solely a legal obligation, but also a religious, ethical, and civilizational responsibility. It demands that all segments of society work diligently to preserve this great charitable legacy and ensure its continuity for future generations.

As for the overall perspective on this research, it clarifies that it is a beneficial addition to research and studies on endowments (Awqaf) due to its comprehensiveness, depth, and its provision of profound insights into the specific laws governing endowments in Algeria. Anyone who wishes to prepare research on waqf in general, or on endowments in Algeria in particular, cannot dispense with reading this study and benefiting from it.

To put it briefly, the endowment (Waqf) is a civilizational and humanitarian institution capable of effectively contributing to the advancement of Islamic societies, provided that integrated legal and administrative mechanisms are established to guarantee its protection and development. Activating these recommendations is the optimal way to revive the spirit of waqf and transform it into a practical instrument for achieving equitable and sustainable development in the present and the future.

Final Commentary on the Study:

It can be said that the waqf system is one of the greatest institutions innovated by Islamic civilization. It has integrated the religious, social, and economic dimensions within a comprehensive legal framework aimed at realizing the objectives (Maqasid) of Sharia in solidarity, benevolence, and sustainable development.

Through its comparative analysis of Islamic jurisprudence and positive law, the study has highlighted that a waqf is not merely an act of worship, but a comprehensive legal, economic, and social system requiring integrated protection to ensure its permanence and continued contribution. Endowments have been, and continue to be, instruments for supporting education, healthcare, and social solidarity. If properly regulated and invested, they are capable of making a beneficial contribution to the development of modern Islamic societies. Hence, the need becomes clear: to renew endowment legislation, enhance oversight of its management, activate the judiciary's role in its protection, and integrate modern means for its administration and investment. Thus, it is evident that protecting endowments is not

2. Establishing an independent national authority for endowments tasked with oversight, supervision, and periodic evaluation, working to protect waqf assets from loss or unlawful exploitation.
3. Activating specialized courts for waqf affairs to ensure the expedited resolution of disputes and the achievement of waqf justice based on Sharia rules and modern systems of evidence.
4. Developing mechanisms for waqf investment by opening new fields for it that are compatible with the modern economy, such as endowment companies, investment funds, and developmental projects with a social dimension.
5. Launching training and qualification programs for superintendents (Nuzar) and administrators (Mutawalleen) to enhance their administrative, financial, and legal competencies, and to promote a culture of responsibility and trustworthiness in the management of endowments.
6. Enhancing cooperation among Arab and Islamic countries in the field of exchanging legal and economic expertise regarding the management of endowments (Awqaf), and unifying the relevant jurisprudential and legislative references.
7. Integrating waqf principles into sustainable development policies, as it constitutes an important economic and social resource capable of contributing to poverty alleviation, and supporting education, healthcare, housing, and other areas.
8. Employing modern technologies in the surveying, documentation, and digital management of endowments (Awqaf) to ensure transparency and facilitate monitoring and oversight.

5. The judiciary plays a fundamental role in protecting endowments (Awqaf), serving as the guarantor for implementing the endower's will and preventing violations against them, particularly when administrative oversight is weak or due to ambiguities in some legal texts.
6. Studies have shown that although Arab positive laws have drawn inspiration from the principles of endowments (Awqaf) in Islamic jurisprudence, they still suffer from fragmented provisions and divergent jurisdictions. This necessitates the unification of endowment legislation and its development to align with contemporary economic and social developments.
7. The researcher also demonstrated that a lack of transparency in the management of endowments (Awqaf), coupled with weak administrative and oversight competencies, leads to the loss of a significant portion of endowment resources and undermines confidence in their developmental contribution.
8. The research affirmed that sound waqf investment is the optimal means to ensure the sustainability of the endowment, if it is conducted according to Sharia-based rules that balance preserving the principal with generating productive returns.

As for the recommendations, they are as follows:

1. Reconsidering endowment legislation in order to unify the provisions and ensure their consistency with the objectives of Islamic Sharia, while introducing amendments that mandate transparency and accountability in the management of endowments.

