

## AWQAF IN HISTORY AND ITS IMPLICATIONS FOR MODERN ISLAMIC ECONOMIES\*

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*This paper aims at analysing the relevance of the historical awqaf system for modern Islamic economies. The main argument focuses on the fact that the awqaf system has provided throughout Islamic history all the essential services at no cost to the state. Thus, a successful modernisation of the system implies a significant cut in government expenditure and all the associated benefits; including downsizing the state sector and a reduction and even an eventual elimination of riba. As far as the modernisation of the system is concerned, historical evidence indicates that the real exiting potential lies in the cash awqaf. It is envisaged here that two powerful Islamic financial institutions, the cash awqaf and mudarabah need to be combined. It is argued further that this combination should take place within the framework of Islamic banks and thus alter the portfolio of these banks in the desired direction, i.e. increasing the mudarabah/murabahah ratio.*

### 1. INTRODUCTION

Pious foundations are known in the Islamic world as awqaf, <sup>1</sup> *boniyad* or *habs*. Whereas the latter two terms are used primarily in Iran and North Africa respectively, the former is known, with slight variations, in the rest of the Islamic world. The word waqf and its plural form awqaf are derived from the Arabic root verb *waqafa*, which means causing a thing to stop and stand still. The second meaning is simply pious (charitable) foundations.

However defined, this institution, whereby a privately owned property, *corpus*, is endowed for a charitable purpose in perpetuity and the revenue generated is spent for that purpose, stands out as one of the major achievements of Islamic civilisation. All over the vast Islamic world, from the Atlantic to the Pacific,

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\* Unless otherwise mentioned, this paper is based upon my forthcoming book; Murat Çizakça, *Management of the Charitable Foundations (Awqaf): Islamic World from the Seventh Century to the Present*.

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<sup>1</sup> Since the word waqf has become part of the English language, it is not italicised in this article. As its plural awqaf is used because it is equally common in English language and is easier to pronounce than waqfs.

magnificent works of architecture as well as myriad of services vitally important for the society have been financed and maintained for centuries through this system. The resilience of the system is, indeed, remarkable. It has been shown that many awqaf had survived for considerably longer than half a millennium and some even for more than a millennium.<sup>2</sup>

Despite these overwhelming achievements, the history of awqaf is a turbulent one. For centuries the fate of this institution was closely linked to the fates of the states under which they functioned. Consequently, they experienced dramatic ups and downs. The period of establishment and growth was often followed by one of decline and neglect and with a new state emerging, a renewal and prosperity once again prevailed.

Nowhere in this long history of fluctuations, however, did the awqaf experience the universal and deliberate destruction that was inflicted upon them during the 19<sup>th</sup> and 20<sup>th</sup> centuries, a fact which pinpoints, of course, to western imperialism as the culprit. Yet, the greatest destruction took place not in a region colonised by the great powers, but in Turkey, an Islamic country which was not colonised. Since an explanation of this paradox has already been provided elsewhere,<sup>3</sup> we will now turn our attention to economic issues.

## 2. ECONOMIC DIMENSION

It would be appropriate at this point, to point out briefly the relevance of the waqf system for modern Islamic economics. Indeed, economists looking at the waqf system would be perplexed by the fact that a myriad of essential services such as health, education, municipal, etc., were provided in history at no cost whatsoever to the government. Therefore, assuming that the efficiency problems are solved, the waqf system can significantly contribute towards that ultimate goal of every modern economist; massive reduction in government expenditure, which leads to a reduction in the budget deficit, which lowers the need for government borrowing thus curbing the ‘crowding-out effect’ and leads to a reduction in the rate of interest consequently reining a basic impediment for private investment and growth.

From the point of view of Islamic economics, the most important item in the above mentioned agenda is, obviously, the reduction in the rate of interest. The waqf can, indeed, lower the interest rate by providing the most essential social services without any cost to the government. This important contribution of the waqf system towards the gradual elimination of *riba* is not yet recognized by the

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<sup>2</sup> Daniel Crecelius, “Introduction”, *Journal of Economic and Social History of the Orient*, Vol.38, Part 3, p.260

<sup>3</sup> Çizakça. *op. cit.*, *passim*.

Islamic economists.<sup>4</sup> It will be proposed here that it should be. Put differently, a re-establishment and revitalization of the waqf system should be considered as a vital step in the struggle to eliminate *riba*. It can be argued that, since it prohibits it by law, Islam demands an immediate and not such a gradual elimination of the interest. This is certainly true and yet utopia. No country has ever succeeded in eliminating interest abruptly by law. There is evidence that even classical Islam could not entirely get rid of interest. In modern times, even the recent Islamization of the banking system has not helped: to the extent that Islamic bank insists on *murabahah* rather than *mudarabah* or *musharakah*, interest merely concealed but not eliminated. In view of the above, it will be proposed here that the gradual elimination or reduction of interest through the waqf system should be given serious consideration.

The waqf could fulfil these functions by voluntary donations made by the well to do. Thus, privately accumulated capital may be voluntarily endowed to finance all sorts of social services to the society. At this point another extremely important function of the awqaf becomes apparent: not only does it help reduce government expenditure and consequently the rate of interest, it also achieves another modern economic goal; a better distribution of income in the economy.

Moreover the waqf definitively solves the problem of the under-supply of public goods, so often observed in conventional economies. This point needs to be elaborated. In this context we must first of all note that the services offered by many constitute public goods, the consumption of which is non-rivalries and the provision thereof is non-excludable.

As is well known, the standard economic theory envisages that since, as rational individuals, consumers of public goods would tend to free ride, they would fail to contribute to the costs of creating these goods. Consequently, under the conditions of rational behavior, public goods would tend to be under-produced in conventional economies.<sup>5</sup>

As far as the Islamic World is concerned, there is so much evidence to the contrary, i.e., to the ubiquitousness of the public goods supplied by the awqaf that it would be more appropriate to talk about an excess supply of public goods rather than their scarcity. It will be hypothesized here that in an Islamic economy this excess supply, not scarcity, may emerge as the basic problem. It should be emphasized at this point that this observation is not limited to historical dimension

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<sup>4</sup> The most recent survey of Islamic economics is totally unaware of the importance or even the existence of endowments. See Mohamed Aslam Haneef, (1995). The linkage with *riba* was also not raised in the proceedings of the Jeddah conference of Islamic economists on awqaf. See IRTI, (1987), *Management and Development of Awqaf Properties*, Jeddah: IRTI/IDB.

<sup>5</sup> Robert H. Bates, (1995), "An Assessment of the New Institutionalism", in J. Harriss, *et. al.* (eds.), p.30

but is valid for all times. Indeed, there is no justification for the assumption that the modern Muslims would be less pious than their forefathers. This is attested by the fact that, given right conditions, modern Muslims would be just as keen as their forefathers to establish awqaf.<sup>6</sup>

All of this has very important ramifications for the present state of Islamic economics. Nearly all of the best known Islamic economists have assigned a crucial role to the state in a future Islamic economy and advocated that the state should redistribute income in favor of the poor, should interfere in the markets when necessary, ensure the provision of basic necessities, and even, according to one economist, initiate massive land reforms.<sup>7</sup>

Latest research in Ottoman economic history has revealed that in Ottoman Empire, one of the greatest of Islamic empires, the state did nearly everything that these economists have proposed – with disastrous consequences.<sup>8</sup> The state did assign top priority to the redistribution of income at the cost of undermining capital accumulation. Interfered in the markets, taxed excessively, far exceeding the *zakah*, applied a ceiling to profits, controlled all the basic factors of production and physical capital, exerted a firm control over the factor prices, even applied a massive policy of food provisioning to the masses and ended up consciously impeding the private sector and encouraging the state sector, creating what has been called the “proto-pseudo-socialist Ottoman system”.<sup>9</sup> Unsurprisingly, this “proto-pseudo-socialist Ottoman system”, has the dubious honor of succumbing, even before the Soviet Union, to the more efficient western capitalism.

