CHAPTER 1

Maryam's Final Word

> *That some people and things are absent from history, lost, as it were to the possible world of knowledge, is much less relevant to [the] historical practice than the fact that some people and things are absent in history, and that this absence itself is constitutive of the process of historical production.*
>
> Michel-Rolph Trouillot, 1995[1]

> *All I mentioned, in whole and in part, is articulated in accordance with legal obligations of the shariʿa. Whoever opposes this [the terms of my waqf endowment], the Prophet Muhammad himself, peace and blessings of Allah be upon him, will be his antagonist on the Day of Judgment.*
>
> From the waqf endowment of Maryam ʿAnklis, Tripoli shariʿa court, 1840[2]

Were it but possible to be present at the remarkable scene that unfolded in the chambers of the shariʿa court qadi (judge) of Tripoli on February 5, 1840.[3] Standing in front of a crowd of at least twenty distinguished male witnesses of considerable social standing, an old woman, unveiled and well-dressed, announced her intention to establish a family waqf.[4] But what started out as a mundane process of registering a specific legal transaction turned into a passionate oral enunciation of what was effectively her last will and testament – her final word, so to speak. Maryam's performance must have been so charismatic, her delivery so finely woven, and her stance so

[1] Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Boston, MA: Beacon Press, 1995), 48–49.

[2] Tripoli shariʿa court registers (hereafter, TICR) 31:1103–1104, dated beginning of Dhu al-Hijja 1255. I translated the phrase "*mufaṣṣalan ḥukm al-fariḍa al-sharʿiyya*" as "articulated in accordance with legal obligations of the shariʿa."

[3] TICR 31:103–104, dated beginning of Dhu al-Hijja, 1255. The word "qadi" will be used throughout this book, because "judge" may too easily be associated with current practices and contexts in the mind of the reader. Moreover, most scholars working with Ottoman-Turkish sources commonly use the term "kadi court," which emphasizes the relationship of the qadi to the state that appointed him.

[4] The list of witnesses is dominated by religious figures such as Sayyid ʿUmar Effendi Karameh. Three of the witnesses – Hasan ʿAllush, Sidi Shaykh Iʿrabi al-Zayla', and Sayyid ʿAbd al-Qadir Qawuqji – stood to benefit financially, for Maryam ʿAnklis designated part of the revenues of the waqf as an annual stipend for them.

unyielding, that the qadi and the scribe produced a text the immediacy and legal hybridity of which I have not seen in thirty years of reading shariʿa court registers (s. *sijill*).

It is extremely rare to come across a case in the Ottoman shariʿa court registers of the cities and towns of the Eastern Mediterranean in which the voice of a litigant is directly transmitted in the first person.[5] Phrases that began with "I" violated the deeply entrenched protocol of rendering proceedings into a tightly structured third-person narrative. Here, however, not only does Maryam ʿAnklis's voice come through, but it unsettles the entire document with unexpected verbatim statements and warnings aimed at the reader. The vocabulary meanders between formal legal language and the colorful vernacular of the local dialect, the handwriting moves in and out of the official Diwani script, and the transitions are unpredictable, sudden, and jarring.

Even more unusually, Maryam's appearance in court resulted in a hybrid document that disrupted established legal norms by combining different types of legal cases in a single narrative. Normally, each type constitutes a separate legal transaction that generates its own record (*ḥujja*).[6] Determined to impose her vision of how her properties were to be devolved in whole legal cloth – who got what, how, when (before or after her death), and in what order – Maryam ʿAnklis inserted within the waqf endowment (*inshāʾ waqf*) the legal instruments of gift (*ḥiba*), probate inventory (*ḥaṣr irth* or *tarika*), will (*waṣīya*), and acknowledgment (*iqrār*). This she did by proceeding in a series of interlocked steps that matched different types of properties (immoveable and moveable) and financial obligation (loans and debts) with different legal mechanisms. All were targeted at two orders of kinship: blood (agnates, in-laws, spouse, and children) and spiritual (Sufi shaykhs and scholars). More importantly, Maryam transgressed legal bounds by combining two temporalities (before and after death) that normally authorize mutually exclusive legal options. It is precisely this

