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Miriam Frenkel and Yaacov Lev

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# Charity and Piety for the Transformation of the Cities

The New Direction in Taxation and Waqf Policy in  
Mid-Twelfth-Century Syria and Northern Mesopotamia

STEFAN HEIDEMANN

## 1. Introduction<sup>1</sup>

This strange system by which the dead provide for the living is typical for a society which is becoming static and ceases to be competitive and enterprising.<sup>2</sup>

This is how Shlomo Dov Goitein, the author of *A Mediterranean Society*, perceived the impact of the endowment (*waqf*) on Muslim societies during the period of *Changes in the Middle East (950–1150)*.<sup>3</sup> Research efforts over the past 35 years have proved the opposite of Goitein's claim. A thorough examination of the wealth of the Ottoman archives has led to this re-assessment. For Goitein's period, however, deeds of *waqf* endowments are almost nonexistent. The impact of the institution of the

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1 This contribution would not have been possible without the splendid academic environment created by the Institute for Advanced Studies at Hebrew University in Jerusalem. Between September 2006 and February 2007 I had the honour to join the Institute as a fellow of the research group 'Charity and Piety from Late Antiquity to the Middle Ages' organized by Miriam Frenkel and Yaacov Lev. I owe much to numerous discussions with all members of this group. At the same time this work is part of a larger research project 'The New Economic Dynamics in the Zangid and Ayyubid Period' supported by the German Research Foundations (DFG) since 2004. A German version of this study appears in *Stiftungen im Islam. Rechtsentwicklung und soziale Bedeutungen vom 7. bis zum 21. Jahrhundert*, (eds) Astrid Meier and Johannes Pahlitzsch, (Berlin, forthcoming). I would especially like to express my gratitude to Emilie Norris for various comments and careful reading and improving the English draft.

2 Sh. D. Goitein: "Changes in the Middle East (950–1150) as Illustrated by the Documents of the Geniza", *Islamic Civilisation 950–1150*, Papers on Islamic History III, (ed) D. S. Richards, (Oxford, 1973), 17–32.

3 See fn. 2.

*waqf* during the period of urban transformation in the 6<sup>th</sup>/12<sup>th</sup> century, therefore, is far less known.<sup>4</sup>

One could describe the 6<sup>th</sup>/12<sup>th</sup> century in Syria and northern Mesopotamia as anything but static. It was a time of renewal and of the final Islamization of the cityscapes. A vast building program finally transformed the late Roman/early Islamic city of the sixth to the tenth centuries—followed by almost two centuries of decline—to the prosperous medieval<sup>5</sup> city of the twelfth to the sixteenth centuries which can be still seen in the old towns of modern cities in the Middle East. The majority of the urban populations had become Muslim by now,<sup>6</sup> and the appearance of the cities was dominated by Islamic buildings and institutions.<sup>7</sup> While the urban decline prior to the Seljuq conquest, the beginning of the urban, political, and economic renaissance<sup>8</sup>, and the extensive Zangid building

- 4 M. Hoexter: “*Waqf* Studies in the Twentieth Century”, *JESHO*, 41 (1998), 474–495. Studies on the *waqf* in the 6<sup>th</sup>/12<sup>th</sup> century are rare, see Y. Frenkel: “Political and Social Aspects of Islamic Religious Endowments (*awqaf*): Saladin in Cairo (1169–1173) and Jerusalem (1187–1193)”, *BSOAS*, 62 (1999), 1–20, and J. Pahlitzsch: “The Transformation of Latin Religious Institutions into Islamic Endowments by Saladin in Jerusalem”, *Governing the Holy City. The Interaction of Social Groups in Medieval Jerusalem*, (eds) J. Pahlitzsch and L. Korn, (Wiesbaden, 2004), 47–69.
- 5 The term ‘Middle Ages’ is here applied to the second flowering of Islamic civilization from the Seljuqs to the early Ottomans, in contrast to the early Islamic period and the period of the early modern Islamic empires, the Ottomans, the Safawids and the Mughals.
- 6 According to estimates, the majority of the population in the Middle East became Muslim between the end of the ninth and the twelfth centuries, with regional differences. R. W. Bulliet attempts a statistical analysis based on collections of biographies; R. W. Bulliet: *Conversion to Islam in the Medieval Period. An Essay in Quantitative History* (Cambridge, London, 1979). M. G. Morony studies individual reports on conversions; M. G. Morony: “The Age of Conversions. A Re-Assessment”, *Conversion and Continuity. Indigenous Christian Communities in Islamic Lands, Eighth to Eighteenth Centuries*, Papers in Medieval Studies 9, (eds) M. Gervers and R. J. Bikhazi, (Toronto, 1990), 135–150. N. Levtzion studies conversion in Syria and Palestine within the context of historical developments in the region; Levtzion, N. “Conversion to Islam in Syria and Palestine and the Survival of Christian Communities”, *Conversion and Continuity. Indigenous Christian Communities in Islamic Lands, Eighth to Eighteenth Centuries*, Papers in Medieval Studies, 9, (eds) M. Gervers and R. J. Bikhazi, (Toronto, 1990), 289–311.
- 7 E. Wirth: *Die Orientalische Stadt im islamischen Vorderasien und Nordafrika*, (Mainz, 2000).
- 8 S. Heidemann: *Die Renaissance der Städte in Nordsyrien und Nordmesopotamien. Städtische Entwicklung und wirtschaftliche Bedingungen in al-Raqqa und Har-*

programs<sup>9</sup> are all comparatively well-known, less familiar are the economic structures behind this blossoming.

After the Seljuqs had laid the military, administrative, and fiscal foundations, the Zangids conducted far-reaching economic and fiscal reforms that allowed for that urban transformation. At the same time the Zangids adjusted many of the existing political and economic institutions to the regulations and stipulations of the revealed law, the *shari‘a*. The Zangid’s care for Islam, its law and its *jihad* was vital for their legitimization of power; it distinguished their rule from that of other rival Seljuq principalities in the eyes of their contemporaries, and helped them to gain legitimacy as foreign Turkish rulers over the indigenous, mostly Arab and Aramaic population.

Which legal and political instruments for this economic growth were at the disposal of the Zangids? This contribution will study the phenomenon of the *waqf* system as one important element that led to the final Islamization of the cities and to their economic revival. Related elements include taxation, *iqta‘* and the monetary system.<sup>10</sup> In the middle of the 6<sup>th</sup>/12<sup>th</sup> century a new *waqf*-policy was inaugurated by a ruler from the Seljuq tradition, Nur al-Din Mahmud ibn Zangi (r. 541–569/1146–1174). The intention of his *waqf* policy went far beyond the mere financing of single institutions. *Waqf* policy meant the systematic use of a legal instrument of private law for general public duties<sup>11</sup> and purposes which fell—in the broad sense—under the responsibility of the state.<sup>12</sup> This

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ran von der Zeit der beduinischen Vorherrschaft bis zu den Seldschuken, *Islamic History and Civilization. Studies and Texts*, 40, (Leiden, 2002).

