PIOUS ENDOWMENTS: LAND AND WOMEN IN LATE OTTOMAN EGYPT: READING THE GRAND MUFTĪ'S OPINIONS FROM 1848–1849

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This essay is a micro-analysis of legal opinions (*fatwā*, pl. *fatāwā*) in 19th-century Egypt, drawing on my research in preparation for a larger project about Egyptian legal-administrative history and, more specifically, land administration. The legal opinions I present here are answers to questions concerning pious endowments (*waqf,* pl. *awqāf*), usually connected to endowed real estate.

Studies about the legal transformation of land administration in modern Egypt are still scarce. The Egyptian security services limit access to 19th-century and even earlier court records, land survey registers, chancellery documents, and administrative orders. Here, I focus on a small number of legal opinions in a limited period from a printed source; as such, the results are not generalisable. Yet they are indicative of problems and questions about endowments and land for further study.

I read the endowment section in the *fatwā*-collection of Muḥammad al-ʿAbbāsī al-Mahdī (1827–1897), the Grand Muftī of Egypt (the Ḥanafī muftī of Cairo) between 1848 and 1897.[1] The Būlāq press finished publishing seven volumes of his selected legal opinions in 1887. The section on endowments (*Kitāb al-waqf*) takes up almost four hundred pages in the second volume (al-ʿAbbāsī, *al-Fatāwā* II, 443–836). The arrangement is chronological, with the cases dated according to when the Grand Muftī issued his opinion.

In this article, I report on my reading of opinions related to pious endowments during the first fourteen months of al-ʿAbbāsī al-Mahdī's tenure. These are ninety-two cases in this period, which includes the last two months of the year of 1264 (October–November 1848) and all of 1265 AH (December 1848–October 1849) (al-ʿAbbāsī, *al-Fatāwā* II, 443–474).

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[1] See Mubārak, *Ḫiṭaṭ* XVII, 12–13; Delanoue 1982: I, 168–180; Peters 1994; Hilāl 2015: III, 1391–1434.

This period was an extremely complex moment in the history of Egypt. The Ottoman governor Muḥammad ʿAlī, or Mehmed Ali in Turkish (r. 1805–1848, d. 1849), became senile and unfit to rule in 1848. The Ottoman sultan appointed Muḥammad ʿAlī's oldest son Ibrāhīm (r. 1848–1849), but his other sons and grandsons actively conspired against Ibrāhīm, who soon died. Next, the imperial government attempted to return Egypt to the empire as a directly controlled province, which resulted in a tense political and legal struggle (Toledano 1989; Mestyan 2017). This period was also a sensitive one in the history of pious endowments. Muḥammad ʿAlī had prohibited the creation of new private (*ahlī*) endowments in 1846, and Ibrāhīm maintained this prohibition. But when Ibrāhīm died, his successor ʿAbbās Ḥilmī (r. 1849–1854) immediately rescinded the prohibition. The opinions given in 1848–1849 thus have the potential to provide insight into whether Muḥammad ʿAlī's legendary intervention in endowments actually affected the daily work of jurists and how they implemented the principles of *fiqh* ('jurisprudence').

The opinions of the Grand Muftī might reflect the work of his entire office. The year 1265 AH was the first full year of al-ʿAbbāsī al-Mahdī's tenure as the Grand Muftī in the province of Egypt. He was only twenty-one when he was appointed in the first half of Ḏū al-Qaʿda 1264 (October 1848). His father was also a Ḥanafī muftī and a rich merchant, associated with Ibrāhīm Pasha, but there might be other reasons, such as support from Istanbul, why Ibrāhīm appointed this young man (Delanoue 1982: I, 168). In addition, Ḫalīl ar-Rašīdī, the latter's professor at al-Azhar, was appointed as his executive representative (*amīn*), which was the cause for some jokes among the *ʿulamāʾ* (Mubārak, *Ḫiṭaṭ* XVII, 12; Hilāl 2015: III, 1395). We cannot exclude the possibility that al-Rašīdī guided the young Grand Muftī in the early years of his tenure. The appointment and the extremely long tenure of al-ʿAbbāsī al-Mahdī also meant that a Ḥanafī jurist presided over the legal landscape of the Egyptian province for practically the whole 19th century. This is significant for the history of endowments as Ḥanafī laws on endowments are relatively flexible. In any case, we may understand the institution of the Grand Muftī itself, the highest office of legal interpretation in Egypt, as a type of Ḥanafī collective.

