



THE IMPACT OF THE ELITE (ULEMA) CLASS ON THE OTTOMAN ECONOMY: THE CASE STUDY OF THE CASH *WĀQFS*

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ABSTRACT

In Muslim societies, the views of religious law scholars are critical for the community's religiosity and the Islamicity of the state, and general socio-economic and cultural life. This study explores several financial aspects of Ottoman life governed by the *Hanafi* code of law and institutionalized *fatwas*, and the effects of the scholarly class. The Ottoman financial institutions manifested as *cash wāqf* played a key role as credit mechanisms in the Ottoman economy. This study focuses on finance-related *wāqf* and *fatwas* in the Ottoman period. This research relies on primary *fatwa* sources and archival *wāqf* documents (*wāqfiyahs*). The institutions of *fatwa* and *cash wāqf*, respectively, as legal and credit institutions, had a significant effect on Ottoman socio-economic society. The *fatwa* institution played the role of monitoring and regulatory agency while *cash wāqf* operated as charitable institutions and interest-free 'banks'. Despite the religious debate around *cash wāqf*, the latter was able to fund community development projects with no interest but also influenced the market borrowing ratio and arrangement of the borrowing methods. The study's findings show that *Islām* strongly influenced the economic decision-making processes in Ottoman communities. Sample of *fatwas* and *cash wāqf* represent some of the most important indicators of these findings. The study will further guide recent progress made in *Islāmic* economy and finance. The flexibility of the *fatwa* institution and its ability to influence decisions are also critical new instruments in *Islāmic* finance.

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1. INTRODUCTION

Institutions are the rule of the game in society (North, 1990). The political and economic factors determined by the institutions of countries, shape performance either directly or indirectly. The religious beliefs and cultural traditions of a society also impact its economic operations. In the context of the Ottoman Empire (1299-1922), *Islāmic* rules affected its economic system and social culture. All the economic applications were adapted to the spirit and letter of *Islāmic* jurisprudence, highlighting the significant position of the *fatwa* institution for the Ottomans. *Islāmic* law depends on the fundamental sources of the *Qur'ān*, *Sunnah*, *ijma* (scholarly consensus/agreement), and *qiyas* (legal analogy). Both share similar methods; however, the *fatwa* has a more special meaning. While *ijtihād* denotes the process of extracting juridical provisions from the sources, the *fatwa* is the answer of a *mufti* or an *'alim* to the provision of special cases (Eliacı, 2011).

Fatwa institutions provided the Ottoman Empire the opportunity for flexible governance. Ottomans did not need to investigate issues that are either *halal* (lawful) or *haram* (unlawful/forbidden) and they did not meet the transaction cost of this investigation, because the *fatwa* institutions solved these issues. The compatibility of decisions to the lifestyle of society facilitated the implementation of the *fatwa* institution. The *Islāmic* religious character of the Ottomans revealed the importance of the *fatwa* institution in governance. Shayk al- Islām held the top position of the *fatwa* institution (Akgündüz, 1991), and until the 19th century, he could act autonomously in issuing the *fatwa*.

The *Islāmic* sensitivity of Muslim people in their daily lives made *fatwas* necessary as regulation of rules. The power of *fatwa* institution came from the collectivity of decisions taken by religious scholars (*ulamas*). Moreover, like other economic activities, the establishment of the cash *wāqfs* (CWs) depended on the rulings of the *ulama* class. They represented very interesting institutions in Muslim societies. They helped solve the many cash problems of entrepreneurs, traders, farmers, and so forth, who were driven by inner conscience to abstain from sinning and dealing with interest (*ribā'*). They also represented charity institutions used to cover the expenditures of *madrasas* (schools), *masjids* (mosques) and *zawiyas* (lodges), and so on. *Wāqfs* met the increasing social needs such as religious,

educational, and reconstruction works. These two functions of the CWs placed them at the centre of society. The well-defined roles and responsibilities in the CWs' *wāqfiyahs* as detailed in their establishment charters, provided them with continuity and entrenchment for a period of five hundred years. One might say that social support, cooperation, and solidarity became institutionalized through *wāqfs*. The amounts of the *wāqfs* and their influence on socio-economic structure reached their most common occurrence and highest rates in the Ottoman Empire (Halaçoğlu, 1998).

The Ottoman Empire was subject to the Hanafi School of jurisprudence. Thus, we will examine the economic views of the founders of the School, Imam Abu Hanifa (d. 772) and his students Imam Zufer (d. 774), Imam Abu Yusuf (d. 798), and Imam Muhammad al-Shaybani (d. 805), to understand the legal allowances of the CWs in the Ottoman Empire. Following this examination, we will explore the position and spread of CWs of the Ottoman State according to an institutional viewpoint. This study focuses on the discussions of *ulemas*, structure, and operations of CWs. It will also investigate the significance of this in primary *wāqf* sources, such as *wāqfiyahs*. A vital point about the Hanafi *fiqh* is that the observations made by Hanafis were generally in the early *Islāmic* period. Hence, the current developments in the economy limited the Hanafi School from solving new challenges. Abu Yusuf, with his experience in social and political life, and Imam Muhammed, with his tendency to centralize life and observations of his judicial thought, closed the gap created by the Hanafi School (Kudat, 2015).

Firstly, CWs will be examined from a holistic perspective, especially on a religious basis. The legalization process of CWs will be analyzed within the framework of the views of the important mujtahid imams and the approaches of the Ottoman scholars. In this context, especially the concept of 'interest' and the word '*rihb*' (profit/earn) in the documents of CW will be compared. The notable *fatwas* related to borrowing cost ratios, detailed legalization process of a CW, and examination of selected CWs samples are the original part of the study. The economic opinions/decisions of the selected Ottoman *ulema*, whose *fatwas* have been reached until today, have been analyzed with the establishment charter of CWs. The primary purpose of the study is to show the effect of *ulema* class on economic and financial life through primary sources by examples. The importance of this study comes from its inclusive and holistic approach. The previous studies do not take this approach.