- 9 Y. A. al-Tabba: *The Architectural Patronage of Nur al-Din (1146–1174)*, PhD dissertation, (New York, 1982).
- 10 For these other elements see S. Heidemann: “Arab Nomads and Seljuq Military”, *Shifts and Drifts in Nomad-Sedentary Relations*, Nomaden und Sesshafte 2, (eds) S. Leder and B. Streck, (Wiesbaden, 2005), 289–305; S. Heidemann: “Financing the Tribute to the Kingdom of Jerusalem: An Urban Tax in Damascus. In: *BSOAS* 70 (2007), 117–142; and S. Heidemann: “Economic Growth and Currency in Ayyubid Palestine”, *Ayyubid Jerusalem: The Holy City in Context*, (ed) R. Hillenbrand, (London, 2009).
- 11 The term ‘public duties’ does not exist as such in medieval Arabic terminology. It is used here in a hermeneutical sense: It means duties which are today usually assigned to the state, and which the early Islamic state like the late Roman performed. The term ‘*masalih al-muslimin*’ (welfare of the Muslims) might be the closest Arabic rendering.
- 12 It is possible to use the term ‘economic policy’ for the Zangids: The policy makers were aware of the main economic impacts of their decisions and actions. They

function of the *waqf* is familiar to scholars of the Mamluk and Ottoman periods, but it is not yet established when and why this conscious policy began in the Seljuq and Zangid period. In the 6<sup>th</sup>/12<sup>th</sup> century, the newly founded endowments generated their income primarily from urban real estate.<sup>13</sup> In turn, they stimulated a vast building program, and financed a multitude of urban institutions. The *waqf*-model of financing was increasingly applied to public and semi-public institutions and duties. In fiscal terms, the establishment of an increasing number of *waqfs* allowed for an efficient skimming of urban economic activities for public purposes. This will be explained below. Additionally, the proceeds from the *waqfs* permitted the abolition of certain taxes and dues that *shari'a* law deemed illegitimate, dues that had previously been the main source of cash income of the Seljuq state. The Zangid regime succeeded also in integrating the theological and judicial elite that were traditionally opposed to the state, by increasing the scope of positions for the elite in the service of these endowments with the number of newly established *waqfs*. They thus helped to build a “public sphere” of institutions within the Islamic society.<sup>14</sup>

used their outcome intentionally for their ‘economic policy’. For a discussion of Zangid tax policy, see S. Heidemann: Renaissance, 11–12 fn. 28, 331–334.

13 References to endowments of agricultural real estate are rare in Syria and northern Mesopotamia until the Mamluk period. For the middle of the 5<sup>th</sup>/11<sup>th</sup> century see J. Sourdel-Thomine and D. Sourdel: “Biens fonciers constitués waqf en Syrie fatimide pour une famille de sharifs damascain”, *JESHO*, 15 (1972), 269–296, and for the end of the 6<sup>th</sup>/12<sup>th</sup> century J. Pahlitzsch: “Transformation”, 51, 53–54. In Iraq under Seljuq-Abbasid rule, the *waqf* financed by agricultural rents seems to be predominant; Kh. J. al-Duri: *Society and Economy of Iraq under the Seljuqs (1055–1160 A.D.) with Special Reference to Baghdad*, PhD dissertation, (Ann Arbor, 1971), 157–159. The same situation seems to be the case in Seljuq Iran; A. K. S. Lambton: “Awqaf in Persia: 6<sup>th</sup>-8<sup>th</sup>/12<sup>th</sup>-14<sup>th</sup> Centuries”, *Islamic Law and Society*, 4 (1997), 298–318, here 300–304. After the conquest of Egypt, the Ayyubids tried to convert *waqf* lands into *iqta's*; D. Behrens-Abouseif: “Wakf. II. In the Arab Lands. 1. In Egypt”, *Enc of Islam*, 2, v. 11 (Leiden, 2002), 63–67.

14 J. E. Gilbert: “Institutionalization of Muslim Scholarship and Professionalization of the ‘ulama’ in Medieval Damascus”, *SI*, 52 (1980), 105–134; M. Hoexter: “The Waqf and the Public Sphere”, *The Public Sphere in Muslim Societies*, (eds) M. Hoexter and Sh. N. Eisenstadt and Nehemia Levtzion, (Albany, 2002), 119–138; S. Leder: “Damaskus: Entwicklung einer islamischen Metropole 12.–14. Jahrhundert und ihre Grundlagen”, *Alltagsleben und materielle Kultur in der arabischen Sprache und Literatur*. Festschrift für Heinz Grotzfeld zum 70. Geburtstag, Abhandlungen für die Kunde des Morgenlandes, 45,1, (eds) T. Bauer and U. Stehli-Werbeck, (Wiesbaden, 2005), 233–250. For a general def-

Exploration of the role of the *waqf* during this period of urban renaissance and transformation contributes to the theory of economic growth in pre-modern, non-European societies. At the same time, the legal rationale for the *waqf* holds within it the ideal of piety and charity that connects it to the Islamic religion. This role and function of the *waqf* in the Zangid period will be studied in five steps:

- What is a *waqf* and how did it function?
- How did the state finance its expenses in the early Islamic period in comparison to the later Seljuq period?
- What characterizes the *waqf* policy of Nur al-Din Mahmud, and what distinguishes it from that of his Seljuq predecessors?
- What were the function and the scope of this policy? A part of the answer becomes apparent in a protocol of a meeting regarding the disposition of revenues of the patrimony of the Umayyad Mosque in Damascus.
- And in conclusion: What dynamic impacts did the new *waqf* policy have on the transformation of the cities in the 6<sup>th</sup>/12<sup>th</sup> century?

## 2. The rationale of the *waqf* in Islamic law

What is a *waqf*?<sup>15</sup> In the twelfth century the Aleppan legal scholar al-Kasani (d. 587/1189) defines the endowment in brief:

The *waqf* is a continuous charitable act for the sake of God—He is exalted (*al-waqfu sadaqatun jariyatun fi sabili llahi ta'ala*).<sup>16</sup>

In the 3<sup>rd</sup>/9<sup>th</sup> century the regulations of the *waqf* developed as part of Islamic law. According to these regulations, an endowment—or *waqf*—is established by a legal deed that names the owner of the endowed property, the substance of the endowment (*ayn* or *asl*), and the beneficiary (*mawquf'alayhi*) of its income (*manfa'a*). According to the Hanafi school

of public sphere in pre-modern Muslim societies see D. F. Eickelman and A. Salvatore: “The Public Sphere and Muslim Identities”, *European Journal of Sociology*, 43 (2002), 92–115, esp. 99 with reference to the *waqf*.

15 For a brief introduction into endowments according to Islamic law see M. Hoexter: “*Huquq Allah* and *huquq al-'ibad* as Reflected in the Waqf Institution”, *JSAI*, 19 (1995), 133–156.