In view of above, it will be proposed here that in an Islamic economy of the future, redistribution of capital should not be allowed to overwhelm capital accumulation. Moreover, the former, i.e., redistribution, should be left basically to the individual Muslims themselves. Put differently, redistribution of wealth should be achieved primarily by the *zakah* and the waqf system. This author is of the opinion that there is powerful support to his proposal in the holy Qur’an, itself. For, there is wisdom, not properly understood by many Islamic economists, behind the fact that *zakah* is the only tax specifically mentioned in the Qur’an.

Most of the debate among the concerned scholars has been centered on whether the state is permitted to collect taxes in addition to *zakah* and how to legitimize such collections. All the scholars seem to take it for granted that the state needs extra revenue.<sup>10</sup> The possibility that the Qur’an, by specifically mentioning only

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<sup>6</sup> Latest evidence from Turkey concerning the dynamic expansion in the number of newly established awqaf confirms this.

<sup>7</sup> Mohamed Aslam Haneef (1995).

<sup>8</sup> Çizakça (1996).

<sup>9</sup> *Ibid.*, pp.208-210.

<sup>10</sup> For an exception see Monzer Kahf (1995), pp. 105-127, where the conditions under which the state may impose additional taxation are clearly specified.

the *zakah*, may have conveyed a deliberate message to limit the size of the state, has occurred to no one.<sup>11</sup>

This single tax (and a modest one at that) implies modest revenue, which implies, *ceteris paribus*, a small state. The modernity of the Qur'an in this age of universal efforts to downsize the overgrown state sectors everywhere is, indeed, striking. The message of the Qur'an is quite clear; in a future ideal Islamic economy the size of the state sector should be limited to what it collects through the *zakah*. This also implies that the state will basically limit itself to defence with all the other services being financed by the only other instrument mentioned in the Qur'an; the *sadaqa*, alms. The importance of the waqf system lies precisely here; for it is the very institution which transforms alms into a myriad of services in perpetuity.<sup>12</sup>

The waqf system contributed significantly to another major economic problem: employment. The ratio of persons employed by the waqf system to those employed directly by the state fluctuated in Turkey as follows: at the turn of the century 8.23%, in 1931 12.68% and in 1990's 0.76%. Consequently the waqf system appears to have ceased being a major source of employment in the Turkish Republic. Although these figures do not include the thousands of various self employed retailers and small scale producers using the waqf premises and the tens of thousands of individuals employed by the new waqf funds established according to the secular Turkish Civil Law, it is still abundantly clear that the overall contribution of the waqf system to employment has fallen significantly.<sup>13</sup>

The decline in the contribution of the waqf system to the employment situation reflects the overall decline of the system in Turkey prior to the 1967 Act. This decline was a direct outcome of a deliberate state policy. To understand this dramatic phenomenon, we must first of all analyze the forces which prompted the state to attack the waqf system.<sup>14</sup> But this takes us from the realm of economics into that of history and for that, we need to go to the very origins.

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<sup>11</sup> See Abulhasan M. Sadeq (ed.), (1992).

<sup>12</sup> On the near identity of awqaf and *sadaqa* see the *fatwa* of the Shaykh al-Mazandarani in Çizakça (forthcoming book), Chapter 3.

<sup>13</sup> This statement is incorrect for the period 1930's to 1970's. Recent research has revealed a significant recovery in the Turkish *awqaf* system after the 1980's. See F. Bilici "Acteurs de Development des Relations entre la turquie et le Monde turc: Les Vakifs", L'urgence du Monde Turco-persan, (Paris: A.F.E.M.O.T.I, Cahiers d'etudes sur la Mediterranée orientale et le Mone Turco-Iranien, 1992), No.14 and *id.* "Sociabilite et expression politique Islamistes en Turquie les nouveaux Vakifs", Revue Francaise de Science Politique, Vol.43, No.3, 1993, pp.412-434.

<sup>14</sup> The attack by the state was not limited to Turkey alone but occurred nearly everywhere. For detailed information, the reader is referred to Çizakça (forthcoming).

### 3. THE ORIGINS

It is well known that charitable endowments have a history considerably older than Islam and it is also very likely that Islam may have been influenced by earlier civilizations. Ancient Mesopotamia, Greece, Rome as well as the pre-Islamic Arabs certainly knew of charitable endowments.<sup>15</sup> The extent to which Islamic awqaf were influenced by these ancient institutions and the extent to which they were the product of the genius of Islam is a question that is still not resolved: while Roman origins have been rejected, primarily Byzantine, but also Mesopotamian, Sasanid, Jewish and Buddhist influences have been accepted as plausible.<sup>16</sup> Thus, we have a fairly clear situation; Muslims were urged strongly to endow their assets in the service of mankind and they knew how to do it from the earlier civilizations, which had dominated the geography they had found themselves in.

At this point the reader may be impressed by the ability of Islam to borrow from other civilizations. This ability may well have originated with a tradition attributed to Prophet Mohammad (pbuh):

“Abu Huraira (May Allah be pleased with him) reported Allah’s messenger (pbuh) as saying: a word of wisdom is the lost property of a believer, he can take it wherever he finds it, because he is more entitled to it”.<sup>17</sup>

Although waqf is not specifically mentioned therein, the concept of wealth redistribution is strongly emphasized in the Holy Qur’an.<sup>18</sup> Moreover, there is definitive *sunnah* evidence that many great personalities of Islam had endowed their properties for charitable purposes. A *hadith* narrated, again, by Abu Huraira has most probably constituted the origin of this institution in the world of Islam:

“Abu Huraira (may Allah be pleased with him) reported Allah’s messenger (pbuh) as saying: when a man dies, all his acts come to an end, but three; recurring charity (*sadaqa jariya*) or knowledge

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<sup>15</sup> B. Laum, *Die Stiftungen in der griechischen und römischen Antike*, (1914); J.C. Rockwell, *Private Baustifungen für die stadtgemeinda auf Inschriften der Kaiserzeit im Westen des römischen Reiches*, 1909; Rostowzew, M. *Geschichte det Staatspacht in der Römischen Kaiserzeit*, Philogus, Supplementband IX, Drittes Heft; Demetrios J. Constantelos, *Byzantine Philanthropy and Social Welfars (Studies in the Social and Religious History of the Medieval Greek World)*, Vol.I, 1991; Mohd Zain b. Haji Othman, (1982), p.7-8.

<sup>16</sup> Fuad Köprülü, (1942), p.10-11.

<sup>17</sup> Sunan al-Tirmidhi, (1992), *bab 19, hadith 2687*

<sup>18</sup> The Qur’an, (2: 215, 264, 270, 280); (3: 7); (111:92); (58: 12, 13).

(by which people benefit), or a pious offspring, who prays for him”<sup>19</sup>.

Although the classical sources have, traditionally, taken into consideration each one of these good deeds, (*sawab*), separately, we prefer to combine them together. For, it will be argued here that such a combination constitutes the essence of the Islamic awqaf. Thus, Muslims needed an institution that would enable them to perform all three of these good deeds. This institution was the awqaf which can, indeed, assure ongoing, recurring charity for many years, even centuries, after the death of the founder. It can finance scholars whose lasting works would benefit mankind for a long period and the *sawab* that accrue to them would be shared by the waqf’s founder who had provided for their sustenance in the first place. Finally the management of the waqf can be entrusted to the offspring of the founder so that while, on the one hand, careful and loyal management is assured, on the other, the offspring would pray for the deceased for, thanks to his waqf, he or she is not destitute.

