

The Question of Waqf in Turkey from its Ottoman Past to the Present

Sanem Aksoy Dursun

Dr.Sc. Sanem AKSOY DURSUN

Abstract

After the collapse of the Ottoman Empire, the traditional *waqf* law has gone through a reform. Republican reforms abolished the Islamic *waqfs* and replaced them with "foundations", an institution adapted from the Swiss Civil Code as it was regarded practically more eligible to reshape the former system. Turkish Republic introduced a new civil code in 1926. Under this new code, the *waqf* institution was changed into an organization detached from its Islamic background. The present essay is going to examine the *waqf* reform carried out in modern Turkey. The kind of the waqf prescribed by the code of 1926 and the waqfs existed during the Ottoman times were entirely different institutions. The predominant aspect of the newly introduced waqf is evident in its new status which is detached from its religious background. It was actually created and appropriated by considering the similar European organizations. Under the new law waqf is realized as a legal entity. The Islamic perpetuity principle has a rather different meaning under the Turkish Civil code. In this respect, this article will not only consider the legal aspects of waqf law but also it will consider the historical circumstances that paved the way to reshaping the former *waqf* system in the Republican era.

Key words: waqf; Islamic waqf; waqf reform; foundation;

1. Introduction

This essay will deal with the Turkish Civil Code with regard to the basis of the reforms concerning the waqf institution. The waqf is an institution formed to reserve accumulated wealth to be used for the good of the public. All through the Ottoman Empire, waqf was a very important institution. After the collapse of the Ottoman Empire, the traditional waqf law has gone through a reform. Republican reforms abolished the Islamic waqfs and replaced them with "foundations", an institution adapted from the Swiss Civil Code as it was regarded practically more eligible to reshape the former system. Turkish Republic introduced a new civil code in 1926. Under this new code, the waqf institution was changed into an organization detached from its Islamic background. The new administration felt it was necessary to revise the entire Ottoman legal system and introduced a modern legislation based on secular tenets.¹

The Ottoman waqfs had faced vital problems even in the nineteenth century and the whole system was then apparently not in a financially prosperous condition. Furthermore, waqfs had already begun to be abused in many ways serving wrong purposes. Consequently, religious groups, mainly the *tekkes* and the some leading sections of the military bureaucracy had gained extra power which became a real problem in the state mechanism. Yet, since the idea of the waqf was traditionally believed to have a sacred basis, the Ottomans could not have developed the idea to reshape the institution in a most radical manner. Hence what was done in this period to settle the problem was not directed to the aim of finding a radical solution to the problem in question but providing pragmatically sustainable circumstances within the status quo so that this historic institution could live on. As it was a chronic problem, the republican law concerning the waqfs preferred to introduce a radical reform, and such a reform could only be carried out by giving up the traditional legal institutions. In this respect, this article will also consider the historical circumstances that paved the way to reshaping the former waqf system in the Republican era.

¹ For such discussions see Çizakça M, "A Critical Assessment of the Waqf Law Being Prepared by IBD/IRTI and Quwait Foundation", pp. 427-448.
<<http://organizations.vgm.gov.tr/db/dosyalar/menu21.pdf>>20 March 2016. Shirazi N. S., "Integrating Zakât and Waqf into the Poverty Reduction Strategy of the IDB Member Countries", *Islamic Economic Studies*, vol. 22, No. 1, May, 2014 (pp. 79-108).

As the present essay is going to examine the waqf reform carried out in modern Turkey, the first question here to be responded is why it was felt to be necessary to revise the former waqf institution radically. The simplest answer to this question would be stating that social and economic structure of Turkey had changed. The changing circumstances provided an outlook to see, inter alia, that the waqf of the traditional society had already become outdated. The Republican Turkey was thus ready to revise the waqf practice whilst reforming the entire Turkish law. Yet before examining the Republican reform we need to respond to two major questions: what was the nature of the Islamic waqf, its historical sphere and how the Islamic tenets of the waqf were implemented under the Ottoman system. On the other hand, the reform process in Turkey has been criticized in several ways particularly on the ground that the Republican reforms in general served to cut ties with the Ottoman past. The present article also intends to make contributions to such discussions reviewing the already stated approaches to the given problem, and to exhibit the conditions that made the reform inevitable. At this very point it should be considered that the main purpose of this article is to set forth that the reform was inevitable. It was clear that the waqf institution could not have been sustained within their own existing construction since the Ottoman waqfs had functions that went far beyond the union of goods for charitable purposes. It is also worth noting that many implementations contrary to the essentials of the Islamic law could be found acceptable due to pragmatism and social needs. Although the social needs in several spheres could be satisfied via waqf components the Ottoman institution of waqf itself fell short of the social change and was incapable of meeting social needs. Certainly this institution was helpful and beneficial to some extent but was in general an agency prompting people to act in a closed environment. Within this closed sphere there was a huge mass of people manipulating the institution and benefiting from its revenues. Regarding the given circumstances the Republic found an incisive solution to the problem since the former legal system was not sustainable in the long run.

2. Waqf under Islam

The idea of waqf was closely connected with *sadaqa*, which means "alms", and the first waqf was founded upon the Muslim Prophet's hadith: The Caliph Umar received a piece of land and the Prophet asked him to

reserve this land and make use of it as *sadaqa*.² *Sadaqa* is mentioned and included in merits among doing a good deed in many verses of the Qur'an. In Islamic terminology *sadaqa* has often been used synonymously with *zakāh*, which is one of the five conditions of Islam. As an institution the waqf originally goes back to early Islamic law. Islam made a contribution to the development of this institution but similar organizations could be observed in the pre-Islamic era. This also reveals that the idea of restricting property for a particular reason is not peculiar to any religion. Thus it is possible that Muslims were aware of such earlier forms of this charity institution.³ Nonetheless, it should be noted that Islam revised the former practice and stamped its mark on the institution.

The waqf institution must always be a charity association in the general sense, and it is expected to provide charity either immediately or ultimately. The institution must be perpetual in order that it may be valid, hence donation must be intended to be perpetual. As a result, the waqf property cannot be sold or inherited, it must be kept under detention for a specified purpose given in the waqfiyya deed. The idea of the waqf is based upon donating property.⁴ However as legal personality was not recognized in Islamic law, the ideas about the ownership of the donated property differs.⁵

This institution gradually declined and was eventually abolished in most of the Muslim countries. According to some scholars the main cause of this decline is the lack of legal reforms to modernize the outdated waqf institution. The major obstacle that impedes modernization of the waqf institution is inherent in itself. First and foremost, predominating perpetuity principle has been an agent that hindered the necessary

² For more information, see Gil M, "The Earliest Waqf Foundation", *Journal of Near Eastern Studies*, 57, 1998, p. 126; pp. 125-140.

³ For detailed information Köprülü B, "Tarihte Vakıflar", *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, 1951, v. 8, no. 3-4, pp. 479-518; Hatemi, H. "Vakıf Kurumuna Hukuk Tarihi Açısından Genel Bir Bakış", *İHFM*, v.: LV S-4, 1997, pp. 111 ff.; Kuran, T. "Absence of the Corporation in Islamic Law", *The American Journal of Comparative Law*, vol. 53, no. 4 (Fall, 2005), pp. 789 ff.

