Gender, Law, and Property Rights in the Middle East

Towards A Gendered Perspective of Property Rights in the Middle East

Randi Deguilhem

CNRS, TELEMME UMR 7303-MMSH / Aix-Marseille University, Aix-en-Provence
randi.deguilhem@univ-amu.fr

Fatiha Talahite

CNRS, CRESSPA UMR 7217 GTM, University of Paris 8 and Paris-Nanterre
fatiha.talahite@cnrs.fr

Gendered access to rights of property ownership and its exploitation are linked to explicit and implicit priorities and proclivities of a given society. Considering the situation from an intersectorial perspective and one which takes into account a non-linear long-term historical approach which necessarily includes changes over time which are firmly anchored within historical movements,¹ the question of gender-specific prerogatives or lack of them regarding rights of property ownership and its use reveals points of convergence where this type of activity is possible for both women and men. Likewise, this transhistorical approach points to sectors where institutionalized and customary law prohibited, permitted, or favored gender-specific real-estate ownership and its exploitation. Hence, the development of various gendered strategies devised and deployed by women and men in order to gain, retain, or prohibit control over rights of property ownership and exploitation.

1 For example, Abdelhamid Hénia, *Propriété et Stratégies Sociales à Tunis (XVI^e–XIX^e siècles)*, (University of Tunis Press, 1999), Faculty of Social Sciences and Humanities, who studied long-term patterns of different types of property ownership and the associated legal infrastructures over a period of several centuries in the city of Tunis from the sixteenth to the nineteenth centuries. Although a gendered analysis was not a specific focus of the study, it nonetheless became clear in the author's research that a gendered perspective of the relevant data was fundamental to understanding the intertwined dynamics of strategy, law, and property ownership.

These questions constitute the basis for the research published in this issue of *HAWWA* where authors explore nodes of interconnectivity between gender and rights on different types of property ownership and its use within specific contexts in the Middle East from the sixteenth century to the present. The empirically-grounded articles presented here as well as research on this topic published in multi-authored volumes, some of which have already appeared² or which are forthcoming,³ make it abundantly clear that a gendered analysis of the rights of property ownership and its exploitation are mainstream questions central to understanding infrastructural dynamics of society. In other words, this issue focuses on questions of empowerment enabled by property ownership and its use with particular regard to ways that are contingent to given situations and which define the range of influence of women and men within their immediate and larger environment.

This issue of *HAWWA* should be read as a companion volume to *Cahiers du Genre* n° 62 published in spring 2017⁴ since both resulted from shared initiatives. However, whereas *Cahiers du Genre* n° 62 focuses on women and their rights (or lack thereof) in terms of property ownership and use on a global level, albeit with a concentration on Europe and Africa, this *HAWWA* issue presents research on gender and property rights specifically in the Middle East and Islamic worlds with the exception of a contribution which offers a comparative perspective for contemporary France.

With this in mind, the articles presented in this *HAWWA* issue represent work which partly results from the conjunction of three projects whose objectives overlap in several ways and all of which embody a multiplicity of disciplinary and critical approaches to gender, law, and property rights in the Middle East. Two of the projects were organized around the study of the institution of

-
- 2 Ouddène Boughoufala, dir., *La fondation waqf et sa terminologie: entre pratiques sociales locales et normes de jurisprudence*, (Algérie: Presses de l'Université de Mascara, June 2016); Sabine Mohasseb Saliba, dir., *Les fondations pieuses waqf chez les chrétiens et les juifs du Moyen Âge à nos jours*, (Paris: Guethner, 2016).
 - 3 Toru Miura, *Comparative Study of the Waqf from the East: Dynamism of Norm and Practices in Religious and Familial Donations* (Tokyo: Toyo Bunko, forthcoming); Randi Deguilhem, dir., *Leaving One's Trace in Society: Waqf Foundations in Islamic Lands and their Religious Communities* (Leiden: Brill, forthcoming).
 - 4 Fatiha Talahite and Randi Deguilhem (dir.), *Cahiers du Genre: Femmes et droits de propriété*, n° 62, (Paris: L'Harmattan, CNRS / CRESSPA / Centre national du livre, 2017). For a theoretical framework which analyzes gendered rights of property from a political economic viewpoint, taking into account several legal codes and legislative systems, see the article published *infra* by Fatiha Talahite, « Pour une économie politique genrée des droits de propriété », *Cahiers du genre* n° 62, 19–42.

