A Look at Cash Waqfs as Islamic Financial Institutions and Instruments

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A Look at Cash Waqfs as Islamic Financial Institutions and Instruments

Mehmet Bulut and Cem Korkut

4.1 Introduction

The importance of institutions has long been understood, and it is known that an economy must be examined in relation to its traditions, social habits, laws, ways of thinking and the ways of life of its people and society. Waqfs are institutions which are able to analyse these factors and they

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succeed in this because they aim to provide a service to people. Waqfs have been managed with regard to decentralization: people who lived with problems and knew them directly could identify and resolve them (Çizakça 2006a). Decentralization also made control easy. The Ottoman Empire, for example, showed that production, consumption and distribution were not determined by economic laws; rather they were determined by the political, social and cultural structure of society. The Ottoman economy was also affected by religious belief. The restrictions of Islam determined economic regulation and waqfs were a main part of this. Cash waqfs were the linchpin of this economic system.

The culture of waqfs is one of the cornerstones of Turkish–Islamic civilization (Alper and Canan 2009). Waqfs, which were in effect in all Ottoman territories, provided not only works of charity but also many things like protecting the community from a strong central authority, financing the rich inheritance of the Islamic civilization, and regional development. Even though there was no social security as an institution, waqfs provided a primitive pension system. Almost every service essential to civilization was funded, organized, built and maintained by this waqf system (Çizakça 2000).

Obviously Islam had a great impact on the growth and development of this system. Research shows that, from the Karakhanid to the Ottomans of the Islamic era of the Turkish world, thousands of people established many waqfs with their own money and without personal benefit for various services. Yediyıldız asserts that they have allocated their agricultural income, rental income and income from accumulated funds for waqfs. Thus, the continuity of these institutions is ensured.

Thanks to waqfs, the following were provided in Ottoman Society (Korkut 2014):

1. preventing violations by a strong government of property rights;
2. preserving and financing the rich architectural heritage of Islamic civilization for centuries;
3. dealing with taxes during depressions;
4. preventing the break-up of land due to Islamic law;
5. providing pensions for old age and disability;

6. providing a primitive social security system and insurance;
7. preserving and building bridges, roads, harbours, lighthouses, libraries, cisterns, weirs, fountains and pavements.

There were many services that were financed by waqfs in Ottoman civilized society (Çizakça 2009). Waqfs even financed the building of city walls and castles, and they provided for security needs. Muslims could even complete hajj pilgrimages with the assistance of waqfs.

Waqfs also provided the things of daily purpose in Ottoman society, a culture that preferred a luxurious lifestyle. The surplus of wealth transferred to waqfs and their accumulation was directed towards public services; and the state sought to prevent capital accumulation.

4.2 Cash Waqfs

Cash waqfs are those that do not consist exclusively of real estate capital, but instead are based on cash. Like other waqfs, the main capital was protected, and it was operated to make income which was used for charity or provided a source of services previously decided on.

Cash waqfs developed in the Balkans and Anatolia where the Ottoman Empire concluded its expansion. From the 15th to the 20th century, they remained in existence. Since in Islam interest is banned, the question of whether the earnings of waqfs arose out of interest needs to be explored.

Cash waqfs worked in the same way as real estate waqfs. The capital was operated by the trustee and the income which was made was used for funding the waqfs' works (Özcan 2008a). With cash waqfs, people could donate not only real estate assets but also cash and securities. In this way, increasing funds, including the waqf system, were recorded and relatively small deposits were merged into the system. When the operation of a cash waqf is examined, it is seen that people mixed up procedures in order to avoid the restrictions of religion. Those who needed cash would sell something to the waqfs and repurchase it at a markup that was repaid over an agreed period. This system can be viewed as a micro-credit mechanism.

Waqfs that were funded directly had complex establishment procedures. According to the pamphlet of Ebussuud written under the influence of Imam Zufer,[1] a person who wanted to found a waqf firstly had to define the *waqfiyah* (endowment charter). The benefactor wrote the expenses of the waqf, the staff wages and the terms and conditions on the *waqfiyah*. After the creation of the *waqfiyah*, the benefactor submitted it to the waqf trustee. Founder and trustee would go to the *qadi* (judge), and the founder would repeat his requests. The trustee would approve, and the *qadi* would ask him whether the waqf was *saheeh*,[2] whether the conditions were contrary to Islam and whether his wage complied with the condition on the *waqfiyah*. After hearing the answers, the *qadi* would approve the solvency of the waqf and the legality of its conditions (Özcan 2003). The terms and conditions will now be examined against some sample *waqfiyahs*.

