



Akademik Eğitim ve Sosyal Bilimler Dergisi (AJESS Journal)

From the Dispensation of Necessity to the Balance of Preponderant Benefit: A Maqāṣid-Based Grounding for Departure from the Founder's Stipulation

Boubker Labiad, Department of Islamic Sciences, Faculty of Social Sciences, Ziane Achour University of Djelfa, Djelfa, Algeria

boubaker.labiad@univ-djelfa.dz , ORCID: [0000-0000-0000-0000 — to be inserted]

Article History

Received: 31/07/2026; Accepted: 20/09/2026; Published: 28/09/2026

Abstract

A founder's stipulations are drafted at a known time and place and under known economic conditions, to secure an aim more evident to their author than his words: that benefit and reward should continue. Centuries pass, the wording survives, and the condition set to guard the endowment becomes the constraint that strangles it. This article asks within what legal field departure from a valid stipulation is legitimate, and by what instrument a jurist may discipline the claim. It argues that the disagreement between prohibitionists and permitters concerns the breadth of the exception rather than the principle, and that the maxim likening the founder's stipulation to the Lawgiver's text is governed rather than governing — Ḥanbalī sources declare such a stipulation void where it collides with the endowment's purpose. Necessity is shown to be insufficient on three counts: its trigger is rare, it rescues rather than develops, and its ruling is temporary while the effect of departure is permanent. Ibn Taymiyya's text on exchange is analysed as a three-part structure whose third restriction is routinely dropped. The article closes by proposing a procedural instrument of four criteria, a four-rung verification ladder, and a reasoned decision, offered as testable rather than established.

Keywords: waqf; founder's stipulation; maqāṣid al-sharī'a; necessity; preponderant benefit; Ibn Taymiyya; exchange of endowment property; Islamic legal reasoning

1. Introduction

A stipulation entered by a founder in his deed is a set of juristic and legal provisions issued at a known time, in a known place, and under known economic conditions. Its author intended by it an aim clearer to him than the words in which he expressed it: that benefit should endure and reward with it. Centuries then pass. The wording survives, preserved in the register, while the circumstances around it change, until the condition laid down to guard the endowment becomes a constraint that strangles it, and adherence to its letter becomes a direct cause of the loss of the very thing for which the letter was written.

It is this divergence between the letter of a stipulation and its purpose that generates the question of this study. Does the Law permit departure from a valid founder's stipulation? And if it does, within what legislative field does that departure move, and by what instrument may a jurist discipline his claim so that it does not turn into a dispensation thrown wide open?

The subject is not untouched. A considerable body of work exists on it, sufficient for anyone who approaches it in point of grounding, argument, and the survey of school positions. What gives one pause about most of that work, however, is that it stops at establishing legitimacy. Establishing legitimacy is the easiest stage of the enquiry and the least problematic, since the jurists — for all their differences — did not close this door completely, but differed over how much may pass through it.

The point at which error enters this novel case, it may be suggested, lies neither in disclosing the founder's purpose nor in determining that departure is permissible, but in what follows: the stage of application, where benefit is summoned after the conclusion has already settled in the mind of the trustee, so that it is deployed to justify rather than to demonstrate; or where

those objectives that suit the desired result are selected and those that oppose it left aside; or where the ratio is made to carry what it cannot bear. That, rather than any shortage of evidence or weakness of grounding, is the gravest hazard of this field. The study is accordingly analytical and critical rather than descriptive and comprehensive. It presents a position, then discusses it, halts at its points of instability, and attempts to emerge with a working instrument.

What gives the subject its value is that the jurist here stands between two hazards: a rigidity that preserves the letter of the stipulation until the endowment dies beneath it, and a laxity that opens the door of benefit so wide that the objective becomes a pretext for seizing endowments under an imposing scholarly cover. Protection from both lies in the precision of the instrument, not in the moderation of the rhetoric. To this may be added that the record of novel endowment cases has swollen in recent decades to a degree earlier scholars could not have imagined. Endowments today are real property, shares, *ṣukūk*, and monies managed in the billions, and a ruling on departure from a stipulation no longer touches a ruined house in a quarter. Error at that scale is not error at this one. Supervisory authorities and the Shari'a boards overseeing them require something by which they may be disciplined and made consistent, so that the ruling is not left to the alertness and reading of an individual trustee alone.

The central problem may be stated thus: what is the legislative field within which the legitimacy of departure from a valid founder's stipulation moves, and what *maqāsid*-based instrument disciplines the claim of departure so as to carry it from arbitrary assertion to reasoned justification? Subsidiary questions follow. Is the disagreement between prohibitionists and permitters a disagreement of principle or of the breadth of the exception? Does legal necessity suffice to cover the cases that actually arise, what precisely distinguishes it from need, and how does that distinction bear on the breadth of the field? And how much actual discipline do the constraints in circulation supply, and where do they fall short?

The literature is substantial. Among the most valuable is 'Abd Allāh b. Bayyah's *I'māl al-maṣlaḥa fī al-waqf*, which settles the question of the rational intelligibility of endowment in a manner not achieved before it and on which most of what followed turns; and Sultān b. Nāṣir al-Nāṣir's *Nawāzil al-waqf*, a wide-ranging inductive work depicting novel cases and assigning them to the schools. To these may be added the resolutions, symposia, and codifications issued by the International Islamic Fiqh Academy and by the General Secretariat of Awqāf in Kuwait. Yet these works — for all their distinction — share a common feature: they stop at the two poles of grounding and survey, establishing legitimacy and collecting the forms, and then refer the work of discipline to the mufti's judgement and his piety. The position of the present study in relation to them is that it begins from where they end. It does not re-argue what has settled; it turns instead to the stage that remains open, the stage of application, and attempts to fashion an instrument for it.

The method is inductive, analytical, and critical. School texts are surveyed in their places in the primary compendia; their basis is then analysed and referred back to its operative ratio; they are then submitted to criticism, so that what holds may be distinguished from what does not; and a procedural proposal is built upon that. Throughout, no text is cited except from its own source, and no author is made to say what he did not say. The plan falls into four parts: delimiting the question and criticising the prevailing characterisation; the rank of necessity and the insufficiency of its field; the rank of need and preponderant benefit and the disciplining of its extension; and the *maqāsid* foundations together with the formulation of the balance. A conclusion follows.

The limits of the work should be declared, so that it is not made to carry what it cannot. It is a grounding and critical study, not a field study. No survey was conducted, no trustees interviewed, no case files examined. The work was done on juristic texts, academy resolutions, and published regulatory instruments. It follows that the balance reached at the end is a theoretical proposal open to testing, not an instrument whose fitness has been established by experience. Two difficulties were encountered: the texts of the question are dispersed between the chapter on endowment, the chapter on sales, and the chapters on adjudication; and published data on actual departure decisions taken by supervisory authorities are scarce, since such decisions are generally neither published nor reasoned. That scarcity is itself among the reforms this study calls for.

2. Delimiting the Question and Criticising the Prevailing Characterisation

No ruling on a thing is sound before it has been conceived, and no conception is sound until its definition has been settled and distinguished from what neighbours it. It is therefore necessary to begin with the meaning of departure, then with the principle on which prohibition is built, then with the actual locus of disagreement between the two orientations. In each of these three there is a critical observation that should not be passed over.

