



AWQAF

Refereed Biannual Journal Specialized in Waqf & Charitable Activities

No. 20 - Year 11 - Jumada I 1432 H, May 2011

(A special issue on the 2nd International Symposium
of Awqaf Journal)

Editorial

- **Waqf and Islamic Unity.**

Articles in English

- **Impact of Waqf Law on the Educational System in Modern Turkey.**

Hatice Karacan

- **Education and Pious Endowments in Al Andalus.**

Ana Maria Carballeira Debasa

Articles in Arabic

- **Awqaf and Higher Education in Modern Egypt: Changing Relations.**

Ibrahim Al Bayoumi Ghanim

- **Harvard and the Likes: Significance of Endowed Education in USA.**

Taraq Abdalla

- **University Education Worldwide between the State and the Society.**

Hasanein Tawfiq Ibrahim

ISSN 1609-4662

Issued by Kuwait Awqaf Public Foundation
Studies and External Relations Department

20

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

AWQAF

Refereed Biannual Journal Specialized in Waqf and Charitable activities

Chief Editor

Dr. Abdul Muhsin Al Jarallah Al Kharafi

Deputy Chief Editor

Eman Al-Hemaidan

Managing Editor

Kawakib A.R. Al-Mulhem

Editing Advisor

Dr. Tarak Abdallah

Editorial Board

Reham Ahmad Bokhuwa
Dr. Mohammad Ramadan
Dr. Issa Z. Shaqra
Dr. Ibrahim M. Abdel-Baqi

Advisory Board

(alphabetically)
Dr. Abdel Aziz Al-Touijri
Abdel Muhsin Al-Othman
Dr. Fouad A. Al-Omar
Dr. M. Manzoor Alam

AWQAF is based on a conviction that waqf -as a concept and an experience- has a great developmental potential which entitles it to contribute effectively to the Muslim communities and cope with the challenges which confront the Umma. Waqf also reflects the history of Islamic world through its rich experience which embraces the various types of life and helps finding solutions for emerging problems. During the decline of the Umma, Waqf maintained a major part of the heritage of the Islamic civilization and caused it to continue and pass from one generation to another. Nowadays, the Islamic world is witnessing a governmental and popular orientation towards mobilizing its materialistic capacity and investing its genuine cultural components in a spirit of innovative thinking leading to comprehensive developmental models conducive to the values of justice and right.

Based on this conviction, AWQAF comes up with a keen interest to give waqf the actual prestige in terms of thinking at the Arab and Islamic levels. It centers on waqf as a specialty and attracts waqf interested people from all domains and adopts a scientific approach in dealing with waqf and relating it to comprehensive community development. Waqf is originally known to be a voluntary activity which requires AWQAF journal to approach the social domains directly related to community life, along with other relevant social and economic behaviors. This might bring about a controversy resulting from the society-state interaction and a balanced participation aiming to reach a decision touching the future of the community life and the role of NGO's.

Objectives of AWQAF:

- ❖ Reviving the culture of waqf through familiarizing the reader with its history, developmental role, jurisprudence, and achievements which Islamic civilization had witnessed up to date.
- ❖ Intensifying the discussions on the actual potential of waqf in modern societies through emphasis on its modern instruments.
- ❖ Investing the current waqf projects and transforming them into an intellectual product in order to be exposed to specialists. This is hopefully expected to induce dynamism among researches and establish a link between theory and practice.
- ❖ Promoting reliance on the repertoire of Islamic civilization in terms of civil potential resulting from a deep and inherent tendency towards charitable deeds at the individual's and nation's levels.
- ❖ Strengthening ties between the waqf on the one hand, and voluntary work and NGO's on the other.
- ❖ Linking waqf to the areas of other social activities within an integrated framework to create a well-balanced society.
- ❖ Enriching the Arab library with articles and books on this newly approached topic, i.e. waqf and charitable activities.

Publication Regulations

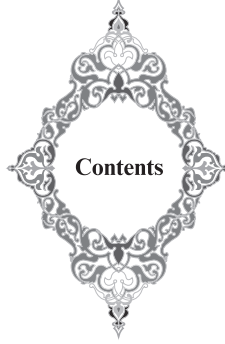
AWQAF journal publishes original Waqf-related researches in Arabic, English and French. It also accepts summaries of approved M.A's and Ph.D's and reports on conferences, symposia, and seminars dealing with the field of Waqf.

Contributions are accepted in Arabic, English or French, provided they abide by the following regulations:

- ❖ They should not have been published before or meant to be published anywhere else.
- ❖ They should abide by the academic conventions related to the attestation of references, along with the academic processing.
- ❖ An article must be 4000-10,000 words in length, to which a 150-word abstract is attached.
- ❖ Articles should be typed on A4 paper, preferably accompanied by a disc (word software).
- ❖ Material meant for publication should undergo a confidential refereeing.
- ❖ Coverage of seminars and conferences is acceptable.
- ❖ Material once sent for publication, whether published or not, is unreturnable.
- ❖ Awqaf is entitled to re-publish any material separately without checking with the relevant author.
- ❖ Awqaf allocates material remuneration for publishable researches and studies as set forth in the relevant rules and regulations, in addition to 20 offprints to the respective researcher.
- ❖ All submissions should be sent to:

**AWQAF, Editor in Chief,
P.O. Box 482 Safat, 13005 Kuwait,
Tel. 965-1804777 Ext: 3137, Fax. 965-2254-2526
E-mail: awqafjournal@awqaf.org**

OPINIONS EXPRESSED IN AWQAF
ARE THOSE OF THE AUTHORS AND DO NOT NECESSARILY REFLECT
THE VIEWS OF THE JOURNAL OR PUBLISHER.



Editorial	9
------------------------	---

Researches & Studies

Awqaf and Higher Education in Modern Egypt: Changing Relations.

Dr. Ibrahim Al Bayoumi Ghanim.....	13
------------------------------------	----

Harvard and the Likes: Significance of Endowed Education in USA.

Dr. Taraq Abdalla	45
-------------------------	----

University Education Worldwide between the State and the Society.

Dr. Hasanein Tawfiq Ibrahim.....	75
----------------------------------	----

Articles

A Novel Approach to the Concepts of Endowment and Education, the Example of the Turkish Scholar and Intellectual M. Fethullah Gullen

Dr. Ali Karamanli.....	111
------------------------	-----

Seminars

The Second International Forum of Awqaf Journal: Waqf and Education - Leading Experiences, Dubai, UAE 27-28 March, 2011

Reham Khafagy	131
---------------------	-----

News

..... 141

Book Review

Islamic Waqf between Theory and Practice

by Dr. Ikrima S. Sabri

Presentation by Dr. Ibrahim A. Mehanna.. 151

English Section

Impact of Waqf Law on the Educational System in Modern Turkey

Dr. Hatice Karacan..... 11

Education and Pious Endowments in Al Andalus

Dr. Ana Maria Carballeira Debasa..... 33



Waqf and Islamic Unity

When the glorious Quran addresses all Muslims as one nation, it is with the intention to highlight this credo through defining the concepts which indicate the group with all its economic, political and social dimensions. This attitude occurs in Al Muminoon Sura, verse 52 which reads as follows: "*And verily this Ummah of yours is single Ummah and I am your Lord and Cherisher*". Here we feel this concomitant relation at the personal and collective level in getting a Muslim to assimilate his mission on this earth. Jurists, in turn, reflected this attitude when they classified duties into two categories: individual duty and collective duty, so that a Muslim should not keep within God's specific commands, but rather he should optimally operate his mentality and capability to achieve the collective duty in the interest of the group. Consequently, we see that the unity of the Ummah is a collective responsibility in which all sectors are involved. It is noteworthy that Muslims' interest in consolidating this unity pushed them to create the mechanisms and social systems which serve this purpose.

One of the mechanisms of unity is, no doubt, waqf and its institutions which contributed effectively to creating this intimate relation among the various parts of the Islamic world. Historical evidence show that the rally of waqf was associated with an abnormal expansion of social work which brought about with it a set of specific procedural and organizational elements which converged on one aim, i.e., Unification of the Ummah.

Within this context, it can be said that waqf played a pre-eminent role in creating a practical format for unifying the Muslims and transforming Islamic brotherhood and cooperation into a practical system and institutions to serve Muslims interests regardless of time and geographical location. Waqf has never been confined to a specific geographical location, neither its benefits were restricted to a specific generation, but rather they extended to reach generations and places unknown to the waqifs. This was embodied in the Prophetic tradition which connected the reward of a good deed with a period after one's death and how this is realized through an ongoing charity. This Prophetic saying opened the door open for waqf in terms of place and time. Undoubtedly, waqf, as a reflection of Qur'anic concept on spending charity (*sadaka*) and inter-mercifulness among Muslims and people at large, assisted in applying other Qur'anic concepts, ahead of which is the Islamic Unity.

It is important to study this rich and meaningful waqf experience at a time the Ummah finds itself divided so as to re-assert and revitalize its unity through systems which transcend theories and principles.

Waqf networks diversified to cope with the social needs of Muslims as shown in the waqf projects which viewed the Ummah as one autonomous entity having its cultural, economic and social properties. This attitude can be tracked throughout the historical development of the waqf system and its gradual exit from the local domain to approach the needs of this entity, for example defending its safety, building its institutions and preserving its cultural and scientific heritage. On the other hand, we see that approval of the Islamic unity among the jurists of the various schools of Islamic thought as the variance over this issue was almost absent among the various sects of Islam. Waqf comparative Islamic studies and the consensus of the jurists were quite evident in waqf- related issues. The logical result was the absence of discrepancies among the major denominations and how this assisted in developing waqf institutions and improving their performance. The natural result of this process was the outspreading of awqaf which reached the various geographical and cultural domains.

At the practical level, there were several models of cooperation and solidarity among members, regions and generations to serve the single nation. In this context, the Awqaf of Haramain which spread across the Islamic nation and reflected that intuitive relation, raising it to a practical level and embodying the actual translation of the Unity of the Umma, took the form of a legal link

through which belongingness to the Umma was confirmed. Thus waqf emerged as a symbol of brotherhood and spiritual, cultural and economic link between waqifs wherever they existed on the one hand and Mecca and Medina to whom the hearts on Moslems cleave on the other.

Awqaf, with all facilities connected with them, were numerous on the way of pilgrimage, for examples digging water wells, building rest houses and providing food and transport to pilgrims. The example of Al Hejaz Railway in 1900 is one of the important infrastructures initiated by the Ottoman caliphate. It provided an exceptional example showing the liberality of waqf and its vehicles for unifying Muslims and easing communication between them. The importance of this project stems from the Muslims awareness of subjecting industrial and technical means to join the Islamic countries and break the barriers imposed by the British and French mandate powers which sought to divide the Islamic countries. The early stages of the train project connected Bilad Al Sham with Medina Al Munawara and this had positive impact on easing the burden of pilgrims. Pilgrims from Bilad Al Sham and Anatolia managed to cover the distance from Damascus to Al Medina in five days only instead of 40 days as the case was before the project. In the light of the aforementioned, we can come out with an important result purporting that though waqf was interested in local domains, it extended outside the territorial borders of those countries and consolidated the concept of the Ummah through establishing waqf institutions with a Unitarian mission. It also asserted that practical belongingness on the parts of Muslims to the Ummah with its broad concept through taking part in defending its safety, assisting its individuals in time of need wherever they existed.

