R. D. MCCHESNEY

Waqf in Central Asia

Four Hundred Years in the History of a Muslim Shrine, 1480-1889

PRINCETON LEGACY LIBRARY

Waqf in Central Asia

Waqf in Central Asia

FOUR HUNDRED YEARS IN THE HISTORY OF A MUSLIM SHRINE, 1480–1889

R. D. McChesney

PRINCETON UNIVERSITY PRESS
PRINCETON, NEW JERSEY

Published by Princeton University Press, 41 William Street,
Princeton, New Jersey 08540
In the United Kingdom: Princeton University Press, Oxford

Library of Congress Cataloging-in-Publication Data

McChesney, R. D., 1944–
Waqf in Central Asia : four hundred years in the history of a Muslim shrine, 1480–1889 / R. D. McChesney.
p. cm.
Revision of thesis (Ph.D.)—Princeton University, 1973.
Includes bibliographical references and index.
1. Islamic shrines—Afghanistan—Balkh Region—History. 2. Charitable uses, trusts, and foundations—Afghanistan—Balkh Region—History.
3. Mazār-e Sharīf (Afghanistan)—History. I. Title.
BP187.55.A3B345 1991 297'.35—dc20 90-47769 CIP

ISBN 0-691-05584-X (alk. paper)

This book has been composed in Linotron Caledonia

Princeton University Press books are printed on acid-free paper and meet the guidelines for permanence and durability of the Committee on Production Guidelines for Book Longevity of the Council on Library Resources

Printed in the United States of America by Princeton University Press, Princeton, New Jersey

10 9 8 7 6 5 4 3 2 1

TO MY PARENTS

Herbert L. and Charlotte W. McChesney,

with love and gratitude

Contents

Preface

THIS IS the story of an Islamic legal institution, the charitable endowment or *waqf*, and its place in society. It is more especially the story of a single example of the institution, the endowment of a major Muslim shrine in what is today northern Afghanistan. This work traces the evolution of the waqf endowment from its foundation in the late fifteenth century until the late nineteenth century, when the Afghan government assumed administrative control of it. The region in which the endowment operated was known until the nineteenth century as Balkh—after its chief city, an ancient urban center. By the end of the century, the shrine, founded in the small village of Khwajah Khayran a few miles east of Balkh, had supplanted that ancient city as the economic, demographic, and administrative center of the region. The city that grew up around the shrine came to be known as "Noble Shrine" (*mazar-i sharif*). Today Mazar-i Sharif is the fourth largest metropolis in Afghanistan and is the administrative center of the area north of the Hindu Kush mountains.

For most of the period of this study—the 1480s to the 1880s—Balkh's economy, culture, and politics were linked not to the region to the south but to the north. It was one of the three great urban centers, along with Bukhara and Samarqand, of the area called Trans-Oxiana (Mawarannahr in Arabo-Persian). Rather than being the northernmost urban region of Afghanistan, as it is today, Balkh was the southernmost city of a political unit whose northern centers were Bukhara, Samarqand, and, for some of the period, Tashkent. For lack of a more precise term to denote this region, I have used "Central Asia" through much of this study, alternating it with "Mawarannahr" or "Mawarannahr and Balkh." To locate it more precisely, it is the region bounded by sixty-three and seventy degrees east longitude and thirty-five and forty-five degrees north latitude.

The transformation of the shrine from village holy site to urban conglomeration was largely dependent on the economic fortunes of the shrine, and these in turn were predicated mainly on the management of the waqf endowment. Such is the central thesis of this book. A complex of charitable, political, reverential, and social motives produced the original endowment in the 1480s. Once established and equipped with an administrative apparatus, the waqf endowment became a formidable economic force in the region, particularly during those times when its sacred character and the tax privileges it acquired provided its managers relative security in comparison with others conducting their economic lives without such advantages.

The subject of the Islamic institution of charitable endowments has long been the domain of scholars whose perspective on waqf is theoretical and legal. Recently, however, a number of studies have appeared stressing the social and economic significance of waqf. Waqf was never a purely legal institution, one whose features could be wholly understood by reference to legal sources. It was a social institution as well, operating in a particular society and subject, like all other components of that society, to local economic, social, and cultural influences. Just as art and architecture adapted to local tastes and economic conditions while retaining and perpetuating certain universal forms, so too did waqf. And what evolved in individual situations, as a consequence of political, social, and economic factors, was often far removed from the way in which legal scholars depicted the institution and formulated its theoretical behavior.

In order to show the evolution of waqf in society, it seemed desirable to limit the study as far as possible to a single endowment. This allows one to grasp more fully the environment in which waqf evolved and still evolves. Here I have chosen the endowment of the shrine of 'Ali b. Abi Talib in the center of present-day Mazar-i Sharif, from its origins in the late fifteenth century to its incorporation under Afghan administration in the late nineteenth century. Throughout, a consistent effort has been made not to view this corpus of waqf as an institution isolated either from the legal regulations governing it or from its environment. As it is impossible in such a study to separate the endowment from the institution it was meant to support or from the administration formed to manage it, both play central roles in this work.

The choice of the 'Alid shrine at Balkh owes a good deal to serendipity. In 1968 I was in Afghanistan doing research on nineteenth-century Afghan history. I came across a small book by Hafiz Nur Muhammad titled *Tarikh-i Mazar-i Sharif*. The work was published in Kabul in 1325/1946 in what was probably a very small edition. It contains facsimiles with accompanying transcriptions of two documents, a decree (*manshur*) issued in 1668–1669 by the Tuqay-Timurid *sultan* of Balkh, Subhan Quli, and an edict (*farman*) of the Muhammadza'i amir of Afghanistan, 'Abd al-Rahman Khan, dated 1889. Both documents concerned the administration of the 'Alid shrine at Balkh and the waqf endowment of the shrine. In addition, Hafiz Nur Muhammad provides a synopsis of a waqf endowment established in the 1870s by a governor of Mazar-i Sharif, Na'ib Muhammad 'Alam Khan, as well as a summary narrative on the founding of the 'Alid shrine and information on nineteenth-century renovations and additions to the shrine.

Some months before the book came into my hands, I had visited the shrine as a tourist with no particular scholarly interest in it. The shrine dominates the city of Mazar-i Sharif and the surrounding plain and cre-

ates a very powerful visual impression. In part because of the impression left by the shrine, the book and the documents in it immediately piqued my curiosity. The book offered evidence that the shrine and its endowments had had an unbroken history of more than four centuries—five, if one brings it to the present day. Such longevity raises many questions: What are the economic circumstances that permit the survival of such an institution for so long a period? How is administrative continuity maintained for such a long period of time? What sorts of conflicts does such an institution experience and how are they resolved? What kinds of changes do the institution and its economy undergo as a consequence of changing external conditions—political, social, and economic—in the immediate surroundings? And what effect does such a long-lived institution have on its environment—on land tenure patterns, on agriculture and commerce, on urbanization, and on the formation and dissolution of social groups?

