

## **Sustainability & Urban Management in Old Muslim Cities: The Role of Pious Foundations**

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**Abstract.** Urban management in traditional Islamic cities relied largely on endowment foundations voluntarily financed by the people. Known as "Habūs" in North Africa and "Waqf" in the Middle East, Habūs covered most municipal services and public utilities through a sustainable and autonomous financial system that depended on incomes from the assets of these foundations. In addition, it performed a significant socio-economic role with regard to the needy. This paper examines the concept of Habūs in traditional Islamic cities and offers a historical analysis of the impact of these foundations on the quality of the traditional built environment in Algiers during the Ottoman period. The study is based largely on Ottoman court records and public registers, *Sijillāt al bāylik*, that are available in the Centre des Archives Nationales d'Alger, in Algiers.

### **Introduction**

Habūs, known in oriental Islamic cities as *waqf*, is a pious endowment in which a property is generally held in perpetuity with the usufruct devoted to a charitable purpose [1]<sup>(1)</sup>. A property donated for the sake of divine reward becomes in legal terms the property of God<sup>(2)</sup>, and its profit is expended according to the donor's clauses. In practice, jurists of different schools of Islamic law diverge on whether the proprietorship of the thing made Habūs remains with the founder and fictitiously so after his death or to be passed to the governors' hands [1; 2, p. 382].

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(1) According to Maliki scholars, perpetuity is not a condition for the validity of the endowment. A property could for example be endowed for a period of time after which it returns back to the endower or to his successors.

(2) According to some scholars, the proprietorship of the thing made Habūs remains with the founder and fictitiously so after his death.

Fundamental texts and early traditions show that habūs had originated and had existed from the earliest times of Islam. An important number of legal texts and early traditions, which consists of 5 prophet's sayings narrated in 17 ways in the main sources of *Sunna* (prophets traditions) outlines initial practices of habūs [3].

Jurists subdivide endowments into two main categories; the first is that donated to the donor's relatives and offspring and that is known as *Habūs Dhurrī* or *Ahlī*, whereas the second is that devoted to the Muslim community and is referred to as *Habūs Khayrī*. Our focus in this paper is on the second type of Habūs as the family endowment has been covered in recent studies [2, 4, 5]. The aim is to analyze the impact of the community Habūs on the urban development and management of the traditional Muslim cities in the light of sustainability issues and the contemporary municipal organizational structures. The hypothesis of the study is that the habūs system developed as a symbiosis between the Islamic law *sharia*, and the daily practices and various customs in the Islamic world. The variety of its foundations and its continuous growth over centuries, covering most aspects of urban development and community services and utilities demonstrate its efficiency as a legal and an administrative system.

The paper intends to contribute to the literature on waqf [6] in two ways. It presents the endowment movement over a relatively long period of time and supports the findings with statistics and quantitative analysis, and focuses on Algiers city on which such studies are scarce. The paper is based on the examination of courts records and public registers; *Sijillāt al-bāylik*, that are available in the *Centre des Archives Nationales d'Alger*, in Algiers (CANA). Courts records amounts to 20,000 pieces and registers to 520 in total, filed in 47 boxes, containing 84,000 sheets. They are copied on microfilms and are mostly in good conditions<sup>(3)</sup>. Findings of the research are presented in tables and are shown along with the analysis. They are also supported by a second hand documentation on other cities such as Beirut, Cairo, Meknes and Tangiers [7-15].

### Endowments Procedure and Documentation

The administrative procedure of Habūs constitution, involved the registration of the endowed properties in courts in classified document deeds (in North Africa, *Rasm al-tahbīs*, elsewhere, *waqfiyya*). During the last century of the Ottoman empire and due to the increasing number of Habūs properties, special registers called *Sijillāt al-Mahākim al Shariyya* or simply *Sijillāt al-Baylik* were created to list down endowed properties according to their foundations. Each asset was listed according to its nature (a house, a shop), its location, its endower, its manager (*Wakīl*), its holder, and the rent or type of contract by which it was held. As these registers were basically used for the control of

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(3) They were brought back from the Centre des Archives d'Outre Mer, Aix-en-Provence, France, where they were classified during the colonial period, under the category "Serie Z". Documents used here are courts records and public registers that are codified in CANA with two numbers; the first indicating the box in which it is classified, and the second is that of the piece or register [17].

the assets and the collection of annual incomes, they were up-dated periodically and were duplicated for safety reasons. According to [16, pp. 33-37], the Ottoman empire by the end of the 18th century attempted to centralize its administrative system in order to improve control on Habūs foundations. In fact, in the last half of the 19<sup>th</sup> century, the administrative reforms with regard to waqfs led to the creation of a ministry for waqfs. This has been the case in Turkey and al-Shām; the closer provinces to Turkey which comprised of Palestine, Lebanon, Syria and Jordan. In the case of Algiers, early registers go back to AH1150/AD1730 and thus, seem to have been established in order to ease rent collection and accounting rather than to reinforce the state power [6]. This was also the case of Constantine (East of Algeria) where Salāh Bey or the local ruler ordered his officers (in AH1192/AD1778) to launch a comprehensive survey on the Habūs properties as a recourse against mismanagement and degradation. Four copies of the enlisting records have been made and submitted successively to the treasurer, the head of municipality, and the two judges of the Mālikī and Hanafī courts [17].

