

Unmixing peoples, delineating properties

The legal regulation of *waqf* property in 19th-century Serbia

Jelena Radovanović (University of Münster)

Abstract: *This article argues that in 19th-century Serbia, the Islamic endowments (waqf) underwent a redefinition – from a non-secular, shared notion of ‘bequest’ (zadužbina), and an Ottoman legal shortcut designating both Muslim and Christian forms of religious/economic/social organizing – into a new concept of “vakuf” that denoted a foreign and specifically religious property tied to a minoritized Muslim population. The process of redefinition was inseparably tied to the ‘un-mixing’ of the population, i.e., the expulsion of the Muslim population from the Serbian Principality, informed by racial and colonial imaginaries and endorsed by the European powers at the Kanlica Conference (1862). Together, the redefinition of waqf and the expulsion of the Muslim population resulted in a high degree of waqf destruction, and a highly uneven process of patrimonialization in the aftermath of empire.*

Introduction

That the ‘ruins of the empire’ are not a metaphor but a reference to actual, material rubble, as Edin Hajdarpasić powerfully warns,¹ is nowhere a more striking image than when embodied by the ruins of *waqf* buildings in the post-Ottoman period. Scholars of Southeast Europe agree that for centuries, *waqf* properties represented the ‘cornerstone of cities’, essential for the functioning of urban life and the founding of new urban centers.² However, the destruction and decline of the *waqf* in the post-Ottoman period remains underexamined. This is

1 Hajdarpasić (2008), p. 730.

2 Zirojević (2018), p. 103; Handžić (1983).

in stark contrast to the excellent studies produced on the *waqf*'s decline in other areas once ruled by the Ottoman Empire, which focus on secularization, privatization, and appropriation of *awqāf* by colonial powers,³ or on the negative effects of late-Ottoman centralization.⁴ Recently, research on Islamic endowments in the modern period has been renewed under the emergence of studies on colonial legalities and decolonial law, which put a spotlight on the roles law and lawmakers played in redefining, racializing, secularizing, and appropriating certain types of landed property in colonial contexts.⁵

For the most part, scholars have not regarded *the waqf* in the Balkans as a case comparable to the rest of the former Ottoman Empire territories or within the framework of coloniality,⁶ due to two main assumptions. First is the assumption that colonial law would only exist where there is direct colonial rule, and such a form of rule did not exist in the Balkans, apart from Habsburg Bosnia, where the colonial character of the Habsburg rule is still disputable for some researchers.⁷ Second, because mosques and other *waqf* buildings became an object of genocidal violence during and beyond the 1990s wars, researchers assume that the institution was similarly destroyed in ethnically motivated violence in the early post-Ottoman period. Thus, even though the general outline of (destructive) legal regulation of *waqf* property in post-Ottoman Serbia is well-established in scholarship,⁸ Serbia remains, like Greece and Bulgaria, an exception to the main body of research on *waqf* properties in the modern period.

However, an examination of the way law was used to undermine the *waqf* in the Serbian Principality after 1830, as well as of the more general discourse on the *waqf* that developed in the 19th century, shows remarkable parallels with the colonial legislation used at that time or later in European colonies. Characteristic of this approach is a redefinition of *waqf* from a highly versatile socioeconomic institution into specifically Muslim religious property. For example, in her sophisticated study of the *waqf* in Lebanon, Nada Moumtaz argues that under the French Mandate, "a process of secularization of land and of *waqf*"

3 Powers (1989); Oberauer (2008); Moumtaz (2021).

4 Barnes (1986); Öztürk (1995).

5 Bhandar (2018).

6 For an exception, see Bečić (2017).

7 Detrez (2002).

8 Nedeljković (1936); Karčić (1983); Kolaj Ristanović (2019).

took place, in which secularization entails “the continuous quest of separating religion from economy.”⁹ While the original meaning of *waqf* belonged to a non-secular sphere that did not differentiate between ‘religion’ and other areas of human activity, the French Mandate law circumscribed the meaning of the *waqf* as “the religious patrimony of the still undifferentiated Muslim community.”¹⁰ Other scholars take earlier examples of French Algeria and British India to point out that redefinition of the *waqf* institution,¹¹ including the moral questioning of its charitable aims, must be understood in the context of the colonial struggle for (extensive) *waqf* land as a resource that had hitherto been in certain ways excluded from the open market.

Similar trends can be observed in 19th-century Serbia, which throughout the century steadily moved from the Ottoman sphere into the periphery of European coloniality. First, as this article demonstrates, over the course of that century, the meaning of the *waqf* and its property were secularized. I trace the shift in the shared meaning of *waqf* from a non-secular idea of ‘bequest’ (*zadužbina*), understandable to both Muslim and Christian communities, and an Ottoman legal shortcut to explain the financing and function of both Islamic endowments and monastic communities, into a new concept of “vakup” (a commonly used, corrupted version of the word “vakuf”) that denoted a foreign and specifically religious property tied to the minoritized Muslim population. In this process, the work of German-educated liberal political economists, who translated *waqf* into “mosque’s property,” was crucial in enabling the privatization of most *waqf* land.