the *waqf* foundations in Islamic regions while the third concentrated specifically on questions of gender and property rights in the Middle East and North Africa. Yet, although the first two agendas did not explicitly deploy, at least in the outset, a gendered perspective as the primary critical lens for understanding dynamics of societal roles regarding law and property ownership and its use, research conducted in these programs very quickly brought to the fore the necessity of mobilizing such an approach within the framework of the various multidisciplinary methodologies employed in the studies.

The first project was our monthly seminar on *waqf* foundations (defined below) organized at the Institute of the Study on Islam and Societies of the Muslim World (IISMM) at the School of Higher Studies in Social Sciences (EHESS) in Paris from which emerged some of the research published in this issue of *HAWWA*.⁵ Held over a period of six years (November 2010–June 2016), the seminar sought to give structure to international research and university studies on *waqf* (several masters and PhDs on modern and contemporary *waqf* were conducted within this framework). Indeed, this seminar was the first comprehensive and multidisciplinary university forum in Europe for a long-term study of the institution of *waqf* from a *long-durée* and multidisciplinary transnational point of view. The sessions provided the opportunity to examine the complexities and intricacies behind the creation of *waqf* endowments and their utilization by individuals, women and men, in addition to different groups in society. The seminar work included transcultural perspectives regarding Sunni, Shiite, and Ibadi *waqf* as well as Christian, Jewish, and Druze foundations in the Middle East.

As per the topic of this *HAWWA* issue as related to the agenda of the *waqf* seminar, the focus of several articles published within studies the relationship between gender as an element of analysis with respect to the creation and use of *waqf* foundations in society. A focus is on the relationship between the founder of the *waqf*, woman or man, and the properties which s/he endows as revenue-generating assets for the foundation, the beneficiaries indicated by

5 IISMM: Institut d'Etudes d'Islam et des Sociétés du Monde Musulman; EHESS: Ecole des Hautes Etudes en Sciences Sociales. We would like to express our sincere thanks to Jean-Philippe Bras and Sabrina Mervin, respectively director and deputy-director of IISMM in 2010 who welcomed the idea of creating a bi-monthly and then monthly research seminar on *waqf* at the institute. This seminar was initiated and directed by Randi Deguilhem from November 2010–June 2014 and then, from November 2014–June 2016, it was co-directed by Randi Deguilhem with Mohammadreza Neyestani (GDRI *WAQF Fondations*, TELEMME-AMU, Aix-en-Provence) and Fatiha Talahite (CNRS, CRESSPA/GTM, Universities of Paris 8 and Paris Nanterre). For a listing of the monthly sessions in final year of the seminar 2015–2016: <http://iismm.ehess.fr/index.php?1586>.

the endower in the foundation charter to receive pre-defined parts of these revenues as well as the current and future designation of the administrator (sometimes the endower her/himself according to the *madhhab* and usages) who will manage the waqf's operations. Thus, in creating a waqf, the individual reinforces or creates networks which institutionally link the founder with the designated beneficiaries and the endowed properties which financially support them.

To give a definition of the waqf endowment, much has been published on this topic,⁶ on the different categories of waqf and its diversity within a multitude of political, economic, and legal systems since the early centuries of Islam up to the recent structural development of waqf as an instrument of Islamic finance, a prime example of the elasticity and infrastructural adaptability of waqf to evolving needs of society. Islamic waqf is a tool recognized and institutionalized by a legal apparatus (or several of them) in Islamic civilization whose formats (there are several of them according to the different *madhhabs* as well as within them) became normalized during the second century AH / ninth century AD with the compilation of Islamic jurisprudence (*aḥkām al-awqāf*, etc.) on waqf endowments. These legal compendia, which continued to develop over the centuries up to the present, provide a framework for the creation and management of the foundations along with relevant state laws and also customary usages which widely differed from place to place.

