

Selçuk Üniversitesi
İlahiyat Fakültesi Kütüphanesi

Demirbaş No.

10721

Tasnif No.



SELÇUK ÜNİVERSİTESİ İLÂHİYAT FAKÜLTESİ DERGİSİ

Yıl : 1990

Sayı : 3

THE INSTITUTION OF THE VAKF

Yrd. Doç. Dr. İbrahim CEYLAN

A — *Historical Background*: In the following pages, the original theory the vakf charity and its doctrinal aspect will be very briefly discussed. It is true that there is no explicit statement in the Kuran (1), concerning the vakf itself. In spite of the silence of the Kuran on this point, the subject of vakf was based on the Tradition of the Prophet, and this is one of the most important (remarkable) facts relating to Islamic law.

In this respect, the Jurists were able to give their constructive faculties full scope, and the laws for operation of vakf institutions were formulated and completed in the early centuries of Islam. (2)

On this point, as in other branches of the Sacred law, contradictory opinions arose among the Muslim Jurists; and various theories were developed by the different schools of jurisprudence.

Not only was school opposed to school; but also within the same school can be found conflict upon in many important points of detail. As we shall explain later this kind of conflict existed between Ebu Hanife and his two disciples, Ebu Yusuf and İmam Muhammed who always criticised their master. (3)

-
- (1) The Kuran however, contains many charitable injunction. For example, Kuran 11/215, states that «They will ask what they shall bestow in alms. Say: (to them) let the goods which they bestow be for parents and kindred, and orphans, and for the poor and strangers; and whatsoever good you do; of a trust God knows it. Another Kuranic verse gives us a true measure of charity, and states (Kuran, 111/92, that «You'll never attain or reach to goodness (al-Birr) till you give alms of that which you love; and whatever you give of a truth God knows.»
 - (2) see Khassaf, A. Bekir, *Kitab Ahkam al-Evkaf*, Egypt, 1902. Ameer Ali *Muhammeden law*, Culcutta, 1912, p. 192; İbni Sahnun al Kubra, (*Al-Mudavvana a-Kubra*, Egypt, 1905; Shafi'i *Kitabul Umm*, 11. p. 278.; Muhammed Zain, (The theory, pratice and Administration of Vakf with special reference to Malay State of Kadah, Ph. D. 1970, St. Andrew.
 - (3) *Kitabul - Vakf*, M.S. fol. 4 - 5; Al-Hidaya, 'vakf'; M. Zain p.H. D.). *Kitabul-Vakf*, yazma (MS), No: 1888, in the University of Princeton.

Muslim Jurists claim that vakf was created by Islam and it was unknown before the time of Prophet Muhammed (peace be upon Him), (4) and that law relating to vakf was created entirely from the *Hadis* by the Jurists themselves. (5).

But non-Muslim scholars maintain that the perpetual endowment institution was introduced by Romans before Islam and there were by Byzantine endowment of churches. (6)

Aapeli says that «The land ownership of the Church is extremely old, being already established before the Muslim vakf system. It was an Byzantine custom to reserve land property for the Church in perpetuity. Islam adopted this Christian custom. (7)

Gatteschi considers that vakf was taken from the nations already subject to the Romans, who knew the system of property of mortmain, and he further states that the vakf to be similar to Roman emphyteusis,» (8) also adds that they are to be divided into three kinds :

1. Vakf dedicated directly for the promotion of religion, that is to say the Church property.
2. Public vakfs, such as are dedicated to the help of the poor and for the welfare of mankind.
3. Consuetudinary (customary) vakf, or vakfs by usage, which, as to

(4) According to the general opinion of the Muslims there were no endowments in Arabia before Islam, neither of houses or land, see Shafi' i.p. 275-80; *Et*, 'Wakf'.

(5) see Khassaf, and Mudavvana, and M. Zain, 10 - 15.

(6) Tyabji. *Mamila Limited Interests in Muhammeden law*, London, 1949, p. 102. On this point, *The Catholic Encyclopedia* says that: The first recorded instance of the dedication of a Christian Church edifice is that recounted by Eusebius (Hist. Eccl. 10.3) when he described the dedication of the basilica of Tyre in 314 under Constantine the Great. The Church was dedicated simply by celebration of Mass, without any additional ceremonies, *ibid*, 3, p. 958, H. of USA.