Second, the process of the *waqf*’s redefinition was inseparably tied to the process of ‘un-mixing’¹² populations, i.e., the expulsion of the Muslim population from the Serbian Principality. Here, I use the term ‘unmixing’ following its critical examination by Aslı Iğsız,¹³ to denote the policy of forced segregation of groups which are imagined to be racially different from each other, yet homogenous within themselves, and where each purportedly corresponds to a “designated geography of belonging.”¹⁴ While ‘unmixing’ is usually discussed in the context of 1923 compulsory population transfer between Greece

9 Moumtaz (2021), p. 4, following the work of Hussein Ali Agrama.

10 Ibid., p. 6.

11 Powers (1989), pp. 535–6.

12 Iğsız (2018); Abbas (2019).

13 Iğsız (2018), pp. 9–10.

14 Ibid., p. 10.

and Turkey, I show below that the same logic informed the expulsion of Muslim population from the Serbian Principality more than half a century earlier.

In this process of expulsion, the Muslim population – as well as ‘typically Muslim’ forms of property holding, including the *waqf* – were racialized as both foreign and on a lesser civilizational plane compared to those of Christians. Such racialization, together with the actual displacement of the Muslim population, resulted in the *waqf* legislation’s enabling of a much higher degree of *waqf* destruction compared to places that had a significant Muslim population after the end of Ottoman rule.

Yet, there is no direct comparability between the political position and actual power of the 19th-century Serbian Principality and a colonial power like France. In the period under consideration here (early 19th century to 1868), Serbia was one of Ottoman Empire’s privileged provinces that emerged in the context of transimperial competition and were regulated by international law and Ottoman edicts.¹⁵ Its autonomy, which in the scholarship is often teleologically portrayed as a step on the clear road to independence, was actually a precarious one, squeezed between two voluminous empires in a highly volatile situation, shorthanded as the “Eastern Question.”

Internally, this autonomy engendered a specific legal geography of power-sharing. After 1830, six fortified cities in which the Ottoman army was stationed, and the Muslim population living in those cities and in some places in the suburbs as well, remained under direct Ottoman jurisdiction, while the Orthodox Christian population (later also extended to Jews and Roma) and the rest of the territory was placed under Serbian administration. Belgrade itself was split under this dual administration.¹⁶ The rest of the Muslim population had been expelled with the Ottoman edicts (*hatts*) of 1829, 1830, and 1833 based on the conditions previously negotiated between the Porte and the Russian Empire. Serbia paid a yearly sum to the Ottoman Porte to compensate for their estates, as well as for other taxes and property incomes that the Ottoman state had previously drawn from the territory of the principality.

In such a context, in Serbia’s elites’ eyes, the key to Serbia’s political survival was the production of the kind of political, social, and cultural narratives that would place it firmly among the European states and enable it to climb the racial and civilizational hierarchy established in the context of 19th-century

15 Can & Genel (2020), p. 468.

16 Jovanović (2016), Aytekin (2016).

colonialism. In this context, the key role was played by mostly Serbian intellectuals, economists, engineers, and artists coming from, or at least educated in, Austria-Hungary and Germany, and working for the Serbian government. As people able to translate between the European colonial and racial imaginaries and the local realities, they represented an enormously important capital in Serbia. It is not without irony that they were able to use a colonialist vocabulary in an anti-imperial struggle, presenting Serbia as a European country temporarily suspended in its development by an 'Asiatic' empire. This constellation had major consequences for the redefinition of property, including the *waqf*, in and beyond the 19th century.

The shared concept of endowment/bequest

In 1862, the State Council of Serbia asked the local authorities in all cities and counties to provide a detailed list of *vakuf* (*waqf*) properties, documenting who was renting them, at what price, and for how much they could be sold if they were to be privatized.¹⁷ This was done in order to provide a basis for a comprehensive law that would, for the first time, regulate the status of Islamic endowments in the autonomous Ottoman province of Serbia.

The lists local authorities sent back to Belgrade showed that there was considerable confusion not only about the extent of possible *waqf* properties, but also about the meaning of the word *vakuf* itself. In some cases, local authorities reported all church property as *waqf*, including the small land plots on which the village churches and schools were constructed. A longer report to the State Council warned about the mix-up, saying that: "According to the popular understanding of the word *vakuf*, local authorities seem to have mixed the real *waqf* lands with other church lands," thus making the lists useless.¹⁸ The "popular understanding" differed from that of the Serbian administrators who were in charge of drafting the law. The leader among them, the German-educated political economist Kosta Cukić explained to the Council several years later that "*vakuf* was the name of those immovable properties that belong to mosques."¹⁹

17 State Archives of Serbia (hereafter AS), State Council (hereafter DS), 1862–1867, p. 64, 77. Cf. Kolaj Ristanović (2019) p. 214.

18 AS, DS, 1862–1867, pp. 141–4.

19 Ibid., p. 1.

The 'popular understanding' that conflated *waqf* and church lands thus juxtaposed the 'expert' definition of *waqf* as a mosque's property. Yet the latter was also an innovation that contradicted the classical understanding of the Islamic endowments as trusts established according to Islamic law and principally dedicated to pious and charitable purposes. According to Islamic law, the property thus endowed does not belong to mosques; it passes from human hands into the realm of God.

The confusion was more than just a symptom of amnesia about the *waqf* that had settled into Serbian society by the 1860s. Rather, it indicated a transformation in understanding of the *waqf*, and property more broadly, that unfolded during the 19th century in and beyond the Middle East. This transformation had its roots in secularizing and colonial interventions but was, in the Serbian case, exacerbated by the expulsion of the Muslim inhabitants. It took the form of categorizing and ordering property along the imagined hierarchy of property forms, which awarded the *waqf* a low position.