16 Al-Kasani (d. 587/1191): *Kitab al-Bada' al-sana' fi tartib al-shara'*, 7 vols, (Cairo, without date); reprint, (Beirut, 1406/1986), here v. 6, 218–221 (*Kitab al-waqf wal-sadaqa*), 221 line 4 (citation). M. Hoexter: “*Huquq Allah*”, 137.

of law, by the act of endowment, the founder relinquishes all his property rights, transforming it into a *haqq Allah*, an inalienable “claim of God”. The founder is essentially free to determine the beneficiaries with a few caveats. If he designates a general perpetual charitable purpose, such as the support of the poor and needy (*al-fuqara’ wal-masakin*) or the holy sites in Mecca and Medina, then it is referred to as *waqf khayri*, a beneficial, charitable endowment. The charity of the *waqf* was not meant as *caritas*, in the western sense of charity, nor as a pre-modern relief system for the poor. It was intended for the respectable poor, like the mystics or *sufis* who were referred to generically as the “poor”, or *fuqara’* (singular *faqir*).<sup>17</sup> The despised and in part violent urban lower class was not included in this definition.<sup>18</sup>

The founder can also designate a succession of beneficiaries, such as members of his own family or any other natural persons in the legal sense. Being a formal sub-group of the *waqf khayri*, it is referred to as *waqf ahli* or *waqf dhuburi*. This type of *waqf* was usually established to maintain control over the family’s assets and to keep them together in light of the consequences of Islamic laws of inheritance, and at the same time to make the property—at least in theory—immune to the frequent practice of confiscation. The family endowment constituted the main type of *waqf* during the 3<sup>rd</sup>/9<sup>th</sup> century.<sup>19</sup> Because a *waqf* must be perpetual in its legal nature, its founders have to name an ultimate perpetual beneficiary, like the aforementioned general category of the “poor and needy”. And as any line of beneficiaries of a family endowment can die out, nearly every *waqf ahli* ultimately transforms sooner or later into a *waqf khayri*. When the family line ended and the endowment reached the *khayri* stage, it was generally integrated into the patrimony of another institution or of another *waqf*. These patrimonies were composed of a large number of individual endowments and properties, but administered as one unit.<sup>20</sup> For example, during the 6<sup>th</sup>/12<sup>th</sup> century, the patrimony of the *waqfs* of the Umayyad mosque in Damascus included numerous ancient endowed properties.

17 Compare N. A. Stillman: “Waqf and the Ideology of Charity in Medieval Islam”, *Studies in Honour of Clifford Edmund Bosworth*, v. 1. *Hunter of the East: Arabic and Semitic Studies*, (ed) I. R. Netton, (Leiden, 2000), 357–372, esp. 367–371.

18 Compare Y. Lev: “Charity and Social Practice in Egypt and Syria from the Ninth to the Twelfth Century”, *JSAI*, 24 (2000), 472–507, esp. 488–491.

19 P. Ch. Hennigan: *The Birth of a Legal Institution. The Formation of the Waqf in Third-Century A.H.*, *Studies in Islamic Law and Society*, 18, (Leiden, 2003).

20 M. Hoexter: “*Huquq Allah*”, 146.

### 3. Financing the state in the early Islamic and Seljuq period

How did the early Islamic state finance its expenses in comparison to the later Seljuq state? Continuing the practice of the late Roman empire, the Umayyad and early Abbasid state financed the military<sup>21</sup>, and public and semi-public institutions and duties primarily from the revenues of the public treasury (*bayt al-mal* or *diwan*): building and maintaining facilities such as fortifications, streets, water supply, and mosques<sup>22</sup>, as well as the remuneration of its personnel<sup>23</sup> and establishing and maintaining markets. As income, the state reaped revenue through the agricultural tax, the *kharaj*, which was usually collected by the civil administration as cash payments. Instances are known where the tax assessment was expressed in money but paid in kind.<sup>24</sup> In the cities, the poll tax levied on non Muslims, *jizya*, was collected in cash. It was paid by the majority of the population which had remained Christian, Jewish, or Zoroastrian.

21 H. N. Kennedy: *The Armies of the Caliphs. Military and Society in the Early Islamic State* (London, 2001), 78–88.

22 Compare for example H. N. Kennedy: “Gerasa und Scythopolis. Power and Patronage in the Byzantine Cities of Bilad al-Sham”, *La ville en Syrie et ses territoires. Héritages et mutations*, BEO, 52, (eds) J.-C. David and M. al-Dbiyat, (Damascus, 2000), 199–204, esp. 204; J. L. Bacharach: “Marwanid Umayyad Building Activities. Speculations on Patronage”, *Muqarnas*, 13 (1996), 27–44.

23 Compare H. J. Cohen: “The Economic Background and the Secular Occupations of Muslim Jurisprudents and Traditionalists in the Classical Period of Islam (until the Middle of the Eleventh Century)”, *JESHO*, 13 (1970), 16–61, here 24, 33–34. For the first two centuries, Cohen found that 53 percent of his sample of Islamic legal scholars was in the service of the state; then the number fell. In the 3<sup>rd</sup>/9<sup>th</sup> and 4<sup>th</sup>/10<sup>th</sup> century 75 percent of the scholars listed by him were merchants and craftsmen in the market. Along with the dwindling financial ability of the state, this ratio might also come from the growing inner distance of the scholars to the existing Islamic empire. But still, in the time of Nur al-Din Mahmud, ‘jurists, the respected poor, mystics and public Qur’an-readers, (*al-fuqaha’ wal-fuqara’ wal-sufiyya wal-qura’*) were supported by state coffers (*lahum nasib fi bayt al-mal*); Ibn al-Athir (d. 630/1232): *Al-Tarikh al-Bahir fi l-dawla al-atabakiyya*, (ed) ‘Abd al-Qadir Ahmad Tulaymat (Cairo, 1382/1963), 118. The personnel of the endowments, though, were paid from the revenues of the *waqfs*; Abu Shama (d. 665/1267): *Kitab al-Rawdatayn fi akhbar al-daulatayn al-nuriyya wal-salabiyya*, (ed) Muhammad Hilmi Muhammad Ahmad and Muhammad Mustafa Ziyada, v. 1, part 1, (Cairo, 1957), 10.

24 H. N. Kennedy: “The Financing of the Military in the Early Islamic State”, A. Cameron (ed), *The Byzantine and Early Islamic Near East III—States, Resources, and Armies*, *Studies in Late Antiquity and Early Islam*, 1, (Princeton, 1995), 361–378, here 366–367.

The highly developed monetary economy ensured the fiscal cycle of cash money, meaning tax income and state expenditure.

Over the course of the 4<sup>th</sup>/10<sup>th</sup> and 5<sup>th</sup>/11<sup>th</sup> centuries, the military, political, administrative, and economic structures of the core lands of the Islamic empire collapsed.<sup>25</sup> Archaeological settlement surveys in Syria, northern Mesopotamia, and Iraq consistently indicate a sharp decline in the number of rural settlements and in turn in primary production and in population.<sup>26</sup> During the 4<sup>th</sup>/10<sup>th</sup> century, a further wave of nomadic migration from the Arab Peninsula into the core regions of the Islamic empire prompted further expulsion of the settled rural population as well as abandonment of villages and small towns. Nomadic camps (*hilla*) frequently became centres of military and political power. Archaeology, architecture, and narrative sources also point to a sharp decline in urban centres and report on ruinous and deserted city quarters. Since the beginning of the 4<sup>th</sup>/10<sup>th</sup> century, the ability of the state to maintain and support 'public' and 'semi-public' facilities, institutions and their personnel diminished considerably. This can be seen in many, especially small and medium sized, cities where state-financed central buildings, like congregational mosques, became dilapidated. This happened not only in the provinces<sup>27</sup> but also in major cities like Damascus<sup>28</sup> and Baghdad<sup>29</sup>. Writing in the middle of the 6<sup>th</sup>/12<sup>th</sup> century 'Imad al-Din al-Isfahani (d. 597/1201) estimated more than hundred dilapidated mosques in the realm of

25 S. Heidemann: *Renaissance*, 29–33.

26 Compare for example R. M. Adams: *Land Behind Baghdad. A History of Settlement on the Diyala Plains*, (Chicago, London, 1965); K. Bartl: *Frühislamische Besiedlung im Balikh-Tal/Nordsyrien*, Berliner Beiträge zum Vorderen Orient, 15, (Berlin, 1994).