For the past two decades, I have spent a good deal of time trying to arrive at satisfactory answers to these questions. This process involved finding information that would illuminate the 223-year interval separating the documents in Hafiz Nur Muhammad's book and reconstruct the history of the institution from its founding and first waqf endowment until the time when the 1668–1669 manshur provides a comparative abundance of information. In the process, I discovered that it was necessary to create a narrative of the history of the region, for no satisfactory one now exists, and to try to sketch in the political, economic, and social conditions that had the greatest influence on the way in which the institution and its endowments evolved.

In 1973, the first product of this research appeared in the form of a doctoral dissertation submitted to the department of Near Eastern Studies at Princeton University. This book is an elaboration and considerable expansion of that first effort.

Many people and organizations have encouraged and assisted me in the course of writing this book. I owe my professors at Princeton University, in particular Michel M. Mazzaoui and Martin B. Dickson, a debt of gratitude that can never be adequately repaid. Ashraf Ghani and Aharon Layish also encouraged me and made many helpful suggestions for which I am grateful. For financial support, without which the circumstances that brought the *Tarikh-i Mazar-i Sharif* into my hands would not have occurred, I must thank the U.S. Department of Education (then part of the Department of Health, Education and Welfare) for awarding me the Fulbright Grant that took me to Afghanistan. Since then the American Council for Learned Societies/Social Science Research Council, the International Research and Exchanges Board, and the U.S. Department of

Education, while providing financial assistance for other research, have indirectly supported work on this book. To them I extend my thanks. Finally, thanks also are due the Hagop Kevorkian Center for Near Eastern Studies at New York University, which underwrote the cost of the book jacket.

Note on Transliteration

CENTRAL ASIA in the period of this book was the meeting place of at least four major linguistic and cultural currents—the Arabo-Persian, the Turko-Mongol, the Anglo-Indian, and the Russian. The first two traditions used the Arabic script to produce written forms of names and terms, the third rendered those same names intelligible to the reading public in the Latin alphabet, while the fourth reproduced Central Asian names and terms in the Cyrillic alphabet.

While Arabo-Persian names and terminology are generally consistently rendered in Arabic script, the same cannot be said of Turko-Mongol names and terms reproduced in Arabic (or for that matter English or Russian names and terms). Inconsistency (to the point of unintelligibility in some cases) is also the norm for Arabo-Persian and Turko-Mongol names and terms reproduced in the Latin and Cyrillic scripts.

Choosing among the bewildering variety of renderings of terms that have been transformed by one or another of these scripts is no small problem. Words of Persian or Turko-Mongol origin that pass from the Arabic script into the Cyrillic via the Latin or into the Latin via the Cyrillic can undergo very strange transformations. In this book, since most of the words being rendered in the Latin alphabet originally come from Arabo-Persian sources, some basic rules have been adopted for transliterating names and terms that cannot be sensibly translated. The object of transliteration is mainly to provide an alphabetic equivalent for each letter being transliterated and only secondarily to reproduce or approximate the sound. (Some Arabic letters, for example, have very different sounds when used in Persian. At the same time, a number of different letters of the Arabo-Persian alphabet may sound exactly the same when uttered in Persian or Turkish.) Of course, equivalence is based to a large extent on phonetic similarity. Here each individual letter of the Arabo-Persian alphabet will have its own Latin alphabet equivalent regardless of whether or not that letter reproduces the sound precisely. For example, I transliterate the word for Islamic judge as *qadi* rather than as *kazi* even though the latter better represents its sound as pronounced in Central Asia. Diacritics are used to distinguish letters for which there is no straightforward Latin alphabet equivalent.

In transliterating I have generally followed the system used by the *Encyclopaedia of Islam*, with a few modifications. First, the following equivalents have been changed:

ج = j rather than dj
چ = ch rather than č
ق = q rather than ḳ

Second, in transliterating the Cyrillic alphabet, I have modified the *Encyclopaedia of Islam* system as follows:

й	=	i in place of y
ж	=	zh in place of ž
ч	=	ch in place of č
щ	=	shch in place of shč
ы	=	y in place of i
ю	=	iu in place of yu
я	=	ia in place of ya

Some liberties have been taken with Turkish terms. For example, the word properly transliterated as *bik, biki* (or *big, bigi*) is rendered *beg, begi*.

Finally, when searching for the perfect system of transliteration, the writer must also reckon with his readers. For those who know the languages and scripts from which words are being transliterated, it is often unnecessary to provide full transliteration (i.e., with diacritics for lengthened vowels and for consonants without Latin equivalents). The expert reader can mentally convert the letters based on his or her knowledge of context and language. For those who have no knowledge of the language, full transliteration is even less helpful, for it simply distracts and confuses the reader. Those best served by full transliteration are either readers who fall somewhere in between, having some knowledge of the language but not certain enough to make the automatic mental conversion of the letters, or expert readers who are interested in the precise way in which a specific text transliterates a particular name or term.

To try to meet the various expectations brought to the reading of this book, I provide full diacritics for all names and terms in the glossary, bibliography, and index. In addition, because of the particular difficulty presented by names of Mongol and Turkish origin when rendered in Arabic script, I have given some of the variant spellings of these words in the glossary and index entries.

To simplify matters further, I have opted for familiar renderings of well-known geographic names, even though they may differ somewhat from the forms that would emerge if I were to apply the above rules strictly (i.e., Herat for Harat and Tashkent for Tashkand).

For those still interested in pronunciation, the following is an approximate guide to the way in which Arabo-Persian consonants and vowels

without an obvious English equivalent were apparently pronounced in Balkh in the period of this study:

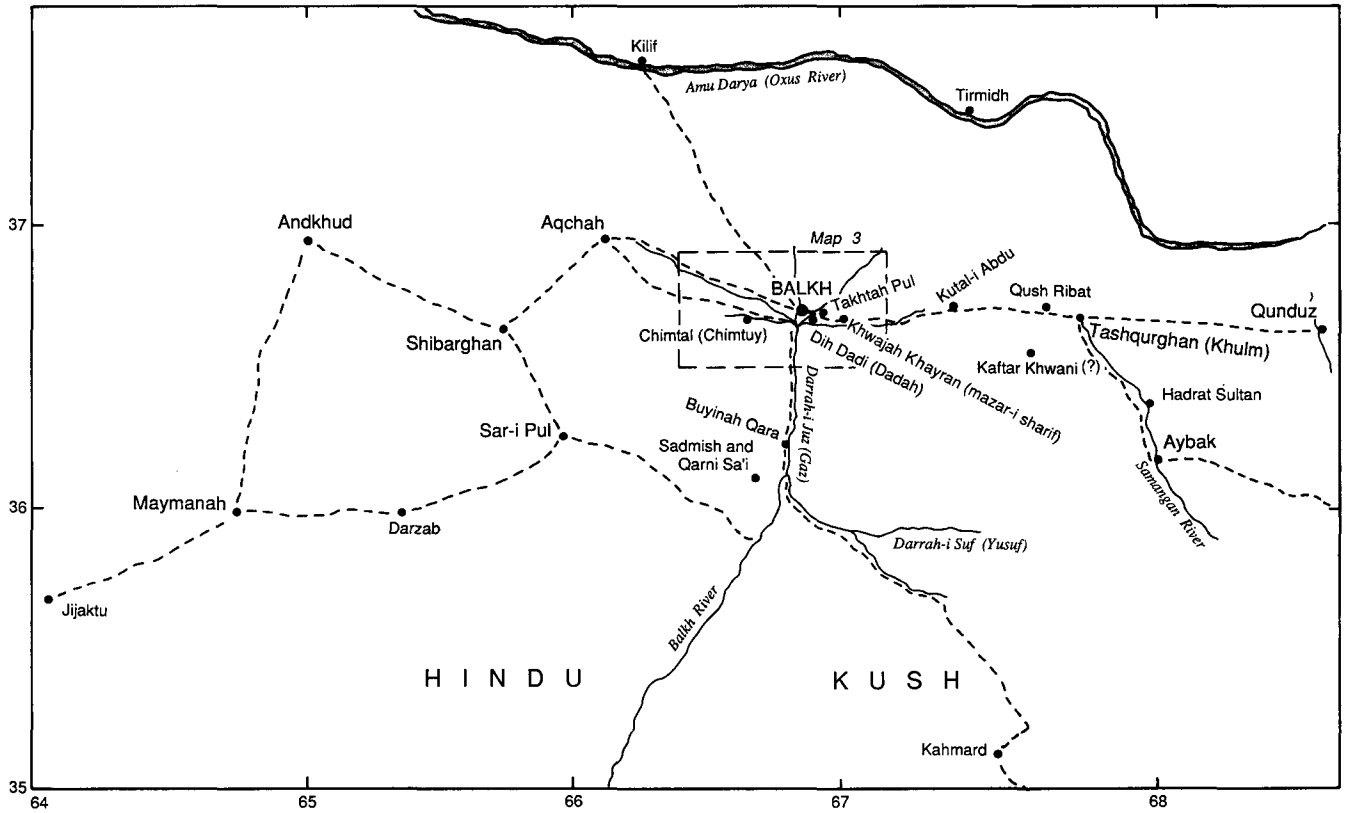
th	=	s
dh	=	z
ḍ	=	z
q	=	k
a	=	a in *pat*
i	=	i in *ship*
u	=	u in *put*
ā	=	a in *shah*
ī	=	ee in *feet*
ū	=	oo in *hoop*
’		Unpronounced
‘		Unpronounced

Abbreviations

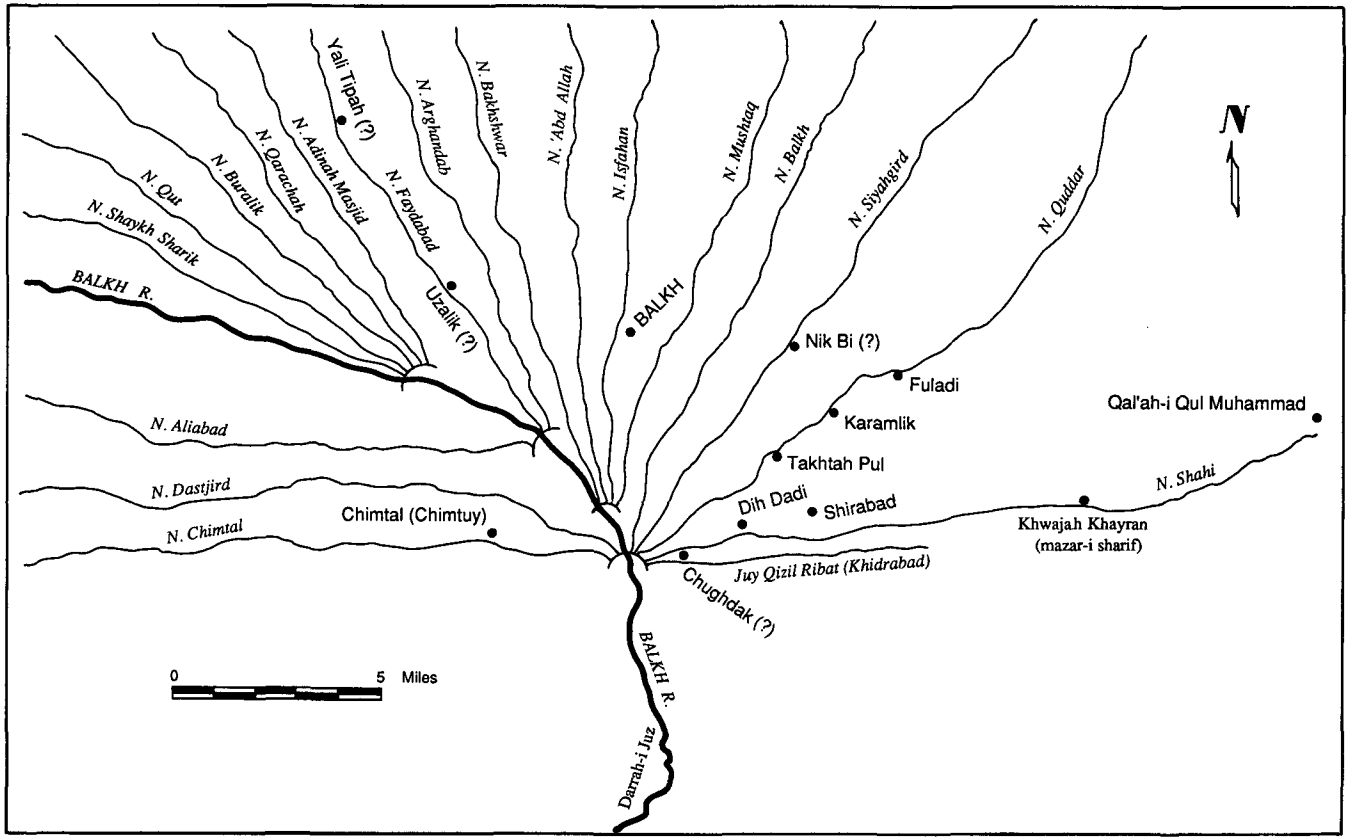
COMPLETE citations of the works listed below may be found in the Bibliography.