Duplication of registers is sometimes made in response to the cohabitation of the schools of law. Besides the Hanafī school that was adopted by the Ottoman administration, other schools were also present in cities that were ruled by the Ottoman empire. In Damascus for instance, Hanafī, Shāfi`ī and Hanbalī courts cohabited [4, pp. 55-63]. In the case of Algiers and most of the North African cities, the Mālikī school predominated since the early time of Islam. However, by the advent of Ottomans, the Hanafī rite was not only introduced to the region, but predominated the local administration. A legal board (*Majlis Ilmī*) that comprised the members of the two courts (*Mahkama Mālikiya*, *Mahkama hanafiya*) was established in order to bridge the rivalry between the two schools.

The role of the legal board concerning endowments could be summed up into a few tasks which were mainly; the supervision of the annual incomes and their distribution according to the donors' clauses, the examination of transactions related to Habūs properties (e.g. rent, exchange), and the nomination of the trustees, called *Nāzir*, *Wakīl* (pl. *Nuzzār*, *Wukalā'*) to manage Habūs properties.

A comparison between different documents and registers of the pious foundations shows some difference in the organization of data and the number of columns. However, it enables us to grasp the mechanisms of their administration. But in most cases the following information was available:

**1. The name of the foundation:** In most cases lists of properties are gathered into categories according to the beneficiaries. Foundations from one city to another varied significantly in nature and size depending on contextual conditions of each region in the empire. In other words, each city would have its own list of foundations. However, a few foundations such as that of the Great Mosque and the two Holy Cities were present in all cities; an issue that will be highlighted furthermore in the sections below.

**2. The nature of the property:** Regardless of the legal divergence between jurists regarding the legality of movables and cash waqf, endowed properties were real estates among which were commercial and residential buildings [18, p. 1096; 19, p. 7]. For example, foundations in Meknes, the Moroccan city during the reign of King Ismail (1672-1727) comprised 33 houses, 495 shops, in addition to some other industrial premises such as public baths, warehouses, mills, oil presses, looms, stables, stores and bakeries [10, pp. 335-374]. Similarly, Beirut (up to 1843) comprised 200 shops and 56 houses, in addition to a few shares in other properties of similar nature and other various commercial and industrial premises [12, pp. 41-120]. In some cases, public buildings such as mosques and schools comprised their own endowed shops within the same building complex as it was in Sulaymānia mosque in Istanbul, and `Alī Bitshīn mosque in Algiers (Fig. 1). The size of the properties depended on the shares owned by the donors and therefore the endowed assets could be as small as shares of inheritors that are defined in the Islamic succession law, such as 1/8, 1/6, 1/3, 2/3, 1/2 and 3/4 of a property. The documents provided lists of these fractions from houses, flats, stores, shops, orchards, and ovens [17] (B 26/ R195 (AH 1146/AD 1733), B24/ R186 (AH 1221/AD 1806), B26/R192 (AH 1077AH/AD 1667).

**3. Types of contracts:** Endowed properties that had commercial and industrial values were rented for an annual bail that was paid to the foundation. The agreement generally lasted up to three years after which it could be renewed. According to [6, pp. 100-103], perpetual and long term leases (for more than three years) were introduced as a means to deal with collapsed assets and as an incentive to the tenant to pay special attention to the endowed assets. Other types of agreements were introduced during the long history of Habūs in order to tackle the problem of collapsing properties and insufficiency of funds for maintenance of buildings.

**4. The management staff:** Habūs foundations were headed by trustees; *Wakīl(s)* and/or *Nāzir(s)*, who were appointed, but also dismissed, by legal authorities among pious and noble persons of the city. In addition to the collection of revenues and their distribution according to the founders' clauses, *Wakīls* were in charge for the maintenance and repair of Habūs properties including carpeting and lighting of religious buildings. Such works were then listed and were annually submitted to the legal authorities for supervision and checking. However, important decisions such as reconstruction and lease were presented to the judge. Depending on the size of the foundation in terms of endowed properties, the post of *Wakīl* was consequently regarded as one of the important ones in the municipal hierarchy [6, pp. 31-40; 20].

Documentation on waqf therefore offers a wealth of information on different aspects of Islamic cities and is thus increasingly becoming a prime source to urban studies during the Ottoman period dealing with most aspects of urbanism such as economy, society, finance, law, politics, urban development and urban history [21, pp. 474-495].

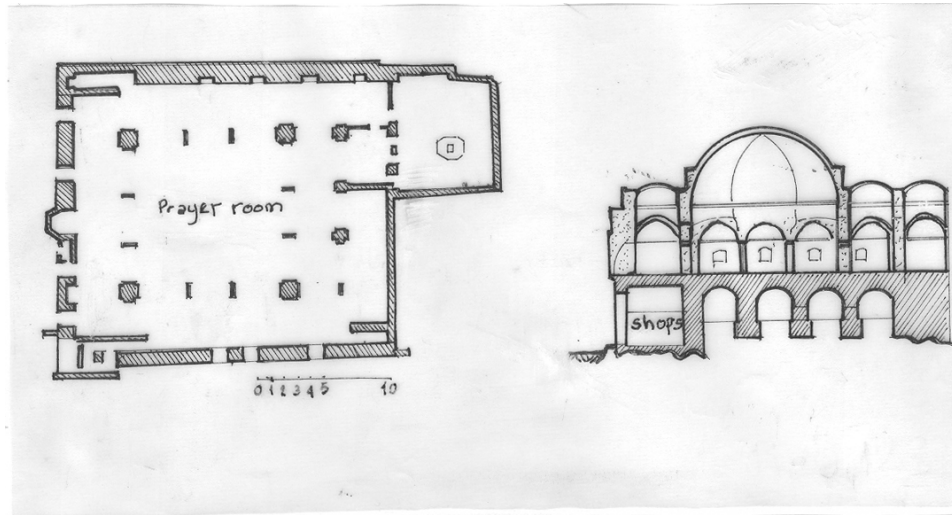


Fig. 1(a, b & c). Ali Bitchin mosque in Algiers (plan of the prayer room, a cross section and a view from Bab el-Qued street, the minaret had been partially demolished by the French army in 1860). Source: a & b from George Marçais *L'Architecture Musulmana de l'Occident*, Paris 1954.