2.1 The definition of departure and its neighbours

Mukhālaḥa is built in Arabic on the pattern of reciprocity, conveying that a thing has come to be otherwise than it was, by substitution or alteration; and substitution is an interactive process between two parties, a standing text and a supervening act. The founder's stipulation is what he sets down in his deed by way of rules and directions concerning the application of revenue, the entitlement of beneficiaries, trusteeship and guardianship, expenditure, and the like. Combining the two, departure from a founder's stipulation may be defined as the introduction, by the administrator or the supervisory authority, of a total or partial alteration contrary to the rule derived from the founder's stipulations as recorded in his deed.

Sulṭān b. Nāṣir al-Nāṣir defined alteration of a founder's stipulation as the administrator's departure from some of the rules the founder laid down for the operation of his endowment, or from some of them.¹ Two observations arise. The first is an evident slip in the phrase "or from some of them", since it is preceded by "some of the rules", which makes the definition divide the part by the part; what was plainly intended is "or from all of them", so that the definition encompasses total and partial departure alike. The second, and the finer, is the restriction of the definition to the administrator. In present practice the party effecting the alteration is generally not an individual trustee but a supervisory authority, a Shari'a board, or a judicial decision. Confining the agent to the administrator therefore excludes most contemporary forms from the definition, which is a defect of comprehensiveness and not merely of expression. And where a definition is too narrow for its forms, the ruling built upon it is too narrow as well: whoever confines departure to the act of the trustee and then insists that judicial authorisation be obtained for it has disciplined the weakest of the forms and left the strongest without discipline.

Much of the literature confuses departure with terms that neighbour it in meaning and differ from it in ruling, with the consequence that a ruling is carried from one locus to another that does not resemble it. Exchange — the removal of the endowed asset and the substitution of another in its place — is narrower than departure, since departure may occur in revenue, in disbursement, in trusteeship, and in leasing without the asset being touched. Every exchange is a departure; not every departure is an exchange. Some writing carries the jurists' severity over exchange, a severity whose ratio is the touching of the corpus, across to questions of altered disbursement, between which there is no sound common ground.

Change of disbursement purpose — applying the revenue to a purpose other than the one the founder designated — is of a lighter rank, since the asset remains, the objective of perpetuity is preserved, and what has changed is only the mode of benefit. The consequence of the distinction is that discipline should be strict in the first and lighter in the second, so that what requires judicial authorisation there may be satisfied here by a decision of the Shari'a board. Dissolution of an endowment, meanwhile, is not a species of departure at all but the rescission of the contract itself: departure occurs within an endowment and with the intention of maintaining it. Some administrative practice has taken to calling dissolution a departure from the stipulation, as a softening of the term; restoring the name to what it names reveals that the act is a rescission and not an adjustment. As for a stipulation void *ab initio*, it lies outside this study altogether, whose subject is the valid stipulation that has become disabled in the event. Confusion between initial invalidity and supervening disablement is among the greatest sources of disorder in this field, since the first is annulled while the endowment stands, whereas the second must be examined and weighed.

2.2 The maxim that the founder's stipulation is like the Lawgiver's text

The agreed principle among the jurists is the obligation to follow a founder's stipulation so long as it is valid and does not contravene the rules of the Law; it is expressed in their saying that the founder's stipulation is like the Lawgiver's text in the obligation to act upon it. It has been argued for from the Qur'anic verse concerning alteration of a bequest after it has been heard,² from the Prophetic statement that Muslims are bound by the terms they set,³ and from the argument that the initiation of an endowment is committed to the founder, and so likewise its specification and ordering.

Yet taking the maxim at its face is open to question on three counts, the settling of which cannot be dispensed with, since the whole field turns upon it. The first is that the likeness asserted concerns the obligation to act, not inerrancy and not rank; the jurists themselves stated this restriction expressly. The meaning is: like the Lawgiver's text in the obligation of compliance, not like it in certainty and permanence. Whoever runs the likeness at large has given the words of a creature what is given only to the words of the Lawgiver, which is precisely what the maxim's proponent means to avoid.

The second is that the Lawgiver's text is not itself a locus for rigid adherence to its letter; its purpose is sought, and its operative ratio and its consequences are considered. If this is the treatment of the inerrant text, how should a founder's words be made more closed than it? Run properly, the likeness would require that a founder's stipulation be treated as a text is treated — by seeking its meaning — not that it be treated as a text is never treated, by rigid adherence to its wording.

The third, and the most telling, is that the school texts themselves contradict this absoluteness in the plainest terms. *Al-Mubdi'* records that where a founder stipulated that the property not be sold and it then fell into ruin, it is sold and his stipulation is void, as expressly stated; and it then reports Harb as having asked Aḥmad about a man who endowed an estate which then fell into ruin, having stipulated that it not be sold, and whose beneficiaries sold a share of it and spent the proceeds on the remainder to restore it — to which Aḥmad replied that there was no objection in such a case, because it was a matter of

¹ al-Nāṣir, *Nawāzil al-waqf*, 133–47. [? A fifteen-page span for a single definition. Narrow it to the page or two actually relied upon.]

² Q 2:181. [? The rendering is the translator's working version; substitute a published translation and identify it at first occurrence.]

³ [? No *takhrīj* is given in the Arabic manuscript.]

compulsion and of benefit to them.⁴ This is an explicit Ḥanbalī text describing a founder's stipulation as *void* where it collides with the survival of the corpus, and not merely as suspended. Were the stipulation truly like the Lawgiver's text, it could never be so described. The maxim is therefore governed and not governing. Its locus is where it does not collide with the purpose of the endowment itself; where it does, its authority falls away. Upon this settlement the remainder of the study is built.

2.3 Locating the real point of disagreement

The jurists divided into two orientations on departure for benefit. The first is prohibition, represented by the majority of the Shāfi'īs, the non-Andalusian Mālikīs, and most Ḥanbalīs. Its substance is that a valid stipulation must be followed, and that the property is the founder's, who authorised its disbursement only in a specified manner. Al-Nafrāwī's commentary records Mālik as holding that endowed real property is not sold even if it falls into ruin.⁵ The second is permission subject to constraints, represented by the Ḥanafīs in a defined set of cases, by the later Andalusian Mālikīs and others, and by some Ḥanbalīs, foremost among them Ibn Taymiyya and his student Ibn Qayyim al-Jawziyya.

On reflection, presenting this disagreement as one of principle — as many researchers do — is inexact. The prohibitionists themselves permit departure where an endowment has been wholly disabled; we have just seen Aḥmad declare a founder's stipulation void upon ruin, and Mālik reported as prohibiting while his own school is reported as granting a dispensation for the sale of a decayed dwelling and a disused well. The door is open on both sides; the disagreement concerns how much passes through it. The consequence of this settlement is that the dispute reduces to a single question: is the exception confined to the rank of necessity alone, or does it extend to the rank of need and preponderant benefit? Delimited in this way, the enquiry moves from arguing for legitimacy to identifying the rank — which is the ground on which a *fatwā* is actually built.