One must also highlight the fact that legal opinions cannot serve as sources for legal history in themselves, as we cannot be sure that the courts and the government actually implemented these opinions. In addition, it is very possible that Muḥammad ʿAlī increased the importance of the Muftī of Cairo's office as a local legal counterweight to the office of Qāḍī Miṣr, the judge appointed and sent from the imperial capital. Still, the Grand Muftī's legal opinions can serve as sources for social history, especially in the case of endowments, because the questions preserve many details about the endower, the assets, the regulatory environment at the time of the endowment act, and the afterlife of the endowment.

My main interest here is whether there were endowments of agricultural land (*ṭīn*, pl. *aṭyān*; in legal terms *arḍ zirāʿa*) before the mid-19th century in Egypt, and if so, how many. My assumption is that endowments of agricultural land, especially by

ordinary individuals, were very rare before the mid-19th century. This is because only things held in absolute ownership (*milk*, *milkiyya*) could be endowed in Ḥanafī law, but from the 16th century in Ottoman Ḥanafī legal theory peasants had no primordial rights to arable land in Egypt (Johansen 1988: 89–92). I am primarily interested, indirectly through the endowments, in agricultural land tenure in the 19th century.

Second, I am interested in women's positions in relation to endowments. The scholarly discussion about *waqf* emphasises the importance of women, and the role of endowment in designing a family's future in Egypt and the Levantine provinces (Tucker 1985; Doumani 2017). In the case of 19th-century Egypt, the future-design function of the *waqf* is important as well because of slave manumission (*ʿitq*). Freed female slaves, usually from ruling class households, created a significant number of endowments (mostly of urban property) up to the early 20th century, and made themselves the trustee (*nāẓira*). I translate *nāẓir/a* as 'trustee' and not as 'administrator,' as it is usually translated, since administrator (*mutawallī*) could actually be a different position. In al-ʿAbbāsī al-Mahdī's opinions, the gender of the endower usually remains hidden, but the trustee's gender is often given. Tucker (1985: 95–96) used these and other opinions to highlight the legal role of women. Her random sample of "Cairo court cases" of endowments between 1801 and 1860 found 180 cases of female trustees (Tucker 1985: 220, n136). The trustee is legally responsible for the endowment, for ensuring that the endower's will is executed, and that those who have right to income from the endowment actually receive that income. The *nāẓir/a* changes over time, of course. A male endower may stipulate himself as the trustee during his lifetime, but designate his daughter as the trustee after his death, and subsequently her children as trustees, according to male seniority; in this way, one could find a *nāẓir-nāẓira-nāẓir* sequence across the three generations. The gender of the trustee thus may not tell us much about the stability of female social positions.

Let me immediately provide the answers to the above two enquiries. Among the ninety-two cases during late 1848 and 1849, sixty-five questions provide the type of asset and among these there are only six endowments whose assets contain agricultural land explicitly. The gender of the trustee is known only in fifty-seven cases and thirteen of these are female. In short, less than ten percent of the known assets are agricultural land and less than a quarter of known trustees are female.

It is important to elaborate briefly on the non-generalisable nature of this data and analysis. First, to repeat, the section dedicated to endowments (*Kitāb al-waqf*) provides only ninety-two opinions during the years of 1848 and 1849 (al-ʿAbbāsī, *al-Fatāwā* II, 444–474). There is no information available regarding whether these comprise *all* the endowment-related opinions in this period or only a selection thereof. (My feeling is that these represent the totality of cases.) Second, the asset of the endowment and the trustee's gender are not known in many cases. This is because the Grand Muftī published the court cases in a very abstract form (or perhaps this is how the questions reached him), stripping the cases of the names, addresses, and any

possible identification marks. Rarely do opinions contain full names. The Grand Muftī did not care about the type of asset in the endowment unless this was the subject of the legal problem. He did not investigate the facts of the case (Peters 1994: 78); the muftī is only a legal interpreter and has no authority in jurisdiction. His focus, as a professional jurist, was the abstract legal question. Hence, the assets and the trustees are not identified unless the question explicitly refers to them. Finally, the language describing the endowed asset is often ambiguous. For instance, there are twelve cases that mention *arḍ* (land), without any further qualification, among the endowments' assets. These are most likely land plots for construction, but we cannot exclude the possibility that some were agricultural land. The following description describes even more problems of reading *fatāwā* for social data.