27 S. Heidemann: "Ein Schatzfund aus dem Raqqa der Numairidenzeit, die "Siedlungslücke" in Nordmesopotamien und eine Werkstatt in der Großen Moschee", *Gedenkschrift für Michael Meinecke*, Damasener Mitteilungen, 11, (Mainz, 1999), 227–242; S. Heidemann: "Numayrid al-Raqqa. Archaeological and Historical Evidence for a 'Dimorphic State' in the Bedouin Dominated Fringes of the Fatimid Empire", *Egypt and Syria in the Fatimid, Ayyubid and Mamluk Eras*, IV, *Orientalia Lovaniensia Analecta*, 140, (eds) U. Vermeulen and J. Van Steenbergen, (Leuven, 2005), 85–110.

28 J.-M. Mouton: *Damas et sa principauté sous les Saljoukides et les Bourides 468–549/1076–1154. Vie politique et religieuse*, Textes arabes et études islamique, 33, (Cairo, 1994), 257.

29 On 21 Jumada II 329/23 March 941 the Green Dome of the congregational mosque of Madinat al-Salam collapsed. The dome was a landmark, visible from the far distance and recognized as symbol of Abbasid might and power.

Nur al-Din Mahmud.<sup>30</sup> Numismatic evidence shows a sharp decline in the cash-based monetary economy, reaching a level presumably not seen since pre-Hellenistic antiquity. To support this evidence, contemporary legal scholars frequently complain about the state of the monetary system of their time.<sup>31</sup>

In the 5<sup>th</sup>/11<sup>th</sup> century, a new development started with the Seljuqs. Coming from eastern Iran, they conquered the Islamic world. In 479/1087, the Seljuqs succeeded in incorporating Syria. They were in command of a professional army of Turkish horsemen and an efficient administration in eastern Iranian-Samanid tradition. In contrast to their nomadic predecessors, they chose fortified cities and fortifications as their seats of power. About 150 years after the collapse of Abbasid rule, rulers in Syria and northern Mesopotamian again commissioned the construction of monumental representative buildings. Frequently, after a conquest, one of the first projects was to build minarets which may be seen as victory monuments of the Sunni renaissance.<sup>32</sup> The Seljuq concept of financing the state was different from that of the early Islamic period and a reaction to the new social, demographic, economic, and monetary conditions. The basis of the Seljuq power was a seasonally available army of horsemen. To finance them, the hinterland of the conquered cities was divided into *iqta'*-districts and distributed among army commanders, *amirs*, and their detachments. These troops and their leaders usually lived in their allotted *iqta'*-district. The *iqta'* was an immediate claim on the land-tax revenues (*kharaj*) of that district as remuneration for military service. Ideally—according to Nizam al-Mulk (d. 488/1095), the political architect of the Seljuq empire—the collecting tax administration and the beneficiary, the *muqta'*, should be separated.<sup>33</sup> Because of the political and

30 See fn. 47.

31 On the relationship between monetary economy and economic growth see S. Heidemann: *Renaissance*, 355–363; S. Heidemann: "Economic Growth and Currency in Ayyubid Palestine".

32 S. Heidemann: *Renaissance*, 154–155.

33 Nizam al-Mulk envisaged a separation of both functions in his blueprint for the Seljuq state, the *Siyasatnama*. The assignment of an *iqta'* to an *amir* entitled him in principle only to claim the tax yield. Tax monies were collected by the local/regional fiscal authorities and handed over to him. The *amir* and his unit could be deployed in any province far away from his *iqta'*. The *iqta'*, in theory, was not meant to give the *amir* any political authority over his *iqta'*; Nizam al-Mulk (d. 488/1095), *Siyasatname*, (ed) Hubert Darke: *Siyar al-Muluk* also known as *Siyasatnama of Nizam al-Mulk* (Tehran, 1962), 48; translated into German by K. E. Schabinger Freiherr von Schowingen: *Nizamulmuluk. Das Buch der Staatskunst*.

economic situation in the Western Seljuq empire, however, the beneficiary, the *amir* who held claims to the *iqta'*, had to take over at the same time the civil and in particular the fiscal administration, as well as the military protection and political responsibility of the district where he levied taxes. Since the bulk of the dues were presumably paid in kind, the food could be directly consumed by the army without making a detour through the market. This system reflects the level of the shrunken monetary economy and the prevailing political and military conditions in Syria and northern Mesopotamia at the beginning of the 6<sup>th</sup>/12<sup>th</sup> century. For their provisions, the army of horsemen was almost independent from the Seljuq ruler. To cope with the centrifugal forces inherent in such a system, an elite troop of military slaves, *mamluks* or *ghulams* (plural *ghilman*), were built up, maintained, and financed through cash payments.<sup>34</sup> Cash was also necessary for the construction of fortifications, monumental representative buildings, and court expenditures. To raise cash money, primarily urban economic activities were skimmed. In the 6<sup>th</sup>/12<sup>th</sup> century, the majority of the population—with regional differences—had become Muslim.<sup>35</sup> As a result, the formerly important contribution of the *jizya*, paid in cash, to state revenues had significantly decreased, according to tax lists from various Ayyubid cities.<sup>36</sup> In order to get income in cash money for the treasury, excise, *mukus*, which was a toll on long distance trade was imposed, and intra-urban dues on sales, *rusum*, *dara'ib*

*Siyasatname*, 2nd edition, (Zurich, 1987), 198. In the Western Seljuq empire, however, both functions, that of the *muqta'* and *amir*, usually merged. Such a distinction which Nizam al-Mulk demanded might have been feasible only within a developed monetary economy which also included rural areas and which allowed an easy transportation of tax revenues over long distances to the *iqta'* beneficiaries. In the Seljuq period, this was probably only the case in eastern Iran and in Egypt. In many regions of the Western Seljuq empire—meaning the core regions of the Islamic empire—a tax, paid in kind, was probably more efficient. For the relation between land tax, *kharaj*, and *iqta'* see S. Heidemann: *Renaissance*, 306–315.

34 About the Seljuq military and its funding see S. Heidemann: “Arab Nomads and Seljuq Military”.

35 See fn. 6.

36 S. Heidemann: *Renaissance*, 323–324. Nevertheless, *jizya* payments were—according to the Geniza documents—extremely harsh for poor Jews and Christians, because the Ayyubids levied—at least in Egypt—the poll tax strictly. Alshech even supposes that this relentlessness was meant as an expression of the piety of the state; E. Alshech: “Islamic Law, Practice, and Legal Doctrine: Exempting the Poor from the Jizya Under the Ayyubids (1171–1250)”, *Islamic Law and Society*, 10 (2003), 348–375.

and *buquq al-bay'*, were levied. These dues were illegitimate according to the *shari'a*.<sup>37</sup> The contemporary legal scholar, theologian, and mystic al-Ghazali (d. 505/1111) leaves no doubt about that:

The assets of the sultans in our time (*amwal al-salatin fi 'asrina*) are all unlawful (*haram*) or to the greater part.<sup>38</sup>

#### 4. The *waqf* policy of Nur al-Din Mahmud

What significance did the *waqf* have prior to the period of Nur al-Din Mahmud? Narrative sources from the 150 years preceding the Seljuq conquest of Syria only occasionally mention endowments, and almost none was established by rulers or members of the ruling elite.<sup>39</sup> Nizam al-Mulk's policy of the Sunni renaissance included the establishment of schools of higher learning, *madrasas*, and of convents for the mystic *Sufis*, *khanqahs*. The *madrasas* served the education of religious scholars for the Sunni renaissance and of legal scholars for the civil administration. These new establishments were usually supported by *waqfs*. Educational policy and spiritual care were the main motivations behind this wave of endowments. The first Seljuq sultans, however, did not take the initiative for their establishment. The known *waqfs* were set up by governors, viziers, and others. Farm land leased to peasants formed the main financial base of these *waqfs*.<sup>40</sup> According to Ann Lambton, the number of endow-

37 S. Heidemann: *Renaissance*, 324–339.

38 Ghazali (d. 505/1111): *Ihya' 'ulum al-din*. (ed) Abu l-Hafs Sayyid Ibrahim ibn Sadiq ibn 'Umran, known as Abu Hafs, 5 vols, (Cairo, 1414/1994), here v. 2, 216; translated into German by H. Bauer: Erlaubtes und verbotenes Gut. Das 14. Buch von al-Ghazali's Hauptwerk, (Halle, 1922), 159. About al-Ghazali's criticism of the Seljuq tax system see S. Heidemann: *Renaissance*, 302–305.