In *waqfiyahs*, the following terms were written:

1. the aim of establishing the cash waqf;
2. the name of the founder;
3. the name of the trustee;
4. the amounts of money to be devoted to the purpose;
5. the ways of using the money;
6. the revenues and expenditures;
7. the person who would manage it after the death of the founder;
8. the date of registration;
9. the names of the jury.

In examining the structure of the Ottoman economic system we can see that cash waqfs were notable institutions with a real emphasis on capital flows and credit transactions. The development of cash waqfs in Ottoman

[1] Ebussuud was Shayk al-Islam for nearly thirty years during the most glorious times of the Ottoman Empire. He had an impact not only on scientific and intellectual works but also on state policy. He was a scholar and jurist who contributed in the implementation of customary law and Islamic law in a harmonious manner in the context of meeting the needs of society.

Imam Zufar was the scholar who saw CWs absolutely permissible. He also listed the halal ways of using money as capital for CWs.

[2] *Saheeh*: trustworthy (English), *sahih* (Turkish).

territories, especially in Rumelia Province, was not a coincidence, as the Balkans were one of the most important trade and production centres for years.

These waqfs helped people who needed cash, and there were different ways to effect this:

1. by providing money to people who were otherwise not able to obtain it without having to repay it along with interest;
2. By giving money to those who could pay it back;
3. by helping people who were cash-strapped;
4. by helping those who were really in need. (Alper and Canan 2009)

Cash waqfs were generally used for providing credit in Rumelia Province since many cities there were trade centres. The province was close to Istanbul, the capital city of the Ottoman Empire. Due to the sensitivity of the issue, records of cash waqfs were protected carefully, which worked as an institution that supplied money to the market, including even small deposits. The main purpose of these waqfs was providing credit to firms. They also helped artisans to make their own capital and develop it (Tabakoğlu 2009). Cash waqfs were important in their era, and they demonstrate the importance of these institutions in the regulation of the economy. When there were cash shortages, cash waqfs worked as a central bank and supplied the money which had been collected.

It can also be seen how the collected money was used from the records. In the 16th century, 40 % of these waqfs were spent on education; but in the 19th century, this rate had decreased to 7 %. The share which was allocated for poor people, reached to 20 % in the 19th century (Çizakça 2000). One could say that at first there was a good economy, then it became worse, and then the share of poor people increased over time. Therefore, cash waqfs ended up in the position of providing services depending on the general situation of the economy. In the 16th and 17th centuries, these waqfs helped educational activities more, and because of the relatively fewer number in poverty, the share which was allocated to poor people was lower. The deterioration of the economy required that more money be given to people.

4.3 Cash Waqfs: Interest Versus Earnings

All the Abramic religions (Judaism, Christianity and Islam) prohibit charging interest on the lending of money, known as *riba* in Islam. Buddhism and Hinduism are other religions with a large number of followers and which also prohibit interest. In Islam, the charging of interest is one of the worst sins, and it is prohibited to borrow money with interest. Borrowing money with interest and paying interest can only be used when there is an obligation (Abdul-Rahman 2010). In the Qur'an, the prohibition of interest is clearly defined in Chapters Al-Imran and an-Nisa.

There are two types of *riba* in Islamic fiqh.[3] *Riba al-jahiliyah* is the type of interest that was used before Islam in Arab lands. In this type, interest commences if you do not pay your debt on time. *Riba al-fadl* is the other type of interest, an example of which is the common credit of today. For example, if you borrow $1200 from a bank with a one-year maturity, and will pay $110 each month, this will be equal to $1320. So, $120 is the interest. This method is widely used in the modern banking system.

We will now examine "interest" according to the Hanafi School of Islamic law. As previously described, interest is a fixed surplus in principle. In cash waqfs, these methods were not used and they offset the occurrences of halal money uses. One may thus look at the term "*ribh*" ("earnings"). If income is considered as "earned", there is no problem with Islamic regulation. Some scholars support this view and claim that the money that comes from the gain of a borrower is not interest but is profit sharing. Operations can be grouped as *kard* (a beautiful loan), *bida'a*,[4] *mudarabah* and *murabahah*. People give the same amount of money that is borrowed from the waqf in *kard*. This loan usually was of gold or silver to decrease the effect of inflation. In *bida'a*, people invest the money that is borrowed from the waqf along with all its profit.

[3] Fiqh can be defined as Islamic jurisprudence. All studies under the theoretical and practical applications of Islamic law are subject of fiqh.

