

Ottoman Cash Waqfs Revisited: The Case of Bursa 1555- 1823

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OTTOMAN CASH WAQFS REVISITED: THE CASE OF BURSA 1555-1823

This article is summarised and updated from the author's extensive book 'A History of Philanthropic Foundations The Islamic World From The Seventh Century to the Present', (Istanbul: Bogazici University Press, 2000). It is also a shortened and updated version of the author's original article published by Journal of the Economic and Social History of the Orient, 38, 3, E. J. Brill, Leiden, 1995.

Introduction

The cash *waqf* (plural: *awqaf*) was a Trust Fund established with money to support services to mankind in the name of Allah. The Ottoman courts approved these endowments as early as the beginning of the 15th century and by the end of the 16th century they had reportedly become extremely popular all over Anatolia and the European provinces of the Empire.

The exact extent of the geographical diffusion of these waqfs and, specifically, in the Arab provinces is subject to discussion. The gifted 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 and social purposes. These vague terms "transferred" and "extra" have been used here deliberately. Whether the capital of the endowment was lent as credit to the borrowers and the return was in fact nothing but the ordinary interest constitutes another debate. In a society where health, education and welfare were entirely financed by gifts and endowments, the cash *waqfs* carried serious implications for the very survival of the Ottoman social fabric.

THE LEGAL BACKGROUND

Position of the Classical Jurists

The Ottomans, being devoted *Hanefis*, conducted their business and social affairs within the general guidelines established by this school of thought. It is, therefore, imperative that this analysis should start with a summary of the classical *Hanefi* position pertaining to cash *waqfs*. Let us first consider the thorny issue of the endowment of moveable assets. The essence of this problem pertains to the perpetuity of the endowment, the *sine qua non* condition for any *waqf*. Real estate was thought to be the best asset to ensure the perpetuity of an endowment. There were, however, three recognized exceptions to this general principle among the *Hanefi* scholars: the endowment of moveable assets belonging to an endowed real estate, such as, oxen or sheep of a farm, was permitted; second, if there was a pertinent *hadith*, and third, if the endowment of the moveable asset was the customary practice, *ta'amul*, in a particular region. Indeed, exercising judicial preference, *istihsan*, Imam Muhammad al-Shaybani had ruled that even in the absence of a pertinent *hadith* the endowment of a moveable asset was permissible if this was customary practice in a particular location. Apparently, even custom was not always a required condition, for according to al-Sarahsi, Imam Muhammed had, in practice, approved the endowment of a moveable asset even in the absence of custom. Furthermore, both Imams Muhammed al-Shaybani and Abu Yusuf had confirmed, absolutely, the endowment of a moveable asset attached to a piece of real estate. In view of this, it is not surprising that we often see such combined cash/real estate *waqfs* in the Ottoman records.

Given the acceptability of moveable assets as the basis for creating a *waqf*, how does one define a moveable asset? More specifically, can money be considered a moveable asset and, therefore, be permitted as the basis for the establishment of a *waqf*? Imam Zufer answered this question affirmatively and ruled that the endowment of cash was absolutely permissible. Zufer went into detail as to how such an endowment could be organized: he suggested that the endowed cash should form the capital base of a *mudaraba* partnership and any profit realized be spent in accordance with the general purpose of the *waqf* as stated in its charter. If the moveable assets endowed were not originally in a liquid cash form, then they should be sold in the marketplace and the cash thus obtained could be utilized as the capital of a *mudaraba*.

In summary, three principles constituted the basis upon which the later Ottoman jurists built the structure of the cash waqfs: the approval of a moveable asset as the basis of a *waqf*, acceptance of cash as a moveable asset and, therefore, approval of cash endowments.



Figure 1 – Ottoman akca

Establishment of a Cash *Waqf*

An additional debate in the establishment of Ottoman cash waqfs revolved around the question of irrevocability. According to Ebu Hanife the founder of a *waqf* or his descendants could revoke the original decision and claim the endowed property back. That is to say, a *waqf* was revocable. Ebu Hanife added, that for a *waqf* to become irrevocable and valid, a court's decision was necessary.

Other great jurists of the Hanefi School did not agree with this opinion. Ebu Yusuf, for instance, argued that when Prophet Mohammed endowed his property, his personal property rights became null and void. Moreover, neither the Prophet nor any of the four Caliphs or the followers of the Prophet, *ashab*, ever reversed their decision to endow their properties. These scholars further argued that the establishment of a *waqf* was an irrevocable act, based upon the *hadith* pertaining to *Omer's* endowment.

During the Ottoman period a legal precedent was established which resolved the debate among the great Hanefi scholars a man wishing to establish a *waqf* informed the court of his intention thereby creating the *waqf*. He later revoked his decision and demanded the trustee of the *waqf* return his capital. When the latter refused to do so, the case was brought before the court where the request was flatly rejected by the judge who declared that a *waqf*, once established, was irrevocable and definite.

There are many instances of the establishment of cash *waqfs* noted in the Bursa Court Registers. One particular case dated 1676 should suffice to demonstrate the process described above. A certain Mehmed Ali b. Hasan, resident of the Karaca Muhiddin district of Bursa, had appointed Hasan Celebi b. Mehmed as trustee of a cash *waqf* which was to be established with a rather modest capital of 50 Esedî Grus. This capital was to be loaned to borrowers having satisfactory collateral and sureties on a "ten to eleven percent per annum" basis.

The return from this investment was to be used to provide a public banquet for the poor Muslims in the "zaviye" of the Baglar district on the evening of every 12th Rebiullelvel. The 50 Esedi Grus was then entrusted to the trustee. Later the endowment's founder demanded the return of his capital on the belief that the three imams did not consider the establishment of a *waqf* with cash a legal act. The trustee responded that according to Imam-i Ensari quoting Imam-i Zufer, the cash *waqf* was legal. The two disputants appealed to the court for an opinion. In his application to the court, Mehmed Ali b. Hasan stated that since Abu Hanife did not consider a *waqf* irrevocable and, therefore, withdrawal from a decision to establish a *waqf* was permitted, he wished to do so and demanded his capital from the trustee of the *waqf*. The trustee responded by confirming that, indeed, Abu Hanife had not considered a *waqf* as definitely irrevocable but Abu Yusuf, the "second imam" and Al- Shaybani, the "third imam" had ruled that a *waqf* was both definite and irrevocable and therefore he requested the decision of the court upholding the irrevocability of the *waqf*. The judge ruled that the *waqf* was definite and irrevocable and that any attempt to abolish the *waqf* was null and void. Moreover, the judge ruled, this decision was in agreement with the rulings of all the "strong imams". This verdict finalized the procedure for the binding establishment of a cash *waqf*.