The 'popular understanding' that conflated church and *waqf* properties was not accidental. By the 1860s, due to a legal arrangement made in 1839, churches had been drawing income from Islamic *waqf* properties for about two decades. Yet the popularly understood connections between Islamic and Christian endowments were much older than this legal regulation. The tendency to such an understanding was embedded in the shared Ottoman context and was actively present in the early period of Serbian autonomy. It had two intertwined sources. First, it was anchored in a shared, non-secular understanding of endowment or bequest (Serbian *zadužbina*) as a moral and pious act that bridged the distinction between the material world and the eternal. Second, it also derived from the comparable, if competitive, way the Islamic and Christian endowments were organized and administered by the Ottoman state.

The shared, moral, and non-secular meaning of endowment is perhaps best reflected in the definition given in 1818 by the famous Serbian linguist and ethnographer Vuk Stefanović Karadžić in his *Dictionary of the Serbian language* (1818). The significance of his *Dictionary* transcended matters of linguistics, and it is not an overstatement to say that his definitions continued to influence lawmakers, ethnographers, and historians in Serbia throughout and sometimes beyond the 19th century. The *Dictionary* does not define *vakuf* as a word at all, but it does define *endowment* or *bequest* (sr. *zadužbina*). Moreover, it makes

no differentiation between Christian and Muslim endowments,²⁰ but rather merges the common definition of endowing in one telling paragraph:

It is the highest [form of] endowment to build a monastery or a church, as did the [medieval] Serbian tzars and kings; and it is also [a form of] endowment to build a bridge across some sort of water or a pond; to pave a bad road; to bring water and establish [a fountain] near the road (and that is called: to make oneself an endowment [i.e., for one's own soul, J.R.]); to plant or graft a fruit tree near the road; to feed the hungry, give water to the thirsty, and to clothe the naked (and this is called to do/make an endowment [i.e., as charity for someone else, J.R.]), and such. The Turks today still build and make all of those endowments. Many Bosnian beys oversee and repair the fountains and bridges around Serbia, built by their ancestors a century ago.²¹

After giving two examples of Muslims repairing such endowments in his home region, he cites a folk poem which identifies the Studenica Monastery as an endowment of the “emperor Simeun,” in other words Stefan Nemanja, the founder of the medieval Nemanjić dynasty.²²

Thus, in the *Dictionary's* assemblage, the phenomenon of endowment exists beyond the boundaries of specific religion, in an explicitly non-secular, moral context. An endowment is a soul-saving act (Serbian *za dušu*, for the soul), whether performed by the Muslim Bosnian *beys*, or the Christian medieval kings. But the boundaries of religion are not the only ones that endowments cross. Endowments exist across multiple temporalities, connecting the past generations of kings and *beys* with the humans of the present. They also cross the boundaries between the material world – in which there are incessant bodily needs to fulfil, and in which the crumbling materiality of built endowments is itself always in need of repair – and the eternal world in which the soul is rewarded. In the coming decades, as I will demonstrate below, such a shared and non-secular understanding of endowment, one which does not differentiate between religious, economic, or other aspects of human activity, would

20 This is also true of the German translation, which the dictionary provides as “die fromme Stiftung” (in English sometimes encountered as “pious foundation”) and which is likewise applied to different religions.

21 Stefanović Karadžić (1818), p. 191, translated into English by the author.

22 Interestingly, the excerpt comes from the poem “Miloš u Latinima,” in which the list of monasteries serves in an interconfessional competition, but with the Catholics.

become increasingly rare, and the moral value of bequests would be reserved for the Christian context only.

Beyond the shared understanding of the practice of endowing/bequeathing, there were also more practical factors that connected Orthodox Christian and Muslim endowments in the Ottoman context. Ottoman authorities considered church and monastery properties within the broader *waqf* framework. Such status enabled continuity of the life and property ownership of many monasteries after the Ottoman conquest. The legal status of monasteries as large landowners was occasionally a matter of dispute, in particular at times of land tax reforms. The best-known such case in scholarship is the so-called ‘confiscation of monasteries’ in the Balkans, in which the monasteries lost a significant part of their property before eventually reaching a compromise with the state.²³ During this dispute, the famous Ottoman jurist Ebüssuud clarified that Christians could found a *waqf* to support “monks, the indigent, bridges and fountains,” but not for supporting the churches and monasteries themselves.²⁴ Yet this ruling did not become a guideline applicable always and everywhere, nor were there any strict and uniform legal rules defining the property of Orthodox churches and monasteries.²⁵ What is more important is that there was a custom of governing both Islamic *waqf* properties and monasteries – explicitly or implicitly – in the same way, and that the word *waqf* was one which made similarities between them immediately recognizable.

Lastly, this legal solution came from the resemblances in the organization and social functions of Christian and Muslim endowments in the Ottoman context.²⁶ Both were social spaces commanding a stunning multiplicity of fiscal and communal functions. They were places of worship, religion-grounded education, and welfare as well as lively economic activities. They organized taxation, were entitled to land tithes, lent out cash, and drew income from a range of commercial buildings (predominantly urban shops and inns for the Islamic urban *waqf*, and rural/agricultural properties for monasteries, including wineries, watermills, fulling mills, and lathes).²⁷

With the beginnings of Serbia’s autonomy in the 1830s, the comparative, if competitive, relationship between Christian and Muslim endowments char-

23 Fotić (1994); Kermeli (1997).

24 Kermeli (1997), p. 147.

25 Kolovos (2016), p. 104.

26 Ibid., p. 106.

27 See Jovanović (1885), p. 182.

acteristic of the Ottoman context was replaced by their gradual disentangling and uneven treatment, even if the first legal regulation of *waqf* properties still bound them together.

