CHAPTER FIVE

THE FAMILY OR PRIVATE ĀḤBĀS

1. Introduction

Studying the institution of pious endowments entails drawing a distinction between the two types of donation that existed and which were determined by the nature of the final recipient selected by the founder: private or public. This distinction was, in fact, recognized by Muslim jurists, as we shall see below. From the 9th century, these two different types of foundations can be traced in our sources: those made in favour of specific individuals, usually the founder’s relatives, and those aimed at benefiting all Muslims or certain collectives, such as the poor, the sick, fiqārāt, etc. This chapter is intended to highlight the fact that, although they are legally a single unit, both represent completely different institutions socially and economically. This fact casts doubt on the possibility that private donations, or family donations rather, can be considered genuine pious endowments, the latter being understood as those whose aim is to provide a general or public service.

From a chronological point of view, the earliest testimony of the existence of private donations in al-Andalus is that made by emir ʿAbd al-Rahmān II in 222 h/836–837; there is, however, very little information on them during the period prior to the caliphate and, as a result, we have to rely on Ibn al-ʿAṭṭār’s treatise for instructing notaries—from the 10th century—in order to detect solid evidence of their fully-fledged development. Apart from being from a much later period, the information available is quantitatively inferior when compared to that of pious donations. The corpus of jurisprudence consulted in this work provides 60 questions dealing with issues pertaining to private or family donations. This represents 26.4%—out of the total 227 that make up the corpus—as opposed to the 60.3% represented by the 137 which deal with cases involving pious donations (see Appendix V, figure 2). It would, however, be unsound

1 M. Shatzmiller, ‘Islamic Institutions and Property Rights: The Case of the
to assert, on the evidence afforded by these data, that private donations were less frequent than public ones. It is significant, for instance, that most of the formularies contained in Ibn al-ʿAṭṭār’s treatise involve private donations; this is not the case, though, with other treatises like Ibn Mughīth’s and al-Jazīrī’s, both of which supply a smaller number of formularies. Generally, we do not have concrete data on individuals, dates, places, etc., as jurisprudence almost invariably omits any reference to the personal details of those involved in the consultations. Some cases of this type of donations have been preserved, however, and they have been looked at in the previous chapter.

2. Legal theory versus socio-economic reality

When studying private or family donations the need to distinguish between the two levels that configure the reality of the institution of pious endowments becomes apparent: on the one hand, legal theory and, on the other, social and economic reality. This distinction allows us to verify that, although from a legal perspective there is only one type of ḥubṣ, they actually constitute two different realities with radically different purposes, even to the extreme of having to treat them as two distinct institutions.

In order to understand the exact nature of private foundations, reference must be made to the basic precepts that sustain the legal theory of the ḥubṣ in relation to its aim; this approach will reveal that this type of endowments does not comply with the former. As for the type of charitable aim selected, we have already seen that, in principle, the main requirement is that it must be pious, based on its definition as perpetual alms for God’s cause (al-ʿwaqf ṣadaqa jāriya fī sabīl Allāh). In spite of the ambiguity of such a generic definition, in daily practice and from the earliest testimonies available to us onwards, the pious nature of the foundation means that

Public Good Waqf’, *Journal of the Social and Economic History of the Orient*, 44/1 (2001), p. 50, claims that 75% of the 400 fatāwā from al-Wanshārī’s deal with pious endowments, and the rest with family waqf, although this assertion is not justified by any kind of quantitative approach. On the contrary, A. Mª Carballeira, *Legados píos*, pp. 354–355, supposes that legal sources deal primarily with private ḥubṣ (48.8%) more than with public ones (37.9%), but she does not include any quantitative analysis either.