As this study examines, there is no specific study that approaches the cash *wāqfs* and the effects of Ottoman ulema on economic life altogether. But a few studies have dealt with discussions of *ulema* about cash *wāqfs*. For example, Mandaville (1979) takes an economically critical approach to the CW debate. Mandaville describes CWs as *usurious piety*. Summarizing the views of the Ottoman *ulama*, Mandaville emphasizes the flexibility of the *Islāmic fiqh*, but he cannot analyze the basic understanding of the CWs very well. After mentioning the general *wāqf* debates among the Ottomans, Şimşek (1986) focuses on the debates that took place about CWs in Ottoman society in the 16th century. Şimşek claims that there is no *Shayk al- Islām* who opposed the establishment of CWs. Although he gives examples of *fatwas* in the study, Şimşek did not mention the relationship between *fatwas* and the cash *wāqf* functioning. Another author who examines the *ulama* approach to CWs is Özcan (1999; 2000). In his articles, Özcan examines the letters and treatises written about the CWs by the *Shayk al- Islāms* and the *ulema*. Özcan's studies provide an essential resource for understanding the Ottoman scholars' opinions about CWs. However, these studies generally lack economic analysis and only make due diligence. Özcan's work on examining the letters of Bali Efendi, is significant in terms of showing the role of CWs in the social life of Rumelian people. When we look at the studies written on the subject and mentioned here, we believe that the scope of this paper will fill a glaring gap in the field.

The study aims at understanding the views and *fatwas* of the *Ulama* class in economic and financial life in Ottoman society. In this way, the determination of religion in economic life and the religious sensitivity of the Ottoman people will be better seen. The study also provides a look at the flexibility of the *Islāmic fiqh*. It also proves that within the framework of *Islāmic fiqh*, the Ottoman *ulama* could find a solution by obeying the orders and prohibitions in the religion regarding the requirements of the age. The findings of the study show that the *Islāmic* religion has been influential in the economic decision-making processes of Muslim communities throughout history. *Fatwas* and CWs samples were examined for this purpose, especially the effect of *ulema* on financial transactions emerging from *fatwas*. The problems experienced during the prohibition and release of CWs are also an indication of the influence and effectiveness of the Ottoman *ulama*.

The study is expected to guide recent developments in *Islāmic* economics and finance. Notably, the flexibility of the *fatwa* institution and its ability to make decisions within the *Islāmic* framework is

important for new instruments in *Islāmic* finance. Significantly, interest in *Islāmic* finance has increased recently. In this case, the inability of the conventional system to solve current financial problems has an apparent effect on the orientation to *Islāmic* economics and finance. This especially refers as Kabir noted to the argument that the main cause of the financial crisis is the laxity of lending standards often adopted by conventional financial institutions which are driven by greed and appetite for excessive returns, with an absence of adequate and appropriate government regulatory control (2018). Moreover, some studies claim that the cash *wāqfs* can be used for alleviating poverty with the halal microcredit channel (Alamoudi and Othman, 2021; Saiti, Dembele, and Bulut, 2021; Kudat and Ceyhan, 2020). This study is vital in showing the effectiveness of the *Islāmic fiqh* and its approach to solving the problems. The primary sources used by the study are indications of its originality. Many fatwas and opinions on financial borrowing and CWs have been studied. These reviews and ideas were also analyzed and interpreted for their use in practice. It is evident that the economic literature on the effects of religion on economic and financial life has been accepted, and the studies on this issue have started to develop. This study will also contribute to the related literature.

2. CASH *WĀQFS* IN THE VIEWS OF SCHOLARS

The duty and responsibility of the religious learned scholar (*âlim*) is to share knowledge, educate others and act with wisdom, including the instruction of religious manners, laws, and commands of *Islām*. Those render the views of Muslim learned class (*mujtahids, ulemas, faqihs*) critical to the dynamic socio-economic life, especially in view of the belief that they are genuine heirs of the Prophet (Ahmed b. Hanbal, 1992). Speaking of *wāqfs* and institutions, Muslim scholars other than Abu Hanifa agree for real assets (immovable good) as *wāqfs* and allow for movable assets with immovable assets to establish *wāqf*. They allow for CWs with some detailed discussions. In this study, we will examine the CWs and pertinent financial issues according to the Hanafi School of law given the adherence of the Ottomans to it. The legal view of Abu Hanifa and his two notable students, Imam Muhammad al-Shaybani and Abu Yusuf, known as *imameyn*, and Imam Zufar shall be addressed to better understand the establishing process of CWs. In the following, we will discuss their legal views, especially those documented in *wāqfiyahs*.

2.1 VIEWS OF IMAM ABU HANIFA

Islām provides organic interest in the organization of public life and development of order, law, economics, social relations, and the environment. In the context of Hanafi legal doctrine, the personal trading experience of Abu Hanifa primarily affected the Hanafi School with regard to trade and economy, especially with regard to the fundamental *Islāmic* prohibitions regarding economic relations. Abu Hanifa's theoretical discussions and solutions to current problems and dilemmas shaped the overall structure of his law school. Some sources claim that Abu Hanifa addressed about 60,000-80,000 legal queries (Al-Muwaffaq, 1981). Such a high rate of responses to a wide array of socio-economic problems as well as many other issues only points to a broad approach to the life affairs of the community. However, this study only focuses on Abu Hanifa's views on *ribā'* and *wāqfs*, in addition to his views on trade which are crucial to understanding his approach to economic issues related to the operations of money in CWs. Some scholars maintain that there is an interest risk in forward-sale agreements, which the *Qur'ān* strictly forbids. However, Abu Hanifa holds the view that when a seller and buyer determine the price for cash price and future price, the sale can be confirmed as *halal* (lawful) (Gözübenli, 1997). This legal view is fundamental, mainly as some cash *wāqfs* incomes depend on future sales.

Abu Hanifa defined *wāqf* as an act through which one would devote his rental income to the poor as religious and social needs of the *Islāmic* community (Günay, 2012). Abu Hanifa did not allow for movable assets to be used for establishing *wāqf*. This is because he believed that, unlike immovable properties, those goods are not long-term. On the other hand, he had flexible views on the recourse of the founder from the establishment of the *wāqf*. Thus, the *wāqfs* could be founded temporarily (Rashid, 2018). He instead proposed an *Islāmic* trade agreement like *muḍārabah*, which is profit-and-loss sharing contract and a kind of partnership whereby one partner provides the other money for investing in a commercial enterprise. He emphasized fairness and equality in trading operations (Siddikī, 1998).

Abu Hanifa had a rank-making method. He first used *qiyas* (legal analogy) and then *istihsan* (juristic preference). When the use of *istihsan* does not work, he drew on the practices and customs of Muslims. He generally used the following sources of legal reasoning: *Qur'ān*, *Sunnah*, statements of the companions of the Prophet Muhammad (*ṣal-Allāhu 'alayhi wa sallam*) *ijma'* (scholarly

consensus/agreement), *qiyas*, *istihsan*, and customs (Ebu Zehra, 1981). This is significant since he also used customs as a cultural institution. He also used the following basic trade principles: knowing income and cost, avoiding interest, drawing on customs and traditions, and trade honour and morality. Muslim scholars viewed current commercial customs as essential. According to Abu Hanifa, *wāqf* transactions are provisional, meaning one would only borrow for use. This is because of the non-binding nature of *wāqfs*; the property of the devoted goods remains to the founder of *wāqf*. This view was intercepted because it would open the door for abuse of property rights of *wāqf*.