The 1830s edicts that granted Serbia autonomy explicitly deliberated on some types of property, most prominently large estates (*timar* and *zeamet*). However, unlike in the case of Greece, *waqf* properties in Serbia were not explicitly mentioned in these settlements, but were left ambiguous. The reasons for this are not clear. Karčić suggests that *waqf* property was also in this case treated as Ottoman state property, but it was neither claimed by the Ottoman state, nor was it openly claimed by Serbia – which was not an independent state – for several decades.²⁸ It is also possible that landed *waqf* holdings outside of the six cities were comparably small (the mentioned lists that mix this land with church properties contain a total of 464 land plots) because the repeated Habsburg-Ottoman wars and the two Serbian uprisings meant continuous waves of destruction of *waqf* property.²⁹ In this case, the direct naming of *waqf* properties in the agreements would have been more costly for the Ottoman government in the eyes of public opinion. For example, in negotiations around the Kanlica conference, the Ottoman side requested that the mosques be preserved in order not to turn the Muslim population against the Ottoman government.³⁰

In the initial years of autonomy, Serbian authorities started to privatize *waqf* property outside of the six cities where the Muslim population resided, selling it primarily to those who owned buildings on it. However, this process was abruptly reversed in 1839, when the opposition to Knez Miloš – which requested security of property in general – gained the upper hand, and the Ottoman Empire's influence again grew stronger in Serbia.³¹ The prior sales were annulled. In the later wording of Knez Aleksandar Karađorđević, the decision to sell was claimed to be inappropriate (*neumesna*) “for higher political reasons

28 Karčić (1983), p. 143.

29 The only two endowments renewed after the two decades of Habsburg rule in the Smederevo *sancak* were those of Sokollu Mehmed Pasha and Yahyapaşaoğlu Bali Bey; Fotić (2001), p. 449.

30 Ristić (1872), p. 74.

31 AS, DS, 1862–1867, p. 4, pp. 141–144; Najviše rešenje od 5. Juna 1852, *Zbornik zakona* VI (1852), p. 108.

based on the character of *waqf* property.”³² The reasons to not privatize *waqf* properties are thus ambiguous: they are based both on the Ottoman Empire’s power, and on the special character of *waqf* property. The latter informed the first relatively comprehensive Serbian regulation of *waqf*, which in August 1839 transferred *waqf* properties to the custody of local churches. By this decision, local churches became holders – though not owners – of *waqf* property that was outside of the Muslim-populated areas. The churches could draw income from renting out such land, but they could neither sell it, nor build on it.³³ Moreover, church and *waqf* lands became the only lands on which the peasants living on them did not receive ownership rights guaranteed by Serbian laws and constitution.³⁴

In practice, the decision to award the income of *waqf* lands to the churches led to numerous misunderstandings. The layered property rights affected the renters of *waqf* property, who in many cases owned buildings on such land and sometimes refused to pay land rents, considering the land their own. Already in the 1850s, local churches started to petition the central authorities to allow them to sell the land, in order to avoid conflict with the local population, which was damaging to their reputation.³⁵ Eventually, the church authorities emerged as the main lobbyist for a comprehensive *waqf* law in the 1860s.

From bequests to *vakuf*: The unmixing of peoples and property

Two processes were the key for the dissolution of *waqf* property in the 1860s. The first was the delineation of the *waqf* as a separate, foreign form of property. This process is inextricably tied to the political project of ‘unmixing’ populations, which in the 1860s took shape in the expulsion of the remaining Muslim population from cities in Serbia. The second process was the (at least attempted) shift of Serbia’s economy to centralized and rationalist models of Smithian capitalism. This school of economic thought arrived in Serbia via German-educated political economists, such as Kosta Cukić, who promoted physiocratic

32 Najviše rešenje od 5. Juna 1852, *Zbornik zakona i uredaba*, VI (1852), p. 109. Other documents show that this legal prescription was not always uniformly followed, and occasionally the state appropriated *waqf* property, AS, DS, 1862–1867, p. 141–4.

33 AS, DS, 1862–1867, p. 1.

34 Nedeljković (1936), pp. 183–4.

35 AS, DS, 1862–1867, p. 30, 45, 53.

economic policies based on an efficient and rational usage of resources. In a predominantly agricultural society, the main such resource was land itself.

The process of 'unmixing' populations in Serbia predated the 1860s, but in 1862 it received a completely new justification in international law. As has already been mentioned, in the 1830s, the Muslim population had been officially limited to six garrison towns and, in some cases, their suburbs, which remained under the Ottoman jurisdiction. However, the relationship between the Serbian government and the Ottoman Porte became tense after the return of the Obrenović family to power in 1858, and in particular after the formulation of Knez Mihailo's program at the Parliament session of 1861, which intended to consolidate Serbian power at the expense of the Ottomans.³⁶ Serbia renewed the request for the expulsion of Muslims from all areas stipulated by the 1830s edicts, a task which it entrusted to Jovan Ristić, who was appointed Serbian representative in Istanbul.³⁷ The disagreement between the governments spread into the local population. In 1862, skirmishes between the Ottoman army and the Serbian police in Belgrade left several dead. After a night of fighting, the Muslim population gathered in the fortress, and the Ottoman army bombarded the *varoš* suburb from the fortress, causing a major international crisis. Although the Ottoman central authorities were at pains to deny any involvement in the bombardment (though Ristić considered them responsible), Serbian statesmen were able to capitalize on the incident, drawing heavily on the fact that the Concert of Europe accepted the Ottoman Empire among their members, but still treated it as a semi-civilized state – an idea that the Ottoman attack on their own civilian subjects only seemed to confirm. Ristić cast the Ottoman army and the fortress itself as the main threat to peace and economic progress in Serbia. In his diplomatic work, as well as in later books he wrote on the topic, he represented the bombardment as an uncivilized act that damaged the *varoš*, endangered the civilian population, and stopped the flow of economic investment.³⁸

