INCORPORATED CASH WAQFS AND MUDARABA, ISLAMIC NON-BANK FINANCIAL INSTRUMENTS FROM THE PAST TO THE FUTURE?

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1. INTRODUCTION

Cash waqfs are charitable endowments established with cash capital. What distinguishes these from the standard real estate endowments is the nature of their capital, *corpus*, which is in the form of cash. The *corpus* of the real estate waqfs, by contrast, is in the form of real estate. Thus, whereas a well to do Muslim normally endows his real estate and channels its rent revenue for charity, in the case of a cash waqf, not real estate but cash is endowed and the revenue generated out of the investment of this cash is then channelled for charity.[2] Alternatively in modern times, a cash waqf can also be established with the shares of incorporated joint-stock companies. Imam Zufar, who had approved of the cash waqfs for the first time, had envisaged that the *corpus* should be invested through *mudaraba.*

Although the origins of cash waqfs can be traced back to ancient Mesopotamia, Greece and the Roman Empire, their full development and maturity in the Islamic world had to wait until the 16th century, when they became the most popular form of philanthropy among the Ottomans. This popularity did not fail to trigger opposition among the learned circles. The basic argument of those, who opposed the cash waqfs was based on a seemingly powerful point: once endowed, the *corpus* of a waqf belongs to Allah. But while investing the *corpus* of a cash waqf, whether in the form of a *mudaraba* or simple loaning, the cash endowed is inevitably distributed to the borrowers. But what belongs to Allah, the opposition argued, cannot be distributed to third persons (Çizakça, 2000)!

It should be noted, however, that only the right to utilize the waqf capital, usufruct, was distributed to the borrowers, not the ownership. The latter was protected by a hefty collateral usually in the form of the borrower's house. This Ottoman arrangement was known as *istiglal.* In this arrangement, borrowers from a cash waqf used its capital for a limited period, usually a year. During the period that the borrower kept the borrowed cash, he was permitted to continue using his house, which he had given to the waqf as collateral. In return, the borrower paid a rent to the waqf. When the borrower paid back his debt, the collateral, his house, was returned to him. Thus, the borrower's house had two functions; it served both as a collateral and a source of rent income for the cash waqf during the period, when its capital was loaned out. Whether the capital of the endowment was lent as credit to the borrowers and the return was, in fact, simply the ordinary interest, or the whole investment process was perfectly legal, constitutes a debate (Mandaville, 1979; Çizakça, 1993).

The cash waqf controversy lasted throughout the sixteenth and seventeenth centuries without conclusion. Meanwhile, however, thousands of cash waqfs continued to be endowed. In Istanbul, of the 2.517 waqfs established in the period 1456-1551, 1.161, that is 46%, were cash waqfs (Barkan and Ayverdi, 1970: XXX), and in the smaller city of Bursa, there were 761 cash waqfs during the 18th century (Çizakça, 1996: 132). Apparently, notwithstanding the controversy, based upon Abu'l-Su'ud's *fatwa* and supported by the Ottoman sultans' orders, these waqfs continued to flourish. Nowadays, cash waqfs, quasi cash waqfs or mixed cash-

[1] The author would like to thank to the Malaysian organizers and his assistant Emin köksal for drawing the figures.

[2] Actually the boundaries between the two types of waqfs need not be so clear cut. For, often waqfs with mixed capital were also endowed. There were excellent legal reasons for this. For more details see, M. Çizakça (2000).

real estate waqfs exist in various forms of development and sophistication, in Turkey, Iran, Egypt, Sudan, India, Pakistan, Bangladesh, Malaysia and Singapore (Çizakça, 2000: ch.3).

FIGURE 1
(Cash Waqfs)[3]

Figure 1 above, clarifies the process by which a cash waqf functioned. An Ottoman cash waqf was established by a generous person, who endowed his savings in the form of cash for a charitable purpose. This cash was then lent to various borrowers. The number of these borrowers usually did not exceed 20. As collateral, the borrowers transferred the ownership of their houses to the waqf, which allowed them to continue using their homes. In return, the borrowers paid rent to the waqf for as long as they kept its capital. Once they paid back the money they borrowed, the ownership of the collateral reverted back to them. The total amount of rent paid to the waqf constituted the profit and was divided into three parts: the first part was used to finance the charitable purpose for which the waqf was established in the first place; the second part was used for administrative expenses and the last part was added to the original capital so as to protect it from inflation. Some cash waqfs could also enhance their original capital by the donations made by other cash waqfs.