The Perpetuity Debate

The establishment of cash *waqfs* by the Ottomans during the 15th century appears to have taken place without legal difficulties. But during the next century when these *waqfs* became so popular that they dominated the *awqaf* system, the military judge of the European provinces, Civizade, challenged the situation. The Seyhulislam Abussuud Efendi almost immediately countered his view and a fierce debate began. Since the details of this debate have already been published they will not be summarized here. It suffices to say that the debate between these two great jurists and their followers lasted for more than a century and even then remained inconclusive. Supported by the State, cash *waqfs* continued to exist and flourish. We will now focus our attention on the paradigm of perpetuity, the most vital issue in the debate, and seek answers to the following questions:

- *Since, one of the main points of the debate concerned the problem of perpetuity (proponents arguing that these endowments had as good a chance for survival as any other real estate endowments and the opponents believing that they would collapse within a relatively short time), would it be possible now, during the last decade of the 20th century, to evaluate retroactively which side of the debate was more true?*
- *What factors caused their failure or supported their endurance? In other words, if these endowments, indeed, had rapidly disappeared, what were the reasons behind this failure? Why were they so badly managed? If, in contrast, they succeeded in surviving for any length of time, then what were the reasons for their relative success?*

- *In what way did the cash waqfs contribute to the process of capital accumulation? This question has to be approached from two perspectives, i.e., from the point of view of savers as well as users of funds. More specifically, did the savers pool their resources to form joint cash waqfs or did they add their capital to already existing ones? Did the users of capital have access to several cash waqfs so as to enlarge the available pool of capital at their disposal?*
- *In the process of transferring funds to entrepreneurs or to the public, to what extent was the Islamic prohibition of riba observed? In other words are the claims that cash waqfs violated Islamic law justified?*

CASH WAQFS IN HISTORICAL REALITY

Survival of the Cash Waqfs

Since perpetuity is considered to be the *conditio sine qua non* of any *waqf*, an analysis of the survival rate of the cash *waqfs* assumes great importance. Unfortunately, with the exception of the Barkan-Ayverdi study, there is no published source that is relevant for this paradigm. Even this well-known study suffers from two weaknesses: first, it covers a time span of merely 76 years and is therefore unsuitable for an analysis of perpetuity. Next, closely related to the first weakness (since it is based upon an analysis of only three *tahrir* registers), the fluctuations in the number of *waqfs* that survived may be misleading. These fluctuations may have resulted from the fact that there may have been more than one *tahrir* register for a single year and a *waqf* not observed in one register may simply have been included in the missing register.

Bearing in mind these shortcomings of the Barkan-Ayverdi study, which concentrated on the Istanbul *waqfs*, an attempt has been made in this article to overcome these two weaknesses by a study of the Bursa cash *waqfs*. To start with, the time span has been expanded to cover the period 1555-1823, i.e., a period of 268 years. Secondly, the analysis has been based upon the individual cash *waqf*. Thus, it has been possible to trace the performance of a *waqf* over a much longer period of time and it has been found that a *waqf* that seemed to have vanished at a certain point in time could be "re-discovered" at a later period.

The main source used for this study is the set of registers that may be called aptly the "vakif tahrir defterleri" or the cash *waqf* censuses. About seventy volumes of these registers have been identified among the Bursa Court Registers Collection. In order to facilitate the research, a sample had to be made and those registers with approximately 20 years in between were chosen. Having selected our sample sources, we were then in a position to examine thoroughly the debate between the two great jurists of the 16th century, Chivizade and Seyhulislam Abussuud Efendi and attempt to conclude, some four hundred years later, whose perspective was the most accurate. The question that we researched was, "what percentage of registered *waqfs* were perpetual"? But first, the term "perpetual" must be defined. For *all* practical purposes, a perpetual *waqf* is defined here as one which survived for more than a century. Thus, those *waqfs* that had survived for at least one hundred years were sought.

In order to find the answer to the problem of perpetuity a total of 2688 cash *waqfs* were entered into the computer. This constituted the *total* population of the research. Within this *whole* population, however, there were 761 *individual waqfs* that were repeatedly identified across several different years, hence the

much larger *total* population figure. The main question can thus be re-stated; what percentage of these 761 waqfs were "perpetual"?

In order to answer this question the entire *waqf* population was analysed by computer. To help the computer identify distinct individual *waqfs*, it was decided that the district (*mahalle*) would be the main research unit. There were usually several *waqfs* in each *mahalle* and each of the latter was given a separate code. The computer was ordered to arrange first the entire population according to the *mahalles* in alphabetical order and second, to produce a chronological list of the *waqfs* in each *mahalle*. With this chronological list of district *waqfs* in hand, it was then a simple matter to search for an individual *waqf* and count the number of its occurrences across different registers and different years.

One of the greatest difficulties encountered in this study was the naming of the *mahalles*. This difficulty became quite serious since the recording clerks often omitted writing the name of the *mahalle* in which a *waqf* was established. and so many *waqfs* could not be included in the research. Thus, the number of *perpetual waqfs* observed represents a probable minimum of the *total* reality. This number was 148, that is to say, out of 761 individual *waqfs*, 148 definitely survived for more than a century. This gives us a "perpetuity percentage" of 19%. It is quite clear that had it been possible to incorporate, into the general population, those *waqfs* that could not be traced to a specific *mahalle*, this percentage would have exceeded 20%.

Given this information, can we then pass a judgement about the 16th century debate of perpetuity? In other words, was Abussuud Efendi correct in arguing that cash *waqfs* had as good a chance as real estate *waqfs* for long-term survival? Obviously, what has been presented above constitutes only the first part of the answer to this question i.e. that at least 20% of the cash *waqfs* survived for more than a century. For a complete answer, it would be necessary to determine the survival rate for real estate *waqfs*. Such research has never been attempted.