[5] This observation is based on close reading of all the registers for Nablus and Tripoli from the seventeenth until the late nineteenth century, and an examination over several years of the registers of Jerusalem, Jaffa, Haifa, Sidon, Beirut, Damascus, Aleppo, Homs, and Hama from the eighteenth until the mid-nineteenth century. I refer to this region as the "Eastern Mediterranean" under the assumption that a geographic designation carries less baggage than other familiar appellations: Levant, Fertile Crescent, Arab East (*Mashriq*). By the "Eastern Mediterranean" I mean the areas west of the Syrian Desert and between Aleppo and Gaza in today's Syria, Lebanon, Palestine/Israel, and Jordan. I sometimes use the phrase interchangeably with "*Bilad al-Sham*" (Syrian Lands) and "Ottoman Syria." Historically, this is a highly integrated yet richly diverse economic, social, and cultural zone.

[6] It is not so unusual to find a court document that combines a lawsuit over the legal status of a property with a legal transaction, such as a sale or rental contract. This particular combination of cases is, however, unique.

unorthodox act that makes her motivations, intentions, and desires profoundly clear.

For social historians interested in understanding the relations between and transformations of family, property, and gender regimes (in both the materialist and the discursive senses of the word), the intricate and passionate personal vision that animates the waqf endowment of Maryam ʿAnklis is akin to a sudden wind that disperses the gray fog of serialized legal documents hovering between the immutable terrain of the past and the critical gaze of the historian.[7] From this perspective, Maryam's final word is to be treasured for what it really is – a rare glimpse into the heart of a fundamental question: How did property devolution, as an accretion of conscious and strategic social acts and forms of legal practice, reproduce and transform family life during the transition from the early modern to the modern period (the seventeenth to the nineteenth century)?

For scholars of Islamic jurisprudence, and for some archival anthropologists, however, Maryam's waqf endowment is not to be treasured, but to be treated with great suspicion and perhaps dismissed for what it also is – an aberration of no weighty import. Legal historians can only shake their heads in wonder at how the qadi and scribes of the Tripoli shariʿa court in 1840 could authorize and register a document that wreaks such havoc with legal norms and procedures. And they would be right to conclude that it would easily collapse if legally challenged, even in the same court. Consequently, this document cannot be considered evidence of *Kadijustiz*, the Weberian view that Islamic jurisprudence is held hostage by the arbitrary authority of the qadi, as opposed to rational adjudication based on substantive doctrine and judicial precedents, as in Western law.[8]

Archival anthropologists may find the outlier status of the document useful for providing a rare perspective from the margins. But they can point out, and justifiably so, that the waqf of Maryam ʿAnklis is the exception

[7] By this, I do not mean to imply that formulaic passages cannot be a rich source of historical analysis. The epistemological and discursive foundations of such texts, the vocabulary that haunts them, the specific structure and shape they take, and how they change over space and time are all vital lines of inquiry in sociolegal history and archival anthropology. But they are not the primary focus of this book. A pathbreaking and canonical work is Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley, CA: University of California Press, 1993). For a recent work that tackles waqf in this vein, see Nada Moumtaz, "Modernizing Charity, Remaking Islamic Law" (PhD diss., City University of New York, 2012). It is important to note here that there were no dramatic changes in legal procedures, registration protocols, types of expertise brought to bear, or authorizing legal vocabularies until after 1860. Iris Agmon, *Family & Court: Legal Culture and Modernity in Late Ottoman Palestine* (Syracuse, NY: Syracuse University Press, 2006) provides a study of the changing "protocols" of lawsuits.

[8] For a brief discussion of this issue, see David Powers, "*Kadijustiz* or *Qadi*-Justice? A Paternity Dispute from Fourteenth-Century Morocco," *Islamic Law and Society* 1, no. 3 (1994): 332–366.

that proves the rule: a mere drop in a sea of court documents that adhere far more closely to the letter and spirit, as well as the structure and scribal conventions, of the Ottoman shariʿa courts. This case cannot, therefore, be seen as a vindication of the highly influential argument by the leading scholar of modern Orientalism in the twentieth century, Joseph Schacht, that an unbridgeable gap between theory and practice has plagued Islamic law from the beginning.[9] The monolithic concept of "Islamic Law" cannot reveal much about how a deeply embedded yet historically dynamic Islamic tradition discursively constructs notions of sexual difference, kinship, and property; nor does it accurately convey how these notions are also disciplined through the bureaucratic conventions of an Ottoman state institution and the local power dynamics that shape legal practices.