Although ultimately the endowed cash was earning cash, i.e., a cash-cash transaction and therefore constituted potentially a usurious transaction, the fact that the cash earned by the waqf was in the form of rent for a pawned real estate, transformed the whole process into a perfectly legal transaction. In short, cash waqfs obeyed the letter of the interest prohibition. But since the endowed cash yielded a fixed return, which hardly changed over the long term, in fact, economically, the yield was very close to ordinary interest. An Ottoman cash waqf usually lent small amounts to people with modest means.[4] Thus they may be considered as the origin of the contemporary micro-credit institutions.

2. FROM CLASSICAL PARTNERSHIPS AND CASH WAQFS TO MODERN BANKING – THE EUROPEAN EVOLUTION AND THE CHALLENGE

As is well known, during the period 10th to the 13th centuries many institutions of the Islamic world were borrowed by the Europeans. While there is a high probability that the Islamic business partnerships, particularly the *mudaraba*, was borrowed during the 10th century and constituted the essence of the most important business partnership form, the *commenda*, in medieval Europe (Çizakça, 1996), there is conclusive evidence that waqfs were borrowed during the crusades. Monica Gaudiosi, a comparative historian of law, has proven conclusively that Merton College of Oxford was designed in the form of an Islamic waqf (Çizakça, 2000). This Oxford model was then emulated by Peter House of Cambridge and many other colleges in medieval Europe, particularly in France, Spain and Italy (Arjomand, 1998; Gozalo, 1998). It is also well known that even the word college was a corrupted form of the Arabic original, "*kulliyah*".

[3] W_1.......W_n : Other cash waqfs; B_1..... B_n: Borrowers; Σ Rent: Total rent.
[4] Latest research has shown that this was not always the case. Professor Suraiya Faroqhi has discovered in the Venetian archives that cash waqfs in Ottoman Bosnia did provide substantial entrepreneurial capital to Bosnian merchants active in trade between the Balkans and Venice.

Concerning the specific form of Islamic waqfs, the cash waqfs, these were also known in Europe and were called *Hauptgeldstiftung* or *Kapitalstiftung* in Germany, and *Monti di Pieta* in Italy. As in the Islamic world, in Europe also real estate foundations apparently preceded cash foundations. As the monetisation of the European economies progressed, *Hauptgeldstiftung* or *Kapitalstiftung,* both terms indicating cash foundations, emerged. By the year 1388, the *Hauptgeldstiftung* had evolved into the so-called *Rahmenstiftung,* which can best be translated as a foundation conglomerate. Thus, in 14th century Germany, it had become possible to establish a cash foundation as an integral part of a larger one. Or, put differently, a primary cash foundation could be perpetually enlarged by the addition of smaller cash endowments (Liermann, 1963: 160-162).

FIGURE 2[5]
(Monti di Pieta)

As for the Italian *Monti di Pieta,* these foundations were originally established by the well to do in order to rescue the poor from the usurers. Thus they were designed to lend to the poor at low rates of interest. Up to this point they were nearly identical to the Islamic cash waqfs, which also lent to the poor at reasonable rates (rents) resorting to the pawned real estates. The two institutions began to differ when the managers of the *Monti di Pieta* realized that they could enhance the capital at their disposal. That is to say, they realized that they could attract capital from the general population by rewarding the depositors with low rates of interest. Thus there would be two different rates of interest in the system. The lending rate to the poor would be higher than the borrowing rate from the savers, and the difference would constitute the profit of the *Monti di Pieta.*[6] This profit would then be used to enhance the capital so that ever increasing numbers of poor could be rescued from the usurers, who demanded much higher rates. In short, the modern deposit banking was borne! The result was a massive increase in the loanable capital and large numbers of borrowers were rescued from the iron hand of the usurers. These institutions originally established in Italy rapidly spread to the rest of Europe and became popular even in Poland and Russia. There is no doubt that abundant capital made possible by the *Monti di Pieta* also reduced the prevailing rate of interest in Europe and consequently encouraged private investment and growth. All of this was made possible due to the gradually relaxed prohibition of interest transactions in the West.

