APPENDIX VI

TEXTS IN TRANSLATION

Introduction

I include here a selection of texts on issues related to pious endowments. I have endeavoured to select a group whose themes are sufficiently wide and varied so as to show the enormous complexity and wealth of nuances that the study of this Islamic institution affords. As for their provenance, they are all legal texts, with the exception of an engraving found in Seville’s Archaeological Museum. Thus, texts written by al-Khaṣṣāf (9th century), Saḥmūn (9th century), Ibn al-ʿAṭṭār (10th century), Ibn Mughīth (11th century), Ibn Rushd (11th-12th centuries), ʿĪyād (12th century), Ibn ʿAbdūn (11th–12th centuries) and al-Wansharīsī’s compilation (15th century) are included here. In order not to make this Appendix too lengthy, moreover, texts appear without any critical apparatus. Sometimes, however, the Arabic concept used is given between parentheses so that the specialist reader can have a more precise idea of the original meaning.

1: Traditions on the first waqf

Abū Bakr [al-Khaṣṣāf] notes: I have found discrepancies regarding the earliest act of alms-giving (ṣadaqa) in Islamic history. To some, they were the alms (ṣadaqāt) given by the Messenger of God consisting of seven orchards and, later on, the alms (ṣadaqa) made by ʿUmar b. al-Khaṭṭāb in Thamgh on the occasion of the Prophet’s return in the seventh year of the Islamic era (hijra). Muḥammad b. ʿUmar al-Wāqidī related to me: ʿUtba b. Jubayra, as transmitted by al-Ḥusayn b. al-Raḥmān b. ʿAmr b. Saʿd b. Muʿādh, told me that when he made enquiries about the earliest ḥubs in Islam, someone replied that, according to the view of the followers (ʿanṣār), it was the alms (ṣadaqa) made by the Messenger of God. Ṣāliḥ b. Jaʿfar, quoting al-Masʿūr b. Rifāʿa, reported to me that Ibn Kaʿb asserted: the earliest alms (ṣadaqa) in Islam was the waqf set by the Prophet with his own assets; I said to Ibn Kaʿb: people say that ʿUmar b. al-
Khaṭṭāb’s alms (ṣadaqa) is the earliest, and he retorted: Mukhayriq was slain at the battle of Uḥud, thirty-two months after the Prophet had emigrated, and stipulated in his will that, were he to pass away, his assets were to be passed on to the Prophet who took possession of them and gave them away as ṣadaqa. This took place before ʿUmar donated [the plot of land known as] Thamgh as ṣadaqa when the Prophet returned from Khaybar in the seventh year of the hijra. Muḥammad b. ʿUmar al-Wāqidī reported to me, on the authority of ‘Utbā b. Jubayra, who was quoting al-Ḥusayn b. ‘Abd al-Ra ṭān b. ‘Amr b. Saʿd b. Muʿādh: I was asked about the earliest ḥubs in Islam and the émigrés (muhājirūn) said that ‘Umar b. al-Khaṭṭāb’s ṣadaqa was the earliest asset established as a ḥubs. When the Messenger of God arrived he found some very fertile plots of land and uncultivated land whose owners had left Medina earlier on and after Muḥammad’s arrival, leaving behind a vast territory, partly barren and partly sown, which they called wādī al-khashāshayn. The Messenger of God donated part of it to ʿUmar b. al-Khaṭṭāb, [the land known as] Thamgh, and the latter purchased wells which he added to the assets given away by the Messenger of God to a Jewish community, a commendable act. ‘Umar said to the Messenger: ‘I own an asset to which I am very attached’, and he replied ‘have it immobilised and devote its fruits to pious aims’, and ‘Umar did so. Muḥammad b. ʿAbdallāh b. ‘Umar related to me, having heard it from Nāfiʿ who was quoting Ibn ʿUmar, that Thamgh was the earliest ṣadaqa in Islam.

Al-Khaṣṣāf, Aḥkām al-awqāf, pp. 4–5

2: Founding a private endowment

Setting-up of a foundation in favour of the [children], both minor and of mature age -if you wish, you can record this at the beginning.

[Variant] of the drawing-up of a foundation with the status of family trust in perpetuity [similar] to that previously [drafted]. If you want, you can say: ‘X, son of Y al-Fulani, in good health and with full use of his capacities, requires testimony’, or, if you prefer, you can also say: ‘The witnesses of the present document [testify] that [X], in good health and with full use of his capacities, in order to ingratiate himself with God -praise and glory be upon Him- by means of good deeds and thus please his Lord through pious supererogatory actions, has immobilised in favour of his sons: Y,