In the aftermath of the bombardment, the representatives of Great Britain, France, Austria, Prussia, Russia, and Sardinia (Italy) met with the Ottoman government at Kanlıca in Istanbul to discuss the "Affairs of Servia." Even though Serbian representatives (not present at the conference) organized their requests around the bombardment and the presence of the Ottoman

36 Ristić (1872), p. 1–3.

37 Ibid., p. 5, 9–10.

38 Ristić (2010 [1881]), p. 149, 186.

army, the Conference concluded with a stipulation to expel the Muslim civilian population living in the multireligious neighborhoods around the Belgrade fortress, but to keep the Ottoman army in four fortresses (Belgrade, Šabac/Böğürdelen, Smederevo/Semendire, and Kladovo/Fethülislam), while tearing down the fortifications in Užice and Soko.

The Kanlıca Conference's justification was particularly significant; in the opening paragraph of its protocol it stated:

In order to prevent the possibility of conflict arising from the intermixture in the same locality of Mussulman and Serbian population, the Ottoman government will transfer in full property to the Serbian government, on condition of indemnifying the proprietors, all the Lands and Houses in the Suburb of Belgrade, belonging at the present time to Mussulmans.³⁹

In other words, the signatory countries of the Conference eventually all agreed that it was the living together, the *intermixture* of the Muslim and Christian population, that presented the security risk, and that the solution to this situation was to separate communities that had lived together for centuries.⁴⁰ However, this had not been the initial position of all European states, nor of Serbia. In the two years leading up to the Kanlıca Conference, Serbia sent missions to Istanbul with the task of convincing the Porte to place the Muslim population under Serbian jurisdiction, but the Porte did not agree.⁴¹ The original French project for the conference likewise rejected the expulsion of Muslims and supported instead the establishment of full Serbian jurisdiction, noting that the cause of the clashes was “the dual government and not the incompatibility between the two races.”⁴²

It is not clear why this suggestion was never accepted. Ristić blamed the Ottoman Porte, who argued that the Muslims would have never stayed under Serbian rule anyway; however, “during the displacement it showed that

39 English text as given in Trifunovska (1994), p. 42–8.

40 Karčić (2013), 77.

41 Ristić (1872), p. 5. Later in 1862, Serbian authorities requested that Ali Pasha either send a commissioner to negotiate the expropriation and displacement of Muslims, or allow them to be put under Serbian jurisdiction; Ali Pasha considered this an insult (Ristić 1872, pp. 25–6). Karčić (2013, p. 82) rightfully notes that based on prior experience, Muslims could not have counted on fair treatment by the Serbian administration.

42 Ristić (1872), p. 61–2; Russia later endorsed this view, p. 69.

many would have stayed on their properties.”⁴³ In a recognizable ‘civilizing’ discourse, Ristić further claimed that the Porte really just did not want to see Muslims “develop under Christian rule” into “citizens, bureaucrats, and parliament members,” i.e., members of a civil(ized) society, a vision that he claimed to be possible in Serbia as a European state. However, it is questionable whether the Ottoman Porte had anything to do with the formulation on “intermixture,” and it is surprising that it signed such a document, since legal and jurisdictional pluralism, as well as “intermixture,” were facts on much of its territory. One of the documents published by Ristić shows that the British representative’s protocol spoke about a “separation of Turks and Serbs” as one of the two “principles” for arranging matters in Belgrade.⁴⁴

The “unmixing” was thus legally enshrined. The separation of populations, and expropriation, was entrusted to the mixed Ottoman-Serbian commissions and undertaken over the next months. In this way, the Kanlıca Conference inaugurated an ominous precedent into international politics, which would find its full expression in the “management of alterity” during the Greek-Turkish population exchange, and beyond, as the historian Aslı Iğsız (2018) convincingly argues.

Political economists redefine the *waqf*

The ‘unmixing’ had far-reaching consequences. It decreased the extent of Ottoman jurisdiction both politically and spatially, giving Serbian jurists more leverage and access to more land. Moreover, it affected the way property was conceptualized at a moment when a capitalist economy was on the rise. The new, rational conceptualization of property had a particular effect on the *waqf* lands, which, just like the Muslim population, were racialized as foreign and incompatible with modernity, in addition to being regarded as economically unproductive.

Such reconceptualization of the *waqf* had much to do with the new generation of liberal political economists working in Serbia. These economists, predominantly educated in Germany, brought about a shift to the newly created science of (political) economy, which postulated economic progress based on rational usage of resources. The most prominent among them was Kosta

43 Ibid., p. 75.

44 Ibid., p. 120.

Cukić (1826–79), the first professor of Political Economy in Belgrade (a post created for him specifically) and, from 1861 on, Minister of Finance. Cukić was a doctoral student and follower of the famous German political economist Karl Heinrich Rau (1792–1870) at the University of Heidelberg.⁴⁵ Rau had developed a teaching of state economy based on the liberal ideas of Adam Smith and similar thinkers. Like them, Cukić considered private property the basis of economic productivity and personal freedom – though he also seemed able to reconcile this teaching with the forced expropriation and displacement of Muslims happening in the same period in which he was writing, a topic on which he remained silent. While Smith and other political economists put the individual at the center, Cukić followed the German school, which gave major significance to the state and the nation. In Serbia, he introduced the first credit institution, and unsuccessfully attempted to establish income-based taxation and the land register.⁴⁶ In addition, he ushered in a set of new laws that regulated in an ever more centralized and uniform way the usage (and expropriation) of land and forests, the regulation of customs, and the construction of infrastructure.