39 For an overview of the history of the *waqf* institution in Syria see A. Meier: “Wakf. II. In the Arab Lands. 2. In Syria”, *Enc of Islam* 2, v. 9, 823–828. The situation was different in Egypt where the Fatimid caliph al-Hakim bi-Amrillah established some *waqfs*, see Y. Lev: “Charity and Social Practice”, 493–495. For a document from the Fatimid period see J. Sourdel-Thomine and D. Sourdel: “Biens fonciers”. The presentation of Deborah Tor, “Piety in the Great Seljuq Era” at the research group's concluding conference in February 2007 showed that the early Seljuq sultans, especially Tughrilbeg and Alb Arslan, were neither praised for piety, for *sadaqa* (benevolent charity) nor for the establishment of *waqfs*.

40 A. K. S. Lambton: “Awqaf in Persia”, 300.

ments in Iran did not increase significantly until the late 7<sup>th</sup>/13<sup>th</sup> century.<sup>41</sup>

After the Seljuq conquest of Syria and northern Mesopotamia, *waqfs*, endowed by the ruling dynasty and their households, were more commonly mentioned for this region. Prior to the period of Nur al-Din Mahmud, their number remained small and enumerable. In 491/1097–8, the first hospital, a *madrasa*, and a *khanqah* were built in Damascus and supported by a *waqf* endowed by the local Seljuq-Burid ruler and his mother.<sup>42</sup> In 508/1114–5, a *waqf* of a judge, *qadi*, from the influential family al-Khashshab is mentioned for Aleppo.<sup>43</sup> In 516/1122–3, the first *madrasa* in Aleppo (*al-madrasa al-zujajyya*) was established, presumably funded by a *waqf*.<sup>44</sup> In al-Raqqa at the Euphrates, a *waqf* inscription, dated to the first decades of the 6<sup>th</sup>/12<sup>th</sup> century, names an ‘Uqaylid *amir* as founder.<sup>45</sup>

Despite the small number of references to *waqfs*, it can be assumed that family *waqfs* and the patrimonies of established old *waqfs* and institutions played a major role in the economic life of the cities in Syria and northern Mesopotamia, even before the time of Nur al-Din Mahmud. In general, they were, however, no subject for the historical record. The importance of these endowments, though, is evidenced in the enumeration of real estate administered by the patrimony of the *waqf* of the Umayyad mosque in Damascus which will be discussed below in chapter 5.

41 A. K. S. Lambton: “Awqaf in Persia”, 304.

42 A. Meier: “Wakf. II. In the Arab Lands. 2. In Syria”, 825. For the *waqf* under the Burids see J.-M. Mouton: *Damas*, esp. 87–88. See also J. E. Gilbert: “Institutionalization”, 115–117 and 127–128.

43 The *qadi* Abu l-Hasan Muhammad ibn al-Khashshab endowed an area of the Hammam al-Bayluna (*hiql al-hammam al-bayluna*) for the sustenance of the Masjid Jurn al-Asfar which he had established; Ibn Shaddad (d. 684/1285): *Al-A‘laq al-khatira fi dhikr umara’ al-Sham wal-Jazira* [v. 1 part 1], (ed) Dominique Sourdel: *La description d’Alep d’Ibn Shaddad*, (Damascus, 1953), 35 and 64. This endowment not only supported the mosque, but also the needy of the family al-Khashshab.

44 Ibn Shaddad: *al-A‘laq*, 96.

45 A fragment of an inscription in al-Raqqa reports on an endowment, a *waqf*, established by a son of the ‘Uqaylid *amir* Abu l-Zimam Salim ibn Malik. The inscription dates the building which is not yet located in or after the year 500/1106–7; C.-P. Haase: “Inscripfen der islamischen Zeit”, *Raqqa II. Die islamische Stadt*, (eds) S. Heidemann and A. Becker, (Mainz, 2003), 99–111, here 103 no. 22.

What characterizes the *waqf*-policy of Nur al-Din Mahmud as contrasted with the practice of his predecessors? The reign of Nur al-Din Mahmud and his son and successor al-Salih Isma‘il (r. 569–576/1174–1181) is not only distinguished by an ideological emphasis on the Sunni renaissance but as well by visible and effective economic and fiscal reforms in more than one field. The necrologies and eulogies on Nur al-Din Mahmud form the basis for the study of his economic and fiscal measures. Yaacov Lev undertook a first appraisal of his economic policy.<sup>46</sup> Al-Isfahani<sup>47</sup>, Ibn ‘Asakir (d. 571/1175–6)<sup>48</sup>, Ibn al-Athir (d. 630/1232)<sup>49</sup>, and Abu Shama (d. 665/1267)<sup>50</sup> begin their biographies of Nur al-Din Mahmud with elaborate eulogies on his pious devotion and virtue. This panegyric differs from that of his predecessors inasmuch as the authors deal extensively with his economic policy. According to the characteristics of this genre, though, such policies are described as acts of piety and justice: he has laudably abolished the urban dues which were illicit according to the *shari‘a*, e.g. *mukus*, *dara‘ib*, *rusum*, and *huquq al-bay‘*. The later frequently repeated reports of their abrogation point in two seemingly opposed directions: on the one hand, they are witness for the continuous efforts of the Zangid rulers and their successors to conform fiscal regime to the *shari‘a*, and on the other hand, they show the continuous need for these levies to fund growing state expenditures.<sup>51</sup>

46 Y. Lev: “The Social and Economic Policies of Nur al-Din (1146–1174): The Sultan of Syria”, *Der Islam*, 81 (2004), 218–242.

47 ‘Imad al-Din Katib al-Isfahani in Abu Shama: *Rawdatayn*, 2 vols (Cairo, 1287–1288/1870–1871), here v. 1, 10–11; (ed) Ahmad and Ziyada, v. 1, part 1, 24–27; (ed) Ibrahim al-Zaybaq, 5 vols (Beirut, 1997), here v. 1, 50–54, and in Bundari (c. 7<sup>th</sup>/13<sup>th</sup> c.): *Sana al-barq al-shami, ikhtisar al-Fath ibn ‘Ali al-Bundari min kitab al-barq al-shami lil-‘Imad al-Din al-Isfahani*, (ed) Fathiya al-Nabarawi, (Cairo, 1979), 16.

48 Ibn ‘Asakir (d. 571/1175–6): *Tarikh Madinat Dimashq*. (partial ed) and translation by Nikita Elisséeff. “Un document contemporain de Nur al-Din, sa notice biographique par Ibn ‘Asakir”, *BEO*, 25 (1972), 125–140, here, 129 and 138.