2.2 LEGAL VIEWS OF AUTHORITATIVE HANAFI SCHOLARS

Like his teacher Abu Hanifa, Abu Yusuf believed that movable assets should not be used for establishing *wāqf*. He maintained that only horses and weapons could be donated as *wāqf* (Günay, 2012). This concession is based on the practice of the Prophet Muhammad (*ṣal-Allāhu 'alayhi wa sallam*). Muhammad al-Shaybani is of the view that movable assets could be donated as *wāqf* capital if the donation were prevailing social custom. This is based on the principle that tradition (custom) may precede the religious text (*nass*) in the Hanafi legal thought. This view, of course, does not mean contradicting a definite decree in the *Qur'ān*. The view is based on the philosophy that if a long-lasting tradition has been formed, it has been accepted by *Islamic* scholars throughout history. The Imameyn (al-Shaybani and Abu Yusuf) are also of the opinion that movable assets can be donated as the capital when there is an immovable good for *wāqf* (Günay, 2012). It is understood from *wāqfiyahs ulema* of the Ottoman Empire used the views of Imameyn for allowing for cash *wāqf* (CWs). This is because if there were any conflict between Abu Hanifa and Imameyn, the views of Imameyn are considered. To sum up, Imameyn has not unconditionally supported the devotion of movable goods; instead, they proposed conditions for establishing that kind of *wāqf*. Institutions of customs, traditions, and experiments had also been activated. Another solution proposed by the *Imameyn* was to connect movables to immovable goods for *wāqf*. Thus, a movable good could be devoted to a real estate endowment.

Imam Zufar was a Hanafi scholar who opted for total permissibility of CW and advocated the lawful ways of using money as capital for CWs. His student, Muhammad b. Abdullah el-Ensari

also conveyed the views of Imam Zufar (Kudat, 2015). Imam Zufar's views formed the basis of following fatwas that allowed cash *wāqfs* in the Ottoman period. His views were crucial to give permission for a donation of cash as *wāqf* capital and are also found in *wāqfiyahs*. The Ottomans found the legal approval of Imam Zufar feasible, rational, and applicable because the state was sensitive to the public interest. Not only mujtahid imams but also Ottoman scholars had focused on the donation of cash and cash *wāqfs*. In the following, we will address the writings and opinions of noteworthy scholars on the issues of cash *wāqf* using their *fatwas* and *risales* (treatise). We selected Ibn Kemal, Civizade Muhiddin Mehmed Effendi, Ebussuud, Imam Birgivi, and Bali Effendi as the scholars for review.

2.3 THE VIEWS OF OTHER OTTOMAN ULAMA ON CASH *WĀQF*

First, Shaykh al- Islām Ibn Kemal (d. 1533) was the first '*alim* in the Ottoman Empire (1299-1922) to write on CW, which led to a discussion by others following *ulema*. He wrote a short yet simple treatise on the subject in which he supported the permission of CW in *Islām*. His views are based on the following general principle which states that "When a judge (*qadi*) decides on an issue, his decision then should not be broken by the decision of another (i.e., *qadi*)" (Öge, 2010). He also defended the principle of consistencies of decisions to prevent legal confusion. He also acknowledged that cash *wāqf* was controversial, according to *mujtahid* scholars. His point was that CWs were prevailing all over and the ban of which would only disrupt services provided through it. Ibn Kemal's treatise is significant because he drew a general framework of permission for cash *wāqf* and their operations. He also pointed out that there are more risks for the devastation of real estate *wāqf* rather than CWs (Özcan, 2000).

Second, Shaykh al- Islām Civizade Muhiddin Mehmet Effendi (d. 1547) may be one of the earliest Ottoman scholars who disallowed CW. The *Sultan* took the title of Shayk al- Islām from him and assigned him as *kazasker* (military judge) in Rumelia. Mehmed Effendi also banned cash *wāqf* in Rumelia, which caused actual confusion in the community (Şimşek, 1985). His banning *fatwa* in Rumelia stirred legal discussions among ulemas, especially that CW were very common and founded in most remote villages. His ban was costly. Civizade took Ebussuud as a rival and opposed his views strongly. He wrote a legal treatise on the opinions of *Hanafi* scholars to establish that cash cannot be devoted to *wāqf* (Özcan, 2003). He opposed the establishment of cash *wāqf* from the structural

perspective. He, however, did not share opposing views about the applications of cash *wāqf* in his treatise. Civizade also persuaded the *Sultan* to disallow CWs, causing it to be unavailable between 1545-1547. *Civizade* justified his ban because the validity conditions do not hold in the case of cash *wāqf*. There were also possibilities of interest risk and opening the gates of usury. Ottoman jurists and *ulema* issued permission for legal transactions (*muamele-i şer'iyye*) for CW. However, Karataş (2011) believed that the court records verify the concerns of Civizade. It should be noted, however, that the records falling in Ottoman courts were only the problematic issues, which means that there were more operations that were functioning smoothly.

Third; Ebussuud (d. 1574) took office of Shayk al- Islām for about thirty active years of the administration. His views helped shaped the life of Ottoman society considerably. Ebussuud was a successful scholar who was able to make essential contributions to customary and *Islāmic* law by providing an excellent adaptation (Okur, 2005). Ebussuud was the Abu Hanifa of his period. Thus, his views on cash *wāqf* deserve analytical attention. Following Imam Muhammed his permission of CW depended on traditionalist principles. His positive views also relied on the views of Imam Muhammed and Imam Zufar. His point was that cash was a kind of good that carried a continuity feature that provided a similar amount of money in *wāqf*. His vigorous defense of CW may be the foundational basis for their spread during the Ottoman period because of his critical influence on society and state administration. Ebussuud wrote a treatise on the permission and methods of CWs. He provided a general framework of current profit rates (*ribh*), which according to the law of *Islām* were different from interest. His legal views are important since the establishment of CWs was formulated with his solution. He thought that the borrowing rates of CWs could not be over the legal rates, which was also valid in interpersonal borrowing.

