servants and of the *waqf*’s employees, along with a monthly payment to four of her freed men, a eunuch, and three female servants, the sum being equally divided among them. The surplus income of the *waqf* would have to be repaid to her two grandchildren, the share of her grandson being worth double that of her granddaughter, in compliance with legal norms regarding inheritance, and later on, to their children, both boys and girls on equal terms. Finally, ‘Ā’isha stipulated that the administration of her *waqf* would have to be attributed to herself during her lifetime, together to her grandson and granddaughter after her death, and later on to the “most upright” (*al-arshad*) among their descendants. Regardless of whether they were asset owners, *waqf* founders, right holders, or administrators, women played all roles in dealing with the holding and transmission of wealth in Mamluk society.

²¹ Wizārat al-awqāf, doc. 140 jadīd (Amīn 1981, n° 350).

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