Key Recommendations and Findings:

Following a comprehensive study of the thesis "The Legal Framework for the Protection of Endowments (Awqaf)," the researcher arrived at a set of prominent findings and recommendations, which are as follows:

1. The endowment (Waqf) is an authentic Islamic system that represents a form of social solidarity, entrenching the principles of justice and economic balance in society. Throughout history, it has contributed to supporting education, health, and social care.
2. Endowment deeds possess a distinct legal force; they are not merely charitable acts but are permanent and binding contracts that entail specific rights and obligations. It is impermissible to dispose of their assets except in a manner that serves the public interest and in accordance with the endower's stipulations.
3. Endowments (Awqaf) possess an independent legal personality in both Islamic jurisprudence and Algerian law, granting them a separate financial liability and protecting them from seizure/capture, as they are assets designated for public benefit.
4. The protection of endowments (Awqaf) is manifested at three main levels: administrative protection through proper regulation, oversight, and accountability; investment protection through the exploitation of waqf assets via Sharia-compliant methods that ensure their growth and continuity while avoiding risk; and judicial protection through the resolution of disputes and oversight of the legality of actions pertaining to the waqf.

judicial oversight over them and affirming the principle that a waqf is a form of public property deserving of protection.

The researcher confirms that adjudicating waqf disputes primarily falls under the jurisdiction of ordinary courts. However, administrative judicial bodies are specialized for reviewing appeals against decisions made by the endowment administration. First-instance courts are competent to rule on civil cases pertaining to endowments, while administrative authorities handle lawsuits related to management and administrative decisions. Regarding territorial jurisdiction, hearing waqf cases is assigned to the court within whose district the endowed property is located. In terms of comparative legislation, the researcher notes that most Arab countries assign the adjudication of waqf cases to the court of the location of the waqf property or the seat of its administration, to facilitate verification and inspection of the assets.

In the second topic, the researcher addresses the methods of proving a waqf, highlighting the judicial means for establishing or denying waqf rights. He clarifies that proof is necessary to safeguard the endower's intention, identify the endowed property, and prevent encroachment upon it. In this, the judge relies on both Sharia evidence and modern legal evidence. The section also explains that accurate documentation of endowments contributes to reducing disputes and expediting their resolution, and that unifying and digitizing waqf records is a fundamental step towards enhancing transparency and protecting waqf assets from loss and exploitation.

Among the methods for investing idle waqf lands are long-term lease (Al-Hikr) contracts. The duration of the Hikr is for a "specified term," and its fee is divided into two parts: an immediate, upfront fee and a mutually agreed-upon annual fee.

In Chapter Three: Waqf Disputes and Methods of Proof:

In the First Topic of his final chapter, the researcher indicates that endowments are susceptible to disputes arising from four main scenarios:

1. Disputes stemming from the endower, such as disagreements among heirs, challenges to the validity of the endowment, or disputes over the endower's intention.
2. Disputes concerning the endowed asset itself, like conflicts over property boundaries, its utilization, or its sale.
3. Disputes arising from the administration of the waqf, due to negligence or overstepping of authority.
4. Disputes among the beneficiaries, including conflicts over entitlement or external infringement on the waqf's assets.

The parties to a general lawsuit can include: the endower (if the dispute relates to his administration or conditions), the beneficiary claiming his rights, the superintendent of the waqf as the responsible administrator, and potentially others, such as those encroaching on the waqf's assets.

The researcher points out that the contribution of the Public Prosecutor's Office in lawsuits has a significant impact on protecting endowments. As it represents the public interest, it is obligated to intervene in all lawsuits related to endowments, thereby achieving

funds, which include minimizing investment risks by selecting secured sectors.

Regarding the ownership of the waqf, he stated that after its establishment, it becomes independent from the endower in terms of ownership and management. Its assets are dedicated to charitable purpose and are administered by a superintendent that ensures its continuity.

The researcher also discussed the concept of a separate financial liability (Al-zimma al-maliyya) for the waqf, noting that it has a legal domicile and a representative who acts on its behalf and in litigation. The waqf is entitled to protection from taxes and fees, is not subject to statutes of limitation, and its assets cannot be seized.

He outlined methods for its investment and the protection of the waqf in lease agreements, detailing the parties involved in a lease contract and the methods for its execution, such as public auction or mutual agreement, with the condition that the lease duration must be specified. To address juristic differences concerning the leased endowed asset, laws have provided a solution by granting the waqf a legal personality, thereby affording it protection.

A waqf lease contract terminates for specific reasons, such as the expiry or rescission of the contract. The researcher detailed the sharecropping (Al-Muzara'a) contract, including the contracting parties, the formal offer and acceptance, and the labor involved. He stipulated that the contract must specify the land, the type of seeds, and the share for both the contractor and the landowner.