The preceding contrasts between theory and practice, text and context are, of course, exaggerated binaries. They do not fully take into account that it is precisely in the encounter between kin and court that law, society, and the archives are simultaneously reproduced and transformed. After all, Maryam's choice to go to court was not born of pure free will: she felt compelled to go. As we shall see later, she was hardly alone – women routinely resorted, both willingly and reluctantly, to the shariʿa court in large numbers. This phenomenon has excited the imagination of scholars, many of whom uncritically (although not entirely without reason) associate presence in the archives with social agency.[10] Presence and agency are not the same thing, and their relationship is complex and often counterintuitive. Still, there is no doubt that one important reason for the court's attraction for women is that it provided their property devolution strategies with legal tools that afforded them greater protection, legitimacy, and flexibility than local customary practices.

[9] Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964). My views on this are influenced by the arguments of Brinkley Messick on the shariʿa system and the relationship between theory and practice, especially as laid out in his yet unpublished manuscript, *The Book of Flowers*, an early version of which he shared with me. My views are also shaped by the work of the legal historian Baber Johansen. Relevant to this discussion is his article "Casuistry: Between Legal Concept and Social Praxis," *Islamic Law and Society* 2, no. 2 (1995): 135–156.

[10] The literature on this topic is fairly large. Four references, each roughly a decade apart, suffice as examples. One of the earliest is Ronald Jennings, "Women in the Early Seventeenth Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri," *Journal of the Economic and Social History of the Orient* 18, no. 1 (1975): 53–114. A seminal work that shaped women's studies through the use of shariʿa court registers is Judith Tucker, *Women in Nineteenth-Century Egypt* (Cambridge: Cambridge University Press, 1985). Annelies Moors, *Women, Property and Islam: Palestinian Experiences, 1920–1990* (Cambridge: Cambridge University Press, 1995) provides a historically informed anthropological approach based on marriage registers. Finally, Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley, CA: University of California Press, 2003) provides a nuanced reading of women's voices and cases in the early modern period.

Maryam's performance, therefore, combines the singularity of her circumstances and desires with a legal act of property devolution embedded in a rooted and living Islamic tradition. On the one hand, it betrays a deep familiarity with Islamic law, as well as a clear determination to bend it to her purposes. On the other hand, her appearance before the qadi and her mobilization of witnesses signal a fundamental acceptance of the court as a state institution, of community members as active participants, and of the perceived divine precepts of the shari'a as framing devices for her existence both on earth and in the afterlife. In short, despite her stubborn desire to impose her choices in the form of a unitary utterance, Maryam 'Anklis's strategy presupposed and worked within the broad confines of Ottoman governance, Islamic legal tradition, and local social and power relations. To this, she applied a form of knowledge of law and procedure that, judging from the shari'a court registers, seems to have been easily available and widely shared within the community. Indeed, the confusing mix of third- and first-person narratives in the document resulting from Maryam's performance symbolizes the mutually constitutive nature of the relationship between kin and court, etching, so to speak, the dynamic interplay between structure and agency into the grammar of the historical record.

Maryam's final word, as we shall see, maps out the social, economic, legal, and cultural universe of property devolution as a set of practices in the Ottoman Eastern Mediterranean. Bucking academic conventions, this introductory chapter will postpone for the moment further discussion of the stakes involved in investigating these practices through a comparative study of propertied classes in two urban centers, Nablus and Tripoli, from 1660 to 1860; the challenges this book poses to the prestige zones of academic knowledge production in the fields of Middle East, Ottoman, and Islamic law and society studies; and the contributions it hopes to make to an understanding of the larger themes of family, gender, and property in modern times. What immediately follows, instead, is a detailed micro-study of the document recorded as a result of Maryam's court appearance, so as to open a door for the reader to enter her world, to understand her points of reference, and to feel the intimacy of her personal story. Such micro-studies, which require assembly from unforgiving sources, serve a purpose more ambitious than the illustration of empirical findings, methodological scaffolding, and theoretical insights; rather, their immediacy and texture animate the spirit of the overall narrative and serve as both the introduction to and the structural backbone of each chapter. For me – and, I hope, for the reader – they are the most rewarding and stimulating part of the book.