It is true that the stringent prohibition of interest enabled Muslims to develop highly ingenious financial instruments, i.e., the *mudaraba* and its derivatives. In the classical age of Islam, as Goitein and Udovitch have argued, these instruments sufficed to provide enough dynamism to the economy. Prohibition of interest therefore did not constitute in the Islamic world an impediment to relative growth in this early period, when Europe too was applying a stringent prohibition of interest. In the later centuries, however, the picture changed dramatically. While due to the relaxed prohibition of interest in the West the *Monti di Pieta* evolved into modern deposit banking during the 15th-16th centuries, the Ottoman cash waqfs, although they

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[5] $D_1 \ldots D_n$: Depositors; B_R: Borrowing rate; L_R: Lending rate; $\Sigma\Pi$: Total profit; ΣKL_R: Total capital lent at the lending rate; ΣKB_R: Total capital borrowed at the borrowing rate.

[6] Savers, who contributed to the capital of the *Monti di pieta* by depositing their savings were paid 6.25% interest while the borrowers had to pay 15% interest to the *Monti* (Van Der Wee, 1994: 123).

had nearly identical organizational structure, could not evolve in the same direction due to the stringent application of the interest prohibition in the liability side. Not able to collect cash from a multitude of savers and relying primarily upon the original endowment, Ottoman cash waqfs remained until the 20th century small scale financial institutions with limited cash available for loaning. Consequently, with lower supply of capital, prevailing rates of interest in the Ottoman empire were always higher than in Europe, making Ottoman private investment costly and impeding growth (Çizakça, 1996). Thus, although it did not matter in the early centuries of Islam, stringent prohibition of interest proved to be a serious impediment to economic growth in the later centuries.

So far, we have explained why the Ottoman cash waqfs could not evolve in similar fashion to the Italian *Monti di Pieta.* We need to turn our attention now to the partnerships. For, whereas Islamic business partnerships provided much needed dynamism to the Islamic world in the period 7th to the 12th centuries, they have failed to evolve in the following centuries. Research has yielded that the *mudaraba* partnership whether observed in the 7th or, a millennium later in the 17th century, remained essentially the same. By contrast, *commenda,* the European version of *mudaraba,* evolved into the massive joint-stock companies with hundreds of share holders, each may be investing modest amounts, but in total, huge sums (Çizakça, 1996). Why then did powerful joint-stock companies emerge in the West but not in the Islamic world[7], despite the fact that the *mudaraba* embodied the most important characteristics of joint-stock associations?

Part of the answer lies in the concept of corporation, a unique contribution of Europe into the history of finance. Origins of corporation can be traced back to the Roman law. Corporation is a community of individuals considered as a fictitious person that has its own distinct legal personality independent of its members. The members may die, or voluntarily withdraw from the partnership by selling their shares, and new members may enter the community, but the corporation continues its independent existence. The debts of the individual members is not the debt of the corporation and the debt of the corporation is not the debt of the members. Debts owed by third party individuals to the corporation, are not owed to its members. A person can be a member of various corporations. Corporations enjoy perpetuity and independence, that is to say, when a founding partner dies, the corporation continues its independent existence.

The earliest corporations did not emerge in the world of finance. The church was probably the very first corporation of medieval Europe. By the year 1200, the *canonist*s were arguing that the entire ecumenical church and the councils, which represented the Christian community, were corporations. This argument was based on the principle that the Pope could make a mistake, but the Ecumenical Council representing the whole Christendom would never make a mistake.[8] By the 14th century, jurists known as Commentators, began to envisage a city or even a kingdom as a corporation. These cities or kingdoms were immortal and had their own independent lives as distinct from their individual members/citizens (Canning, 1988: 474). These developments were followed by the application of the Roman law concept *Quod omnes*

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[7] Joint-stock companies did not emerge indigenously but were introduced in to the Ottoman empire as a Western invention during the late 19th century. By contrast the earliest such companies emerged in Europe during the 16th century. The famous Levant and the powerful English and Dutch East India companies were established at the end of the 16th and beginning of the 17th centuries. It is well known that while the former colonized India, the latter colonized Indonesia.