3. The Rank of Necessity: Its Field and Its Insufficiency

Necessity is narrower than benefit at large: it is that benefit in which want has reached the severest of ranks and the most straitened of conditions, so that the endowment stands in imminent danger of disappearing or of having its benefits suspended. Wahba al-Zuhaylī defined it as a person's being overtaken by a condition of danger or severe hardship such that he fears harm or injury to life, limb, honour, reason, or property and its appurtenances, so that it becomes obligatory or permissible for him to commit the forbidden or omit an obligation in order to repel that harm according to his preponderant estimation, within the limits set by the Law.⁶ Comprehensive as the definition is, applying it to endowment requires a qualification. The threatened locus here is not the responsible agent's own person but the endowed asset and its usufruct; the party compelled is not an individual under duress but a trustee or a supervisory authority; and what is departed from is not a text of the Law but a founder's stipulation. Neglect of this qualification is what has led some researchers to transfer the constraints governing the necessity of eating carrion, wholesale, to the necessity of selling an endowment, between which the difference is plain.

3.1 Terms and causes in the law of endowment

The jurists express the sense of necessity by cognate terms that are not fully synonymous with it — need, excuse, harm, hardship, difficulty, widespread affliction, and compulsion — and it is not sound to treat them as a single category, since the gradation of rank among them yields a gradation of effect. Hence a disorder in some contemporary work, where the Ḥanafī term for widespread affliction is cited as evidence of necessity, when in their usage it stands closer to general need than to compulsion.

As for causes, contemporary writers have extended them until some reach fourteen, from food and medicine to duress, constraint, travel, and illness. Applying these to endowment shows that most have no bearing on it, and that the operative cause here reduces to grave harm falling upon the endowed asset or its usufruct, and to a present danger threatening the loss of the corpus. Importing such lists from the chapters on worship and foodstuffs without refining the ratio is among the well-known hazards of legal reasoning, since the attribute to which the ruling was attached there — fear for life — is not the attribute operative here, which is the disablement of endowed usufruct.

3.2 The three manifestations of necessity

A survey of the school texts yields three manifestations of the effect of necessity upon departure, and no fourth.

Priority of upkeep over the beneficiaries. Where a founder stipulated priority for the beneficiaries and the property then fell into ruin, upkeep is given priority and the stipulation departed from. The Ḥanafī reasoning is highly indicative of their method: where upkeep is not expressly provided for in an endowment, it is stipulated by entailment, since the founder's purpose is the

⁴ Ibn Muflih, *Al-Mubdi'*, 5: 355.

⁵ al-Nafrāwī, *Al-Fawākih al-dawānī*, 2: 135.

⁶ al-Zuhaylī, *Nazariyyat al-ḍarūra al-shar'iyya*, 67–8.

perpetual flow of revenue to the poor, and that purpose is attained only through repair and upkeep.⁷ They did not say that the stipulation is departed from; they said upkeep is stipulated by entailment — that is, the founder's own purpose requires it even where his words are silent. They read the deed by its purpose and admitted into the stipulation what the founder did not utter, because it was entailed by what he did utter. This is a purely maqāsid-based operation conducted under the name of signification by entailment, and had it been brought out as such it would have furnished a foundation for the whole of this field. Among the Ḥanbalīs the school position is that the stipulation is followed; but al-Ḥārithī restricted this to what does not lead to disablement, in which case upkeep takes priority in order to preserve the corpus⁸ — a restriction that returns in its result to the Ḥanafī position, though by a different route.

Borrowing on the endowment's account for upkeep. Where a trustee requires funds for upkeep and there is no revenue or it does not suffice, he may borrow against the endowment. Ibn Nujaym states that the custodian may borrow on the endowment's account for the necessity of upkeep, but not in order to distribute the proceeds among the beneficiaries.⁹ The jurists differed over whether judicial authorisation is required: the Ḥanafīs and Shāfi'īs required it, the Mālikīs and Ḥanbalīs did not. It is worth observing that Ibn Nujaym restricted the permission by two clauses. "For the necessity of upkeep" identifies the ratio; "not in order to distribute the proceeds among the beneficiaries" closes the door to extension. This craft — following a dispensation with a clause that prevents its extension — is what ought to be imitated in every dispensation built upon benefit.

Sale and exchange upon total disablement. This is the gravest form in its effect, since it touches the corpus rather than the revenue. Ibn Muflīh states that an endowment may not be sold or transferred unless its benefits are wholly suspended, as with a house that has collapsed or land that has fallen into waste and cannot be restored.¹⁰ Among the Mālikīs a dispensation was granted for the sale of a decayed dwelling and a disused well, a comparable property to be acquired in its place and endowed; and al-Nafrāwī stated expressly that the stipulation is followed where no necessity calls for departure, and that otherwise departure is permitted.¹¹

3.3 The governing maxims and the constraints on their operation

A jurist does not issue a *fatwā* in these questions arbitrarily, for the construction of a ruling is a system with inputs, instruments, and outputs. Four maxims serve here, and it is enough to identify the position of each. *Dispensation* — defined by al-Āmidī as what is legislated by way of ruling on account of an excuse while the prohibiting cause subsists — entails that departure under necessity is a dispensation and not a settled ruling, its effect lapsing with the lapse of its excuse; and that is precisely the difficulty to be developed below, since the effect of departure in an endowment does not lapse. *Juristic preference* — for al-Zarkashī, departing in a case from the ruling applicable to its analogues on account of a stronger consideration — is positioned here in that giving upkeep priority over the stipulated purpose is a departure from the ruling of the analogue in order to preserve the corpus. *Hardship brings facilitation*: al-Suyūṭī observed of it that all the dispensations and mitigations of the Law issue from it,¹² and its position is that where the application of a stipulation leads to severe imposition upon the trustee or the beneficiaries, the door of mitigation opens. *Harm is to be removed*: its most useful branch here is that harm is not removed by harm, which forbids treating the disablement of an endowment by a disposal that produces equal or greater harm — as where a property of modest but stable revenue is sold to acquire one of greater revenue and less stability.

Nor is necessity acted upon without restriction. It is required that the necessity be present or expected on preponderant estimation rather than merely imagined; that departure be the determinate means of repelling it; that it be compelling, such that loss or disablement of the corpus is feared; that no equal or greater harm follow from it in consequence; and that it be measured by its own extent in quantity and duration. A serious caution must be added: necessity must be qualified as *legal* necessity, and the party assessing it is accordingly neither the administrator nor the accountant but a jurist thoroughly versed in legal theory and the objectives of the Law, or a Sharī'a committee assisting the qāḍī in determining the applicability of the ratio. Confusion between assessing the technical situation and assessing the legal characterisation is among the greatest corrupters of the *fatwā* in this field.

⁷ al-Sighnāqī, *Al-Nihāya fī sharḥ al-Hidāya*, 12: 207, citing *Al-Dhakhīra*; and see Ibn Māza, *Al-Muḥīṭ al-burhānī*, 6: 165.

⁸ al-Ruḥaybānī, *Maqālib ulī al-nuhā*, 4: 146.

⁹ Ibn Nujaym, *Al-Baḥr al-rā'iq*, 5: 232–3.

¹⁰ Ibn Muflīh, *Al-Mubdi'*, 5: 353.