1.1 A Copper Pot with Its Lid

The hybrid document, which unfolded in a series of tightly choreographed steps (see Figures 1.1 through 1.4), began as a pious endowment (*waqf*) of two types of immovable properties: shares in mulberry orchards that Maryam ʿAnklis inherited from her father and from her former husband; and shares in storage cellars and a small shop on the ground floor of the ʿAnklis residence, which she inherited from her father.[11] The agricultural and commercial properties were designated for the sole benefit of her two daughters, Diba and Fatima, and their progeny, equally and in perpetuity, with each daughter in charge of managing her own half.[12] Maryam's goal was not to keep the ʿAnklis family patrimony intact, but rather to make sure that everything devolved to her daughters by effectively disinheriting two men: her current husband, ʿAli Taraḥ, and her paternal cousin, Hajj Muhammad, the senior member of the ʿAnklis family. Both would have otherwise been legally entitled, according to Islamic rules of inheritance (*ʿilm al-farāʾid*), as practiced by the Hanafi school of jurisprudence at the time, to one-fourth and one-third, respectively, of Maryam's estate following her death (Figure 1.1). In other words, she ensured that her daughters would receive more than their legally stipulated share, since living daughters could receive no more than two-thirds of an estate in the absence of male heirs.[13]

Maryam's second step was to make a legal acknowledgment (*iqrār*) that a large debt owed to her by her current husband had been repaid.[14] This was followed by a warning to her paternal cousin. Recorded as a transcription of spoken colloquial, beginning with a resounding first-person "I," the words leap from the text:

> I have at a previous time handed over to my cousin a promissory note [which she renders in colloquial as a "paper" (*waraqa*)] I received from my husband so he [cousin] can collect this debt from him [husband]. Since then, my husband has repaid me and satisfied my legal claim; yet my cousin has kept this paper. If, after my death, my cousin sues my husband in court [in an

[11] Properties are classified as "*bustān*" composed of mulberry and other fruit trees (*tūt wa-ghayrihi*). The storage cellars (*qabw*) and small shop (*dukkāna*) are in two (probably adjacent and co-owned) ʿAnklis residences: *dār* al-Hajj Omar ʿAnklis, co-owned with Omar's paternal cousin, al-Hajj Muhammad ʿAnklis, and *dār* al-Hajj Muhammad ʿAnklis.

[12] The appointment of each daughter as an independent superintendent over her share of the waqf effectively made the endowment akin to devolvement of private property.

[13] Or if there was only one living daughter, one-half. The rest was to be distributed to the nearest agnates.

[14] The debt was for the amount of 1,400 piasters.

attempt to collect this money], *his lawsuit should be considered illegal and the paper null and void*.[15]

Through the legal acknowledgment and the warning, Maryam launched two pre-emptive strikes in anticipation of future challenges to the property devolution strategy privileging her daughters: one to satisfy her husband (by forgiving his debt), the other to block her paternal cousin (Figure 1.2).

Instead of returning to the endowment, Maryam continued in the court by initiating a third type of legal transaction, a legal gift (*hiba*) for the purpose of devolving her moveable properties. Of the seventeen personal items she gifted (Figure 1.3), sixteen of them – including a gold necklace and silk shirts – were to go to her younger, unmarried daughter, Fatima, most likely as a trousseau in preparation for marriage. Diba, the older daughter from her first husband, already married, was to get "a large copper pot with its lid."[16] Fatima got both a small and a large copper pot with their lids. While a copper pot may seem to be a trivial household item, the fact that Maryam made a special point of singling out this object can be read as a pointed personal message to her daughters amid the long and complicated legal maneuvering. "The copper pots," she might have been saying to them, "embody all the intangible dimensions of my experiences that I want to pass on to you as a wife, mother, and household matriarch." The copper pot is symbolic of a woman's power in the engine room, so to speak, of the household. It is where the alchemy of food – combining and transforming chemical elements over a fire – meets the alchemy of childbirth and the continuity of life. And food, of course, is the supreme currency of power relations, affective ties, and economic dynamics among and between families, households, and social networks. Maryam's gift of cookware, therefore, can be viewed as a deliberate oral and textual act designed to express the transfer of authority as mother and wife to her two daughters. Her act signaled both pride and confidence in their readiness to take on responsibilities not only for themselves and their families, but also for their mother in her old age.