BA 2–4	Mahmud b. Amir Wali. *Bahr al-asrar fi manaqib al-akhyars* parts (rukn) 2–4 of vol. 6
EI (1, 2, S)	1: *Encyclopaedia of Islam.* 1st ed. 2: *Encyclopaedia of Islam.* New ed. S: *Shorter Encyclopaedia of Islam.*
EIr	Yarshater, E., ed. *Encyclopaedia Iranica*
FA	*Al-Fatawa al-'Alamgiriyah*
Gaz. 1, 4	Adamec, Ludwig. *Historical and Political Gazetteer of Afghanistan*, vols. 1 and 4
IVAN	Institut Vostokovedeniia Akademii Nauk
SSR	Sovetsk(oi) Sotsialistichesk(oi) Respublik(i)
TMS	Nur Muhammad, Hafiz. *Tarikh-i Mazar-i Sharif*
TR	Sharaf al-Din. *Tarikh-i Mir Sayyid Sharif Raqim (Tarikh-i Raqimi)*

Map 1. Central Asia in the sixteenth through nineteenth centuries.



Map 2. The Balkh appanage: waqf sites of the seventeenth century.



Map 3. Waqf sites in the Hazhdah Nahr system in the seventeenth through nineteenth centuries.

Waqf in Central Asia

CHAPTER ONE

Introduction

"IT IS IMPOSSIBLE to understand and to appreciate a juridical institution at all without having considered it beforehand in its natural milieu and without having pursued its historical evolution." So wrote Fuad Köprülü nearly half a century ago in the first article in the inaugural issue of the journal *Vakıflar Dergisi.*[1] Anyone who has spent time studying the history of Islamdom has formed some idea of the institution of the Islamic endowment, or *waqf* (*vaqf* in the western Persian-speaking regions, *vakıf* to a Turk, and *hubus* to a North African).[2] No one would question its central importance in the social and economic history of the Islamicate regions, particularly in the twelfth to nineteenth centuries, and most scholars consider it the single most important institution for the provision of community social services in Islamdom. Whether supporting education; financing public buildings and facilities; providing welfare for the poor, the indigent, and travelers; feeding birds and stray cats and dogs; or supplying communal tools and utensils, waqf has been thoroughly woven into the fabric of daily life and its ubiquitousness established by the breadth and depth of the historical record.

But despite the literature about waqf, Köprülü's challenge to consider it in its own context both temporally and geographically has remained largely unanswered. In 1942 he noted that despite the tremendous volume of studies then available on waqf it was still little understood as a historical phenomenon.[3] As late as 1965, Claude Cahen wrote ". . . no work as yet has dealt with the history, let alone the economic history, of the waqf. . . ."[4] Köprülü argued for the study of waqf from the perspective of social history and suggested an approach that would embrace the entire Islamicate world.[5] But since those words appeared in print, research and writing on waqf[6] have been affected by the general gravitation

[1] Köprülü 1938, 4.

[2] The Arabic plural form is *awqaf.* However, throughout this book I have elected to use the Anglicized form, *waqfs,* when speaking of more than one endowment.

[3] Köprülü 1942, 6.

[4] Cahen 1965, 91.

[5] Köprülü 1938, 4–9.

[6] Among the scholars whose works should be consulted on waqf in Anatolia, Iran, and the Arab region are Muhammad Muhammad Amin, Gabriel Baer, Omar Lutfi Barkan, Soraya Faroqhi, Leonor Fernandes, Ronald Jennings, Metin Kunt, Uri Kupferschmidt, Ann Lambton, Aharon Layish, and Andre Raymond.

of historical scholarship toward economic and social issues to such a point that the methodological problems that such a study would involve would render it unworkable, at least for the time being. The amount of literature available is now so massive and, more importantly, reveals such a wide range of as yet unresolved problems as to make a comparative study of the type envisioned by Köprülü impractical. In such a study, the author would have to make sense not only of the political and social histories of Islamdom from Indonesia to Mauritania but also of economic developments, including such complex and understudied topics as land tenure, market and nonmarket exchanges, agriculture (especially agronomy), and manufacturing. The essential and highly individualistic issue of terminology alone makes such a study almost inconceivable at this point. As only one example, terms for units of land may vary widely in one region over a period of a century and between regions contemporaneously. Until a complete understanding of the meaning of such terms is obtained, it is very difficult to make accurate comparative assessments of such issues as the changing proportion of different categories of landholding, the flow of land into and out of cultivation over time, and comparative crop yields, and, therefore, to assess changing economic conditions.

Certainly the direction of scholarship, guided by the same belief in the necessity of understanding the historical and "natural" milieu of waqf, has been away from the type of all-encompassing work proposed by Köprülü. Instead the focus has been on limited geographic areas[7] or on single aspects of waqf.[8] The value of the monographic treatment is in allowing the historian to consider the whole range of the transactions and interactions of waqf within a limited scope, either in time or in space, while maintaining some control over the material.

The subject of this book is the corpus of waqf administered on behalf of the shrine complex of 'Ali b. Abi Talib near Balkh. The conclusions drawn for the 'Alid shrine's waqf may prove useful to others in examining comparable cases. At the same time, it is my firm belief that the particular historical circumstances of Balkh and its surrounding region shaped the waqf institution in unique ways that could not be reproduced elsewhere. While it is hoped that the reader will find parallels elsewhere, the shrine and its waqf at Balkh should not necessarily be taken as a model for the evolution of waqf.

In the course of carrying out the research for this study, it became clear that the literature about the waqf at Balkh, as well as waqf in Central Asia generally, tended to fall into two broad categories: works of a theoretical and legal nature (generally those of Muslim legal scholarship)

[7] For example, see Faroqhi 1974, 1981, 1984.

[8] For example, Baer 1979, 1982; Shinar 1982.

and descriptive and analytical works. There is no fine line that can be drawn between the two categories; they deal with the same subject and often overlap. And both have a marked tendency to regard waqf, whether generally or in a specific case, as a permanent and therefore static institution, an institution that once created remains largely unchanged. Many authors, whether legal thinkers attempting to formalize the principles of waqf or scholars concerned with waqf as a phenomenon in history, have found it difficult to correlate the idea of the inevitability of change with the legal concept of waqf's immutability.

Theoretical and Legal Works

Legal works include the fatwa collections, manuals of legal formularies (*shurut*), and monographs devoted to waqf. The legal school of interpretation for Central Asia in the period under discussion is that of Abu Hanifah al-Nu'man (d. 767), known as the Hanafi or Nu'mani school. The legal tradition on waqf comes down from Abu Hanifah through his two main interpreters, Abu Yusuf (d. 808) and al-Shaybani (d. 805) (the latter usually cited in the Hanafi texts by his given name, Muhammad). Through the citations found in such latter-day (late-seventeenth-century) Hanafi compilations as *al-Fatawa al-'Alamgiriyah* (*FA*); through the fiqh works which were commented upon, glossed, and super-glossed in sixteenth- and seventeenth-century Central Asia; through the works cited in manuals of legal formularies; or through biographical entries on legal scholars, in which the works they read and wrote are listed, it is possible to identify the authoritative legal works and thus the authoritative legal tradition on waqf in Balkh. Using *FA*[9] as a representative summation of the works current in Central Asian and Hindustani Hanafi law at the end of the seventeenth century, we find nearly fifty different sources cited in the *kitab al-waqf*, the chapter on waqf. In addition, the opinions of another dozen or so individual authorities or groups of authorities, such as the "shaykhs of Bukhara" and "shaykhs of Balkh" (referring to the legal scholars of those two cities in the eleventh and twelfth centuries), are