49 Ibn al-Athir: *Bahir*, 161–172; Ibn al-Athir: *Al-Kamil fi l-tarikh*, (ed) C. J. Tornberg, 13 vols (Leiden, 1851–1874), here v. 11, 264–267; (ed) Beirut, 13 vols (Beirut, 1399/1979), here v. 11, 402–405.

50 Abu Shama: *Rawdatayn*, (ed) Cairo, v. 1, 5–24, esp. 16–18; (ed) Ahmad and Ziyada, v. 1, part 1, 9–58, esp. 39–44; (ed) Zaybaq, v. 1, 31–92, esp. 70–77.

51 At least in 19<sup>th</sup> century Morocco, the temporary abrogation of illegitimate taxes (*mukus*) were almost customary in the reciprocal act of the oath of allegiance (*bay‘a*); notwithstanding certain uprisings about their re-introduction; see B. Dennerlein: “Legitimate Bounds and Bound Legitimacy. The Act of Allegiance

In such a situation of expanded public duties and responsibilities, however, even a partial abolition of illegitimate dues has to be financially compensated in some other way—and that way was with the establishment of endowments.

For the first time endowments occupy a broad space within the eulogies of the piety of a ruler in Seljuq tradition. Immediately after the above mentioned abrogation of illegitimate dues, Abu Shama continued with paragraphs about the endowments of Nur al-Din Mahmud. In these eulogies, the public or semi-public responsibilities of the state are summarized by the term *masalih al-muslimin*. With a general meaning of “welfare of the Muslims”, the term is also used in a more specific sense. Ibn al-Athir explains the term at the beginning of a chapter: “And that which he [Nur al-Din Mahmud] did as *masalih* is very much; it is that which he undertook in the lands of Islam (*bilad al-Islam*) in regard to their protection and the protection of the Muslims (*hifzuha wa-hifz al-muslimin*).” Ibn al-Athir proceeds in the next sentence with the—still today—impressive building program of Nur al-Din Mahmud, and enumerates the institutions which fell under the term *masalih*, welfare, in a concrete way. Ibn al-Athir names at first city walls and fortifications, institutions of education and higher learning, followed by mosques, hospitals, *Sufi* convents, guesthouses for pilgrims and many more.<sup>52</sup>

The establishment of endowments became now an immediate concern for the rulers. Endowments were no longer left to the charity of the ruling families and their households. For the period of Nur al-Din Mahmud, Imad al-Din al-Isfahani gives the figure of more than hundred dilapidated mosques which Nur al-Din Mahmud began to reconstruct, and to each of them he assigned a supporting *waqf*. Under his rule the number of *waqfs* increased considerably.<sup>53</sup> The extensive building program even included construction work in small and medium sized cities, such as al-Raqqa on the Euphrates, which were not immediately affected by the series of devastating earthquakes that took place in Syria in 546/1152 and between 551/1156 and 554/1159. According to archaeological evidence, for more than a hundred years, some buildings of central importance had lain in ruins, for example the congregational mosque in

to the Ruler (Baifa) in 19<sup>th</sup> Century Morocco”, *Welt des Islams*, 41 (2001), 287–310, here 292–296.

52 Ibn al-Athir: *Bahir*, 170.

53 Katib al-Isfahani in Abu Shama: *Rawdatayn*, (ed) Ahmad and Ziyada, v. 1, part 1, 26.

al-Raqqa. Nur al-Din Mahmud now ordered their reconstruction.<sup>54</sup> In accordance with al-Isfahani, Abu Shama states that Nur al-Din Mahmud endowed a separate *waqf* for each institution.

In the Zangid and Ayyubid period, primarily revenue-generating urban real estate was endowed, for example shops in the markets, tenement buildings, commercial complexes, bakeries, mills, and baths. Where did those assets for Nur al-Din Mahmud’s investments come from? Only private property (*milk*) can be legitimately endowed. Ibn al-Athir addresses this issue:

According to the *shari’a*, there was only fully legitimate property, in outer [appearance] and inner [substance]. He [Nur al-Din Mahmud] [only] endowed what was turned over to him and [what] he inherited of its sum of its money [?] or what he appropriated in the lands of the Franks and became his share.<sup>55</sup>

The aforementioned eulogies emphasize this distinction of Nur al-Din Mahmud between his private purse and the state coffers. Ibn al-Athir points out that the latter directly benefited the ‘welfare of the Muslims’ (*al-amwal al-mursada li-masalih al-muslimin*). This distinction between private purse and state coffers may have been an innovation in comparison to the supposed practice in the Western Seljuq empire, because there, the function of a military commander of a district, an *amir*, was essentially synonymous with that of the *muqta’*, the beneficiary of the tax revenue of an *iqta’*. The fiscal revenue was directly appropriated as remuneration without going through the public treasury for redistribution. Even if Nur al-Din Mahmud’s private wealth and the state’s coffers were not systematically separated, like in all pre-modern states, then, nevertheless, the re-

54 For the congregational mosque in al-Raqqa see fn. 27. The inscription above the entrance mentions only the restoration and construction, but does not inform about financing and support of the building.

55 Ibn al-Athir: *Bahir*, 172: “*laysa fiha milkun ghayrin sahibin shari’iyin zahiran wa-batinan. Fa-innahu waqafa ma ntaqala ilayhi wa-wazana thamanahu aw ma ghaliba ‘alayhi min biladi l-franji wa-sara sabmuhu*”. The reading of the phrase, marked in the translation with a question mark, is problematic. According to the phrasing of the *Bahir*, it must be translated “and he weighed its price [probably the coins as price]”. This translation, however, is not conclusive in a sentence which should inform about the origin of the endowed property. A passage, similar in the grapheme, can be found in Abu Shama’s *Rawdatayn*, (ed) Ahmad and Ziyada, v. 1, part 1, 23 line 7: “*wa-waritha thamanahu* (and what he inherited of its sum of money)”. The editor of the *Bahir*, Abd al-Qadir Tulaymat, found the last phrasing more convincing although that reading is again not completely satisfactory. Possibly there is a mistake in the transmission of the text.

ports of his panegyrists imply that neither legitimate nor illegitimate tax monies were spent on establishing *waqfs*.<sup>56</sup> The ability of Nur al-Din Mahmud to set up more than one hundred endowments raises questions about his personal wealth and its sources as well as about the position of the Seljuq-Zangid ruler within the economic life of his principality, questions which cannot be answered sufficiently by available sources.<sup>57</sup>

As a provisional conclusion, it can be stated: within the fiscal and economic architecture of the principality of Nur al-Din Mahmud and his Zangid and Ayyubid successors, endowments of urban, commercial, revenue-generating real estate constituted a major source for funding of urban public and semi-public institutions and duties. This funding was independent from the state's treasury. This is evident by the numerous still existing buildings, the eulogies that report on funding by *waqfs*, and the concurrent abrogation of dues illegitimate according to the *shari'a*. One main model of funding, that by the treasury, was replaced by another, the *waqf*. The endowments became in certain respects the urban equivalent of the agricultural *iqta'*. Both, *waqf* and *iqta'*, were suitable institutional solutions at a given level of fiscal instruments, of economic development, and of monetary economy. They allow their beneficiaries—whether an urban institution or a military detachment—to achieve financial independence from the state coffers by establishing and skimming their own financial resources. In contrast to the *iqta'*, however, the *waqf* is an institution whose legal form is well-rooted in the *shari'a* as *sadaqa*, charitable giving. The legal and spiritual importance of the *waqf* far exceeds the described function as a financial instrument. The military *iqta'* goes back to the legitimate tax yield from agricultural activities (*kharaj*) whereas the *waqf* is an institution entirely under private law.