More specifically, a waqf gives an individual, woman or man, the institutional and long-term (i.e., permanent) means of designating a revenue-generating property fully belonging as a private asset to her/him and endowing it for her/his waqf with a pre-determined amount of the revenues coming from it (usually via rent contracts or agricultural products in the case of arable land) allocated to a specified beneficiary. It is the choice of beneficiary by the endower which determines the type of waqf: if the destination of the waqf revenues is religious, public, or charitable, it is a *waqf khayrî* / *'amm*, if it is an individual or groups of individuals, it results in a *waqf dhurrî* / *ahlî* / *khâṣṣ* or if a combination

6 Entries on the topic of waqf published in the different editions of the *Encyclopedia of Islam* are a good starting point to acquaint oneself with the institution. Interested readers can follow up with publications indicated in the bibliographies of the different entries on specific aspects of the endowments. For a general introduction to the topic: Randi Deguilhem, "The waqf in the city," in Salma K. Jayyusi, dir., with Renata Holod, Attilio Petruccioli and André Raymond, *The city in the Islamic world*, (Leiden: Brill, 2008), 923–950, and a recent multi-authored volume edited by Pascale Ghazaleh, ed., *Held in Trust. Waqf in the Islamic World*, (Cairo: American University in Cairo Press, 2011) as well as the multi-authored book on Christian and Jewish waqf: Sabine Mohasseb Saliba, dir., *Les fondations pieuses waqf chez les chrétiens et les juifs du Moyen Âge à nos jours*, (Paris: Guethner, 2016).

of both types, this yields a *waqf mushtarak*.⁷ Each waqf, which theoretically operates on a permanent basis (whereby the inalienable aspect of waqf), is an autonomous unit which functions within religious, state, and customary legal frameworks as well as within the relevant political structure. The question of the administration and management of these properties (built, agricultural, monetary, immoveables), all of which are regulated by religious, state, and customary legal structures which sometimes overlap each other and, other times, are parallel or contradictory to one another, is also paramount to the study of the endowments.

Tremendous amounts of resources, built and agricultural as well as monetary, are embedded within waqf assets. This is especially the situation in urban areas (entire commercial and industrial areas such as souks and bazaars are often owned by individual waqfs) but also in peri-urban and rural regions. This results in the fact that waqf-owned properties create important units of economic, financial, social, and political power often contested by the state from the early centuries of Islam up through the medieval and pre-modern periods, the colonial and postcolonial eras and the present day.

Gender is inextricably central to all the above questions and circumstances. A recent multi-authored volume directed by Judith Butler and Elizabeth Weed,⁸ which develops Joan Scott's work on gender as a category of analysis of societal questions, is useful here. Not only, in fact, is this approach "useful," to take up Scott's terminology, but it is fundamentally critical for disentangling the trajectory and histories of waqf endowments and situating them within their specific circumstances throughout Islamic history. Through the approach of studying waqf-related documents from different time periods and places, in particular, but not limited to those registered within the court system in the

7 Islamic Sunni and Shiite jurisprudence did not make any gendered distinction between women and men as endowers, administrators or beneficiaries of waqf: Randi Deguilhem, "Gender blindness and influence in late Ottoman Damascus. Women as the creators and managers of endowments," *HAWWA* n° 1/3 (2003): 329–50, and for Safavid Iran, Mohammadreza Neyestani, « Fondations waqf dans le chiisme duodécimain en Iran du 16^{ème} au 18^{ème} siècle selon les hadiths, le fiqh et la société safavide », (PhD dissertation, Aix-Marseille University, TELEMME-MMSH, Aix-en-Provence, 2014). However, in practice, Ottoman court records reveal that gender was, indeed, a factor especially in the choice of administrators of waqf endowments and the allotments of waqf revenue as indicated by the endowers of waqf to beneficiaries: for example, Beshara Doumani, "Endowing family *waqf*. Property devolution and gender in Greater Syria, 1880–1860," *Comparative Studies in Society and History*, n° 40/1 (1998): 3–41.