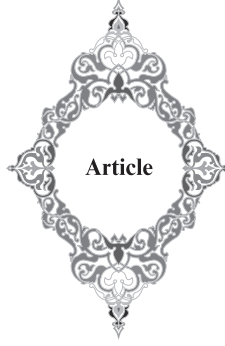
With the recent spreading of modern waqf institutions and the growing interest in waqf, it has become imperative for waqf interested people to meditate upon the Unitarian dimension of waqf so far relatively absent outside the circle of waqf awakening. Hence the role of modern waqf institutions in coping with the Muslims needs emerges and creates formulas and institutions to preserve the nation.

This issue of awqaf Journal is a special issue with excellence as parts of the researches submitted to the 2nd International Forum, organized in collaboration with Zayed University UAE, and the IBD in Jeddah, KSA during the period from 27-18 / 3/2011 are included. The link between all such researches is the dialectic relation between waqf institutions on the one hand and the educational sector on the other hand, whether this be in the historical experience of the waqf

system in the Islamic world, or the modern experience in the Islamic world or the west. Some papers focus on the educational status prevalent in the Islamic world and the importance of introducing waqf as a likely partner to promote education not only in terms of finance but also in providing specialized and strict management backed by non-governmental partnership, all of which are striving to boost the educational institutions.

The issue also includes the regular sections of the journal such as the coverage of waqf's news, new publications of waqf-related issues and a book review.

Editorial Staff



Impact of Waqf Law on the Educational System in Modern Turkey

By: Hatice KARACAN^(*)

Abstract

During the Ottoman Empire, there were many educational foundations in Turkey. However, with the establishment of the Turkish Republic, the foundation system and educational system were reformed and an attempt was made to unify both systems. For this reason, all educational institutions were connected to the Ministry of Education. And the legal arrangements relating to old and new foundations, which were subject to the Civil Code and Foundations Law, were recently unified by the new Foundations Law in 2008. In this period, and in order to increase the number of foundations and make them more effective especially in education, economic and financial privileges and tax exemptions were granted to foundations. Most importantly foundations were permitted to establish higher education institutions. This paper examines the educational activities of foundations and the legal arrangements regarding foundations and their effects on the educational system in Turkey.

In general

According to the Turkish history, the first foundations developed during the Seljuk period (1038-1293) were institutionalized and experienced their heyday during the Ottoman period (1299-1920). According to official sources, the first foundation, whose settlement deed still survives, was established in 1048 to support

(*) Lecturer Private Laow - Turkish National Police Academy - Istanbul - Turkey.

needy students. The principal cause for the establishment of this foundation was the first verse of the Qur'an, which says "Read". The number of Turkish-Islamic foundations during the Ottoman Empire numbered hundreds of thousands and as legal organizations they contributed significantly to the social, economic and cultural life of society. At that time public services in many areas especially religion, education, health, housing and urban development, social welfare and the other social services were fulfilled by foundations. Additionally these foundations reached their peak artistically during the reign of the Ottomans.

With the establishment of the Turkish Republic, the foundations system was also reformed. The legal status of all such religious foundations continued after the Ottoman period, but were re-determined under the establishment of Foundations Law (Law No. 2762, dated 1935) and connected to the General Directorate of Foundations. New foundations established after the proclamation of the Republic were regulated by Turkish Civil Code. Finally in 2008, these regulations regarding old and new foundations were unified by the introduction and application of Foundations Law (Law No. 5737).

In Turkey, during the first years of the Republic the number of new foundations was very low. By the incentive policy of the State and the new regulations, the number of foundations showed a significant increase. After the cabinet was delegated the authority to grant tax exemptions to foundations, these bodies became very popular as legal entities. These organizations play a significant role in areas where public services are insufficient and the private sector doesn't find it profitable to invest. Therefore, foundations are categorized as a *third sector*, alongside the public and private sectors (Korkmaz, 2004, p. 37).

In Turkey, there are many charitable foundations, funded by donations, which provide for the utilization of private wealth for the public benefit to support public services and research in fields of science, medicine, public health, social welfare as well as education.

The educational system in Turkey was also reformed with the establishment of the Republic. During the Ottoman Empire, education services, except "enderun", were fulfilled by foundations free of charge. After the proclamation of the Republic of Turkey, unification of the education system, and all educational institutions were connected to the Ministry of Education by the Law concerning Unification of Education (Law No. 430), which came into effect in 1924. Under this new modern system, all public and private pre-university institutions of education were controlled by The Ministry of Education. Institutions of higher education were overseen by the Council of Higher Education, which has legal personality and may be headed also by the Minister of Education. Through transition to the new system, the functions of educational foundations also changed. In pre-university education, most private primary and secondary schools were established by foundations, or these organizations

contribute to public schools from outside the system. They also arranged all kinds of courses to educate people from all levels of the society for various purposes. In higher education, the role of foundations was increased after enabling the establishment of private-nonprofit sector making higher education institutions by The 1982 Constitution.

In this study we will handle the educational foundations with their legal arrangements. First, the regulations in Turkish Law regarding foundations and The General Directorate of Foundations will be explained. Afterwards the educational foundations will be classified under two groups as pre-university and university level foundations. After discussing pre-university foundations, we will focus on university foundations and foundation universities in two separate sections.

Legal Arrangements Relating to Foundations in Turkish Law

In Turkish Law, Article 33 of The 1982 Constitution of The Republic of Turkey regulates the right to form foundations. Article 33 primarily regulates the right to form associations, or become a member of an association, or withdraw from membership without prior permission. However at the end of the Article it is declared that “*the provisions of this article are also applicable to foundations*”.

The main law relating to foundations in Turkish Law is Foundations Law (Law No. 5737), which came into effect in 2008. However The New Turkish Civil Code (Law No. 4721) contains the regulations regarding foundations in Articles 101-117. A Foundation is defined in Article 101 of Trukish Civil Code (Law No. 4721) as “*The foundations (in Turkish “vakf”) are charitable groups under the status of a legal entity formed by real persons or legal entities dedicating their private property and rights for definite and constant objectives*”. According to the Article, the entire property or any type of income received or to be received from the activities, or economic values of any rights may be endowed to a foundation (Article 101/II). For example movable goods or immovable properties, chose in action, share of profit, financial profits or other interests can be dedicated. What is important is that the economic value of these dedicated properties or rights must be sufficient to accomplish the foundation’s objectives.

To form a foundation is restricted contrary to the characteristics of the Republic defined by the Constitution, Constitutional rules, laws, ethics, national integrity and national interest; or with the aim of supporting a distinctive race or community (Article 101/ IV). Lastly the third paragraph of Article 101 of the Turkish Civil Code that says “*There is no membership status in the foundations*” was cancelled by The Constitutional Court in 2008 saying that the right to become a member of an association that is regulated in Article 33 of The 1982

Constitution shall be applied to foundations (*Decision of Constitutional Court, Date 17.04.2008, No. 2005/14- 2008/92*).

Real or legal persons can form a foundation. The will for forming a foundation is expressed by issuance of an official deed or title acquired after a deceased person. The foundation is regarded in the status of a legal entity when it is being registered in the records kept by the court of that location (Article 102/I of Civil Code). Besides this regulation, there are also foundations that have been set up by a special law, for example The Turkish Armed Forces Foundation or The Yunus Emre Foundation. Foundations may receive benefits in-kind or in cash from persons or organizations at home or abroad and may help other parallel organizations at home or abroad. The provisions regarding performance of activities by associations in the international arena and formation of higher organizations may also be applicable to the foundations by way of comparison (Article 117/II of Civil Code).

In the Turkish Law legal persons, foundations are classified as a legal person that has an ideal objective other than the sharing of profit (Oduzman, Seliçi & Oktay-Özdemir, 2009, p. 78). However foundations are allowed to operate a commercial undertaking to accomplish their objectives. For example educational foundations operate a dormitory or private educational establishments, or health foundations operate hospitals. The foundations that operate a commercial undertaking are deemed as traders under the rules of The Turkish Commercial Code. But it is said that foundations that work just for public profit, shouldn't be considered as traders, because under Article 18/I of The Turkish Commercial Code, associations that work for public benefit aren't considered as traders and this rule must be applied by way of comparison to foundations that work for the public benefit (Ödüz, 2007, p. 36).

However, it is a controversial issue if a foundation can be formed just for operating a commercial undertaking. Some authors think that it should be possible, since there is no restriction in Turkish Civil Code (Law No. 4721) on a foundation's objective. The majority of doctrines claim that, even though there is no restriction on the objective of foundations in Codes, in view of the principle of numerous clauses with respect to legal persons, it shall be impossible to form a foundation just to operate a commercial undertaking, in fact in the Turkish Law there is no commercial establishment that consists of goods (Hatemi, 2001, 11, 35). Furthermore the diachronic theoretical bases of the foundation concept prevent the forming of a foundation for sharing profit (Serozan, 1994, p. 91). However, it is signified that it must be possible to form a foundation to ensure the

continuity of Family corporations and to prevent them becoming smaller from generation to generation (Ödüz, 2007, p. 37).

Types of Foundations in Foundations Law (Law No. 5737)

In the Turkish Law, the old Civil Code (Law No. 743), adopted in 1926 after the declaration of the Republic, had regulated the foundations. However, at that time there were many foundations that formed during the Ottoman Empire. Relating to these old foundations it was declared that they would enact new legislation by Article 8 of the Application Law of old Civil Code. Based on this regulation the first Foundations Law (Law No. 2762) was accepted in 1935. So, new foundations that formed after the introduction of The Civil Code were subject to the Civil Code. Older foundations that formed before The Republic were subject to the Foundations Law (Law No. 2762). The same application continued after the new Civil Code (Law No. 4721), which took effect on 01.01.2002 and it's Application Law.

With the new Foundations Law (Law No. 5737), accepted in 2008, these different regulations, relating to old and new foundations were unified. By this new Law, and in order to facilitate forming foundations, the conditions related to becoming a founder of foundation were lightened, the founders' liability was determined objectively and foreigners, who have the right to settle in Turkey were allowed to take part in the management body of such foundations. To ease the process and encourage the establishment of foundations (and thereby increasing their number), foundations were granted some tax exemptions and the procedure to acquire and sell real estate were eased by this new Foundations Law (Law No. 5737). Besides this Law, there are other legislative privileges for foundations. For example, provisions relating to adverse possession may not be applicable to the assets of the foundations (Art 117/I of Civil Code). It makes no difference if real estate is registered title deed or not (Oduzman et.al., 2009).

According to Foundations Law (Law No. 5737) there are five types of foundations. These are:

- 1 - New Foundations: foundations formed according to the Civil Codes (Law No. 743 and 4721)
- 2 - Engrossed Foundations: foundations existing before The Civil Code (Law No. 743) and managed and represented by The General Directorate of Foundations according to the rules of Foundations Law (Art. 3/I). They are not recognized as having separate legal status, but have as a whole "engrossed foundations legal entity" (Oduzman et.al., 2009, p. 285). The majority of old foundations were merged in this engrossed legal entity. Even

though this legal entity has legal status, it has no organization and organs, and its legal representative is The General Directorate of Foundations. There are over five thousands engrossed foundations governed by The General Directorate of Foundations.