At this point it may be argued that the *real estate waqfs*, normally, would have had a far better chance of survival than the *cash waqfs* and Abussuud Efendi must have been wrong to argue that the latter had as good a chance for survival as the former. But the staying power of the *real estate waqfs* should not be exaggerated. After all, *waqfs* were subject to such dangers as frequent fires, earthquakes and the declining fertility of land. Moreover, they suffered from inelastic revenues, the artisans who rented their shops refused to increase their rents and were difficult to evict due to the State support they enjoyed.

Icareteyn Vakiflari

When a major disaster struck a *waqf* property, substantial reconstruction work would have to be undertaken. Financing such unforeseen major expenses would naturally have been beyond the capacity of the normal revenues of the endowment. The solution was found in an institution known as the *icareteyn vakiflari*, which may be translated as the "double rent endowments."

The basis of this institution is subject to debate. Gerber has argued that the classical law manuals are silent about the *icareteyn vakiflari* and that these endowments were invented during the 16th century. According to Gerber, these endowments were incorporated into the Ottoman jurisprudence in the year 1611-12, with the promulgation of a new law. This law belonged to the orbit of the state law, *kanun*, and was not an original Islamic concept. However, this view is challenged by Akgunduz who traces the origin to the so-

called *icare-i tavile* by which the long term renting of an endowment property became possible for the first time as early as the 10th century. The *icare-i tavile*, a simple method by which the trustee signed successive rent contracts in a single session, was approved by the well known Hanefite jurists Mohammed b. El-Fadl and Ca'fer al-Hindawani. Moreover, the concept of a lump sum payment can also be observed in the writings of these early 10th century jurists. That the *icare-i tavile* evolved during the next six centuries into the Ottoman *icareteyn vakiflari* is certainly an interesting idea and is supported by Klaus Kreiser. Drawing our attention to a 15th century *fetwa* by Seyhulislam Molla Gurani and to Bulent Koprulu's work, Kreiser has informed us that the concept of double rents was well known during the 15th and 16th centuries.

But this evolution did not occur smoothly and the legality of the concept was subject to an intense debate lasting several centuries even before the Ottomans emerged as a world power. The final outcome of the debate was that such endowments could be permitted only following the decision of a judge and in response to a dire necessity, *zaruret*. In any case, the promulgation of the 1611-12 law was apparently in response to such a *zaruret* which took the form of a series of fires that caused large scale destruction of the *waqf* property in Istanbul.

The new system was based upon two different types of rents: the first one was a large lump sum amount, *muaccele*, paid promptly to the trustee of the *waqf*. The second type, *muecccele*, was the normal annual rent. According to a *fetwa* by Abulhay, the *muaccele* had to be roughly equal to the real value of the *waqf* property and the relationship between the two rents exhibited a ratio that varied between 1:30 and 1:112. With the now substantially enhanced revenues of the *waqf*, the reconstruction work could be completed. In order to ensure that the rental of a *waqf* property remained attractive to prospective tenants, the tenure was lengthened substantially, up to as much as 90 years.

Lengthening the tenure to nearly a century created two new problems. The first one was the legal problem of circumventing the orthodox legal prohibition on the long-term lease of a *waqf*. A legal device, *hile-i ser'iye*, which has been explained in detail by Gerber, solved this problem. The second problem was the more substantial one of confusion and eventual loss of the *waqf* property rights in the long term. It goes without saying that with the tenure increasing to just under a century, the *waqf* property ended up having, in practice, two "owners" which must have led to substantial confusion of property rights. As a result, the new tenants who rented it as *icareteyn* must have eventually usurped some real estate *waqf* property. There is substantial evidence that in Egypt, where the ninety years tenure was applied, probably, for the first time, this practice led to the emergence of pseudo private property.

Although it is not possible within the present limitations of our knowledge to quantify these arguments, substantial evidence can be found regarding the evolution of the Ottoman *waqf* law. Consider for instance, the legal status of the person, *mutasarraf*, who utilized the *waqf* property. Although strictly speaking, when the former died, the contract between him and the endowment should have been cancelled, however, over time a transfer prior to death was permitted. This transfer took the form of renting or selling the *waqf* property to a third party. Bequeathing the property to one's children or even to other relatives was permitted first in 1833 and then in 1867. When such transfers became legal, clearly the status of an *icareteyn waqf* effectively approached that of private property. Finally, *Vakiflar Kanunu*, the republican law of endowments, permitted the private ownership of a *waqf* property against the payment of a so-called *taviz bedeli*.

Until now, we have referred to the “usurpation” of *waqf* property rights by private individuals. But the greatest challenge to these rights came from the State and need not be repeated here as it has been explained in detail elsewhere. All of the above should indicate the vulnerability of the real estate *waqfs* for long term survival and hence in retrospect support Abussuud Efendi's argument in the perpetuity debate.

Before moving on to the next topic, it will be argued here that the *icareteyn vakiflari* probably constituted the origin of the well-known *malikane* system, which was initiated in the year 1695 and thereafter dominated Ottoman State finance during the 18th century. In the *malikane* system, as in the *icareteyn vakiflari*, tax-farms were auctioned off to the highest bidder who paid a *muaccele*, a large lump sum payment and an annual rent, *mal*. The system was introduced during a period of extreme financial hardship and severe budget deficits caused by the long and costly war with the Habsburgs and played a crucial role in restoring the State finances (Genç, 1975).

The Management of the Cash *Waqfs*

Having observed the “perpetuity percentage” of the cash *waqfs*, the obvious question to ask at this point is one of management. How was it that some twenty percent of the cash *waqfs* succeeded in surviving for more than a century in the first place? To answer this question we need to take a careful look at the way these *waqfs* were managed. More specifically, we will be concerned here mainly with the manner in which the trustee invested the capital of the *waqf*.