This shows that Ebussuud sought to predicate the establishment and operation process of CW according to *Islāmic* legal rules. Thanks to determining borrowing costs by legal rules, usury can be stopped (Akdağ, 1979). Ebussuud supported the views of Abu Yusuf and Imam Muhammed on the permission to donate moveable goods for *wāqf* when considering their evidence on supporting custom on the matter. As a result, cash could be accepted as moveable good, and the CWs were already used in society. There was public interest to keep CWs open. Ebussuud also believed that CWs provided the

principle of continuity because of the stability of the donated amount of money. CWs also had an ordinary *wāqf* structure. So, the irrevocable principle was also valid for it. Ebussuud gave the leading formulation for establishing CW to become legal (Mandaville, 1979) and provided religious and legal support. He even argued that those who advocated the prohibition of profit out CWs operations are considered as disbelievers who need to refresh their faith (Kurt, 1996).

Fourth; and opposed to Ebussuud, Imam Birgivi (d. 1573) held negative views about CWs in his treatise *es-Seyfū's Sarim Fi Adem-i Cevaz-i Vakfı'l Menkuli ve'd Derahim* (Sharp Sword at whether *wāqf* of Securities and Cash are Permissible) and *Tescilü'l-Vakf* (The Registration of the *Wāqfs*). Birgivi was strict about the legal problem of CWS. He maintained that CWs issued interest-based loans, and this was not a lawful method. He also believed that *zakāt* institutions may be damaged with the acceptance of CWs as lawful. Heritage may also be affected negatively because of the suspicious operations in CWs. Birgivi held that in the case of CWs, the testaments were lacking, and the beneficiaries were unable to take their lawful rights. His point was that benefactors needed to have the right to give up establishing *wāqf* since CW was not trustworthy (Güney, 2019). But in practice, the judges did not allow the *wāqf* to be dissolved again after it was established. The legal precedent used by Imam Birgivi was that Prophet Muhammad (*ṣal-Allāhu 'alayhi wa sallam*) did not give the community any example to be used for analogy on the operations of CWs. Another problem for Birgivi concerned the trustees whom he thought were ignorant and ignored the legitimate ways of trade in *Islām* and infect interest (Önder, 2006). Imam Birgivi also opposed the CW operations and criticized the *murābahah* operation which many other contemporary scholars validate. Scholars who approved the legality of CWs were careful to avoid the term interest (*ribā*). They typically used *ribh* (profit) or *muamele-i şer'iyye* (Şimşek, 1985). Birgivi, who believed in the importance of the socio-economic functions of *wāqfs* pointed out the inaccuracies of the ineffective people managing those institutions. He held an opinion on CWs that differed from the state official view up until the end of his life. This is important to reflect the understanding of the period (Bulut, 2010).

Fifth; Bali Effendi (d. 1572) was another scholar who held a favorable view on the establishment of CWs and who played a critical role in the permission of cash *wāqf* following the ban of Civizade (1545-1547). He sent letters to the Sultan, Civizade, and Mavlana Shah Chlabi concerning the necessity of CWs in society (Şimşek, 1985) in which he stressed the detrimental effects of banning CWs on

society. It is believed that the letters of Sheikh Bali Effendi formed one of the reasons for allowing CW revival (Özcan, 1999). He thought that CWs were a relatively common and important institution in society and that discussions on disallowing CWs negatively affected those interested in donating cash. Benefactors became confused, and that caused social chaos. He addressed all those issues in his letters. Three letters by Bali Effendi in the archive were addressed to the Sultan (Özcan, 2003). Bali Effendi accepted the legal views of Ebussuud. He criticized Civizade's ban on CWs (1545-1547) and defended what he believed to be scholar consensus on the issue, besides the customary applications and operations of cash *wāqf* in society. His argument was also like earlier ones; he pointed out the real damage to public interest resulting from the CW ban. In his letters, Bali Effendi also shaped the views of many *Islāmic* scholars, who, according to him, found CWs trustworthy. His views drew a general perspective and looked at the consequences of the ban. He compared the advantages and disadvantages and damage following CW prohibition on society. The letters of Bali Effendi provide us with a better understanding of the role and position of CWs in society (Kayahan and Cantürk, 2016; Özcan, 1999).

3. TERMS OF INTEREST (*RIBĀ'*) AND EARNINGS (*RIBH*) IN CASH *WĀQF*

Monotheistic religions prohibit the charging of interest on money lending. This is known in *Islām* as *ribā'* (interest on loans). *Islām* accepts interest as one of the worst sins. Muslim are forbidden to borrow money with interest margins. Borrowing money with interest and paying interest can only be used when there is an obligation (Rahman, 2010). This statement is placed in Mecelle-i Ahkām-ı Adliyye (Majalla) as "Necessity renders prohibited things permissible." In this case, if the transaction you are going to do is vital and you have no other choice, then it becomes legitimate to make a transaction with interest. The *Qur'ān* clearly defines the prohibition of interest (*Qur'ān* 3, 130; 4, 160-161). *Islāmic* law identifies two types of *ribā'*. *Ribā' al-jahiliyyah* (interest known during the pre-*Islāmic* period) was known among Arabs before the advent of *Islām*. It starts when one fails to pay his debt on time set before. *Ribā' al-fadl* is another type of interest. Today, the common credit represents an example of this type. Basically, someone borrows US\$1,000 from the

bank and pays US\$1,120 to the bank. Here US\$120 is the surplus and interest. This method is widely used in the modern banking system.

In the following, we will examine the term of interest according to the Hanafi law. As mentioned earlier, the interest is a surplus in an agreement that has no provision for one of the parties. In the CWs, these methods were not used, and they improved *halal* money-operation ways. We will look at the term of *ribh* (earning). If the income is considered as earning, there would be no problem according to the *Islāmic* regulations. Some scholars support these views on the premise that money taken from cash *wāqfs* as a loan that comes from borrowers again is not considered as interest, but rather profit sharing because various methods have been used to avoid interest risk. First, the capital (money) given to borrowers does not imply ownership, but rather a usage right only. Second, the situation of getting a mortgage from the debtor of land or house or others is known as *istiglal* (exploitation). Generally, the debtor would use credit from CW for a year. The debtor may live in the house that he showed as collateral. He paid rent to cash *wāqf*. He may retake his house upon payment of all debt at the end of the lending period.

CWs had two benefits from that kind of operation, rental and profit income (Çizakça, 2004). Çizakça (2004) argues that these benefits represent the usual interest. However, there was a trade between the debtor and CW. There were also goods in this trade. The *murābahah* or other methods (*bai'al-'inah*, *bai' al-wafa*, *bai' al-istiglal*) were used as trade. The benefits came from the sales operation of CWs. The rental income was also *halal* income for the CWs. Some *wāqfiyahs* show that people who would take the loan from CW were identified as artisans, merchants, and others, and also describe the conditions such as not lending to people with fixed income, which shows that CW had other noble intents than mere interest income. Moreover, CWs are not only charity institutions. Thanks to CWs, the Ottomans could establish a unique financial system that is an alternative to capitalism (Bulut and Korkut, 2019a).