- 3 - Annexed Foundations: foundations that formed during the Ottoman Empire and managed by descendants of the founder. Their managers are under control of the General Directorate of Foundations, and if they cannot select a manager or create a managing body for a period of ten years, they are managed by The General Directorate of Foundations by decision of the court.
- 4 - Community foundations: foundations that acquired legal entity by the establishment of Foundations Law (Law No. 2762) regardless of whether they have a charter or not. Their managers are selected by their members, who are Turkish citizens but not a Muslim. Community foundations are considered a type of Annexed Foundational (Hatemi, 2001). In the time of the Ottoman Empire, Christians and Jews, as Ottoman subjects, had the right to form foundations. Their charitable Institutions' legitimacy was recognized by imperial edict. The educational or charity institutions of these communities are legally secured by the Treaty of Lausanne.
- 5 - Artisans' Foundations: formed before Foundations Law (Law No. 2762) are organizations whose managers are selected by its members. There are 162 Community and Artisans' foundations established by minorities in Turkey, such as the Greeks, Armenians, Jews, etc. (Aydn, 2006)

Regulating old and new foundations under the same law has been criticized since their status/characters are different (Ödüz, 2007). One of the purposes of Foundations Law (Law No. 5737) was to remove the legal confusion relating to foundations. Unfortunately, when the law was being formulated, the main focus was Community foundations and the Foundations in Western Thrace. So it is claimed that because of this, the problems experienced by foundation institutions in the past were ignored (Ballar, 2008).

Foundations Formed for Public Interest

In the Turkish law, foundations formed for public interest have special status and different privileges from other foundations. However there is no regulation that describes such foundations which were formed for public interest. Indeed foundations formed for public interest connotes foundations that have tax exemption. Tax exemptions for such foundations were prescribed for the first time in Law No. 903 (dated 13.07.1967). The regulation, still in force, is Article 20 of Law No. 4962 (dated 30.07.2003, Official Gazette 07.08.2003-25192).

According to this Article, in order to ensure tax exemptions, foundations must aim to spend a minimum of two-thirds of their revenues on public services that are subject to the public budget.

To qualify for exemption; foundations must aim to be engaged in at least one or more causes relating to health, welfare, education, scientific research and development, culture and environmental protection or forestation issues. To claim tax exemption, a foundation's activity shall be open to the public and shall reduce the burden of the states with regard to the provision of public services and should be operational for a minimum of at least one year.

There are also other advantages granted to foundations formed for public interest in other Laws. For example the old Civil Code Article 453 regulated that reserved portion of inheritance for close relatives could be reduced in favor of a foundation if it were formed to provide services deemed to be in the public interest. However the new Civil Code doesn't have this provision, instead it is envisaged that the testamentary dispositions in favor of the foundations formed for public interest be diminished in the final stage (Article 570/II of Civil Code).

However these foundations have been criticized for having been granted such privileges and tax exemptions as it has been that some of them only spend a symbolic part of their revenues on provisions deemed to be in the public benefit. On the contrary, they manipulate the major portion of their revenues towards different targets other than their stated social objectives. In fact some malicious people, whose targets are purely commercial, may establish foundation as opposed to commercial enterprises in order to benefit from the privileges and tax exemptions granted to such bodies. Therefore, these people do charity work only for reasons of perceived reputation (Serozan, 1994).

As a matter of fact the number of foundations in Turkey increased rapidly after the regulations regarding economic privileges for foundations came into effect. The other reason for this increase is the close supervision that associations are subject to. To avoid regulatory supervision, some people prefer to establish foundations rather than associate enterprises. As a result of this, foundations which have a plenary committee and are run like associations, came into existence. The other unstated reason that some people prefer to establish foundations instead of associations is to overcome the ban on purchasing real estate.

General Directorate of Foundations

The General Directorate of Foundations is an administrative autonomous body, which is connected to the Prime Ministry. The structural principles of The General Directorate of Foundations are determined by Foundations Law (Law No. 5737).

In Turkey, since the establishment of The Republic all foundations work has been transferred to The General Directorate of Foundations. Radical changes were made in the administration of foundations under "Foundations Law (Law No.2762)" which went into effect in 1935. The General Directorate of Foundations, which is a juristic body, is responsible for the management of old foundation properties and the protection of any works of art which have architectural or historical value. Also they are responsible for providing support to foundations and their objectives. The General Directorate of Foundations also carries out supervision of new foundations established after the introduction of The Civil Code (Law No. 743) enacted in 1926.

Furthermore The General Directorate of Foundations has dormitories, operated by the Ministry of National Education. More importantly, The General Directorate of Foundations also gives scholarships to students from poor families who are studying at primary and secondary school level. The General Directorate of Foundations gave scholarships to ten thousand students in 2008, martyrs' children and orphans being given priority in this regard. The aim of the General Directorate of Foundations is to increase the number of such scholars, expanding the scholarship to cover those students studying at university and to support them especially if they are studying industrial subjects abroad (Strategic Plan, 2009).

The General Directorate of Foundations celebrates Foundations Week with a special theme each year and in this context award-winning essay contests, art and project competition have been organized by the Directorate. This year, 2011, Foundations Week will be celebrated with the theme of education. As with every year, award-winning contests and art competition have been organized around the theme of education. This year's project competition will be between the foundations submitting education projects. The main purpose of this competition is to highlight and revive these education projects. In addition to these activities, a symposium will take place in May 2011 on "Education and Educational Institutions in Civilization of Foundation" and "The contribution of Foundations in Education and the Evaluation of Educational Institutions of Foundations".

Educational Activities of Foundations

According to the Research of Istanbul Chamber of Certified Public Accountants on Civil Society in Turkey, approximately one quarter of Turkish foundations work in education (2008). We will analyze Turkish educational foundations in two chapters, first the work of foundations in the field of pre-

university education; second the work of foundations in the field of university education. There are two kinds of foundations working in university education. The first are university foundations, the second are foundation universities. Here we will give information about pre-university foundations. After that university level foundations will be handled.

In this context, educational pre-university foundations' objectives are different and their activities are shaped by their objectives. For example, some foundations give priority to building schools and donating them to the Ministry of National Education, being concerned with inadequacy of classrooms and the excessive number of students per class in the Turkish educational system. Furthermore, private primary and secondary education are also carried out mostly by foundations.

The contribution of foundations to education may be direct or indirect. For example, there are many analphabet people, the majority of whom consist of women living in impoverished regions of Turkey. In these regions the education of girls is considered unimportant, so some foundations are challenging this mentality and are active in promoting and providing education to them. This involves cooperating with the regional authorities and other non-governmental organizations.

Due to inadequate educational opportunities, the primary aim of some educational foundations has been to support primary school children living in socio-economically less developed areas. These foundations try to support them economically and socially from primary school to university including associated cost while studying. Their aim is to support not only students but also their families. There are also foundations whose primary aim is to support homeless children in need of education and their mothers. Other foundations have been established with the aim of providing educational and vocational guidance to the youth of Turkey. The main purpose of all these foundations is to remove inequality of educational opportunities.

Some foundations focus on children who need special education for example the mentally disabled, Down's syndrome, cerebral palsy or autistic children. These foundations are interested in these children's education and treatment, offering care and support to them and their families. They also try to provide them with the skills necessary to be fully functional members of society. In this context, these foundations play a significant and important role in increasing social awareness about these children, who are in a disadvantageous situation.

Educational foundations, which are institutionalized, deal with their objectives in a professional manner, for example The Turkish Educational Foundation (TEV), The Educational Volunteers Foundation of Turkey (TEGV),

The Mother and Child Education Foundation (AÇEV). They aim to create and implement educational programs and extracurricular activities for children and their families, so that they can acquire skills, knowledge and attitudes needed to become rational, responsible, self-confident, peace-loving, inquisitive, cognizant individuals who can put their inner creativity to use and to be respected members of a diverse society. They implement their original education programs in a variety of different locations throughout the country. Therefore, they develop projects focusing on the educational, social and cultural problems of deprived children and their families and have implemented these projects in cooperation with governmental and non-governmental organizations. Recently, the first Children Rights Conference, which was held last month in Istanbul, was organized by The Child Foundation in cooperation with Istanbul University and the Social Services and Child Protection Agencies, which are connected to the Prime Ministry. One of the main concerns of this conference is the education of children. Other areas covered are equal opportunities in education for children, children who need special education and the education of gifted children. Additionally, these institutionalized educational foundations are preferred as providers of such services rather than the private sector.

Other contributions of educational foundations can be summarized as follows:

- to give scholarships to successful students in every level in Turkey or abroad,
- to supply teaching materials to needy students or schools,
- to provide accommodation to students, for example dormitories,
- to establish nursery, primary and secondary schools and institutions of higher education and private establishments to prepare students for various exams,
- to operate recreational and sports facilities for students,
- to be the initiator in establishing vocational institutions,
- to arrange foreign languages courses, especially in English, Arabic and Persian,
- to educate orphans and poor children free of charge.

University Foundations

State Universities have to cope with various difficulties, which are caused by restriction of public resources. On the other hand they need agreed constitutions, governed by private law, to realize and rationalize the value of their service. Therefore, some kind of foundations, associations and corporations circle the universities. In this context, University foundations, which are formed according to Civil Code and Foundations Law, aim to support universities. University

foundations have been encouraging and helping universities to improve themselves since the beginning of the Republic.

University foundations, after creating cash generated by car parks, social facilities or other services in the physical place of the university, are able to give scholarships to university students, support academic staff in their research, and supply security system or any other materials to the university as required. So university foundations contribute and mutually interact with the universities in terms of their public services.

Thanks to university foundations, many state universities now manage to cope with their resource shortages and have improved the quality and scope of the education offered. The ratio of incomes supplied by university foundations is not so high as the total income of universities. However since these incomes aren't expended according to the budgetary principles and the university's other basic expenses are already covered by the state, incomes from university foundations contribute marginal efficiency to the university.

We mentioned above that university foundations give scholarships to university students. However the contributions of university foundations to its students are not just in terms of scholarships. They also encourage students to participate in social events, for example on panels, symposiums, and theater or cinema groups. They also show concern for students trying to adapt to living in the city. Thanks to these foundations, students learn social responsibilities and so be effective members of society.

However, university foundations, which play an important role in the development of education at universities, are sometimes criticized. It is claimed that university foundations prevent transparency in universities relations. In fact a few university foundations have been the subject to corruption investigations (Akyldz, 2003). Therefore a new Law (Law No. 5072) regarding "The Relations of Associations and Foundations with the Public Institutions and Organizations" was published in 2004 (Official Gazette 29.01.2004-25361). According to this Law it is forbidden for foundations and associations to use the names and properties of public bodies, to participate in tenders of public institutions, to demand any payment or donation for public services or to want the requirements to be bought from foundations or association; it is also forbidden for public servants to use their title when holding position in foundation. However public servants, who work for such foundations, cannot demand any payment. Any kind of resource transferred from University budget to foundations is also forbidden (Article 2).

These restrictions which regulate all types of associations and foundations, have destabilized university foundations. Therefore, it is recommended that strengthening the control systems over foundations rather than imposing restrictions upon them, would be beneficial.

