CHAPTER NINE

"ALL OF PALESTINE IS HOLY MUSLIM WAQF LAND": A MYTH AND ITS ROOTS

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In 1988, the fledgling Islamic Resistance Movement in Palestine, Ḥamās, emerged with a new concept, manifested in Article 11 of its Charter: "...The land of Palestine is an Islamic waqf land [endowed] for the benefit of Muslims throughout the generations and until the Day of Resurrection. It is forbidden to abandon it or part of it or to renounce it or part of it..." This idea was further elaborated in the following Ḥamās statement: "Palestine in its entirety is holy [emphasis added] Muslim waqf land." The Ḥamās view of Palestinian land thus incorporates two concepts: one, Palestine is waqf land; and two, as such, it is holy land. The popular Islamic concept of the holiness of Palestine was until then based on religious and historical factors, such as being regarded as 'the territory blessed by God (Allāh)"—an interpretation of Qur'ān 17:1, which identified the blessed precincts of al-Aqṣā (allāhū bārakāhu ḥawlahub) with Palestine (originally with al-Shām) (Jabr 1999, 191; Abu 'Aliya 2000, 41), and as ard al-istra'—the territory of Muḥammad's nocturnal journey and ascent to heaven (Jabr 1999, 200). With Article 11, Ḥamās added a legal justification to the holiness of Palestine. And once the land was pronounced waqf, two additional attributes were added to the public discourse (the religious and nationalist discourse in general, not only that of the Ḥamās activists)—it was now regarded as holy and inalienable.

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1 Quoted from a leaflet Ḥamās disseminated in Gaza on July 22, 2000.

Even though the claim that Palestine is waqf land, and as such no part of it could be renounced, was commonly used in the public discourse in the context of the Palestinian-Israeli conflict over the last decade or two, its legal and historical roots have not yet been studied. One expert even wrongly claimed that this new assertion of Ḥamās was not accepted by other Islamic fundamentalist groups, and that "apparently Ḥamās itself was aware of the weaknesses of this claim" (Steinberg 2002, 148–49). As I will show below, the concept that Palestine is holy inalienable waqf land is not only a consistent assertion of Ḥamās, but was adopted by the official political and religious actors of the Palestinian Authority (PA) and became common knowledge amongst Palestinians and other Muslim constituencies.

My main argument in this chapter is that the Ḥamās concept is a novel politically-oriented myth, rooted neither in Islamic legal texts nor in historical practice. This myth aims to explain why Palestinians (or Muslims in general) should not cede a single inch of land to Israel or to the Zionist Jews. A myth is generally a political allegory related to events from the past or, alternatively, it is future-oriented. It is normally based on historical reality, but its original factual core is adapted, extended, interpreted and exaggerated. The purpose of a myth is basically twofold: to interpret the reality (mainly to place the present on a historical sequence) and to urge people to behave according to a particular pattern (Sivan 1990, Introduction).

The first section is an attempt to trace the legal grounding of the Ḥamās contention that Palestine is a waqf land and to follow the sources and authorities that Ḥamās uses to endorse its new interpretation. I compare the Ḥamās text both with earlier texts, those issued by Ḥājj Ṭāhir al-Ḥusaynī, the Grand Mufti and President of the Supreme Muslim Council (SMC) in British Mandate Palestine during the 1930s, and with more recent texts, such as Jordanian and Palestinian fatwas from the 1990s and 2000. In the second section I demonstrate that, contrary to Ḥamās’ claims, lands conquered by Islam, including Palestine, were categorized as fay’ lands rather than as waqf lands (I will also explain the differences between these two systems). The third section deals with the practice of land tenure during medieval and Ottoman times. I argue there that fay’ or kharaj lands, known as mitl lands in the Ottoman period, were not considered holy and were transacted freely, including with non-Muslims.
In the fourth section I demonstrate that, even if we accept Ḥamās' erroneous contention that all of Palestine is holy inalienable waqf land, both Islamic jurisprudence on the waqf institution and historical practice show that waqf assets were, in fact, alienable. Palestinian Muslims, including religious authorities during the British mandate period, took part in transactions that altered the original purposes of the waqf, changed its charitable character, and even transmitted waqf assets to non-Muslim hands. In the conclusion, I explain how the general public, including those considered political rivals of the Islamists, accepts the new radical Islamic religious-based legal innovations.

The Invention of the Myth and Its Political Use

Article 11 of the Ḥamās Charter of 1988 states:

The Islamic Resistance Movement believes that the land of Palestine is an Islamic waqf land [endowed] for the benefit of Muslims throughout the generations and until the Day of Resurrection. It is forbidden to abandon it or part of it or to renounce it or part of it. No Arab State nor the aggregate of all Arab countries, and no Arab King or President nor all of them in the aggregate, have the right to do so; nor does any organization or the aggregate of all organizations, be they Palestinian or Arab, because Palestine is an Islamic waqf for the benefit of the Muslim generations to the Day of Resurrection. This is its [Palestine land's] rule in the Islamic shari'ah. This rule applies like any other land conquered forcefully by the Muslims, since the Muslims endowed it at the time of conquest as waqf for the benefit of Muslims throughout the generations and until the Day of Resurrection. This [rule also] took place when the commanders of the Muslim armies, upon completing the conquest of al-Shām [Greater Syria] and Iraq, sent a [message] to the Caliph of the Muslims, 'Umar Ibn al-Khattāb, consulting him as to what to do with the conquered land, whether it should be partitioned between the troops or left in the possession of its population, or otherwise. Following discussions and consultations between the Caliph of Islam, 'Umar Ibn al-Khattāb, and the Companions of the Messenger of Allah, peace and prayer be upon him, they decided that the land should remain in the hands of its holders to benefit from it and from its wealth; but the abstract ownership (qiyās) of the land ought to be endowed as a waqf for all generations of Muslims until the Day of Resurrection, while the [original] owners would have usufruct rights (mā网点a) only, and this waqf will endure as long as heaven and earth last. Any action regarding Palestine [land] that contradicts this rule of Islamic law is void and those who conducted it will bear the responsibility.²

As far as we know, this document—the Ḥamās Charter—was the first to make this legal claim, based on what was believed to be a historical precedent according to which all the Islamic conquered territories (and not only Palestine) are waqf, and therefore should remain under Muslim control. It reveals two features of the outlook of modern Islamist groups. The first is that this outlook draws on a tradition attributed to the second Caliph 'Umar Ibn al-Khattāb (r. 634–644), while at the same time ignoring other important Islamic sources and practices. This reflects, as Emmanuel Sivan noted, the Islamist tendency to idealize the age of Muḥammad and the four Righteous Caliphs (r. 622–661), “whereas all laws and injunctions produced after 660 by jurists by means of analogy (ṣiṣā) and consensus of experts (ijmā') are ipso facto suspect, for the jurists were usually more attuned to the needs of the powers that be than to the goals of the Faith” (Sivan 1990, 55, 69–70).