For his students, as well as the intellectuals in Serbia, Cukić published a three-volume textbook on *The foundations of national economy* (1851–62), based on Rau's own three-volume *Political economy* and organized in the same way. Economic historians consider the work a watershed in economic thought in Serbia. Following Rau's structure, Cukić's textbook introduces the main aspects of liberal political economy based on the ideas of free competition, meritocracy, and efficiency as the guidelines for the state. But the main claim the book actually makes is that Serbia's economy is a European one, or, rather, that it can be one by following the rational, efficient, and scientific rules of political economy. Although published in the period in which Serbia was an autonomous Ottoman province, all the examples, histories, and statistics are those of other Western and Central European countries. The Ottoman Empire exists either as an item in the Serbian budget, or as a backward place where unmotivated peasants are inefficiently working land they do not own.

Cukić's book does not speak of the *waqf* directly, treating it only indirectly through the discussion on charity and welfare. According to Cukić, the modern era ushered in masses of the poor, and the systematic care of the poor is the state's duty,⁴⁷ which can be performed best by municipalities and (secular)

45 Leovac (2014), p. 119–20.

46 Ibid., p. 124.

47 Cukić (1862), p. 501.

private institutes. Churches and monasteries, which had historically been in charge of charity, are unsuitable because they leave the poor of other religious beliefs unattended. Moreover, they are also not following rational rules in giving out charity.⁴⁸ In his view, charity should only go to those who are “truly poor” and not simply “unwilling to work.” The laxness in distributing charity otherwise causes proliferation of the poor, characteristic of Southern Europe and the “Mohammedan countries.”⁴⁹

Cukić’s understanding of private property, demonstrated in the textbook, was also in play in his legal work, which directly affected the *waqf* institution. During his work on the committee on the Law on *Waqf* Lands, Cukić made two seemingly small interventions that actually had far-reaching consequences for *waqf* property. The first was the already mentioned redefinition of *waqf* as “a mosque’s property.” Such a reformulation took *waqf* property outside of the traditional Islamic legal definition in which it belonged to God, and reformulated it into the private property of a new legal subject, the property-holding mosque. With this reformulation, Cukić actually joined a much larger trend that combined secularization and the normalizing idea(l) of private property. Moumtaz has shown that the view of the *waqf* as a legal person that can buy and sell property started to enter late-Ottoman practice, affecting Ottoman law only at the turn of the 20th century, while French colonial law redefined the *waqf* entirely as a legal subject that owns assets – a change with legacies lasting into the present.⁵⁰ The redefinition of the *waqf* as “a mosque’s property” had several consequences. First, it legitimized the appropriation of land belonging to mosques that were destroyed or not functional. Second, it contributed to an almost exclusive focus on mosques, both in the legislation of the time and in subsequent scholarship, while obscuring the endowment status of other land and buildings, including baths, schools, libraries, and elements of infrastructure. (In fact, it is completely unclear from these documents which other *waqf* properties existed on this territory in the 19th century.) Lastly, it cemented the understanding of the *waqf* as specifically religious property.

Secularization also affected the Orthodox church and monastic property – likewise redefined as a church’s property – but only to a certain extent. The absolutely privileged status churches and monasteries had enjoyed since autonomy was curbed in the 1860s. The 1862 Law on Orthodox Church Authorities,

48 Ibid., p. 538.

49 Ibid., p. 536.

50 Moumtaz (2021), p. 31–67.

also authored by Kosta Cukić, subjected the work of church authorities and its judiciary to regular state control by the Ministry of Education and Church Affairs.⁵¹ In addition, this law (Article 7) denied the church full control over its property, mandating that it could not be sold, gifted, or mortgaged without the Ministry's permission. The real value of church and monastic property shrank, amounting to at least a 3% decrease during the 1870s, and an 18.46% decrease during the 1880s, the result of state appropriation of forests and the establishment of new local churches.⁵²

The second intervention made by Cukić is the usage of the word *vakuf* itself, which cemented a new, separate status for the Islamic endowments in comparison to their Christian counterparts: one that paralleled and complemented the unmixing of populations. My intention is not to argue that he had been the first person to use the word *vakuf*, which had been locally in circulation at least in its Turkish form for centuries. However, his choice of a word the origin and perception of which were marked as foreign by that period signaled a clear removal of the *waqf* from the shared context of bequests, as defined by Vuk St. Karadžić above. While the word *zadužbina* was widely known and venerated, *vakuf* was a word which by that time, as the anecdote from the previous section clearly shows, was not well understood even by the more educated among the general population. This case is comparable to the “politics of non-translation,” invoked recently by the scholar of Islamic law Lena Salaymeh.⁵³ Focusing on scholarly texts, Salaymeh argues that non-translation of Islamic terms not only makes the texts difficult to read, but also leads to “exotification, miscomprehension, miscommunication, and inaccessibility.” More importantly, “non-translating insinuates that a term is incomprehensible in the target language and in the target culture.”⁵⁴ A similar process was at play here. In the process of legislation, there was no attempt to reach a clear understanding of what *waqf* was, nor that the word was also used in the Christian context. The choice of the word contributed to ‘*waqf* amnesia’, the legacy of which remains today.