The researcher then included the modern Kuwaiti experience in managing endowments, which is considered a project for advancing the waqf sector in Kuwait, as well as endowment funds. Their objectives are to revive the tradition of waqf, renew its developmental impact, and meet the needs of society.

Subsequently, the researcher addressed the protection of the waqf in the face of the superintendent 's shortcomings. The superintendent 's function is defined as preserving the waqf, implementing the endower's conditions, collecting revenues, and fulfilling the rights of the beneficiaries. The guardian is prohibited from selling the waqf or transgressing against it.

His compensation is established for him in return for his management of the Waqf's affairs. In positive law, if the superintendent 's compensation is stipulated in the waqf deed, it is due to him. Regarding the financial source for this compensation, the researcher leaned towards the opinion of most jurists.

The research also dealt with holding the guardian accountable with legitimacy and wisdom and explained the method for his dismissal in positive law: by the endower or the judge, due to his immorality, betrayal, or inability to perform.

In Chapter Two: Investing Waqf Assets/funds and its Impact on its Protection: The researcher addressed the nature of investing waqf assets/funds, establishing it as a legal, economic, and developmental necessity that ensures its benefit to society. He cited evidence for its legitimacy, noted the differing opinions among jurists, and outlined the legal parameters for investing its

its legitimacy from the Qur'an and the Prophetic Sunnah, its Sharia and legal classification, as well as its status in Algerian law. Because superintendents play a role in protecting the waqf, the researcher outlined the conditions for appointing a superintendent (Nazir) to manage it: he must be prudent, competent, and trustworthy.

The study also dealt with the types of superintendents, including the original superintendent, which is established for a person without being delegated, the right of the endower to superintendents over his waqf, the entitlement of the beneficiary, the right of the judge by virtue of his authority, and the subsidiary guardianship delegated to a person.

Due to the proliferation of endowments in later times and the increase in complaints, several bodies were established, including: a dedicated Ministry of Endowments, the General Inspectorate, the Directorate of Endowments and Pilgrimage, and the Endowments Committee, chaired by a director appointed by the Minister. Its tasks include regularizing the status of public and private endowment properties when necessary, and overseeing the preparation of a manual for the waqf superintendent and the Central Endowments Fund. The Directorate of Religious Affairs and Endowments undertakes the implementation of measures and projects and the conclusion of contracts. The Waqf Agent monitors endowment properties. Mosques fall under public endowments, and their institution consists of four councils. Finally, there is the Direct Management Authority (the superintendent of the Royal Waqf), who is the person assigned the task of management and is appointed by the Minister.

permissible. He also outlined the jurisprudential conditions required for the beneficiary entity to be eligible for the endowment's revenue: it must be a charitable and righteous cause, and its existence must be perpetual.

Second Topic: Classifications of Waqf and its Legislative Framework: Waqf was classified into charitable (Khayri), familial (Ahli), and a third type that combines both (Musharak). In contrast, Algerian law classifies it into only two categories: Public Waqf and Private Waqf. Public Waqf is further divided into two types: one where a specific channel for its revenue is designated, making it impermissible to spend it on other charitable causes unless the original purpose is exhausted, and another type called a public Waqf with an unspecified beneficiary.

The Algerian legislator enumerated examples of public endowments, including places of religious worship, their affiliated real estate, and religious funds, institutions, and projects. The researcher noted that the legal frameworks in some Arab countries, such as Egypt, Morocco, and Tunisia, differ from one country to another.

In Algeria, endowments began with the advent of Islam, driven by Algerian society's commitment to the Waqf system. They went through a period of decline after independence until serious interest was revived through two fundamental decrees, the issuance of the Family Code, the constitution, and some ministerial decisions.

In Chapter One: The Administration of Waqf and its Impact on its Protection: The chapter was divided into two topics. The first topic addressed the superintendents (Nazara) over the waqf, establishing

Key Topics of the Scientific Material:

The researcher divided his study into: an introduction, a preliminary chapter, three main chapters, and a conclusion.

In the introduction, the researcher addressed: defining the research topic, its importance, the reasons for selecting it, its central problem, the study's objectives, the difficulties encountered, previous studies on the topic, and the research methodology adopted, which is the comparative inductive method. He also outlined his research plan, which consisted of four chapters.