(7) Aapeli S. «A Wakf (A Turkish Vakf)», *Studia Orientalis*, (Fennica) XIX, 10, p. 4 - 6, 1953.

(8) Gatteschi says that «This institution is just like the Holy property (re sacra) of Roman law, which could not be disposed of, and which hence was said to belong to no one.» A Jurist says that Emphyteusis (perpetual right in a piece of another's land) is bilateral and onerous, whereas, vakf is unilateral and gratuitous, see, also (*Muslim World IV*). Gatteschi, *op. cit.* (Real Property Mortgage and Vakf according to Ottoman Law 1869 Italy, trans. by Edward A. Von Dyck Alexandra London, 1884.

the right of property, belong to the Mosque, but the rents and increase of which go to private individuals. (9)

A. Bajirmi claimed that» the arabs found in the conquered lands, foundations for the public benefit for Churches, orphanages and poor-houses and may have adopted this form for the practice of the charity necommended by their religion. (10)

It was also reported that the origin of vakf as a family settlement dates back to the time of Prophet Abraham. (11)

Whatever might infact have influenced its early development, Islamic law regarded vakf as based upon the Tradition of Prophet Muham-med, (12) This was of course necessary in order to justify the instiution according to the principles of Şeri'a.

With regard to the tradition relating (13) to the vakf, Hz. Ömer had acquired a piece of land in Khaybar, and proceeded to the Prophet and sought his counsel, to make the most pious use of it, (whereupon) the Prophet declared, «tie up the substance of the property, and devote the usufruct to human beings, and it is not to be sold or made the subject

(9) ibids, On the third point D'Ohssen, (11. p. 544). disagree with Gatteschi D. he says that there exist no consuetudinary. Abul 'ala Mardin says that' Roman law relating to the charity there is not any connection with Islamic vakf..., see *İktisat ve Ticaret Ansiklopedisi*, X. p. 133-3/.

(10) A. Bajirmi (Süleyman ibn. Ömer) *Khashiya alâ Shar al Khatib-al Ikna*, 111. 187 - 98, (1911) quoted by Muhammed Zain, p. 12. Whereas M. Zain states that Islamic vakf was established in the year of VI. VII. of after Hıgra.

(11) ibid. see *Judica Encyclopedia*, 'endowment'.

(12) *Buhari*, *Muslim* 261/874; *Tirmiz*, 279/892; *Abu Davud*, 275/888; *İbn. Maja*, 273/886; *Nasai*, 303/915. The first work (*Kitab-al Vakf*) which was written by Hilal bin Yahya, who died in 859. It is very valuable work, and Khassaf He was an anative of Basra in Irak, and it was he wrote a wor upon the subject of vakf. He died in 875, and his book and Hilal were contemporary with the SIX BOOK of TRADITION. In both works the view of Abu Hanife is explained; Schacht J. «Early Doctrine on Vakf», in *Fuat Köprülü Armağanı*, p. 443 - 52, İstanbul 1953.

(13) *Buhari*, *babı-basaya*, V. p. 25 - 30; *Tirmizi*, *babı-vakf*, VI. p. 144; *Abu Davud*, II. p. 14; *Nasai*, VI. *vasaya*, p. 251; *Muslim*, V. p. 73, (bakı, vakf); *İbni Maja'a* (babı sadaka); *Müsned*, A. İbn. Hanbel, VI, p. 277 tradition or hadıs, 4608, ibid. VII. p. 164 hadi, 5179, 6078, 5948; *Kitabul-'İmm*; *Muvatta*, *İbn Malik*, II. p. 195, and, 996 - 98; Concerning Abu Talha, Kuran, 3/92. In short, these traditions are approximately the same in meaning but are variants.

of gift or inheritance; devote its produce to your children, your kindred, and the poor in the way of God. (14)

In a tradition of Anas ibn Malik it is said that the Prophet wished to purchase gardens from the Bani (beni) Najjar in order to build a Mosque; they refused to take the purchase money however, and gave the land for the sake of God (*Buhari*, *vasaya*, p. 28, 31, 35). (15) According to *Buhari*, (*vasaya*, 17), «A third tradition of Enes bin Malik, concerns a family endowment, in keeping with the pronouncement in *Kur'an* (*sura* 3/85).