### Algiers as a Case Study

Endowments relied primarily on personal intention and religious convictions of individuals. Hence, the number of the endowed properties and their assignment could not be regulated or planned, or even directed by public authorities. However, their diversity and ever-increasing size necessitated the intervention of the state for their organization and management.

Two types of endowment foundations have been noted, one being the largest, and generating revenues while the other depending on revenue and having been created to look after community needs and provide special services. However, both relied on real estates and often intertwined as they sometimes shared the assets.

#### Revenue-generating foundations

The *Haramayn* foundation comprising endowments made to the two holy cities, Mecca and Madina, is the most important one. It was present in Istanbul, the capital of the empire and in other cities of the empire such as Cairo and Damascus, and reflected the strong religious recommendations on pilgrimage *Hajj*. It reflects the attachment of Muslim societies to these cities as well as the devotion of the empire to this religious primacy. Accordingly, the project of the railway linking the Syrian region to the two holy cities turned into an important endowment foundation in the Middle East by the end of the last century [11, p. 33; 16, p. 20]. In Algiers, the foundation of Mecca and Madina had been the largest foundation in the city with 1,558 assets that represented over 40% of the total endowments in the city in 1837; i.e. by the end of the Ottoman period, and the early days of the French colonization. It owned 840 houses, 258 shops, 33 stores, 82 rooms (in warehouses), three public baths, 11 bakeries, 4 cafes, 1 funduq (warehouse and hotel), 57 gardens (of fruit trees), 62 farms, six windmills and 201 '*anā*'<sup>(4)</sup> [22, p. 470]. Figure 2 shows the diversity and ever increasing trend of its main assets between 1669 and 1774.

The pious foundation of the Great Mosque is another example that was increasingly growing owing to its multidisciplinary role in the city and its religious status. Being a congregational place for Friday prayer, it also accommodated various other activities in relation to higher education, jurisdiction, and legislation [23, pp. 10-15]. Figure 3 gives an overview on the evolution and the size of this foundation.

#### Municipal foundations

Despite the prohibition of orthodox Islamic teachings, most Islamic cities (if not all) accommodated, during the Ottoman period, mausoleums, *zāwiyā*, which were built in the memory of pious persons. According to Saidouni (1990), there were about 18 mausoleums in Algiers each of which had its own foundation. Some of these sanctuaries

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(4) When an endowed asset collapsed its land is rented for an investor who paid an annual rent in counterpart of redeveloping the plot. The rights in the assets were therefore divided between the Habus institution and the leaseholder (see [6, p. 104]).



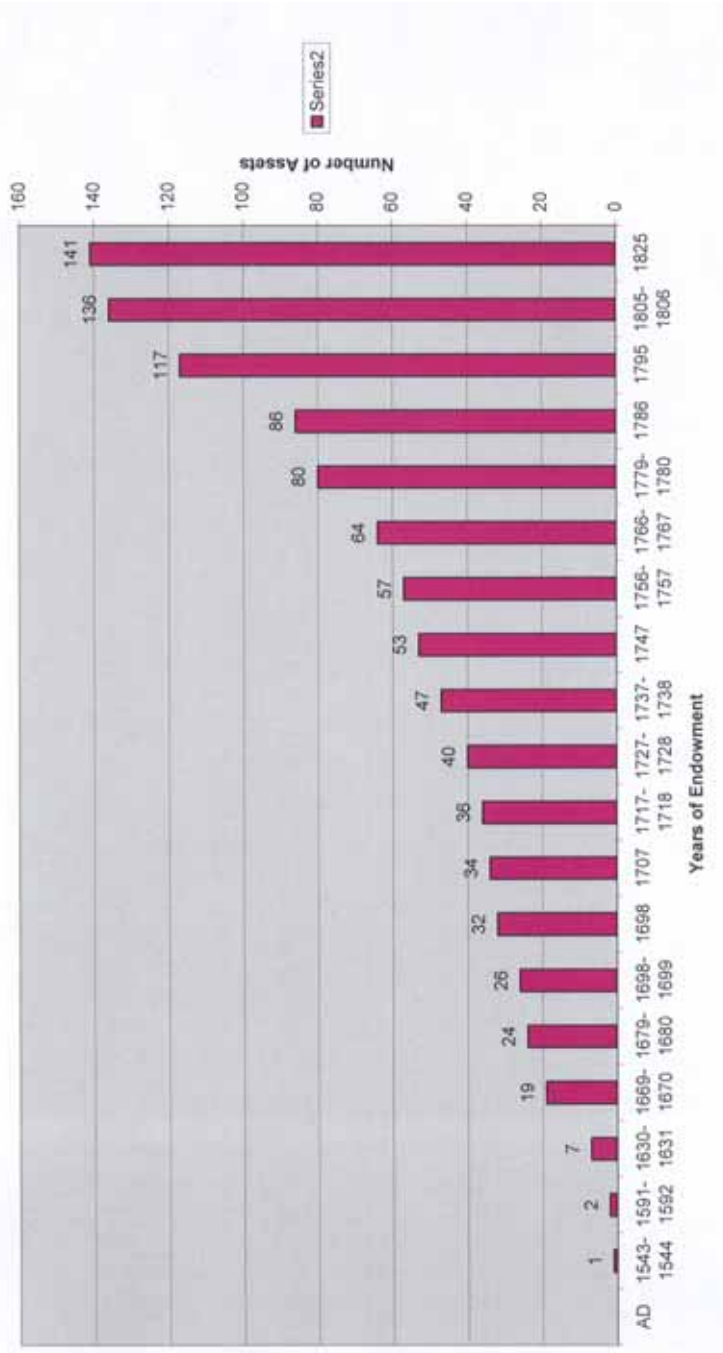


Fig. 3. Growth of the Grand Mosque's endowments assets, Algiers (1543-1825).  
Source: Based on public registers - Ottoman archives, CANA Algiers.