[4] In the *bida'a* method, the borrower uses the money that was taken from the cash waqf for his business. Later, the profit is given back to the cash waqf to serve its purposes. Thus, the borrower does not expect any profit gain in the *bida'a* method.

Mudarabah was a labour–capital partnership, an agreement between the entrepreneur and the waqf. The entrepreneur put in his labour and the waqf put in the capital for the business. The profit would be distributed under the agreement. Any loss not due to failure by the entrepreneur would be paid out of the waqf. In *murabahah*, the waqf bought a property in cash and sold it again after a certain term. In *mudarabah* and *murabahah*, the excess money was not an interest, but profit. Moreover, this profit was spent for the purpose of the waqf (Döndüren 1998).

It should be noted, however, that only the right to utilize the waqf's capital—its usufruct—was distributed to the borrowers, not to the ownership. The latter was protected by hefty collateral usually in the form of the borrower's house. This Ottoman arrangement was known as *istiglal*. In this arrangement, borrowers from a cash waqf used its capital for a limited period, usually a year. During the period that the borrower kept the borrowed cash, he was permitted to continue using his house, which he had given to the waqf as collateral. In return, the borrower paid a rent to the waqf. When the borrower paid back his debt, the collateral, his house, was returned to him. Thus, the borrower's house had two functions: it served as collateral and as a source of rent income for the cash waqf during the period when its capital was loaned out. Whether the capital of the endowment was lent as credit to the borrowers and the return was, in fact, simply the ordinary interest, or whether the whole investment process was perfectly legal, is debated (Çizakça 2004).

4.4 Examples of Cash Waqfs in Rumelia

The first example of a cash waqf that of Huseyin Effendi b. İbrahim, which was founded in the Albanian city of Garzik Village on 22 November 1848 by Hüseyin Effendi b. Sheikh İbrahim Efendi. The capital of the waqf was a thousand qurushes and the rate of operation was 12 %. The operation method was *istirbah*.[5]

[5] The operation method of a CW can be defined as an Islamic financial instrument such as *murabahah*, *mudarabahah*, and sale-and-leaseback.

The second example is the waqf of Mahmud Agha b. Süleyman, which was also founded in Albania, in the Berder-i İskender neighbourhood, on 6 December 1859 by Mahmud Agha b. Süleyman Agha b. Hadji Ahmed. He devoted 2000 qurushes with an operation rate of 15 %. The methods of operation were written as *istirbah* and *istiğlal*. The income from the waqf was reserved to pay the wages of the staff at the masjid located in the Baba Geda neighbourhood. The conditions on the trustee and other functions were also written into the *waqfiyah*. The date of foundation and the name of the jury were also given in the *waqfiyah*.

The third example is from Kosovo. The waqf of Ramazan b. Recep was found on 8 March 1908. Its capital was 860 qurushes and the rate of operation was determined at 12 %. The income from the waqf was for the expenses of the mosque in Norçe Village. The views of the *mujtahid* imams, the verse of al-Baqara 181 and the date of foundation were also written into the *waqfiyah*.

Another example was the waqf of Ahmed Agha bin Ali, who was from Karça and resided in Yelkenciler Village, Xanthi. He founded the waqf in a court room of a government building and made Hüseyin Agha bin Kalyoncu Ömer Agha the trustee. He devoted 75 silver Mecidiye, equal to 1500 qurushes, and he declared that the money would be operated at 12 % annually. After this investment, it was asked that the cost of the mosque in Yelkenciler Village would be covered by the revenue.

The distribution of this income was conducted as follows. The imam who was in charge at the masjid was given 90 qurushes annually, as was the preacher. Ahmed Agha bin Ali also added some conditions to the charter about holding all the rights for changing or making other provisions for the waqf while he was alive. Moreover, after the death of the owner, persons authorized to work with the waqf were added in detail. In another section of the charter, there is information about the functioning and cancellation of the waqf, describing the opinions of a variety of imams. In the last part of the *waqfiyah*, the registration date of the waqf is written.

The cash waqf of Emin Agha bin Hüseyin bin Süleyman was founded in Mevcudiye District, Yunusdere Village, Ahi Çelebi Township, Komotini. The founder appointed Emin Agha bin Ahmed bin İbrahim as trustee. He devoted 1000 qurushes with a 15 % operation rate. This money was operated by a trustee. A sufficient mortgage and/or a strong guarantor was asked to use credit. The income equalled 150 qurushes, of which 50 was for the wage of the imam and preacher, 50 for the repair of the mosque, and 50 for the candle oil. The heirs of the waqf after the death of the trustee were also written in detail. This task was left for the most talented of his sons. There are also included the views of some imams and regulations on the waqf in the *waqfiyah*. Qur'anic verses and a registration date were also written at the end of the *waqfiyah*.