The second feature pertains to the maneuvering between traditional concepts and modern ideology; in our case it is the interplay between 'Umar's precedent and the modern goal of national (Islamic) territory. The fact that fundamentalist groups tend to sanctify tradition, on the one hand, and to put it in a modern ideological form, on the other, was explored by Eisenstadt. He maintained that in their approach to the old Arab and Islamic literature and holy texts, although the Islamists sanctify tradition, they have altered it from an idealistic, utopian, substantial and totalistic form to a modern ideology (Eisenstadt 2002, 9).

Before I discuss the historical roots of the Ḥamās argument, I would like to shed some light on the questions of who instigated this idea and to what extent it was accepted by the Palestinian public. The circumstances involving the drafting of the Ḥamās Charter are vague. Only a few books have been published on the Ḥamās (Shaked & Shabi 1994; Mishal & Sela 1997; Nūsse 1998; Pavlowsky 2000; ² The Arabic text is available at http://www.hahd.org/rr/hamas.htm. My translation deviates from that of Raphael Israeli by using the relevant legal terms (Israeli's translation is available at http://www.palestinecenter.org/charter/documents/charter.html and taken from: Alexander & Foxman 1990).}
Hroub 2000; al-Harūb n.d.; Manṣūr 2003), but none discussed this issue, or even raised the question. Shaykh Ahmad Yāsīn, the Hamās founder and spiritual leader, received no formal education beyond high school in Gaza. There is room to believe that neither Shaykh Yāsīn nor any of his followers drafted the Charter, but rather that Islamic experts from the Jordanian Muslim Brothers organization developed it. An Islamic legal opinion (fatwā) published in 1995 indicates that Jordanian Islamic scholars hold similar ideas to Hamās. The fatwā issued by Jordanian shari’a experts, signed by seventeen Ph.D. holders (some of them faculty members) and two members of parliament from the Muslim Brotherhood party, refers to the question of selling Jordanian land plots to Jews. The issue was raised in the Jordanian media following reports that Israeli businessmen wished to invest in Jordanian real estate after the two countries achieved a peace treaty, and the fatwā was aimed at blocking such transactions. In their legal opinion, published in Hamās’s international journal, Filastin al-Mustama (October 1995, p. 29), the drafters refer to Jordan’s land in the same category as the Hamās Charter of 1988 refers to Palestine:

...These Jordanian lands and the rest of al-Shām land is harāj [sic—should be: kharāj] lands whose abstract ownership was endowed to Allāh for the public benefit of Muslims. They are not the private property of any leader, regime, party, head of a tribe, or particular person. It is legally (kharāj) prohibited to sell waqf lands to the Jews, who are the enemies of Allāh and whoever desires to take it over and to expel the inhabitants of these lands.

In 1994, Ziyād Abū ‘Amr, a Palestinian professor of political science at Bir Zeit University, attributed the perception of Palestine as waqf land to Palestinian and other Islamic movements (Abū ‘Amr 1994, 27). When the Oslo peace process deteriorated during the second half of the 1990s, Yasser Arafat also adopted this idea and it was raised frequently in the Palestinian media. For example, in 1998 Faysal al-Husayni, who was a PLO representative to Jerusalem and a PA cabinet member, made the following assertion in a lecture and in an article he published on the peace process:

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If you ask a Palestinian, what are the boundaries of Palestine, if he presents his Islamic outlook, then Palestine stretches from the river to the desert, it is an Islamic waqf land, not to be sold or traded... (Mayor & Husayni 1998, 10).

During Friday services on December 4, 1998, the preacher (not identified) whose sermon was broadcasted on PA Radio said: “Palestine is an Islamic waqf land” (Filastin, December 4, 1998). This message was reiterated in another sermon on April 30, 1999, by another khatib, Shaykh Yusuf Abu Sineh, an official PA preacher (ibid., April 30, 1999); and Yasser Arafat himself repeated these words in December 1999, as reported in the PA’s newspaper (al-Hayāt al-Jadida, December 12, 1999). The following year, the public message took the form of an official PA fatwā. On July 22, 2000, the very day that Arafat declined US President Bill Clinton’s proposal for solving the Israeli-Palestinian conflict at the Camp David II summit, Shaykh Ibrāhīm Ǧabār, the Chief Muftī of Jerusalem and the Palestinian Territories, issued a fatwā ruling that it would be forbidden (harām) for Muslims in Palestine to accept compensation or indemnification in return for their land which was seized by the Israelis when the Jewish State was created in Palestine in 1948. The fatwā, which was typed on the official stationery of the PA’s Chief Muftī and signed by Ǧabār, asserts in its first paragraph:

Accepting compensation for land in Palestine equals its sale—both are absolutely forbidden by the shari’ā. Whoever accepts compensation for his asset is bound by the fatwā issued by the Palestine ulamā’ in the 1930s, which totally prohibits [such action], because the Palestine land is not goods to be traded, but rather blessed and holy waqf land (waqfyya muḥarraka muqaddasa). This fatwā was repeatedly supported by fatwās issued by ulamā’ of the Muslim nation since it originated and until the present day.

Ǧabār’s fatwā went on to state that the Palestinian refugees’ [physical] right of return is sacred and eternal and that “the land of Palestine will remain in the hands of those [Palestinians] who are entitled to it and to all the Muslims until the Day of Resurrection” [emphasis added]. It is unclear from Ǧabār’s wording whether the concept of Palestine as a holy waqf is his own ruling or whether he [wrongly,

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2 Roni Shaked, who interviewed Shaykh Yāsīn for his book on Hamās, told me this but he did not mention it in his book.

as will be discussed later] attributes it to the 1930s fatawa. Undoubtedly, both fatawa, though issued sixty-five years apart, are motivated by the same purpose: to prevent the transfer of Arab/Islamic-owned lands to Zionist Jews. Before discussing the political context of ʿAbdī’s 2000 fatawa, let us draw on the 1930s fatawa and compare its legal arguments to those of more recent texts.