Abu Talha have the Prophet his favourite of ground, the Bairuha-garden ... where the Prophet used to go to enjoy the shade and drink the water. The Prophet however, gave it back to him with the observation that he should make it an endowment for his relatives. Ebu Talha there upon gave the garden as a *SADAKA*, (charity) for Ubaiy and Hassan. (16)

These traditions maintain that the institution of vakf was created in the time of the Prophet. A. Ali observes that 'not only did he (the Prophet) declare that a provision for one's family was the best of alms giving, but he encouraged... (17)

Members of his household and his companions to create such vakf, and himself set an example by consecrating certain lands at Khayber. (18) He also gave an example from *Buhari* (*sadaka*) that the most excellent of *Sadaka* is that which a man bestows upon his family. (19)

With reference to another Tradition of the Prophet as a basis for the theory of vakf charity, a tradition states that «A human - beings» deeds come to end with his death, and only three things do not pass away from the world with him, namely charity which endures forever, ('ilm) knowledge and learning, and his sons who have been brought up as upright

(14) *Buhari*, *bab* *vasaya* V. p. 24, (supplement of İmamı Kastalâni). see *ibids* 13, and *Mebcut*, XII. p. 131; *Dara-Kudni*, *Müsneid*, p. 503 - 9; *al-Hidâya*, II. 338, translated by Hamilton, Lahore, 1957.

(15) Quoted by *EL 'Wakf'*, İbni Kesir, (*AlBidâya*, III. 215; and, *Ikhtiyar*, (*Al Musuli İbn Mavdud*, Egypt, 1951, III. p. 41 - 47.

(16) *Buhari*, *Nasai*, and *ibids*.

(17) *Mebcut*; *Hidaya*,: *Bahr ar-Raik*, V. p. 187; *Fath-ul Kadir*, II. p. 630. Syed A. Ali, p. 192, İbn Kemal, *Ms. (Süleymaniye, 971/7, and Fetva of Abu Suud, MS. Süleymaniye, 971/7; Halebi, Mülteka*, II. p. 336; Sidi (Syed) Khalil, *Maliki law*, trans. by Ruxton F. H. London, 1916.

(18) A. Ali, p. 192, 309. *ibids*.

(19) *Buhari*; Family vakfs played also very considerable role in Islamic society, for seven *Sadakas* of Prophet, see Hassaf, esp. *JESHO*, II. p. 250 - 51, 1959; Suhraavardiy Al-Mamun, «The Waqf of Moveables», in *JAS Bengal* (1911), p. 323 - 429.

and honest men and hwo continue to pray even after their father has departed. (20) This precept of giving charity to the poor is the starting point of the institution of the vakf, which is found throughout the Muslim world.

The fact is that vakf as established and developed by Muslim - Jurists differs from all other know legal establishments. Nevertheless, it is probable that Muslim Jurists were influenced, by the example of Roman law, which undoubtedly was known to them, (21) but it is obvious that alongside certain superficial resemblances there are very considerable divergencies in detail between vakf and any of those establishments which had been already mentioned. These characteristic peculiarities and essential dfference give the instition of vakf its unique legal individuality. (22)

In fact the vakf institution was an Islamic foundation rather than a borrowing from other religious institutions.