A typical 18th century *waqf* register contains the following information: 1. The name of the *waqf* and the purpose for which it was established. 2. The name of the *mahalle*; district, in which the endowment was registered. 3. The name of the trustee. 4. The time period covered by the census. 5. Original capital of the *waqf*. 6. Later additions to the capital of the *waqf* either by individuals or by other *waqfs*. 7. The balance of the new capital thus formed. 8. The return obtained from the investment of the endowed capital at the end of the year. 9. The purpose for which the annual return was designated, i.e., the expenditure or *almasarif*. Finally, in the section known as the *zimem*, information about the borrowers of the endowment capital was given: 10. The names of the borrowers. 11. The amount of capital they borrowed. 12. The *mahalle* where the borrowers lived. 13. The religious denomination of the borrowers and, 14. Their gender. The invaluable wealth of information contained in the *waqf* census registers stems from the standardized entry of data kept on hundreds of endowments across a time span of nearly three hundred years. Leaving aside the usual changes in the palaeography, there are only two distinctions discernible between a record kept in the 16th century and one of the 18th century; profit was called *irad* in the former period and *murabaha* in the latter, and whereas in the earlier period there is no information supplied about the borrowers, this information is made available in the latter. With the exception of these differences, a 16th century *waqf* census entry contains exactly the same type of information as the one from the 18th century.

A typical 18th century cash *waqf* entry would read like this; “the account of the revenue and expenditure of the Muslim endowments for the purpose of (assisting) the *avariz* and *nuzul* taxes for the (residents of the) Orhan Gazi district of the city of Bursa during the trusteeship of Esseyid Halil Aga, the trustee of the said endowment from the year 1200 (1785) until the end of Zilhicce of the same year”. This particular cash *waqf* was endowed with an initial capital of 2377.5 grus. To this, the “profit” of the previous year was added which increased the capital to 2544 grus. Later, we have three other *waqfs* further contributing to this 2544 grus. The first contribution, 50 grus, was provided by the *waqf* of the Ayse Hatun for the purpose of reciting the *mevlid*. The second one, 85 grus, came from the *waqf* of Hatim Hatun, for the same purpose. Finally, the third contribution, 50 grus, also came from the *waqf* of Hatim Hatun this time, for the purpose

of buying candles for the Orhan Gazi *waqf*. The total capital of the endowment thus, increased from the original 2377.5 grus to 2729 grus, a total addition of 351.5 grus.

This enhanced capital of 2729 grus was then distributed as credit to 20 individuals. These investments generated a return of 257.5 grus, *murabaha fi sene-i kamile*, which represented 9.4 per cent of the invested capital. Out of this return of 257.5 grus, a total of 86.5 grus were spent to assist the payment of *avariz* and *nuzul* taxes, to recite the *mevlid*, to buy candles, to pay the trustee and the bookkeeper, and for miscellaneous expenses. The remaining 171 grus was called the *ziyade ez masraf* and was added the following year to the capital of the endowment.

This demonstrates, in brief, how a cash *waqf* actually functioned. In a nutshell, the endowed capital was distributed as credit to a number of borrowers and the return from this investment was spent for religious and social purposes. If the return exceeded, as in this particular example, the expenses, the remainder was then added to the original capital of the endowment the following year. In this brief explanation there are many points that cry out for an explanation. First, let us consider the enhancement of the initial capital.

The original capital of an endowment could be expanded in two ways; either the return of the invested capital exceeded the expenditure and the resulting profit was added to the capital, or other endowments assigned part of their revenue to the endowment considered. The *waqf* for the provision of food to the members of the guild of *sipahiyen* constitutes a good example: the original capital of this endowment was 2010.5 grus. Four other endowments contributed to the capital of this *waqf* increasing it to 2180.5 grus. There is no satisfactory explanation for this frequently observed phenomenon of the transfer of funds between endowments. Whatever the explanation, the increased capital was invested in its entirety through transference to borrowers.

Having observed above that the original capital of the endowment could be increased either by a reinvestment of the profit generated or by contributions from other endowments, it will be argued here that there must have been a relationship between "perpetuity" and enhancement of the initial capital. Put differently, we have the impression that the "*perpetual waqfs*" owed their survival to the enhancement of their initial capital. It has been stated above that 148 *perpetual waqfs* were studied. Of this total a 25% sample (36 *perpetual waqfs*) was created and the relationship between the enhancement of their capital and their perpetuity was examined. The results of this analysis are presented in Table 1¹. Out of these 36 *perpetual waqfs* only 7, or 19% had not had their initial capital expanded. The remainder, i.e., 81% of these *waqfs* had gone through a process of capital enhancement. Thus our impression that the enhancement of the initial capital appears to have been an important factor in explaining the perpetuity of the endowments was confirmed.

Let us now examine the nature of the return of the invested capital, the *irad* or *murabaha*. Was it based on a certain percentage of the capital invested i.e., a rate of interest pure and simple or, was it solely the profit generated by the invested capital? If the former is true, it goes without saying that this would be in contradiction with the well known Islamic prohibition of interest. In such a case an explanation concerning how the prohibition was circumvented would be necessary. If the latter alternative is correct, i.e., return equals profit realized, then the return could conceivably entail not only a situation of profit but also a loss thereby causing a potential depletion of the initial capital as well.

¹ For "Capital enhancement and Perpetuity" table see: Murat Cizakca, *A history of philanthropic foundations the Islamic world from the seventh century to the present*, Istanbul: Bogazici University Press, 2000).

A cash *waqf* could invest its capital in one of these three methods: *mudaraba*, *bida'a* and *muamele-i seriyye*. The first two methods are well known forms of Islamic finance and need not be explained here. The third expression, on the other hand, is a general terminology covering various methods by which money could be lent to borrowers within the framework of Islamic jurisprudence. While the jurists permitted these *muamele-i seriye* methods, it seems they were simple legal devices intent on obeying the letter of the law while violating its spirit. Of these, a method called *Istiglal*, was the most wide-spread. By this method, the borrower was asked to provide a collateral, usually his own house, which he was permitted to continue using but for which he had to pay a rent for as long as he kept the *waqf's* money in his possession. When he paid back the credit, the ownership of his house reverted back to him. It is the exact nature of this rent and whether it actually constituted interest that is debated.