were inside the city, among which he is famous and still present Athaā`libi sanctuary. Most of the others were outside the city-wall [24, pp. 176-177]. Beirut comprised 15 *zāwiyā(s)*, among which was *zāwiyat al-awzā`ī*, the oldest one established in AD 774 (Hallaq H., pp. 61-71).

Apart from the mystical status of these sanctuaries that were believed to have a divine power and to be a source of *Baraka*; blessing and mercy, the role of these foundations was essentially educational and social. Most of them comprised Quranic schools and dormitories for students who attended courses for years. They were also meeting points to adepts of different Sūfī sects, mystic groups, and warehouses for passengers whose fees and other expenses were entirely covered by the incomes of the endowed properties. For example, Sīdī ‘Ammār al-Tensī pious foundation in Algiers owned nine houses, 14 shops, two stores, three bakeries, two gardens (fruit trees) and a farm [25, p. 173].

In other cases, endowments foundations were founded as a conjugation of religious recommendations with social and historical circumstances. The Andalusian community foundation, for example, was established in Algiers in response to the massive migration of Muslims from Spain during the *Reconquesta*, in order to accommodate refugees and provide them with first aid. In 1830, i.e. three centuries after the tragedy, the foundation seems to be still alive as it had a total of 96 properties among which 56 were houses in addition to an educational complex that was established in 1623. Also, the Hanafi Foundation called *Subul al-Khayrāt*, and the Janissaries<sup>(5)</sup> foundation had originated along with the arrival of the Turkish community in the Maghrib and was founded to cope with the socio-cultural needs of its members who were a minority in the city.

Some other Habūs foundations were founded simply to fulfil local and community needs such as providing water, feeding and sheltering poor men, paving streets, building schools, mosques and hospitals which were also highly recommended by religion. In Algiers for example, two foundations were created to assist with municipal services of the city; the foundation of fountains, also called *Sabīl*, and that of streets <sup>(6)</sup>. Literally, *Sabīl* is a street or a path, but popularly, it means providing water for a thirsty passenger. Although, they were stated in the Turkish administrative document called *Tachrifat* as important public foundations [26], there is no mention of these two foundations in the consulted registers. In Meknes, the same foundation called *Siqāyāt*, provided potable water to mosques and residential quarters [10, Vol. 1, pp. 369-370]. This was also the tradition in Istanbul, the capital of the Ottomans, in which a permanent organization for water supply called *su-yolculari*, had been created to supervise and carry out the repair work for fountains, canals and aqueducts. The same system was, later on extended to all

(5) The name given to the regular infantry created by the Ottomans in the XIV<sup>th</sup> century which became their principal force and rendered possible the vast conquests made in this and following centuries. And the corps of the janissaries was called Odjak [18, Vol. IV, pp. 572-574].

(6) There is no mention of these two foundations in the public registers of Algiers. However, they are stated in the Turkish administrative document called *Tachrifat* translated to French [6].

big cities of the empire [27, pp. 10-12]. Many such pious foundations for municipal services could be cited. In Beirut there was an office located close to the Great Mosque of Beirut called a "basket of bread" from which food used to be distributed to poor men on Friday that had 45 assets of which 40 collapsed and became Hikr<sup>(7)</sup> by the end of the Ottoman period [11, pp. 84-87]. Meknes had endowments for the city-wall and prisons in Meknes; the latter having 7 shops [8, p. 216; 10, p. 371]. Within the city wall of Istanbul building complexes were annexed to district mosques, each comprising a library, a hospital, an hospice, a convent for dervishes and a bath for ablution [27, p. 11].

#### **Habūs system and urban management**

As can be concluded from the diversity of the pious foundations, Habūs covered a myriad of municipal services (health, education, social welfare) and utilities (potable water, traffic system, defense) in old cities. In other words, most infrastructure (streets, canals, aqueducts) and public facilities (mosques, schools, hospitals, cemeteries, public baths) relied in their municipal management on Habūs funds.

Besides providing urban societies with services, Habūs also played a crucial role in the physical development of cities. Most landmarks and historical buildings that were initially erected by rulers, notables and high officers, owe their survival nowadays to the Habūs system. In Algiers, most mosques such as the Grand Mosque, al-Jāmi' al-Jadīd (Fig. 4), `Alī Bitshīn, Safīr, some of which are named after their founders, were habūs buildings and had simultaneously endowed assets for their maintenance. Some of Habūs had a form of building complexes combining religious, social and economic facilities such as qaysariyyas and khāns, markets, schools, hospitals and thus created urban nodes in the city that marked its physical structure.

On the financial level, the availability of funds for these foundations and their autonomy in expenditure should have eased the tasks of the local authorities and public treasury in providing the basic services. It would also have solved the problem of undersupply in basic services and inequality in their distribution. One could then rather talk about oversupply of public goods than scarcity in old cities [19, p. 3]. On describing the municipal tasks of the French administration in 1830; immediately after colonization, stated that: "the French authorities, just like the Ottoman local governor, had no worry about the expenses of religious buildings and other public charges as they were entirely covered by the foundations' funds" [28, p. 173].