¹¹ al-Nafrāwī, *Al-Fawākih al-dawānī*, 2: 136; and on the Mālikī dispensation see al-Raṣṣā', *Al-Hidāya al-kāfiya al-shāfiya*, 297.

¹² al-Suyūṭī, *Al-Ashbāh wa-'l-naẓā'ir*, 77. The saying is reported by him from the scholars and is not his own choice.

3.4 A critical note on the sufficiency of necessity

It might be supposed after this survey that the path of necessity suffices for the novel cases of endowment, since it is agreed among the schools and safe in its consequences by reason of its narrowness. It is this supposition that is to be examined, for the path, sound as it is, falls short on three counts.

The first is that its operative ratio here is total disablement, a condition rare in practice. An endowment generally does not die outright; it falls chronically ill. Agricultural land whose revenue is less than its costs; a house let at a quarter of the customary rent; a shop in a district from which settlement has moved away. These forms lie outside the ratio of necessity, since usufruct in them subsists — and they are at the same time the forms a trustee most often faces.

The second is that necessity is an instrument of rescue and not of development. It is summoned after ruin has occurred, not before it. The objective of endowment is not the bare survival of the corpus but the continuance and growth of benefit, and whoever waits until an endowment reaches the threshold of necessity has forfeited the original objective while supposing himself to be safeguarding it.

The third is that the ruling of necessity is by its nature temporary, whereas departure in most of its forms is permanent in effect. An asset once sold is not returned; a purpose once changed does not generally revert. To build a permanent effect upon a temporary warrant is an instability in the reasoning that is rarely noticed.

The upshot is that the jurisprudence of necessity represents the agreed minimum, and that reality imposes something wider. Moving to the next rank does not, however, discard this path: it remains the firmest handhold, over which no two differ, and the point of return where reasoning beyond it becomes unstable.

4. The Rank of Need and Preponderant Benefit

The previous section concluded that the field of necessity is too narrow to accommodate reality. The question remains: may a trustee depart from a founder's stipulation towards what is more beneficial, even where the endowment stands and is benefited from? This is the true parting of the ways.

4.1 Need and its fine distinctions from necessity

Al-Juwaynī defined the appropriate consideration falling under need as that which relates to a general need without reaching the limit of necessity.¹³ Al-Shāṭibī defined the category of needs as those things wanted by way of amplitude and the removal of a straitness which ordinarily leads to constraint and to the hardship attendant on losing what is sought; if they are not observed, responsible agents fall as a general matter into constraint and hardship, though not amounting to the ordinary corruption anticipated in the general benefit.¹⁴ Al-Shāṭibī's is the best of these definitions, in that he identified the essence — amplitude and the lifting of constraint — and then identified the differentia separating it from necessity in his words “though not amounting to the ordinary corruption”, gathering definition and differentia in a single phrase, which is characteristic of the fineness of his craft. Nūr al-Dīn al-Khādimī defines need as the condition in which want falls short of necessity, so that the forbidden is permitted on account of an incidental factor and contrary to the applicable maxims, in order to remove constraint and bring facilitation, the ruling being permanent and continuing.¹⁵

Four differences may be gathered between the two ranks: the hardship in need is lighter than that in necessity; the impulse behind necessity is compulsion and behind need is facilitation; necessity operates upon what is forbidden in itself and need upon what is forbidden by reason of something else; and the ruling of necessity is temporary while that of need is continuing. This last difference is the key to the field. It was established above that the effect of departure in an endowment is permanent in most of its forms, and that building the permanent upon the temporary is unstable. If the ruling of need is by nature permanent, then grounding departure from a founder's stipulation upon need is better suited to the nature of its effect than grounding it upon necessity. This is a conclusion not anticipated when the study was designed; it emerged from comparing the properties of the two ranks with the properties of the effect, and not from any received report.

4.2 Categories and conditions of need

Need divides, by generality and particularity, into a general need extending to the community or a section of it and a particular need wanted by a specific individual; by time, into temporary and permanent; and by ruling, into what is permitted for the sake of the want itself and what is permitted for an incidental excuse and is not permitted save while that excuse subsists. The most useful of these divisions for the present case is the last, since an endowment is a perpetual institution: the need upon which departure from its stipulation is built ought to be of the continuing rather than the incidental kind. Whoever alters the

¹³ al-Juwaynī, *Al-Burhān*, 2: 275.

¹⁴ al-Shāṭibī, *Al-Muwāfaqāt*, 2: 21.

¹⁵ al-Khādimī, *Al-Ijtihād al-maqāṣidī*, 2: 225.

disbursement purpose of an endowment for a need that appeared in a single year and then lapsed has built the permanent upon the incidental, which is a failure of correspondence between the rank of the cause and the rank of the effect.

The conditions for recognising a need are seven: that it not operate so as to nullify necessity, which is its origin; that it be present rather than awaited, and real rather than imagined; that it collide with no text, maxim, or universal objective; that it be measured by its own extent; that it not permit what necessity itself would not permit, being below it in rank; and that it not be taken as a device for circumvention, since dispensations are not attached to acts of disobedience. It is worth observing that most of these are negative conditions telling a trustee what not to do, and few of them tell him how to establish that he has not done it. There is a considerable difference between a condition that is denied and a condition that is proved, and a *fatwā* is built upon proof.

4.3 The maxim that need occupies the position of necessity

Al-Suyūṭī devoted an independent heading to this maxim in the form that need occupies the position of necessity, whether general or particular;¹⁶ it is a branch of the greater maxim that hardship brings facilitation, of which he observed that all the dispensations and mitigations of the Law issue from it.¹⁷ A point of wording with a scholarly consequence arises here: this saying is frequently attributed to al-Suyūṭī himself, whereas he in fact reported it from the scholars in the language of transmission. There is a difference between an imām's own choice and his report of another's, and laxity in such matters accumulates in the literature into a misattribution that circulates until it is treated as settled.

Operating the maxim in the law of endowment nonetheless meets a practical obstacle: who assesses the generality of a need? Assimilation to necessity is made conditional in the maxim itself upon the attribute of generality, and generality is an attribute of fact rather than of law — apprehending it requires knowledge of circumstance rather than derivation from a text. The preponderant view is that in this composite age the assessment of generality is not the jurist's alone, but is shared according to the subject-matter of the need: economists where it is economic, engineers and planners where it concerns the built environment, physicians where it is medical — after which the matter returns to the jurist to clothe the case in its legal characterisation. The expert's role here is to furnish the mujtahid with instruments and apprise him of circumstance, not to share in issuing the ruling. Confusing the two functions is a serious hazard, since the jurist then becomes a ratifier of technical reports he does not understand, or the expert becomes a muftī without realising it.