In the Preliminary Chapter: The Nature of Endowment (Waqf) in Islamic Jurisprudence and Positive Law: The researcher addressed two main topics:

First Topic: Definition, Pillars, and Conditions of Waqf, this included: Defining Waqf: The researcher defined Waqf according to the various Islamic schools of thought, and according to the regulations and laws of Algeria and a few Arab countries. Proof of its Legitimacy: From the Qur'an, the Sunnah, and the practice of the Companions (may God be pleased with them).

The Pillars and Conditions of Waqf: The researcher presented the majority juristic opinion that Waqf has four pillars: the endower (Al-Waqif), the beneficiary (Al-Mawquf 'Alayh), the endowed asset (Mahall Al-Waqf), and the legal declaration (Sighah). Among its conditions are that the endower must possess the legal capacity for donation, be of sound mind, own the endowed property, and not be under interdiction or terminally ill. Regarding the endowed asset, the researcher mentioned that it must be known, specific, and legally

reforms to restore its civilizational and developmental impact in Algerian and Arab society.

The researcher elaborated in detail that endowments (Awqaf) are not limited to a single domain. Rather, they encompass the sphere of religious rites and worship, and their services have also included the fields of education, learning, health, and social care. They contributed to the advancement of study, both within mosques and in other endowment schools dedicated to disseminating religious and worldly knowledge, as well as through the endowment of libraries and the books

they contained to spread sciences and knowledge. In the field of medicine, the researcher pointed to what was well-known among Muslims: the endowment of hospitals to provide healthcare for individuals and society. Furthermore, endowments were designated for public services and various forms of social solidarity work.

This research emphasizes the necessity of continuously developing the legal and regulatory frameworks for endowments (Awqaf). This ensures adherence to the rulings of Islamic Sharia and maximizes the benefit from endowment resources through the implementation of clear policies for oversight and management, and by striking a balance between positive laws and Sharia controls. The researcher believes that through this, endowments can remain an effective tool for achieving public benefit and supporting charitable and developmental projects in society. Consequently, this research possesses broad scientific significance and a practical trajectory that contributes to reforming the endowment sector in Islamic countries.

3. **Social and Economic Importance:** By enhancing the endowment's (Waqf's) contribution to community development, achieving social justice, and bolstering trust in endowment institutions.
4. **Educational and Cultural Importance:** This is embodied in raising legal and Sharia awareness and linking knowledge to religious values.

The researcher believes that studying the legal framework for protecting endowments (Awqaf) between positive law and Islamic Sharia holds significant importance from both the theoretical and practical perspectives, within a comparative scientific framework aimed at unifying the legal and legislative reference. The endowment (Waqf) represents a venerable Islamic institution that contributes to building society and achieving solidarity. The researcher emphasized the urgent need for a foundational jurisprudential and legal framework that balances the rulings of Sharia with the requirements of positive law in protecting endowment assets.

This study has contributed to filling a legislative and cognitive gap in the subject of endowments (Awqaf), pushing towards the reform of the legal system in a manner that serves sustainable development. The researcher also sought to promote a culture of endowment awareness within society and official bodies, and to entrench the idea that a waqf is not merely an act of worship, but a comprehensive legal and economic system. The research presented practical solutions for developing the Algerian law specific to endowments and enhancing its contribution to achieving social justice and sustainable development. It also proposed institutional

Keywords:

Sharia - Endowments (Awqaf) - Law - Protection - Management - Investment.

Significance of the Scientific Material:

The research is characterized by a phenomenon of scientific and intellectual thoroughness; it is almost an encyclopedia of the rulings on endowments (Waqf) in Islamic jurisprudence, covering its definitions, types, legal provisions, and the opinions of Islamic schools of thought and scholars, all grounded in well-documented scientific sources and references. The same applies to its study of Algerian law and its specific articles related to endowments. Emanating from this scientific importance in the subject matter addressed by the researcher are secondary importances (Social, Economic, Educational, and Cultural). These importances can be briefly outlined as follows:

1. **Scientific Importance:** The scientific importance of the research is manifested in expanding the legal and jurisprudential knowledge and developing its studies on endowments (Awqaf), contributing to the comparative research between Islamic legislation and positive laws related to endowments, and in the abundance of sources and references from which the researcher derived the scholarly material for the research, documenting them with systematic, scientific rigor.
2. **Practical Importance:** The research encompasses a practical study for protecting endowments (Awqaf) and ensuring their continuity, proposes solutions for legal challenges, and provides guidance for administrative and judicial bodies.