4. THE LEGALITY OF OTTOMAN CASH *WĀQFS* UNDER *ISLĀMIC* LAW

We will examine the legacy of *wāqfs*, with particular attention to CWs, according to *Islāmic* fatwas and the legal views of *mujtahid* (a scholar who is qualified to make *ijtihād* in the evaluation of *Islāmic* law) imams and scholars. The *fatwas* are crucial in providing evidence for the legitimate applications of CWs. The views of *mujtahid* imams are

also important, yet the scholars permitted *wāqfs* and the CWs under these views. Shatzmiller (2001) noted that the governments sought *fatwas* as a solution to managing difficulties as reflected in the terms used in *wāqfiyāhs* under *Islāmic* legacy.

Muâmele-i şer'iyye (transactions under Sharia) and *murâbaha-i mer'iyye* (transactions under the regulations) terms are typically used in *wāqfiyāhs*. These methods yielded interesting discussions on cash *wāqf*. Former Shaykh al- Islām Civizade Muhiddin Mehmed Effendi first banned cash *wāqfs* during his tenure as *kazasker* of Rumelia Province between 1545-1547. As known, *kazasker* was a chief judge in the Ottoman Empire, so named initially because his jurisdiction extended to the cases of soldiers, who were later tried only by their officers. Thus, he had a great sanction power. Following his prohibition, Shaykh al- Islām Ebussuud realized the inconvenience of such a ban and the damage it caused to institutions established in the past. Hence, he allowed it with the purpose of usefulness. Birgivi disagreed with this permission while maintaining that CW applications are unlawful. Most Ottoman scholars believed that money is operated by trustees, used for societal benefit, and is operated through *halal* ways. The most used methods in CWs are *bai 'a'l-inah*¹, *bai 'a'l-wafa*², and *bai 'al-istiglal*³.

Ebussuud placed attention on traditional practices because of permission. Balî Effendi, an economic expert, looked at the issue and instead focused on the necessity of CW mechanisms. The views of Civizade and Birgivi were generally about religion as they believed that the gains made of CWs were interested but not profit or earning, and so they prohibited it. In practice, *fatwas* shaped the operating ratio and methods of money. In the following, we highlight some examples of *fatwas* on the operations of CWs and some other borrowing and lending issues.

TABLE 1
Sample Fatwas on Borrowing

No	Fatwa	Response	Source
1	Zeyd lends money to Amr under the method of <i>muamele-i şer'iyye</i> ⁴ for a one-year period from the CW where he is acting as a trustee. After one year, Zeyd gets the profit of money. But the capital continues to stay in Amr without using <i>muamele-i şer'iyye</i> for a two-year period. Can Zeyd demand the profit for these two years.	No	Ceride-i İlmiyye Fatwas (Cebeci, 2009)
2	A woman lends money for a one-year term, and for this money, she takes ribh (profit) with <i>muamele-i şer'iyye</i> , is this ribh (profit) permissible (halal) for the woman?	Sure	Fetâvâ-yı Ali Efendi (Ali Efendi, 1323/2014, Fatwa No: 333)
3	Someone lends money to a woman with <i>muamele-i şer'iyye</i> and fifteen percent (15%) from the <i>wâqf</i> where he already is trustee, would be able to get it again with ribh at the end of the period?	Sure	Fetâvâ-yı Ali Efendi (Ali Efendi, 1323/2014, Fatwa No: 335)
4	Zeyd lends money to Amr with a rate of thirty percent (onu on üç) (30%) from the <i>wâqf</i> at where he is the trustee. Can Zeyd get this money over the rate of fifteen percent (onu on bir buçuk) (15%) at the end of the year?	No. Because, a certain limit is set on the profit limit.	Fetâvâ-yı Feyziye (Kaya, 2009).

TABLE 1 (continued)

No	Fatwa	Response	Source
5	Someone gives money to someone with a profit rate of fifteen percent (15%); shall he get this money with its <i>ribh</i> at the end of the year?	Sure	Fetâvâ-yı Fezziye (Kaya, 2009)
6	Zeyd lends money to Amr from the CW where he is acting as a trustee. Later, Amr sells the real estate to Zeyd with <i>istiglal</i> method and empties the real estate and delivers it to Zeyd. Then, Zeyd and Amr make a rent contract and the property is rented by Amr for a year. Amr gives the rent to Zeyd at the end of the year. The contract is not renewed at the end of a year. But Amr is using the property for a few more years without any contract. Then, Amr gives the rent to Zayd again. But Zeyd does not accept the money and wants more. Does Zeyd have the right to ask for more money?	No	Fetâvâ-yı Fezziye (Kaya, 2009)
7	Zeyd lends money to Amr with a rate of fifteen percent (onu on bir buçuk) under muamele-i şer'iyye for a one-year period. Can Zeyd get this money with its profit at the end of the year?	Sure	Ceride-i İlmiyye Fatwas (Cebeci, 2009).

TABLE 1 (continued)

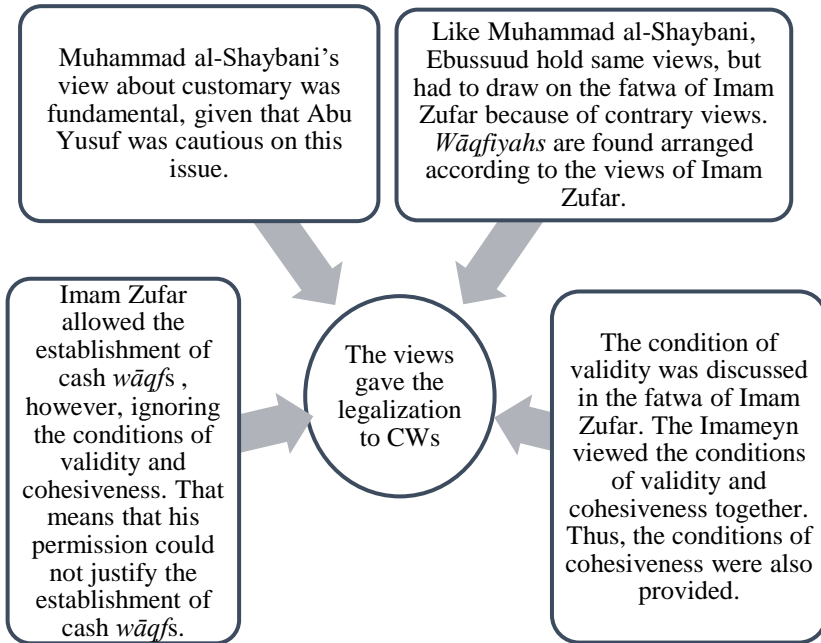
No	Fatwa	Response	Source
8	Zeyd lends money to Amr without using the muamele-i şer'iyye method from the CW where he is acting as a trustee. Can Zeyd get this money with its profit?	No	Ceride-i İlmiyye Fatwas (Cebeci, 2009)
9	Zeyd lends money to Amr from the CW where he is acting as a trustee. Later, Amr sells the real estate to Zeyd with the <i>istiglal</i> method and rents it again from Zeyd for a year. Then, Amr claims that he rented the real estate without delivering it. So, he refuses to give this rental price. Zeyd rejects this claim and declares that Amr accepts all the terms. If Zeyd maintains his claim despite Amr's denial, can he take Amr out of the real estate and take it completely?	Yes	Behcetü'l-Fetâvâ Sheikhu'l-Islam Abdullah Effendi from Yenişehir (Kaya, 2011)
10	What way should Zeyd, trustee of the CW, take to buy Amr's house with the <i>istiglal</i> method?	Amr must have the intention of selling his house to Zeyd when Zeyd paid for the house. It does not have to be pronounced intent. Then, the house is sold. Zeyd, the trustee, provides evacuation of the house, or Amr can deliver everything in his home to the trustee. Then, Zeyd rents the house to Amr and gives it to Amr with the goods in the house.	Ebussuud. Mecmû'atü'l-Fetâvâ (Kurt, 1996)