The questions addressed to the Grand Muftī provide a window onto the Ottoman administration during the reign of Muḥammad ʿAlī and his sons. Institutions such as the governor's bureau (*Dīwān-i Khidīwi*), the *Ḍarbḫāna* (the mint office) and the *Rūznāma* (the tax administration office) appear from time to time. The Rūznāma (also appearing as Rūznāmacı/Rūznāmağī in administrative documents) is especially important for my purposes. It appears that this office was originally the registration office of the provincial treasury (hence the Ottoman expression *rūz-nāma*, the 'day-book,' 'journal'; and *rūz-nāma-cı*, the scribe in charge of the daily register of income and expenditure) in 16th-century Egypt. However, from the early 17th century the office started to function as the main fiscal administrative unit of real estate taxation and general registry. For instance, upon the order of the governor, the Rūznāma issued the certificates of *iltizām* (tax-farming) and preserved the records of the many types of agricultural lands. During the reign of Muḥammad ʿAlī, we can translate Rūznāma into English as the 'Land Administration Office' because it connected the 1814 land survey with the taxation registers (Deny 1930: 131; 187-213; 519-548; Shaw 1962: 338-348; ʿUmar 1983: 21, 221; Mestyan forthcoming).

In addition to the above themes (land and women), the legal opinions provide a window into important socio-legal problems. In the Appendix, I provide translations of three opinions as samples. The first one is a typical case about a rural saint's mausoleum. Here the legal problem is that some want to handle it according to the rules of *waqf* although there was no endowment. The second is a case when the endower's stipulation about the mature responsibility (*aršadiyya*) of the trustee is more important than age (the rules of inheritance). Finally, I translated a typical case of manumitted slaves who worry about their shares from the endowment that their former owner established for their benefit.

To summarise my reading, I have created an analytical table indicating the dates of the opinions, the type of asset in the endowments, and the trustee's gender (Table 1). I have added notes about the cases, for instance, whether there is reference to manumission (*ʿitq*), including claims by descendants of manumitted slaves.

Table 1. The endowment cases submitted to al-ʿAbbāsī al-Mahdī and opinions issued during 1264 and 1265 AH (al-ʿAbbāsī, *al-Fatāwā* II, 443–474).

Date of legal opinion (AH)	**Gender of trustee**	**Type of asset(s)**	**Notes**
18 Ḏū l-Qaʿda 1264			
24 Ḏū l-Qaʿda 1264	male	a fountain, a large land basin (*ḥawḍ*), well, trees	
23 Ḏū l-Qaʿda 1264	male	land (*arḍ*), trees, date palms	
2 Ḏū l-Ḥiǧǧa 1264			Muftī's opinion: the rules of endowment do not apply to a saint's tomb.
2 Ḏū l-Ḥiǧǧa 1264	male		
25 Ḏū l-Ḥiǧǧa 1264		real estate	
30 Ḏū l-Ḥiǧǧa 1264	female to female	a building	
20 Muḥarram 1265		three mansions	
27 Muḥarram 1265		a mansion	
28 Muḥarram 1265			
5 Ṣafar 1265	male	a building	manumitted slaves
9 Ṣafar 1265	male	agricultural land (*ṭīn*)	endowment for the jobs (*waẓāʾif*) related to Sayyid Badawī mosque
11 Ṣafar 1265	male	shops	
11 Ṣafar 1265	male		
12 Ṣafar 1265	male to female		Muftī's opinon: female descendent is the trustee
27 Rabīʿ Ṯānī 1265	male	land (*arḍ*)	exchange as lease (*ḥikr*) is not valid
30 Rabīʿ Ṯānī 1265			problem: two opposing legal opinions
1 Ǧumādā al-Ūlā 1265	male		endowment for jobs related to a mosque

1 Ǧumādā l-Ūlā 1265	male		Muftī’s opinion: manumission (*ʿitq*) is not accepted without written proof
1 Ǧumādā l-Ūlā 1265	male	[place, building]	manumitted slaves have the right to *waqf*
2 Ǧumādā l-Ūlā 1265	female	place, building	Explicitly mentioned family endowment (*waqf ahlī*)
2 Ǧumādā l-Ūlā 1265			
3 Ǧumādā l-Ūlā 1265			
? Ǧumādā l-Ūlā 1265	male	real estate	problem: government (*ḥākim as-siyāsa*) confiscat-ed part of family endowment (*waqf ahlī*), what to do with the rest
9 Ǧumādā l-Ūlā 1265	male	building	renovation expenses
3 Ǧumādā t̠-T̠āniya 1265	female	[real estates]	three mosques
5 Ǧumādā t̠-T̠āniya 1265	male	storehouse	
6 Ǧumādā t̠-T̠āniya 1265	female	buildings	
7 Ǧumādā t̠-T̠āniya 1265			mansion and graves are not endowment
8 Ǧumādā t̠-T̠āniya 1265	male	[land]	
9 Ǧumādā t̠-T̠āniya 1265	female	*rizqa* (endowed small piece of agricultural land)	
10 Ǧumādā t̠-T̠āniya 1265	males	mansion	Muftī’s opinion: rent of endowed asset for a long period is prohibited
11 Ǧumādā t̠-T̠āniya 1265	male	a building made of dried bricks	problem: asset in Fayyūm is not productive