Thus, through *istiglal* and other similar measures it was possible for cash *waqfs* to lend money (on interest) and still remain within the law. But did they actually lend money on interest or pseudo interest? We searched for the answer to this question by examining the *murabaha/capital* ratios. This search also shed light upon a recent debate between modern economic historians and jurists. This debate started with the Barkan-Ayverdi study that claimed that the cash *waqfs* simply lent money on interest. These authors were then joined by first Mandaville and then Gerber.

A large body of modern day jurists, specializing in Islamic law came to notice Barkan's and others' argument when these views were summarized and published in Turkish (Çizakça and Çiller, 1989). In a symposium that followed in Istanbul, the historians' views were criticized on the grounds that all of the methods by which the cash *waqfs* transferred their capital to the borrowers had been scrutinized carefully by the Ottoman jurists and were therefore legal. More specifically, it was argued that the historians had been confused by some of the terminology used in the endowment deeds. The term *istirbah*, for instance, which some historians wrongly interpreted as resorting to *riba* or interest, simply meant that the capital of the endowment was not transferred as *karz-i hasene*, lending without interest, but that a share of the profit to be earned by the investment of the endowed capital was to be paid back by the borrower to the *waqf*. The term *ilzam-i ribh*, likewise, meant that the borrower was required to make a profit and return to the *waqf* the principal plus a share of this profit. The term, *onu onbir uzere*, which can be translated as "eleven out of ten", specified this profit share and meant that for every ten *dirhems earned* by the borrower or the entrepreneur, one *dirhem* should be returned to the *waqf*.

The crucial word here is "earn". Indeed, if as Donduren suggests, the amount returned to the *waqf* by the borrower was a percentage of the profit earned, then this would be a profit share and not interest. So, herein is the basis for yet another debate.

To test this theory we need to investigate the profit/capital ratios for each cash endowment. If Donduren is right and the return of the capital was in the form of a profit share then we would expect that the profit/capital ratio would exhibit a fluctuating trend reflecting the ever changing amounts of profits (or losses) accruing to the invested capital. If the return, however, were in the nature of *interest*, then we would expect to see more or less constant profit/capital ratios reflecting the constant returns to the invested capital.

Before we start this analysis, however, we need to make a distinction between judicial and economic interest. Even if the profit/capital ratios exhibit a constant trend and the return is therefore identified as interest, it must be remembered that this pertains to an economic interest and not to a judicial one. This is because, as far as judicial interest is concerned, the issue had been resolved centuries ago by the jurists. *Istiglal* and other methods of lending that modern historians consider simply as interest, pertain in actual fact to *economic* interest. As far as the Legal Establishment was concerned these instruments were permitted and not categorized as interest. Most of the Ottoman jurists had no doubts about the legality of these instruments.

To find an answer to the question of whether the *murabaha* or *irad* constituted an *economic* interest, 1563 *waqfs* and their respective profit/capital ratios covering the period 1667-1805 had been entered into the computer. This evaluation constituted a major part of an earlier study (Çizakça, 1993). Only four of these *waqfs* exhibited significant fluctuations while all the rest, i.e., 1559 of them, produced returns of between 9 and 12 per cent. Thus we conclude, although the financial instruments utilized by the cash *waqfs* were considered to be legal and approved by the courts, these constant ratios strongly suggest that an *economic* interest prevailed. The details are presented below.

| Average profit/capital ratio (Economic interest) | Economic Interest Rates in Bursa |
|-----------------------------------------------------|----------------------------------|
| 963/1555 | 10.8% |
| 1078/1667 | 10.8% |
| 1104/1692 | 10.8% |
| 1105/1693 | 10.6% |
| 1163/1749 | 11.5% |
| 1181/1767 | 11.1% |
| 1200/1785 | 11.5% |
| 1201/1786 | 11.0% |
| 1220/1805 | 11.5% |
| 1239/1823 | 13.0% |

Table 1

At this point it would be appropriate to ponder the implications of this observation. First of all, the increasing trend of the economic interest rate in Bursa is diametrically opposed to the declining trend of the rate of interest observed in the West. This observation needs urgent explanation and should constitute the subject of a separate research. Moreover, there seems to have existed a secondary capital market in the Ottoman economy. This conclusion is suggested by the observation that market interest rates prevailing among the *sarraf* in Istanbul as well as in Ankara were significantly higher than the Bursa interest rates. This leads us to the following conclusions: first, the cash *waqfs* were prohibited from applying the existing market interest rate and were not allowed to charge rates above a certain limit imposed by their founders. Second, there were at least two different rates of interest prevailing in the market with the cash *waqfs* applying the lower rate. Consequently, it would make economic sense to borrow from a Bursa cash *waqf* and to lend the capital borrowed at the market rate of interest, say, to the *sarrafs*, bankers, in Istanbul.

We will investigate this speculation below. For the moment it should suffice to point out that evidence from other sources support this argument. Consider, for instance, the forthcoming book by Ronald Jennings where he has shown that the trustee of a *waqf* in Lefkose, Cyprus lent money to the poor at 20 or 30% "interest" thereby violating the condition of the donor that only 10% "interest" be charged. This violation did not escape the attention of the court and the trustee was accused of fraud.

It is possible to find literally thousands of endowment documents, *vakifnames*, which impose a maximum level of *economic* interest to be charged. Consider the following cases: In the month of Safer, 1513, el-Hac Suleyman b. el-Hac (?) endowed 70.000 silver dirhems. Of this, 30.000 dirhems were to be spent for the construction of a school and the remaining 40.000 was to be loaned as *muamele-i ş-eriyye* and *istiglal* with 10% annual *murabaha*. The revenue thus obtained was to be spent as follows; 3 dirhems daily wage to the teacher of the school, 1 dirhem to his assistant, 1 dirhem to the person who recites the Koran, and 2 dirhems to the trustee of the endowment.



Figure 2 – An Ottoman Akca dated 1115 hijra (1703 AD), issued during the reign of Sultan Mehmed IV

Looking at the situation from a purely economic point of view, it may be suggested that if other institutions like the *sarraf* existed, that fully exploited the high market demand for capital by charging higher rates of interest, then eventually such institutions would expand at the expense of the cash *waqfs*, which due to moral and religious considerations were not permitted to charge beyond a maximum rate. We will have more to say on this argument when we consider the decline of the cash *waqfs*.