8 Judith Butler and Elizabeth Weed, dir., *The Question of Gender. Joan W. Scott's Critical Feminism*, (Bloomington/Indianapolis: Indiana University Press, 2011).

former Ottoman lands (as with three articles in this issue), gendered patterns regarding the creation and use of waqf and the legal structures surrounding them are revealed within their specific context, recalling that Muslim women enjoyed full ownership of property acquired through purchase or inheritance and exploitation of it. Nonetheless, as with men who created waqf, the choice of properties to be endowed for it and the choice of beneficiary to receive revenues from economic activities carried out on waqf properties was completely voluntary but, in reality, these choices were heavily conditioned by the socio-political milieu of one's family.⁹ In line with this, sociologically-oriented studies disclose that, in practice, disposal by women of their properties and their use (i.e., the articles published *infra*), regardless of legal protection, were often contingent on family customs which were most often designated by men in the family. In other words, a gendered analysis of the relationship between law and property rights and its use, whether the assets in question were ceded to waqf foundations or belonged to individuals in different capacities, is indispensable for understanding the mechanisms of societal dynamics organized around gendered norms of various kinds.¹⁰

The second project from which emerged some of the work published in this issue of *HAWWA* is a four-year CNRS (Centre National de la Recherche Scientifique, France) international research cluster (GDRI) on the waqf foundations which functioned from 2012–16 and which was partnered with international institutions.¹¹ Partly created to enlarge the scope of the work being

9 Gender as a critical approach of analysis as based on waqf-related documents has been used in an increasing number of publications in different languages. Among the earlier publications in English: Gabriel Baer, "Women and waqf. An analysis of the Istanbul *tahrîr* of 1546," *Asian and African Studies* (1983): 9–27; Mary Ann Fay, "Women and waqf. Property, power and the domain of gender in eighteenth-century Egypt," in Madeline C. Zilfi, dir., *Women in the Ottoman Empire. Middle Eastern women in the early modern era*, (Leiden: Brill, 1997): 28–47; M. L. Meriwether, "Women and waqf revisited. The case of Aleppo, 1770–1840," in Zilfi, *Women in the Ottoman Empire*, 128–52, and the articles on women and waqf published in *EWIC* (*Encyclopedia of Women in Islamic Cultures*), (Leiden: Brill, 2003).

10 Judith Butler and Elizabeth Weed, "Introduction," in *The Question of Gender*, 1–8.

11 GDRI *Waqf Foundation* website: <https://waqf.hypotheses.org> and CNRS GDRI *Waqf Foundation* site: <http://www.cnrs.fr/derci/spip.php?article653>. Members of this GDRI cluster in alphabetical order: Aix-Marseille University-TELEMME UMR 7303; Birzeit University, Palestinian Territories; IFPO (French Institute of the Near East); IISMM-EHESS Paris; INCEIF (International Centre for Education in Islamic Finance) Kuala Lumpur; Toyo Bunko Tokyo; University of Algeria–University of Mascara (Algeria); University of Tunis and Zayed University (UAE).

conducted by the participants of the IISMM-EHESS waqf seminar but also constructed with the objective of uniting existing networks of scholars studying waqf in different parts of the world for a specific time with the aim of working together on waqf, the agenda of this GDRI cluster was entitled, “Leaving One’s Trace in Society. Waqf-Habous Foundations in Islamic Lands and their Religious Communities.” The research in this GDRI included aspects mentioned above for the IISMM seminar but with a particular focus on the roles and networks of individuals who created waqf foundations in order to delve into details concerning their ownership of property and relevant legal frameworks which regulated the possession of real-estate assets and the creation of endowments with these properties. A major focus then of this cluster, whose participants worked from primary resource material (waqf-related documents, religious and state legislation) written in several languages located in archives in Asia, Africa, and Europe, was to analyze patterns of property ownership (shops, residences, agricultural lands) and choice of beneficiaries of the endowments as related to the individuals who established the endowments. Gendered perspectives occupy a central place in this research which is currently being developed via a meta-analysis approach linked to the *FileMakerPro* waqf database established at the MMSH (Maison Méditerranéenne des Sciences de l’Homme), Aix-en-Provence. One of the ultimate objectives of this database is to unite and centralize the data gleaned from the researchers’ work on the waqf documents in the GDRI within this database in order to reveal gendered patterns of property ownership in the Islamic world whose assets are transformed into waqf and which are regulated by legal structures.