11 Ǧumādā al-Ṯāniya 1265	female	a place, a built structure, land (*arḍ*)	problem: asset in Dumyāṭ not productive
12 Ǧumādā al-Ṯāniya 1265			
12 Ǧumādā ṯ-Ṯāniya 1265	male	shops	
12 Ǧumādā ṯ-Ṯāniya 1265	male	mansion	Muftī's opinion: if endowed house is destroyed the trustee may rent the land out for new construction
13 Ǧumādā ṯ-Ṯāniya 1265		mansions, date palm trees, trees, fishing ponds, land (*arḍ*)	origin of land: private ownership
16 Ǧumādā ṯ-Ṯāniya 1265	male		missing trustee
18 Ǧumādā ṯ-Ṯāniya 1265	male	places, a building, land (*arḍ*)	
19 Ǧumādā ṯ-Ṯāniya 1265	female	a building	
26 Ǧumādā ṯ-Ṯāniya 1265			manumitted slaves
26 Ǧumādā ṯ-Ṯāniya 1265	several trustees	a place	land?
5 Raǧab 1265		*arḍ rizqa* (endowed small piece of agricultural land)	
5 Raǧab 1265		mansion	
14 Raǧab 1265	male	a place [built-up land]	problem: construction
16 Raǧab 1265	female	[buildings]	family endowment (*waqf ahlī*), sultanic letter (*berat*) quoted
21 Raǧab 1265	several trustees	an oil press	
21 Raǧab 1265			mosque

21 Rağab 1265	Female endower/ male trustee	real estate	Problem of generations, once governor (*ḥākim*) destroyed mosque
25 Rağab 1265		mansion	
27 Rağab 1265	several trustees	storehouse	
29 Rağab 1265			
29 Rağab 1265	male	land (*arḍ*)	problem: rent
5 Šaʿbān 1265	male	shop	
9 Šaʿbān 1265	male	a store and other things	
11 Šaʿbān 1265			salary of a mosque's position is paid by the Rūznāma from the proceeds of an endowment
16 Šaʿbān 1265	male		the governor (*walī al-amr*) ordered the destruction of endowed asset
24 Šaʿbān 1265	male	places, building	places destroyed and sold
27 Šaʿbān 1265			manumitted slaves
15 Ramaḍān 1265	female	stores, built-up land	the governor's bureau (*Dīwān*) destroyed the endowed asset, manumitted slaves
19 Ramaḍān 1265			manumitted slaves
19 Ramaḍān 1265		a building	
21 Ramaḍān 1265	male		asset in Alexandria, oral testimony is not accepted in case of rights
22 Ramaḍān 1265		land (*qitʿat arḍ*), drinking water (? *šurb māʾ*)	endowment in oases
9 Šawwāl 1265		agricultural land (*arḍ zirāʿa*)	

21 Šawwāl 1265		*arḍ rizqa* (endowed small piece of agricultural land)	
23 Šawwāl 1265	Female endower/ female trustee	a mill	
3 Ḏū l-Qaʿda 1265	male		
3 Ḏū l-Qaʿda 1265	male	land (*arḍ*)	construction on the land
6 Ḏū l-Qaʿda 1265	male	place	
6 Ḏū l-Qaʿda 1265	several trustees	real estate	
6 Ḏū l-Qaʿda 1265	female		
6 Ḏū l-Qaʿda 1265	male	land (*arḍ*)	
13 Ḏū l-Qaʿda 1265			110-year-old, mentally confused endower
14 Ḏū l-Qaʿda 1265	male	storehouse	
15 Ḏū l-Qaʿda 1265		three houses	data from a list
21 Ḏū l-Qaʿda 1265	male	real estate	
22 Ḏū l-Qaʿda 1265	male	places	*waqf ahlī*
23 Ḏū l-Qaʿda 1265	male	agricultural land (*arḍ zirāʿa*)	
25 Ḏū l-Qaʿda 1265	male		trustee acts illegally
26 Ḏū l-Qaʿda 1265	male		heritable position in mosque maintained by endowemnt
26 Ḏū l-Qaʿda 1265		a garden	
26 Ḏū l-Qaʿda 1265		a built-up place	
1 Ḏū l-Ḥiğğa 1265	female		
3 Ḏū l-Ḥiğğa 1265		mosque (?)	Ḍābiṭḫāna
7 Ḏū l-Ḥiğğa 1265	several trustees	water wheels, land (*arḍ*)	
7 Ḏū l-Ḥiğğa 1265	male	land (*arḍ*)	problem: rent
18 Ḏū l-Ḥiğğa 1265	male	land (*arḍ*)	trees are private property
18 Ḏū l-Ḥiğğa 1265	male	garden, fountain	the governor (*ḥākim al-siyāsa*) appointed the *nāẓir*