On the economic level, the Habūs system would have enabled the urban societies to achieve a certain distribution of wealth and incomes and to decrease socio-economic disparities. Wealthy people, including governors and high officers, were continuously incited to donate their properties for public welfare and participate directly in the management of the city [29, pp. 140-148]. The conveyance, be it based on religious convictions or worldly motives, would also have saved municipal authorities from

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(7) It is a term that is used in Egypt and other Eastern countries and is similar to 'anā'. See the notes above.



**Fig. 4. The Jāmī al Jadīd Mosque still standing and dominating the old Algiers. Source: The National Library, Algiers.**

multiple administrative procedures of taxation, resources planning, bureaucracy and over-staffing.

Habūs had also a deep impact on the urban economy of cities and their regions. Foundations were in control of a great variety of commercial, industrial and agricultural undertakings. Endowed assets were generators of capitals both through leases and economic vocations that insured financial fluidity in the local markets [29, p. 171]. They thus occupied a strategic position within the economic networks. Being religious foundations they also injected moral and social values in the market economy of the middle age of the traditional Islamic cities; a factor that must have smoothened the forms of exploitation and distribution of wealth.

On the political level, pious foundations played a medium role between the central authorities and the urban societies and became a principal party in the municipal structure. Although they were incorporated into the mechanisms of the state and thus used in a way to insure its stability and perpetuation as seen by Leewen [29, p. 89], it cornered some power from central authorities and allotted it to citizens, jurists and other social organizations. In other words, Habūs enabled citizens of different social and



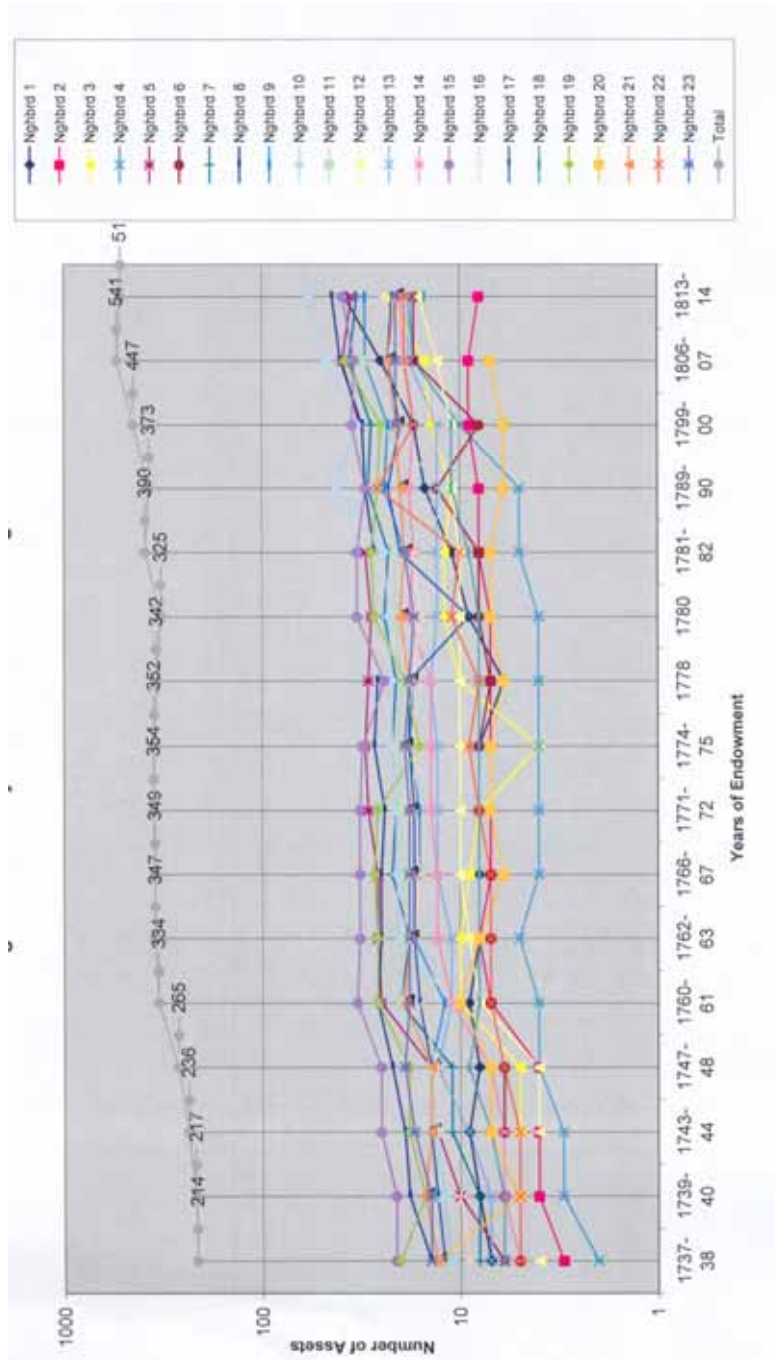


Fig. 5. Haramayn endowments per neighborhood.

At a higher level, Habūs foundations would have contributed in promoting political freedom in the Muslim cities. Imams, jurists and some notables depended in their incomes and payments on revenues of Habūs rather than the public treasury. Although the high positions in the Habūs institutions were occupied by nomination, ‘Ulamā (jurists, judges and lawyers) used Habūs mechanisms to consolidate their position within the existing power structures [29, pp. 130-139]. Being a source of autonomy and a financial support for political opposition, Habūs would therefore have embarrassed oppressive rulers and authorities over history and often led to its abolishing or suffocating. In fact, Algiers during the first days of colonial administration witnessed many rebellions and revolts led by jurists and Imams that led to the confiscation of endowed properties [23, p. 10]. On describing this action, Houtsma [18, p. 100] states that: “France was the first to tackle the problem of Habūs in Algiers (...) in not a very skilful fashion”. Another evidence would be the present state of waqf foundations in Palestine in facing Israeli colonial authorities [16].