Although the Muslims may have been encouraged to borrow from other civilizations without any hesitation, as the aforementioned *hadith* suggests, the actual process of borrowing was not simple. For, whatever institution was borrowed, it had to be moulded and re-shaped so as to conform to the basic teachings of Islam. There were substantial differences in the opinions of the early great jurists concerning the structure and judicial framework of the waqf.

The basic problem pertained to the Islamic law of inheritance: since a founder could entrust the management of his waqf to any one of his offspring and thus initiate a de facto primogeniture, this could alter the basic principles of Islamic law which promulgates a just and fair distribution of property among all the heirs.

But for the reasons that will be explained below, the Muslim society needed this institution. So the great jurists ended up tolerating it. The turning point came when Abu Yusuf observed how important these institutions had become during his pilgrimage and introduced new legislature, which facilitated the establishment of foundations. The legal structure of waqf funds was firmly established during the second half of the second century.<sup>20</sup>

At this point, it needs to be explained how a system which did not originate in Islam, not specifically mentioned in the Qur’an and objected initially by many of the eminent jurists, was embraced so enthusiastically and developed to such a phenomenal dimension. There can be two explanations: historical and economic. Let us first consider the former. The great Islamic conquests enriched the Muslim world beyond any imagination and prepared the economic preconditions for the

<sup>19</sup> Imam Muslim (1992), *Sahih Muslim, (Kitab al-wasiyya), Al-Kutub al-sittah we shuruhuha, bab 3; (al-sawab ba’d al-wafat), hadith 14*, Istanbul: Çağrı.

<sup>20</sup> F. Köprülü (1942), p.4.

emergence of this institution. We have to remember, moreover, the emphasis attached in the prophetic traditions on the importance of doing good and charitable deeds, as mentioned above. Since wealth is considered in Islam as an important source of trial, the natural tendency among the Muslim rich to do good deeds as a preparation for the hereafter can be easily understood. Thus, it is for these historical reasons that although not mentioned in the Qur'an specifically, and objected initially by some jurists, the waqf has been embraced.

But this is not all. Economic theory also has its own explanation why the waqf system was needed universally. Indeed, according to the theory there were compelling reasons for such a system to emerge. We had seen above that under the conditions of rational behavior, public goods would tend to be under produced. This dilemma pertaining to the creation of public goods promotes a demand for the creation of non-market institutions.

This universal "demand for the creation of non-market institutions" may also explain why, despite the fact that the waqf is not specifically mentioned in the Holy Qur'an, this institution became so popular and widespread in most of the Muslim world. The theory explains, furthermore, the universality of the awqaf or waqf like non-market institutions. For, after all, endowments were known not only in the Muslim world but also in other great civilizations.<sup>21</sup> Moreover, once accepted and firmly established by the Muslims, spread to the west during the Crusades. Indeed, at least in the case of England, it has been definitely established that the famous Oxford University was built upon the Islamic waqf model.<sup>22</sup>

#### 4. FUNCTIONING OF THE SYSTEM

In a nutshell, a waqf, whether in North Africa or India, functions as follows: a founder who has accumulated private wealth decides to endow his personal property for a specific, often pious, purpose. The amount of the original capital, *corpus*, the purpose for which it is endowed and all the other conditions of management are clearly registered in a deed of endowment submitted to the authorities. In this way the privately accumulated wealth of a pious Muslim becomes God's property. The founder strictly stipulates how the annual revenue of the waqf should be spent. This revenue (usufruct) may be allocated completely for a pious purpose (waqf *khayri*), or to a group of beneficiaries. The management of the waqf is entrusted to trustees, *mutawallis*, whose functions may be fulfilled by the founder himself during his lifetime. Thus, there are four major components of any waqf: the three groups of individuals; the founder, the beneficiaries, the trustees and the endowed capital itself, or the *corpus*. Since a detailed analysis of

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<sup>21</sup> For a comparison of pious endowments in Mamluk Egypt, Mughal and Ottoman Empires, Late Ming China and Old Babylonia see the special issue of *Journal of Economic and Social History of the Orient*, Vol.38, Part 3, 1995, and for an introduction to the huge literature on Europe see Bronislaw Geremek, (1994).

<sup>22</sup> Monica M. Gaudiosi (1988), Vol.136, No. 4, pp.1231-1261.

all these components has already been made by the present writer,<sup>23</sup> we will now briefly look at only some of these components.

#### 4.1 Beneficiaries and the Family Awqaf

At this point it is important to note that awqaf allocated their annual revenues to a myriad of beneficiaries. Moreover, a founder could also appoint himself or his heirs as the primary beneficiary. This type of waqf is known as the waqf *ahli*, or the family waqf. The revenue of such waqf is reserved for the benefit of the founder of the offspring. Initially public benefit is of secondary importance here, it assumes primary importance only after the nestle expires, i.e., when the future generations of the founder expire and the entire revenue of the waqf begins to accrue to public purposes. Through such awqaf it was also possible to avoid Islamic inheritance rules and to bequeath to a specific member of the family. In short, though not sanctioned by Islamic law, primogeniture could be applied in the Islamic world by resorting to the family awqaf. This possibility had, naturally, far reaching consequences throughout the world of Islam to which reference will be made later.

The origins of this specific type of waqf are obscure and controversial. French orientalists, for instance, have argued that the family awqaf originated as a reaction of Arabs to the Islamic law of inheritance, which aimed at improving the position of women in the society. But when women were made eligible to inherit, this offended the local traditions and the Arabs tried to find an indirect way to circumvent the new law and still apply a sort of primogeniture or at least to bequeath to only the male offspring. These orientalists thus basically argued that the family awqaf were relatively late development and in the later centuries evolved primarily to circumvent the law of inheritance.

This line of reasoning ignores the Prophetic traditions fully sanctioning pious offerings for provisioning the self, the children and the needy relatives.<sup>24</sup> Thus, the whole argument that the family awqaf were a relatively late development is false. It is well known, moreover, that when Omar, the Second Caliph, endowed his land in Khaibar, he allocated its usufruct, among other things, to his offspring following the Prophet's advice and that Imam Shafii, himself, had also endowed his house in Fustat to his offspring.

Most orientalists have argued furthermore that family awqaf were also resorted to in order to protect the family property from the arbitrary confiscations of the rulers. This was apparently another reason why this institution had become so popular. Köprülü accepts this explanation as plausible but argues that this motive cannot explain all the awqaf. Consider, for instance, the palace eunuchs who had

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<sup>23</sup> Çizakça, (forthcoming book), Chapter 2.

<sup>24</sup> M. A. Qureshi, (1990), p.82

no offspring but who established substantial foundations.<sup>25</sup> The strongest refutation to the confiscation argument has been provided, however, by Gerber who demonstrated that the women of Edirne, who had nothing to fear from confiscations, established 65% of their awqaf as family awqaf, while 80% of awqaf endowed by those who had the most of fear, the elite, were charitable. Thus Gerber concludes:

“In 15<sup>th</sup> and 16<sup>th</sup> centuries Edirne the waqf was used only in a minor capacity or even rarely in order to safeguard the property of the founders for transmission purposes”.<sup>26</sup>

In any case, family awqaf, in general, did not constitute the majority of awqaf in the Ottoman Empire. Barkan has shown that the ratio of family/charitable waqf was not particularly high during the sixteenth century while a recent analysis has revealed that during the 18<sup>th</sup> century merely 14.20% of the total awqaf revenue and during the 19<sup>th</sup>, 16.87%, was reserved for the family members of the founders. In Aleppo the ratio was somewhat higher; of the total of 687 awqaf established in this city between 1718 and 1800, 50.7% were charitable, 39.3% were family and 10% were mixed.<sup>27</sup> Further to the South, in Egypt, the family awqaf were even more popular; for these yielded more revenue in 1928-29 than all the other types of awqaf.