In the time of Nur al-Din Mahmud, the office of the “administrator of the supervision of the *waqfs*”, the *mutawalli nazr al-awqaf*, seems to have been either newly created or is emphasized for the first time in the reports of this period. Its duty was to supervise and control those institutions that the *waqf* made financially independent from the ruler, and to align them with the goals of the Zangid policy. In this regard, the of-

56 J. Pahlitzsch: “Transformation”, 54–58, discusses this question whether Nur al-Din Mahmud or Saladin turned land belonging to the *bayt al-mal* into an endowment. In all cases in which a conclusion can be drawn, a private purchase of land from the state preceded the endowment.

57 Compare the extent of economic activities of later Mongol rulers in Iran W. Hinz: “Ein orientalisches Handelsunternehmen im 15. Jahrhundert”, *Welt des Orients*, 1 (1947–9), 313–340.

fice seems to be parallel to the *diwan al-ard*, “the office of the land”, that supervised the *iqta's*. The first named supervisor of the *waqfs* was the Shafi'i jurist Sharaf al-Din Abu Sa'id 'Abd Allah ibn Abi 'Asrun (488–585/1095–1189)<sup>58</sup>, who appears to have had an important influence on Nur al-Din Mahmud's *waqf*-policy. Kamal al-Din al-Shahrazuri (d. 572/1176–7)<sup>59</sup> succeeded him in this office.<sup>60</sup>

## 5. The meeting about the assignment of income from the patrimony of the Umayyad Mosque

Between Sha'ban 551/September 1156 and Jumada I 554/May 1159<sup>61</sup>, again a series of devastating earthquakes ravaged Syrian cities.<sup>62</sup> In this exceptional emergency situation, the responsible urban elite faced the enor-

58 Until Nur al-Din Mahmud appointed him in Aleppo, Ibn Abi 'Asrun taught in Mosul and Sinjar. After the conquest of Damascus, he taught at the Ghazaliyya within the Umayyad Mosque and assumed the office of the supervisor of the *waqfs*, *mutawalli al-awqaf*. Ibn Shaddad: *A'laq*, 98–99; al-Nu'aymi (d. 927/1520–1): *Al-Daris fi tarikh al-madaris*, (ed) Jafar al-Hanni, 2 vols, (Cairo, 1988), here v. 1, 383–400, esp. 400. N. Elisséeff: *Nur ad-Din, un grand prince musulman de Syrie au temps des croisades (511–569 H./1118–1174)*, 3 vols., (Damascus, 1967), here v. 3, 929–930.

59 He was appointed as *qadi l-qudat*, chief judge, in Damascus and at the same time ‘inspector of endowments’ *nazir al-awqaf*; see A. Meier: “Wakf”, 825, and N. Elisséeff: *Nur ad-Din*, v. 2, 680–681, v. 3, 827.

60 Before that period, in the 4<sup>th</sup>/10<sup>th</sup> century, such a central supervision of endowments did exist in Iraq (*diwan al-birr wa-diwan al-sadaqat*). This was, however, a different historical and economic environment. Miskawayh (d. 421/1030): *Kitab Tajarib al-umam*, (eds) and translated by Henri F. Amedroz and David Samuel Margoliouth. The Eclipse of the 'Abbasid Caliphate, v. I and II; tr. IV and V, (Oxford, 1920, 1921), here v. 1, 152; A. Duri: “Diwan. The 'Abbasid Period”, *Enc of Islam* 2, v. 2 (Leiden, 1991), 324; E. Tyan: *Histoire de l'organisation judiciaire en pays d'Islam*, (Leiden, 1960), 382–383. In Fatimid period a *diwan al-abbas* exists in Egypt; D. Behrens-Abouseif: “Wakf. II. In the Arab Lands. 1. In Egypt”.

61 Ibn al-Qalanisi (d. 555/1160): *Dhayl tarikh Dimashq*. (ed) Suhayl Zakkar, (Damascus, 1403/1983), 514, 518, 525–531, 533, 541; Abu Shama: *Rawdatayn*, (ed) Zaybaq, v. 1, 332–336, 375, 381.

62 E. Guidoboni and F. Bernardini and A. Comastri: “The 1138–1139 and 1156–1159 Destructive Seismic Crises in Syria, South-Eastern Turkey and Northern Lebanon”, *Journal of Seismology*, 8 (2004), 105–127; N. N. Ambraseys: “The 12th Century Seismic Paroxysm in the Middle East. A Historical Perspective”, *Annals of Geophysics*, 47 (2004), 733–758.

mous challenge of reconstructing the city and financing the reconstruction. Abu Shama's chronicle preserved parts of a protocol of a meeting that took place in the citadel of Damascus, on Thursday, 19 Safar 554/12 March 1159.<sup>63</sup> The protocol sheds light on the function and the scope of the *waqf* policy of Nur al-Din Mahmud within the economic and fiscal parameters described above.

The meeting was hosted by Nur al-Din Mahmud. The named attendees were the Shafi'i *qadi* of Damascus as chief representative of the legal system; the "administrator for the supervision of the *waqfs*", the Shafi'i Ibn Abi 'Asrun; members of Shafi'i, Maliki, and Hanbali schools of law, but no one of the Hanafi school; the heads of the urban administration and militia and also professional witnesses. Nur al-Din Mahmud had summoned all the relevant urban dignitaries—this is evident by the circumstances—to find a mutually agreeable, practical, and first of all legally legitimate solution, to redirect funds from the largest and richest patrimony of the city, that of the Umayyad Mosque, to urban construction and re-construction projects and also to the fortification of the city.

Over the centuries, the great patrimonies had accumulated enormous capital in the form of commercially used real estate. In the protocol the term *masalih* was used in two different ways: in the general sense as 'welfare of the Muslims (*masalih al-muslimin*)'; and in a specific usage, as productive assets of the patrimony which are not part of an endowment. The use of their proceeds was not regulated by any *waqf*-deed. In general, the *masalih*-assets should serve the 'welfare' (*masalih*).<sup>64</sup> Abu Shama:

And Nur al-Din asked them about the [additional] asset of *masalih* which was added to the *waqfs* of the congregational mosque in Damascus (*al-mudaf ila awqaf al-masjid al-jami' bi-Dimashq min al-masalih*), [and] which [i.e. the additional asset] is not an endowment for it [i.e. for the mosque] (*allati laysat waqfan 'alayha*). [...]

Then Nur al-Din ordered [the Shafi'i Ibn Abi 'Asrun], the *mutawalli* of the

63 Abu Shama: *Rawdatayn*, (ed) Cairo, v. 1, 17–18; (ed) Ahmad and Ziyada, v. 1, part 1, 41–44; (ed) Zaybaq, v. 1, 73–77. Compare also the discussion on the protocol in J. Pahlitzsch, "Transformation", 56–57.

64 For the development of the legal term *maslaha* see F. M. M. Opwis: *Maslaha: An Intellectual History of a Core Concept in Islamic Legal Theory*, PhD Thesis Yale University, (Ann Arbor, 2002), esp. 42–43 (she cites here al-Ghazali), 341–343. At the end of the 5<sup>th</sup>/11<sup>th</sup> century, the concept of *maslaha* gained ground in the law finding process. Al-Ghazali (d. 505/1111) envisioned *maslaha* as a method to expand the law in the cases for which no textual evidence directly applied. Its application should remain restricted to those cases that displayed necessities.