Higher Education Institutions of Foundations

The great majority of higher education institutions in Turkey belong to the state. However Article 130 of The 1982 Constitution provides that only foundations can establish universities and any other higher education institutions. According to Article 130 of The 1982 Constitution “ *Institutions of higher education, under the supervision and control of the state, can be established by foundations in accordance with the procedures and principles set forth in the law provided that they do not pursue lucrative aims (Paragraph II)...Institutions of higher education established by foundations shall be subject to the provisions set forth in the Constitution for state institutions of higher education, as regards the academic activities, recruitment of teaching staff and security, except for financial and administrative matters (Paragraph X)*. The procedure of establishing higher education institutions by foundations and their administrative matters are regulated in Additional Articles of Higher Education Law (Law No. 2547), these Additional Articles were added to the Law in 1983 (by Article 32 of Law No. 2880, dated 17.08.1983). Besides, there is a by-law regarding the higher education institutions of foundations (Official Gazette: 31.12.2005-26040). In Article 4 of the By-law, higher education institutions of foundations is described as “a university or a high-tech institute in conjunction with its faculties, institutes, colleges, vocational high schools, conservatories and research and development centers established by foundations provided that they don’t pursue lucrative aims”.

The Higher Education Law (Law No. 2547) provides that the incomes of higher education institutes cannot be transferred to its foundation even this transfer is temporary (Additional Article 6). As a matter of fact, The 1982 Constitution provides that foundations aren’t allowed to establish higher education institutions for lucrative purpose. Therefore, direct donations to higher education institutions of foundations are possible. These donations are tax-exempt (Additional Article 7 of Law No. 2547). Granting tax exemptions, the Government aims to encourage donations to foundations which establish higher education institutions.

Higher education institutions of foundations benefit from other facilities, exemptions and exceptions, which are set forth in legislation for state institutions

of higher education. For example they don't pay real estate tax (Article 4 of Law No. 1319), motor vehicle tax (Article 4a of Law No. 197) etc.

The regulations regarding academic organs and activities of foundation and state institutions of higher education are the same. Qualifications of teaching staff in foundation and state institutions of higher education are also the same. For example academic staff, who have been dismissed (under disciplinary regulations) or whose activities are prohibited by state institutions of higher education cannot serve in the foundation institutions of higher education (Additional Article 8 of Law No. 2547). Other issues regarding principles and periods of education and students' rights in state and foundation institutions of higher education are subject to the same provisions (Additional Article 9 of Law No. 2547).

Higher education institutions of foundations are divided into four groups: 1- Foundation (private non-profit) Universities; 2- Foundation high-tech institutions 3- Foundation vocational high schools; 4- The others. In this study, the foundation universities will be explained in detail due to their prevalence.

Private Non-profit Foundation Universities

Foundation universities are private and non-profit higher education institutions, which are established by one or more foundations and governed by their own board of trustees and whose members are selected by foundations. Foundation universities operate at the higher educational level to alleviate the burden of higher education undertaken by the State. Despite the fact that the foundation universities are non-profit institutions, they are commonly known as "private universities". In Turkey it is forbidden to establish private higher education institutions. Therefore the private sector, which wants to establish a university, must establish a foundation and then establish the university through this foundation.

Establishment

The first condition to establish a university is the establishment of a foundation, one of the objectives of which is to establish a university or in a broader sense an institution of higher education. One or more foundations, which aim to establish a university, inform the General Directorate of Foundations regarding their decision. With the approval of Directorate, the foundation applies to the Council of Higher Education.

These foundations should support their application by documents that prove that all materials, equipment and structures are present or an amount sufficient for their stated purpose. They should also submit documents that prove

enough money or any other economic value is allocated to meet the minimum 20% yearly expenditure of the institution (Additional Article 3 of Law No. 2547). After these and other formalities of application procedures, detailed in Higher Education Law and other regulations are fulfilled. Following the decision of the Council of Higher Education, the university is established by Law within the framework of the Constitution and Higher Education Law (Law No. 2547).

As can be seen, foundation universities are established by law such as state universities with a separate legal entity from the foundation. Even though the foundation, which establishes the university, is a legal entity operating under the provisions of Civil Code, the established university is a public legal person. Even if the legal entity of the foundation dissolves, the university's legal status continues. In this case the properties of all kinds of movable and immovable items, equipment, materials, money and the economic rights, which are allocated to the university by the foundation, become the property of the university. The authorities of the terminated foundation of the university are transferred by the General Directorate of Foundations to another foundation, with similar objectives (Additional Article 15 of Law No. 2547).

According to the 1982 Constitution, institutions of higher education established by foundations are subject to the provisions of higher education, in terms of the academic activities, recruitment of teaching staff and security, except for financial and administrative matters (Article 130 X). In fact, referring to the Constitution, the Council of State has ruled that the contracts of the academic staff at the foundation universities are administrative contracts and any disputes arising from these contracts should be heard in administrative courts (Division VIII of Council of State, Date: 04.02.2003, No. 2002/557- 2003/561).

Direction

The administrative powers of foundation universities rest in the board of trustees consisting of at least seven people. Members of the board of trustees are elected by the governing body of the foundation. The members should hold the necessary qualifications for public office. However, there is no age limit for them as long as they comply with the qualification requirements for public services post. In addition, at least two-thirds of them should have a bachelor's degree. The board of trustees selects a chairman from among their members (Additional Article 5 I of Law No. 2547).

The board of trustees represents the legal body of the university. The university directors are appointed by the board of trustees after approval of the Council of Higher Education. The board of trustees executes or terminates the

contracts of the other administrators and academic staff and other employees and votes and oversees the budget of the university. The board of trustees carries out other functions designated by law and can delegate some powers, which are appropriate, to the administrators of the university (Additional Article 5 II of Law No. 2547).

The Rector, who holds membership as a right since he is on the board of trustees, executes the decisions of the board of trustees. As we said above, the Rector is determined by the board of trustees (Article 13a of Law No. 2547). However, in practice, this system has been criticized, claiming that the board of trustees may interfere with the Rector's business. Therefore, it is recommended that the Rector should be appointed by the President of the Republic as well as state universities and should be the authorized officer of the university (Türkiye'nin Yükseköğretim Stratejisi, 2007).

Financial issues

Foundation universities are financed by three different sources. These are: 1- Contribution by the foundation 2- Student fees 3- State aid.

The main financial resource of foundation universities is the contribution of the foundation that establishes the university. However, most foundation universities don't have a strong foundation to support them. Therefore, the majority of these universities' incomes depend on students' fees. Among the foundation universities, the amounts raised from students' fees to the total income ranges from 20% - 90% (Foundation universities report, 2007).

In Turkey there has been a lot of controversy over state aid to foundation universities. This issue is regulated by Additional Article 18 of the Higher Education Law (Law N. 2547). This regulation, which was amended many times, sets the criteria for foundation universities to get state aid. For example, to get state aid, foundation universities should complete at least two academic years, give full scholarship to 15% of its students, employ a certain number of full-time lecturers and publish a certain number of scientific papers etc. As can be seen, these provisions aim to encourage foundation universities to support academic staff and scientific research and to give scholarships to students as well as to develop themselves. However, it is said that these provisions should be alleviated (Söyler, 2008).

Additional Article 18, which regulates state aid to foundation universities, was added to the Higher Education Law in 1991 by the Law No. 3708. By this regulation, foundation universities were empowered to use public domains and structures, also to get state aid up to the amount of 45% of their budget

determined by themselves. But this regulation, which was seriously criticized, was cancelled by the Constitutional Court since the provisions of using public domains and getting state aid weren't detailed by Law (*Decision of Constitutional Court, Date: 29.06.1992, No. 1991/21,-1992/42*). After that the Article was again changed in 1999; this time it was enabled to allocate forestry land of the State to foundation universities. This regulation was also seriously criticized and protested. On application of the main opposition party, the Constitutional Court canceled the regulation, referring to Article 169 of The 1982 Constitution, which states "*the ownership of state forests shall not be transferred to others. State forests shall be managed and exploited by the state in accordance with the law*". The structures, which were built in state forests by foundation universities in this period, emerge as one of the main controversial subjects concerning foundation universities. Even though these foundations were ordered to transfer such properties to the State, things are still unchanged (Domanic, 2007).

However, contrary to widespread belief, state aid to foundation universities isn't so high. For example in 2005, the number of foundation universities, which obtained state aid, is ten. And the amount of this aid is just 3-4% of total incomes of these foundation universities (Foundation universities report, 2007).

Regarding the budgetary principles, foundation universities have greater advantages than state universities. Indeed, state universities don't have administrative and financial autonomy. So a long bureaucratic process is involved whenever purchases are made, even for small purchases. In this respect, foundation universities are much more flexible. This feature provides foundation universities with the ability to use their resources more effectively and to realize their investments in a shorter time (Akyldz, 2003).

However some foundation universities, which don't have a strong foundation to support them, have been spending their incomes on infrastructure instead of education. Therefore, in these foundation universities, the expenses of teaching per student are far below the student fees (Foundation universities report, 2007). Consequently, teaching expenses per student may go up to twelve times in some foundation universities. The differences between the foundation universities indirectly affect the quality of education (Türkiye'nin Yükseköğretim Stratejisi, 2007).

In regard to this issue, it is recommended that any commercial activities of foundations, which establish universities, should be granted tax exemptions and credit facilities provided that incomes from these activities are transferred to the university. In this context, it is thought that foundation universities should be enabled to use public domains under more appropriate conditions (Söyler, 2008).

Numerical data on foundation universities

The most well known foundation universities in Turkey are Koç University, Sabanc University, Yeditepe University, Bilkent University, Bahçeşehir University, Istanbul Bilgi University and Istanbul Kultur University. Bilkent University is the first private-nonprofit university, established in 1984. The second one is Koç University, 1992; the third one is Başkent University, 1994. By 2010, there were more than fifty foundation universities in Turkey. This number is nearly half the number of state universities. There are also vocational high schools foundations, which are higher education institutions but not universities. The number half the students studying at foundation universities in 2008-2009 Academic year was 166.157, whereas this number at state universities is 1.580.377. The number of teaching staff at foundation universities is 10.318, while the number at state universities is 87.615. The ratio of teaching staff to students at foundation universities is higher at state universities (<http://yogm.meb.gov.tr/istatistikler.htm>).

In Turkey, state universities are inadequate in meeting the demand of higher education. In order to alleviate the burden of the State, foundation universities have moved into the higher education system. However, foundation universities give priority to the most popular programs which demonstrate a higher possibility of finding work after graduation.

The role of foundation universities in education

As previously stated, foundation universities have been involved in higher education because the burden of higher education on the State has become heavier. Foundation universities have partially shared in this burden. In order to increase the quality of education, some foundation universities make very important investments. They offer students the chance to study in modern campuses, join social, cultural and sportive activities, and participate in international projects with universities abroad as well as getting employment opportunities after graduation. They also give scholarships to successful students and they support the academic staff in their research.

Foundation universities have been competing with each other preparing scientific projects to improve education, to increase the quality of education and bring modernization and innovation into education as well as organizing academic and scientific conferences to attain international standards.

Some foundation universities, which have already completed these improvements, have shown better performance in science related subjects than State universities. Having financial and administrative autonomy provides a

significant advantage to foundation universities. Financial autonomy in particular has given foundation universities the flexibility and protected them from long bureaucratic procedures. Therefore, it has been shown that foundation universities have a bigger growth potential than state universities (Günay, 2008). Because of the special features of foundation universities, it is recommended to form new university models combining the advantages of both types. (Tekel, 2008).