Another motive in establishing family awqaf, it has been argued, was to protect the property of an indebted person. In the Ottoman lands this practice was prohibited by a *fatwa* of Ebussuud during the sixteenth century while in India it led to a huge controversy beginning in 1894 with the Abdul Fata (and others) v. Russomoy (and others) case in the Privy Council and culminating in Mohammed Ali Jinnah's victory and the passing of the Mussalman Waqf Validating Act of 1913. It can even be argued that by mobilizing the Muslims of the subcontinent behind a single issue, this controversy paved the way for the eventual birth of Pakistan as an independent state.

#### 4.2 The Trustees (*Mutawallis*)

Unlike the Anglo-Saxon law where there is a confusion pertaining to the status of the trustees,<sup>28</sup> Islamic law considers these individuals strictly as managers to whom the waqf is entrusted. While these individuals were the ones who actually preserved the Islamic architectural heritage through the centuries and enabled many awqaf to survive, it was also they who ended up being accused ruthlessly and held responsible for the demise of the system. It can be argued that all the dramatic changes in the history of the waqf system were undertaken in order to put these

<sup>25</sup> Fuad Köprülü (1942), Vol.II, pp.5,6.

<sup>26</sup> Haim Gerber (1983), Vol.17, p.35

<sup>27</sup> Nazif Öztürk (1995), p.249. For Aleppo *Awqaf* see Bruce Masters (1988), p.173.

<sup>28</sup> In Anglo-Saxon law the functions of the trustee and the owner is not clearly separated.

trustees under strict control so as to put an end to their “misuse and embezzlements”. No doubt, sometimes these accusations were justified, but often, they were simply used as a scapegoat and served the more sinister schemes of the state. Whatever the case may be, management of awqaf still constitutes an unresolved agency problem. Any modern waqf reform therefore, must inevitably encounter this challenge of agency.

### 4.3 The Original Capital of the Endowment (*Corpus*)

The *conditio sine qua non* of any waqf is that it should be established with privately owned capital. Behind this simple statement, however, there are bitter debates and controversies. Consider, for instance, the huge awqaf established by confiscated property in the Islamic Republic of Iran.<sup>29</sup> Consider also land as *corpus*. Was land a privately owned commodity under Islamic law; and whether the *corpus* had to be restricted to land and other real estate? There are two controversies concealed behind this simple question. The first one, pertaining to the private ownership of land, led to an enormously complex relationship; the state vis-a-vis awqaf and the second one pertaining to the type of *corpus*, i.e., movables versus immovables, led to the cash waqf controversy. We will focus on the latter.

## 5. THE CASH AWQAF

The cash waqf was a special type of endowment and it differed from the ordinary real estate waqf in that its original capital, *asl al-mal* or, *corpus*, consisted purely or partially, of cash. The earliest origins of the cash awqaf may be traced back to eighth century, when Imam Zufar was asked how such awqaf should function.<sup>30</sup> The fact that such a question was asked at all may be taken as an indication of the existence of such awqaf at that time.

Cash awqaf were also known in Europe where real estate foundations were originally the only forms of endowment. But eventually, it became possible to make an endowment with movables. As the monetisation of the economy progressed, *Hauptgeldstiftung* or *Kapitalstiftung*, both terms indicating a cash waqf, emerged. By the year 1388, *die Hauptgeldstiftung* had evolved into the so-called *Rahmenstiftung* which can best be translated as a foundation conglomerate. Thus, in fourteenth 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.<sup>31</sup>

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<sup>29</sup> Çizakça (1988).

<sup>30</sup> He had replied that the *corpus* of the *awqaf* should be entrusted to the entrepreneurs in the form of *mudarabah*.

<sup>31</sup> Hans Liermann (1963), *Handbuch des Stiftungsrechts*, I. Band, *Geschichte des Stiftungsrechts*, Tübingen: J.C.B. Mohr, pp. 160-162.

In the Islamic world, from the eight-century until the fifteenth, there is a huge gap of knowledge concerning the history of cash awqaf. Consequently we simply do not know whether their re-emergence in the fifteenth century Ottoman Empire was a phenomenon influenced by Europe or simply represents a continuity.

Be that as it may, these endowments had been approved by the Ottoman courts as early as the 15<sup>th</sup> century and by the end of the 16<sup>th</sup> they had become the dominant form of waqf formation all over Anatolia and the Balkans.<sup>32</sup> It has been argued that the cash awqaf were legalized only in the Turkish speaking parts of the Ottoman Empire, i.e., Anatolia and the Balkans and that the more pious Arabs never allowed these awqaf in Arab provinces.<sup>33</sup> While this view may have had some legitimacy in history, it is no longer acceptable, for later research has revealed that cash awqaf exist in a multitude of Islamic countries.<sup>34</sup> In Egypt, waqf of movables has been permitted by the law number 48, dated 1946. Moreover, the diffusion of cash awqaf was far more extensive than once presumed. They have been observed in the Ural-Volga region; in India and Pakistan they are still considered to be legal; in Iraq there is a *fatwa* permitting them, in Iran the famous waqf *Astan-e-Qods-e Razawi* has recently purchased shares in various industrial complexes thus establishing cash awqaf, again in Iran, they have been permitted by the May 17, 1986 Cabinet Decree, Article no.44; they have been observed in the Malay world,<sup>35</sup> and in Singapore, presently, they constitute about 38% of all the awqaf.<sup>36</sup>

The legality of the cash awqaf in the vast lands from the Balkans to the Malay world thus implies a general acceptance by all the major schools. But this general acceptance has not been without a fierce controversy that lasted at least from the sixteenth century until the twentieth.

Probably the most detailed account of this controversy has been studied by Suharwardy, an Indian jurist-scholar who traveled to the Ottoman lands at the height of another controversy, that of the family awqaf, prevailing in India. His major article on the legality of cash awqaf<sup>37</sup> was published just two years before the family waqf controversy ended in the victory of Muslims against the British establishment. Thus the first two decades of the present century witnessed fierce

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<sup>32</sup> For the Cash Awqaf of Bursa, in Anatolia, see Çizakça (1995), Vol.38, part 3, pp.313-355 and in the Balkans see Avdo Sucesk (1966).

<sup>33</sup> Mandaville (1979), Vol.10, No.3, pp.289-308.

<sup>34</sup> For Syrian cash awqaf (sixteenth-seventeenth centuries) see Bruce Masters (1988), p.162; for Egyptian (modern); see the two *fatwas* given by the *Muftis* of Egypt and of Alexandria in 1908 presented below, see also G. Baer (1969), p.80, as well as (1962), p.153 and Syed Ameer (1985), p.249. For Sudan (also modern) see Sumaiya Sid Ahmed Abdel Hadi (1997), pp. 10, 20; for the indirect evidence for Aden see J.N.D. Anderson (1978), p.37, footnote No.5.

<sup>35</sup> Moshe Yegar (1979), pp. 207, 209.

<sup>36</sup> Majlis Ugama Islam Singapore (1995), *Annual Report*, pp.54-55.