INJECTION OF CAPITAL INTO THE ECONOMY

The Trustees as Borrowers

The points just made may be investigated further by a careful analysis of the borrowers. It has been indicated above that after the year 1749; the Bursa *waqf tahrir* registers contain a section for each *waqf* that informs us about the persons who borrowed the capital of the endowment. Looking carefully into these sections it should be possible to identify frequent borrowers, or those who borrowed regularly from a multitude of endowments. These individuals were most likely the ones who borrowed at the lower rate offered by the cash *waqfs* of Bursa and then lent this cash at higher rates to the *sarrafs* of Istanbul. The careers of two trustees extending from 1749 to 1785 in the district of Timurtas in Bursa illustrate this point.

First of all, we note that these persons had administered as many as eight different endowments. Thus, it seems, the trusteeship had by this time emerged as a distinct profession. Halil Efendi received 69 grus and 360 akces salary, *mevacib*, annually from these establishments in the year 1749. Eighteen years later, in 1767, he was still managing seven foundations in the same district and his annual salary had increased to 76 grus and 260 akces. But he was not satisfied by this and had begun borrowing from the very foundations that he administered. The total amount he borrowed in 1767 amounted to 14 grus and was obtained from two different foundations.

In the year 1785, a certain Ahmet Efendi replaced Halil Efendi mentioned above. This Ahmet Efendi served as the trustee of six cash *waqfs* in the same Timurtas district. Four of these six endowments were the same as those managed previously by Halil Efendi. Ahmet Efendi earned a salary of 50.5 grus from these endowments, considerably less than Halil Efendi's 76 grus, 360 akces. But Ahmet Efendi was a much greater borrower. He borrowed a total of 79 grus, far in excess of Halil Efendi's 14 grus, from four of the endowments he was managing.

These two cases lead us to believe that not only had trusteeship emerged as a distinct profession, but also that trustees were emerging as major borrowers as the 18th century progressed. This increasing tendency for trustees to borrow is also confirmed by a more thorough analysis involving a 25% sample for the years 1749-1823. The details are presented below.

Based upon the tables, we can now conclude that the trustees were becoming more and more significant as borrowers. Since they controlled the cash *waqfs* it must have been relatively easy for them to borrow capital from these institutions. The percentage rate at which they borrowed was shown to have been substantially lower than the prevailing market rate. Consequently, it is argued that the trustees must have earned substantial amounts by exploiting the difference between the two rates of "interest" existing in the capital market.

Capital Injection

All the information presented above supports the fact that cash *waqfs* were responsible for a large-scale injection of capital into the economy of Bursa. Based on results of an analysis made with a 25% random sample, it seems, in a given year, 10 to 12 persons, on average, borrowed from a single *waqf*. But some *waqfs* provided credit to as many as 37 to 42 persons within a given year.

If we take 1767 as the year for which we have the most complete information, and multiply 1662, the figure derived from the 25% sample as the number of borrowers for that year, by four, we obtain a very rough estimation of the total number of borrowers; This figure is 6648. Thus, we conclude that in a given year during the 18th century more than six thousand persons were provided with credit by the cash *waqf* system in the city of Bursa.

To gain a figure for the total amount borrowed by these people, we should also multiply the credit provided in the sample for 1767, 117.084, by four. This gives us almost half a million grus. At this point we may wonder about the relative significance of this figure. Comparing this figure with the data provided by Mehmet Genc for the tax yield of the Bursa silk cloth press, *mukataa-i resm-i mengene-i kutni ve pesimi ve keremsud-i Brusa ve tevabii*, for the years 1757-1788, we note that the capital injected into the economy of Bursa by the cash *waqfs* was nearly ten times greater than the amount withdrawn by the State through the

tax farm of silk cloth press. The redistribution function of the cash *waqfs* must not escape us here: the cash injected into the economy was not a lump sum amount given as credit to a select group. On the contrary, this amount saved by the privileged few was *voluntarily* redistributed. Thus, injection and redistribution occurred simultaneously. Evidence for this will be provided below.

In this context an assessment of the six thousand or more persons who were provided with credit needs to be made. Indeed, what does this figure imply? Unfortunately, a reliable estimation of Bursa's population for the 18th century is not available. Erder, based upon the reports of French travellers, has made the only estimate that this author is aware of. Accordingly, in the early 18th century, Bursa had a population of about 50.000 to 65.000. By 1831, Behar (1996: 35) informs us that the city's population was 60.000. By the beginning of the next century (1911), this figure had reached 76.000. Thus, it would be reasonable to argue that for most of the 18th century Bursa probably had a population of about 60.000. In view of these numbers, we can conclude that about 10% of the total population of Bursa resorted to the cash *waqfs* of the city as a source of credit.

At this point, however, we must point out another difficulty in analysis and that is the repetitiveness of the data. We do not know if these six thousand or so borrowers were six thousand separate individuals or if a particular group of people borrowed from a multitude of endowments in a given year. The answer to this question is important also from another perspective: capital pooling.

In view of the difficulty presented by the Muslim names, in searching for an answer to this problem, it was necessary to develop a method that would reveal specific information about each one of the more than six thousand borrowers. This study was facilitated by the availability of two additional types of information: the name of the district, *mahalle*, in which the borrower resided and his profession. To facilitate the research further, a sample, had to be taken. This time four of the most popular Turkish names were chosen: Ahmet, Mehmet, Ali and Mustafa. The computer was then asked to list all the Ahmets, together with the names of the endowments from which they borrowed, the name of the district in which each one lived, the profession of each one and the amount borrowed by each. The same process was repeated for each of the other names. As a result, 133 professions were identified. Leaving aside one interesting case whereby a mother and a son had borrowed from the same endowment, it became clear that only one individual, a certain Ali Molla, had borrowed from two different endowments in the year 1767. This gives us a ratio of 7.5 per thousand. Thus, within the obvious constraints of our sample, it is concluded that only 7.5 per thousand of the borrowers practiced capital pooling. This gives, as a very rough estimate, the result that out of the 6648 borrowers only about fifty were involved in capital pooling. In view of what has been explained above about the increasing importance of the trustees as borrowers, it can be argued that most of these fifty borrowers plausibly belonged to this particular profession. This argument is supported by a previous study that showed that another profession that would have been most likely to utilize the cash *waqf* sources, i.e., the silk sector, rarely did so. In fact, the ratio Silk Credits/Total Credits never exceeded 3% during the period 1749-1785 (Çizakça, 1993).