Socially speaking, pious foundations could be regarded as an instrument of a comprehensive social welfare policy. On describing waqf in Damascus, Leeuwen [29, p. 208] states that: "there was probably hardly anyone whose life was not at one stage or another shaped by waqf system, either in the form of schools or mosques, or in the form of commercial locales, or in the form of bathhouses, coffeeshouses and other social meeting places, or in the form of allowances, financial support and provisions". Endowment shrunk the gap between the rich and the poor as it insured permanent incomes for the deprived persons and thus strengthened the community cohesion in the cities. In Algiers, among people who benefited from perpetual leases of the Holy cities endowed assets, 53.6 % were laymen including women, jews and craftsmen [6, p. 134].

The Andalusian foundation could be taken as an example of this welfare policy at the community level. On comparing the limited number of properties with the successive masses of migrants from Andalusia during the two centuries of the *reconquista*<sup>(8)</sup>, it could be deduced that the foundation insured a transitional reception, by providing shelter and jobs, for the refugees and thus, contributing in their economic and social insertion in the empire lands [30; 31; 32, pp. 166-184]. Being a mid-way between Habūs Ahlī and Khairī, this foundation also shows the complementary sides of this social welfare policy that tackled the problem of poverty and deprivation.

Finally, the Habūs had also a deep impact on the development of Islamic law; *Sharia*, in both its institutional and legal aspects during the Ottoman empire and Islamic civilization. Cities witnessed a continuous evolution in Habūs practices, the size of foundations and diversity in the types of the concerned urban actors. Habūs system was thus a result of the continuous interaction between the theoretical framework of Islamic law and daily needs. The analysis of the Habūs history shows that most legal opinions of

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(8) A Spanish word that is used by historians to characterize the Christian defeat of the Moors (Muslims of Spain) 9th-15th centuries, and their expulsion from Spain.

jurists and administrative measures came out due to some historical circumstances and social events that related to Habūs. Islamic law, *sharia*, that shaped cities should therefore not be understood simply as a package of legal texts issued from fundamental sources; *Quran* and *Sunna*, but rather as part of the dynamic urban history that is best explained by the Habūs evolution [29, pp. 33-66].

### **Habūs impacts: Critiques and counter-critiques**

Among the implications of the legal meaning of Habūs, endowed properties were physically devoted in perpetuity to a determined use and/or usufruct conforming to the donor's clauses. Endowed buildings were therefore permanent components within the urban dynamic space, which was continuously changing due to transactions, agreements among neighbors, and assiduous physical transformations. Endowed buildings, consequently, became landmarks in the old cities that lasted for decades and often for centuries.

However, pious foundations, during the late period of Ottoman empire, mainly in the second half of the 19<sup>th</sup> century, were faced with some deficiencies that rose with the increase in the number of collapsed and decaying buildings and a shrinkage of funds for maintenance and repair. For example, in Beirut (1843) 279 endowed properties of different foundations were *Hikr* against only 225 standing properties [11, pp. 41-120]. Tangier (1714-1894) would also have comprised a number of vacant pieces of land that resulted from collapsed endowments. Some of them were exchanged against houses in remote residential areas regardless of the differential in economic potential. For example, in 1797, a letter was sent by the governor to the manager of Habūs ordering him to facilitate the exchange of an endowment property to the American consul to build his house in compliance with his desire and choice [8, p. 44]. Regardless of the number of such deviations, legal mechanisms, such as *hikr/'anā'*, *Istibdal*<sup>(9)</sup> and *Jelsa* contracts had been developed to tackle the problem of disintegration and to revitalize collapsed buildings [33, pp. 55-72].

Perhaps the most serious criticism of the Habūs system in this regard, relates to the accusations of mismanagement, endemic corruption and neglect that were behind degradation and malfunctioning in the built environment [21, p. 480; 34, pp. 23-25]. On describing some cases mostly related to present Saudi Arabia, Akbar for instance states that: "properties accumulated without proper management, allowing corruption at all levels". He adds, on explaining the reason, that: "since repairs were not made, buildings fell into decay".

Historically speaking, the vast legislation literature and archival documentation that accumulated over centuries denote that Habūs had been a well established social practice in all Islamic cities and attracted scholars' interests in the various schools of law. Apart from some reservations from Abū Hanīfa (died in 767A.D.) on the theoretical foundation

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(9) Known in Algiers as *Mua'wadha* is an exchange transaction that consists of receiving an asset in counterpart of an endowed one based on legal reasons (see [33]).

of waqf concept, there is no objecting opinions or even reservations from scholars of law for constituting waqf. Social, economic and legal reasons were therefore shown to have been at the root of the proliferation of Habūs foundations [21, p. 480].

In practice, an overview of public registers at succeeding periods allows us to observe the continuous growth of the pious foundations through the ever-increasing number of endowed properties over the three centuries of the Ottoman period as seen in Fig. 2.

Regarding bankruptcy and lack of funds for repair, this state was also not common. The Turkish community's pious foundation, *subul al khayrāt*, in Algiers during the French invasion (1830) could be considered in this respect. Due to the departure of the Turkish administration, the foundation would have been the weakest one among other foundations. However, on describing its financial balance five years after the capture of the city by the French army, Devoulx [22] stated that the total income of the foundation was 16,000 ff and the outgo for repair and other expenses was 14,583 ff. This excess of 1,417 ff shows that the foundation was financially healthy despite the demolition and confiscation of an important number of its properties.