At this point, the sense of anticipation permeates the text once again, as Maryam recounts all her personal moveable properties and communicates to all present what should happen to them after her death. Visual clues and procedural moves make it very clear that Maryam, ready to detach

[15] My emphasis. In other words, she had authorized her cousin to collect the debt on her behalf by handing over her husband's promissory note. The transliteration for the italicized phrase is "*fa-huwa da'wāhu 'alayhi bāṭila lā yu'mal bi-da'wāhi wa-la bi-l-waraqa haythu annahu waṣala li-haqqī*."

[16] In Arabic: "*tanjara kabīra nuḥās ma'a ghiṭā'hā*."

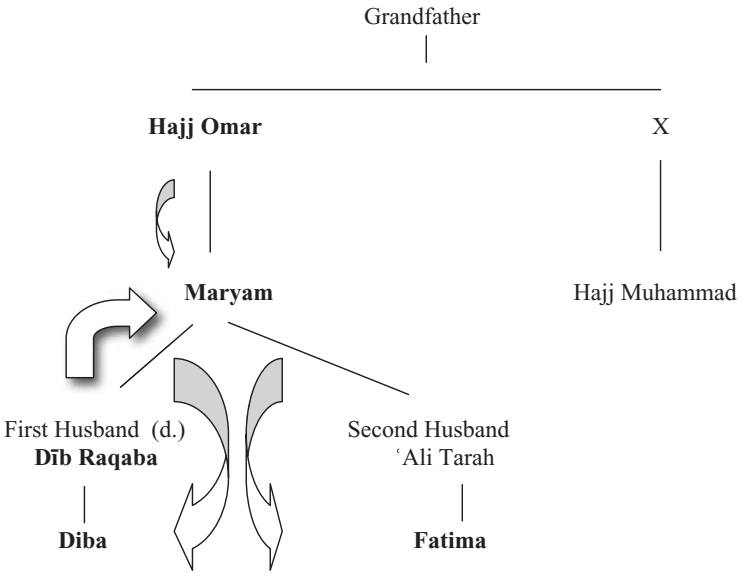
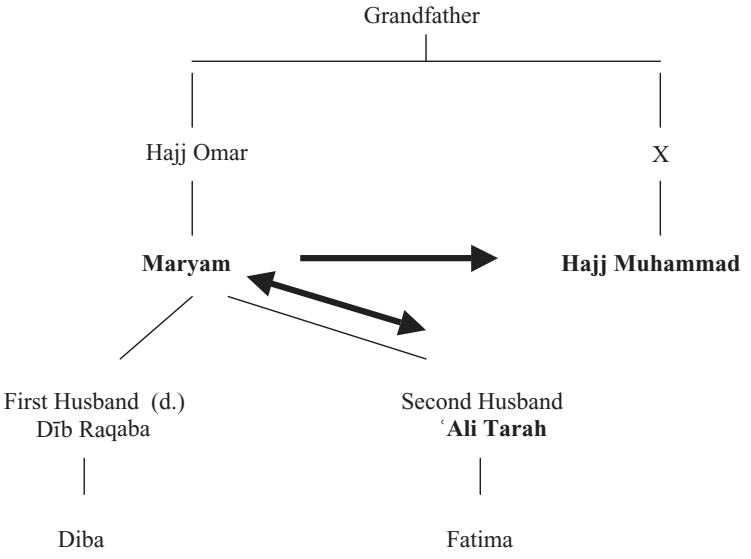


Figure 1.1 Property devolution strategies of Maryam ʿAnklis, in order of appearance: family endowment (*waqf dhurri*)

herself from the material world, was conducting her own "auto-probate," as if she were already dead.[17] That is, she initiated from within the

[17] There are other instances where individuals appear before the court to draft what is essentially an inheritance document, as if they were already dead. Having passed all their property on to their children, they ask only that they be provided with a daily stipend. For example, see Nablus shariʿa court registers (hereafter, NICR) 6:198.