The secularized definition of *waqf* property as exclusively religious, and its foreign status, continued to be significant among other intellectuals and economists. Vladimir Jovanović (1833–1922), another German student and one of the founders of the Serbian Liberal Party, explicitly discusses the *waqf* in

51 Zakon o crkvenim vlastima pravoslavne vere, 30. Septembar 1862.

52 Jovanović (1885), p. 86, 95, Jovanović (1895), p. 20.

53 Salaymeh (2021).

54 Ibid., p. 255.

his *Political dictionary*.⁵⁵ There, he writes: “Vakup, from the Turkish word vakuf or vakf, means the property that belongs to a mosque (like our monastery or church property).” After emphasizing the foreign origin of the word, and the foreign status of *waqf* compared to *our* church or monastery, he presents the *waqf* as a parasite on the state’s economy: “There is no tax paid on the *waqf*; and, since their number grows from year to year, the state’s annual revenue decreases.” Lastly, he explains that many of the *waqf* lands are such only in name, in order for their owners to avoid tax.⁵⁶ These definitions of *waqf* were not unique; like the secularizing redefinition, they were in circulation throughout the Middle East and the Ottoman Empire. The difference between the last definition and that of Vuk Karadžić shows the striking transformation of the understanding of *waqf* over only a few decades.

Bajrakli Džamija and the mosque’s new meaning

While the original international property agreements stayed silent concerning *waqf* property, the Protocol of the Kanlica Conference nominally protected specifically “Religious Edifices and Tombs,” which “shall be scrupulously respected” (Article I). In negotiations with Serbia, the Ottoman government likewise requested that the mosques and graveyards in the Belgrade *varoš* remain “under its discretion,” but the Serbian government argued that such a prescription would form an obstacle to urban regulation.⁵⁷ Some scholars argue that the Ottoman government, as in the 1830s, regarded the nine million piastres Serbia paid in 1865 as compensation “for all requests defined by the Kanlica conference,” as implicitly including *waqf* properties.⁵⁸ This claim is based on the work of Felix Kanitz, who wrote that the “[By paying compensation] Serbian government obtained the unwillingly given right to demolish those mosques that stood in the way of urban regulation.”⁵⁹ Either way, *waqf* property more generally came to be understood as a specifically religious property of the Muslim community, and in the eyes of the state, the absence of such a community

55 Jovanović (1872), p. 355.

56 Ibid.

57 Ristić (2010 [1881]), p. 81.

58 Nikić (1958), p. 161; cf. Karčić (1983), p. 144.

59 Kanitz (1868), p. 435.

made this property itself obsolete and an obstacle to capitalist urban development.

In 1867, the Ottoman army withdrew from the remaining four fortresses, ceremonially handing over the keys of Belgrade, and leaving only the Ottoman flag. The withdrawal was negotiated between Serbia and the Ottoman Porte, amidst changes in international politics and the war in Crete. The Ottoman army withdrew to Vidin, bringing along the movables from the fortress mosques.⁶⁰

The same years saw the final privatization of *waqf* property. In 1866, Cukić wrote to the State Council, stating that all of the *waqf* regulation was patchy, causing much disagreement. Thus it was in the interest of both the church and private persons to address the issue of the *waqf* lands because “there was no reason why the question of *waqf* lands should be left unresolved,”⁶¹ a statement that could only be read in light of the Muslims’ displacement. The 1867 Law on *Waqf* Lands made it mandatory for churches to sell the landed properties of Islamic endowments to those people who were holding and using them. The law’s third article extended privatization also to “those properties that had been paying *waqf* rights to the mosques prior to 1862,” which meant all of the *waqf* properties beyond the fortresses. The Metropolitan of Belgrade, much displeased with the new law, requested the transfer of these lands fully into church property, with sales being optional (which indeed had been the first solution Cukić had proposed); he also requested a clarification as to whether the newly available *waqf* property within fortresses, including the graveyards, would be awarded to churches or to municipalities.⁶² However, the legal committee led by Filip Hristić neither clarified this, nor heeded his requests in general.

The displacement and expropriation of the Muslim population opened the way for Belgrade’s urban regulation, and in 1867 the first regulation plan was drawn up by the Vienna-educated engineer and mathematician Emilijan Josimović. After 1862, the number of sixteen mosques, which appears to have been stable since the 1830s, started to decline: Josimović’s plan accounted for seven mosques in the *varoš*, to which two fortress mosques and the central Batal Mo-

60 Ristić (2010 [1881]), p. 81.

61 AS, DS 1862–1867, p. 1.

62 Ibid., p. 153, 156.

sque should be added for the full number.⁶³ Four were slated for demolition.⁶⁴ By early 1878, five mosques remained, and in the meantime, most were left to neglect. They figured as empty signifiers and soon became treated like exotic ruins, depicted by photographers and artists educated in Austria: photographer Anastas Jovanović and his son, architect Konstantin A. Jovanović, theater painter Antonije Kovačević, scholar and lithographer Felix Kanitz, and Russian photographer Ivan Groman. Various drawings preserved the appearance of twelve Belgrade mosques, and six were photographed.⁶⁵