⁴ Nasir, J. J. *The Islamic Law of Personal Status*, Third Edition, Hague, Kluwer, 2002, pp. 243ff; Cattan H. in *Law in the Middle East*, Vol. I, Origin and Development of Islamic Law, edited by Majid Khadduri and Herbert J. Liebesny, 1955, pp. 203 ff.

⁵ For discussions see. Abdallahi, A. A "A New Definition of Waqf: On The Basis of Which the 'Legal Personality' of Waqf Is Established", *Journal of Islamic and Comparative Law*, vol. 7, 1978, Nigeria, pp. 57, 58. Also see Cattan, *op. cit.*, p. 208.

reforms.⁶ Under Islamic law a waqf should always be founded on the basis of perpetuity. This means the designated mission of the waqf cannot be changed or modified even by the donator. A waqf's mission can be temporary, but when the certain designated goal was achieved the mutawalli cannot use the waqf's yields for a similar mission without changing the waqfiyya or the waqf's mission. A waqf cannot be founded to function for a certain period of time because in this case the given perpetuity fails.⁷ The power to alter or amend it could be given in the waqfiyya, but this was an exceptional case, hence found limited application.

The mutawalli is not entitled to sell or bestow the waqf's property; leases could only be given for a year. This could cause problems especially when the waqf property became worn-out over time and was yielding little or no income. In cases when there was not enough financial reserve to restore the buildings and since offering for sale was not permitted, many of the waqf constituents had to face the risk of confiscation and eventually they could not serve their purpose due to the fact that the waqf rules were closed to amendment. Yet over time restoration or renovation was allowed, but it was under restricted conditions. For instance, the Ottoman waqf deed contained a standard formulary listing which included the amendments the mutawallis were authorized to make. Since the waqf property had been donated in perpetuity to Allah, it could not be subject to legal transactions. Due to this static practice the property was removed from its very sphere where it was active and the investments intended to contribute to its benefits could not be made.

The function of the mutawalli is very limited in the case of the waqf since the owner is Allah and the mutawalli is merely in charge of the management within the parameters of the waqfiyya. For that reason, he cannot deal with the given property with an ownership title. The number of the waqf branches was so great in the world of Islam that they could not be kept easily under legal control which eventually caused corruption due

⁶ For example, Schoenbaum, J. A. "The Role of Legal Doctrine in the Decline of the Islamic Waqf: A Comparison with Trust", *Vanderbilt Journal of Transnational Law*, vol. 32, pp. 1198 ff.; Kuran, T. "Institutional Roots of Authoritarian Rule in the Middle East: Political Legacies of the Waqf" (3 Feb. 2013), seen on 27 March 2016 <https://www.law.yale.edu/system/files/documents/pdf/Intellectual_Life/LTW-Kuran.pdf>.

⁷ Cattan, *op. cit.*, pp. 206-207.

to lack of proper supervision.⁸ Consequently, many waqfs in the world Islam had become unproductive and corrupt establishments.

Furthermore, since the idea of the waqf was believed to have a sacred basis, the institution remained unchanged. Because adapting the waqf to changing circumstances was perceived as challenging the sacred rules, the institution could not keep up with the social, economic changes. As far as the waqf institution is concerned, only ad hoc adjustments could be made to overcome the dilemma in question, in other words, radical reforms could not be carried out.

3. The Ottoman Practice

In the Ottoman society, waqf was as important an institution as it was in the world of Islam. The aforementioned problems certainly continued to exist in the Ottoman waqfs. Yet they displayed some dissimilarity due to specific local cultural and social conditions. Therefore, the article will confine itself solely to the Ottoman practice henceforth, disregarding the general problems of the waqf institution observed throughout the world of Islam. It is necessary here to have to look at the property law to establish the status of the Ottoman waqf better. First we will need to consider the Ottoman land system. Under the Ottoman system, land suitable for crops was named *miri*. The *miri* land (*beytülmal*) was owned by the Sultan as head of State. The Sultan or State could let land or grant it to be used for a certain span of time in agriculture in return for its tax called *öşür* which literally means "tithe".⁹

The property right to *miri* land was formally owned by the State but its yield belonged to the possessors since under Islam the property right to chattels and real chattels was ultimately owned by Allah and its material income belonged to the beneficiaries. Accordingly, both parties owned

⁸ Schoenbaum, *op. cit.*, p. 1221 ff.

⁹ For an extensive study of the Ottoman land system see Cin, H. "Osmanlı Toprak Hukukunda Miri Arazinin Hukuki Rejimi ve bu Arazinin TMK Karşısındaki Durumu", *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, 1965-1966, v. 22-23, nos. 1-4, p. 755. The *miri* land is further divided into three categories: *timar*, *zeamet*, *has*. *Timar*, most important practice on the *miri* property, was for fertile land whose management was granted to the light cavalry regiments (*spahi* military units). *Timar* system was devised to provide troops for the Sultan's army and was supervised from above, by the central political power. Anybody who was entitled to have a *timar* could only be among the ranks of the army. This system was abolished by the Tanzimat edict in 1839.

rights in consideration of the property itself and its yields. In conditions when a natural person owned both the property itself and its yields this was regarded as "full ownership", a natural person could thus have full ownership of small size property, i.e., his house or vegetable garden. However, as far as the *miri* land, land suitable for crops, was concerned the State could own only the property itself yet grant its yields to natural persons.

It was possible to establish a so-called *sahih* (a perfect) waqf only when the property is fully owned by a donor. However, the *miri* property could not be a *sahih* donation since private ownership was prohibited as far as *miri* land was concerned. As has already been stated, this kind of land could be let in the name of the *beytülmal* (state property) leasing the usufruct only when retaining full ownership of the land itself. Hence the lessee could not donate this property to establish a waqf. However, head of state could donate the revenue (*öşür*, or *rüsum*, its tax) or the right of usufruct for charity. For example, a school could be built upon the Sultan's consent which allowed the revenue to be made use of the *miri* land or the right to use the land itself, or both of them could be donated to establish a waqf.¹⁰ This kind of waqf, known as *gayri-sahih* waqf or quasi waqf, was common among the Ottoman sultans.¹¹ When the Sultan (or any member of the imperial family with Sultan's consent or military dignitaries) decided to form a waqf they could donate both the revenue of the *miri* land (*gayri-sahih* donation) and his / their own property (*sahih* donation), thus they could provide sort of public service to meet the needs of the people.

Since it was a system closed to private ownership of land, a different kind of waqf could not have developed under the given laws. Such a system could not have produced enough capital to back up itself. This aspect was clearly stated during the discussions before the approval of the Statute of Waqfs in 1929.¹² According to the waqfiyya of the eighteenth century 65 percent of the waqf units formed this century belonged to the military, i. e. sultans, grand viziers, other pashas, doctors of Islamic law, and sheikhs of religious orders while the amount those set up by common people was only 34 percent. Had the former system not supported by the state, the waqfs could not have been so widespread and only the families

¹⁰ Berki, A. H. "İslam'da Vakıf, Sahih ve Gayri Sahih Nevileri II", *Ankara Üniversitesi İlahiyat Fakültesi Dergisi*, 1958-1959, VII, pp. 1 ff.