[8] The idea that the believers would not agree on a mistake also exists in Islam. Notwithstanding this, Islamic law could not develop the idea of corporation and the Islamic community is not considered as a corporation.

tangit ab omnibus approbetur[9] to the corporations. The result was the birth of elections and majority voting, in one word, democracy (Çizakça, 2002: 61-62).

There is no precise information as to when the idea of corporation was applied for the first time in business. It is very likely that the itinerant merchants travelling in caravans had formed the earliest merchant guilds in corporative form. From the 11th century onwards the merchant guild of Saint-Omer was fully organized (Pirenne, 1963, 23). The 13th century Flemish capitalists had operated in London through the *Hanse* of the Flemish towns, i.e., a corporation. Similarly, the magnates of Cologne also had established themselves in England through a similar *Hanse.* Although these early origins and the corporative structure of the *Hanse* are rather obscure, we have definitive information about the corporative structure of the 15th-16th century joint-stock companies (Postan, 1952:220).

Application of the idea of corporation into business life had far reaching consequences. The fact that the corporation had a life independent of its members or founders meant that even when a share holder died, the corporation continued to live. This stands in sharp contrast to the Islamic enterprises. According to Islamic law, when a partner dies, the whole partnership has to be liquidated and distributed among the heirs. This had several negative consequences: first, companies subject to Islamic law had, by definition, short life spans. For, their live spans were limited to the life spans of the partners. An untimely death of any of the partners brought with it the death of the company as well. By contrast, Western corporations enjoyed perpetual existence.[10] Second, the independent existence of a corporation led to massive accumulation of capital in the firm. This is because, the partners could freely expand their investments in the firm not fearing an untimely death of any of the partners and by extension that of the company. Third, theoretically, the perpetual existence of the firm facilitated the inflow of capital from the third parties as well. For, these third parties also did not have to fear that the firm would suffer an untimely liquidation. Fourth, thanks to the corporation, the third parties entered into legally binding contracts only with the corporation. By contrast, according to Islamic law, where corporation law did not exist, third parties had to get into such contracts with each and every partner, a situation, which obviously increased the transaction costs. This proved to be a great impediment when outside parties were asked to lend to the company. Consequently, they saw to it that the amount they lend would not exceed the repayment capability of the weakest partner. To sum up, corporative structure and the resulting perpetual and independent existence of the company directly led to massive accumulation of capital in Western firms, contributed both by the founders and the outside parties (Kuran, 2000 and 2003). Finally, not only the incorporated firm but also its capital was perpetuated (Çizakça, 1996).

Meanwhile, the judicial personality concept was extended in the West to the foundations (waqfs) as well. With both the foundations and the firms enjoying corporate structure, the two institutions came ever close. Foundations' directors were granted new rights and approached to the position of company directors. New foundations were established to manage financial portfolios. The directors of such portfolio companies were regarded as foundation trustees. This was a new business corporation acting as a trustee for its shareholders. Most 18th and 19th century European institutions established to manage the investments of share holders of canals and railways were incorporated trusts.

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[9] "What touches all must be approved by all"

[10] There is no exaggeration here. The V.O.C., the Dutch East India Company, lived almost 200 years. Established in 1602 it was only liquidated when Napoleon occupied Holland. The Hudson's Bay Company, incorporated on May 2, 1670, is still alive and well today (Van Dillen, 1970 and Milgrom and Roberts, 1992).

Islamic world failed to follow these developments. Islamic enterprises certainly did not have corporate structure. Only the waqfs came close to corporate arrangements. But the jurists are not in agreement whether the Islamic waqfs were truly corporate structures. As a result of all this, neither the cash waqfs nor the *mudaraba* partnerships could evolve into modern banking.[11] Deposit banking simply did not emerge. Both cash waqfs and *mudaraba* partnerships remained small institutions with limited capital. Moreover, while cash waqfs enjoyed relatively long life span, Islamic partnerships did not. Both had limited capital. While due to the lack of corporate structure the *mudaraba* partnerships were short lived and lacked capital, due to the stringent prohibition of interest on the liability side, cash waqfs could not expand their capital as *Monti di pieta* were able to do by attracting deposits from the public. Muslims failed to develop the cash waqfs into potent instruments of finance that could both face the Western challenge posed by deposit banking head on, and at the same time, remain loyal to the interest prohibition. This challenge is still relevant today as it has been in history.