<sup>37</sup> A. Al-Ma'mun Suharwardy (1911), Vol.7, No.6, new series, pp.323-430.

legal debate about the awqaf (family as well as cash) in India and we should view Surharwardy's magnum opus from this perspective.

The reason Suharwardy traveled all the way to Istanbul is explained by himself in the "acknowledgements" as follows:

"I take this opportunity of expressing my sincere thanks to Mohammed Ali Sevki Bey and to Zaimzade Hasan Fehmi Bey, grandson and First Secretary to Field Marshall Gazi Ahmet Muhtar Pasa, late Ottoman High Commissioner in Egypt for obtaining access for me to several important libraries in the Ottoman Empire and also for procuring for me the *fatwas* of the Grand Mufti of Egypt and of the Mufti of Alexandria... In a subsequent issues of this journal, I hope to give a translation of the well-known treatise on the subject of this paper by the celebrated Shaykh al-Islam, Mufti, Abussuud, a manuscript copy of which I have just discovered in Constantinople."

Thus, the purpose of his visit to the Ottoman lands was to study the cash waqf controversy in the Ottoman Empire itself and to find out about the legality of this institution. The manuscript of Abussuud that he refers to was obviously the one written during the sixteenth century at the height of the Ottoman cash waqf controversy.<sup>38</sup> It is noteworthy that he did not limit himself to the famous treatise which more or less finalized the legality of cash awqaf in the Turkish speaking parts of the Empire, Anatolia and the Balkans, but went as far as obtaining *fatwas* from Egypt.

Actually, at the beginning of the twentieth century, looking at the Ottoman Caliphate and Egypt for solutions to the prevailing legal problems in India appears to have become the established norm for Indian Muslims. For the family waqf controversy also the same method was used. The implications of this situation should not escape us here. Ottoman Caliphate was the symbol of legitimacy in the Islamic world and any legal issue that was solved in the Caliphate would be considered as solved in India as well. This was particularly so as both regions followed the Hânaflî law. This situation did not escape the attention of the Imperial powers. Any change that was desired by the latter in the Muslim zones of the British or French Empires, was first imposed upon the Ottomans and when these succumbed to the pressure, the rest of the Muslim world colonized by these powers would follow suit.

Since the sixteenth century Ottoman legal debate concerning the validity of cash awqaf has been well documented and summarized by Mandaville,<sup>39</sup> we will briefly summarize here the controversy as it was reviewed by Suharwardy at the

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<sup>38</sup> Mandaville (1979), Vol.10, No.3, pp.289-308.

<sup>39</sup> *ibid.*

beginning of this century. Suharwardy starts his work by a short statement, which reveals his overall purpose:

“A careful perusal of this paper – the result of considerable labor and research – containing excerpts from works of the highest authority, will, I venture to hope, leave no doubt in the minds of the readers about the validity of the waqf of movables, including money, shares in companies, securities, stock etc.”

After, consulting some of the most important Hanafite sources,<sup>40</sup> Suhrawardy reaches the conclusion that the two great Hānafi jurists, Imam Mohammed and Abu Yusuf, differed concerning the validity of the waqf of movables. While the former has declared that such awqaf are valid absolutely, whether a pertinent custom exists in his time or not, the latter approves of them only subject to the existence of custom. In *Majma al-Anhur*, it is convincingly argued that since Imam Zufar had been asked about the validity of such awqaf, it is clear that there was a practice of them. Consequently, waqf of movables are valid according to both great Imams.

On the other hand, Imam Mohammed’s approval that the waqf of movables were valid not only subject to the existence of custom at his time but also subject to custom which may arise in another time and country, has had important implications. It is thanks to this flexibility that Islam gained two very important types of waqf in the later periods; the waqf of grain ships<sup>41</sup> which made pilgrimage possible and the cash awqaf, both during the sixteenth century.

In short, the argument that the cash awqaf should be rejected because their *corpus* in the form of cash cannot be perpetual, is rejected on the grounds of custom and tradition, both more powerful than the analogy pertaining to perpetuity. No doubt, it is based upon these considerations that today cash awqaf are considered to be legal in the enormous geography described above.<sup>42</sup> Having thus

<sup>40</sup> The *Is’af* of Burhaneddin (930/1499), Fatawa Kadi Han, al-Sarakhsi, the *Durr al-Muntaqa*, *Majma al-Anhur*, *Bahr al-Raiq*, *Manhat al-Khaliq*.

<sup>41</sup> Endowment of a boat, probably invented by the Mamluks, had become customary under the Ottomans who used to send regular supplies of foodstuffs to the holy cities from Egypt with these boats. There were some 200 grain ships stationed in Suez. See Stanford Shaw (1962), p.137. Also see Colin Heywood, “The Red Sea Trade and Ottoman Waqf Support for the Population of Mecca and Medina in the Later Seventeenth Century”, A. Temimi (ed.), (1988), t.3, pp. 165-184. I have been informed about the Mamluk origin of waqf ships by Behrens-Abu Seif. Hans George Majer, on the other hand, has argued that these ships were not endowed as such but were purchased by regular *awqaf*.

<sup>42</sup> Concerning other major schools; Imam Shafi’î, like Abu Yusuf, approves of the waqf of moveables subject to custom. Imam Malik has also approved as we learn from the *Mudawwana*. The Hanbali position is similar to that of the Shafi’îs. Finally, the Shiite position is also positive as revealed by the *fatwa* of Shaykh ‘Abd Allah al-Mazandari. This

established the legality of cash awqaf, let us now focus our attention the way they functioned in history.

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approval is of further importance as it permits the establishment of cash *awqaf* with joint-stock company shares as well. For details see Çizakça (forthcoming book).

## 6. CASH AWQAF IN THE OTTOMAN ECONOMY

In a society where health, education and welfare were entirely financed by gifts and endowments, the cash waqf carried serious implications for the very survival of the Ottoman social fabric. Moreover, they also provided major injections of capital into the economy of the cities where they functioned. Cash awqaf were established by well-to-do individuals who allocated a certain amount of money for pious purposes. The amount endowed had to be privately owned and the capital of the waqf was "transferred" to borrowers who after a certain period, usually a year, returned to the waqf the principal plus a certain "extra" amount, which was then spent for all sorts of pious or social purposes. These vague terms "transferred" and "extra" have been used deliberately here. For, whether the capital of the endowment was lent as credit to the borrowers and the return was in fact nothing but the ordinary interest rate constitutes a debate.<sup>43</sup>

A summary of this debate, without going into the details, would be appropriate here. First of all, Imam Zufar's *fatwa* back in the eighth century that the *corpus* of the cash waqf should be invested through *mudarabah*<sup>44</sup> and the return be used for the original purpose of the waqf did not find application in reality. In a separate study based upon a sample of 1563 Bursa cash awqaf<sup>45</sup> and their respective profit/capital ratios covering the period 1667-1805, this author found that the Ottoman cash awqaf lent money with a nearly constant return. The question now is whether this arrangement should be called ordinary interest or was it something else? To start with, Ottomans themselves never called it interest, *riba*. The term they used was the so-called *istiqlal*, which has been described as follows:

“*istiqlal*... was outwardly construed as a sale: The borrower handed over to the lender a piece of real estate, supposedly as a sale, but actually as a pawn. If the borrower redeemed his debt after a year, the asset reverted back to him. In the mean time, the lender leased the asset to the borrower (so that the borrower could go on using it) and the “rent” which was often exactly 10% of the loan, was nothing but interest. In short, we have here a simple interest bearing loan with a piece of real estate as security.<sup>46</sup>”

Although, this arrangement may be dismissed simply as a cumbersome method of lending with interest, it is important that from the perspective of Islamic jurisprudence, it was fully sanctioned instrument. From economic perspective, however, since it provided fixed return to the capital lent, it was nothing but

<sup>43</sup> Mandaville (1979), Vol.10, No.3, pp.289-309 and Çizakça (1993).

