



Elmalılı Muhammed Hamdi Yazır, *Osmanlı Vakıf Hukukuna Giriş: Ahkâm-ı Evkâf (Introduction to Ottoman Waqf Law: Ahkâm-ı Evkâf)*, Hamdi Çilingir (Ed.) İstanbul: Vakıfbank Kültür Yayınları, 2020, 372 pages, 978-605-7947-77-2

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Many researchers have investigated why the modern economy emerged in the Northwest Europe and not in the Middle East. Some researchers have argued that Islam is inherently opposed to innovation and that Muslim societies cannot adapt to changing conditions. Others tried to measure the economic performance of the Islamic world also stating that Islamic Law is an obstacle to modern economic growth. For the latter, some authors examined Islamic law of waqf to support their arguments, as the awqaf form the economic basis of Muslim societies for many centuries. According to these researchers awqaf in the Islamic World delayed the emergence of private entrepreneurship, in the form of corporations and modern companies, which are among driving forces of modern economic progress, such as in the west of Europe. This thesis, highlighted in more recent studies, has been expressed in different ways by both oriental and Muslim intellectuals since the 19th century when the signs of economic backwardness began to be visible. Accordingly, since the waqf institution provide public services to the needy on free basis, it makes people inert and destroys private entrepreneurship. In addition, the waqf system generally withdraws the wealth from the economic circulation and prevents people from acquiring property. Thus, the inability to circulate wealth among society hinders economic development. This situation is caused by a set of rules inherent in Islamic law of waqf, Muslim intellectuals, living in the times when the debates first arose, responded to the objections, summarized above and directly related to the legitimacy of the waqf.

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In this respect, the lecture note titled “*Ahkam-ı Evkâf*” by Elmalılı Muhammed Hamdi Yazır, which contains the recording of the lessons he gave once a week at the Mekteb-i Mulkiye in Istanbul between April 13, 1910, and March 24, 1914, is an important book containing the answers mentioned above. This work, which was transcribed and prepared for publication by Hamdi Çilingir, begins with a very long section titled “Presentation of the Editor”. Then there are the transcriptions of 3 copies of the 1910-1911, 1911-1912 and 1914 school years. Çilingir has made a highly qualified and in-depth evaluation by examining all 3 copies in the presentation of the editor (Yazır, 2020). This book evaluation can be considered a summary of Çilingir’s evaluations. However, concerning a few studies in the field of awqaf, it attempts to extend the dimensions of the discussion, mostly in terms of economics.

Yazır, emphasizes the philosophical background of doing charity and establishing waqf in Islam at the beginning of his lecture note. According to him, the main reason that creates civilization is the sense of cooperation among people. At the core of cooperation is exchange. However, cooperation should not be perceived only as an exchange of goods. Because society consists of many different layers, from strong to weak. While it is possible to exchange equal values between people in the same layer, such an exchange cannot be done between different layers. Therefore, one exchange method for meeting the needs of the weak and poor differs from the exchange that meets the needs of the rich and strong in society. Yazır calls this type of cooperation done by this exchange “teavun-i ihsan”. Because people may not be willing to cooperate for this kind of help due to their ambitions. However, the true religion that encourages its followers to be constantly sensitive can guide people and encourage them to this kind of cooperation. The religion of Islam encourages charity with many clear provisions. One of these ways of doing charity is waqf (Yazır, 2020).

Elmalılı Muhammed Hamdi Efendi divides the objections raised against the legitimacy of awqaf into moral and economic. According to those who criticize awqaf from a moral point of view, since the waqf provides the needs of the people free of charge, it leads them to inactiveness and fatalism. In terms of economic critics, awqaf slow down economic development and progress by preventing the circulation of wealth in society. However Yazır, rejects both. A nation can be driven to inertia only if there are no moral and social rules to encourage it to work or if it has been educated to survive in a reliant way. Islam, on the other hand, does not allow people to live relying on others as long as they can work and earn. On the contrary, it encourages them to spend for others from what they earn. Therefore, the members of a society educated in this way will regard laziness as the greatest sin. Yazır supports his argument with concrete examples. To understand that the

Muslim Ottoman society did not have any deficiencies in private entrepreneurship, it would suffice to compare the works made by the state with the works made by Muslims individually (Yazır, 2020, p. 65). On the other hand, as a basic rule of the Hanafi waqf law enforced in the Ottoman Empire, the donated property must essentially be real estate. In the dedication of real estate, even if the bare ownership of the goods is removed from circulation, the right of use remains in circulation. Therefore, the criticism that wealth has ceased to be circulated significantly disappears (Yazır, 2020).

While responding to the criticisms made against the awqaf, Yazır accepts that the Ottoman society was deprived of private entrepreneurship and attributes this situation to the weakness of the government. According to him, if the Ottoman society had been waiting for the government to build some works for civilization from the past, there would have been no place to give education or even to read a book. In this direction, as an example, the Ministry of Awqaf (Evkâf Nezareti), which was established in 1826 for the protection of awqaf built by Muslims since ancient times, can be looked at. When the functions of this institution are examined, it was not possible to maintain the existing awqaf, let alone the improvement of the waqf system and the development of awqaf. The Ministry only collects the waqf revenues and distributes them to thousands of officials. In addition, when the finance and pre-modern waqf records are investigated, it will be understood that the government has illegally expropriated awqaf whenever possible, and not only that but also that some unscrupulous people have been allowed unfair behavior and forcible confiscation of the waqf property. This has led to the disappearance of many awqaf along with their income. According to Yazır, all of this has come about as a result of fulfilling the wishes of the Europeans. However, what was promised to the Muslims by the Europeans did not come true (Yazır, 2020).

Inferences similar to those of Yazır can be seen in a recent study. Hallaq (2017) study examines the Ministry of Awqaf, which is an important step in the Ottoman modernization adventure, within the framework of Islamic waqf law and the modernization of Muslim societies. Hallaq (2017) also reveals the mechanisms by which the modernizing forces that occupied the Islamic geography throughout the 19th century transformed Islamic waqf law. Accordingly, the Ministry of Awqaf became an important tool of the centralization policy, which dried up the incomes of the waqf institutions (Hallaq, 2017). Thus, the concept of waqf, which was the property of Allah in the pre-modern Muslim world or as a collection of premises that did not belong to any person in terms of property rights, ceased to be the property of Allah in parallel with secularization. During the period from the 19th century to the beginning of the 20th century, awqaf became secular and legal entities that could own property (Moumtaz, 2021).

References

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