The number of teaching staff per student at the foundation universities is higher than at State universities, whereas the rate of research assistants is lower. These statistics indicate that foundation universities prefer to employ qualified academic staff instead training research assistants (Türkiye'nin yükseköğretim stratejisi, 2007).

Regarding academic publications, some foundation universities, with a strong foundation behind them, have shown better performance; while the others, whose incomes are mainly based on student fees, have had a low number of papers published.

In terms of student satisfaction, survey results show that there are no differences between state and foundation universities. The main reason for students' to choose State universities rather than foundation universities is the students fees. Students have primarily chosen State universities because of the lower cost of students' fees (comparatively, the cost at foundation universities are very high). Therefore it is predicted that, if the students' fees of foundation universities are lower, students will be much more willing to choose foundation universities in the future (Ünver, 2008). As a matter of fact, an indirect benefit of foundation universities is that they prevent money being spent abroad.

Because of these foundation university benefits, it is a state policy to increase the number of foundation universities in higher education. To encourage an increase in the number of foundation universities, Article 10 of By-Law regarding Higher Education Institutions of Foundations was amended in 2008. By this amendment, the establishment of universities with at least three faculties was enabled. Before, it was stipulated the university consists of at least two faculties for science and literature. As stated before, foundation universities give priority to the most popular programs which provide a higher possibility of finding a job after graduation. In order to encourage them, the condition regarding the obligatory provision of science and literature faculties was removed from the regulation.

The problems of foundation universities

Apart from their positive effects, foundation universities also have had their own problems. One of these is related to their legal statutes, especially in regard to the relationship between the foundation, the board of trustees and administrators/ academic staff of the university. In fact some Founders see these universities as commercial enterprises, not legal entities a public legal entity. This personal approach of Founders prevents foundation universities from being institutionalized (Türkiye'nin Yükseköğretim Stratejisi, 2007). In addition, the authority of the board of trustees over the directors (especially on the Rector) and the academic staff casts a shadow on the scientific autonomy of the university (Foundation universities report, 2007).

Another problem results from the budgetary principles in operation. The budget of the university is prepared by the board of trustees instead of the academic bodies. Therefore the budgetary process is based on the decisions of the board of trustees; especially by the discretion and priorities of the chairman, who is mostly not with an academic background. Therefore, comprehensive development plans haven't been realized because of the arbitrary decisions of the chairman.

Other problems of foundation universities are related to finance and taxes. Some of the financial problems result from location, for example providing an appropriate land for campus buildings. The majority of foundation universities is in the larger Turkish cities, especially in Ankara and Istanbul. Most of them are located far from the city centers. Those in city centers have had to pay higher rates for rents etc., since in big cities the rents are often much higher. Therefore, in order to be able to offset rents, they put up the student fees. Additionally, as mentioned previously, buildings of foundation universities in state forests are still disputed. The other financial problems included financial weaknesses of foundations and insufficient contributions from the state.

The main tax problem of foundation universities is that students' fees are subject to value added tax (VAT), whereas student fees at state universities aren't. This inequity between state and foundation universities has been highlighted as problematic. Therefore, it is recommended that VAT on student fees should be abolished or at least the rate of VAT should be reduced up to 1% by the initiative of the Cabinet.

Objections against foundation universities

As we said above, foundation universities were admitted to higher education in order to alleviate the burden on the state. For this reason, foundation universities have been legally granted financial privileges and facilities as well as tax exemptions and state aid. However, according to the

1982 Constitution, higher education institutions of foundations cannot pursue lucrative commercial aims and they are subject to the provisions set forth by the law covering state institutions of higher education with respect to the academic activities and recruitment of teaching staff and security, but except financial and administrative matters. Therefore, foundation universities have been criticized for getting state aid and profit from economic and financial facilities, which are granted to the state universities (Türkiyenin yükseköretim stratejisi, 2007). A repeal of the provisions regarding state aid and other privileges granted to foundation universities needs to be effected, since public resources may be transferred to the crème of society. consequently, it is recommended that the government should be very careful in granting these facilities to foundation universities and should prevent people attempting to establish universities even if they don't have sufficient assets (Akyldz, 2003).

The other criticism is that foundation universities give preference to market-oriented programs. It is said that foundation universities should organize the departments of university according to scientific and academic considerations rather than to market conditions (Özdem, 2008).

Another criticism about foundation universities is beneficiary students, who got high grades in the university placement test, and the other students, who pay fees, studying together. Because of the discrepancy between the capabilities of these students, there are big differences between the qualifications of graduates. To solve this problem it is recommended that the academic quality rating system at foundation universities should be made more effective and stringent (Türkiye'nin yükseköretim stratejisi, 2007).

Foundation universities are also criticized because of their financial and academic concerns. The financial criticism against foundation universities is that the budget of the university is prepared by the board of trustees especially according to the priorities of the chairman, who is mostly far removed from the academic environment. The chairman may decide the income to be spent on infrastructure instead of on education. If this were the case, the teaching expenses per student would stay far below that of student fees.

There are also academic criticisms about the number of research assistants and the contracts of academic staff. In fact the number of research assistants at foundation universities is lower than at State universities. Therefore, it is claimed that foundation universities are teaching-oriented instead of being research-oriented and they don't want to train research assistants, since it is expensive. Instead they prefer to hire qualified academic staff. Preferring to employ qualified staff they have left the state universities in the lurch i.e. they are

inadequately staffed (Foundation universities report, 2007). All academic staff at foundation universities work on contract, which is not long-term. It has been claimed that this lack of long-term contracts inhibits the continuity of scientific study at foundation universities (Erçelebi, 2008).

Conclusion

Education is one of the most important and urgent problems Turkey is facing today and it has been acknowledged that the State cannot deal with this problem alone. Therefore, it is believed that foundations, associations and the private sector should do their best to improve education in Turkey. In this context, foundations have a significant role in facilitating and improving the education quality. However they have to deal with the social, financial and administrative problems.

For example some of the main problems of foundations and educational foundations are financial difficulties. There are enormous differences between the foundations in Turkey regarding the assets they own. Donations to foundations are insufficient. Their incomes are also affected by fluctuating financial markets, since the majority of their investments consist of bank deposits.

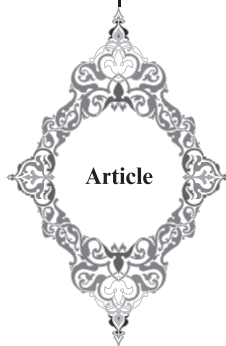
To increase donations to foundations, it is recommended that they should improve their communication with the other foundations, society, public or private institutions and with the State (Korkmaz, 2004). However the nature of the relationship between the state and foundations is controversial in Turkey. It is believed that foundations should have autonomy and be independent from the State on one hand; and on the other hand they should be supported by the State. These two different approaches are difficult to reconcile and they obscure a clear understanding of the relationship between the state and foundations.

In order to enhance the role of foundations in education, the problems should be solved and obstacles should be removed for the improvement and development of educational services of foundations.

References

- Akyldz, A. (2003). Vakf üniversiteleri. *Bilgi toplumunda hukuk Ünal Tekinalp'e armadan C. III, Ystanbul: Beta Yaynlar*, 459-500.
- Aydn, D. (2006). Cumhuriyet dönemi vakflar: tarihi bir bakq ve vergi muafiyetine sahip vakflarn mali krizi. *Report prepared for TÜSEV*, 35-58.
- Ballar, S. (2008). *Yeni vakflar hukuku*. Ankara: Seçkin Yaynclık.
- Domaniç, H. (2007). *Devlet ormanlarına yapılan vakf üniversitelerinin devlete mal edilmesi için verilen hukuki mücadeleler*. Ystanbul: Arkan Basım Yaym Dadtm Ltd.^{ti}.

- Erçelebi, H. (2008). Türkiye’de Vakf Üniversitelerinin yeri ve önemi: *Türkiye’nin 2023 Vizyonunda Vakf Üniversiteleri (03-04 Nisan 2008)*. Ankara: Atlm University Publications-28, 34-40.
- Günay, D. (2008). Vakf üniversitesi statüsü ile kalite güvencesi ve akreditasyon ilişkisi: *Türkiye’nin 2023 Vizyonunda Vakf Üniversiteleri (03-04 Nisan 2008)*. Ankara: AtlmUniversity Publications-28, 264-275.
- Hatemi, H. (2001). *Kişiler hukuku*. Ystanbul: Filiz Kitabevi.
- Istanbul Chamber of Certified Public Accountants (2008). *Civil Society in Turkey*. Retrieved from <http://www.kurumsalsosyal.com/tr-TR/haberler/97_turkiyenin-stk-fotografil.aspx>.
- Korkmaz, A. (2004). Kâr amac gütmeyen kurumlardan editim ile ilgili vakfların etkili iletiqimi (Unpublished doctoral dissertation). Istanbul University Social Sciences Institute, Istanbul.
- Oduzman, M. K., Seliçi, Ö., & Oktay-Özdemir, S. (2009). *Kişiler hukuku*. Ankara: Vedat Kitapçık.
- Ödüz, M. T. (2007). *Türk hukukunda vakf tüzel kişilidinin esaslar*. Ystanbul: Beqir Kitabevi.
- Özdem, G. (2008). 1980 sonras uygulanan yükseköretim politikalarında vakf üniversitelerinin yeri: *Türkiye’nin 2023 Vizyonunda Vakf Üniversiteleri (03-04 Nisan 2008)*. Ankara: Atlm University Publications-28, 115-129.
- Serozan, R (1994). *Tüzel kişiler*. Ystanbul: Filiz Kitabevi.
- Söyler, Y. (2008). Editim hizmetleri badlamnda vakf üniversitelerinin finansal ve vergisel sorunlar: *Türkiye’nin 2023 Vizyonunda Vakf Üniversiteleri (03-04 Nisan 2008)*. Ankara: Atlm University Publications-28, 422-442.
- Teker, D. (2008). Yeni bir üniversite modeli: vakf üniversitesi statüsünde devlet üniversitesi: *Türkiye’nin 2023 Vizyonunda Vakf Üniversiteleri (03-04 Nisan 2008)*. Ankara: Atlm University Publications-28, 229-237.
- The Council of Higher Education (2007). *Foundation universities report*. Retrieved from
- The Council of Higher Education (2007). *Türkiye’nin yükseköretim stratejisi* (Publication No. 2007-I). Ankara.
- The General Directorate of Foundations (2009). *Strategic plan 2010-2014*. Ankara. Retrieved from <http://www.vgm.gov.tr/WordExcellPdf/VGM2010_2014SP.pdf>.
- Ünver, Ö. (2008). Vakf üniversitelerinin geliqme potansiyeline iliqlin istatistiksel bir yaklaqm ödrenci memnuniyeti anketi: *Türkiye’nin 2023 Vizyonunda Vakf Üniversiteleri (03-04 Nisan 2008)*. Ankara: Atlm University Publications-28, 90-110.



Education and Pious Endowments in Al-Andalus^(*)

By: Ana María CARBALLEIRA DEBASA^(**)

Introduction

The act of almsgiving has been and continues to be an obligation for Muslims, impregnating Islamic societies as a religious ideal and a social practice. This ideal inspires daily behaviours that structure relations between human beings. Charitable acts could stem from a sincere religious faith, because through charity the donor was brought closer to God in hopes of gaining salvation. This religious dimension does not mean that charity might not be driven by altruism, or that it might not be utilised in the service of the political, social and economic interests of the donor.