<sup>44</sup> Very briefly, *mudarabah* was a partnership of capital and entrepreneurship, where the entire capital as well as the pecuniary loss belonged to the principal. Profit was distributed as a result of mutual agreement. See A. Udovitch (1970), and Çizakça (1996).

<sup>45</sup> Çizakça (1993).

<sup>46</sup> Haim Gerber (1988), p.128.

interest. To distinguish *istiqlal* from the ordinary rate of interest where the former acts in the economy just like the latter but is permitted by Islamic jurisprudence, we shall call it “economic interest”. Rejection of Imam Zufar’s suggestion and the insistence of the trustees to lend the *corpus* of the cash awqaf through “economic interest” had far reaching consequences. We will now focus on this problem.

Looking at the problem from the perspective of capital accumulation, it can be envisaged that an entrepreneur could borrow money from an endowment with a modest rate of “economic interest”. In short, a cash waqf could function in reality just like a bank, with one difference; whereas a bank accumulates funds from a multitude of savers and then transfers these to entrepreneurs and earns its profits through the different rates it utilizes (lending rate minus the borrowing rate constitutes the bank’s profits). Cash waqf would actually distribute the life long accumulation of a single individual, endowment capital, to borrowers thus, in fact, functioning as an instrument of capital distribution. Moreover, whereas the bank has to pay a fixed rate of interest to the savers (borrowing rate), an endowment pays nothing for the fund it transfers to the borrowers. Put differently, the cost of capital for an endowment would be zero! Thus, the entire rate of return could be considered as profit, which would be spent for social and pious purposes.

It can be further assumed that since an endowment utilized the savings of a single individual, rather than the savings of thousands of people, it would have relatively less capital at its disposal. So the possibility of capital pooling among the endowments, i.e., supply side capital pooling, assumes great importance. Capital pooling on the demand side, i.e., an entrepreneur borrowing from a multitude of endowments, is also, obviously, quite important. Implications of these assumptions should be fully understood. What is at stake here is the possibility of whether the cash awqaf could fulfil the function of the Western banks for Islamic societies. Supply side capital pooling implies that substantial capital could be put at the service of the entrepreneurs and demand side capital pooling implies that a single entrepreneur can borrow from a multitude of awqaf so as to maximize the available funds at his disposal for a single project.

Evidence found in the Ottoman archives has confirmed that endowments, indeed, applied a process of capital pooling among themselves. This took the following form: founders of smaller awqaf stipulated that a part of the annual return of their awqaf be set aside to be submitted/incorporated to the larger awqaf. Thus, the existence of supply side capital pooling was confirmed.<sup>47</sup> On the demand side, however, totally unexpressed results were encountered. First of all, it was found that the borrowers were not entrepreneurs but consumers and that the capital supplied by the cash awqaf was not accumulated at the hands of a few enterprising individuals but was diffused throughout the society.

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<sup>47</sup> Çizakça, “Cash Awqaf of Bursa”, *op. cit.* Thus, supply side capital pooling observed in 14<sup>th</sup> century Germany was also possible in the Islamic world. We do not know, however, if the idea originated in the former or the latter.

To conclude, research has revealed that cash awqaf which originally appeared as a promising and unique Ottoman institution of capital accumulation, actually functioned as an institution of capital distribution. Capital pooling was certainly practiced among the endowments but the borrowers were mostly small consumers and the endowments' funds were not utilized to finance important business ventures. A tiny minority of borrowers who did practice demand side capital pooling did so in order to lend the waqf funds at a higher rate of return to the *sarrafs* of Istanbul, thus in this process creating a secondary capital market.

At this point we must ask several questions. Why, indeed, did the Ottoman cash awqaf not function like the Western banks and contribute to the process of capital accumulation in the economy rather than limiting them primarily to the redistribution of capital? Why, in other words, did they finance merely consumption rather than entrepreneurial investment?

The answer lies in the method of lending and takes us back to Imam Zufar who had suggested that the awqaf funds should be transferred to the borrowers as the capital of a *mudarabah* partnership. Put differently, Imam Zufar had envisaged a *mudarabah* partnership between the cash waqf and the borrower; the former, i.e., the waqf being the principal, *rab al-mal*, of this partnership and the latter the agent, *mudarib*. We have, moreover, stated above that the trustees had refused to apply Imam Zufar's *fatwa*. While, this author is not aware of any historical source explaining this refusal, it can be deduced that the trustees must have been concerned about the risks of a *mudarabah* partnership. In any case, probably concerned about such risks, they applied not the recommended and completely legal *mudarabah* but the far more dubious *istiqlal* which was a legal device concealing a usurious transaction. While *istiqlal* conformed to the letter of the law, it violated its spirit by dangerously approaching *riba*.

Moreover, since *istiqlal* involved in the submission of substantial collateral in the form of a house, the borrower was severally limited. Put differently, unless a borrower put up his house as collateral, he could not borrow from the waqf funds. Consequently, we should not be surprised if the entrepreneurs faced with the relatively small amount of capital at the disposal of the cash awqaf, could not resort to demand side capital accumulation, i.e., request funds from a multitude of awqaf so as to accumulate capital. To do so, would have meant that they would have had to provide several houses as collateral, as many houses as the cash awqaf they wished to resort to! In short, the trustees who refused to abide by the ruling of Imam Zufar were the real culprits. It was because of this refusal that the cash awqaf were limited to the role of capital distribution and could not contribute to the process of capital accumulation. The challenge for modern Islamic economists should be obvious here: re-designing the cash awqaf such that they contribute not only to capital redistribution but also to capital accumulation and at the same time obeying not only to the letter but also to the spirit of the teachings of Islam.

## 7. RE-DESIGNING OF THE CASH AWQAF

Resorting to *istiqlal*, probably caused by the risk aversion of trustees, had two important consequences. On the one hand, the cash awqaf were reduced to the role of merely capital redistribution, and on the other, they ended up utilizing an instrument, which was dangerously close to *riba*. In short, when we re-design the cash awqaf we should see to it that the asset side operates through the *mudarabah* and avoids *istiqlal* altogether.

Actually, the reader will have noticed by now the similarity between the historical cash awqaf and modern Islamic banks: both were designed originally to operate through *mudarabah* and both ended up utilizing, from the Islamic perspective, less preferable instruments. This can not 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 awqaf 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 awqaf how to utilize the capital, modern Islamic bankers apply *murabahah* on their own initiative. It has been shown elsewhere that there are two basic reasons why modern Islamic bankers insist on applying *murabahah* despite all the criticism they have been subjected to; managerial and financial.<sup>48</sup> As far as the former is concerned, Islamic banks have found it very difficult to supervise and guide the individual entrepreneur in a *mudarabah* situation. This is quite natural, since *mudarabah* demands close, personal and continuous contacts<sup>49</sup> between the principal and the agent. Moreover, this is not merely a moral problem and is not limited to monitoring the agent's activities. Such contacts in the form of mutual co-operation and assistance should constitute the very essence of any partnership. However, we have learnt from experience that, unless seriously reorganized, the large and bureaucratic Islamic banks are simply not suited for this task. Experience, again, has taught us that such co-operation is best provided by the relatively small, specialized companies as observed in the American venture capital sector.