3. FACING THE CHALLENGE

Muslims might be able to face this ongoing challenge by merging the two most important Islamic instruments of finance; *mudaraba* and cash waqfs, and by adding to this synthesis the Western corporative structure. The early details of such a model have already been outlined (Çizakça, 1998). Moreover, part of the task has already been successfully completed. If modern Islamic banks today function as sophisticated *mudaraba* partnerships, attracting the savings of thousands of depositors, this is thanks to the fact that these institutions now enjoy corporate structure and judicial personality, both borrowed Western concepts. It is to be hoped that these institutions will also enjoy another character of corporate bodies; longevity.

But, it is well known that while Islamic banks apply *mudaraba* on the liability side while collecting deposits, they resort mostly to *murabaha* on the asset side. Actually, the reader will have noticed by now the similarity between the historical cash waqfs and modern Islamic banks: both were designed originally to operate through *mudaraba* and both ended up utilising, from the Islamic perspective, less preferable instruments. This cannot be a mere coincidence. What then were (are) the reasons behind this undesirable situation?

Although risk aversion must be a trait shared by both the trustees of the cash waqfs and modern Islamic bankers, the causes of risk aversion in history and today differ. Whereas the trustees in history were precisely instructed in the waqf deeds by the founders of cash waqfs how to utilise the capital, modern Islamic bankers apply *murabaha* on their own initiative. It has been shown elsewhere that there are two basic reasons why modern Islamic bankers insist on applying *murabaha* despite all the criticism they have been subjected to; managerial and financial (Çizakça, 1996(b): 84). As far as the former is concerned, Islamic banks have found it very difficult to supervise and guide the individual entrepreneur in a *mudaraba* situation. This is quite natural, since *mudaraba* demands close, personal and continuous contacts[12] between the principal and the agent. However, we have learnt by experience that, unless seriously reorganised, the large and bureaucratic Islamic banks are simply not suited for this

[11] Evolution of the classical *mudaraba* partnership into modern Islamic banks had to wait until the 1960s, when the Mit Ghamr experience of the late Dr. Ahmed El-Naggar was conducted.

[12] In history close, personal and continuous contact between the principal and the agent in a *mudarabah* partnership could not be maintained due to distance and communication problems. But this difficulty was partially overcome by the small size of the mercantile community and informal controls imposed by this community on the agent. See, Avner Greif, "Cultural Beliefs," pp. 912-950.

task. Experience, again, has taught us that such co-operation is best provided by the relatively small, specialised companies as observed in the American venture capital sector.

As for the financial problem, Islamic banks encounter a mismatch of funds. Whereas the deposits they collect are of short-term nature, *mudaraba* investments usually involve long term commitments.[13] It is precisely at this point, i.e., the problem of mismatch of funds, that cash waqfs represent an exciting potential. Let us imagine for one moment that it were possible to combine cash waqfs and Islamic banks. Since waqf capital that is entrusted to an Islamic bank would represent a long term, even hopefully a perpetual fund, the problem of mismatch of funds would be definitively solved. We will now concentrate on how this combination can actually be realised.

Thus, if cash waqfs and Islamic banks could be combined, the financial problem mentioned above would be solved leaving only the managerial problem unsolved. Consequently, the merger of these institutions should be designed such that the managerial problem is also solved. Put differently, providing cash waqf / long term capital to the banks would not suffice, we must also see to it that this capital is invested with close, continuous, personal management that *mudaraba* demands. This necessitates that the management of *mudaraba* funds are totally separated from the bank management. This can be done in one of two ways: either Islamic banks establish, by providing equity finance, associated companies with autonomous management which specialise in *mudaraba* investment, or, better still, completely independent *mudaraba* companies are established by third persons and the capital of the cash waqfs are entrusted to these companies. Actually, this is not an either / or situation; these alternatives need not be mutually exclusive.

Let us now envisage how a cash waqf would be linked to an Islamic bank. This is explained in figure 3 below. Assume that a person wishes to establish a cash waqf with his savings. The founder approaches an Islamic bank and informs them of his intention. Then he deposits his savings in a special account and establishes a waqf attached to the bank. The bank would thus become the trustee of the waqf. Actually, the founder can divide his capital between several Islamic banks thus creating a portfolio, the first of three. Moreover, since each Islamic bank enjoys corporate privileges, the waqf attached to an Islamic bank would also be protected by the bank's corporate status.