30 Ḏū l-Ḥiǧǧa 1265	male	garden, trees	some trees are private property, some are endowed
30 Ḏū l-Ḥiǧǧa 1265		mansion	endowment certificate dated 1166 AH

There are only six cases of endowed agricultural land without doubt. Three questions mention agricultural land as part of the assets (one question alludes to *qiṭʿat ṭīn zirāʿa*; and two times *arḍ zirāʿa*). Next, in three cases the endowed asset is *rizqa*. We know that *rizqa* (*iḥbāsiyya*) was an old, pre-Ottoman pseudo-endowment category, usually a small amount of agricultural land for the maintenance of a family mosque and mausoleum in a village (Michel 1996). Importantly, *rizqa* land could be endowed in legally valid (*ṣaḥīḥ*) endowments. There are examples of endowing *rizqa* in the 17th century (Badr-Crecelius 1998). This means that Ḥanafī jurists handled *rizqa* similarly to the category of *milk*, since only things held in absolute ownership could be endowed. Muḥammad ʿAlī abolished the category of *rizqa iḥbāsiyya*, but the word *rizqa* continues to appear in legal documents throughout the first half of the 19th century. As late as 1869, there is a case in which an endower refers to *rizqa iḥbāsiyya* land in her endowment (Mestyan forthcoming). Adding the three *rizqa* assets to the three *arḍ zirāʿa* cases, there were only six endowments out of the sixty-five known ones, within the total of ninety-two, which certainly contained agricultural land.

Yet, there might have been more agriculture-related land in endowments. First, there are the fourteen endowments that mention *arḍ* among their assets, and we cannot exclude that some of these refer to agricultural land. Second, there are endowments of trees, palm trees, and gardens. These do not refer to cash-crop-related arable land (*aṭyān*), but to types of horticulture (gardening). Finally, I can assume in some cases that the endowment contained agricultural land, but there is no solid evidence. It is thus entirely possible that there are more cases of endowed agricultural land even within this sample, though likely not significantly more. This would mean that no more than ten percent of the total cases contains agricultural land.

As to the trustee question, there are thirteen female *nāẓira* mentioned among the fifty-seven cases where the gender of the trustee is known. Thus, less than the fourth of the known cases were governed by female trustees. While this ratio cannot be generalised, it does confirm the presence of Muslim women in powerful economic positions in the 19th century (Tucker 1985: 95–96). It is useful to note that, in some cases, the muftī explicitly affirms that females can be trustees. For instance, the question to which the answer is dated 12 Ṣafar 1265 AH (al-ʿAbbāsī, *al-Fatāwā* II, 448) is about a case in which all descendants, who had right to trusteeship, died except a girl. The question is whether she can be the *nāẓira*. The very posing of this question implicitly suggests the denial of this right from females. In his answer, the Grand

Muftī makes it clear that only law can decide this case: females have right to trusteeship if the legal evidence establishes such a right. A similar case is the opinion dated 9 Ǧumādā t̲-T̲āniya 1265 AH (al-ʿAbbāsī, *al-Fatāwā* II, 455), when a group challenges the right of a female trustee. The muftī makes it clear again that if her trusteeship is valid according to the conditions of the endower, then this group cannot challenge her without legal justification. However, in another case, 2 Ǧumādā al-Ūlā 1265 AH (al-ʿAbbāsī, *al-Fatāwā* II, 451), when the question is whether two girls have rights to the income of an endowment or only the boys in an older generation, the Grand Muftī establishes that the endower did not make any stipulation in this regard, and thus the boys have right to the income. One must note that this last case has nothing to do with gender but with the Ḥanafī laws of inheritance, which stipulate that the older generation of descendants has the right of inheritance over the younger one.

In addition to the above two issues, my reading provides the following simple observations. A very significant majority of endowments in the court cases in late 1848–1849 in front of the Grand Muftī involved built structures. The cases mention many endowed houses, shops, storehouses, or simply *makān* ('place', likely a built structure). In general, based on my readings of endowment certificates in *Wizārat al-Awqāf* (Ministry of Endowments) in Egypt and in other collections, I can only conclude at this point that this result confirms the pattern that endowments in Egypt before the 1850s were mostly made of built structures in cities and villages.

Constructed buildings lead to a recurring problem in the cases. This is the situation when a renter built a house or a shop on endowed built-up land or *within* an endowed building, in agreement with the trustee. Most often, this was a lease of endowed land for construction (*ḥikr*). This situation led to all kinds of complications since the agreement usually specified that the built structure became the absolute property (*milk*) of the renter. For instance, the renter dies—answer: the building can be inherited according to the laws of property inheritance; or the *nāẓir* wants to sell the renter's building—answer: if the renter pays the rent to the endowment, the *nāẓir* cannot touch the built property (29 Raǧab 1265; al-ʿAbbāsī, *al-Fatāwā* II, 463).