ʿAbdī’s mention of the 1930s precedent refers particularly to Ḥājj Amin al-Ḥusaynī, the Grand Muftī and President of the SMG in British Mandate Palestine. Al-Ḥusaynī was deeply concerned by the increase of land sales to Jews in Palestine during the 1920s–30s, and he launched a public campaign among the Palestinian Arabs opposing the trend. In this campaign, as well as in issues related to holy places, al-Ḥusaynī was the first Palestinian leader to employ religious arguments in the context of the Arab-Jewish struggle over Palestinian territory.

In his public speeches, al-Ḥusaynī repeatedly stressed that selling land to the Jews was a sin from the Islamic viewpoint and an act of high treason. Addressing a large meeting on 29 December, 1934, al-Ḥusaynī explained, according to a British intelligence report, that since Palestinian land belonged to God it should not be sold to man (Porath 1977, 96). This argument, which was presented in a general form, with no reference to a particular legal or theological text, resembles the position of the Ḥamās Charter. One would expect to find it too in the most important fatawa that al-Ḥusaynī issued four weeks after the above-mentioned meeting, but in fact his fatawa of January 1935, which was printed at the SMG’s Islamic Orphan Press (Dār al-ʿAytām al-ʿIslāmiyya) and widely disseminated, highlights other arguments for explaining why Palestinian land is holy and why Muslims should not sell assets to the Jews:

... These holy lands embody the first qibla [direction of prayer—al-Quds/Jerusalem], the third [sacred] Mosque [al-Aqṣā], the destination of the ʿirāq [the nocturnal journey] and marjīʿ [ascent to Heaven] of your Prophet Muḥammad, and its soil was molded by the blood of the Muslim righteous warriors, and by [the bodies of] many prophets, saints, martyrs, and pious forefathers, and every inch of it contains their righteous remnants and their eternal glorious deeds which sustained throughout the ages in an Islamic dimension, confirming that ‘There is no God but Allāh and that Muḥammad is the Messenger of Allāh’. This holy land which embodies all of what was mentioned is a trusteeship (ʿamān) of Allāh, of his Messenger and of the Muslims on their shoulders, and therefore the sale of any inch of this land to the Zionists is a betrayal of God and his Messenger and the entire Muslim people (or all Muslims), as well as an extinguishing of the light of Islam from the sacred land and an assistance to remove the Muslims from their territories... (al-Ḥusaynī n.d.; see also Zuʿaytar 1984, 374).

The fatawa was ratified by 249 ʿilāma, muftis, qādis and other officials of the SMG who were subordinated to the Grand Muftī. On this occasion they also issued another fatawa which specifically attacked the land brokers, who now were threatened with denial of Muslim burial. The latter fatawa referred to the entire territory of Palestine as ‘the Islamic holy lands’ (al-bilād al-ʿIslāmiyya al-muqaddasa) without indicating the grounds for why this was so (ibid.).

Thus, although the current Palestinian Chief Muftī Shaykh Ikrīma ʿAbdī mentioned in his July 2000 legal opinion the 1930s fatawa to support his argument regarding the holiness of Palestine, al-Ḥusaynī’s fatawa provided different justifications for this; nor did al-Ḥusaynī argue, as does ʿAbdī, that Palestine is a waqf land and that those who possess it are entitled only to enjoy the right to use it.

For the attributes for Palestine’s holiness enumerated by al-Ḥusaynī, who himself had no education in Islamic law (Porath 1974, 191), were taken from the literature extolling Jerusalem (faḍḥīḥ biḥt al-maqdis/al-quds). Unlike ʿAbdī (and the Ḥamās Charter), al-Ḥusaynī grounded the holiness of all of Palestine in Islamic history and heritage. The battles occurred on Palestinian soil and the Islamic prominent figures, be it those who sacrificed their lives for its conquest or those who operated, lived or were buried there, all turned it into a sanctified patrimony. Al-Ḥusaynī claimed that the Islamic conquest of the land and its history under Islam turned it into a trusteeship that Allāh, his Messenger and the successive Muslim generations obligated present-day Muslims to uphold, and this entitled a ban on transferring any of the land to non-Muslims. However, al-Ḥusaynī did not use legal claims, as Hamas and the PA’s Muftīs do today, that the land of Palestine is waqf and inalienable. Moreover, in the mid-1930s, al-Ḥusaynī himself appealed to the local Palestinian Arabs to endow their private lands as waqf in order to prevent their sale to the Jews. His appeal was backed by another special fatawa that he issued for this purpose (al-Jam‘ī al-ʿArabīyya, January 24, 1935). Since the SMG controlled the shari‘a courts, which were entitled by law...
to approve every transaction of waqf properties, the Grand Mufti hoped that granting the lands waqf status would give his SMC the legal power to control land sales. This very fact proves that in his mind Palestine was not waqf territory, as Islamists today claim; rather, he recognized private ownership of lands but he wished to change its legal status to waqf. However, Palestinian Arabs did not respond positively to his appeal.

Let us return now to the PA Mufti’s legal opinion of July 2000. The political context of Bahr’s fatwa was to protect his Chairman—Arafat—from allegations of relinquishing the Palestinian refugees’ right of return. It was urgently issued a few hours after a similar manifesto signed by senior Islamist and Hamás figures was circulated in the Gaza Strip. The Hamás leaflet stated that:

Palestine in its entirety is holy Muslim waqf land and no person, group, organization or State is authorized to concede any part of its soil to the enemy (ibid.).

The rivalry between the two Palestinian political factions—Fatah headed by Arafat and Hamás headed by Yasím—led the PA to adopt the concept that “Palestine land is a holy waqf,” which was a Hamás innovation.

Though a relatively new argument, this notion was soon inculcated into segments of the Islamic public in Palestine and across the Muslim world. For example, Dr. Mustafa Rushwan, a faculty member in one of al-Azhar’s affiliated colleges, refers to Palestine as waqf land and cites the same argument as the Hamás Charter (Rushwan 2001, 46–53). Another example is a fatwa issued by Shaykh Yusuf al-Qaraawī, one of the most popular contemporary muftis, based in Qatar, who referred to all of Palestine as waqf land.6

**Between Waqf and Fay’**

The Islamist drafters, as we have seen, base their claim regarding the waqf status of the forcefully conquered Palestine and al-Shām (Greater Syria) lands on an early tradition (hadith) which refers to these lands as ‘tharaj lands.’ The tradition is taken from the early Arab literature regarding conquered lands (futūh al-buldān) (al-Ḥarūb n.d., 77) which the Imam transferred for the public good as fay’. The system of fay’ totally differs from the institution of waqf.