¹¹ Hatemi, H. *Medeni, Hukuk Tüzel Kişileri*, İstanbul, 1979, pp. 55-56.

¹² *ibid.*

that were wealthy enough to bestow charity or for some familial purposes could establish a waqf.¹³ This type of the waqf certainly could not find a wide application in a legal system where the most profitable assets in those times were closed to private ownership. However, over time, the members of the military class began to form *sahih* waqfs by finding ways to get tracks of *miri* land and possess them as if they were private property. In this way state assets could be transferred to private hands, which was in fact nothing but the violation of the rule not allowing private ownership of land, and in this particular case, paradoxically enough, it was the sacred waqf institution itself that provided this privilege. The revenue of the *miri* land which used to provide social benefits in the past, now came to serve personal material and immaterial interests.¹⁴ Nevertheless, this new exceptional practice did not pave the way to true private ownership of land and to an accumulation of capital, because the aim of the state was not removal of the impediments that hindered accumulation of capital. Under the new implementation *miri* land still remained, though indirectly, in the controlling sphere of the central power.

Later on the Ottoman reorganization process revealed clearly that the existing traditional property relations were not sustainable. The land reform process originally started to take place in 1839 (with the *Tanzimat*). A new legislation, named *Arazi Kanunnamesi*, which means code of laws on land, was issued in 1858. The code provided a level of ownership right to the tenants. Although it may be argued that the law corrupted the *miri* land system by bestowing a kind of private ownership to tenants of the land, it was impossible to conserve the former land system. Since the new Ottoman army organized in the nineteenth century had adopted Western military methods the *timar* system had become inadequate and outdated to meet the requirements of modern troops. Removal of the *timar* organization in 1848 inevitably necessitated revision of the entire land system, and it opened doors to adopting recognition of a level of private ownership of

¹³ Statistical data reveal that common people, people living at average subsistence level, could also form *waqfs* on a small sum of Money or a small size property. But those significant, long lasting *waqfs* which left an indelible mark in history were the ones founded either by the sultan and members of the imperial family or by the Ottoman dignitaries' wealthy enough to form such establishments. For extensive information and statistical data see Kuran, T. "The Provision of Public Goods under Islamic Law: Origins, Impact and Limitations of the Waqf System", *Law & Society Review*, Vol. 35, No 4 (2001), p. 853 ff.

¹⁴ Yediyıldız, B. *XVIII. Yüzyılda Türkiye'de Vakıf Müessesesi*, Ankara, 2003, p. 171.; Akdağ, M. *Türkiye'nin İktisadi ve İctimai Tarihi*, Vol 2, İstanbul, Cem Press, 1974, p. 314 ff.

land. The Ottoman government thus had to impose a series of new taxes on the *miri* land in return for granting ownership following the new legislation on land came into force in 1858. As a matter of fact, the traditional rules had already been broken and even persons among lower ranks of the military could change tracks of *miri* land into personal possession. The real reforms to change the property relations could not be carried out. The *ad hoc* alterations only served to prolong the existing system.

It would here be convenient to refer briefly to an aspect of the social functions of the original, authentic waqf system in its own historical environment. Traditional Ottoman population consisted of several different ethnic and religious communities having different life styles. Apart from the Christians and Jews, Muslims, too, were not an integrated community and were following several different sectarian beliefs and religious orders. Waqf system was in fact devised for the needs of such a disintegrated population. Each waqf had ethnic, communal, briefly, some social, substantial base, and served the needs of the intended social section, and in this sense they existed to provide public service and contribute to public welfare. It would not be wrong to receive them as social units create or at least agents encouraging developing some “free spheres” in social life. It should also be noted that the former waqfs contributed to the material wealth of the Ottoman population with their numerous benevolent societies that built schools, hospitals, caravanserais, mosques, fountains, soup-kitchens and so on. The waqf tradition as a matter of fact was means for providing social assistance and solidarity. A considerable part of today’s municipal services used to be carried on through waqf components.¹⁵ The negative aspects of this undertaking should be clearly mentioned without ignoring its positive sides. First of all, it should be emphasized that the given welfare associations were not providing public service in the modern sense of the term. Every social group or religious community was providing service only for its own members. For instance, an association formed by the Alawites did not easily admit people who did

¹⁵ Ottomans provided public service also in peripheral territories, e.g. Jerusalem through waqf. The founders of such *waqfs* were usually the imperial Ottomans and the aim was both charity and dissemination of the Ottoman culture. Singer, A. *Constructing Ottoman Beneficence: An Imperial Soup Kitchen in Jerusalem*, State University of New York Press, 2002, p. 36, pp. 39ff. In these cases, the property was to be received to support the *waqfs*’ purpose. For instance, Hurrem the Sultana endowed assets to found a waqf and built an *imaret* (soup kitchen) and supported it (see Singer, p. 49).

not follow the Alawite faith. Secondly, the administrators of the waqfs having schools at their disposal used to appoint instructors from their family circle as they inserted provisions into the waqfiyyas which would in the future enable to retain the key positions in the waqf components among the members of their family. Some positions used to bring social prestige to a whole family. Arrangement of school curricula was left to waqf administrators whose leading aim was not improving education and culture. These were crucial matters since the greater part of the population could receive education in waqf schools. There is a saying in the Islamic fiqh which is “the condition laid down by the founder of a waqf is like a dogma of sharia”. This principle was used in favor of nepotism and eventually helped corruption of the waqf system.¹⁶

During the Ottoman times waqfs turned out to be real economic power. The revenue of the waqfs was equal to the half of the treasure in the eighteenth century.¹⁷ The waqfs founded by the *ulama* and the *tekkes* were not only an economic but also a political power. This powerful structure could act so unrestrainedly that could disturb the central authority. This lack of supervision also made room for corruptions. Due to the defects in the entire system and also malfunctions and corruptions in the individual waqfs, it was felt to be necessary to bring the waqfs under control and form a Ministry of Waqfs in 1826.¹⁸ The system incurred many deficiencies and could not manage to surmount problems by restoring the system and following its own administrative traditions. The former waqf system was not a totally official and centralized institution as they had their own administrations. The ministry changed it to a completely centralized organization. What was intended was to lessen the power of the waqfs.¹⁹ One of the leading functions of the ministry was to collect the revenue of the miri land and distribute it to the beneficiaries of the waqf, which was formerly the task of the mutawalli. Another important function was when a waqf failed because of extinction of descendants or due to some other causes, the waqf property would also be transferred to the ministry.

¹⁶ Yediyıldız, *op. cit.*, p. 228.

¹⁷ Yediyıldız, *op. cit.*, p. 203.

¹⁸ See more about the problems of the Ottoman *waqf* system, Genca, E. “Osmanlı Hukukunda Vakıfların Denetimi (Evkaf-I Hümayun Nezareti)”, *İÜHFİM*, LXXII-1, 2014, pp. 531-554.