The Decline of the Cash Waqfs

In the year 1909, cash *waqfs* yielded 7500 *grus* interest in Istanbul and 9400 *grus* in the provinces, thus a total of 16900 *grus*, while the total revenue of the *awqaf ministry* amounted to 56.966.000 *grus*. By contrast, in the same year the Ziraat Bankasi, an agricultural bank, singularly advanced about ten times this amount, 563 million *grus*, as credit. The credit advanced by the Ottoman Bank, on the other hand, reached a staggering 1,102 million *grus*. Seyhun does not make it clear if the entire capital of the cash *waqf* system

was included in the total revenue indicated above but it would seem that it was not. He informs us that in the year 1914 a new bank called the *Awqaf Bankasi* was established. The capital of this bank was 500,000 *liras*, 500.000.000 *grus*, and consisted of almost entirely endowed money. Thus, the entire money endowed to the cash waqf system amounted to, at the most, 500 million *grus* which was still less than the credit advanced by the Ziraat Bankasi alone as mentioned above. In short, the cash *waqf* system was superseded by modern banks as suppliers of credit.

Apparently there were two distinct reasons behind this decline: economic and administrative. Let us first concentrate on the former. It has already been mentioned that the cash *waqfs* charged a fixed rate of *economic* interest that did not change in the long run. The rigidity of this rate was caused by conditions stipulated by the founders at the time of the establishment of these endowments. Once so determined, these rates could not be changed in response to the changing economic conditions and any attempt to do so was considered to be against the law. This is a clear case of information asymmetry: the rates were determined by the founders, who had no information about the economic conditions in the future.

While the rates charged by cash endowments thus remained fixed, other sources of finance that developed were not hampered by such limitations. The *sarraf*, moneychangers, charged rates determined by the supply and demand for money. Consequently, a capital market developed in which two different rates of interest prevailed.

It was argued above that under these conditions it would make sense to borrow money from cash *waqfs* that supplied the relatively cheaper capital and then sell this to the *sarraf*s who would re-sell it with a mark-up to the public. It was further argued that the trustees of the cash *waqfs* were in an ideal position to perform such transactions and, indeed, it was shown as evidence for the above argument that they were emerging as major borrowers of capital from the very endowments that they controlled.

Even more definitive evidence supporting this idea has been found in the archives of the Chamber of Commerce of Marseille. The correspondences of French merchants residing in Istanbul inform us that, indeed, the market rate of interest prevailing in that city was substantially higher than the *economic* interest charged by the cash *waqfs* of Bursa. To demonstrate this point Table 1 presented above has been re-formulated in order to include information from the French sources.

| Year | Economic Interest Charged by Bursa cash waqfs | Market Interest Rate in Istanbul | Source |
|------|-----------------------------------------------|----------------------------------|------------|
| 1555 | 10.8% | 20% | A 68/75 |
| 1643 | | | ACCM, J141 |
| 1667 | 10.8% | | B135/350 |
| 1672 | | 25% | ACCM, J143 |
| 1686 | | 25% | ACCM, J145 |
| 1687 | | 18% | ACCM, J145 |
| 1692 | 10.8% | | B169/385 |
| 1693 | 10.6% | | B169/385 |
| 1698 | | 20% | ACCM, J183 |
| 1700 | | 18% | ACCM, J152 |
| 1748 | | 10% | ACCM, J201 |
| 1749 | 11.5% | | B170/386 |

| | | | |
|------|-------|--|----------|
| 1767 | 11.1% | | B199/423 |
| 1785 | 11.5% | | B352/736 |
| 1786 | 11.0% | | B352/736 |
| 1805 | 11.5% | | B197/802 |
| 1823 | 13.0% | | B308/548 |

Table 2 - (ACCM: Archives of the Chamber of Commerce of Marseille. I am grateful to Ethem Eldem for these French sources).

In one of the French documents (ACCM, J 183), it is clearly stated by the two "deputes" Conston and Reimond that the situation in Istanbul differs substantially from that of Europe. They report that the *sarrafs* obtain capital at 12% to 13% interest which they then lend to members of "our" nation at about 20% interest without any regard to usury prohibitions. This approximate rate of 12-13% is roughly 2% above the rate at which the cash *waqfs* provided capital. The 2% difference therefore may represent a mark up charged by the trustees when they re-sell the capital to the *sarraf*. Moreover, the trustees themselves could also become *sarrafs*. In this case, the profit of the *trustee/sarraf* would increase by up to 8% or more. In short, the *trustee/sarraf* would borrow capital cheaply from the cash *waqf* managed by him and loan it at a higher rate to a third party. This process naturally closely resembles the essential character of conventional deposit banking.

Finally, by the middle of the 18th century the difference between the *economic* rates charged by the cash *waqfs* and the market interest rate prevailing in Istanbul had substantially narrowed. Assuming that the demand for capital remained constant, this narrowing might possibly be explained by an increasing availability of capital which, in turn, might have been caused by more aggressive entry of the trustees into the capital market during these years. Turning our attention to administrative reasons for the decline of the cash *waqfs*, we must note a major development that affected the entire *waqf* system: not only cash endowments but also real estate *waqfs*. This was the centralization drive initiated by Abdülhamid I and continued rigorously by the following Sultans, particularly Mahmud II.