Jointly with voluntary alms (*sadaqa*)⁽¹⁾ the possibility existed of institutionalising

(*) This paper has been carried out within the research project “Teoría y práctica notariales en la Granada nazarí y mudéjar a través de los documentos árabe-granadinos” [“Theory and Practice of Notaries in the Nasrid and Mudejar Granada. A study of the Arabic Granadan documents”], funded by the Spanish Ministry of Education (ref. FFI2009-09897)

(**) Tenure Researching Escuela de Estudios Árabes (CSIC, Granada).

(1) A general view of *sadaqa* may be obtained in recent works by Lev, Y., “Charity and Gift Giving in Medieval Islam”, in Frenkel, M. & Lev, Y. (eds.), *Charity and Giving in Monotheistic Religions*, Berlin-New York, 2009, 235-264; Singer, A., *Charity in Islamic Societies*, Cambridge, 2008, 30-65. See also, among others, Weir, T.H., “Sadaka”, *Encyclopaedia of Islam*², VIII, s.v.; Rosenthal, F., “Sedaka, Charity”, *Hebrew Union College Annual*, 23 =

charity through the Islamic donation system of *waqf* or *ḥubs*.⁽²⁾ As is widely known, this consisted in the endowment in perpetuity of the use or usufruct of a property with the purpose of allocating it immediately or in the future for a pious work. Throughout the time, *ḥubs khayrī* or public endowment was probably the most prominent form of voluntary benevolence in the Muslim world, for it has been shown to be a vehicle of prime importance for financing a broad spectrum of activities and institutions in Islamic societies. In al-Andalus *ḥubs khayrī* was an institution endowed with considerable income drawn from foundations made not only by rulers and members of the elite, but also by affluent individuals, from which buildings and public institutions profited (mosques, cemeteries, ramparts, fortresses), as well as population groups (the poor, lepers, ascetics, captives, slaves, *jihād*)⁽³⁾.

Arabic legal sources are amongst the documents which help offset the archival impoverishment relating to Western Islam in the Middle Ages. These are collections of juridical opinions (*fatāwā*) issued to elucidate obscure points of law or to offer guidance concerning new cases, and model documents (*wathā'iq*,

= (1950-1951), 411-431. Concerning the distribution of alms in al-Andalus, see Carballeira Debasa, A.M., "Pobres y caridad en al-Andalus", in Puente, C. de la (ed.), *Estudios Onomástico-Biográficos de al-Andalus. XIII (Identidades marginales)*, Madrid, 2003, 53-91; *idem*, "Caracterización de los pobres en la literatura paremiológica andalusí", *Al-Qantara. Revista de Estudios Árabes*, XXXVII (2006), 128-134; *idem*, "Indigencia y marginalidad en al-Andalus", in García Sanjuán, A. (ed.), *Saber y sociedad en al-Andalus. Actas de las IV-V Jornadas de Cultura Islámica de Almonaster la Real*, Huelva, 2006, 63-80; *idem*, "Forms and Functions of Charity in al-Andalus", in Frenkel & Lev (eds.), *Charity and Giving in Monotheistic Religions*, 189-202.

- (2) From this point onwards I shall use the term *ḥubs* and its plural *aḥbās* to refer to the pious foundations in al-Andalus, since it is the term that is most frequently employed in the documental base I have used. In fact, use of this form is supported in the Islamic West, as against common employment of the term *waqf* and its plural *awqāf* in the East.
- (3) There are numerous publications dealing with this Islamic institution. See an updated bibliography in the recent work by Meier, A., Pahlitzsch, J. & Reinfandt, L. (eds.), *Islamische Stiftungen zwischen juristischer Norm und sozialer Praxis*, Berlin, 2009. Specifically, concerning the system of *ḥubs khayrī* in al-Andalus, see Carballeira Debasa, A.M., *Legados píos y fundaciones familiares en al-Andalus (siglos IV|X-VI|XII)*, Madrid, 2002, 67-202; *idem*, "The Role of Endowments in the Framework of Andalusian Society", in Borgolte, M. (ed.), *Stiftungen in Christentum, Judentum und Islam vor der Moderne. Auf der Suche nach ihren Gemeinsamkeiten und Unterschieden in religiösen Grundlagen, praktischen Zwecken und historischen Transformationen*, Berlin, 2005, 109-121; García Sanjuán, A., *Hasta que Dios herede la tierra. Los bienes habices en Al-Andalus (siglos X-XV)*, Huelva, 2002, 169-254; *idem*, *Till God Inherits the Earth. Islamic Pious Endowments in al-Andalus (9-15th Centuries)*, Leiden-Boston, 2007, 184-292.

shurūṭ) that set out the guidelines that should be followed by notaries when drawing up documents. Although exploitation of these kinds of texts provides a high yield in the study of society and economy, this documental base presents lacunas and deficiencies in relation to the institution of *hubs* in al-Andalus. In general, in such works the information regarding the subject in question is dispersed and isolated. In most of the cases they do not furnish a complete transcription of the endowment deed and omit a detailed description of the management of this type of property, as well as of the various business transactions that they engendered. Consequently, although all these factors do not diminish the importance of this type of documentation, one must not ignore other sources (historical, biographical...) which are likely to supply additional information and to reinforce the content of the legal texts, so that they all complement each other.

This documental base records a series of charitable acts destined to support activities that would boost study and education in al-Andalus. This work is devoted to the establishment of pious foundations for this purpose. Although this is one of the earliest documented aims of this type of donations (the oldest references go back to the 3rd/9th century) and evidence of this practice can be found in nearly all the periods of Andalusī history, most of the information refers to the Nasrid kingdom of Granada, particularly in the 8th/14th and 9th/15th centuries*.

In general, knowledge of the pious legacies set up for educational and cultural purposes in al-Andalus is scarce. In this regard, it is the individual who establishes the pious endowment about whom we have the least information. Except for specific cases relating to donations made by certain Andalusī sovereigns, there exist hardly no evidence regarding the identity of the founders. Only acts of charity dispensed by individuals known for their extraordinary piety were registered in biographical repertories to illustrate the fine spirit of the donors. It can be observed from the sources that the founder used to be a sole individual.

In the vast majority of cases, however, these endowments were established on behalf of a collectivity of persons.⁽⁴⁾ It tends to be emphasised that in the Nasrid period such foundations were set up in favour of students of limited means, a difference being made between poor and rich students, and there is even

* A reference to AH and AD.

(4) The biographical literature, however, offers us an exception in this regard. This is the case of Khadija bint Ja'far b. Nuṣayr b. al-Tammār al-Tamīmī, who, around the year 394/1003-1004, endowed a great number of books to the benefit of his daughter. The case is rather unusual, as a woman who was situated within the scientific circuit generally transmitted from male to male (especially within the family unit). Only rarely did she transmit to other women, as in =

register of a reference to a hups instituted for the benefit of foreign students who arrived in al-Andalus in order to carry out their studies, as we shall later see. But in previous periods the references to students are usually of a more general nature, without their economic situation being actually determined, and, furthermore, there is no documentation regarding pious legacies reserved exclusively for foreign students.

The foundations for educational purposes documented in the sources are mainly of two kinds: books and allowances for students in the shape of pensions or grants. This aspect explains why donations of different nature are recorded, which affect both real estate and personal property. Among the latter, apart from books of study, there are references to donations of copies of the Koran. The characteristic perpetuity of Islamic pious endowments implies that the donation of real estate properties is preferable, since, by definition, they are imperishable. Obviously, the perishable character of personal property would go against this condition, converting the foundation into a temporary deed. For this reason, some juridical doctrines of Islam have pronounced against the donation of personal property. The Mālikis, however, manifested greater flexibility on this question, admitting the donation of all kinds of property. This is clear from the sources consulted, which reveal the existence of this practice in al-Andalus.⁽⁵⁾ One must bear in mind that the donation of personal property such as books required the existence of a distinctive mark to prove their status as , since, otherwise, they could be alienated with ease.⁽⁶⁾

Books

Information about pious endowments of books and copies of the Koran in the documental base for this work is generally very bare, as well as being scarce.⁽⁷⁾

= the circumstance we have here. Accordingly, therefore, two possibilities may be given consideration: either the mother had no male sons, or the daughter in question was the only child interested in science. See Ibn Bashkuwal, *Kitab al-Sila*, ed. 'I. al-'A. al-Husayni, Cairo, 1955, n° 1532. Regarding the founder of *hubs*, see Ávila, M.L., "Las mujeres «sabias» en al-Andalus", in Viguera, M.J. (ed.), *La mujer en al-Andalus. Reflejos históricos de su actividad y categorías sociales. Actas de las V Jornadas de Investigación Interdisciplinaria (Madrid, 1985)*, Madrid-Seville, 1989, 165, n° 55.

(5) Of the four juridical doctrines of orthodox Islam, the Andalusis followed overwhelmingly the legal principals of the Mālikī school.

(6) Schacht, J., "Early Doctrines on Waqf", *Mélanges Fuad Kōprülü*, Istanbul, 1953, 448-449.

(7) Concerning donations of books and copies of the Koran in al-Andalus, see Carballeira Debasa, *Legados píos y fundaciones familiares*, 178-183; García Sanjuán, *Hasta que Dios herede la tierra*, 198-199; *idem*, *Till God inherits the Earth*, 222-224.

With regard to donations of books, they served to promote science, culture and knowledge among the poor. Many ulamas were of modest social extraction, which meant they did not dispose of the necessary means to acquire objects of this kind. These donations therefore facilitated the access of new members to the ranks of the collective. This type of *hubs* also reflects how highly dedication to the Islamic sciences was valued, as well as the expensiveness and scarcity of books.⁽⁸⁾

Most of the references to pious endowments of books are registered in notarial treatises. In this connection, Ibn al-‘Attā (4th/10th c.) and Ibn Mughhīth (5th/11th c.) record the existence of *diwān*-s of books established in *hubs* for the purposes of “loaning to trustworthy students, so that they could copy, compare and study them”.⁽⁹⁾ The fact that it is specified that they should not be delivered to the keeping of just anyone, but only to individuals who may be trusted, reveals the adoption of measures to ensure that the books were returned once used. While no mention is made in any of the previous cases about the titles of the works concerned, al-Jazīrī (6th/12th c.) shows the existence of pious legacies of specific books, such as al-Bukhārī’s *Al-Sahīḥ*, Muslim’s *Al-Sahīḥ* and *Al-Muwatta* by Mālik b. Anas.⁽¹⁰⁾ To these one must add al-‘Utbī’s *Al-Mustakhraja* and a copy of the *hadīth* transmitted by Saḥnūn, according to the information that Andalusi biographical literature provides in this regard.⁽¹¹⁾

Notarial treatises also furnish information regarding the constitution in *hubs* of copies of the Koran for lending to those wishing to read them. On the establishment of a donation of the holy book, an exhaustive description had to be made (shape, writing style, presence of adornments, clasp, type of case or chest containing it) in order to contribute to its being identified.⁽¹²⁾

In both cases the delivery of books and copies of the Koran to beneficiaries took place via a loan between two parties: the lender and the borrower. In one text there is an allusion to the free loan of these objects, mentioning that they

(8) Ribera, J., “Bibliófilos y bibliotecas en la España musulmana”, *Disertaciones y opúsculos*, I, Madrid, 1928, 181-228.