¹⁹ See Hatemi, H. *Önceki ve Bugünkü Türk Hukukunda Vakıf Kurma Muamelesi*, İstanbul, 1969, p. 138, 13n.

Nevertheless, in the course of time, the revenues donated to a waqf did not use to go directly to the ministry but first to the finance ministry and then back to the ministry of waqfs. As the Ottoman Empire was getting weakened and impoverished the finance ministry reduced the revenues of the waqfs, and as a result the system became over time incapable of sustaining itself financially.²⁰

Apart from the given historical circumstances that caused the waqfs become weaker it should also be given mention to the legal incapacities. The function of the perpetuity principle, a major perception for the waqf system, which became a structural deficiency that finally caused the failure of the Ottoman waqfs. The main criticism raised against perpetuity principle was that it precluded the circulation of the property in such a way that it could not be sold out and renovated. A long-term lease was not allowed either. The mutawalli had to follow the waqfiyya blindly and for that reason had to use the property in accordance with the designated direction. This would sometimes mean to terminate the waqf because the ruined property could not be used to achieve the given purpose. As it was impossible to change the waqfiyya and sell the property or when there was no money to renovate it the waqf in question would inevitably decline. Although during the Ottoman period a number of legal solutions were applied to prevent depletion of the waqf property, they were not effective enough to cope with changing circumstances. Moreover, as the solutions did not aim to resolve the problems radically, they did not serve the intended purpose and in most cases they were misused. The institutions introduced to allow usufruct to tenants whilst retaining the ownership of the property is known as *icârateyn* (double tenancy) did not meet the needs. The tenant in return for the usufruct would renovate the ruined property and this was the first rental he had to pay, the second was the rental he paid in return for his annual use which would also remind him that the ultimate owner was the waqf itself. Bestowing solely a right of usufruct was not sufficient to save the waqf property when another legal practice known as *muqata'a* was introduced. In this case not only the right of usufruct was bestowed but also right of divided ownership was given temporarily to a tenant, in other words, the ownership was divided between the waqf and the tenant. The tenant in such a case could have the

²⁰ Hatemi, 1979, *op. cit.*, pp. 337- 361.

property renovated by himself as an owner by paying an annual rental. In both of the cases the right on the property could be inherited.

Over time these legal instruments came to be misused especially in cases when the property was not worn out or ruined thus need not be let through *icârateyn* or *muqata'a*. The person presiding over the property, namely the caretaker could accept a bribe to bestow these rights to those who were under serving. The waqf property would then be wasted and eventually the system would become weakened.

In fact the Ottoman waqfs had to circumvent some legal principles to be able to survive. Although usury was unlawful in Islam it was allowed to found cash waqfs, based on cash funds, to satisfy social and pecuniary needs. Apart from such specific waqfs, the Ottoman waqfs in general could be given a role resembling that of private companies. The waqf deeds used to authorize the mutawalli to increase the waqf's revenues, and he could make investments to achieve the purpose. Since the waqfiyye was deemed to be sacred, that is to say, untouchable, some of the waqfs could operate freely like private enterprises.²¹ Yet, even the wealthiest families could not accumulate capital to sustain their funds they had to benefit in fact from revenues of the miri land.²² All this flexibility and pragmatism did not help accumulation of capital but used to serve the traditional order in some way or other. Briefly, all the institutions of the closed system, especially state ownership of land, which hindered accumulation of capital in individual hands, helped only to prolong the lifespan of the traditional order.²³

Alongside the waqfs formed to serve the needs of a social environment we should also touch upon the ones formed on a family basis to understand the system better. During the Ottoman period familial waqfs were, too, very important. There were also, so to speak, "semi-familial" waqfs founded both for charity and familial purposes.²⁴ The revenue was

²¹ İnalçık, H. *Devlet-i Aliyye Osmanlı İmparatorluğu Üzerine Araştırmalar*, Volume 1, 39. Edition, İstanbul, İş Bankası Press, 2009, p. 262.

²² Akdağ, *op. cit.*, p. 314.

²³ Pamuk, Ş. *Osmanlı Ekonomisi Ve Kurumları*, VI. Edition, İstanbul, İş Bankası Press, 2016, p.9.

²⁴ See, Öztürk, N. *Türk Yenileşme Tarihi Çerçevesinde Vakıf Müessesesi*, Ankara, 1995, pp. 44-45. Öztürk gives statistical data, accordingly: 105 of the 313 (33.54 percent) XVII. century Ottoman *waqfs* were familial and 136 of them (43. 45 percent) were semi-familial, in other words, either the total or a part of the 77 percent of the revenue of the XVII. Century *waqfs* were allocated for the good of the founding families. 22 of the 324 (7 percent) of the XVIII. Century *waqfs* were familial and 224 of 324 (75 percent) semi-familial, which means that 82

sometimes donated exclusively to the descendants of the donor, but more often a certain amount of the revenue was donated to the family and remaining part to charity. It is important to note that most of the founders of the family waqfs were people from the ruling Ottoman élite. Such important people had considerable wealth, yet since this wealth was provided by the central power it was always possible to lose it in case of a conflict with the state. In anticipation of such conflicts, those who wanted to establish a waqf preferred to form a family waqf to preserve their wealth. Thus family waqfs formed by high officials were widespread because these persons' primary aim was to preclude confiscation of their property due to political conflicts. Such waqfs were regarded as instruments to preserve family property. Another reason for establishing family waqfs was to circumvent inheritance rules. As Orthodox Islamic inheritance law caused inequalities in sharing property and its yields, wealthy families intended to preclude such unfavorable consequences by forming this kind of establishments. In the course of time, family waqfs, too, became corrupt and began to serve only the familial needs rather charitable purposes. By the eighteenth century the waqf environment had been changed into a sphere serving the personal interests of the privileged individuals who narrowed the range of action of the common people.

Since the obstacles hindering the formation of capital accumulation and acceptance of private ownership of land had not been removed, no radical legal reform could have been made in this period. A number of pragmatic legal alterations were certainly made but they were always *ad hoc* solutions. From the viewpoint of today one may claim that under the given circumstances the best thing to untie this deadlock would have been privatization of land ownership by separating the codes legal system and the precepts of religious or spiritual life and eventually adopting a modern law, however such an attempt would be not only too bold but also one that went far beyond the historical horizon of the era. The given aspects of the Ottoman waqf display that this institution was abolished due to many reasons. Since the entire social and economic system of the Ottoman Empire had to be restructured in the modernization process of Turkey, the waqf reform unavoidably became a necessity.

percent of the these *waqfs* century were formed to serve the families. As for the XIX. century, only 15 percent (9 of the 60) were semi-familial and interestingly enough, no familial *waqfs* were to be seen among the sample *waqf* deeds of the given century.