The last example was founded by companions. The waqf of Yusuf Agha bin Hadji Salih and companions was founded by 21 people. They founded a cash waqf and appointed İbrahim Efendi bin Hasan Rıza Efendi, who resided in Arifane District, Komotini, as trustee. They devoted 2775 qurushes and wanted to operate it with a 12 % rate annually. The income that came from this operation would be spent on the mosque, which was located in Burhaneddin Village, Komotini. Pehlivan Mustafa Agha was responsible for the services of the waqf. After the death of Yusuf Agha bin Hadji Salih, his son was authorized to manage the waqf. If there was no person who was very qualified, or he had no son, this right would be given to a person who was suitable from Burhaneddin Village. On the other section of the charter, there is information and provisions about the functioning and cancellation of the waqf that also describe the opinions of a variety of imams (Ebu Hanife, Ebu Yusuf, Hasani'ş-Şeybani). In the last part of the *waqfiyah* there is information about the registration date and the names of the jury who confirmed this waqf.

The examples show that all the detail of the waqf had to be described in the *waqfiyah*. The trustee had to control the waqf under these conditions. We also see that the founders tried to ground the waqf in Islamic law. Inequality in income distribution could be minimized by cash waqfs and social problems were prevented by this social institution. The need of poor people was met by the money of devotional people and is a method of fighting poverty. These waqfs also provided employment at the places they supported. In the example *waqfiyahs*, it can be seen that the imams' and preachers' wages were paid by cash waqfs, which provided the continuity of these institutions. Cash waqfs also contributed to the educational system by financing madrasas and schools and paying the wages of teachers and other staff. The construction or repair of some schools was also financed by cash waqfs. Money was devoted for providing waqfs with continuous revenue. Waqfs purchased houses, lands and real estate to operate the money, so the accumulated money was not inactive. Cash waqfs injected activity into the economy with this accumulated capital (Bulut and Korkut 2016).

The rate of operation was generally 15 %, which was not high at the time the waqfs were founded. There were regulations stipulating that this rate was not to obtain higher interest from borrowers. In the last part of the *waqfiyah*, the registration date of the waqf is written. In waqfiyahs, one routinely finds the phrase "onu on bir buçuk üzere", which can be translated as "eleven and a half out of ten", which equals a rate of 15%). In almost all *waqfiyahs* there is also a definition about the continuity of the cash waqf. The founder provided income constantly by asking the person who would use money from the waqf to possess a sufficient mortgage and/or have a strong guarantor.

4.5 Conclusion

Cash waqfs were charitable institutions and also provided labour and employment by giving income to scholars, imams, muezzins and preachers or by giving credits to people who wanted to establish a new business.

Cash waqfs were important because they operated like the banks of the present day. They gave credit to firms which needed capital for investment. This situation provided a manner for waqfs to maintain a source of income. They also served as a central bank even though they did not coin money. When the market needed money, cash waqfs prevented this shortage as best they could.

Cash waqfs also provided social work and were primarily non-profit, local government institutions. But the integration of profit into the waqf system caused some problems. One of these, probably the most important, was moral, because Islam strictly forbids interest. The waqf system, which had the aim of serving society, faced difficulties with the operation of cash waqfs. Another important point was the management of these waqfs. Their application showed that it was better to manage them locally, rather than from central government, when the system became weakened. The strict control of the institution was essential for cash waqfs, and this was made possible by local administration (Alper and Canan 2009).

The records prove that cash waqfs did not give importance to social status, occupational status or religious belief: all groups of people were able to take credit, including those producing goods, services and the trading by small scale artisans, groups of traders, merchants of military origin, non-titled unqualified people, and peasants involved in agriculture (Çiftçi 2004).

A diversity of loan fields shows that cash waqfs contributed not only to production but also to other services. People took credit for various reasons, including consumption, a low interest rate, capital, and as a way to protect themselves from economic crises. The Ottoman Empire did not give permission to a single collection of capital in nearly all areas, so all loans were distributed to the public and not given to certain individuals. Cash waqfs also protected people from the high interest rates of usurers.

They were linked to the Waqfs Ministry in the 19th century and survived into the last years of the Ottoman Empire. The money which had been amassed created a problem for many years, but was eventually transferred into Vakıfbank which was founded in 1954 (Öztürk 1995). At present, Vakıfbank is establishing a participation bank that will operate money under Islamic law. So it can be said that, even a hundred years later, cash waqfs have found a way to survive.

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