(9) Ibn al-‘Attār, *Kitāb al-Wathā’iq wa-l-sijillāt*, ed. P. Chalmeta and F. Corriente, Madrid, 1983, 206-207 (trans. P. Chalmeta and M. Marugán, *Formulario notarial y judicial del alfaquí y notario cordobés Ibn al-‘Attār*, m. 399/1009, Madrid, 2000, 367); Ibn Mughhīth, *Al-Muqni ‘fī ‘ilm al-shurūt* (*Formulario notarial*), ed. F.J. Aguirre Sádaba, Madrid, 1994, 326.

(10) Al-Jazīrī, *Al-Maḡṣad al-mahmūd fī talkhīṣ al-‘uqūd* (*Proyecto plausible de compendio de fórmulas notariales*), ed. A. Ferreras, Madrid, 1998, 288.

(11) Al-Khushanī, *Akhbār al-fuḡahā’ wa-l-muhaddithīn* (Historia de los alfaquíes y tradicionistas de al-Andalus), ed. M.L.Ávila & L. Molina Martínez, Madrid, 1992, n° 499, n° 506.

(12) Ibn al-‘Attār, *Wathā’iq*, ed. 207, trans. 367; Ibn Mughhīth, *Muqni’*, 326; al-Jazīrī, *Maḡṣad*, 288.

were taken from and returned to the lender, while the latter did not cease to perform this function throughout his life.⁽¹³⁾

As for the place of deposit, general books that were the object of a pious foundation in al-Andalus were kept safe both in the houses of private individuals⁽¹⁴⁾ and in mosques.⁽¹⁵⁾ This fact makes clear the importance of the mosque as a place of teaching. Although it is unknown where copies of the Koran established in *hubs* were stored, it would be logical to suppose that they were deposited in mosques.⁽¹⁶⁾

In principle, one may infer from all this information that these pious legacies of books also had a socio-economic function, as happened in other parts of the Islamic world, where *khayrī* performed a fundamental role in the development and maintenance of libraries, library staff and scientific activities.⁽¹⁷⁾ However, in the sources consulted there exist no data which would lead one to countenance a similar circumstance in al-Andalus, where it seems that donations of books and copies of the Koran made by private individuals were more modest than those established in other areas in the Islamic world; this is why they lacked the same socio-economic dimension.

Material assistance in the shape of pensions

In al-Andalus, in addition to the donation of books, the other kind of foundations for educational and cultural purposes recorded in the sources are allowances for students in the shape of pensions.⁽¹⁸⁾ Given the eminently private

(13) Ibn al-'Atfār, *Wathā'iq*, ed. 208-210, trans. 369-371.

(14) Ibn al-Farādī, *Ta'rīkh 'ulamā' al-Andalus*, ed. F. Codera, Madrid, 1891-1892, n° 1070, n° 1274; al-Khushanī, *Akhbār al-fuqahā' wa-l-muḥaddithīn*, n° 499.

(15) Al-Wansharīsī, *Kitāb al-Mi 'yār al-muārib wa-l-jāmi' al-mughrib 'an fatāwī ahl Ifrīqiya wa-l-Andalus wa-l-Maghrib*, ed. M. Hajji *et alii*, Rabat, 1981-1983, VII, 227-228. See Giladi, A., "Three *Fatawa* on Lending Libraries in North Africa and Spain", *Arabica. Revue des Etudes Arabes*, 44, 1997, 143; Sánchez-Moliní, C., "Las bibliotecas y al-Andalus", in Carabaza, J.M. & Tawfik Mohamed Essawy, A. (eds.), *El saber en al-Andalus. Textos y estudios (II)*, Seville, 1999, 95-97.

(16) A well-known case is that of al-Bahā' (d. 305/917), daughter of Umayyad emir 'Abd al-Rahmān II (r. 206-238/822-852), who copied Korans and established them in *hubs*; she also founded a mosque, where they might have been stored. See on this Ávila, "Las mujeres «sabias» en al-Andalus", 155, n° 19; Marin, M., *Mujeres en al-Ándalus*, Madrid, 2000, 623.

(17) Shatzmiller, M., "«Waqf *Khayrī*» in Fourteenth-Century Fez: Legal, Social and Economic Aspects", *Anaquel de Estudios Árabes*, 2 (1991), 208.

(18) Regarding material assistance in the form of pensions for students in al-Andalus, see Carballeira Debasa, A.M., "Pauvreté et fondations pieuses dans la Grenade nasride: aspects sociaux et juridiques", *Arabica. Revue des Etudes Arabes*, LII (2005), 391-416; García Sanjuán, *Hasta que Dios herede la tierra*, 200-201; *idem*, *Till God Inherits the Earth*, 224-225.

nature of education, one may assume that these endowments were partly destined to help poor students at both the primary and the secondary level. With the exception of one case, the rest of the references involve donations established for the benefit of students who were preparing to join the collective of ulamas.

The only exception refers to a *hubs* established by the Umayyad caliph Al Hakam-II (r. 350-366/961-976). The chronicles contain a pair of references to the zeal displayed by this sovereign on this occasion. One reference, dated in the year 356/967, registers the designation of masters commissioned to teach the Koran to the children of the capital's poor families; for this undertaking three schools were founded in the vicinity of the Friday Mosque of Cordoba and twenty-four in the capital's poorer neighbourhoods.⁽¹⁹⁾ While in this case the chronicler does not provide details of how this initiative of the caliph was financed, we do have another anecdote that seems to complete that already mentioned. Allusion is made in it to a pious endowment instituted in 364/975 by Al Hakam-II, by means of which saddlers' shops in the market of Cordoba were set up in order to finance the salaries of those instructing the poor children.⁽²⁰⁾

Although one must bear in mind that all this information reflects the socio-cultural integration of the destitute, it is necessary to take into consideration that learning and knowledge were fundamental values in Islam. The fact that the *sharī'a* orders most facets of Muslims' lives explains the need for instruction in the founding texts of the Islamic faith. Consequently, the teaching of the Koran to Muslim children, whether rich or poor, was an essential instrument for the teaching of Islam. This religion offered a spiritual order for the world, together with a legal and political framework. Thus, study of the Koranic text from childhood was an expression of acculturation which interested Andalusī rulers in order to promote acceptance of the existing socio-economic order.⁽²¹⁾

(19) Ibn 'Idhārī al-Marrākushī, *Al-Bayān al-mughrib fī akhbār al-Andalus wa-l-Maghrib*, ed. G.S. Colin & E. Lévi-Provençal, Leiden, 1951, II, 240 (trans. E. Fagnan, *Histoire de l'Afrique et de l'Espagne intitulée Al-Bayano 'l-Mogrib*, Algiers, 1904, II, 397).

(20) Ibn 'Idhārī al-Marrākushī, *Al-Bayān al-mughrib*, II, 249 (trans. Fagnan, 411); Ibn Hayyān, *Al-Muqtabis fī akhbār balad al-Andalus*, ed. 'A. 'A. al-Hajji, Beirut, 1965, 207 (trans. E. García Gómez, *El Califato de Córdoba en el AMuqtabis@ de Ibn Hayyan. Anales palatinos del califa de Córdoba al-Hakam II, por 'Īsà Ibn Ahmad al-Rāzī* (360-364 H. = 971-975 J.C.), Madrid, 1967, 247).

(21) The use of charity for political and social aims is to be understood within a broader model of the employment of religion in medieval Islamic societies. In that model political government and social order were presented as inspired and sanctioned by religion. Politics and religion were not separate spheres. Charity maintained its fundamental religious meaning, even though

This caliph foundation, which was of some significance, is the only one of its kind documented in the Umayyad period. It could be considered as an antecedent to the very late existence of madrasas in al-Andalus. Within this geographical context the question of when and where madrasas were erected has been the subject of debate. Those of Murcia, Malaga and Granada in the Nasrid period are taken to have definitely existed.⁽²²⁾ The hypothesis of the existence of a madrasa in Seville in the 6th/12th century has also been advanced.⁽²³⁾ But the best known madrasa is unquestionably that founded in Granada under the rule of emir Yūsusuf I (r. 733-755/1333-1354), whose official inauguration took place in 1349. It is known that this Granadan institution was endowed with properties set apart as *hubs* for its upkeep.⁽²⁴⁾

The scarcity of madrasas in al-Andalus contrasts significantly with their proliferation in the Islamic East from the 5th/11th century onwards. There the madrasas were private pious foundations destined for public purposes, which remained under the control of the founders and of their descendents. G. Makdisi attributes the lack of initiative in this regard in al-Andalus to the fact that Mālikī doctrine did not accept that the administration of a *hubs* should fall on its founder.⁽²⁵⁾ Nevertheless, in the Maghreb the existence of madrasas founded by sovereigns after the 7th/13th century is attested to, due to the prestige that such foundations brought the rulers.⁽²⁶⁾ Maybe the fact that activities of this kind were

it took on political and social functions. On the importance of the link that existed between charity and education, see Lev, Y., *Charity, Endowments, and Charitable Institutions*, Gainesville, 2005, 85-112; Gardet, L., "Notion et principes de l'éducation dans la pensée arabo-musulmane", in *L'Enseignement en Islam et en Occident au Moyen Âge*, Paris, 1977, 1-2; Makdisi, G., *The Rise of Colleges. Institutions of learning in Islam and the West*, Edinburgh, 1981, 35-74; Singer, *Charity in Islamic Societies*, 82-85; Shatzmiller, "«Waqf *Khayri*» in Fourteenth-Century Fez", 93-218. Regarding the learning process and the social function of education, see also the works by Chamberlain, M., *Knowledge and Social Practice in Medieval Damascus, 1190-1350*, Cambridge, 1994; Ephrat, D., *Learned Society in a Period of Transition*, New York, 2000.

(22) Abd al-Hamid Isa, M., *Historia de la enseñanza en la España musulmana*, unpublished Ph.D. dissertation, Madrid, 1979-1980, 473-483.

(23) Valencia, R., "Un solar entre murallas: la Casa de Mañara y su entorno durante la Alta Edad Media", in Oliva Alonso, D. (coord.), *Casa Palacio de Miguel de Mañara: Restauración*, Seville, 1993.

(24) Ibn al-Khatīb, *Al-Ihāḥa fī akhbār Gharnāta*, ed. M. 'A.A. 'Inan, Cairo, 1973-1977, I, 508.

(25) Makdisi, *The Rise of Colleges*, 28, 37-38; Pedersen, J.-[Makdisi, G.], "Madrasa", *Encyclopaedia of Islam*², V, 1122-1134.

(26) Shatzmiller, M., *The Berbers and the Islamic State. The Marīnid Experience In Pre-Protectorate Morocco*, Princeton, 2000, 87-113.

not particularly promoted by Andalusī sovereigns is connected with the internal political situation of Islam in the Iberian Peninsula and exterior threats to it.

Apart from the pious endowment of al-Hakam II regarding primary teaching, the other testimonies deal with donations for the benefit of secondary level students, that is, those aspiring to join the collective of *ulamas*. The bulk of the references contained in the documentation consulted correspond to the Nasrid period. The fact that juridical sources offer most information in this regard will enable us to acquaint ourselves with the interaction of the legal aspects of the institution of *hubs* and the socio-economic repercussions derived from it for the beneficiaries.