4. The Reform in 1926 and After

Three years after the declaration of the Turkish Republic the modern Turkish Civil Code was approved in 1926. The new legislation abolished the former waqf system and introduced a new institution known as *tesis*, foundation. This new institution was taken from the Swiss Civil Code, which was based on the Germanic legal tradition. Historically, the continental Europe, especially Germanic legal tradition adopted the *piae causae*, charitable corporations based on the Roman law, and mingled it with the Christian belief of the salvation of the soul and interwove these ideas to form the religious foundations (*Stiftung*) of the mediaeval times. Secularization of these religious, church based foundations could not have existed before the Enlightenment. Through the ideas introduced by the French Revolution and the Enlightenment, and also upon the impact of the contemporary economic developments the religious foundation of the Germanic legal tradition evolved to modern institutions.²⁵

The very point in transition to European law was Turkey's decision to adopt a secular law. Under a secular system it seemed to be impossible to retain the type of the waqf run in the manner explained in the preceding pages. First and foremost, private ownership would be opened out to common people. Thus state-sponsored waqf system could have found no basis to survive. After having given up the traditional property relations the new legal model adopted was the Swiss civil law. It also lent the model that the Republican Turkish administration considered when dealing with the reorganization of the historic waqf in a manner similar to the German institution. Under Turkish Civil Code the waqf was changed into an institution detached from its Islamic background and was recognized as a legal personality. Anybody with enough property to achieve the designated purpose could then form a "waqf" with a deed issued both postmortem and ante mortem. As the waqf was now given its own legal personality, the debate concerning the ownership of the donated property did not seem any longer to be significant under the new law. The new law also introduced major changes about the organization and the perpetuity principle regarding the former waqf establishments. These changes will be considered below.

²⁵ See Schulze, R. "Die Gegenwart des Vergangenen- Zu Stand und Aufgaben der Stiftungsrechtsgeschichte", in *Stiftungsrecht in Europa*, ed. by Klaus Hopt - Dieter Reuter, Carl Heymann, Köln, 2001, pp. 55 ff.

It is clear that the system and the principles the Civil Code was based on are disparate from those of the Islamic law. The conditions that the new law anticipated make it no longer possible to establish waqfs in the old manner. Yet problems caused by the former system have not ceased to exist, and actually they do exist even today. All the problems originating from the system of the former waqfs could not have been settled once and for all by one single legislation. Since the new civil code was intended to establish a system based on future prospects, it could not have aimed to remove all kinds of problems carried from the past through to the present day. On the other hand, Islamic waqf assets, e.g. schools, hospitals, mosques, baths, fountains and a large number of historical edifices were among the cultural heritage of the Ottoman past and could not be left to ruins. Hence it was clear that such waqf property should be handled exclusively, namely by a new legislation. After ten years of long discussions concerning the case, in 1929 Prof. Hans Leemann from Switzerland, a celebrated authority in civil law, was requested to contribute to finalize the endeavor. Having observed the former waqf system and the assets Prof. Leemann came to the conclusion that a special legislation was needed to be made to protect the historical heritage.²⁶ After six more years of protracted discussions a “Statute of Waqfs” was enacted in 5 June 1935.²⁷

The “Statute of Waqfs” and Turkish Civil Code both follow different rules for the waqfs. Since the juridical problems arisen from the Ottoman waqfs still exist and occupy the courts, it would not be wrong to say that there is a dual waqf system in today's Turkey: The Ottoman waqfs on the one side regulated in line with the Statute of Waqfs and the newly formed waqfs constituted in accordance with the Civil Code on the other. Since one of the major aims of the Statute was to liquidate the former waqfs, this duality should be considered natural. Yet it should be noted here that as long as the waqfs formed in the Ottoman era managed to survive in the future the problems resulting from their status will continue to exist. Apart from the problems of those who managed to survive, problems of the community waqfs formed by the Ottoman Christians and Jews occupy not only the local courts but also international ones.

²⁶ Of the discussions in the enactment process in the Law's preamble see Hatemi, 1979, *op. cit.*, p. 398. These discussions displayed that since through the land reform, the main revenue of the *waqfs* generated by the *miri* land was confiscated, the future *waqfs* would not be able support themselves without it.

²⁷ *Resmi Gazete* [Official Gazette], 13 June 1935 – 3027 Düstur III/16, 586.

4.1. Fundamentals of the Reform

The traditional Ottoman waqf system was based on a non-profit organization. This characteristic did not change in the Civil Code of 1926. As a matter of fact, the Swiss law, which served a model to modern Turkish civil code this characteristic was by no means different from or alien to the former Turkish traditional practice. In this sense the Swiss *Stiftung* displayed no difference from the Ottoman waqf. The Turkish legal reforms about the waqf institution focused on three main points: inclusion of a new concept, namely the "legal personality and the structure of the organization; perpetuity principle; redefining the waqf as a social institution divested of its sacred status.

4.1.1. Waqf as a Republican Institution

According to Article 101 of the Civil Code, waqf is an institution having a legal entity holding a sufficient amount of property organized to achieve a specific and fixed purpose and which is donated by real or legal persons to achieve a special and perpetual purpose. The third paragraph of the same article prohibits from establishing waqfs to support the members of a particular racial, ethnic or religious community. This definition challenges not only the Islamic definitions but also distances itself from its Islamic roots. First of all, by bestowing a waqf a legal personality, one of the major arguments about the ownership of the waqf property becomes baseless since the new law clearly recognizes the legal personality of the waqf and owner of the property now becomes the waqf itself. Also, as the new waqfs cannot be formed to support the members of a religious or ethnic community, it was not possible then to attribute an Islamic identity to this institution.

Under article 102 the waqf gains legal personality, a status which the Ottoman waqfs did not have, as soon as it is entered into the registers by court decision. Courts make a general examination of the application file to see whether the waqf to be formed is in accordance with the terms of the legislation. Courts check three different points in order to approve the registration of a waqf. First requirement is whether the purpose of the waqf is legitimate and complying with the principles of the Turkish Constitution. Although the law does not stipulate it, the purpose of founding a waqf is now generally for the public good, that means there is no need for a waqf serving the religion while under Islamic law one of the necessities and terms of forming a lawful waqf was to have a religious motivation, the feeling to be

nearer to God (or *karābat*). In today's waqfs one observes that the Islamic notions or ideals such as *sadaqa* and *karābat* were replaced by "public good" or "common interest" which sounds like a desacralized version of the given Islamic terms. On the other hand, this non-religious formation precluded Christians and Jews from forming waqfs for their own communities, despite the fact that the Civil Code does not stipulate Islamic duties in promoting a waqf since under article 101 a waqf cannot be founded to support the members of a religious or ethnic community or minority. Under Islamic law it was not possible for an Ottoman Christian or Jew to form a waqf, however in the present context it has nothing to do with religious motives but it is the result of the republican policies. Yet during the Ottoman times Christians and Jews used to be granted the right by the sultan to form "waqf-like" organizations under specific circumstances for the fulfillment of their communal needs. But the new law does not allow any such liberty even in exceptional cases.

