

## **The Alienation of Waqf Property between Šarī‘a and Local Custom: A Comparative Study of Aleppo, Damascus and Jerusalem (18th c.)**

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A *waqf* is established to be eternal and *waqf*-property is by definition inalienable. But *waqf*-property is – as any other property – subject to gradual deterioration, accelerated in times of crisis, like wars and natural disasters. When the *waqf* revenues were not sufficient to keep an asset profitable or to restore it in case of destruction, Islamic Law provided some solutions to attract private investments. Some of these contracts involve the establishment of private property rights on *waqf*-assets, like *hikr*, *khulu* or *mursad*.

In this lecture, contracts of partial alienation of *waqf*-property that allow private investments will be studied in Aleppo at the end of the 18<sup>th</sup> century. Based on my own research in the Court Records of that town, I will compare my findings to the way similar contracts were used in two other major cities of the Ottoman Bilad al-Sham: Damascus and Jerusalem.

A detailed analysis of the documents often reveals different terminology and different conceptions of these contracts within the geographically rather narrow context of the Bilad al-Sham. Using the original documents, these differences will be worked out and compared to each other. This will lead me to a re-evaluation of legal practises (in the documents often referred to as local custom – *‘ada*) in pre-Tanzimat Bilad al-Sham in relation to the legal discussion as revealed in *fatwas* incorporated into the court documents as well as in the – at that time widely used – law books (e.g. Haskafi’s *al-Durr al-Mukhtar* and Ramli’s *al-Fatawa al-Khairiyya*).