Concerning the latter, Islamic banks encounter a mismatch of funds; whereas the deposits they collect are of short term nature, *mudarabah* investments usually

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<sup>48</sup> Çizakça (1996b), Vol.3, No.2, p.84

<sup>49</sup> 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 Anver Greif, "Cultural Beliefs and the Organization of Society: A Historical and Theoretical Reflection on Collectivist and Individualist Societies", *Journal of Political Economy*, 102(5), pp. 912-950.

involve long term commitments.<sup>50</sup> It is precisely at this point, i.e., the problem of mismatch of funds, that cash awqaf represent an exciting potential. Let us imagine for one moment that it were possible to combine cash awqaf 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 realized in reality.

If cash awqaf 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 *mudarabah* demands. This necessitates that the management of *mudarabah* funds is totally separated from the bank management. This can be done in one of two ways: either Islamic banks establish associated companies with autonomous management which specialize in *mudarabah* investment or completely independent *mudarabah* companies are established by third persons and the capital of the cash awqaf is entrusted to these companies. Actually, this is not an either/or situation; these alternatives need not be mutually exclusive.

Let us see how a cash waqf would be linked to an Islamic bank. Assume that a person wishes to establish a cash waqf with his savings. Assume further that the purpose of this waqf is to help finance entrepreneurs who wish to establish their own businesses. 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 (or *mudarib*) of the waqf. Next, the bank would transfer the endowment capital to various specialized *mudarabah* companies. The bank may have provided equity finance to some of these companies or they may be completely independent. In any case, by transferring the waqf capital to a multitude of such companies, the bank actually creates a portfolio. In this process the bank signs a *mudarabah* contract in the name of the waqf with each of these specialized companies. Thus, each *mudarabah* company becomes in fact the *mudarib* of the waqf and agrees in advance that it can invest the awqaf funds only through *mudarabah* 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 specialized *mudarabah* companies. Actually, to be more precise, Islamic bank's involvement in the management of waqf funds in this model is limited to a periodic assessment of the performance of the *mudarabah* companies. If the bank is satisfied with this

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<sup>50</sup> This is not a general rule, some *mudarabah* contracts, particularly in trade finance, can be of short-term nature. But *mudarabahs* involving high technology investments in the industry yield returns only in the long run. For historical examples of both short and long term *mudarabahs* see Çizakça (1996).

performance, the waqf funds can indeed remain with the *mudarabah* company in perpetuity. But to ensure this, the *mudarabah* company must perform. To provide further protection to the awqaf funds, the *mudarabah* company may also be required to ensure the *mudarabah* capital through *takaful* insurance that would guarantee the safety of the original waqf assets.<sup>51</sup>

Next, we come to the linkage between the *mudarabah* companies utilizing the waqf capital and the entrepreneurs financed. Since, again, only *mudarabah/musharakah* instruments are used, there is no problem from Islamic perspective. Structurally speaking, we are talking about a triple *mudarabah* arrangement here. The first *mudarib* is the Islamic bank also fulfilling a trustee function as just described. The second layer is the various *mudarabah* companies and the third is the entrepreneurs. In this structure, it is possible to form two different sets of portfolios and thus minimize the risks. The first portfolio is created by the bank and pertains to the *mudarabah* companies and the second one is created by each one of these companies and pertains to the entrepreneurs.

Reducing the risks by setting up two different sets of portfolio constitutes only one aspect of the perpetuity of the waqf funds. The other one is the re-investment of profits returned to the waqf. Research has revealed that in the Ottoman economy, more than a quarter of the cash awqaf established in the city of Bursa survived for more than a century and 81% of these surviving awqaf owed their resilience to capital enhancement realized either by re-investment of profits or receiving further donations from various other smaller cash awqaf (the so-called Rahmenstiftung model mentioned above).<sup>52</sup> In view of this, it is suggested that the modern cash awqaf 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.

Actually, establishing a cash waqf within the framework of an Islamic bank and *mudarabah* companies, constitutes only one aspect of cash waqf creation. A modern cash waqf can also be created directly by endowing 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 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.

What we have just stated above does not constitute an original suggestion. Muslim philanthropists have already thought of these possibilities and established cash awqaf as described above. The Vehbi Koç Foundation in Turkey constitutes

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<sup>51</sup> I owe this point to the anonymous referee of the *Islamic Economic Studies*.

<sup>52</sup> Çizakça, "Cash Waqfs of Bursa", *op. cit.*

perhaps the best example of such a waqf. The following excerpt dictated by the late Vehbi Koç, himself, and taken from the Deed of Trust of his foundation explains why he had decided to establish his foundation as a cash waqf:

“Praise be to Almighty God, who with His Will enabled me to perform charitable works during my lifetime with pleasure, and granted me the means to continue (performing ongoing charity) after my death. In my belief that the Turkish Nation will continue to exist so long as the world endures... and my wish being to establish this foundation in perpetuity, I have based this endowment on a commercial entity that will be able to adopt itself to the requirements of the day rather than on properties dependant on economic conditions and natural disasters. I have chosen to set up this endowment with the shares of Koç Holding. These are made up of numerous commercial and industrial enterprises, and are therefore less subject to risks. This foundation that I have established by the grace and kindness of God, I entrust, first of all, to my heirs and to their succeeding generations, to my business colleagues and to the Government of the Republic of Turkey. I call upon all my heirs, my close acquaintances, my business colleagues, my fellow citizens who may be involved in this Foundation, and the officials who will assume its administration, to accept this endowment as a bequest made to the Turkish Nation, to protect it, and strive with their best intention to achieve its original aims. I request the auditing authorities of the State and, when necessary, its authorized agencies, courts and judiciary, never to depart from the dictates of their conscience when making decisions, lest this foundation suffers harm and be diverted from its aims. I have brought this enterprise into being as a result of lifetime of effort and sincere desire. I pray that God will regard it worthy of His protection and grant it success”.<sup>53</sup>

The late Vehbi Koç’s personal statement reveals a number of important points on which we would like to comment. First, there is a deep sense of religiosity and gratitude to the Almighty for allowing him to do continuous charity even after his death. In other words, an awareness of the importance of *sadaqa jariya* and the Prophetic tradition mentioned at the beginning of this article. This is followed by an explanation why he has decided to organize his endowment as a cash waqf rather than one based on real estate. His decision was based on the concern that real estate awqaf may be vulnerable to economic conjuncture and natural disasters. Since, the shares of his own holding are made up of numerous commercial and industrial estates, “they are less subject to risks”. Here we observe a profound

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<sup>53</sup> The Vehbi Koç Foundation (1995), *Twenty-five Years of Philanthropy, 1969-1994*, Istanbul: The Vehbi Koç Foundation, p.1. I am grateful to my sister, Professor Dr. Çigdem Kâgıtcıbası, for sending me this important document from Istanbul.

understanding of the way waqf functions. Vehbi Koç seems to have been fully aware of the vulnerability of real estate awqaf to economic conjuncture. Such vulnerability has been demonstrated by Suraiya Faroqhi based upon the seventeenth century records of Mahmut Pasa Vakfi. Faroqhi has shown how stagnation can ruin a waqf by providing evidence that due to the stagnant trade conditions more than half of the Ankara revenue as calculated in gold coins was lost to this particular waqf and how the cloth market in Konya was allowed to fall into ruins.<sup>54</sup>

Although we have no way of knowing as to how the Vehbi Koç Vakfi would fare under similar conditions, theoretically, it may be argued that a conglomerate capable of penetrating into international markets should be better equipped in dealing with stagnation by diversifying its markets. Indeed, there are more than 100 companies in the conglomerate with 40,000 employees and the total number of Koç Holding shares allocated to the foundation have been declared as 10,000.<sup>55</sup> In this way, the late Vehbi Koç, a brilliant businessman, has diversified the risks.