Property
- Cash loan to husband

Strategy:
- Neutralize husband and uncle
- Settle with husband through acknowledging payment of debt
- Cut off uncle's intervention by invalidating promissory note

Figure 1.2 Property devolution strategies of Maryam ʿAnklis, in order of appearance: acknowledgment (*Iqrār*)

waqf document a fourth legal mechanism: a probate inventory (*tarika*) (Figure 1.4).[18] The probate inventory was not formally acknowledged in the document, because such an inventory could only legally be drawn up after one's death. Nevertheless, and even though the word "*tarika*" was never used, the procedure itself was enacted as Maryam transported

[18] The visual feast of things and numbers typical of probate inventories never fails to attract scholars of shariʿa court registers, myself included. In the mid-1980s, I abandoned a year's work of quantifying such inventories, convinced that no safe generalizations could be made from the data. The tables and figures in this book may be numerous, but they were included after careful consideration as to their veracity and usefulness.

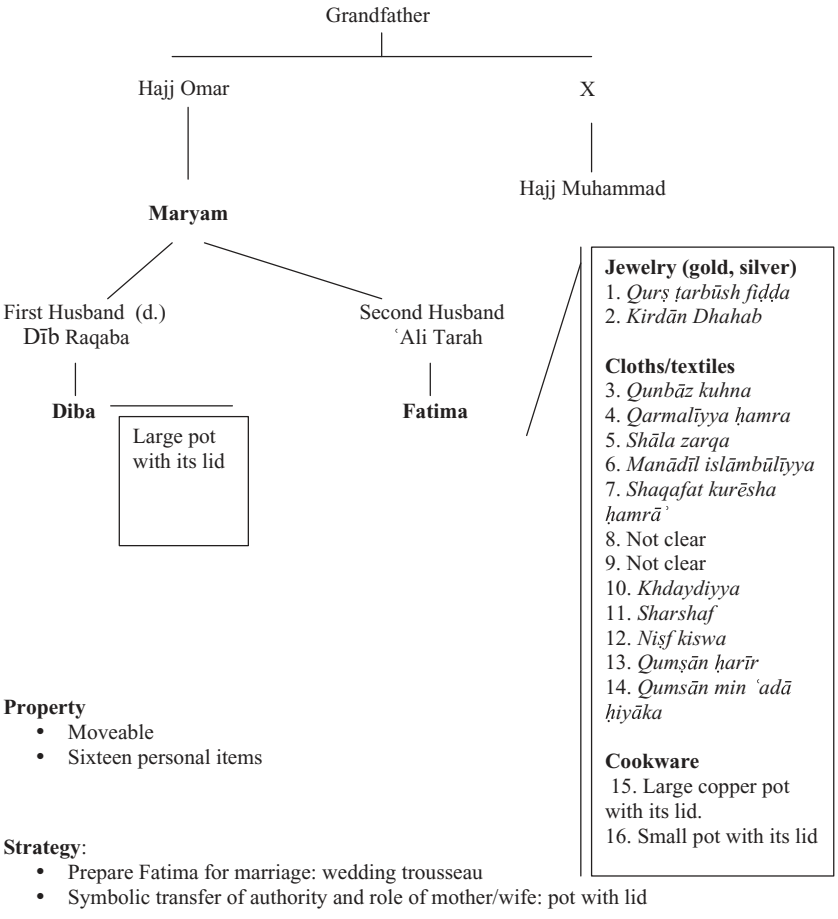


Figure 1.3 Property devolution strategies of Maryam ʿAnklis, in order of appearance: gift (*ḥiba*)

herself and her audience into a future temporal realm. The in-texting of the visual and structural template of one type of *ḥujja* inside the template of a different type sent a clear message about Maryam's intentions and her power of alchemy: transforming the different transactions into a single legal pot, with its lid.

On a visual level, students of shariʿa court registers will immediately recognize how the itemization of moveable properties at the top of Figure 1.6 takes the form of a generic probate inventory document; specifically, the