FIGURE 3[14]
(Cash Waqf and Islamic Bank)

Next, the bank would transfer the endowment capital to various specialised *mudaraba* companies. In any case, by transferring the waqf capital to a multitude of such companies, the bank actually creates a second portfolio diversifying the risks for the waqf's capital. In this process the bank signs a *mudaraba* contract in the name of the waqf with each of these specialised companies. Thus, each *mudaraba* company becomes in fact the *mudarib* of the

[13] This is not a general rule, some *mudarabah* contracts, particularly in trade finance, can be of short term nature. But *mudarabah*s involving high technology investments in the industry yield returns only in the long run. For historical examples of both short and long term *mudarabah*s see; Murat Çizakça, *A Comparative Evolution* .

[14] M_1………..M_n: Mudaraba companies; E_1…….E_n: Entrepreneurs (incorporated joint-stock companies); K: capital transfer (equity finance); K+ΠK: Capital plus profit share; ΠKE_n: Profit share generated by the equity finance provided to the nth entrepreneur.

waqf and agrees in advance that it can invest the waqf funds only through *mudaraba* or *musharakah*. This solves the managerial problem mentioned above; Islamic bank is not any more involved in the management of waqf funds. This is entrusted to the specialised *mudaraba* companies. Actually, to be more precise, Islamic bank's involvement in the management of waqf funds in this model is limited to the selection and periodic assessment of the performance of the *mudaraba* companies. If the bank is satisfied with this performance, the waqf funds can indeed remain with the *mudaraba* company in perpetuity. But to ensure this, the *mudaraba* company must perform. To provide further protection to the waqf funds, the waqf insures the *mudaraba* capital through *takaful* insurance that would guarantee the safety of the original waqf assets.

Next, we come to the linkage between the *mudaraba* companies utilising the waqf capital and the entrepreneurs financed. Since, again, only *mudaraba / musharakah* instruments are used, there is no problem from Islamic perspective. Structurally speaking, we are talking about a triple *mudaraba* arrangement here. The first *mudarib* is the Islamic bank also fulfilling a trustee function as just described. The second layer is the various *mudaraba* companies and the third is the entrepreneurs. In this structure, it is possible to form three different sets of portfolios and thus minimise the risks. The first portfolio pertains to the Islamic banks, the second one to the *mudaraba* companies and the third one to the entrepreneurs. While financing an entrepreneur, it is perfectly possible, even advisable, that several *mudaraba* companies pool their resources and finance an entrepreneur. Such co-financing would not only diversify risks but would also mean that large amounts of capital can be transferred to a promising entrepreneur. Such a venture can generate a profit share well above the original capital invested.

Diversifying the risks by setting up three different sets of portfolios constitutes only one aspect of the perpetuity of the waqf funds. The other one is the re-investment of the profits returned to the waqf. Research has revealed that in the Ottoman economy, about a quarter of the cash waqfs established in the city of Bursa survived for more than a century and 81% of these surviving waqfs owed their resilience to capital enhancement realised either by the re-investment of profits or receiving further donations from various other smaller cash waqfs[15]. In view of this, it is suggested that the modern cash waqfs add their profit shares to their *corpus* thus ensuring the perpetuity of the endowment. Actually, it is quite possible that in this way, not only the perpetuity will be assured, but also, managed properly, the original endowment capital will substantially grow in real terms as well. Each *mudaraba* company returns to the waqf the capital that the waqf invested with it plus the profit share (K+ΠK). The locus of all such profit shares constitutes the sum of the profits for the waqf, which it spends for its purpose, capital enhancement and administrative expenses.

Actually, establishing a cash waqf within the framework of an Islamic bank and *mudaraba* companies, constitutes only one alternative in cash waqf creation. A second and much simpler alternative for creating a modern cash waqf involves direct endowment of incorporated joint-stock company shares. This can be done as follows; an individual with substantial means can allocate a part of the shares he owns for a cash waqf. He can stipulate further that the returns to be generated by these shares would belong to the waqf and be allocated for a specific charitable purpose. In view of the previous paragraph, he would be well advised to stipulate further that a certain part of the total returns would be re-invested by purchasing more shares and added to the *corpus* of the cash waqf.