4.4 Ibn Taymiyya's text: a structural analysis

The clearest authority for extending the field from necessity to need is Ibn Taymiyya's position on exchange, reported from him by Ibn Muflīḥ in *Al-Mubdi'*: that where there is need, exchange for a like asset is obligatory; that where there is no need, exchange for a better asset is permissible on account of the manifest benefit; and that exchange for a like asset is not permissible without need, because the founder's designation is thereby lost.¹⁸

Brief as it is, the text is tightly built, and its three clauses reward examination one by one. "Where there is need, exchange for a like asset is obligatory" moves the question from the sphere of permissibility to that of obligation once need is present, on the ground that a guardian is bound to act for benefit; exchange is thus not a dispensation to be treated indulgently but a duty that may be demanded of him. "Where there is no need, exchange for a better asset is permissible on account of the manifest benefit" is the point of the great transition, declaring exchange permissible where need is absent altogether, on condition that the substitute be better and the benefit manifest: the ratio here is neither the absence of usufruct nor its diminution, but the preponderance of the substitute and the evidence of that preponderance. "Exchange for a like asset is not permissible without need, because the founder's designation is thereby lost" is the valve that prevents the rule from running loose. It is the finest of the three clauses and the least noticed: exchange for an equivalent is forbidden absent need because it defeats the founder's designation without any countervailing gain. The text is therefore not an unqualified opening but a precise equation — the weaker the need, the stricter the requirement of superiority; the stronger the need, the lighter it becomes.

The text should not be made to carry more than it can bear. Some of those who have relied on it in contemporary extensions have taken its first clause — the permissibility of exchange without need — and dropped its third — the prohibition of exchange for an equivalent — emerging with a rule its author did not state. Selective reading within a single text is less visible than selective reading across several, and is for that reason more dangerous. Ibn Taymiyya moreover carefully distinguished his warrant from the warrant of necessity, likening this permission to the permissibility of women's adornment with gold and silk: a matter permitted for the completion of benefit rather than by a necessity that renders carrion lawful. The comparison

¹⁶ al-Suyūṭī, *Al-Ashbāh wa-'l-naẓā'ir*, 88.

¹⁷ al-Suyūṭī, *Al-Ashbāh wa-'l-naẓā'ir*, 77.

¹⁸ Ibn Muflīḥ, *Al-Mubdi'*, 5: 353–4; and for the question at its source see Ibn Taymiyya, *Majmū' al-fatāwā*, vol. 31. [? A volume without a page. Supply the page or delete the cross-reference.

is exact. Carrion is permitted to the extent of sustaining life and the prohibition then returns, whereas silk is permitted to women from the outset and permanently. In attaching exchange to the second rather than the first, he showed that he regarded it as an original and continuing ruling rather than an incidental dispensation — which accords with what was said above about the permanence of the effect of departure.

4.5 The five constraints and a critique of their sufficiency

Five constraints are stated for departure by those who permit it: that it be towards what is more beneficial; that the disposal not be individual but referred to the judiciary or to a Sharīʿa advisory board in which jurist and expert are integrated; that no gross inequity result from it; that any inequity affecting those working for the endowment be removed; and that the process be untainted by suspicion, as where an administrator exchanges in favour of a relative whose testimony would not be accepted in his favour.

These constraints are sound in themselves and none of them is open to dispute. The observation to be made concerns their function rather than their soundness: they are descriptive and not procedural. To say “that it be towards what is more beneficial” is a constraint no one contests, but it does not tell us by what indicator the more beneficial is known, who assesses it, by what document it is established, or what margin between the two states is to be treated as material. While a constraint remains at this level of generality, every trustee may bring under it what he wishes and then declare that he has observed the constraints. This, it is suggested, is the real defect in the literature of the field: prohibitionist and permitter agree upon the constraints verbally and differ over their application in a way that the wording cannot resolve. It is for this reason that the study closes with a proposal that carries the constraint from description to procedure.

Among the effects of this rank in juristic practice is departure from a stipulation where it results in inequity to those working for the endowment — a trustee, a prayer leader, or a teacher for whom the founder stipulated a wage below the customary rate; and the lease of an endowment for more than a year against the founder’s stipulation where benefit is found in the extension; and al-Ḥaṭṭāb’s *fatwā* concerning the Shaykh’s college at al-Qanṭara, where he altered some of its spaces and increased the students’ stipends as their numbers grew, reasoning that it was overwhelmingly probable, almost to the point of certainty, that had the founder been alive and the matter put to him he would have approved of it and thought it good.¹⁹ His reasoning contains a valuable instrument that has not been fully exploited, which may be called summoning the hypothetical founder: the muftī conducts an imagined dialogue with the founder and asks him whether he would have accepted this had he seen what we see. Valuable as it is, it is a double-edged instrument, since an estimate of what the founder would have accepted can be manufactured to the measure of what is desired. It must therefore be disciplined: the estimate must rest on indications drawn from the endowment deed itself rather than on bare approval, and the imputed purpose must be of the same kind as what the founder expressly stated, not of the kind we ourselves consider more beneficial.

5. The Maqāṣid Foundations: From Justification to a Balance

A claim of benefit left without foundation becomes a mount for any rider. The two preceding ranks therefore require maqāṣid foundations that carry reasoning within them out of arbitrary assertion. On examination these reduce to four, and are followed by a proposal gathering them into a single instrument.

5.1 Istiṣlāḥ and rational intelligibility in the endowment case

Reasoning from benefit is an extension of the principle of ratio-based reasoning in the Law, resting on the premise that rulings are grounded in the securing of benefits and the repelling of harms. The question prior to any reasoning from benefit in endowment is therefore whether endowment is a matter of non-rationalised compliance or is rationally intelligible. If the former, benefit may not be operated in it at all; if the latter, the door opens. ‘Abd Allāh b. Bayyah examined this question and concluded that endowment is rationally intelligible and oriented in purpose towards benefit,²⁰ and upon this every *fatwā* permitting departure is built. Nor has this remained an individual opinion: it has risen to collective ijtihād, the International Islamic Fiqh Academy having resolved at its nineteenth session that endowment is among the widest fields of fiqh resting upon ijtihād, and that it is a rationally intelligible disposition connected to the objectives of the Law whose aim is to realise the benefits of the endowment for the founder and the beneficiaries.²¹ This carries the question from the stage of claim to the stage of institutional premise. It establishes the principle of intelligibility, however, and not the measure of what may be built upon it: whoever infers from it that every benefit permits departure from every stipulation has made it carry what it cannot.

¹⁹ al-Ḥaṭṭāb, *Mawāhib al-jalīl*, 7: 278–9.

²⁰ Ibn Bayyah, *Iʿmāl al-maṣlaḥa fī al-waqf*, cited in al-Nāṣir, *Nawāzil al-waqf*, 78. [? Citation at second hand. Referees are likely to require the original.]

²¹ International Islamic Fiqh Academy, resolution of the nineteenth session, Sharjah, 1–5 Jumādā I 1430 / 26–30 April 2009, concerning the endowment of shares, sukūk, intangible rights, and usufructs. [? Supply the resolution number.]

Scholars divide reasoning from benefit into three branches: in the foundation of the Law, in the understanding and application of texts, and where no text exists. The preponderant view is that reasoning from benefit in the present question belongs to the second branch rather than the third, as is commonly supposed. One who considers departure from a stipulation does not face a textual vacuum but a standing text, namely the endowment deed; his work is the work of one who interprets a text and applies it. The classification is not a theoretical luxury. The third branch is wider in field and weaker in discipline; the second is narrower and more closely bound to the wording and its purposes. Whoever places the question in the third has freed his hand; whoever places it in the second remains tied to the founder's deed, interrogating it without exceeding it. Ibn 'Āshūr's observation may close this discussion: that the path of benefits is the widest path a jurist may take in managing the affairs of the community in its novel cases when the ways before him have become obscure.²² The point of the citation is his restriction — *when the ways have become obscure* — for benefit is with him a path taken in obscurity and not a substitute for the remaining paths.

