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Cash waqf: Is it a usurious piety?

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Context. During my research on a project entitled *Muslim Economic Thinking and Institutions in the 10th / 16th century* I came across to an article by American writer Mandaville, Jon E., with the caption “Usurious Piety: The Cash *Waqf* Controversy in the Ottoman Empire”(*International Journal of Middle East Studies*, August 1979, No. 10, pp. 289-308.).

It appears that while dealing with the cash *waqf* controversy in the Ottoman Empire of sixteenth century Mandaville’s use of a sensational caption “Usurious Piety” – a term in contradiction, was aimed at creating curiosity and defaming this institution. It gave an impression that the cash *waqf* meant practicing usurious activities under the disguise of a pious endowment. This is the context of this discussion.

Going through the paper I found that, otherwise a very informative work, its heading is misleading. He presents no clear text to show that the objective from the cash waqf was lending on interest except an allegation by an opponent that cash is sometime loaned on interest. He is also not correct when he says: “ True, al-Shafi’i Malik, and Ibn Hanbal refused cash waqf” (Mandaville, 1979, p. 296). Majority of Jurisprudential Schools are not very strict on the condition of perpetuity (*ta’bid*), so they generally approve the establishment of cash waqf. For example, one may refer for Shafi’i stand to his famous work *Kitab al-Umm*, 3: 274-87, for Maliki stand to al-Mudawwanah, 6:98-99, and for Hanbali stand refer to *Majmu’ Fatawa Ibn Taymiyah*, 31:234-35.

As far the Hanafi school of jurisprudence is concerned, there are different opinions on permissibility of a movable and non-permanent object such as cash (al-Tarabulusi, 1902, pp. 14-17):

1. Imam Abu Hanifah is very strict on the condition of perpetuity. So he is against the endowment of any object that is not permanent or loses its substance.
2. The others say that such object cannot be endowed independently, but can be if they are attached to a permanent object (Abu al-Su’ud, 1997, pp. 17-18).
3. Abu Yusuf exempts horse and weapons only from the condition of attachment because of approving text (*nass*) about them (*ibid*, p. 8).
4. His colleague Muhammad, exempts everything that is known in practice. Most of the senior Hanafi scholars (*al-masha’kh*) have adopted this stand.

In the earlier centuries of Islam cash or movable property was not any significant part of waqf to take a form of a big controversy. According to Mandaville, only one example of cash waqf is found in the first half of the 9th/15th century. Per year it slightly increased in the second half of the 15th century. The trend doubled in the early 16th century. In 1505, for the first time more endowments of cash than land awqaf were established. Beginning in 1533, the cash waqf became the rule rather than the exception’. ‘And by about 1560 it had become the dominant mode of endowment’

(Mandaville, 1979, p. 292).

Cash Waqf Controversy begins: It was sometimes between 1545 and 1547 that Muhammad b. Muhammad Jawizadah (d. 995/1587) the former *Shaykh al-Islam* and *Qadi al-Askar* of Remeli issued a *fatwa* in which he denounced the establishment of cash waqf. This was against the opinions of *Shaykh al-Islam* Muhammad b. Muhammad al-Imadi known as Abu al-Su'ud (d. 982/1574). As the differences of these two great scholars on an established system surfaced, the Ottoman *ulama* sharply divided into two camps: the majority who supported the permissibility of the established practice of cash waqf, and the minority who insisted on its invalidity.

In addition to accepting cash waqf as a known established practice, and that repayment of the cash is just like the same cash (*`aynuhu*), the proponents also argued that a lot of socio-economic and religious benefits, available from the cash waqf, would be completely lost if cash waqf is abolished.

The opponents relied on the traditional argument – absence of perpetuity. In addition, they considered cash waqf as ‘source of many evils’ and the worst was that it was loaned at interest using legal devices (*al-mu`amalah*) and sometimes even without using ‘permissible devices to do so’. (Mandaville, p. 306)

Investment avenues of the cash waqf. The supporter of cash waqf pointed out various legal methods for investment of waqf fund:

- *Mudarabah*
- Interest free loans (*qard hasan*)
- *Mu`amalah* (*al-`inah* and *tawarruq*)

In these techniques, practice of interest nowhere figures. ‘*Mu`amalah*’ was used as a way out to avoid clear interest. It was a term used during Mamluk and Ottoman period for *al-`inah* (fictitious sale on credit and repurchase at cash) and *al-tawarruq* (fictitious sale and repurchase admitting a third party also) Muslim scholars considered the cash waqf analogous to property of an orphan, so they took utmost care to ensure its safety and preserve its perpetuity. That may be one of the reasons that they allowed guaranteed or semi-guaranteed use of such a fund in the form of *mu`amalah*. However it remains to be explored what proportion of cash waqf was used for *mudarabah*, for interest-free lending and for loaning on extra guaranteed return using legal device of ‘*inah* or *tawarruq*. The institution of cash waqf *per se* has nothing to do with usurious practices.

It is a fact that Muslims never tried to denounce the prohibition of interest in principle, nor to reject it in practice. This point is also brought out clearly by Schacht (1936, Encyclopaedia of Islam, Vol. III, p.1150), an ardent Jew, who says about Muslims that ‘they were always conscious that a direct breach of the prohibition of *riba* (interest) was a deadly sin’. Thus, on the basis of any individual practice one should not censure the whole community.

Early scholars pointed out the following legal methods for investment of cash waqf: *mudarabah*, interest-free loans, *mu`amalah*. Modern Islamic financial engineering has innovated a few more techniques, such as *ibda`* (investing the fund with the guarantee of capital safety and return of the profit also if any), *murabahah*, *salam mutawazi*,

istista, *al-ijar*, *al-ijarah al-muntahiyah bi'l-tamlik*, *al-musharakah al-mutanaqisah*, etc. Thus there is no reason to pollute the pious institution of waqf with the practice of usury.

Cash waqf could have proved a sound foundation for interest-free banking at the time when Europe was establishing banking system based on interest during the sixteenth century. But we were lost in controversy. Muslim mind had to wait still four centuries to make such experiment through equity or waqf funds.

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