*waqfs* of the congregational mosque, the mosques, the hospital, the aqueducts (*quniyi l-sabil*) and what goes with those, that he read out before him in the presence of the aforementioned [attendees] the proceeds of the endowments (*daribati l-awqaf*), place by place (*mawdi'an mawdi'an*), in order to separate what—according to their knowledge—belongs to the *masalih* property and does not belong to the *waqf* (*annahu lil-masalih duna l-waqf*).<sup>65</sup>

The document continues with an extensive list of the patrimony's real estate holdings within Damascus, emphasizing the great economic importance of the patrimony for the city. This list itemizes numerous shops in the *sug*, a commercial complex (*qaysariyya*), tenements, rooms for rent and a bakery. All property was scattered within the entire area of the intramural city. The protocol implies four legal categories as how the aforementioned real estate belonged to the *masalih* assets of the patrimony: First, real estate that formed part of the Umayyad family's legacy within the city (*mirath bani umayya*); second, all that which was acquired with the assets of the *waqfs* and *masalih* (*bi-mal al-waqf wal-masalih*); third, family *waqfs* that came to the patrimony when their last beneficiary passed on; those which had no living immediate beneficiary anymore and which had become part of the patrimony; fourth, commercially used real estate built on public streets and grounds (*tariq al-muslimin*), such as those within the old *temenos*, the precinct of the Hellenistic temple which had become the Umayyad Mosque. Nur al-Din Mahmud then directed the discussion toward re-assignment of these revenues he wished to achieve.

And Nur al-Din said: "And in fact the most important of the welfare (*masalih*) is the protection of the border lands of the Muslims (*sadd tughur al-muslimin*) and the building of a wall enclosing Damascus (*bina' al-sur al-muhit bi-Dimashq*), towers (*al-qilal*)<sup>66</sup> and a moat (*al-khandaq*) for the safety of the Muslims (*li-siyanat al-muslimin*), their families (*harimuhum*) and their properties (*amwaluhum*)." And they approved what he suggested and they thanked him.<sup>67</sup>

After the attendees had approved the new assignments of the proceeds from the *masalih* assets, Nur al-Din Mahmud turned to another source of revenue, the surplus from the endowments, *fawadil al-awqaf*. This

65 See fn. 63.

66 This part of the sentence is missing in Cairo edition and in that of Ahmad and Ziyada, but it is present in the edition of Zaybaq.

67 See fn. 63.

term refers to the net income of the *waqf*, the gross income minus the expenditures to fulfil the purposes stipulated in the *waqf* deed.

Then he [Nur al-Din Mahmud] asked them about [the disposition of] the surpluses of the endowments (*fawadil al-awqaf*): [He asked] "Is it permissible to spend them on the construction of city walls and works on the moat as welfare (*masalih*) which is intended to be for the Muslims?" Then Sharaf al-Din 'Abd al-Wahhab al-Maliki<sup>68</sup> gave his legal opinion (*afwa*) about the lawfulness (*jawaz*) of that.<sup>69</sup>

In the following statements of the attendant legal scholars, some criticism became apparent. They expressed concerns about the revenue of the *waqfs* being spent on issues other than those stipulated in the *waqf* deeds. Finally, according to the protocol, all attendees approved the policy of Nur al-Din Mahmud. With this decision, they not only acknowledged the authority of Nur al-Din Mahmud but attended the obvious needs after the earthquakes.

In this case, Nur al-Din Mahmud succeeded in finding a legally approved solution to tap the revenues of a major patrimony for funding of public and semi-public duties. In comparison to later treatises and practice, it can be supposed that this was not a singular incident in Damascus, but mirrored a now growing practice of control by the ruler over the spending of revenues of these major patrimonies.<sup>70</sup> The largest urban patrimony in Damascus controlled much of the urban economy. In turn, the control of the surplus from the patrimony and the newly established *waqfs* allowed Nur al-Din Mahmud to control indirectly the use of the surplus of urban economic activity and to redirect it to 'public' purposes without reverting to direct taxes, and even abolishing them, at least from time to time.

68 He was the representative of the Maliki school of law and taught in the Umayyad mosque under the central 'Dome of the Eagle (*qubbat al-nasr*)'. He owed his career in Damascus to the Burids.

69 See fn. 63.

70 For the in the Ottoman period compare Tarabulusi (d. 922/1516): *Al-Is'af fi ahkam al-awqaf*, (Beirut, 1981), 62. The ruler is allowed to take a loan from the *waqf* when vicissitudes occur to Islam. In Mamluk Egypt the loans were never returned: M. Hoexter: "Huquq Allah", 153 fn. 71; E. Tyan: *Histoire*, 378, fn. 2.

## 6. Conclusion: The dynamic economic effects of the *waqf*-policy

The transformation from the late Roman and early Islamic cities to that type of medieval cities found today in the old towns in the Middle East was achieved—among other factors—with the help of a consciously applied instrument of funding: the *waqf*. The reign of Nur al-Din Mahmud saw a visible change, in quality and in quantity, of the endowment; it found now a widespread systematic political application in Syria and northern Mesopotamia. This new policy went far beyond the financing of single institutions. After two centuries of decline, the state penetrated more and more into society, particularly with regards to monetary economy, the fiscal system, the legal system, public security, education, urban infrastructure, road construction and much more. After the Seljuq conquest of the late 5<sup>th</sup>/11<sup>th</sup> century, this expansion of the state was financed by dues and taxes illegitimate according to the *shari'a*, i. e. the *mukus*, *rusum*, *dara'ib*, and *huquq al-bay'*. Their levying, however, contradicted the ideological self-perception of the Seljuqs and their successors, the Zangids and Ayyubids who saw themselves as the revivers of the Islamic state and its legal system.

Nur al-Din Mahmud found a different solution than taxes. The political assignment of the proceeds of the numerous newly established *waqfs* and—at least after the earthquakes during the reconstruction period—the revenues of the *masalih* assets and the surplus of the patrimonies made it possible to skim urban economic activities for public and semi-public duties and construction projects while still abolishing or lowering the criticised dues and taxes. The funds came from the private property of the ruler. This and the creation of the numerous *waqfs* itself entered the eulogies on the piety and justice of Nur al-Din Mahmud and served as part of his political legitimization.

At the existent level of fiscal and economic organization and a relatively shrunken monetary economy, the *waqf* for the maintenance of public institutions and buildings represented in some regards the urban equivalent to the *iqta'*, the immediate agricultural levy for the sustenance of the military in the rural areas. Both, military and urban institutions, received funding independent from the fiscal redistribution of the ruler. To control the *waqfs* and to keep them in line with the goals of the Zangid policy, the office of the "administrator of the supervision of the *waqfs*" was newly created or now especially emphasized.

What were the economic impacts of this new *waqf* policy of Nur al-Din Mahmud on the development of the cities? Nur al-Din Mahmud's *waqf* policy was part of a wide range of measures stimulating dynamic economic growth. The endowed property—the new *waqf* assets, shops, *khans* and workshops in the *sug*, tenements and other buildings—increased urban economic activities and allowed a far larger group of people to find housing and employment in the cities. The expansion of the Seljuq form of *iqta'* improved the cultivation of rural areas and fed a growing urban population. Numerous settlement surveys prove this demographic turn. The *waqf* fostered a dynamic development, quite the opposite of what Goitein has perceived.