These *fatwas* show that Muslim jurists favored CW and its related financial transactions when operated through *muamele-i şer'iyye*. However, they had interventions regarding high borrowing rates, non-contractual claims, and non-*Islāmic* methods. It can be understood that CWs also determined the market borrowing ratio because Muslims preferred not to borrow at high-interest rates from usurers. Providing affordable borrowing costs by CWs and the compatibility of operations with *Islāmic* law were most preferred among Muslims. Although the borrowing cost seemed to be fixed, it was shaped within the market conditions framework. It is also possible to define this as a term difference. Instead of other credit mechanisms used by usurers, the tendency of people lending from CWs allowed the market interest rates to converge with the operating rates in CWs.

The 3rd, 4th, 5th, and 7th *fatwas* highlight the role of *ulema* in determining the borrowing ratio. As shown in these *fatwas*, an operating rate of 15% was allowed while a rate of 30% was found exorbitant. The 1st, 2nd, 3rd, 6th, 7th, and 8th *fatwas* instead emphasize the operation method. Credit transactions are permitted if *Sharia* principles were observed. The 9th *fatwa* also shows that the *fatwa* institution has taken the initiative to defend the rights of *wāqfs* which was essential to ensure continuity of the *wāqf*. The 10th *fatwa* instead reflects the sensitivity of avoiding interest in borrowing. It is mentioned in the *fatwa* sources that CW is allowed. Moreover, the recommended method to be followed when the *wāqf* is established is also explained. The view of *Ibn al-Bezzaz* illustrates the point: It is permissible as long as the dirham, dinar, foodstuffs, and multiple securities are entrusted. The sales prices after the sale of cash and such securities can be given through *muḍārabah* or *bida'* (method such as *muḍārabah* but in which the labourer does not take profit) and the profit to be obtained can be used for charitable works of *wāqf* (Kurt, 1996).

The establishment of the CWs is governed through the law, which requires four conditions for its legality and completion; namely, occurrence, validity, gaining force, and cohesiveness (Kudat, 2015). As regards the phases of CW establishment, *wāqfiyāhs* provide the following Figure 1.

FIGURE 1
The Views Gave the Legalization to CWs



Wāqfs samples provide information on the process as follows:

1. The *wāqf* founder states that *wāqf* is legal (*sahih*) according to Imam Zufar.
2. However, there is no need for cohesiveness, in his opinion, and so the founder gives up the establishment process.
3. The founder wants his capital.
4. The trustee argues that according to Imameyn both the conditions of validity and cohesiveness cannot be dissociated.
5. He needs the decision of the judge on this issue.
6. The judge rules in favor of the *wāqf* validity and relates validity with cohesiveness, according to *Imameyn*.
7. When a judge issues a decision on an *ijtihādi* issue, others will concur on this issue.
8. In conclusion, all roads will be closed about the renunciation of *wāqf* (Kudat, 2015).

Ottoman judges were highly competent; they ruled and issued decisions through oversight of the public interest. CWs took advantage of this custom and spread it almost to the remotest villages and funded people and charity works. As seen through archived documents, CWs are generally founded under the supervision of *Islāmic* law and are signed by the *Shari'a* judge. For instance, *Molla Husrev* approved and signed the documents of CWs during his tenure as *Sheikh al- Islām* in Istanbul. Judges such as *Efdalzade*, *Mustafa b. Mehmed*, *Mustafa b. Evhad*, *Müeyyedzade*, *Yarhisarizade*, *Mehmed b. Ali Fenari*, *Sad* and others gave permission and signed the CW documents (Mandaville, 1979). One of the opposite *fatwas* and applications belongs to *Civizade*. The prohibition of CWs by *Civizade Muhyiddin Effendi* in Rumelia affected finance, trade, employment, and charity works directly. This is because CWs operated as financial institutions that provided loans to people in need of cash and for charity organizations to cover the expenses of masjids, madrasa, lodges, and so forth. CWs also contributed to providing employment in the economic and social life of the Ottomans. The larger *wāqfs* employed about 20-30 people.

The ban on CWs was troublesome to the whole community from cities to villages because CWs spread to most remote villages in the Ottoman Empire. We can predict the effects of this situation easily. Nevertheless, we will look at the primary sources belonging to Rumelia region in the 16th century. The letters of *Sheikh Bali Effendi* represent one of those primary sources as they revealed the chaos resulting from the CW ban. In his letter to the *Sultan*, *Sheikh Bali Effendi* emphasized that cash *wāqfs* were three hundred years old. That implies that they carried significant functions and provided an effective mechanism for wealth transfer. The letter highlights the significance of *fatwa* and *ulema* institutions. *Sheikh Bali Effendi* says that *ulema* had worked on this issue in greater detail earlier. Thus, there is no mistake in the lawful condition of CWs (Özcan, 1999).

Banning of CWs showed the effects of *fatwa* institution on Ottoman economic and social life, leading to interruption of credit and wealth transfer. Traders and farmers who needed cash were provided through CWs who could not benefit from any loan not to speak about the damage of their charity purposes, mainly when CWs were used to pay wages of *imams*, *muezzins*, *muallims* and others. The ban is also like an unemployment shock. The chaos caused by the prohibition

kept philanthropists away from charity for a while. This situation negatively affected many areas, from education to infrastructure services, religious services to employment. The ban continued between 1545-1547 (Gel, 2010). Those affected tried to survive until the state's removal of the ban.