The centralization drive was prompted by the ever-increasing financial needs of the State and the fact that by the beginning of the 19th century large parts of land property in the Ottoman Empire was controlled by the *waqf* system. Thus, the State was deprived of enormous potential revenue. Moreover, this provocative situation had a shaky legal justification. After all, a major part of this real estate was *arazi-i emiriye-i mevkufe*, i.e., land that essentially belonged to the State but was made *waqf* and then eventually claimed by private persons through the *icareteyn* system explained above. As the *rakabe*, ownership, remained with the State, the Sultan could justifiably claim that these endowments were *evkaf-i gayri sahiha*, canonically unsound; and as they were of quasi-legal status and ultimately held provisionally, these *waqfs* could be revoked. After the destruction of the Janissaries and the resultant unchallenged growth of Mahmud's absolutism, practically all the endowments of the empire were put under the jurisdiction of the *Evkaf-i Humayun Nezareti*, Minister of Endowments. The *waqf* lands in this period yielded 44,000 *kese* revenue per annum which accrued to the Treasury. This amount was initially paid out to the endowments to meet their needs. During the government of Fuad Pasa these payments were called *iane*, aid. This was followed by a systematic reduction until the *iane* constituted a mere one-fourth of the original level of payments to the

waqf system. Thus, in short, the State first expropriated the revenues that belonged originally to the *waqf* system and then shamelessly called the meagre payments it made, "aid".



Figure 3 – An Ottoman akca issued during the reign of Sultan Mustafa bin Mehmed (1617- 1618- 1622- 1629)

Going back to the cash *waqfs*, we note that they too could not escape Mahmud's iron grip. A directive promulgated in 1863 made it clear that cash *waqfs* fell within the jurisdiction of the *Evkaf-i Humayun Nezareti*, Ministry of the Imperial Endowments. Article 14 of the directive instructs the trustees that the annual *murabaha*, return, of endowed money not assigned for a specific social service must be sent directly to the Treasury and recorded in the registers rather than kept by the trustees. This article is of interest not only because it indicates clearly that the cash endowments did not escape the centralization drive of Mahmud II, but also because it confirms the arguments made above pertaining to the tendency of the trustees to exploit the resources of the cash *waqfs* to their own advantage. It is self evident that the trustees did not just keep the money in their possession but lent it at a higher rate to the *sarrafs* or to the public.

At the turn of the century the cash *waqfs* were put under the control of a separate department, the Directorate of Endowed Money, *Nukud-i Mevkufe Mudurlugu*, which was to function as an agent of the Ministry. A few years later the bulk of endowed money controlled by the directorate was used for purchasing shares of a newly founded bank, the Bank of Pious Foundations (*waqfs*), *Evkaf Bankasi*. Since the Ministry bought the majority of shares, it in fact controlled the new bank. This control was assured by the composition of the board of directors the majority of whom were appointed by the Ministry. The lending regulations of the bank were quite conservative and have been explained in detail (Şeyhun, 1992).

Conclusion

By organizing as well as financing expenditures on education, health, welfare and a host of other activities, cash endowments fulfilled services that are today financed by the State or local authorities. Thus, they played a vitally important role in the Ottoman social fabric and did so without any cost to the State.

The aim of this article was to analyse how these endowments functioned and contributed to the society over the long term. For this purpose, the Cash *Waqf* Census Registers of the city of Bursa covering the period 1555-1823 were analysed. Thus, although limited to one Ottoman city, a long-term analysis covering almost three hundred years has been attempted for the first time.

Cash *waqfs* were subject to a number of controversies throughout their history. The first debate pertained to the long-term survival of these institutions. This article partially resolved this debate in retrospect: the registers revealed that about 20% of the Bursa cash endowments had survived for more than a century. The complete answer to the debate necessitates the discovery of the survival percentage of the real estate endowments.

The next question addressed concerned the reasons behind the relative success of these "perpetual" endowments. It was hypothesized that capital enhancement in the form of reinvesting the returns, receiving donations from other endowments, or both, played a decisive role in the survival of the endowments. This hypothesis was vindicated and the data revealed that 81% of the, 'perpetual' endowments had gone through a process of capital enhancement.

Another debate surfaced recently among the economic historians and modern Islamic jurists. While the former had argued that the return of the invested capital of a cash *waqf* was interest pure and simple, the latter rejected this view and argued that the return percentages stated in the documents pertained to *ilzam-i ribh*, the requirement that a certain percentage of the return *earned* was to be paid back to the endowment. This debate was resolved by an analysis of the *murabaha/capital* ratios of 1563 endowments. There is no doubt that cash *waqfs* injected substantial amounts of capital into the economy of Bursa. In this context the concepts of capital redistribution and capital accumulation need to be addressed separately: this research based upon the Bursa court registers has indicated that cash *waqfs* were, primarily, institutions of capital redistribution. The capital accumulated in one way or the other by the original waqf founders was voluntarily distributed to a myriad of borrowers. Thus, redistribution appeared to be the primary function of this institution. It is possible that the cash *waqfs* were tolerated, notwithstanding the controversial nature of the returns they generated, precisely because of this.

But I had originally thought that while they were thus redistributing the accumulated capital, cash waqfs might have also paved the way for a secondary cycle of capital accumulation by favouring the entrepreneurs over the consumers (Çizakça, 1996: 131-132). That is to say, by providing business capital to the entrepreneurs (borrowers), they might have also enhanced entrepreneurship and generated capital accumulation. If this were true, then the cash waqfs would have to be considered as both capital distributing and capital accumulating institutions. The available evidence from the Bursa Ottoman court records presented above, however, did not support this view. The latest research by Tahsin Özcan on the Istanbul (Üsküdar) cash waqfs also did not indicate any indication about the capital accumulating role of the cash waqfs (2003). The searched for evidence came from an unlikely source; the Venetian archives, where Suraiya Faroqhi discovered documents informing us that the Bosnian cash waqfs, indeed, provided entrepreneurial credit to merchants involved in trade between Bosnia and Venice (Pedani Fabris, 1994). Based upon Professor Faroqhi's discovery we can now argue that indeed cash waqfs functioned as both capital redistribution as well as accumulating institutions. Nevertheless, the true dimension of the capital accumulating function of cash waqfs can only be established by further research. Finally, it was concluded that State policy, more than anything else, was responsible for the final demise of the cash waqfs. The destruction started by Abdülhamid I, gained momentum under Mahmud II and was completed by the Republic in the year 1954, when all the capital of the extant Ottoman cash waqfs were pooled to create a modern bank, the Bank of Awqaf (Vakıflar Bankası). Yet, shortly after this, with the law of 1967, republican cash waqfs were borne. But that is a different story (Çizakça, 2000: 90-110).

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