It is worth outlining the differences between the two institutions, fay’ and waqf, in order to understand the method that today’s Islamists employ in adopting new interpretations and uses to early traditions. Waqf is a privately-initiated endowment of a completely privately-owned (mulk) property, based on the Islamic pious concept of charity. The endower is an individual who wishes to turn a property he owns into an eternal endowment for charitable purposes. Charitable action in Islam is based on eternal remuneration of the endower in the afterworld (Anderson 1951, 292; EI3, s.v. Sadaqa, 709), and therefore the founder of a waqf is entitled to such reward while the endowment could exist in this world forever. Hence, the ban on the sale, long-term rental or mortgage of waqf assets (Qadri Pasha 1902, 3). The verb waqafa means ‘to stop’, ‘to block’ or ‘to suspend,’ implying one of the basic rules of the waqf: once endowed, the donated property loses its abstract ownership (raqudu) which, according to the Hanafi school of law (official school of the Ottoman state), goes to Allah, as a metaphor for its eternal status, and the beneficiaries are entitled to usufruct (muṣaffa‘) only; that is, no one has ownership rights of the endowed property. The founder of the endowment can stipulate the charitable purposes of the waqf, the beneficiaries and their entitlement at the time of the donation, and the rules of devolution for generations to come. He can also nominate the administrator of the endowment, as well as stipulate the conditions for future nominations and the rules of the endowment’s administration.

Fay’, on the other hand, is the name given to land which was conquered by the Muslims but remained in the hands of the original owners to benefit from, provided that they pay a special tax signifying that the abstract ownership belongs to the State Treasury for the benefit of the Muslim community. In order to understand how the Hamás Charter drafters arrived at the conclusion that fay’ lands (all forcefully conquered lands) have the status of waqf, it is necessary to outline the historical development of these two institutions.

In pre-Islamic tribal society fay’ applied to immovable items taken as booty (EI3, s.v. Ghanima, 1005–6), to be divided between victors, either in fifths or fourths, the leader being entitled to one of the parts. This custom was upheld by the Prophet Muhammad after 6 “al-Aqsa wa-khator al-ṭaba‘î” dated July 24, 2001, at www.qaradawi.net.
the battle of Badr (624), and Qurʾān 8: 42 mentions five uses for the prophet’s one fifth. The Prophet actually designated his fifth for public use. The other four fifths were divided among the conquering troops (Elʿ, s.v. Fayʾ, 669; Berchem 1886: 47–9). The Prophet’s practice was part of the custom of ghanīma since the Qurʾānic text says: faʾin ghānīmata (if you take booty), and not fayʾ. The subsequent battles which ended with the surrender of Banū al-Nadīr, and the Jews of Khaybar and Fadak led to a new precedent which involved the institution of fayʾ, as distinct from ghanīma. The Banū al-Nadīr surrendered after a siege in 625, and Qurʾān 59: 7–10 states that since the victory resulted from God’s interposition in favor of his Apostle, it [the entire land and not only one fifth] was fayʾ for him exclusively, to the ultimate benefit of the Muslim society (Elʿ, ibid.). In this case, the Qurʾān uses the verb ajāʿa, namely to bring back (and not the verb ghanīma as in the case of Badr), which indicates that the new custom marks the principle of fayʾ. Khaybar estates were left in the hands of their Jewish inhabitants who, after their surrender in 628, had to pay half of their date crops as tax to the Muslim conquerors.

The conquest of Khaybar, a Jewish-inhabited oasis, was more complicated—a matter that entailed many interpretations regarding the legal precedent in terms of land tenure, booty and taxes. It was first conquered by force (ʿumraṭ) and then the Prophet reached an agreement with the local Jewish inhabitants according to which they would surrender and remain on their lands, but in the future would have to hand over half of their date and grain crops as tax to the Muslim conquerors. From a legal point of view, the pact was defective, since it did not say whether they were to remain the owners of the soil which they were to cultivate. Traditions tell that the Prophet divided the lands into plots and gave every Muslim beneficiary from among the warriors the right to cultivate from a particular Jewish cultivator half of the yield of his specific plot (Elʿ, s.v. Khaybar, 1137–43).

In the Banū al-Nadīr and Khaybar preceeded the foundations of the future State Treasury (bāyiʾ al-māl) were established. The principle was that in territories surrendered without a battle (ṣūḥān) the lands (completely) belong to the entire Muslim community, which may benefit from its taxes. However, when land was conquered by force (ʿumraṭ), it was divided between the warriors and only one fifth went to the Prophet (or his successors as leaders of the Muslim army and community), who could donate it for the benefit of the Muslim community (Elʿ, s.v. Bayt al-Māl, 1143–44).

What joined the concept of fayʾ and ṣūḥān and the fate of estates acquired ṣūḥān and ʿumraṭ was apparently the reform initiated by the Caliph ʿUmar b. al-Ḫaṭṭāb. The urge for the reform grew as the Islamic conquests increased, and it became economically damaging to divide conquered lands between the Muslim troops. The following hadith cited in Abu Yūsuf’s Kitāb al-Khirāj marks the change of policy by ʿUmar:

Bilāl and his companions asked ʿUmar b. al-Ḫaṭṭāb to distribute the booty acquired in Iraq and Syria: “Divide the lands among those who conquered them,” they said, “just as the spoils of the army are divided.” But ʿUmar refused their request... saying: “Allāh has given a share in these lands to those who shall come after you” (ibid., 1141).

The tradition indicates the essence of ʿUmar’s new policy according to which the conquered lands (ʿumraṭ), and not only the lands captured after a peaceful surrender (ṣūḥān), belong to the Muslim community, and should not be allocated to the warriors for private ownership.

Another tradition narrating this reform tells that after al-Šām (Greater Syria) was conquered, the leaders of the Islamic camp:

... wrote to the Caliph ʿUmar b. al-Ḵaṭṭāb: This fayʾ of which we allotted you one fifth, the rest belongs to us and nobody has any share in it, following the Prophet’s example... in [the case of the conquest of] Khaybar [referring to a different version of the above-mentioned tradition, according to which the Prophet distributed shares of Khaybar to the warriors]. ʿUmar replied: I am not bound by what you said, rather, I shall endow it (affūka).