We should here include a detail pertaining to the aspects of the new waqfs prescribed by the republican law. As long as a waqf is founded for the good of the public it is given by law certain privileges, e.g. tax exemptions. The question is whether a waqf may be founded for purposes apart from charity? According to the predominant view on this question the sole purpose of founding a waqf cannot be profit making.²⁸ Yet waqfs may promote private enterprises but this can only be to achieve the ultimate purpose of the foundation designated in the waqfiyya document. For example, the revenues earned by the waqf universities must go back to the university's fund or to the related facility, to be used, for example, to open a new research center, and not to founders of the waqf. This approach still takes into account the historical background since the Islamic waqf was not essentially established for profit making, but it can also be claimed that such understanding overlaps with the principle of serving the public good. Therefore, although profit making was not prohibited by the Civil Code, arguing otherwise would be against the nature of the waqf idea.

The second requirement is about the donor, as he must be legally capable of establishing a waqf. Finally, the donated property which can basically be anything valuable such as land, chattels, or money that can be subject to donation but it must be sufficiently valuable to achieve the goal of the waqf.

²⁸ For this debate see Dural M. - Ögüz T. *Kişiler Hukuku*, Istanbul, Filiz Kitabevi, 2014, p. 360.

The debate among Islamic Schools on whether a waqf is given an irrevocable presence once it was formed or whether it can be revoked by the donor or his descendants was no longer a significant question after the approval of the law. Under Turkish Civil Code once a waqf is registered and gained legal personality it cannot be revoked by the donor himself or his descendants.²⁹ By registration the waqf becomes the owner of all the donated property on its own right (Article 105). That is why the obligations for transferring the propriety rights do not need to be exercised, for example for chattels the possession need not be transferred to the waqf once it is registered.

4.1.2. The Perpetuity Principle

The Islamic perpetuity principle has a rather different meaning today. The term “perpetuity” included in the new definition of the waqf is still used but it is used only to clarify that the activities to achieve the designated goal should continue without interruption. For example, a waqf founded to build a school attains its goal as soon as the school building is erected. This principle precludes a waqf only from being founded for a limited period of time. The Islamic waqfs of the past, too, could be founded for similar goals. The difference is the liberty to change the goal of the same waqf as soon as the designated goal is attained. This was not easily possible in the past, and actually there were few exceptional cases for this kind of practice. Because the waqfiyya was regarded as sacred, thus altering it was an exceptional case. However, since the waqf as an institution was given an unislamic meaning through Turkish reforms, the waqfiyya was not a sacred document any longer, for that reason not only the waqfiyya but also the purpose of the waqf could be shifted to a different goal.

Article 113 provides that the goal given mention in the waqfiyya may be altered as time goes by and when it is too difficult to achieve and when it is meaningless to do so. In this case the organs of the waqf (not exclusively the mutawalli any longer) shall not only be authorized but also obliged to apply to court to modify the purpose of the waqf, and in case it fails to take the issue to court General Directorate for Foundations (a government branch in charge of the waqfs) shall act in lieu of it and appeal to court.

²⁹ For the situation in Islamic law see Fuat, A. H. “İslam Hukukunda Vakıf Akdinin Bağlayıcılığı”, *Istanbul Üniversitesi İlahiyat Fakültesi Dergisi*, Istanbul, v. 27, 2012, p. 61 ff.

The main criticism raised by jurists of the Islamic world against perpetuity principle was that it precluded the circulation of the property in such a way that it could not be sold out and renovated no matter how ruined and worn out it became. The Turkish Civil Code enabled the transfer of the waqf assets even if the waqfiyya included an open expression prohibiting any transaction of the donated property. This provision was introduced by the 1967 amendment and perhaps it was one of the most important changes regarding the given historical background. According to article 113 of the Civil Code provided that when there is enough reason a law court may decide the property be sold out, or used for more profitably although it was not given mention in the waqf deed. The deed may then be disregarded when the revenue of the property is less than its expenses or when the revenue is less due to imprudent or wrong allocation. In such cases the most profitable way to increase the yields could be undertaken either by modifying the designated use or simply by selling the property. For the property not mentioned in the waqf deed, in other words, that which is owned after the foundation of the waqf may be sold or used in a most profitable way without the decision of court. However, in the former case as the change referred to the alteration of the waqf deed, a legal process has to be undergone. At this point one may argue that appealing to court in certain situations could be a waste of time, but considering the caretaker's corruption due to lack of supervision, this objection may be ignored. Moreover, in urgent cases preliminary injunctions can be held.

4.1.3. The Waqf Organization

In the former waqf establishment the only person in charge was the caretaker, represented sometimes by one person and sometimes more than one person in accordance with the amount of the waqfs assets. However Turkish waqf reform revised the function of the caretaker and granted this duty to a group of persons. The new waqf had now administrative organs included mandatorily and voluntarily. A waqf must have a managing body instead of a caretaker which may consist of one person or more persons by which its operations are carried out on behalf of a board (board of mutawallis) who would make all the decisions the waqf has to implement. The board will manage the property, conduct the necessary transactions to make profit and serve the intended purpose of the waqf. Apart from the board of caretakers, depending on the donor's will other organs such as the supervision board can be founded. In this case the supervision board shall

be in charge of controlling the board of caretakers and in case of wrong doing the former will have a right for a court appeal.

The waqf administration may also be changed especially when there is enough reason to protect the waqf property or sustain the designated purpose thereof. In this case the boards or members of the boards (board of caretakers or supervision board) may appeal to court for a necessary change (Article 112 of Turkish Civil Code), for instance, when the board of caretakers cannot perform its function under particular circumstances or is inadequate to take the necessary measures to achieve the purpose of the waqf. The Code brought the waqf administration under the strict control of the General Directorate for Foundations by ensuring both the internal check and external audit. Since the entire organization of the waqf could then be checked, corruptions gnawing at the financial resources of the former waqfs were minimized. The status stemmed from the precepts of traditional law had granted the former waqf units a level of considerable freedom which remained outside the scope of supervision. Now that the new waqfs (or foundations) being affiliated directly to a central agency, they could never once again exercise the power they had in the past.

4.2. Social Factors

As one of the fundamental institutions of the traditional society the waqfs played a significant part in the past. The Republican policy detached itself from traditional law and institutions. In the eyes of the new administration, religious concerns could not be a matter of consideration when dealing with legal matters. A new civil code was regarded desideratum to lay down the foundations of modern life. Within this process, almost all of the institutions of the past have been called into question and made subject to revision, the historic waqf being one of them.

Apart from this primary politics, there were certainly other factors to introduce a legal reform. We need to look at the economic and social aspects of the republican policies to get better access to the background of the new regulations. Economic aspect was probably the most noticeable factor which precipitated the reform process. The code of laws of the Ottomans remained in force up until the approval of the Civil Code in 1926. Surveys on the agricultural production revealed that arable land had not been for many decades used profitably. According to a survey conducted in 1927 the planted area was 43.638 square meters, which was only 4.86 % of the country's total land, but the land suitable for crops was 32 % of the total

land of Turkey. In other words, the cultivated land was only 1/7 of the farmland.³⁰ The land reform took place as one of the initial steps of the Republic. Consequently, a considerable amount of the land was distributed to the rural people, and the heavy tax collected from the farmers, known as *öşür*, was abolished in 1925.