At the end of 1993 the book value of the foundation's assets stood at \$ 120 million with an approximate market value of \$ 297 million. The foundation is then entrusted first, to the coming generations of his heirs, thus, this is essentially a family waqf in perpetuity, and then to the business colleagues and then to the Government of Turkey. The business colleagues were probably included with the view that if the heirs prove to be incapable individuals, the colleagues who run the Koç enterprises should interfere and manage the waqf with proper business perspective. Their inclusion in the deed would certainly enable them to have a say in the waqf affairs. Inclusion of the Government is also telling: Vehbi Koç had been an eye witness to the great destruction of the Turkish awqaf by the state that took place between the 1930s and 50s. Perhaps, by entrusting his endowment to the Government of Turkey he wanted to impose a moral obligation on the state. Finally, he prays that "God will regard it worthy of His protection".

We are given further important information pertaining to the investment of the foundation shares in the waqf deed. Article 7 of the Vehbi Koç Foundation Deed stipulates that all excess cash of the foundation that accrue to the waqf on annual basis shall be converted into government bonds and kept as emergency fund. These bonds shall be used when the Koç Holding exercises a capital enhancement. Should this process take place, the foundation shall participate therein, so as to maintain its relative share in the conglomerate. Should the emergency fund not suffice to maintain the foundation's share in the conglomerate, the Board of Trustees can allocate 20% of the primary revenue of the waqf for this purpose. Should a process of capital enhancement not take place, the excess cash of the fund shall be invested in shares and bonds, preferable those of Koç Holding companies.

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<sup>54</sup> Suraiya Faroqhi (1995), p.281-284

<sup>55</sup> *Vehbi Koç Vakfi Resmi Senedi*, Article 4, p.5.

Article 9 stipulates that a minimum of 80% of the total revenue of the waqf shall be allocated to social and cultural services. A maximum of 20% of the revenue shall be allocated to administrative expenses, emergency cash, and investments to buy properties for the waqf. These conditions also imply a deep understanding of institutional history. For, it is well known that waqf revenues allocated for charity were often usurped by the trustees. Consequently, while historically charity to total expenditure ratio has often declined, salary to total expenditure ratio has often either remained the same or increased at the expense of the former.<sup>56</sup> Vehbi Koç seems to have been either aware of these historical tendencies or has been able to envisage them thanks to his great business acumen. In any case, by stipulating fixed ratios of charity to administrative expenditure, he seems to have been determined to avoid such problems. Finally, we are informed that the Vehbi Koç Foundation has been granted tax-exempt status by the Council of Ministers on 28 December 1968.

The Vehbi Koç Foundation just explained constitutes an example of a large business enterprise establishing its own waqf. But the reverse, i.e., a waqf establishing its own firms, is also possible. In this case, a waqf or awqaf pool their resources and create a company or companies. They also share the profits generated by this company(ies) according to their relative contribution to its capital. The Diyanet Vakfı constitutes an example of a waqf creating a multitude of companies or providing equity finance to already established companies,<sup>57</sup> while the Koç Foundation is the best example of a huge conglomerate creating its own waqf. The Koç specializes in education and has financed a highly ambitious secondary high school and a major university, while the Diyanet, like the Tabung Haji of Malaysia, is involved in the organization of the annual pilgrimage to Mecca and is represented in 700 localities by 90,000 religious functionaries.

The importance of these innovations cannot be emphasized enough. This is because, for the first time in the centuries' long history of awqaf 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 awqaf should invest their capital through *mudarabah*, Ottoman cash awqaf had invested their capital by providing interest bearing loans, *istiqlal*. Consequently, their income was limited to the "economic interest" that they had charged which always fell behind the market interest rate. In short, risk aversion had condemned Ottoman cash awqaf to inertia. In the post 1967 Turkish Republic, however awqaf have become direct recipients of companies' realized profits. Thus,

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<sup>56</sup> Suraiya Faroqhi (1995), p.285.

<sup>57</sup> According to; Diyanet Vakfı.(1997), pp.109-119, this waqf had established six different companies and owned 80-99% of their equities. It also purchased shares of various Islamic banks (Kuveyt-Türk Evkaf Kurumu and Ihlas Finans) and insurance companies. Such shares constituted 1-10% of the total net asset value of these companies.

ironically, not the awqaf of, Ottoman, but of the staunchly secular Republican Turkey, actualized, at long last, Imam Zufar's teaching.<sup>58</sup>

Moreover, we can also interpret these waqf -company relations as the rebirth of cash awqaf. Thus, Ottoman cash awqaf destroyed in 1954 by being incorporated into the bank of awqaf, Vakıflar Bankası, have, like a phoenix, been re-born albeit in a radically different organization structure and in a far more dynamic form. It will be suggested here that these latest developments taking place in Turkey should be carefully taken into consideration by those interested in re-designing cash awqaf.

We can now return to the complex relationship between the state and awqaf mentioned above. This is indeed a highly complex relationship. On the one hand, the rulers founded the greatest awqaf in nearly all the Islamic countries, on the other, many of them exhibited a relentless hostility towards this institution. While, the reasons behind this hostility have assumed different forms over time and space, the hostility, itself, has remained a constant. It is, therefore, all the more remarkable that this institution has managed to survive.

The hostility of the state towards awqaf has assumed a new dimension with the advent of colonialism. Both the British and French colonial powers were hostile to awqaf. This hostility was based on the same principles and took in practice very much the same forms.<sup>59</sup> The colonial hostility, which sought an outright prohibition of awqaf, was supported by the indigenous modernists persuaded by the former. The combination of these two forces was formidable and, thanks to the modernists, the hostility continued, even enhanced, after the colonial epoch.

While we would be justified to criticize the colonial powers and their modernist supporters for aiming to destroy an age old institution that has provided Islamic world with innumerable architectural masterpieces, financed education, health, infrastructure investments and municipal services at marginal cost to the state, we have to be far more restrained in our criticism when it comes to agriculture. For, the colonial/modernist onslaught has ended up transforming agriculture in the Islamic world from one dominated by awqaf and share cropping into one dominated by private ownership of land. Consequently, to the extent that small family ownership of land is more productive than waqf lands exploited through share cropping, aggregate productivity in the agricultural sector of Islamic countries must have been considerably enhanced. It is for this reason that we have concentrated in this paper primarily on cash awqaf. In our opinion, a waqf reform in modern Islamic world should not aim at transforming small, family owned lands into waqf held agricultural estates, but concentrate instead on urban real estate and cash awqaf where the real potential lies.

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<sup>58</sup> For the near identity of equity finance and the historical *mudarabah* see Çizakça (1993).

<sup>59</sup> David S. Poers (1989), pp.535-571.

Finally, the definitive establishment of property rights in the post-colonial Islamic world means that Islamic philanthropy shall be transformed. To the extent that Muslims endowed their properties in order to escape confiscations, which, in it as we have seen, is a controversial point, this motive shall disappear. Thus, religious charity pure and simple shall dominate the Islamic world of future. But in the meantime much has been lost and philanthropic gap between the Islamic world and the West has widened: whereas the largest Turkish waqf has an approximate market value of US\$ 300 million, in the United States a donation of one billion US dollars has recently been reported.<sup>60</sup>

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<sup>60</sup> *Newsweek*, September 29, 1997, pp.13-21.

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