7 In early Islam the difference between ghanīma and fayʾ was also not clear. See, for example, Ṣaḥīḥ Mohammad 2001, 186. On fayʾ, see Elʿ, s.v. Fayʾ, 669.
8 Lüdersguard (1978, 76) holds that in Greater Syria the towns were taken ʿumraṭ, while the land was taken ʿumraṭ.
9 al-Ḵaṭṭāb (1094, 3–5) cites hadiths maintaining that both the Prophet and ʿUmar b. al-Ḵaṭṭāb dedicated their personal booty from Khaybar to charitable purposes.
10 Ibn ʿAṣākir 1993, 2: 196–97. The Arabic text in Ṣaḥīḥ al-nīṣā fiḥ bil-Šām... ḫaṭṭāba ṣāḥib Umār b. al-Ḫaṭṭāb inna ḫaṭṭāba ṣāḥib fayʾ ʿumraṭ gābak lahe khamāsin, wāqāya mā ʿaqtha ḫayba laṣay ṣawād miṣān ʿaṣāk kumal ʿumraṭ al-Māl sāḥib Allāhu ʾalayhi wa-salām bi-khāybar, ḫaṭṭāba ṣāḥib Umār, ḫayba laṣay laṣay mā ʿaqtha wāqāya ṣawād ʿaṣāk... I am grateful to Professor Amulam Elad for this reference and for his assistance.
In a second version of this tradition the last word *ṣerība*, namely 'I shall endow it', is replaced with the words *aḥbasīna jā‘ā‘a‘n*, meaning: 'I shall endow it as *jā‘ā‘a‘* (harbusa is a synonym for *waqf* asa, used commonly in the Maghrib). This particular version of the hadith reflects the combination between *waqf*, or *ba‘a‘*, and *jā‘ā‘*. The second version actually shows that the verb root *h.b.a.*—endow—by itself is not enough, or too general, and needs specification—endow as what? The second version of the hadith cited above specifies 'endow it as *jā‘ā‘*'.

There is also another interpretation of the verb *waqf* in this context as meaning 'withheld' and 'refrained from dividing the conquered lands' (Ben Shemesh 1967, 24 n. 9; 112 n. 9). This is based on the literal understanding of the verb *w.q.f.* before the term *waqf* was used to express an endowment. Those who accept this interpretation would rule out the ʿHanāfi contention.

A third approach was provided by W. Heffernan, who (wrongly, in my opinion) maintains that *waqf* has two meanings: one is pious endowment and the other is the fiscal system explained above as the *jā‘ā‘* system (Shorter EI, s.v. Waqf). In other words, one legal term—*waqf*—signifies two different institutions.

ʿUmar's reform created a confusing mixture, which affected the meaning of the terms. The public could no longer use the term *ghanīma* (booty) for the lands conquered *am uṣūr* because they were also re-allocated for public purposes. Thus, the verb *w.q.f.* or *h.b.a.* was used in this connection, because it had the connotation of an act of withdrawing the abstract ownership from a specific person and designating lands for public use. The principle of *jā‘ā‘* lands was that the newly captured territories were left in the hands of the indigenous inhabitants who were entitled only to usufruct rights without the abstract ownership (*raqaba*), which was retained by the treasury. The indigenous owners were liable to pay the *khānī* land tax (and in the case of non-Muslims also *jīzā*), as a sort of tenure to the state, which was legally transferred to the State Treasury (*bayt al-māl*) (EI, s.v. Fay); 869). *Fay* lands were not actually state lands. The separation between the abstract ownership and the usufruct was only a theoretical legal device that enabled the imposition of taxes.

The inter-relationship between *jā‘ā‘* and *waqf* can be explained thus: in the formative period of Islamic statehood, before the jurists attached specific meanings and rules to the various terms, denoting different institutions, the Muslims made use of different terms to express a particular practice or, alternatively, the same term was used for different practices. The main reason for this complexity was that since the institutions followed earlier systems, they varied from one region to another and were controversial even before Islam. Claude Cahen points to a very fluid use of terminology in the early generations of Islam. Thé example he gives is that of *khānī* and *jīzā*, which were used interchangeably and finally were determined as poll tax on non-Muslims for *jīzā* and land tax for *khānī* (EI, s.v. Khārājī, 1030; ibid., s.v. Dījīz, 559; ibid., s.v. Bayt al-Māl, 1143–44; Ch. ibid., s.v. Wāqf, 58). The jurists defined them and specified only at a later stage that the one meant land tax and the other poll tax. In the same manner, all kinds of pious donations were made by the first generations of Islam. They could all be included in the very general term of charity (*sadaqa*). Only later, with the elaboration of Islamic law, did jurists differentiate between the various kinds of donations, attaching a specified meaning, a precise definition and rules, as well as a different term to each of the charitable acts. The various kinds of charities made by the first generations of Islam were not all considered *waqf* by later jurists. Some of the early donations fell within this definition, while others were classified as gifts or ordinary charity (Cahen 1961, 45). Moreover, the first generations of Islam used derivatives of the verb *w.q.f.* in a fluid or loose way. Only later did the jurists attach to the noun *waqf* (and its synonym *ba‘a‘*) and its derivatives a specific meaning; it became a technical term implying exclusively the institution of Islamic endowment. Only those early charities, which fulfilled the rules pertaining to this specific institution, were then considered as *waqf*.

The ʿHamāsī and current Islamists disregard the *jā‘ā‘* system and refer to ʿUmar’s action as *waqf* in the new form, that is, as it was shaped by jurists from the second/eighth century onwards (perhaps by making use of the first above-mentioned hadith version, which uses the verb *w.q.f.*, ‘to endow,’ without specifying ‘as what’ and neglecting the second version which specifies the *jā‘ā‘*). The ʿHamās interpretation of that hadith says:

... The land should remain in the hands of its holders to benefit from it and from its wealth; but the abstract ownership of the land ought

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11 On the changes of tax institutions over time, see Simpson 1988, 149–50. On the differences according to regions, see Demett 1990.
to be endowed as waqf for all generations of Muslims until the Day of Resurrection, while the [original] owners will have usufruct rights only (see n. 1).

It is true that the fay' shared one legal characteristic with what later became the Islamic endowment institution of waqf—the separation of ownership and usufruct. This is, however, the only characteristic shared by the two institutions. The fay' came into being as a result of conquest, and taxes imposed on fay' lands were, in fact, the major source of revenue for the Muslim State Treasury. The waqf, on the other hand, was never owned by the state and never formed part of its fiscal revenues; it was employed in strict conformity with the private-founder's stipulations. These particularities of the two different institutions were formulated during the first two centuries of Islam.