[9] Here I have concentrated on works that were considered authoritative in Balkh during the period covered by this study. Although *FA* was compiled in India, it serves our purposes for several reasons. In the first place, the bulk of its sources are Central Asian. Second, it has been published and (partially) translated, whereas Central Asian fiqh works contemporary with it are far less accessible—works like al-Khwarazmi's *al-Fatawa al-Shibaniyah* (*Fatawa Shibani Khan*), compiled for the founder of the Abu'l-Khayrid/Shibanid line in Mawarannahr, Muhammad Shibani Khan (d. 1510), or the seventeenth-century *Fatawa Subhaniyah*, compiled for Subhan Quli Khan (d. 1702). Third, these latter sources cite the same authorities as *FA*. Perhaps an analysis and comparison of the texts will show different emphases over time and between regions, but for now the Indian work serves well enough.

adduced from quotations in the works cited. The works used by *FA* fall more or less into six categories with one or two prominent subcategories:

1. Fatwa works, the authors of which select appropriate opinions from the authorities of their time and where applicable cite opposing points of view, in which case a recommendation for the mufti using the work is given.
2. A line of scholarship going back to al-Quduri's (d. 1037) *Mukhtasar*.[10]
3. A line of scholarship going back to Husam al-Din 'Umar Ibn Mazah (d. 1141),[11] author of *al-Waqi'at al-Husamiyah*.
4. A third line to *al-Hidayah* of Burhan al-Din 'Ali b. Abi Bakr al-Marghinani (d. 1197)[12] within which line there is a major subcategory of commentaries stemming from Mahmud b. Ahmad b. 'Ubayd Allah al-Mahbubi, who flourished in the thirteenth century.
5. A fourth line from Hafiz al-Din Abu'l-Barakat 'Abd Allah b. Ahmad al-Nasafi's (d. 1310) *Kanz al-daqa'iq* and *al-Kafi*.[13]
6. A group of miscellaneous *furu'* works, whose antecedents are a combination of all these lines.

Besides fiqh works, I also include in the category of legal materials the documents—waqf inscriptions, waqf deeds (*waqfnamahs* or *waqfiyat*), government decrees (*farmans*, *manshurs*, *yarlighs*, *'inayatnamahs*)—directly related to waqf as well as such ancillary documents as sale/purchase agreements, lease agreements, and tenancy and development (*hikr* and *sukna*) covenants.

What nearly all these works have in common (with the exception of government documents confirming waqf conditions or attempting to correct abuses) is an a priori perspective, that is, they postulate what waqf should be, not necessarily what it became, and as such convey to the investigator an idealized, however indispensable, picture of waqf.

In its narrowly legal sense, *waqf* is the voluntary relinquishing of the right of disposal of a thing by its owner and the dedication of the usufruct of that thing to some charitable end, as a charitable gift (*sadaqah*).[14] The word *waqf* refers to the act of transferring the thing to a permanent state of impoundment, but it has come to be widely used as well for the thing impounded (more properly *mawquf*, pl. *mawqufat*, or *sadaqah mawqufah*, as the legal texts generally refer to it).[15] The act of waqf is considered

[10] Brockelmann 1943–49, 1:183.

[11] Ibid., 179. Barthold 1968, 326–27 and 353–55 discusses the political activities of Ibn Mazah and his successors.

[12] Brockelmann 1943–49, 1:466.

[13] Ibid., 2:251.

[14] The standard Hanafi phrasing may be found in al-Marghinani 1980, 3:10. The work was translated in the mid-nineteenth century by Charles Hamilton (see al-Marghinani 1957).

[15] Heffening 1961; Fernandes 1980, 12, where the use of the term for both the endowment and the object of the endowment in Mamluk Egypt is discussed.

by Hanafi lawyers to be accomplished and the right of alienation relinquished (implicitly to God) either when a *qadi* (judge) probates the waqf deed or when the waqf donor, in the words of al-Nasafi in *al-Kafi*, "delivers what he has made waqf to the waqf administrator [*mutawalli*] then [as a legal procedure] alleges that the waqf is not binding and the qadi issues a decision that it is."[16]

The practice of voluntarily alienating one's property for a purpose benefiting the community as a whole was ascribed to Islamdom's earliest history. Despite this, the surviving hadith texts show no unanimity on the admissibility of the practice. The ninth-century Hanafi tradition on the earliest waqf relates that Mukhayriq, who was killed thirty-two months after the Hijrah, willed all his wealth to the Prophet. The latter impounded it and made it a charitable gift. Al-Khassaf considered that act to constitute the first waqf.[17] Others see the first waqf as 'Umar b. al-Khattab's (d. 644) dedication of land at Khaybar to a charitable purpose on the advice of the Prophet.[18]

Among the eighth-century Hanafis, there was much difference of opinion, first on the admissibility of waqf and then on its irrevocability. Abu Hanifah held at first that, since the usufruct was a nonexistent thing and as it was not permissible to make a charitable gift of a nonexistent thing, then waqf was not permissible.[19] Having later adopted the view that waqf was permissible, he then saw it as analogous to an interest-free loan and therefore revocable by the bestower, a point on which his disciples, Abu Yusuf and Muhammad al-Shaybani, overruled him, at least as they were interpreted by later lawyers.[20]

Systematization of the regulations concerning waqf came in the ninth century in the works of Abu Bakr Ahmad b. 'Amr al-Khassaf (d. 875) and Hilal ibn Yahya ibn Muslim al-Basri (d. 859).[21] These specialized works attempted to define every legal issue that might arise for a waqf and supply an authoritative answer. Much later, in the sixteenth century, Ibrahim b. Musa b. Abi Bakr b. al-shaykh 'Ali al-Tarabulusi (d. 1516) offered the texts of al-Khassaf and Hilal in an abridged form.[22] By his own account, al-Tarabulusi merely restated the significant points (*al-maqasid*) made by al-Khassaf and added to these the additional things (*al-zawa'id*)

[16] *FA* 2:350–51.

[17] Al-Khassaf, fol. 1b, al-Tarabulusi 1952, 3. For *hadith*-reports, see the "Kitab al-wasaya" in any edition of al-Bukhari's *al-Sahih*.

[18] Heffening 1961, 625.

[19] Al-Marghinani 1908, 3.10: *Al-manfa'ah ma'dumah fa'l-tasadduq bi'l-ma'dum la yasihh wa la yajuz al-waqf.*

[20] Ibid.

[21] Al-Khassaf; al-Basri 1936–37.