With the last wave of expulsion of Muslims and compensations for their property, the process of unmixing populations and property came to conclusion in autonomous Serbia. This period's peak was the reopening of the Bajrakli Džamija in Belgrade in 1868, after the last Ottoman Muslims had been displaced the year prior. In 1868, Knez Mihailo ordered that a mosque be renovated and put into use for the Muslim community in Belgrade. But which community? The Education Minister's letter identified the mosque's purpose as "the religious consolation" of "those Mohammedans who are in Belgrade on business."⁶⁶ In contrast, there seems to have been a small population of around thirty Muslims living in Belgrade as craftsmen, which the letter characterized as too poor to support the imam and the *müezzin*; the majority of the Muslim population, registered as Roma, actually lived along the Ottoman border.⁶⁷ The engineering experts chose the Bajrakli Mosque as the most suitable. The strongly built mosque is dated to the 17th century; in the 18th, under Austrian rule, it had been converted into a Jesuit church, and then back into a mosque, with some traces of the church building still visible.⁶⁸ This choice ignored the more magnificent Batal Mosque, standing in the place of today's Serbian Parliament building, which was abandoned and later demolished in 1869 or 1870, in spite of proposals to turn it into a national museum or state archives, the latter suggested by Knez Mihailo.⁶⁹

The main aim of reopening the Bajrakli Mosque, once that Muslim community was not present anymore, was to serve as a proof of religious liberty in

63 Đurić-Zamolo (1977), p. 67. Five of these mosques still received *waqf* income in 1862: Tamiš (Kör Mustafa), Defterdar, Ali Pasha, Zincirli, and Bajrakli (AS, DS 1862–1867, 77–8).

64 Jovanović (2016), p. 81.

65 Đurić-Zamolo (1977), p. 21.

66 Hodžić (1957), p. 95; Zirojević (2018), p. 111; Šaljić (2019).

67 Šaljić (2019), p. 79.

68 Ibid., p. 78; Đurić-Zamolo (1977), p. 24.

69 Đurić-Zamolo (1977), p. 30.

Serbia, and a token of the Serbian ruler's good will toward the now minoritized Muslim population. At the time of the Berlin Congress, it enabled Jovan Ristić to claim that,

of all the countries in the East, none is as tolerant in religious questions as Serbia ... Even though in the capital of Serbia there is no Mohammedan population, the government is paying for one mosque for just those Muslims that would be passing through Belgrade.⁷⁰

The ruling Obrenović family continued to follow this model, reopening the mosque once again in 1893. The chronogram created in that year celebrates Aleksandar Obrenović and the Belgrade municipality, concluding that "today Christian bread repaired the Bajrakli Mosque".⁷¹

Rather than a revival, as seen by some scholars, the reopening of the Bajrakli Mosque represented a complete break with tradition. On the one hand, it symbolically ended the traditional existence of the *waqf* in 19th-century Serbia, as it was the state and not the *waqf* that now financed the renovation and upkeep of the mosque, or paid salaries to its *imams* and *müezzins*, selected and brought from Bosnia. On the other hand, the event marked a transition in the way Serbia perceived the remaining Muslims. The latter not only moved from Ottoman to Serbian jurisdiction, but for the first time started to be regarded as a minority: that process comprised not only numerical and cultural marginalization and racialization, but also a new definition of minority as an 'anomaly' to the normalized hegemony of the nation-state.

Conclusion

Patrimonialization in the aftermath of empire is a contingent and uneven process, in which the elusive notion of value is ever subject to various power relations and contested histories. In 19th-century Serbia, this process depended on the relationship between the Ottoman Empire and its autonomous province, but also on the highly volatile transimperial context in which Serbian statesmen saw an exit from its precarious position through an alignment with European powers.

70 Ristić (1987 [1887]), p. 210–1 (translation by author).

71 Hodžić (1957), p. 99.

Here, I have shown how Serbian intellectuals and legislators transformed the meaning of the *waqf* by resorting to the repertoire of colonial and racial imaginaries developed in the context of European colonialism. While the original shared understanding of *waqf* in the Ottoman context stemmed from the non-secular, moral concept of bequest as much as from similarities in organization and function of Islamic and Christian endowments as religious-social-economic institutions, it was translated into – or replaced by – the term ‘vakup/vakuf’, perceived as a foreign concept reduced to a type of religious property tied to the minoritized Muslim population.⁷² The narratives of economic progress based on rational usage of resources further cast the *waqf*, re-defined as private property of the mosque, obsolete. This was the case especially in the aftermath of the expulsion of Muslims, whose depiction as an obstacle to Christian-led modernization was promoted by Serbian statesmen, endorsed by European powers, and legally enshrined at the 1862 Kanlıca Conference.

As shown above, some of the criticism of the *waqf* also applied to Orthodox churches and monasteries, the property of which also decreased to some extent. The public opinion on monastic properties was also changing: even conservative authors of the older generation at the time, such as Milan Đ. Milićević, criticized from a moral perspective the amount of monastic possessions, as these institutions no longer played the same roles in education and welfare that they did under Ottoman rule. He suggested keeping only the architecturally and historically significant monasteries, while turning others into churches, which would also mean their dispossession.⁷³ Yet it was precisely this idea of ‘architecturally and historically significant monasteries’ – the leading idea of patrimonialization – that allowed for the preservation of a much higher share of their properties. From very early on, there were state-sponsored efforts to describe, catalogue, and preserve in drawing and photography the Orthodox Christian – and pre-Christian – monuments. Most famously, the Serbian Learned Society supported the project pursued by the architects Mihailo Valtrović and Dragutin Milutinović between 1871 and 1884, which served to establish the political legitimacy of Serbia’s borders.⁷⁴ During the 19th century, such treatment was never extended to mosques, which were, for the most part, in the literal sense turned into the ruins of empire.

72 Cf. Mirkova (2017), p. 78; Moumtaz (2021), p. 89.

73 Milićević (1865), p. 582; Milićević (1867), p. 10.

74 See Ignjatović (2014).

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