As for the third research agenda relevant to this issue of *HAWWA*, a grant obtained in 2015 from the French Institute of Gender (GIS Genre), CNRS, financed a panel of a group of scholars, including doctoral students, to present their research on questions of gender and property rights in the Middle East and North Africa at the British Society for Middle Eastern Studies (BRISMES) congress in July 2015 in London.¹² The research presented during this panel, some of which is published here while other presentations appeared in *Cahiers du Genre: Femmes et droits de propriété* n° 62, 2017, study the impact of gender as an expression of society in relation to law and real-estate property rights in the Middle East. The research presented at this panel revealed the wide diversity of law and gendered access to property ownership and its use in the MENA

12 This grant was awarded to Fatiha Talahite, CNRS, CRESSPA UMR 7217, GTM, Paris. The funds were used to organize a panel at the BRISMES 2015 conference in London and to finance related expenses such as publications resulting from the research presented at BRISMES.

area which, most often, was a result of customary practices which frequently superseded state legislation.

Within these contexts and with regard to these agendas, turning towards the contents of this issue, all seven articles focus on gender, law, and property rights but each one studies the relationship between them according to specific circumstances which, in the end, yields a comparative perspective over time and place. The case studies range in time from the sixteenth century to the present and are situated in three continents: North Africa (Ottoman Algeria, contemporary Morocco), East Asia (Ottoman Jerusalem, Ottoman Istanbul, contemporary Jordan), Central Asia (Safavid Iran) and Europe (contemporary France). The issue is organized chronologically. It opens with three studies on the Ottoman and Safavid worlds, followed by three articles on the modern and contemporary periods and, lastly, with a study which gives a comparative angle with an analysis of the current situation concerning law, women, and property in France.

Three of the seven articles focus on questions concerning gendered access to waqf property and their legal infrastructures, including customary law. If this seems disproportionate in terms of diversity of choice in the studies presented here, it is simply a result of the projects associated with this issue of *HAWWA* as explained above. The remaining four articles examine relationships between gender, law, and property rights from the perspective of inclusion and exclusion of women with regard to the possession and use of private and communally-owned property.

The issue begins with three articles which study law, gender, and property rights for the Ottoman and Safavid worlds. Ouddène Boughoufala's article opens this part with the analysis of an empirical study of properties owned by women who used them to establish waqf in the Algerian city of Miliana during the Ottoman period. Basing his study on documents registered with the Ottoman law court in Miliana and with local administrative offices of the Ottoman Empire in the Algerian provinces, he investigates the rights and responsibilities of these women as can be understood by their choice of beneficiary for their endowments and the law and social roles which provide the framework for this. This is followed by a study written by Musa Sroor who focuses on similar questions as the previous article but with a case study for Ottoman Jerusalem during the Egyptian period (1831–41), a period which has been largely neglected in the academic literature. Using primary material from the Ottoman law court, he analyzes attitudes of local society regarding Muslim women's rights to dispose of their properties in the form of creating endowments and designating beneficiaries for them. Even though religious and state law accorded these women the full right to dispose of their proper-

ties according to their own wishes, the author has discovered that numerous families in Jerusalem did not accept these rights as revealed by the documents. The last article in this section is authored by Mohammadreza Neyestani in his work on women, waqf, and rights of property in Iran during the Safavid period (sixteenth–eighteenth centuries) giving examples from the Shiite world. As with the two previous studies, he uses waqf-related documents to analyze women's roles in society from the viewpoint of Islamic law which guarantees them full property ownership and exploitation rights juxtaposed with customary practices. His emphasis in this article is on the charitable destination chosen by women in the city of Isfahan to receive the revenues of their properties which they have endowed in the form of waqf.