I also learned in my reading that the muftī's fundamental principle in his opinions is that "the condition of the endower is like the text of the legislator" (*šarṭ al-wāqif ka-naṣṣ aš-šāriʿ*). The Grand Muftī repeats this *fiqh* principle again and again in the opinions, which also means that in all those cases, the questions contradicted the original will of the endower. Another often repeated principle is that "the endowment is not property and cannot be handled according to property rights" (*tamlīk*). This repetition indicates that people often wanted to handle the endowed asset according to property laws (for instance, selling it), which, of course, contradicted not only the endower's conditions but also the very idea of the Muslim pious endowment.

Importantly, the provincial government appears in some cases. For instance, the administrative authority (*ḥākim al-siyāsa* or *walī al-amr*) took part of an endowment

in order to straighten or widen a street, or destroyed a mosque for which an endowment was made (opinion dated 21 Rağab 1265 AH). The laws, however, to which the Grand Muftī referred were purely *šarīʿa* laws and not administrative ordinances. In one opinion (1 Ǧumādā al-Ūlā 1265 AH), he upheld that the right of deposing a *nāẓir* belongs to the highest legal authority and not to the administrative government (*wilāyat iqāmat an-nuẓẓār li-qāḍī l-quḍāt*). Some cases indicate the continued Ottoman sovereignty in Egypt, or at least the continuity of 18th-century practices. For instance, in one case, 16 Rağab 1265 AH (al-ʿAbbāsī, *al-Fatāwā* II, 460), a sultanic letter (*berat*) proves the right to trusteeship. This might have been an endowment belonging to one member of the Ottoman-Egyptian elite (especially since this case is about a *nāẓira*) because typically female members of this elite could have access to the imperial centre in the early 19th century. In some other cases, there is mention of old local Ottoman administrative offices such as the Rūznāma and the Ḍābiṭḫāna. There are also indications that some endowments have existed for hundreds of years. In the opinion dated 30 Ḏū l-Ḥiğğa 1265 AH, we learn the year of the endowment certificate: 1166/1752–1753. Finally, some cases mention jobs in mosques and shrines (*waẓāʾif*) as financed by *waqf* and as heritable/for sale, which is again the continuity of a much earlier practice (Cuno 1999, 138-9).

A last remark: during a workshop (2–4 May 2019, Institut français d'archéologie orientale, Cairo), Ghislaine Alleaume shared with me that she never encountered the category of *waqf ahlī* in the Alexandria *šarīʿa* court records of the 18th century. Yet, four questions addressed to al-ʿAbbāsī al-Mahdī use this category during late 1848 and 1849, and in many later cases. It needs further work to understand the appearance of this category in judicial texts.

In sum, my reading so far has affirmed my assumption that endowments with agricultural land were very rare in the early 19th century. It also reveals that there were many women in trusteeship positions. Although 1848–1849 is a very challenging period in the history of the province of Egypt, the legal opinions concerning endowments appear to be in harmony with earlier Ottoman practices. The doctrine of Islamic land and endowment law, too, shows continuities: the Grand Muftī often cites Ḥanafī legal compendiums from earlier centuries (for instance, answer dated 21 Rağab 1265 mentions the opinion of Abū Naṣr ibn Sallām, a work by Ibn ʿĀbidīn, a study by al-Šurunbulālī etc). The perhaps banal conclusion must be that, at the end of Muḥammad ʿAlī's life, the highest legal interpretation in Egypt was still fully based on *sharīʿa* principles, at least concerning endowments. Among the cases discussed here, there is no reference to the governor's ban on *waqf ahlī* (theoretically in place during these years). The governors tried to centralise the administration of endowments, but did not destabilise the legal architecture. Theoretically, the *ʿulamāʾ* were still in full control of the legal domain of the endowments. The regulations of the government do not appear to constrain their jurisdiction. This situation, however, would soon change.

REFERENCES

A. Primary sources

Mubārak, *Ḫiṭaṭ* = ʿAlī Mubārak, *al-Ḫiṭaṭ at-Tawfīqiyya al-ǧadīda li-Miṣr al-Qāhira wa-mudunihā wa-bilādihā al-qadīma wa-š-šahīra*. 20 vols. Būlāq: al-Maṭbaʿa al-Kubrā al-Amīriyya, 1306 [1888–89].

al-ʿAbbāsī, *al-Fatāwā* = Muḥammad al-ʿAbbāsī al-Mahdī, *al-Fatāwā al-Mahdiyya fī al-waqāʾiʿ al-Miṣriyya*. 6 vols. [Cairo]: al-Maṭbaʿa al-Azhariyya al-Miṣriyya, 1301 [1883–84].