5.2 Consequence and the temporal dimension in the assessment of benefit

Consequence is a universal principle requiring that a ruling be applied to an act in a manner appropriate to its anticipated outcome; al-Shāṭibī treated it as among the major principles upon which maxims, and not merely particular rulings, are built. Its position in the present question is central, since a ruling of departure is by its nature a ruling upon the future. One who sells an endowment to acquire a more beneficial asset is wagering that the more beneficial will remain so; one who alters the disbursement of revenue is wagering that the new need will endure. A wager not disciplined by consideration of consequence becomes a gamble with endowed property.

Four conditions govern the proper consideration of consequence: command of the objectives of the Law, which serve as the compass; understanding of circumstance, since no consequence can be anticipated without knowledge of the present; knowledge of the states of responsible agents; and knowledge of the divine patterns operative in the world. On understanding of circumstance, Ibn Qayyim al-Jawziyya observed that neither muftī nor judge can rule truly save through two kinds of understanding: understanding of the circumstance and grasp of it, deriving knowledge of what has actually occurred from indications and signs until he comprehends it; and understanding of what is required in that circumstance, which is understanding of God's ruling as given in His Book or upon the tongue of His Messenger — and then the application of the one to the other.²³

To these a fifth condition may be added, required by the nature of endowment, which the present author has not seen stated in this field: consideration of intergenerational consequence. An endowment is an institution crossing generations by virtue of its perpetuity, and the benefit given preponderance within it must be preponderant not merely for the present generation. Its effect upon later beneficiaries, who have no voice in the assessment, must also be considered. Neglect of this dimension is what makes some decisions to dispose of endowment property beneficial in the near term and destructive in the long.

5.3 The jurisprudence of priorities and the resolution of competition

The jurisprudence of priorities is the placing of each thing in its proper rank with justice and then advancing what is more entitled to precedence, on the basis of sound legal criteria.²⁴ The jurist's need of it is evident, since departure is towards what is more beneficial and the more beneficial is not known without ordering. Among the more important criteria for resolving competition are the precedence of the greater benefit, the precedence of the more general over the more particular, the precedence of rulings concerning objectives over rulings concerning means, the precedence of what is feared to be lost over what is not, and finally the weighing of an effect by its generality in quantity and in duration.

One fine question should not be passed over. Suppose a family endowment upon a designated family whose yield exceeds their requirement and would suffice the whole village; and suppose the village then needs a portion of it. Do we prefer the collective act of devotion to the individual one, and the more general to the more particular? Or does a family endowment fall outside these criteria by reason of its particularity? The preponderant view is that it is not excluded from weighing altogether, but that preferring the collective aspect within it is subject to two indispensable conditions: that the beneficiaries' underlying benefit not be touched, and that the surplus be real and settled rather than incidental to one or two years. Where either fails, the matter returns to the original position, namely the founder's designation — for preference by generality operates upon what exceeds the entitled party's right, not upon what is his right.

²² Ibn 'Āshūr, *Maqāṣid al-sharī'a al-islāmiyya*, 122.

²³ Ibn Qayyim al-Jawziyya, *I'lām al-muwaqqi'īn*, 1: 87.

²⁴ al-Qaradāwī, *Fī fiqh al-awlawiyyāt*, 135–8.

5.4 Opening the means and a critique of precautionary blocking

Among the most conspicuous features of the heritage of this field is that the restriction of departure from founders' stipulations rested less on any specific text than on blocking the means, out of fear that rulers and judges would encroach upon endowments. The concern was well founded in its time and no reproach attaches to those who held it. But the question to be put to it is one of outcome rather than of grounding: did the blocking attain its purpose? The testimony of the history of endowments is that it did not. Whoever set out to seize an endowment was not defeated by a juristic maxim, and more endowments have been lost under the banner of preserving them than under the banner of disposing of them, because rigid adherence to the stipulation led to neglect, neglect to ruin, and ruin to loss. Where a means is blocked and the blocking does not lead to its purpose, the blocking retains no significance, since it is not a ruling intended for its own sake but an instrument, and an instrument falls with the failure of its fruit. It is therefore sound to hold departure permissible by way of opening the means towards the preservation and upkeep of endowments. What is meant by opening the means is what al-'Izz b. 'Abd al-Salām indicated in holding that assistance in a thing may be permissible not because it is intended in itself but because it is a means to obtaining a preponderant benefit;²⁵ Muṣṭafā Ibrāhīm al-Zalmī expressed it as means legally prohibited which lead to a preponderant benefit.²⁶

Four paths are available to a jurist for establishing that a means leads to its end, differing in strength and complementary in operation. The first is express statement: that the founder should state in his deed the end he intended — as in saying that he endows this so that students of religious learning may benefit from it — so that his purpose becomes stated rather than inferred, and adjusting the instrument where it has become impracticable is a fulfilment of what was stated rather than a departure from it. The second is recognised preponderant supposition, since it is customary in the Law's operation to build upon supposition in innumerable particular rulings, as in the rules governing transmission and testimony; its position here is that it should be preponderantly supposed that maintaining the stipulation will lead to the disablement of the endowment, without requiring certainty, since otherwise action would be impossible. The third is contextual indication, of which the clearest here are the movement of settlement away from the endowment's location and the discontinuance of the beneficiary purpose beyond expectation of return. The fourth is practical experience, the strongest in the present case, since the knowledge obtained from it approaches certainty; Ibn Hajar al-'Asqalānī, commenting on Moses's counsel to the Prophet that he had tried people before him, observed that experience is more powerful in securing what is sought than extensive knowledge.²⁷

On this basis it is proposed that the fields of departure not be opened at once, but opened on a limited scale and under close supervision, with the effect monitored and reviewed after a defined period: if the trial bears fruit it is generalised, and otherwise it is withdrawn. A *fatwā* in novel cases concerning public wealth which is not followed by a mechanism of review becomes a decision that cannot be reversed, and that the Law never intended.

5.5 A contemporary regulatory case: the disciplining of exchange in Saudi Arabia

No judgement upon a maqāṣid instrument is sound without testing it in an operating field. Before formulating the balance, therefore, a contemporary regulatory case is presented — neither in praise nor in censure, but to extract its methodological lesson. The statute of the General Authority for Awqāf in Saudi Arabia provides that among the Authority's competences is consideration of applications to exchange charitable endowments in accordance with the requirements of benefit, prior to their approval by the competent Sharī'a body.²⁸ The regulations governing the work of trusteeship provide that — without prejudice to the founder's stipulation — a trustee is not permitted to exchange the corpus of an endowment save after obtaining the authorisation of the competent body, and that the Authority is to be notified of any exchange immediately upon its completion, with detailed particulars of the substitute asset, within a limited period.²⁹

Three lessons emerge from these two provisions. The first is that the declared standard is the requirement of benefit rather than total disablement: the regulatory framework has broadly adopted the rank of need rather than the rank of necessity alone. This accords with the position preferred above and indicates that institutional practice has preceded much theoretical writing to this conclusion. The second — and the point requiring careful attention — is that the regulations preface their provision

²⁵ al-'Izz b. 'Abd al-Salām, *Qawā'id al-aḥkām*, 1: 223.