In sum, the basic element of the new concept is based on attributing the early Islamic fay' system to the waqf. According to the present-day interpretation, land is transferable between Muslims, who have only usufruct rights. The Muslims use the ambiguity and the multi-faceted meaning and practice of the term and institution of waqf in the formative period of Islam and manipulate it for their political purposes in the context of the Israeli-Palestinian conflict over territory.

State Land in Medieval and Ottoman Practice

The next question to be addressed is whether under Islamic rule fay' land could not be sold by its actual holders, and whether non-Muslims were excluded from acquiring rights on fay' or other sorts of state lands. The emphasis in this section will be on the practice in Palestine.

Cohen wrote that during the Medieval Period, fay' lands were viewed as quasi-waqf, only in the sense that they were devoted to the benefit of the Muslim generations to come. In other words, by using the term waqf in the context of land tenure, the early Muslims meant to distinguish the fay', i.e., lands in which a share (from the tax revenues) was given to the public benefit, from other privately-owned lands (upon which lower taxes were imposed). Cohen, however, emphasizes that the landholders, whether Muslims or not, were entitled to absolute ownership on fay' lands and they could exploit them in that capacity [and conduct transactions] (Cohen 1970, 108).

Put another way, state control of these lands was limited to one major public interest: safeguarding the state's income from the kharaj taxes. The Muslim state of medieval times did not interfere in matters such as who the actual owner of the land was (or its beneficiary), or his religious denomination, as long as he paid the required taxes.

Granovski wrote that during the Mamluk and Ottoman periods a new kind of state-owned land was granted to military commanders by a kind of feudal tenure (iga'at). The landlord and the state received revenues from the tenant farmers. Under the Ottomans, kharaj lands—formerly fay' lands—were regarded as privately-owned, whereas only the relatively new feudal estates were considered state-owned (Granovski 1949, 322 n. 20). The new non-possessed lands conquered by the Ottomans were transferred to the State Treasury and re-allocated to cultivators in return for a payment (tajn), according to the principle of fay' (abstract ownership of the State, and usufruct to the cultivator), but they were now called arba'at amiriyya or, in short, mifti (ibid., 16). In introducing the new mifti system the state aimed to ensure the productive nature of the land (Stein 1984, 11).

All non-private and non-cultivated lands, and more importantly all sown lands, but not fruit trees and the like, were categorized as mifti and were regarded as state lands. The peasants could not sell, grant or endow these lands. However, mifti land was not state land in the modern sense of public land not to be sold to private individuals. It could be acquired by possession and actual working of the land for a ten-year period. In the later years of the Ottoman state, ways were found to circumvent these restrictions by the establishment of waqf ghayr sahih, that is, an endowment of estates of the mifti kind established with the special approval of the state in which the endower donated only those rights he was entitled to—usufruct rights—i.e., the revenues from the land (EP, s.v. Mifti, 125).

Gabriel Baer states that privately-owned land (muhl) not only existed during the successive Muslim periods in Palestine and other Muslim-controlled territories, but that the lands were liable to change owners and non-Muslims were also able to purchase them (Baer 1962, 51). Ottoman non-Muslim subjects (dhimmis) could legally purchase lands, and Palestine, or Greater Syria, was not an exception. Indeed, the Ottoman Shari'a Court records of Jerusalem from the sixteenth century testify that Jews purchased lands and houses from Muslim buyers (Cohen & Simon-Picali 1993, 304–21; Cohen 2003, 236–396).
Foreign non-Muslims who resided in the Ottoman territory (musta’mins) could only purchase land following the reforms of 1856 (Baer 1962, 51), and consequently a musta’min became a dhimmī and had to pay the kharāj and/or jizya.

The 1858 Ottoman Land Law determined five categories of land, among them completely privately-owned land (mulk), waqf, and mīrī. Mīrī land could be transacted under certain restrictions, but the buyer of such land was entitled to usufruct rights only. The consent of the Sultan was required to turn mīrī land into mulk in a procedure known as tamlik (Granovski 1949, 84). The purpose of this system was to ensure that the land would be cultivated, and if neglected, the state could reclaim it. It is believed that many feudal landlords succeeded in turning their mīrī lands into private (mulk) land (Heyd 1973b, 81). Thus, the land tenure reality in Palestine was that most of the mulk land was confined to urban sites, mostly buildings and gardens; most of the agricultural land was of the mīrī category (Stein 1984, 1).

During the last third of the nineteenth century the Ottoman government sold large-scale worthless lands in the plains of Palestine to entrepreneurs—among them non-Muslims—who undertook to cultivate them. For example, the lands of the Sarona colony in northern Palestine were sold to the German Templers and tracts in Unm Labs were sold to Jews who established the colony of Petah Tikva (today a city). On the eve of World War I, 172 large landholders in Palestine possessed, as private owners, over five million dunars (4.425 dunams = 1 acre). One Arab family from Beirut, the Suroqs, alone owned 230,000 dunars, incorporating a few Arab villages on the Esdraelon Plain, which they sold to the Zionist movement in the 1920s (Granovski 1949, 75). Unlike the plain areas, in the mountainous sections of Palestine private owners held only small plots, and they registered their ownership already in the second half of the nineteenth century (Gerber 1987, 80). Between 1878 and 1914 some 245,000 dunars in Palestine were purchased by individual Jews and by Jewish agencies (Porath 1977, 109).

The very fact that thousands of private Muslims—and non-Muslims—endowed their real estate in Palestine as waqf for the benefit of the public as well as their family members is further proof that the ownership of lands in Palestine during centuries of Islamic rule was also private. The practice of waqf endowment in Palestine (and elsewhere in the Ottoman state) followed the legal theory according to which the land or urban property could be donated as waqf by individuals only, not by an organization or by the state apparatus as such. Even large waqfs for public purposes endowed by governors and other statesmen were registered as private endowments. If the land was state-owned, the official who endowed it had to receive a special decree from the Sultan (tamlikānāmē), turning the land over for his private disposal and, in so doing, making it possible for him to legally endow it. Only the Sultan or his deputies had the right to endow mīrī land as waqf, and even if mīrī land was endowed for public purposes, the land itself was not the endowed property since the abstract ownership could not be transferred; only the income tax from these lands was diverted from the State Treasury to other public purposes. Consequently, no private person could endow land, unless he received a tamlik (Ben Shemesh 1955, 32).