The new law of 1925 (no. 552) that abolished *öşür* thus cut down the income of the *gayri-sahih* waqfs sustained by the revenue of the *miri* land. The tenants of these lands would be granted ownership according to the Civil Code which recognized modern ownership holding the full title to the property. In replacement, modern taxation system was introduced so that revenue and land taxes may be issued. The Code annulled state ownership of land. From the viewpoint law, ownership of land being opened out to common people meant a radical change in property law and such a radical reform would necessarily affect the legal status of the waqfs.

As can be seen, in a modern social order the traditional waqf was very difficult to revive without abolishing it simply because these foundations were connected to each other in such a way that reforming one meant abolishing another. Thus when the land reform came into force, most waqf foundations could not exist any longer. On the other hand, retaining the former land system was not profitable and exceedingly difficult to manage vast tracks of land without distributing them, thus bestowing full ownership thereto. Therefore, the social and historical conditions necessitated a land reform to be made, consequently the waqf foundations depending on the revenue of land could not exist anymore, which also meant the elimination of one of the agents that impeded accumulation of capital.

The Civil Code radically changed the legal basis of property rights. Since property rights were then secured by the Constitution it became redundant to form family waqfs to preclude family property from confiscation. Furthermore, as the republican laws removed legal restrictions causing male-female inequality in inheritance it was also redundant to form family waqfs to preclude injustice. It is clear that the former waqfs had functions developed in a social medium organized in line with the orthodox Islamic law. Such functions could not have been supported in a modern society, and it became an unavoidable necessity to reorganize the traditional waqfs after the declaration of the Republic.

³⁰ Çelik, Z. "Cumhuriyet Türkiye'sinde Toprak Reformu ve Uygulamaları", 25 March 2016, <<http://www.tarihtarih.com/?Syf=26&Syz=355358>>.

The waqfs of the Ottoman period evidently formed a network of social organizations providing public service, and this aspect of the waqf system cannot be ruled out. Yet it is also true that the waqf components had not been able to restore themselves in line with their own traditions, and eventually became outdated in a changing world in the course of history. They contributed to religious and health services, built schools and libraries, but what they provided in the sphere of education was not in line with modern needs. The kind of education they sponsored was somewhat archaic. It is a fact that modern states prefer to offer public services to the entire population regardless of their ethnic origin or religious faith. In this context the original function of the former waqf system was not compatible with the aims of modern social states. With the foundation of the Republic most of the waqf property was transferred to the governmental agencies; for example, a great number of primary and secondary schools belonging to the waqfs' property was transferred to the ministry of education and hospitals to the ministry of health. It was a practice in which the propriety rights granted to the waqfs were declared to be invalid. Consequently, waqf hospitals were given to ministry of health, cemeteries to municipalities.³¹ Several branches of the public service were thus centralized which made their supervision easier.

On the other hand, the public service in question seemed to be somewhat outdated under the nationalistic politics of the Republic which aimed at creating a unified Turkish nation out of the Ottoman population divided into several ethnic and religious communities. Nation-states almost as a rule either eliminate the institutions of the old régime, or radically change their functions. Hence the Republican administration felt it was necessary to cancel such Ottoman institutions centralizing the former waqf institution. Furthermore, it may be claimed that the new politics had an ideological basis too, since the modern Turkish state tried radically to eliminate the symbols of the Islamic / Ottoman past through republican acts and reforms. Certainly, the waqf institution was one of such symbols. It should be noted here that the Civil Code of 1926 adopted the term "tesis" (foundation) in lieu of "waqf". The related article of the code remained unchanged until 1967.³²

³¹ Hatemi, 1979, *op. cit.*, p. 394.

³² This new act (no. 903) has not revived the former *waqf* institution but it made easier to form a *waqf* by introducing tax exemptions and lessening the legislative impediments

The question which may be raised here is that whether this traditional establishment could coexist as institutions maintaining the cultural heritage of the past together with those newly founded modern ones. The republican administration did not raise such question, yet this aspect of the case should certainly be open to academic debate. Although this question is bound to remain a completely theoretical issue today, it would not be without significance to discuss it. However, such discussion would not be an easy issue, simply because the given suggestion entails solutions remaining within the parameters of the traditional law, and solutions of this type were in the immediate conditions neither applicable nor desirable.

It would be relevant here to note that the newly introduced model for the waqfs was not completely established during the years immediately after the Civil Code of 1926 was approved. The related articles of the Code concerning the waqf establishment were partly amended in 1967. The main reason for this change was that the waqfs as an institution were weakened between 1926-1967. Only 369 waqfs were founded in Turkey in this period. However, according to the data found in the archives of General Directorate for Foundations there were 26.728 waqfiyyas, and more than 25.000 different waqf names were registered during the Ottoman times. This shows that the historic waqf had lost its popularity. The main reason to explain this outcome was the fact that the waqf institution had no longer the power and privileges it enjoyed in the past. So, this loss of popularity should be ascribed to the fact that the public who were to a certain extent alienated from, hence became indifferent to the newly introduced waqf. Another factor that caused weakening of the waqfs was a financial one: lack of capital to form such charity foundations in modern Turkey. In the early years of the Republican period the country suffered from lack of capital. Even before declaration of the Republic, Turkey was a country that had faced a series of long-drawn, protracted battles between 1912 and 1922, which turned it into a poor country. In the early decades of the Republic it was difficult to revive and promote the waqf kind of organizations without the support of a central power.

Due to the given factors amendments in the law of 1926 were brought into question as late as 1967, after four decades. It should be noted that Turkey had accumulated enough capital in the intervening period,

arising from the inheritance law. See more in Akünel, T- Tezel, A. et al, in *Türkiye'de Medeni Kanuna Göre Kurulmuş Vakıflar ve Sorunları*, Vehbi Koç Vakfı Yayınları, 1975, p. 178 ff.

especially after the World War II. The new circumstances had thus created a sphere in which financial capital could be invested. The Ottoman waqfs, mostly affiliated to the members of the imperial family and those formed by the Ottoman dignitaries, were foundations perpetuating the fame of their founders. This time, after 1950, the rising Turkish bourgeoisie needed such an institution that would enable to allocate some of its wealth to charity and, certainly to maintain its reputation. Therefore, it was not an incidental development to demand that the law of 1926 to be revised came from the leading sections of the rising bourgeoisie, namely from the Koç Conglomeration. Needless to say those, the waqfs or similar foundations can rise in a social medium, where financial donors have accumulated a surplus wealth that may be allocated to charity. In the 1960s, that is to say, some forty years after the declaration of the Republic, Turkey had reached a relatively high level in economic development. It was time for the private sector to act on its own interest. Within this process a number of leading wealthy families became in need of a new law which would enable to facilitate establishing waqfs. Such developments pointed out that the new law reshaping the waqf system has become established and adopted over the decades, and the new foundations still bearing the name “waqf” formed in accordance with the Republican laws have proliferated over time.³³

The foregoing discussion shows that the kind of the waqf prescribed by the code of 1926 and the waqfs existed during the Ottoman times were entirely different institutions. The predominant aspect of the newly introduced waqf is evident in its new status which is detached from its religious background. It was actually created and appropriated by considering the similar European organizations. Yet this kind of waqfs has become widespread over time. Especially the so-called waqf universities and hospitals are the most prominent components of the new waqfs. There are waqf constituents who serve educational, academic and cultural activities.