As it is well known, the intangible nature of *ahbās* implies respect for the founder's will, in accordance with the terms expressed in the endowment deed. Non-observance of these clauses calls into question the inviolability of such foundations. The legal consultations posed relating to the constitution of pious legacies for students in the Nasrid period, as well as dealing with the transgression of the founder's will, also tackle the need to clarify an idea contained in the donation deed. The aim was to avoid any distortion of the stipulations regarding the objective of the *hubs* in an endeavour to be more respectful towards the provisions initially envisaged.

This aspect becomes evident in various texts, where students in need appear as beneficiaries of pious endowments. Most of the references place these individuals geographically in the city of Baza. From this information one may infer that students in this area in the times of the Nasrid dynasty were especially favoured by the establishment of *ahbas* destined to finance their studies. This suggests the existence in this locality of a study centre which enjoyed a certain reputation, since it was also attended by students from elsewhere.

One of the legal queries which aroused the greatest uncertainty among the jurists of Granada was that relating to individuals not in a state of pressing hardship partaking of *ahbas* in favour of the poor students of Baza. This is shown in one consultation addressed to two contemporary jurists in the 9th/11th century, Ibn Manẓūr and al-Mawwāq, concerning the differentiation between poor and wealthy students when determining their right to take part in pious legacies. In the question raised a quarter of one *hubs* was set aside for needy students. Later, the administrator of this foundation discovered that some students were sons of rich parents, who were responsible for their tutelage, which meant that their needs were consequently covered. Likewise, a case is examined involving students who, due to having reached the legal age of majority, were no longer under paternal protection, so their means of subsistence might be scarce, regardless of

their father's wealth. Ibn Manzūr comes up with the most detailed response in this regard, stating that no differentiation should be made between poor and rich students, since the fact that the father might be wealthy does not mean that the son is too. From this point of view, the son has the right to share in income from the *hubs*, even though he lives under the same roof as his progenitor or, having reached adult age, the father continues to provide him with support. Ibn Mawwāq, on the other hand, holds a different opinion.⁽²⁷⁾

Another legal consultation focus on the case of a teacher and an artisan who, apart from having their own jobs, sometimes attended classes in order to take advantage of the funds originally intended to assist Baza's needy students. The crux of the matter lies in resolving whether these individuals were entitled to benefit from the profits generated by properties, since it is evident that the founder's aim is that the endowments help to assist those who have no other way of earning their living, because they are fully dedicated to the study of science. Al-Mawwāq issues an opinion against this manner of proceeding.⁽²⁸⁾ In contrast to the preceding question, the determining factor in this concrete case for deciding if these individuals are to participate in or be excluded from the *hubs* income is whether both of them possess a certain economic status. It must be borne in mind that here the source of the profits is the practicing of a trade or profession.

Similarly, other consultations record the issue of participation in income from pious legacies for students by individuals who do not meet the necessary requirements indicated by the founder. In these cases, unlike the above, the beneficiaries' place of origin is called into question.

Concerning the *ahābs* set aside to the benefit of students from Baza, a query is made as to whether out-of-town students may take part in profits, altering the original aims. According to the reply offered by Ibn Manzūr in this regard, students settled in this locality but not native to the place, when they fall into a state of need, can be allowed to receive a part of the income, unless the endowment deed explicitly deprives them of that right.⁽²⁹⁾

(27) Al-Wansharīsī, *Mi'yār*, VII, 123-124 (Calero, M.I., "La afectación de las rentas de los habices de las mezquitas en fetuas nazaries del siglo XV. El caso del poeta-alfaquí al-Bastī", in Moral, C. del (ed.), *En el epilogo del Islam andalusí: la Granada del siglo XV*, Granada, 2002, 178-179; Lagardère, V., *Histoire et société en Occident musulman au Moyen Âge. Analyse du Mi'yār d'al-Wansharīsī*, Madrid, 1995, 284, n° 255); al-Wansharīsī, *Mi'yār*, VII, 130 (Calero, "Afectación de las rentas de los habices", 177).

(28) Al-Wansharīsī, *Mi'yār*, VII, 124-125 (Calero, "Afectación de las rentas de los habices", 179-180; Lagardère, *Histoire et société*, 286, n° 263).

(29) Al-Wansharīsī, *Mi'yār*, VII, 123-124 (Lagardère, *Histoire et société*, 284, n° 255).

Not only local students but outsiders too could be beneficiaries of a pious donation. This is reflected in a question addressed to Ibn Lubb (8th/14th c.) regarding a *hubs* established in an unspecified place in favour of people who had come from elsewhere to devote themselves to the study of science. Seemingly, this was the situation in the days of the founder, but later only students devoted to the study of the Koran remained there. Contrary to the previous case, the issue this time was whether students native to the place had the right to partake in the profits from *ahābs* set up for out-of-town students. In the fatwa issued on this matter not only is this possibility countenanced, but local students are moreover recommended to initiate themselves in the study of science, as well as of the Koran.⁽³⁰⁾ The participation of students of the Koran in a *hubs* allotted for students of science is especially justified in this case, owing to the absence of the beneficiaries designated by the founder.

In these last cases some flexibility may be observed in the practical application of the founder's stipulations in relation to the alteration in the original destination of pious legacies.⁽³¹⁾ Nevertheless, the decisions taken by the Granadan jurists on this point do not substantially modify the founder's will, since the beneficiaries are students, a circumstance that thereby meets the main condition to be able to partake in the income.

Final considerations

Arabic juridical sources are the most explicit concerning the institution of *hubs* in al-Andalus, which determines the eminently legal nature of the information they contain regarding the constitution of pious endowments destined for educational and cultural purposes in al-Andalus. The sources consulted make it possible to gather data about some aspects of the juridical system through which the institution of *hubs* was governed. In this context one must take into consideration whether pious foundations for the poor present peculiar characteristics. In principle, the same status of intangibility is applied to them as to the remaining pious legacies. However, social needs could reach a

(30) Al-Wansharī, *Mi'yār*, VII, 264 (Lagardère, *Histoire et société*, 281, n° 246).

(31) In the opinion of some researchers, due to pressure from the Christian peninsular kingdoms in the Nasrid period, legal doctrine evolved toward approaches that were more open to the application of criteria of public utility; see Arié, R., *España musulmana (711-1492)*, Barcelona, 1982, 357-358; López Ortiz, J., "Fatwās granadinas de los siglos XIV y XV. La fatwā en al-Andalus", *Al-Andalus*, 6, 1941, 88. For an overall view of Nasrid Granada, see Viguera, M.J. (coord.), *El Reino Nazarī de Granada (1232-1492)*. Historia de España Menéndez Pidal, Madrid, 2000, VIII, 2 vols.,

point where they conditioned the legal status of these goods. Thus, some flexibility is detected in donations for the benefit of a particular category of students, which can be extended to other categories at the risk of partially modifying the original aims envisaged in the endowment deed. The condition of poverty is capable, then, to undermine the intangibility of *hubs* property.

Throughout the history of al-Andalus, needy people were favoured by pious endowments, although more explicit information is available to us regarding the destitute of Nasrid Granada. The legal consultations analysed make reference to foundations established for the benefit of secondary level students. This group in particular received support from the donations, and specifically those who were carrying out their studies in Baza, whether they were natives of the city or not. When determining who had the right to participate in a share of *ahbas*, the Granadan jurists did not base their opinions as much on a student's level of need as on his economic independence. This latter aspect was crucial for deciding whether an individual did or did not enter the category of student. From this perspective, secondary teaching, aimed at training *ulamas*, was the main beneficiary of these legacies. Likewise, through this type of foundation attempts were made to make available to the lower social strata some highly expensive objects, as is the case of the *diwān*-s of books and copies of the Koran, so that their use should not be restricted to the advantaged social groups. It may be inferred that there was some interest in al-Andalus in fostering the integration within society of those in need.⁽³²⁾ Since poverty was an inherent state in the social order of things, charitable practices contributed to maintaining the equilibrium between the different social groups.

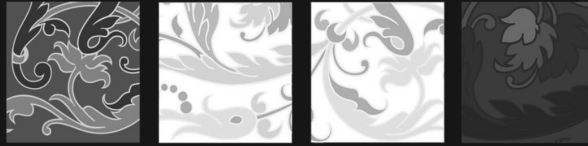
Charity could display an institutional nature when it was adopted by political authorities. The Umayyad sovereigns of al-Andalus utilised the distribution of donations as a framework for interaction with the population and to cultivate the popular support of subordinated social groups.⁽³³⁾ One may consider, furthermore, that on occasion charity from rulers, in addition to maintaining social hierarchies, might preserve cultural norms by financing activities which reinforced the dominant values in society, such as study and education. The high level of development reached by science and knowledge in al-

(32) On the integration/marginalisation of the poor in Andalusí society, see Carballeira, "Pobres y caridad en al-Andalus", 82-89; *idem*, "Indigencia y marginalidad en al-Andalus", 66-69, 80.

(33) Carballeira Debasa, "Caridad y poder político en época omeya", in Carballeira Debasa, A.M. (ed.), *Estudios Onomástico-Biográficos de al-Andalus. XVI (Caridad y compasión en biografías islámicas)*, Madrid, 2011, 85-128.

Andalus relied on the support of a well-organised education system with adequate resources to ensure its efficiency. The political power hardly played any role in this process, which remained almost entirely in private hands. Indeed, there are few references concerning the pious endowments set up by the monarchs in this area. This limited activity by the rulers leads one to assume that the resources of institutional power were channelled towards achieving priority objectives⁽³⁴⁾. From this it might be inferred that the role of donations made by private initiative for educational and cultural purposes had a more lasting impact than in other areas where the authorities had more direct involvement, like in defence. However, due to the dearth of available information, it is not possible to estimate the importance of pious foundations in sustaining education and the transmission of knowledge in al-Andalus.

(34) Social policy was not among the activities that were backed by institutional support in medieval Islamic societies. The principal role of political authorities was to collect taxes and pay the army. For the limits of the function of authority in Islam, see Imber, C., *Ebu's-Su'ud. The Islamic Legal Tradition*, Edinburgh, 1997, 79-94, 156-162; Lewis, B., *The Political Language of Islam*, Chicago-London, 1988, 43-70.



مَسَابِقَةُ الْكُوَيْتِ الدَّوَلِيَّةِ لِأَبْحَاثِ الْوَقْفِ

Kuwait International Contest on Waqf Researches

مسابقة الكويت الدولية لأبحاث الوقف

تعلن الأمانة العامة للأوقاف عن تمديد فترة استقبال البحوث المشاركة في مسابقة الكويت الدولية لأبحاث الوقف حتى يوم ٢٠١١/٩/١م، وذلك لإتاحة الفرصة لأكبر عدد من الباحثين للمشاركة في المسابقة التي تتضمن موضوعين يختار المشارك أحدهما، وهما:

- ١- الوقف والأقليات الإسلامية في العالم الثالث.
- ٢- توثيق الأوقاف في العالم الإسلامي: حماية للوقف والتاريخ.

ويمكن الاطلاع على العناصر التفصيلية لمواضيع المسابقة وشروطها على الموقع الإلكتروني للأمانة العامة للأوقاف. www.awqaf.org

لمزيد من المعلومات والاستفسار حول المسابقة

الرجاء الاتصال على هاتف: ١٨٠٤٧٧٧ داخلي ٣١٤١ - ٣١١٠ - ٣١٧٩،

فاكس: ٢٢٥٤٢٥٢٦.