Thus, the actual situation regarding land tenure in Palestine during the Ottoman period refutes the Ḥamās claim that the land of Palestine was all state-owned or that its sale to non-Muslims was forbidden. The Ḥamās contention disregards the Islamic medieval and Ottoman practices according to which fey’ lands could change hands and non-Muslims were not excluded from buying such lands. Even the Ottoman newly-created state land—mīrī land—could become privately-owned and, again, non-Muslims were not excluded. From the last third of the nineteenth century, mīrī lands in Palestine (and elsewhere) were sold to entrepreneurs, including Jews.

_The “Holy” Inalienable Nature of Waqf—Twenty-first-century Practice in Palestine_

Even if we accept the Islamists’ contention that lands in Palestine are waqf lands from the Islamic legal perspective, which we do not, the question arises as to whether they are holy by nature, and whether, according to both Islamic jurisprudence and practice, they are, indeed, inalienable.

The political use of the alleged waqf nature of all Palestine draws on two attributes of this system. The first is the claim that waqf land, due to the pious nature of the institution of waqf and of the principle of respecting the endower’s stipulations as if they were the Legislator’s [God’s] text (šart al-waqfī ka-nafs al-shārī), is holy and intact. This assertion draws on the waqf’s pious character as a charitable endowment usually associated with religious institutions and
of Islamic law (Reiter 1996, 171; idem 1997a, 65). The two major justifications to legitimate transactions of waqf assets were maslahah or manfa'a—benefit for the endowment—on the one hand, and darura—dread regarding the physical or economic condition of the estates, on the other (Qadri Paşa 1902, art. 133; Abbé Zahra 1971, 6).

Two major methods of alienating waqf assets were legitimized by the jurists under these circumstances. The first was leasing waqf properties for long periods in a variety of forms (Hoexter 1984 and 1997). The second method abandoned the interpretation of viewing the asset as an absolute perpetual element and allowed, under certain conditions, the exchange or even sale of properties as a means of ensuring the charitable purpose of the waqf. Thus, the waqf’s income could fund the charity and perpetuate the charitable nature of the endowment and satisfy its eternal nature (as opposed to the eternal nature of the properties originally endowed). The method was istibdlūl, the exchange of a waqf property for a substitute property that would become waqf. This method was developed as an exchange for money—istibdlūl bil’darāḥīm—which should be invested in the purchase of a substitute property for the waqf.

The very existence of the istibdlūl system in the shar’īa and in judicial practice refutes the contention of Islamists that waqf land is holy. The endowed land could be exchanged or sold to purchase another property. Moreover, as I will show in the following paragraphs, long-term lease, exchange and even the sale of waqf real estate were common practices in Palestine and were authorized by Muslim religious authorities even when the buyers were Jews or other non-Muslims.

The following examples, showing that waqf land was in fact sold with the approval of established religious figures, are taken from British Mandate Palestine and from the records of the sha’bī courts in Israel. Under British rule, between 1917–48, thirty-two out of fifty-six real-estate transactions in Jerusalem involved waqf properties that changed hands through istibdlūl bil’darāḥīm (Reiter 1996, 177). In most cases, the waqf sold unused urban land and invested the proceeds in the construction of new buildings for the waqf on other vacant plots in its possession, or in purchasing houses or warehouses.

14. On long-term transactions such as ḥārī, āḏrawīn, masāhra, and khulās in the Ottoman period, see Gerber 1988; Baer 1979; Glavé 1895; Mercier 1899; Abibat 1901 and Hoexter 1984 and 1997.

15. For examples, see Jerusalem Shābī’s Court records [henceforth: Jerusalem shābī].
One of these transactions was a sale by the family waqf of ‘Ali Karīm al-Dīn al-Nammarī of a twenty-dunam stretch in Jerusalem to the English Sports Association for use as an athletic field. The qaḍī who permitted the transaction was employed by the SMC, which also approved the sale. Given the political sensitivity of selling such a large waqf plot in Jerusalem, it is implausible that the qaḍī, who was subordinate to Hájj Amīn al-Ḥusaynī, did not receive the latter’s consent prior to giving his approval. Hence, al-Ḥusaynī, who ruled that lands in Palestine are a holy asset that should not be transferred to non-Muslims, did not prevent the sale of a twenty-dunam plot of waqf land in Jerusalem to a British foundation.

Al-Ḥusaynī, as president of the SMC, was also involved in selling waqf properties administered by the council16 by the legal device of istibdal bi’t-rāḥim, without investing the money received to purchase a substitute property. Among these transactions was the sale of a twelve-dunam plot belonging to the al-Bira mosque waqf.17 True, the land was sold to Muslims, but it lost its waqf status and became privately owned.

During the British Mandate period, istibdal bi’t-rāḥim was also used by Muslim authorities as a legal means for approving government expropriation of waqf land to be used for the benefit of the public (Arabs and Jews alike), for a substantial amount of money as reparation (ibid., 180). The SMC also leased to private Arab investors uncultivated agricultural waqf lands for long periods, on the basis of special civil contracts issued according to civil Mandatory (and not shari’a) law. The waqf inspector of the SMC criticized these transactions as contrary to waqf interests and leading to the loss of its land, but despite this criticism, the transactions took place (ibid., 187).

After 1948, Israeli qaḍīs found a technical method of using istibdal to approve the selling of waqf assets, some of them to non-Muslims—Jews or Bahais (Levishly 1966, 41–76; Reiter 1989, 21–45).

455/147/150 [vol. 455, p. 147, no. 150], 433/146/315; 439/90/210; 461/11/17; 453/37/209.

16 In some cases, the SMC also administered family waqfs which the shari’ah court had rendered to its administration due to mal-administration of their mawāqif. See Reiter (1936, 140).

17 Jerusalem sjill, 500/101/114. There is evidence (Israel State Archives, SMC files, F/989, file 84) that SMC officers were looking for an estate to sell in order to raise money for renovating and developing other waqf assets, and that the al-Bira plot was chosen for this purpose.

For example, two large urban plots belonging to the ‘Ali Pāshā waqf in Acre were sold to the Bahais, one in 1962 (6.5 dunams in a village east of Acre) and the other in 1974 (6 dunams in Acre’s al-Majādala neighborhood).18 In another case, the qaḍī approved the sale of a waqf house in Haifa without asking the price or the name of the buyer, who was a Jew. In his records, he wrote that he relied on the judgment of the waqf administrator’s (civil) attorney, who also happened to be a Jew, and that the sale would benefit the waqf.19 The attorney was interested in selling this house without committing himself to a specific purchase and the qaḍī separated between the two parts of the istibdal, selling and buying, by granting the waqf administrator general permission to sell and specific permission to buy, and vice versa. In an interview I conducted with the qaḍī who authorized these transactions, he expressed his motivation as ‘satisfying present-day economic requirements,’ that is, maximizing the endowment’s profits.20 In so doing, the qaḍīs eased the restrictions on selling waqf assets according to market needs, even when the buyers of the waqf estates were non-Muslims, namely, Jews and Bahais.