³³ It should be noted that in the year 2014 there were 4.876 *waqfs* in Turkey, 76 waqf universities, 8 vocational schools for higher education, and many waqf hospitals. One may well claim that new “*waqf*” became socially established within the course of time in spite of hesitations about the new system.

5. Conclusion

The reform process in modern Turkey started to revise and amend the laws of the Ottoman Empire following the declaration of the republic. The Civil Code of 1926, which was inspired by the Swiss law, ultimately aimed to eliminate the Islamic waqf. What was intended was a radical reform to reshape the waqf system and to call for confiscation of this traditional institution. The Ottoman type of the waqf certainly was dependent upon the former law and it became worn-out and inapplicable due to the changing social circumstances which, in turn, caused a legal vacuum to exist. The former system was evidently unable to restore and reproduce itself in its own path. Under such circumstances it could not have survived in its traditional, historical context. It was reasonable to create a new system. Furthermore, the new administration aimed at modernizing the country and turned its face towards the West. "West" in this context primarily meant secularism. The resultant effect of all these factors required a reevaluation of the entire institutions of the former régime including the waqf.

The fact that the former waqf system had played an unfavorable part in that they it has blocked the path that may have helped forming an accumulation of capital. The removal of the system has not immediately opened doors due to lack of enough capital in those years. Especially in the 1960s, new regulations supporting and promoting free market economy opened a new phase that helped capital accumulations. It can be said that the law of 1926 in the long run has achieved its purpose which over the decades resulted in having a plethora of modern foundations still named "waqf".

List of References

- Abdallahi, A. A, (1978), "A New Definition of Waqf: On The Basis of Which the 'Legal Personality' of Waqf Is Established", *Journal of Islamic and Comparative Law*, vol. 7, Nigeria.
- Akdağ, M., (1974), *Türkiye'nin İktisadi ve İçtimai Tarihi*, Vol 2, İstanbul, Cem Press.
- Akünel, T- Tezel, A. et al, in *Türkiye'de Medeni Kanuna Göre Kurulmuş Vakıflar ve Sorunları*, Vehbi Koç Vakfı Yayınları, 1975.

- Berki, A. H., (1958-1959), "İslam'da Vakıf, Sahih ve Gayri Sahih Nevileri II", *Ankara Üniversitesi İlahiyat Fakültesi Dergisi*, VII, pp. 1 ff.
- Cattan H. in *Law in the Middle East*, Vol. I, Origin and Development of Islamic Law, edited by Majid Khadduri and Herbert J. Liebesny, 1955, pp. 203 ff.
- Cin, H., (1965-1966), "Osmanlı Toprak Hukukunda Miri Arazinin Hukuki Rejimi ve bu Arazinin TMK Karşısındaki Durumu", *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, v. 22-23, nos. 1-4, p. 755.
- Çelik, Z. "Cumhuriyet Türkiye'sinde Toprak Reformu ve Uygulamaları", 25 March 2016, <<http://www.tarihtarih.com/?Syf=26&Syz=355358>>.
- Çizakça M, "A Critical Assessment of the Waqf Law Being Prepared by IBD/IRTI and Quwait Foundation", pp. 427-448; <<http://organizations.vgm.gov.tr/db/dosyalar/menu21.pdf>> 20 March 2016.
- Dural M. - Ögüz T. (2014), *Kişiler Hukuku*, İstanbul, Filiz Kitabevi.
- Fuat, A. H., (2012), "İslam Hukukunda Vakıf Akdinin Bağlayıcılığı", *İstanbul Üniversitesi İlahiyat Fakültesi Dergisi*, İstanbul, v. 27.
- Genca, E. (2014), "Osmanlı Hukukunda Vakıfların Denetimi (Evkaf-I Hümayun Nezareti)", *İÜHFİM*, LXXII-1, pp. 531-554.
- Gil M, (1998), "The Earliest Waqf Foundation", *Journal of Near Eastern Studies*, 57, pp. 125-140.
- Hatemi, H., (1997), "Vakıf Kurumuna Hukuk Tarihi Açısından Genel Bir Bakış", *İHFİM*, v.: LV S-4, pp. 111 ff.
- Hatemi, H., (1979), *Medeni Hukuk Tüzel Kişileri*, İstanbul.
- Hatemi, H., (1969), *Önceki ve Bugünkü Türk Hukukunda Vakıf Kurma Muamelesi*, İstanbul.
- İnalçık, H., (2009), *Devlet-i Aliyye Osmanlı İmparatorluğu Üzerine Araştırmalar*, Volume 1, 39. Edition, İstanbul, İş Bankası Press.
- Köprülü B, (1951), "Tarihte Vakıflar", *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, v. 8, no. 3-4, pp. 479-518.
- Kuran, T. "Absence of the Corporation in Islamic Law", *The American Journal of Comparative Law*, vol. 53, no. 4 (Fall, 2005), pp. 789 ff.
- Kuran, T. "Institutional Roots of Authoritarian Rule in the Middle East: Political Legacies of the Waqf" (3 Feb. 2013), seen on 27 March 2016 <https://www.law.yale.edu/system/files/documents/pdf/Intellectual_Life/LTW-Kuran.pdf>.

- Kuran, T., (2001), "The Provision of Public Goods under Islamic Law: Origins, Impact and Limitations of the Waqf System", *Law & Society Review*, Vol. 35, No 4.
- Nasir, J. J., (2002), *The Islamic Law of Personal Status*, Third Edition, Hague, Kluwer.
- Öztürk, N. (1995), *Türk Yenileşme Tarihi Çerçevesinde Vakıf Müessesesi*, Ankara.
- Pamuk, Ş., (2016), *Osmanlı Ekonomisi Ve Kurumları*, VI. Edition, İstanbul, İş Bankası Press.
- Schoenbaum, J. A. "The Role of Legal Doctrine in the Decline of the Islamic Waqf: A Comparison with Trust", *Vanderbilt Journal of Transnational Law*, vol. 32
- Schulze, R., (2001), "Die Gegenwart des Vergangenen- Zu Stand und Aufgaben der Stiftungsrechtsgeschichte", in *Stiftungsrecht in Europa*, ed. by Klaus Hopt - Dieter Reuter, Carl Heymann, Köln, pp. 55 ff.
- Shirazi N. S., "Integrating Zakāt and Waqf into the Poverty Reduction Strategy of the IDB Member Countries", *Islamic Economic Studies*, vol. 22, No. 1, May, 2014 (pp. 79-108).
- Singer, A. *Constructing Ottoman Beneficence: An Imperial Soup Kitchen in Jerusalem*, State University of New York Press, 2002, p. 36, pp. 39ff.¹
- Yediyıldız, B., (2003) *XVIII. Yüzyılda Türkiye'de Vakıf Müessesesi*, Ankara.