5. SAMPLES OF CASH *WĀQFS*

We use *wāqfiyahs* in the Ottoman archives to examine three examples of CW and analyze the views of *mujtahid imams* and the intents of CWs in this part. We will also discuss some documents of *wāqf* endowment that provide information about scholarly views on the establishment process. The first *wāqf* is that of *Dönümcü el-Hâc Halil son of Abdullah*⁵. This *wāqf* was founded in *Memi Pasha District, Eğriboz City*⁶ in 1768. The first part of the *wāqfiyah* provides a long prayer. Generally, in this part, people highlight the kindness of founding *wāqfs* and emphasized that *wāqf* is made for God's sake. The founder, *Dönümcü el-Hâc Halil*, son of *Abdullah* devoted cash (4.500 *qurush*) and some of his real estate such as olive-oil mill, vineyards, and house. He placed some specified conditions for the borrowers who use the money from CW. This part locates in *wāqfiyah* like the distrustful people; weak in belief and have risk potential, cannot borrow money from *wāqf*. He also wanted a sufficient mortgage and/or a strong guarantor for borrowing. The income method is described as terms of *istirbah* and *istiglal*.

The income of *wāqf* generated out of the cash operation according to the *Islāmic* methods was channeled to *muderris* (scholars), *qurra'* (instructors) and *talebe* (students). The other important part of *wāqfiyah* is the opinion of *mujtahid imams*. People who established a cash *wāqf* wanted to ensure they were based on *Shari'a* principles. The *wāqfiyah* also discusses *Imam Zufar* and the *Imameyn* (*Imam Muhammed* and *Abu Yusuf*). In this part, the emphasis is placed on the allowance of devoting movable assets as *wāqf*. In conclusion, the permission to devotion is approved. There is a registration date, in the last part of this *wāqf*.

Next, the second CW belonged to *AkovaHzâde Hatem Ahmed Effendi*, the son of *Mustafa Agha*⁷. This CW was founded in *Yenişehir-i Fenar*⁸, Rumelia in 1752. This *wāqfiyah* also contains prayer part. The founder of *wāqf* devoted 3.320 *qurush* (398.400 *akche*)⁹ cash. He wanted to operate this money with *mu'amele-i şer'iyye* (under *Islāmic* law). The operation rate is set at 15% per annum¹⁰. All income of *wāqf*

was dedicated to religious works such as wages of *imams*, *hafızs*, and so forth

One can also see the views of mujtahid imams. Following the discussion of opposing opinions of *Abu Hanifa* on the devotion of movable assets to *wāqf*, the permission of other *mujtahids* is also emphasized. The *wāqfiyah* concludes with a verse from *Qur'ān* (2:181) that says the curse of *Allāh 'azza wa jalla* would be on the person who damages the *wāqf*. The registration date of *wāqf* is also included in the last part of the document.

The third example is the *wāqf* of a woman known as *Ümmü Gülsüm Hanım*, the daughter of *Mütesellim Halil Agha*¹¹ who devoted 20.000 *qurush* and some other estates such as farm, house, store, olive grove, vineyard, field, and so forth. The *wāqf* was founded in Ali Effendi District, Midilli in 1792¹². In its introduction, the *wāqfiyah* contains a prayer part, followed by describing the conditions of real estate donation. In the part of cash money devotion, the ways of operation are defined as *istirbah* (to take income from devoted money) and *istiglal*. The rent and cash income are both given to religious services as wages of *imam* and *hatib* of mosques built by the donation of *Ümmü Gülsüm Hanım*'s mother, *Huri Hanım*. In the other part of *wāqfiyah*, the distribution of additional income for charity works is documented. The verse of *Surah Baqarah* of the *Qur'ān* (2:181) and the registration date are written in the last part. The witnesses (jurists) are also found toward the end of the *wāqfiyah*.

TABLE 2
Summary of *Wāqfiyahs*

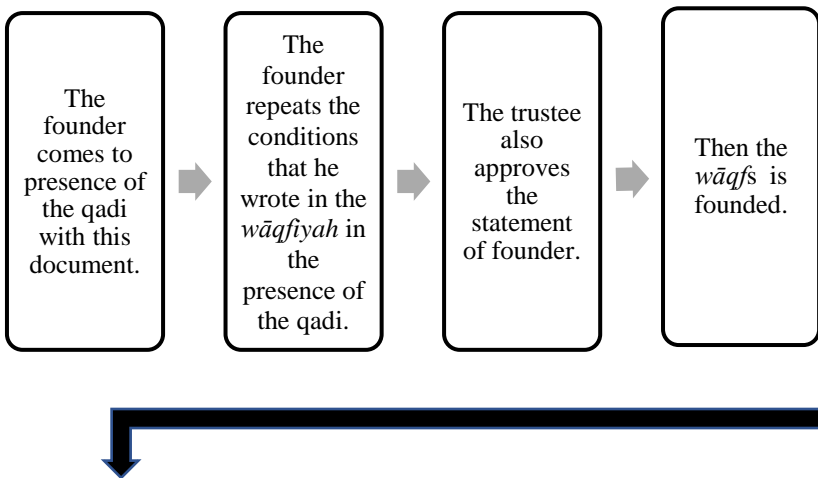
	Dönümcü el-Hâc Halil	Akovalızâde Hatem Ahmed Effendi	Ümmü Gülsüm Hanım
Place	Memi Pasha District, Eğriboz	Yenişehir-i Fenar	Ali Effendi District, Midilli
Year	1768	1752	1792
Capital	4.500 <i>qurush</i> and real estate	3.320 <i>qurush</i>	20.000 <i>qurush</i> and real estate
Methods	Istirbah and istiglal	Mu'amele-i şer'iyeye	Istirbah and istiglal
Purpose	Educational services	Religious services	Religious services

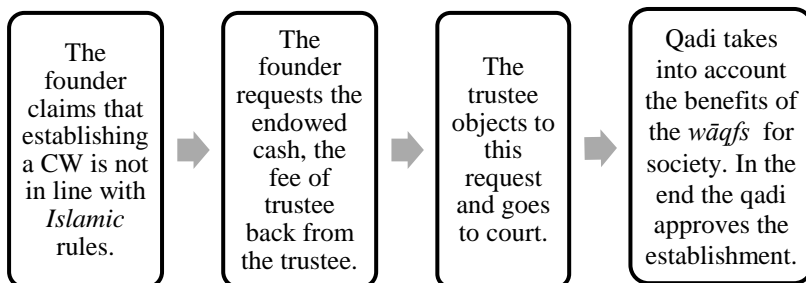
TABLE 2 (continued)