²⁶ al-Zalmī, *Uṣūl al-fiqh fī nasījihi al-jadīd* [? page required]; and see al-Ashqar, *Al-Wāḍiḥ fī uṣūl al-fiqh*, 237.

²⁷ Ibn Hajar al-'Asqalānī, *Fatḥ al-bārī*, 7: 336.

²⁸ Statute of the General Authority for Awqāf, Saudi Arabia, among the Authority's competences. [? Supply the article number, the date of issue, and the source reference.]

²⁹ Regulations Governing the Work of Trusteeship, General Authority for Awqāf, Saudi Arabia, section on the trustee's duties, published in *Umm al-Qurā*. [? Supply the article number and the issue and date of the gazette.]

with the clause “without prejudice to the founder’s stipulation” and then set out a complete procedure for exchange. The appearance of the drafting is that the stipulation is preserved; the reality of the practice is that an organised administrative channel exists for passing beyond it where benefit requires. This is not a reproach: combining verbal respect with practical flexibility is precisely what was established above in holding the maxim to be governed rather than governing. The observation is rather that leaving the matter in this verbal shadow weakens transparency, and that it would be better for the operative rank and its ratio to be stated openly, since what is stated can be reviewed. The third is the requirement of prior authorisation and subsequent notification with detailed particulars within a fixed period. This is the most valuable feature of the framework, because it carries the constraint from description to procedure: prior authorisation prevents unilateral action, and subsequent notification creates a written trace open to tracking and accountability.

The case is not to be generalised without qualification. Regulatory environments differ from one country to another in ways that bear materially upon the strength of oversight and the maturity of endowment adjudication, and what is workable where an independent endowment agency has been established may not be workable where it has not. Surveying other experiences in the Arab East, the Maghrib, and South-East Asia, and comparing them methodically, remains an independent line of research for which the present article has no room.

5.6 A proposed procedural balance for the claim of departure

It has been established that the constraints in circulation are descriptive rather than procedural, and that the points of disagreement lie in application rather than in wording. What follows is that an instrument should be formulated for the claim, with defined inputs, a ladder of verification, and a reasoned output. What is offered here is a proposal open to refutation and improvement, not a claim whose fitness is beyond question.

The criteria are four, each with an indicator by which it is established. **Transparency**: that the ground of departure be recorded in a document to which reference can be made, rather than held in the mind of the trustee. **Preservation**: that the corpus not be touched until the lesser measures — repair, leasing, and investment — have been exhausted. **Preponderance**: that the difference between the two states be material rather than slight, since a slight difference does not support the dismantling of the founder’s designation. **Justice**: a governing attribute running through the other three rather than a fourth pan, its indicator being that no entitled party, present or absent, is wronged by the decision.

The verification ladder has four rungs. The four criteria may be satisfied, in which case the disposal proceeds. They may be deficient in a procedural respect capable of being remedied, in which case the disposal proceeds subject to a mandatory improvement. They may be deficient in a substantive respect — as where material preponderance is absent — in which case it is suspended until the deficiency is made good. Or they may be vitiated, where the true motive is shown to differ from the declared one, in which case it is prohibited from the outset. The output is a composite ruling accompanied by a statement of reasons setting out the basis of each criterion, so that it is open to tracking, comparison, and review.

A worked application will show the instrument in operation. An endowment supports a Qur’an school in an old quarter; the founder stipulated that the revenue of the adjoining house be applied to the school and its people. Settlement then moved away and the students ceased to come, so that the house is let at a nominal rent and the school stands closed. It is proposed that the house be sold and commercial units purchased in a thriving location, their yield to be applied to bursaries for Qur’an students across the whole city. On the balance: **transparency** is satisfied if a document establishes the cessation of students and the shortfall of the rent against the customary rate; the trustee’s own assertion does not suffice. **Preservation** is satisfied if it is established that repair, long lease, and investment in the asset itself have been tried or are impracticable; otherwise this is a procedural deficiency to be remedied. **Preponderance** is satisfied if the difference between the two yields is material and settled rather than seasonal; otherwise it is a substantive deficiency upon which the disposal is suspended. **Justice** is satisfied if no one actually benefiting is deprived, and if the entitlement of later generations is observed by stipulating that the substitute remain endowed upon the same purpose rather than upon a purpose more general than it without warrant. Where the criteria are met, the disposal proceeds with a statement of reasons setting out the basis of each. Where it appears that the true motive is a desire for the site of the house rather than the benefit of the endowment, the balance is vitiated at its root and the disposal is prohibited from the outset even though its outward form is complete — and the prohibition here rests not on suspicion or on conjecture about intentions but on objective indications legible to anyone examining the file.

The instrument should not be made to carry more than it can. It produces a founded and reasoned ruling; it does not produce a binding one. Binding force in novel cases concerning public endowments belongs to the judiciary and to collective *ijtihād* in the academies and boards. Its added value is one of discipline, traceability, and comparability, not the discovery of unknown rulings; whoever claims more for it than this has made it carry what it cannot.

6. Conclusion

This analytical and critical study concludes that the definition of departure from a founder’s stipulation in current circulation is too narrow for its forms, because it confines the agent to the administrator; the correct course is to extend it to the supervisory authority, the Shari’a board, and the judicial decision. It concludes further that the maxim likening a founder’s stipulation to the Lawgiver’s text is governed rather than governing, that the likeness concerns the obligation to act rather than rank, and

that the school texts themselves describe such a stipulation as void where it collides with the purpose of the endowment, as in the report of Aḥmad transmitted by Ḥarb.

It has emerged that the disagreement between prohibitionists and permitters is not one of principle but of the breadth of the exception, and that delimiting the question in this way carries the enquiry from arguing for legitimacy to identifying the rank. The field of necessity is confined to the priority of upkeep, borrowing for its sake, and exchange upon total disablement, and falls short on three counts: the rarity of its trigger, its being an instrument of rescue rather than development, and the temporariness of its ruling against the permanence of its effect. Grounding departure upon the rank of need is therefore better suited to the nature of that effect than grounding it upon necessity — a conclusion that emerged from comparing the properties of the two ranks with the properties of the effect.

Ibn Taymiyya's text on exchange has been shown to be a tightly built three-part structure: obligation where there is need, permissibility of exchange for a better asset where there is none, and prohibition of exchange for an equivalent absent need. Dropping the third clause, as occurs in some contemporary extensions, distorts his position rather than relying upon it. The five constraints in circulation are sound in themselves but descriptive rather than procedural, and therefore do not resolve the real point of dispute, which is application. Precautionary blocking of the means did not attain its purpose of preserving endowments, and an instrument falls with the failure of its fruit; it is therefore sound to move from blocking to a disciplined opening coupled with trial and review. The contemporary regulatory case discloses that institutional practice has broadly adopted the standard of the requirement of benefit rather than total disablement, and that its most valuable feature is the requirement of prior authorisation and subsequent notification, because this carries the constraint from description to procedure. The study concludes with a maqāṣid-based proposal resting on four criteria — transparency, preservation, preponderance, and governing justice — a four-rung verification ladder, and a reasoned output: an instrument of discipline rather than of binding force.