In practice, both Hanafī and Mālikī scholars agreed, and stipulated that priority should be given to the maintenance and repair of endowed buildings on other expenses as these were sources of income *Usūl*, and that was the case of the two Holy cities foundation in Algiers [6, pp. 137-141]. This could be best explained through the incomes of the Haramayn foundation. This foundation would have created a parasitic situation in Algiers and in other Islamic cities, as an important part of the foundation's revenues were sent abroad. Yet, the takings were not sent until all the repairs and maintenance required for the whole foundation's properties had been carried out. In other words, an important share of the foundation's income was devoted to maintenance and repairs. Only the remainder, that was towards the end of the Ottoman rule estimated to be 10,800 ff, was then sent to the two holy cities. Legal Act; [17], 116-(16) for the year 1143/1723; for instance elucidates the forwarding of the Haramayn foundation to the two holy cities. This seems also to be the tradition in other Islamic cities until 1926, where the Islamic Congress of Mecca solicited governments to collect and send revenues of the Haramayn foundations [18, p. 1102]. On the whole, the priority given to the repair and maintenance of the foundations assets that reached 1,558 out of 8,000 total houses of the city, would therefore have had its positive impact on the physical environment of the cities [31, p. 42; 35].

Concerning corruption, such a claim in the absence of detailed financial studies on records for a long time span is hard to prove although separate cases might be detected [29, p. 137]. But in general terms, *Wakīls* were legally nominated by the judge basically for their good reputation. Devoulx [25] stated for example, that the nomination depended in most cases on the "social rumor". Conversely, this post could be lost at any time due to the neglect of duty, corruption or unjustified expenditure concerning incomes and



maintenance of the building [18, pp. 6-7; 25, p. 371]. The community was often involved in keeping an eye on the managers of public foundations in order to prevent them from neglecting their duties or embezzling public funds [6, p. 481]. Besides, the administration of the main foundations was insured by a board of many members. Haramayn for instance, had a board of four members; two from retired Turkish officers that had a good reputation, *al-aghawāt al-akhiyār*, and two from the local population, referred to as *al-wukalā` al-`abrār*. Hoexter [6, p. 36] mentions in this regards that: "whenever a new member was appointed to the board, a document was drawn up in which the whole extent of money in the foundation's treasury were listed in detail; the newly appointed member or members then ceremoniously assumed responsibility for that money, in the presence of the other members of the board." She added that: "Even a minor decision concerning the day-to-day running of the assets were taken by the full board of four." If corruption was installed then, it would have existed at all levels of administration and would not have exclusively existed in Habūs institutions.

Concerning physical degradation of buildings, various legal mechanisms were set by jurists in order to follow up the urban dynamics and overcome the side effects of Habūs as a freezing instrument to assets. 'Anā', also known as hīkr in the Middle Eastern cities, is a pretended separation between two parts of the asset, the land and the construction. When an endowed property collapsed and the institution had no funds to reconstruct it, its ground was rented perpetually to someone who could redevelop it for his own business. The rent, called `Anā/Hīkr was proposed by the Wakīl to the judge who approved or rejected it depending on the experts opinions and the market value. The tenant then had unrestricted rights on his new buildings and new plantations [6, p. 96; 18, pp. 1099-1100]. Another similar type of long-term lease that concerns shops and workshops is called *Jalsa*<sup>(10)</sup>. A similar transaction in Egypt is called *Ijāratayn* (pl. of *Ijāra*); the two rents). It consists of the right of a tenant of an Ana/hīkr estate to rent it to a third party who had then to pay two types of rents; the fixed one which goes to the foundation of Habūs in counter part to the piece of ground, and a second one that is agreed upon with the first tenant who developed the land [8, p. 16; 18, p. 1099]. *Istibdāl* (exchange) is another mechanism that was used to exchange less profitable asset for more lucrative ones. This transaction occurred mostly when waqf possessions needed capital injections to insure their preservation and functioning [29, pp. 151-177].

Financial fluidity among different foundations was also permitted in order to overcome shortage of funds and absorb excess incomes. In 1860, endowed properties in Tetuan City (Morocco) were completely demolished after the war, and a considerable loan from Tangier's foundation was made for reconstruction [8, p. 29]. In Algiers, a financial aid from the Great Mosque foundation was provided to the fountains foundation to cover repair expenses of an aqueduct [17] (Court Record 26/1-(25) and B246/279-R369). Haramayn foundation was also involved in various economic projects, such as the construction of two lime kilns and a mill, the financing of the project of

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(10) It is a long-term lease that concerns endowed shops and workshops that collapsed. The tenant of the plot could redevelop it in counterpart of an annual and perpetual rent (see [6, pp. 104-105]).

water conduit or cistern as the foundation in charge was not able to do so [6, pp. 160-162].

Also, exchange of endowments against other public or private properties was allowed when buildings were likely to collapse or if the action was judged to be profitable to the endowment. In Algiers for instance, a woman owning two shops was permitted to exchange them with a space upstairs of an owned property that belongs to a mosque [17] (Court Record 37/1-(1)). In both cases, such transactions were submitted to the judge for approval, which was done in the presence of experts in construction and land market.