[22] Al-Tarabulusi 1952.

to be found in al-Basri.[23] It should be noted, however, that for the compilers of *FA*, al-Tarabulusi was treated as an authority alongside al-Khassaf and Hilal. Unlike his predecessors, al-Tarabulusi did not follow the usual *responsa* format (*su'al/jawab*, question/answer, or *qala/qultu*, he said/I said) but attempted to extract the principal precepts contained in the texts of al-Khassaf and Hilal and present them in a more coherent manner. These and other works (the vast majority of which were Central Asian or Khurasanian in origin) cited by the compilers of *FA* were known and available to administrators of the law in Balkh during the time covered in the present work.

A necessary question for the historian, however, is whether these works represented or portrayed actual situations and whether the legal concerns expressed were, in fact, actual issues at the time in which the work was compiled or written. For example, in *Fatawa Qadi Khan*, the author refers to a case involving a hostel (*ribat*) and uncultivated (*mawat*) land on the banks of the Oxus River. The question is posed thus:

> A group rehabilitated mawat land on the Oxus. The sultan collected the *'ushr* [tax] from them. Nearby was a ribat. The mutawalli [administrator] of the ribat came to the sultan and the sultan released the 'ushr to him. Does the mutawalli have the right to spend the money on the muezzin who gives the call to prayer at that ribat, that is, to help him out with food and clothing? And does the muezzin have the right to take that 'ushr which the sultan has provided? The jurist Abu Ja'far[24] is reported to have said, "If the muezzin is in need then it is good for him. It is not incumbent on [the mutawalli] to spend that 'ushr on the ribat building [for repairs]. He may spend it on the needy but that is all. . . ."[25]

For the historian the question is: When the detail seems as concrete as this, fixing the example in a specific setting, can one assume that the example represents an actual case?

There is some evidence suggesting that one may indeed make such an assumption. The late Ol'ga D. Chekhovich of the Uzbek Academy of Sciences in Tashkent, who has published a considerable amount of documentary material pertinent to Central Asian economic issues,[26] wrote an article not long before her death in which she examined a number of Central Asian manuals of legal formularies dating to the late Middle

[23] Ibid., 2. Notwithstanding his disclaimer, al-Tarabulusi includes the opinions of a number of other jurists, among whom are al-Natifi (d. 1054), Shaykh Isma'il al-Zahid, Qadi Khan (d. 1196), Abu'l-Qasim al-Kufi (d. 963?), and Abu Layth al-Samarqandi (d. 993/4).

[24] Abu Ja'far al-Hinduwani, one of the "shaykhs of Balkh." He was a teacher of al-Sarakhsi and authored a collection of fatawa (Brockelmann 1943–49, 2:951).

[25] Cited in *FA* 2:472.

[26] See Chekhovich 1954, 1965, 1974, 1979.

Ages.[27] These manuals were written for court officials such as qadis and muftis as handbooks of specimen forms. In passing, they give examples of the changes in legal institutions that time and changing circumstances had wrought. Such information is often introduced by phrases like, "At the present time in Mawarannahr a certain circumstance exists that . . ." or, alluding to political realities after summarizing the legal view on some aspect of taxation, "but the rulers of our day collect such and such a tax. . . . " One qadi writing such a manual at the beginning of the sixteenth century clearly describes the then-novel system of commendation (that is, surrendering lands or other taxable property to someone who would guarantee the tax payments) and gives sample documents by which such a transaction might be legally executed.

Even if one remains skeptical that such cases were in fact a portrayal of what was really going on, one has to assume at least that the writers were dealing with issues of concern to them and their contemporaries.

Many of the issues surrounding waqf in a historical setting are not addressed in the legal materials. One of the most important developments in the history of waqf, the evolution of two distinct forms—the "public" waqf (*waqf khayri*) and the "family" waqf (*waqf ahli* or *waqf dhurri*)—is only covered inferentially. From a strictly legal standpoint the two forms of waqf are identical. Whether the object of a waqf endowment was an institution or a relative was of little concern legally. But for the historian of Muslim society, the two forms were usually of a different scale and often had dramatically different social and economic consequences. Public waqfs typically had as their first purpose support of a public institution—such as a fountain, a mosque, a hostel, a cemetery, a hospital, or a school—while private waqfs were established to aid the founder's kin and descendants. To be legally valid, such private waqfs had to establish an ultimate public purpose in the event of the extinction of the founder's line. In many cases, such as the Ahrarid waqfs of Samarqand and Tashkent, the foundation served both purposes simultaneously (what has become known as the "mixed" or *mushtarak* waqf), benefiting family members and supporting a public institution. Such waqf deeds might specify that family members would receive a certain percentage of the income either as foundation officials or as direct beneficiaries, while the remainder would be used to maintain a public institution.[28]

In general private waqfs tended to be small, somewhat more vulnera-

[27] Chekhovich 1980a.

[28] For instance, Khwajah 'Ubayd Allah Ahrar's waqf deed of January 25, 1470, on behalf of his madrasah at the Suzangaran Gate in Samarqand (Chekhovich 1974, 76–77 [text], 82–83 [translation]). After expenses, including taxes, the income was to be divided into sixty equal parts, ten of which were for the founder's son. The other fifty shares went for various positions at the madrasah.

ble to economic and political pressures, and, in the case of Central Asia for the period in which we are interested, of substantially less economic importance than the public waqfs. On the other hand, public waqfs (and in this study we will be considering only public waqfs), tended to be extensive, either because the object they funded required substantial appropriations from the outset or because (as in the case of al-Bakharzi's mausoleum in Bukhara) over a long period of time numerous small waqfs had accrued to the institution and created, from an administrative standpoint, one large waqf.

There were moral considerations in the case of public waqfs that also distinguished them from the family foundations and which, incidentally, made them more resistant to political and economic pressures. From an economic standpoint, too, property held as a public waqf had certain distinguishing characteristics. Two recent studies of waqf-held commercial property in our day, one in Sefrou, Morocco, and the other in Yazd, Iran, suggest that waqf-owned property was and still is less driven by market forces than private property. In Sefrou, waqf administrators kept rents on commercial properties at a very low level, effectively eliminating rent as a cost of doing business, while in Yazd it was found that rents on waqf properties tended to lag behind the market, rising and falling well behind rents on private real estate.[29] This situation was due to a number of factors, including the public views that a public waqf should not make profit the first priority and that its function was to serve the community with both its endowed institutions and its endowments. Politically, public waqfs created constituencies—the employees of the foundation, the recipients of its benefits and services, and those who might have to provide such services in the absence of the waqf. A public constituency ensured that politicians would try to avoid acts that might offend the public and at the same time would be vigilant in monitoring the administration of the waqf.

A good deal of the information that comes down to us about waqfs in Central Asia was produced by the judicial and political reviews of waqfs and their administrations. From the documentary trail left by these reviews, we find that, for a variety of reasons, the administrators of public waqfs were influential figures locally and regionally.