Furthermore, the researcher declared at the outset of his study that the research aims to achieve numerous objectives, among them:

1. To enrich the legal texts pertaining to endowments (Awqaf) by comparing Algerian laws with the rulings established by Islamic jurisprudence on this matter, given that Algerian laws consider Sharia is their primary source for the rulings and regulation of endowments.
2. The researcher also included a prominent general objective, which is to derive jurisprudential (Shar-iyyah) and legal rules aimed at protecting the endowment system, hoping to find legal mechanisms that contribute to the sound management of endowments and the growth of their assets.
3. Among his primary intended objectives are:
   - A. To present recommendations for ensuring the comprehensive protection of endowments (Awqaf) by integrating the provisions of Islamic Sharia into positive laws, and to propose more beneficial supervisory and management mechanisms that guarantee transparency and accountability; thereby achieving a balance between Sharia controls and modern positive laws.
   - B. To derive the general rules and common principles shared by Sharia and law in the field of managing endowments, investing and develop them, to realize the objectives (Maqasid) of Islamic Sharia in solidarity, benevolence, and social development. This ensures the continuity and lawful, ethical investment of endowments in a manner that serves society and limits any exploitation or mismanagement of endowment funds.

legal provision back to its legislative origin—whether it aligns or shows shortcomings. This begins with the definition of an endowment (waqf) in both jurisprudence (Fiqh) and law, then proceeds to its diverse applications in their respective fields, their regulations, the oversight mechanisms for their integrity and growth, and the direction of their disbursements.

And it was clear and explicitly stated that the ultimate outcome of the researcher's general objective and his study is to propose a unified legal framework that guarantees the protection of endowments (Awqaf) and the growth of their assets, thereby realizing the purposes (Maqasid) of the endowment in achieving social justice and sustainable development. Furthermore, the researcher sought to root the concept of systematic protection for endowments in Islamic jurisprudence and in the specialized laws governing endowments and analyze the positive legal framework (Algerian and Arab) regulating endowments, and to propose mechanisms that ensure the preservation of endowment properties.

The researcher also indicated a general objective he shares with every research study on endowments (Awqaf) that motivates its researcher to investigate this subject: namely, the desire to make a scientific contribution towards improving the societal function of the Islamic endowment institution. However, he channeled his contribution by highlighting the legal gaps that have led to mismanagement within this system, resulting in severe and illicit exploitation of endowments.

Waqf and its Impact on its Protection," and his Master's thesis, titled: "A Comparison of the Rules Governing the Burden of Proof in Islamic Jurisprudence and Algerian Law." He has also published several scholarly articles in peer-reviewed academic journals and on the "Algerian Endowments" website. Furthermore, he has participated in scientific activities related to legislative endowments, such as conferences and scientific seminars. His academic interests include studying the judicial organization for resolving Waqf disputes and enhancing the developmental impact of endowments within Algerian legislation.

General Objective of the Scientific Material:

The researcher initiated his study based on a central problem, which he summarized through the following questions: Are the rules adopted by Algerian laws and the jurisprudential provisions they encompass capable of protecting endowments (Awqaf) and enabling them to fulfill their mission in society? Do endowments truly enjoy the same protection as public funds? Does the protection available in the laws conform to jurisprudential interpretations (Jjtihadat)? Is the prevailing administrative model conducive to the sound management, growth, and development of endowments? And what are the means to correct mismanaged endowments and revitalize inactive ones?

Consequently, it became clear that the research generally aims to study the legal framework for protecting endowments (Awqaf), while conducting a comparative analysis between the laws and their presumed source, "Islamic Sharia," by tracing each

The Legal System for Endowments Protection Between Positive Law and Islamic Sharia
A Comparative Study

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The original study is a thesis for which the author was awarded the Ph.D. degree from the Faculty of Law and Political Science at Mohamed Bin Ahmed University of Oran (2), for the 2022-2023 academic year.

The scientific abstract of the study was prepared by Ms: Gherbi Fatima and reviewed by the Editorial Management of the Waqf Magazine.

General Introduction to the Author/Researcher:

He holds a Ph.D. from the University of Mohamed Bin Ahmed, Oran 2. He specializes in Islamic Sharia and Comparative Law, with a primary focus on the jurisprudence of endowments (Waqf) and its laws, as well as comparative studies between them. He has published a number of research papers centered on the jurisprudence of endowments, their investment and financing in Islam, and the relationship between Waqf jurisprudence and civil law. His published research includes: "The Legal Personality of the