B. Secondary sources

ʿAbd al-ʿAziz Badr, Hamza and Daniel Crecelius. 1998. "The Waqf of the Zawiyya of the Emir ʿIsa Agha Çerkis: A Circassian Legacy in XVIIth Century Jirje". *Annales Islamologiques* 32. 239–247.

Cuno, Kenneth M. 1999. "Ideology and Juridical Discourse in Ottoman Egypt: The Uses of the Concept of Irṣād". *Islamic Law and Society* 6/2. 136–163.

Delanoue, Gilbert. 1982. *Moralistes et politiques musulmans dans l'Égypte du XIXe siècle (1798–1882)*. 2 vols. Cairo: Institut français d'archéologie orientale.

Deny, Jean. 1930. *Sommaire des archives Turques du Caire*. Cairo: Imprimerie de l'Institut français d'archéologie orientale du Caire, pour La Société royale de géographie d'Égypte.

Doumani, Beshara B. 2017. *Family Life in the Ottoman Mediterranean: A Social History*. Cambridge: Cambridge University Press.

Hilāl, ʿImād Aḥmad. 2015. *al-Iftāʾ al-Miṣrī: Min aṣ-ṣaḥābī ʿUqba ibn ʿĀmir ilā ad-duktūr ʿAlī Ǧumʿa*. Vol. III. Cairo: Maṭbaʿat Dār al-Kutub wa-l-Wathāʾiq al-Qawmiyya.

Johansen, Baber. 1988. *The Islamic Law on Land Tax and Rent: The Peasants' Loss of Property Rights as Interpreted in the Hanafite Legal Literature of the Mamluk and Ottoman Periods*. London: Croom Helm.

Mestyan, Adam. 2017. *Arab Patriotism: The Ideology and Culture of Power in Late Ottoman Egypt*. Princeton, NJ: Princeton University Press.

——. Forthcoming. "Seeing Like a Khedivate: Taxing Endowed Agricultural Land, the Proofs of Ownership, and the Land Administration in Egypt, 1869". *Journal of the Economic and Social History of the Orient*, accepted, forthcoming.

Michel, Nicolas. 1996. "Les *rizaq iḥbāsiyya*, terres agricoles en mainmorte dans l'Egypte mamelouke et ottomane: Etude sur les *Dafātir al-Aḥbās* ottomans". *Annales Islamologiques* 30. 105–198.

Peters, Rudolph. 1994. "Muḥammad al-ʿAbbāsī al-Mahdī (d. 1897), Grand Muftī of Egypt, and his *al-Fatāwā al-Mahdiyya*". *Islamic Law and Society* 1/1. 66–82.

Shaw, Stanford J. 1962. *The Financial and Administrative Organization and Development of Ottoman Egypt, 1517-1798*. Princeton, N.J.: Princeton University Press.
Toledano, Ehud R. 1989. *State and Society in Mid-Nineteenth-Century Egypt*. Cambridge: Cambridge University Press.
Tucker, Judith E. 1985. *Women in Nineteenth-Century Egypt*. Cambridge: Cambridge University Press.
ʿUmar, Inṣāf ʿUmar Muḥammad. 1983. "Dār al-Maḥfūẓāt al-ʿUmūmiyya bi-l-Qalʿa – Našaʾatuhā – Tanẓīmuhā – Idāratuhā – wa-Dawruhā fi-Ḫidmat al-Aršīf al-Ǧārī". Unpublished PhD thesis, Kulliyat al-Adab, Cairo University.

APPENDIX

Three Legal Opinions from al-ʿAbbāsī, *al-Fatāwā* II, 443–474.
2 Ḏū l-Ḥiǧǧa 1264 [30 October 1848], p. 445.

(A question was posed) concerning a group of descendants of a saint (*walī*) who has a mausoleum in a village. All of them mutually agreed to clean it and do similar services. He has no mosque and there are no endowments for this mausoleum. This is merely a tomb of this saint. Everyone in the service of this tomb [has been working] according to conventions and custom agreed upon a long time ago. The one who is in charge of these matters in the mausoleum also agreed to this. But one descendant went to a judge who appointed him to the trusteeship (*niẓāra*) of the tomb. Isn't it the case that the appointment by the judge is invalid because it contradicts what has been mutually understood for a long time and the assurance given by the one who is in charge of these matters?

(He answered): The judge has no authority to appoint one descendant as trustee of his ancestor's tomb because it is neither a mosque nor an endowment, which would make the trustee's appointment legally valid. God Almighty knows best.