Little of this information can be gleaned from the legal texts. Nor does one learn from them alone which legal prescriptions or prohibitions were most influential on the administrative practices of those responsible for the waqfs, which were irrelevant to particular areas, and which were replaced or overruled by unwritten customary practices. Islamic legal scholars, including the specialists in waqf, have been concerned to a large

[29] Bonine 1979 for Yazd, Iran. Geertz et al. 1979 for Sefrou, Morocco.

extent with establishing the conformity of social institutions to the moral and ethical standards of Islam. We may assume that early lawyers, al-Khassaf and Hilal al-Basri for example, were attempting to deal with waqf as it appeared in the ninth century. That al-Tarabulusi found it sufficient, six and one-half centuries later, simply to recast his predecessors' works might indicate either that the work of the earlier lawyers was seen to be substantially complete and adequate to contemporary conditions or that as a legal institution waqf remained more or less what it had been in the ninth century. But perhaps this frames the question too narrowly. It would take a careful comparison, for example, of all the texts cited in *FA* to show beyond a doubt that there had been no significant changes in the legal status of waqf over the long period covered by these works. It is perhaps more likely that such an analysis would show that indeed there was a gradual change in waqf law in general and even perhaps radical changes in some aspects of it. (The emergence in the Ottoman regions—also predominantly Hanafi—of such phenomena as the cash waqf, the double rent, the *mursad*-lien, and the hikr and *kedek* instruments for alienating waqf probably had analogues in Hanafi Central Asia.)[30]

One finds certain broad issues and principles in the legal texts that are of special significance to this study. Some of these are addressed directly, such as the power of the mutawalli to dispose of waqf property. Others are only alluded to in the course of discussing another matter.

The first issue we will deal with is the concept of the "general good" (*maslahah*)[31] of the waqf. The primary concern of the mutawalli and, indeed, the only reason for his existence is the "general good" of the waqf. What constitutes the "general good" is to a large extent defined by the formal instrument or waqf deed of the donor. The stipulations set out there are, once validated, absolutely binding on the mutawalli. Should the donor stipulate that the endowment is never to be sold, lent, rented, or exchanged, then the mutawalli is bound by these terms. On the other hand, should the donor stipulate that the property be disposed of in a specified fashion or that the waqf income be used to acquire additional property, then the mutawalli is similarly obligated to act accordingly.[32] Should he violate the stipulations, and thereby subvert the good of the waqf, the mutawalli would be liable for dismissal by the appropriate judicial overseer, generally the qadi-judge.

In cases where express conditions are not laid down, the mutawalli,

[30] Mandaville 1979; Deguilhem-Schoem 1988; Baer 1979, 1982. Recently, evidence of cash waqfs in Central Asia in the late nineteenth and early twentieth centuries has been discovered. See Dzhalilov 1989.

[31] Generally on maslahah see Khadduri 1989.

[32] See for example, al-Khassaf, fol. 88b.

being by definition a judicious and capable individual (*qadir wa amin*),[33] has the power to manage the endowment to its best advantage according to the regulations found in the authoritative law manuals of his time and always subject to judicial review. For the donor, the overriding concern (after the validation of the waqf) must be the object for which the waqf was established. Since he cannot foresee conditions that might prevail after his death and since his presumptive interest is the security and perpetuity of the beneficiary of his waqf, whether a mosque, a college, a mausoleum, or social services, there would be little point in arbitrarily limiting the ability of the waqf administrator to achieve these ends. In certain cases, provision could be made for the depreciation of waqf property in the waqf deed itself. Al-Tarabulusi cites the case of a slave given as waqf along with the land on which he worked. The mutawalli could sell this slave when he had become old and use the price toward a younger slave, in order that the "general good" of the waqf might continue to be served.[34] Most future conditions, such as soil erosion or the depletion of water supplies, changing trade patterns, or natural disasters, could not be so readily provided for. It was therefore to the advantage of the donor to allow the mutawalli as wide a scope as possible for maneuvering while at the same time trying to insure that he kept his attention riveted on the welfare of the waqf.

This guiding principle is clearly outlined by al-Tarabulusi: "He [the mutawalli] is permitted no discretionary action, except when the well-being [maslahah] of the waqf is involved."[35] The maslahah could overrule all other considerations. The author of the early-sixteenth-century *al-Fatawa al-Shibaniyah*, in discussing the length of waqf leases, qualifies his opinion at least twice with the phrases, "unless the maslahah of the waqf is served by not giving permission [to extend a lease]" and elsewhere "unless the maslahah of the waqf lies in granting permission [to extend a lease]."[36] Since the welfare of the waqf was almost always involved when the mutawalli was acting in his official capacity, it is clear that the lawyers intended that he have fairly wide discretionary power, in the absence of specific donor stipulations. Such power was a practical necessity for the waqf to function at all over a long period of time. In addition, at various times and places, the judicial authorities took a broad view of the good of the waqf to override specific stipulations set down by the owner.[37]

The power of the mutawalli to dispose of waqf property, a subsidiary issue to the welfare of the waqf, has drawn the attention of outside ob-

[33] *FA* 2:399.

[34] Al-Tarabulusi 1952, 49.

[35] Ibid., 55.

[36] Al-Khwarazmi, *al-Fatawa al-Shibaniyah*, fols. 90a–90b.

[37] For example, *FA* 2:401.

servers, who have tended, in the absence of specific information to the contrary, to assume that waqf property was inalienable. It is not uncommon to find such remarks as "it is well-known that the sale, exchange, or any other alteration in the status of waqf property was forbidden by the Shari'ah,"[38] occasionally even when the writer has evidence to the contrary. Such assertions are certainly not unreasonable given the emphasis placed by the legal texts on the stability and permanence of the endowments and the formulaic prohibition of sale contained in many if not most waqf deeds. But the same texts also offer vehicles for valid alterations in the status of waqf properties. In the Hanafi manuals current at Balkh in the period of this study, there were provisions for the sale, exchange, and/or lease of waqf property either when explicitly stipulated in the waqf deed or when it was to the clear advantage of the waqf.[39]

The discretionary power to sell, lease, or exchange waqf property subject to any donor's stipulations was not, of course, unlimited but was controlled by another authority, the state, whose power is referred to somewhat obliquely but nonetheless unambiguously in the texts. The government's role is implied by the frequent references, in the fatwa works in particular, to the qadi-judge and his decisions. It also appears where there are discussions of the stipulations which make a waqf act null and void. In the chapters on the administration (*wilayah*) of waqf in both *FA* and al-Tarabulusi, for example, several circumstances are cited under which the qadi-judge is empowered to remove or appoint a mutawalli-administrator even in the face of contrary stipulations in the waqf deed. Al-Tarabulusi states, "If [the donor] stipulates that the administration of the waqf be his own, or he confers it on someone else, whether his children or others, and stipulates that neither the sultan nor the qadi may

[38] For example, Abduraimov 1970, 65–66.