	Dönümcü el-Hâc Halil	Akoyalızâde Hatem Ahmed Effendi	Ümmü Gülşüm Hanım
Referred mujtahids	Abu Hanifa, Imam Zufar, Imam Ensari, Imameyn	Abu Hanifa, Imam Zufar, Imam Ensari, Imameyn	Abu Hanifa, Imameyn

The *wāqfiyâhs* show us the importance of religious basis for business transactions. Looking at the sample *wāqfiyâhs*, the establishment process of gaining legitimacy is understood. Almost step by step, with the opinion of *mujtahid imams*, a solid religious basis was established for the *wāqfs*. This is an indication of the importance of religion and the views of ulama in Ottoman society economic and financial life. As well as ensuring the legitimacy of the donations made by the philanthropists, one of the most fundamental factors in *wāqf* longevity is the importance given to the *wāqfs* by people with a religious basis. The establishment process derived from a sample *wāqfiyah* can be seen in Figure 2 (Bulut and Korkut, 2019b).

FIGURE 2
The Establishment Process for A Sample CW





6. CONCLUSION

Despite the legal solid opposition, CW functioned as an effective financial and charity institution in Ottoman society, which responded to the financing needs of both the state and society. Given the role and position of the state and religious authorities over the issue, cash *wāqf* helped retain its place systematically. The treatises of Imam Birgivi or propositions of others failed to prevent the operation of the widespread CWs, or undermine their contribution to the public interest, the support of financial resources for charity and social services, and their survival for many years later as a strong institution. The CW applications during Ottoman rule demonstrate that religious scholars (*ulema*) in general opted for permission of CW given the detrimental effects of banning it and sometimes they condoned it under some defective situations. One of the main reasons for the bans on CWS is that these *wāqfs* are established with the instinct of protecting wealth. However, very few of the *wāqfs* were found with this intention. The general purpose is charity. Nonetheless, those exceptions did not undermine the authority of legal permission of CWs given the widespread belief that CWs are useful institutions, providing capital transfer from the rich to the poor and needy and with effect on employment. Income of cash *wāqf* is canalized to imams, muezzins, muderris, and so forth.

Ebussuud Effendi noted that abolishing the interest-based income would cause a collapse of many pious foundations and harm the Muslim community. This situation concerning the pragmatic and flexible attitude of Ottoman rulers and society. Ottoman credit and

finance institutions retained their *Islāmic* lineage and mainly remained uninfluenced by developments in Europe until the end of the seventeenth century. This does not mean that Ebussuud allows interest-bearing transactions in CWs. Ebussuud's fatwa and permission for CWs supported an interest-free institution as an alternative to the interest-bearing transactions used to finance entrepreneurs in Ottoman rival countries (in Europe).

The administrations avoided discussion on CWs. They only applied the decision of fatwa authority. Ibn Kemal and Ebussuud took the role of jurists in their permission of cash *wāqf*. It seems that Civizade and Birgivi missed the realities of the time and viewed the issue instead from a purely religious standpoint. Birgivi stayed connected to the basic disciplines of *Islām* and placed profound importance on ethical values. Alternatively, jurists tried to meet the basic economic needs of the community such as cash and credit instead of endangering economic growth of society. It was known that there was a cash need in society, and people needed an institution providing such money transfers. CWs also prevented usury caused by a cash shortage. Therefore, jurists allowed for cash *wāqf* to avoid more significant problems. The public encountered difficulties in their daily economic and social life because of a need in the money supply. Ottoman scholars represented part of that social and economic life.

Nevertheless, the people sought the *ulema* when they could not solve the problems in the ordinary course of economic life, and the *fatwa* institution was born genuine out of those needs. CWs also promoted works pointed out in the tradition of Prophet Muhammad (*ṣal-Allāhu 'alayhi wa sallam*), which states: "Debts must be paid". When a person is loaded with debt, he must work to pay it. People taking credit from CWs become motivated to pay their debt and also do that as charity. During legal reasoning regarding CWs, Ottoman scholars consider *nass*, *legal* rules, customs, needs, and the community market. They also used institutions to solve economic problems, such as cash shortages and credit needs. CWs were critical financial institutions in the Ottoman economic system. The CW social benefits can be evaluated in this social implication context. In addition, the determinative role of *ulema*, which is highly effective in economic, financial, and social life cannot be denied, because the *wāqfs* institutions have moral as well as financial aspects. Social effects such as economic effects are also determinative in the mental development of countries.

ENDNOTES

¹ In a *bai al'inah* transaction, a lender sells an asset to a buyer (the borrower) on credit for a fixed price (the loan amount) plus a profit element (analogous to the interest amount in a conventional finance transaction). The lender immediately repurchases the asset from the borrower in cash for the fixed price.

² *bai al wafa* is a sale with the right of redemption, literally, a sale of honor. Typically, such a sale takes place when a commodity is sold on the condition that the seller be allowed to redeem the commodity upon paying its price; and the buyer agrees to honour the condition.

³ *bai al istiglal* is a variation of *bai al wafa*. The concept of *istiglal* adds that during this period the good could be leased to the original seller. This technique was widely used by the CW according to Murat Çizakça (1996).

⁴ It means the transaction in accordance with the Sharia. This statement has been added specifically to make the transactions of *wāqfs halal*.

⁵ Archive of Directorate General of Foundations Register No: 625, Page: 22, Order: 23; Registration date: 27 December 1768 G. / 17 Şaban 1182 H.

⁶ *Euboea*, an island in Greece in the western *Aegean Sea* that is separated from the mainland by a narrow channel at *Chalcis*, which is its capital.

⁷ Archive of Directorate General of Foundations Register No: 626, Page: 16, Order: 13; Registration date: 28 February 1752 G. / 12 Rebiülahir 1165 H.

⁸ Larissa now is the capital and largest city of the *Thessaly* region of *Greece* and capital of the *Larissa* regional unit.

⁹ 1 *qurush* equals to 120 *akche*

¹⁰ In *Waqfiyas* this term is written as *onu on bir buçuk*.

¹¹ Archive of Directorate General of Foundations Register No: 743, Page: 178, Order: 43; Registration date: 12 May 1792 G. / 20 Ramazan 1206 H.

¹² *Lesbos* sometimes referred to as *Mytilini* after its capital, is a *Greek* island located in the *Northwestern Aegean Sea*.

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