The second section consists of three studies from the modern and contemporary periods. In the first article, Eda Güçlü examines legal actions in Istanbul taken by women who skillfully navigated the new Ottoman laws of the nineteenth-century Tanzimat era with the firm objective of protecting their property rights on buildings threatened by men living in their neighborhoods who try to maneuver the new laws to their own advantage. Using law court documents from the period as well as documents registered with the new administrative offices, she clearly reveals that these women had a strong grasp of their rights to their properties and used the legal system to fight for their rights. The second article in this section, written by Myriam Ababsa, also studies exclusionary tactics employed by men in their tentative to dispossess women of property which, according to shari'a, legally belongs to them. Her extensive research and interviews with women in Jordan make it clear that women are being forcibly excluded from property ownership through the process of *takhāruj* (exclusion of their inheritance rights) in contemporary Jordan despite their legal rights which give them ownership and rights of disposal of that property. This is especially dramatic in the case of housing since this process of dispossession very often leaves them without a place of dwelling even though the law guarantees this right to them. Lisa Bossenbroek has authored the final article in this section where she uses a gendered analysis to study the impact of agrarian reforms on the future of the peasantry in Saïs, Morocco. According to her research, the government's decision in 2006 to privatize land belonging to socialist-inspired collective state cooperatives constitutes a turning point in gender relations within farming families, impacting identities of peasant women and men with the result that young men are taking on modern methods for farming and maintaining their rights on agricultural land while young women, although their rights are theoretically protected by law, have begun to seek employment in other sectors of society, thereby, renouncing their rights to agricultural property.

The last section of this issue takes on a comparative perspective with the study by Sylvette Denèfle who focuses on recent developments on questions related to property and women in France. As with the studies presented in sections one and two, she has found similar situations in France, namely, the fact that while French contemporary law protects women's rights to property and inheritance, in practice, there is a disparity in all socioeconomic levels of 15%–25% between the amount of property owned by men and that owned by women. The author concludes that property holding, a fact which legitimizes equality, gives us a window into seeing that social practices, when studied through the lens of gender, shows that societies such as France are, in reality, unequal and unfavorable towards women.

To conclude, this issue of *HAWWA*, when read together with *Cahiers du Genre: Femmes et droits de propriété* n° 62, 2017, contribute towards the research on gender, law, and property rights in the Middle East and beyond. It is hoped that future work on law and gendered access to property ownership and rights to its exploitation will yield more extensive information and increasingly reveal further patterns on these questions on a global scale, pointing to levels of power and empowerment in this field.

Bios

Randi Deguilhem is a professor with the CNRS and a member of TELEMME (Temps, Espaces, Langages, Europe Méridionale-Méditerranée) UMR 7303-MMSH, Aix-Marseille University where she has taught DEA and MA seminars on MENA history and supervises PhD dissertations. Historian of the modern and contemporary Middle East, much of her research focuses on the *waqf-habous* foundations with particular emphasis on juridical and religious jurisprudence (*Hanafi*) as well as state legislation on the Sunni endowments in nineteenth-century Ottoman Syria through the French Mandate period until the present day, all of which she studies from the perspective of gender. She initiated and directed the CNRS international research cluster (GDRI) on waqf (2012–16) to which belongs the waqf endowment seminar at IISMM EHESS Paris. She also directs the research and teaching network *GenderMed* at the MMSH, AMU. Among her publications: “Gender Blindness and Societal Influence in Late Ottoman Damascus: Women Who Create and Manage Pious Foundations,” *HAWWA* n° 1.3, (2003): 329–350 and “Women, Gender and Waqf: Ottoman,” in *Encyclopedia of Women and Islamic Cultures (EWIC)*, Suad Joseph, dir., vol. 5, *Practices, Interpretations and Representations*, (Leiden: Brill, 2007): 384–388.

randi.deguilhem@univ-amu.fr

Fatiha Talahite is an economist, professor with the CNRS, and member of Crespa-GTM (Centre de Recherches Sociologiques et Politiques de Paris, Genre, Travail, Mobilités) UMR 7217, University Paris 8 and Nanterre. Her research concerns gender and economy, especially feminist economic epistemology, as well as the economies of the Arab and Muslim world which she approaches from the angle of the economic history of institutions. Among her recent articles: « Genre et théorie économique », *Regards croisés sur l'économie* n° 15, *Peut-on faire l'économie du genre ?*, (2014) p. 13–28; (with Rafik Bouklia-Hassane) « La féminisation de 'immigration algérienne dans les pays de l'OCDE au tournant du XXI^e siècle », *Hommes et migrations* n° 1311, *Femmes et migrations*, (2015) p. 63–70.