In sum, the debate regarding the eternal nature of waqf, that is, whether the charitable purpose of the waqf or the original endowed properties should be preserved, was determined by medieval Islamic jurists in favor of the former one. The legal devices which authorized transactions of waqf estates were adapted by the qaḍīs in a flexible manner. Istibdal, the exchange of waqf properties, was used in the last century by Muslim official authorities to legalize state expropriation of waqf land, as well as in exceptional cases to sell waqf estates even to non-Muslims. Even Hájj Amīn al-Ḥusaynī, who attempted to use the waqf system in order to prevent Palestinian Muslims from selling lands to Jews, approved both the sale and long-term lease of waqf lands. Perhaps the present-day Muslims and Arab nationalists who proudly base their opinion on his fatwe are unaware of his contribution to the loss of the status of waqf of large plots of land in Palestine during the Mandatory period.

18 Acre sjill, Qar‘anāt, 11/83/74.
19 Acre sjill, Qar‘anāt, 5/22/68.
20 Interview with Shaykh Muhammad Ḥubaysh, conducted on February 27, 1986.
Conclusion

The current Islamic argument that Palestine in its entirety is waqf land is a political myth, based on a hadith interpretation. The new concept is threefold: first, it claims that all seventh-century conquered lands enjoy the status of waqf; second, as such, these lands are a holy Islamic patrimony; and, third, these lands are inalienable in the sense that they could not be sold or transferred to non-Muslims, and particularly not to Jewish Zionists. The invention of this concept by the Hams during the first intifada was driven by modern political goals: to prevent Arab moderate leaders from ceding any land to Israel and to stop Muslims from selling Arab-owned estates to Jews. When the Oslo process crumbled in the second half of the 1990s, the concept was rapidly inculcated into many Palestinians and other Muslim communities outside Palestine, and it was adopted by Yasser Arafat and the PA Mufti.

The new myth is based on a hadith referring to the seventh-century Islamic fiscal reform, putting it into a present political concept involving control of land and territory and giving it a new, anachronistic interpretation. The huge body of Arab and Islamic literature contains millions of traditions that Islamists could use as 'artefacts' to borrow Benedict Anderson's term (Anderson 1991), in the process of constructing a new myth.

Our case study sheds some light on the process of constructing a religious-based political myth by Islamist groups. It reveals the sources—hadith literature as historical precedents, reflecting the ideal period of the prophet and the first Righteous Caliphs—and the method that they used in endorsing a new legal interpretation. This method demonstrates selectivity in choosing the traditions, according to a literal criterion, without any research into the original meanings of the early texts and institutions as long as the literal text serves their political end. The Islamists' method in this case is also based on ignoring a significant proportion of other authentic literature that reveals alternative approaches. Furthermore, it is based on an absolute disregard of the accumulative practice of fourteen hundred centuries of Muslim rule.

The Hams concept regarding land tenure in Palestine reflects the Salafi orientation of authenticity, which implies slavish imitation of the past, or a contemporary reading of the past. As Sivan noted, Islamists tend to idealize the age of Muhammad and the four Righteous Caliphs. As this study shows, through a legal contention, the new concept of Hams is narrated by present-day Islamists without indicating a particular reference to the literature. By so doing, the Islamists present their concept as an axiomatic precedent and they avoid being challenged by non-radical Islam.

This case study explores how Islamists maneuver between two worlds, as Eisenstadt argued, between the worlds of tradition and modernism. The Hams Charter presents the organization's modern ideology and political ends in the context of the current Middle East conflict. However, their modern outlook is based on tradition. Early Arab and Islamic literature (and history) is being sanctified and anachronistically re-interpreted to cope with modern challenges.

Another interesting phenomenon related to the modern myth invented by fundamentalists is the rapid process of dissemination of such a myth until it becomes accepted wisdom. In the case of Palestine, the claim that it is a holy waqf in its entirety was adopted by PA officials and by many Palestinian and even some Muslim religious figures, as well as the general public outside Palestine. Why was the new myth so easily and rapidly accepted and how did it become common knowledge? Moreover, how is it that an ideologically-based religious-legal myth which was constructed by the Hams Islamist movement to distinguish its political goals from those of its nationalist opponent—the non-religious Fatah—has been welcomed and used in the political discourse by Fatah itself and other political rivals? Here, the actual context of the PA's Mufti 'Ikrima Sabri's fatawa is important: Yasser Arafat's participation in the peace summit talks of July 2000 at Camp David was presented by Hams as a surrender and a compromise on the issue of the Palestinian claim of return. As such, Arafat's political rivals charged that he was planning to cede sacred territory. Once it became clear that the peace talks collapsed (on July 22, 2000)—the PA's apparatus made use of the Hams myth as a means of overall Palestinian and Islamic consolidation. The broader Islamic World now became a strategic hinterland for the Palestinians. In order to achieve political unity and to face the new challenge, the PA recruited a religiously-based myth. However, Sabri's fatawa differs from the Hams text by grounding the legal opinion on a different historical precedent. Whereas Hams idealizes the first century of Islam (seventh century), the PA refers to the 1980s Palestinian nationalist hero—Hajj Amn al-Wasayn. The rapid and wide acceptance of the new myth can also be explained
by a number of additional reasons: first, the need for Palestinian unity opposing Israeli policy since 1997, with the demise of the Oslo process; second, the fact that Palestinian society is mostly religious; and, finally, the lack of high-level Islamic scholarship, that is, the fact that Palestinian laypeople are not acquainted with the religious and historical knowledge which could refute such newly-invented myths. This particular point was even raised by senior Islamist scholars, such as the Syrian Sa'īd Ḥawwā, who referred to the ignorance in religious matters of the masses who in his eyes are being misled by official 'ulama'. Ḥawwā wrote that “things have come to such a point that somebody can say to the Muslims: ‘This is Islam’ or: ‘This does not contradict Islam,’ and they would always believe that” (Sivan 1990, 54). Our case study shows that what Ḥawwā attributes to the official ‘ulama’ applies to the Islamists themselves. Thus, “What is Islam?” in any particular case undergoes a process of interpretation, and the methods of interpretation vary according to the political ends of those who are engaged in this process.