Three recommendations follow. Supervisory authorities should issue no decision departing from a stipulation unaccompanied by a statement of reasons setting out the basis of each criterion separately, since it is reasoning that renders a decision open to review, and what is not reviewed is not corrected. Sharī'a boards should attach to every authorisation of departure a fixed period for review and a mechanism for monitoring effect after implementation, so that a *fatwā* in novel cases concerning public wealth does not become an irreversible decision, and so that practical experience becomes a cumulative basis. And researchers should move from establishing legitimacy — which has settled — to disciplining application, and field studies should be devoted to measuring the effect of departure decisions upon Algerian endowments after they have been issued; for what this study offers is a claim testable outside its own setting, not a case whose fitness is beyond question.

All of this remains a proposal offered for criticism, and it is enough for it that it should be testable.

Declarations

Disclosure statement. The author reports there are no competing interests to declare.

Funding. No funding was obtained for the reported work. [Amend if the research falls under a funded national project.]

Declaration of generative AI use. The research reported in this article, together with its argument and its sources, is the author's own and was written in Arabic without AI assistance. Claude (Anthropic, Claude Opus 5) was used to translate that Arabic text into English and to draft the English abstract and keywords. The author has revised the translation against the Arabic original and takes full responsibility for the accuracy and integrity of the submitted text.

Word count. 10,697 words, inclusive of notes and bibliography.

Notes

Bibliography

al-Ashqar, Muḥammad Sulaymān. *Al-Wāḍiḥ fī uṣūl al-fiqh*. 6th ed. Amman: Dār al-Nafā'is, 2005.

General Authority for Awqāf. *Regulations Governing the Work of Trusteeship*. Riyadh: General Authority for Awqāf. [Date required.]

General Authority for Awqāf. *Statute of the General Authority for Awqāf*. Riyadh: General Authority for Awqāf. [Date required.]

al-Ḥaṭṭāb al-Ru'aynī, Muḥammad b. Muḥammad. *Mawāhib al-jalīl li-sharḥ Mukhtaṣar Khalīl*. Ed. Zakariyyā 'Umayrāt. Beirut: Dār 'Ālam al-Kutub. [Year required.]

Ibn 'Ashūr, Muḥammad al-Ṭāhir. *Maqāṣid al-sharī'a al-islāmiyya*. 4th ed. Tunis: Dār Saḥnūn, 1430/2009.

Ibn Bayyah, 'Abd Allāh b. al-Shaykh al-Maḥfūz. *I'māl al-maṣlaḥa fī al-waqf*. [Publication details required.]

Ibn Ḥajar al-'Asqalānī, Aḥmad b. 'Alī. *Fath al-bārī sharḥ Ṣaḥīḥ al-Bukhārī*. Ed. Muḥammad Fu'ād 'Abd al-Bāqī. Beirut: Dār al-Ma'rifa, 1379.

Ibn Māza al-Bukhārī, Burhān al-Dīn. *Al-Muḥīṭ al-burhānī fī al-fiqh al-nu'mānī*. Ed. 'Abd al-Karīm Sāmī al-Jundī. Beirut: Dār al-Kutub al-'Ilmiyya, 1424/2004.

- Ibn Muflih, Burhān al-Dīn Ibrāhīm b. Muḥammad. *Al-Mubdi' fī sharḥ al-Muqni'*. Beirut: Dār al-Kutub al-'Ilmiyya. [Year required.]
- Ibn Nuḡaym, Zayn al-Dīn. *Al-Baḥr al-rā'iq sharḥ Kanz al-daqa'iq*. Beirut: Dār al-Kutub al-'Ilmiyya, 1418/1997.
- Ibn Qayyim al-Jawziyya, Muḥammad b. Abī Bakr. *I'lām al-muwaqqi'īn 'an rabb al-'ālamīn*. Beirut: Dār al-Kutub al-'Ilmiyya. [Year required.]
- Ibn Taymiyya, Aḥmad b. 'Abd al-Ḥalīm. *Majmū' al-fatāwā*. [Publication details required.]
- International Islamic Fiqh Academy. Resolution of the nineteenth session, Sharjah, 1430/2009. [Resolution number required.]
- al-Juwaynī, 'Abd al-Malik b. 'Abd Allāh. *Al-Burhān fī uṣūl al-fiqh*. Ed. Ṣalāḥ b. Muḥammad b. 'Uwayḍa. Beirut: Dār al-Kutub al-'Ilmiyya, 1418/1997.
- al-Khādīmī, Nūr al-Dīn. *Al-Ijtihād al-maqāṣidī: ḥujjiyyatuhu, ḍawābiṭuhu, majālātuhu*. Kitāb al-Umma series. Doha: Ministry of Endowments and Islamic Affairs, 1419/1998.
- al-Nafrāwī, Aḥmad b. Ghunaym. *Al-Fawākih al-dawānī 'alā Risālat Ibn Abī Zayd al-Qayrawānī*. Beirut: Dār al-Fikr, 1415/1995.
- al-Nāṣir, Sulṭān b. Nāṣir. *Nawāzil al-waqf*. 1st ed. Riyadh: Dār al-Ṣumay'ī, 1439/2017.
- al-Qaraḍāwī, Yūsuf. *Fī fiqh al-awlawiyyāt: dirāsa jadīda fī ḍaw' al-Qur'ān wa-'l-Sunna*. 2nd ed. Cairo: Maktabat Wahba, 1416/1996.
- al-Raṣṣā', Muḥammad al-Anṣārī. *Al-Hidāya al-kāfiya al-shāfiya*. Ed. Muḥammad Abū al-Ajḡān and [second editor required]. Beirut: Dār al-Gharb al-Islāmī, 1993.
- al-Ruḡaybānī, Muṣṭafā al-Suyūṭī. *Maṭālib ulī al-nuhā fī sharḥ Ghāyat al-muntahā*. Damascus: al-Maktab al-Islāmī. [Year required.]
- al-Shāṭibī, Ibrāhīm b. Mūsā. *Al-Muwāfaqāt fī uṣūl al-sharī'a*. [Publication details required.]
- al-Sighnāqī, Ḥusām al-Dīn. *Al-Nihāya fī sharḥ al-Hidāya*. [Publication details required.]
- al-Suyūṭī, Jalāl al-Dīn. *Al-Ashbāḥ wa-'l-nazā'ir fī qawā'id wa-furū' fiqh al-Shāfi'iyya*. 1st ed. Beirut: Dār al-Kutub al-'Ilmiyya, 1411/1990.
- al-'Izz b. 'Abd al-Salām. *Qawā'id al-aḥkām fī maṣāliḥ al-anām*. Beirut: Dār al-Kutub al-'Ilmiyya. [Year required.]
- al-Zalmī, Muṣṭafā Ibrāhīm. *Uṣūl al-fiqh fī nasījīhi al-jadīd*. 1st ed. Iḥsān li-'l-Nashr wa-'l-Tawzī', 1435/2014. [Place required.]
- al-Zuhaylī, Wahba. *Nazariyyat al-ḍarūra al-shar'iyya muqārana ma'a al-qānūn al-waḍ'i*. 4th ed. Beirut: Mu'assasat al-Risāla, 1405/1985.