Finally, a question might arise regarding the ever-increasing number of endowed properties during the Ottoman period as seen in Algiers in spite of the considerable number of the collapsed buildings as seen previously (Figs. 2 and 3). What would be the factors behind such an evolution? A number of western scholars explain that, such development was essentially due to two malicious motives concerning endowers: to protect the property from unscrupulous rulers and to evade the Quranic law of inheritance, either by excluding particular heirs (mainly women) or including those not entitled to inherit [2, p. 173, p. 384; 18, p. 1100; 19, p. 2; 28; 36, p. 233]. Regarding the first motive, endowments, as it is the tradition in most societies, were first designated to the family members and/or the descendants' endowers and then to public welfare; when the family line deceased. In this sense, natural catastrophes (epidemics, earthquakes) and wars would have contributed to the extinction of families and the return of family endowments to public foundations [32, 36]. However, this could not explain the considerable acts of endowments of notable women, officers, and rulers who had nothing to fear from confiscation<sup>(11)</sup>.

Regarding the second motive, only exhaustive, comprehensive, and cross-cultural studies in different regions and periods of endowers' clauses (*Waqfiyyāt*, pl. of *waqfiyya*) could approve or disapprove the willingness of donors to escape from Islamic inheritance law and subdivision principles. Be that as it may, the Habūs principle was in favor of the urban society, both as individuals and as a community. We should note here that in Islamic legislation, preserving one's property from illegal confiscation (by another legal means) is permitted in *Sharia*. In other words, the Habūs system, thanks to its religious value venerated by the rulers, should have provided in times of despotism, a refuge from illegal expropriation. Thus, to further contradict the previous critique considering Habūs as a source of degradation, any estate, be it an endowment or private could become, in the case of injustice and mismanagement, a source of dilapidation<sup>(12)</sup>. In other words as explained by Ibn Khaldun in his *Muqaddimah* (Introduction to History), injustice often leads to decline and degradation [37]. A private property,

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(11) On categories of endowers in Damascus, see table IV in [4, p. 64].

(12) This is thoroughly explained by the famous Arab historian Ibn Khaldun A.R. (died in 1406 A.D.) in his *Muqaddimah* (Introduction to History), Chapter 43, p. 286 entitled "When injustice leading to decline" [37].

therefore could either be neglected so as to escape from taxes and repulse public agents' notice or be transferred to a family endowment in order to be preserved from confiscation.

### Conclusion

Traditional Islamic cities depended in their urban and municipal management on the endowment system called Habūs (in North Africa) or waqf (in the Middle East). Donated properties were grouped during the Ottoman empire, according to donors' clauses into foundations managed by trustees who collected annual incomes from rents and looked after buildings. Collected funds were spent for the provision of municipal services (potable water, streets pavements, city-wall) and public utilities (education, health, social welfare, worship) at no charge to citizens. In other words, the availability of funds and autonomy in expenditure made of these foundations the backbone of the municipal management in old cities.

The Habūs system had impacts on different aspects of urban management. Due to its religious nature, the Habūs system depended exclusively on endowers' convictions and pious willingness and thus could not be planned or directed by central authorities. This could be considered as an alternative approach to public participation in planning, managing and developing the city. At the socio-economic level, Habūs played a crucial role in, distributing wealth, reducing the poverty rate, and promoting social cohesion. At the political level, the ability for any person to constitute Habūs, and the financial autonomy of pious foundations contributed in decentralizing authority and power, and thus in down-sizing the role of the central authority in managing the city.

With regard to the physical impact of the Habūs system, annual revenues of pious foundations were first spent on the repair and maintenance of the endowed properties. Only the remaining parts were spent according to the donor's clauses.

However, the late Ottoman period witnessed a paradoxical development of pious foundations. Endowments witnessed a continuous growth in the number of donations simultaneously with a remarkable increase in the number of collapsed buildings. Legal mechanisms were accordingly developed to cope with the degradation of endowed properties and to recycle the land of collapsed endowments. Cross-cultural studies in both time and space regarding the Habūs system constitute the only means to identify interacting factors in this paradoxical state that characterized the late era of the Ottoman empire.

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. عرفت المدن الإسلامية منذ تاريخها الأول نشأة نظام الوقف الذي يتمثل في التصديق بأصول العقارات لصالح منفعة عامة، وذلك من باب التعبد والتقرب إلى الله سبحانه. وقد ظلت تتزايد عقارات هذه المؤسسات على مر القرون بحيث وصلت في بعض المدن إلى تغطية نسبة كبيرة من أراضيها وعقاراتها. وقد تميزت مؤسسات الأوقاف بنظام إداري دقيق وذاتي يشرف عليه القضاء ويقوم عليه وكلاء يعينهم في ذلك المجتمع بآليات متنوعة، يرتبط معظمها بمدى أمانة الأشخاص ومؤهلاتهم في إدارة تلك العقارات. وقد ترك لنا التراث الإسلامي في مختلف البلدان مخطوطات متعددة وضخمة تبين لنا كيفية إدارة تلك الأوقاف ومدى سريان خدماتها في المجتمعات المدنية. وقد كان لارتباطها بالفقه الإسلامي أثر في استحداث الآليات القانونية والإدارية التي تسمح بمجاراة متطلبات التجديد والاستجابة للنوازل والوقائع التاريخية المختلفة.

ويهدف هذا البحث إلى عرض التجربة التاريخية للوقف ومعرفة مدى ارتباطه بتنمية المدن في التاريخ ثم تعميم النتائج ومحاولة استنباط الآليات المناسبة لمشكلات المدن في عصرنا. ونقصد هنا بالتنمية الاستجابة لمتطلبات المجتمع الحضري أفراداً وجماعات من تربية وصحة وأمن وسكن واستهلاك والاحتفاظ بذلك المستوى من المعيشة بل والتحسين المستمر لها.