21 Rağab 1265 [12 June 1849], p. 462.

(A question was posed) concerning a woman who built a mosque and endowed a piece of real estate for its benefit. She stipulated that after her descendants, her two brothers have the right to the trusteeship; and after them, their most mature and responsible son; and after them, their most mature and responsible son, and so on and so forth.

However, the mosque became ruined in the lifetime of the two brothers' sons. The office deputy informed the judge about this situation. Thus, the judge ordered the sons of the above-mentioned two brothers and the son of the son of one brother of the endower to appear in front of him. He investigated their circumstances. He

found that the most mature and responsible among them was the son of the son of the [endower's] brother, based on the witnessing from a lot of people whose witnessing was acceptable, excluding the sons of the two brothers. Therefore, the judge appointed him to be the trustee of the mosque and of what belongs to it. The sons of the two brothers claimed that they have more right to the trusteeship than him because they are higher in the descendant generations than the son of the son of the brother. But since the judge had ascertained that the son of the son of the [endower's] brother was the most mature and responsible, he prohibited that they oppose him. The judge wrote a certificate about this for him, and installed him as the trustee. So, he took over all rights to the endowment. He repaired what was defunct [in the mosque], and he took care of the rituals as it is due, according to the revealed law, for a long period. However, the ruler destroyed the above-mentioned mosque when the road was straightened. The trustee nonetheless rebuilt it in an even better shape than it had been first, and took care of its rituals.

Next, the sons of the two brothers died without heirs, except one. This person sued the above-mentioned trustee that he has more right to the endowment because he is older than him. The defendant objected that he [the plaintiff] is not a responsible person because he behaved in a way that proves that he is not responsible. And this is that he [the plaintiff] gained authority over a mansion, which belonged to another endowment and used it for his living quarters despite the fact that he had no right to live in it according its endower's stipulation. What is more, it became ruined by his dwelling in it and he left the building.

The question is, if it is proven that his stay was against the stipulation of the endower and that the ruination of the mansion was due to his living there and leaving it, whether this rules out his claim to mature responsibility because he acted unlawfully according to the revealed law, so he has no right to the above mentioned trusteeship. Also, the question is whether, if the defendant is more knowledgeable in the matters of the endowment, what also gives him priority over the other, then, in this manner, there should be no consideration whether the plaintiff is older. This is because both of them are from the descendants of the above mentioned two brothers, and the plaintiff's mature responsibility was not established, and the present administrator is more mature and responsible by the witnessing of true evidence.

(He answered): If, at the time of its establishment, the stipulation of the endowment was that the trusteeship should belong to the most mature and responsible son and after him to the most mature and responsible son among the sons of the endower's two brothers, their descendants and their progeny, without a preferred order [among generations], and the judge confirmed that the most mature and responsible person was the son of the son of the brother, as opposed to anyone for whom the trusteeship was stipulated (after affirming his claim, against the contending party), [then] the trusteeship and the right of speaking about the matters of the endowment belongs to him, and opposing him in this matter is not possible for whoever belongs to an older generation reasoning only on the basis of age. It is because the measure

of his [the contender's] mature responsibility was not decided based only on time against the measure of responsibility of the one whom the judge appointed.

Even in the case if the one whom the judge appointed does not belong now to those whom the endower stipulated for the trusteeship (and the judge appointed the son of the son of the brother as the trustee in lieu of an appropriate trustee from among those who fall under the scope of the stipulation), his appointment is still valid and no other [member of] the family has the right to challenge him. But if it is not so, then not. God Almighty knows best.

19 Ramaḍān 1265 [8 August 1849], p. 465-466.

(A question was posed) concerning an endower who created his endowment for the benefit of his manumitted slaves and the manumitted slaves of his manumitted slaves, one after the other, as it is mentioned in the endowment's certificate. [The problem] is that there are some manumitted slaves whom the endower freed and made the merit of manumission for his deceased daughter, and wrote the manumission letter in her name and ended it wishing the merits for her. It was, however, established in the legal document [issued by a court] that the endower was the one who freed the above-mentioned slaves, who are now entering in their rights to the proceeds of the endowment. [The question is] whether it is not harmful that the manumission letter was written in the name of the daughter although it is established that the endower was the owner of the mentioned manumitted slaves at the time when he freed them.

(He answered): The proceeds of the endowment are to be paid to the manumitted slaves; to all of those whom the endower freed, while he was alive, from among the slaves he owned when the manumission occurred. The proceeds should be distributed among them according to the stipulation. The writing of the manumission letter in the name of the daughter does not invalidate this, based on what was mentioned. God Almighty knows best.