[15] Murat Çizakça, "Cash Waqfs of Bursa", *op.cit.*

FIGURE 4
(Koç Foundation)

The Koç Foundation of Turkey constitutes the best example for this type. Since the companies in question are incorporated, they can enjoy longevity for reasons explained above. It would be reasonable to assume that this longevity would be reflected on the waqf as well. The Koç Foundation spends 80 percent of its revenues for educational purposes and reserves 20 percent for property investment, administrative expenses and the emergency fund. The emergency fund is allowed to accumulate in order to ensure that the share of the waqf within the overall Koç conglomerate can be maintained. Put differently, when the conglomerate decides to enhance its overall capital, the foundation uses its accumulated emergency funds to participate in this capital enhancement by buying the newly issued shares so as to keep its share within the conglomerate constant.

A third alternative in creating a cash waqf has surfaced in Turkey as a response to the authorities' insistence that the minimum capital necessary to establish a waqf must be about 500.000 US dollars. While the Kemalist bureaucratic establishment undoubtedly tried to impede the foundation of new waqfs with this new rule, philanthropists have responded to the situation by capital pooling. Recent research conducted with 452 waqf administrators has yielded that 92 percent of the waqfs sampled had more than one founder and the average number of founders was 35.6! Thus the new Turkish waqfs are rapidly becoming company like structures and are governed by Board of Governors. 43 percent of the trustees interviewed have stated that this new arrangement of multiple founders not only enables them to pool capital and thus meet the state's minimum capital requirement, but it also enables them to pool labour, talent and intellectual capacity. New solutions, however, lead to new administrative problems. For one thing, the interviews have shown that although nearly half of the waqf founders interviewed contribute unequal amounts to the capital, in 85 percent of the multiple founder waqfs each founder has an equal say in the Board of Governors.[16] This is where the new multiple founder waqfs differ from the incorporated joint-stock companies, where the voting power is proportional to the amount of shares held by each shareholder.

The importance of these innovations cannot be emphasised enough. This is because, for the first time in the centuries' long history of waqfs we have this institution at last provided with the means to benefit from the dynamism of companies. It will be recalled that notwithstanding Imam Zufar's prescription that cash waqfs should invest their capital through *mudaraba,* Ottoman cash waqfs had invested their capital by providing rent generating loans, *istiglal*. In the post 1967 Turkish Republic, however, waqfs have become direct recipients of companies' realised profits. Thus, ironically, not the waqfs of, Ottoman, but of the staunchly secular Republican Turkey, actualised, at long last, Imam Zufar's teaching [17]! The following figure summarizes the observations made above.

FIGURE 5[18]
(Multiple Founder Waqfs)

[16] Murat Çizakça, *et. all.,Philanthropy in Turkey.*
[17] For the near identity of equity finance and the historical *mudarabah* see; M. Çizakça, *Risk Sermayesi*.
[18] ΣΠ: Total profit.

4. CONCLUSION

We can also interpret these waqf-company relations as the rebirth of cash waqfs. Thus, Ottoman cash waqfs destroyed in 1954 by being incorporated into the Bank of Waqfs, *Vakıflar Bankası*, have been re-born, like a phoenix, albeit in a radically different organisational structure and in a far more dynamic form. It will be suggested here that these latest developments taking place in Turkey and elsewhere in the Islamic world should be carefully taken into consideration by those interested in re-designing the cash waqfs. What we need is detailed studies of the successful cash waqfs all over the Islamic world. For, often it is the case that creative Muslims establish successful institutions faster than the scholars can envisage. Finally, the Western experience should not be ignored. For, according to the *hadith,* "wisdom is the lost property of the believer…". I do not mean here, by Western experience, merely financial institutions like the corporations, important though they are. Other Western concepts and institutions such as the rule of law, freedoms of thought, entrepreneurship, as well as, property rights, human rights and democracy are all equally important. These are *conditio sine qua non* for any successful economy in the 21st century. After all, even the best-designed financial institution must operate within a broader macro-economic/socio-political framework and is doomed to fail unless these values, concepts and institutions exist. To what extent these conditions already exist within the centuries old Islamic traditions and to what extent they need to be borrowed from the West, however, constitutes special research beyond the present confines of this article.

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