[39] See *FA* 2:399–401 on the conditions for sale or exchange with or without the founder's stipulations; 401 on the right of the qadi to order the sale of waqf property when the maslahah of the waqf requires it. However, al-Mahbubi n.d., 370, a mid-fourteenth-century Bukharan work, offers a dissenting opinion: "Some of the 'moderns' allow the sale of some of a waqf if it is detrimental to the development of the rest but the most correct point of view is that [sale] is not permissible on the principle that waqf, after validation, does not admit [ever again] of ownership just as the free man does not admit of the status of slave. Here we see just what we have seen in cases of *istibdal*-exchange [i.e., abuses of the waqf]." On 369, addressing the question of istibdal, the author writes, "He [Abu Yusuf] permits exchange of waqf in the absence of an express stipulation by the donor if the income of the land has decreased. But we do not issue fatwas in accordance with this [opinion]. For we have seen innumerable corrupt practices in cases of istibdal exchanges. The tyranny of the qadi has made it a device [*hilah*] for invalidating the majority of the waqfs of Muslims."

On leases, see *FA* 3:407. On private improvements permitted on waqf property, see Chekhovich 1964, 71–74 and Mukminova 1968, 129–30 for the terms *sukniyat* and *uskunah*, which designated such improvements in sixteenth- to nineteenth-century Central Asia. In other Hanafi regions, see Baer 1979, 1982, Deguilhem-Schoem 1988.

dismiss him from the position, his stipulation is null and void if he or whomever he designates is not trustworthy."[40] The comparable passage in *FA*, citing Qadi Khan, reads, "If the donor stipulates the administration for himself and [further] stipulates that neither the sultan nor qadi shall have the right to dismiss him, then if he were not trustworthy in his administration, the stipulation is null and void and the qadi has the right to dismiss him and to appoint another in his place."[41]

This seemingly minor point underscores an issue of major importance in the history of waqf. The state is an acknowledged party to the legal operation of waqf. The mutawalli of the waqf might not be a person designated by the government at the outset, but it is clear that in the discharge of his duties he not only has to conform to standards established in the law manuals but also has to behave according to the "Shari'ah-minded" norms of the political authorities. The head of the government, whether a local amir or the khan himself, was bound by moral and legal standards as well but remained the final arbiter in controversial cases. It was to him or to his official, the qadi, that questions of the welfare of the waqf eventually came. Some rulers closely identified themselves with the interests of the waqfs under their regimes and established bureaucratic agencies to supervise their operation. The title *mutawalli 'amm* (public or general mutawalli) was adopted in certain places by political leaders to signify both their arbitrary role and their moral commitment to a particular waqf or group of waqfs even though they did not participate in day-to-day management.[42]

Besides an interest in the sound administration of waqfs, governments also retained a fiscal interest in the tax liability of property made waqf. Like the issue of the disposal of waqf property, the retention of tax liability in waqf property has drawn comment from historians. An apparent bias toward the view that waqf properties were by their nature tax-exempt persists to the present despite what would seem to be overwhelming evidence to the contrary. If one is to generalize, the view most supported by legal and historical evidence is that lands liable for taxes retained that liability on being made waqf. Similarly, property that was not liable did not acquire any tax liability on being made waqf. This would seem to be the rule, to which of course there are numerous exceptions. The law manuals generally assume that property subject to tax (*kharaj* or *jibayah*) remains so when transferred to a waqf. One of the questions raised in the manuals is whether or not the mutawalli may bor-

[40] Al-Tarabulusi 1952, 50.

[41] *FA* 2.409.

[42] Shah 'Abbas (r. 1587–29), for example, so designated himself in the waqfs he founded at Mashhad and Isfahan. See McChesney 1981, 169, 172. The Afghan amir 'Abd al-Rahman Khan assigned himself a similar title (see chapter 13).

row against the waqf property if he has insufficient funds to pay the taxes when they fall due.[43] One of the few cases (if not the only one) in which tax exemption seems to have been assumed was when a cemetery or mosque was at issue. The *FA*, citing *Fatawa Qadi Khan*, says that it is correct that kharaj land becomes exempt from kharaj if the owner makes it a cemetery, and that the same holds true in the case of a commercial building (*khan*) or house whose income is dedicated to a cemetery.[44]

That governments resisted efforts to reduce or remove tax obligations is shown in Central Asia by the case of the Ahrarid waqfs, extensive properties left by the celebrated fifteenth-century Naqshbandi figure, Khwajah 'Ubayd Allah Ahrar (d. 1490). In the nineteenth century, his descendants, still administering the waqfs, complained of the heavy tax burden they bore.[45] Ahrar himself once reportedly described the extent of some of his properties not by acreage, price, or yield, but by the amount of tax he paid.[46] At the time he made the remark, the lands in question were not yet waqf but it seems safe to suppose that the waqf on which his descendants were paying taxes had also been among the taxed properties to which the khwajah had wryly referred.

For a mutawalli there was obviously an interest in obtaining tax exemption for waqf lands or, in the case of new waqf lands added to an already existing stock, to see that they were as unencumbered as possible. So besides exemptions from sympathetic politicians, there evolved a complicated legal method for converting tax-liable into tax-exempt property before making it waqf.[47] The procedure was being used at least as early as 1556.[48] Citing evidence in two fourteenth-century fatwa collections (*al-Fatawa al-Tatarkhaniyah* and *Khizanat al-muftin*), a judicial document ruled that the permanent exchange of one-third of a piece of 'ushr land (land taxed at 10 percent of its yield) or two-thirds of a piece of kharaj land (land taxed in this case at 20 percent of yield) for a tax

[43] *FA* 2:424, al-Tarabulusi 1952, 57. The Baillie abridged translation of *FA* has a footnote on p. 622 that says "According to the *Land Tax of India*, waqf land is generally liable to the kharaj." Lambton 1969, 234 notes that in Iran, "before the grant of the Constitution, vaqf land was subject to taxation unless granted immunity by a special decree or farman." In an Afghan source of the early twentieth century, we find some evidence that waqf land may have had its own specific tax levy, at least in Afghanistan at that time. In the archives of the Afghan sardar 'Inayat Allah Khan (son of the amir Habib Allah Khan, who reigned from 1901 to 1919), there is a petition for relief from an assessment on waqf that reads in part, "For several years they have annually assessed us forty *sir* of wheat and forty-eight *sir* [one sir = about seven kilograms] of white straw as *maliyat* [tax] on waqf. Since we do not have a single iota of waqf land we ask to be relieved of this levy" (Shokhumorov 1980, 103).

[44] *FA* 2:472.

[45] "Vakufy v Tashkente," in *Turkestanskie Vedomosti*, 1884, 10:32.

[46] Ivanov 1954, 11, quoting Wa'iz-i Kashifi, *Rashahat 'ayn al-hayat*.

[47] See Chekhovich 1955.

[48] Ibid., 227.