J. Schacht observes that «the origin of the institution of vakf cannot be traced to any single source; it is, as Heffening (*El 'Wakf'*) and Santillans (*Santilla D. Isttuzioni Di Diritto Musulmano*, 11.p.412-49 1938 Roma) have seen, the result of the combination of several factors and various elements which were immediately fused during the formative period of Islamic law. (23)

The development of the vakf institution can be followed in the early legal sources. (24)

The main sources for these early doctrines are *the SIX BOOKS* of Tradition (Kütübü Sitte); Mudavvna; of İbn Sahnun (d. 240/854); *The Kitab ahkam-al Evkaf*, by Hilal, d. 245/859; *Kitab Ahkam-al Evkaf*, by Hassaf (d. 240/854; *Kitab-al Siyar al Kebir of Shaybani*, (d. 189/805. and.. *The Kitab al Umm of Shafi'i* (d. 204/819).

In these authors' works the matter is discussed in detail. These texts carryus strainght into the formative period of Islamic Jurisprudence concerning the vakf institution.

(20) *Buhari* and ibids.

(21) see Codification of Muslim law by Abu Hanife, ed. by Muhammed Hamidullah, in *Zeki V. Toğan Armağanı*, İstanbul, 1955, p. 369 - 78.

(22) see Abul ala Mardin, and M. Zain, and *Muslim World*, IV.

(23) «The carly doctrine o vakf,» by Schacht J.

(24) «The vakf of Moveables», *JASB*, p. 323 - 429, by Suhravardy: *El'.*

B — *Definition of Vakf :*

Vakf, (pl. *Evkaf*) or *habs*, (pl. *Husus*) means primarily «to detain», «detention» or to stop, a term which in the language of Islamic law signifies the endowment or dedication, or consecration of property, ei. there in express terms or by implication, for any charitable or pious object, or to secure any benefit for human-beings. The term illustrating the mainly religious purpose of an endowment is seeking the pleasure of God (Takarrubu livechillah-ı Tealâ). (25) Vakf really means, however, the legal process by which one creates such an endowment, and is synonymous with Tahbis, Tasbil, or Tahrim, and in popular speech it became transferred to the endowment itself, which is property called *Mevkuf*, *Mahbus*, and *Mahrum*. (26)

C — *Constitution of a vakf :*

On the validity of a vakf, Abu Hanife, like the others refers to vakf; but deals with it a very incomplete and summary manner it is reported of him that at first he did not admit the legality of a vakf but later, after long deliberation approved of it; basing his acceptance on the principle of Islam (İjma'a). (27)

At first Abu Yusuf agreed with Abu Hanife that a vakf did not become binding until after the decree of the Kadi (judge), or unless made by way of a testamentary (vasiyya) disposition. «but when Ebu Yusuf» went to Medine on the pilgrimage with the Caliph Harun al-Raşid and saw there in the neighbourhood the numerous vakf created by the Companions (Ashab) of the prophet he abandoned Abu Hanife's opinion and made a decree declaring the validity of doctrine of vakf. (28) In true founder of the vakf was thus Ebu Yusuf (d. 182/798). Later Jurists such as Suhra-verdi, İbn Kemal, Abu Suud have followed the rules of the two disciples, and has accepted this decision and they have issued Fetvas (İbn Kemal, see, Süleymaniye, yazma (MS) No: 971/7), confirming this view.

(25) ibids, the word vakf itself is derived from the arabic verb VA KA FA which means to restrain, or restrain, or dedicate or to stop etc.

(26) *Dara Kudni*, p. 503 - 9, *El «Wakf»*. see for details, *MSS. VIKAYE* No: 645; and No: 180 (612) *Durr al Mukhtar, fi Sharhi Tanvir al-Absar - Kaskaf*, 1088/1688, in J. Rylands Library Manchester.

(27) *Tirmiz*, (VI. p. 251), is a collection of the traditions and one of the most famous and important of the six tradition Books; and *Ikhtiyar*, III. p. 41.

(28) *İjma'i-Ummet*, (law) the general concurrence and agreement in opinion and decision of the legist or Jurst (qv). see also, *Bahr-ar Raik*, chapter Vakf.

According to Abu Hanife, vakf signifies the dedication of any particular thing in such a way that the vâkîf's right in it continues, and advantages of it to some sharitable purpose, in the manner of a permanent loan. (29)

The Only exceptions recognized by Abu Hanife were made in favour of a Mosque and a testamentary vakf coming into effect by reason of the death of the testator, both of which he held to be binding in themselves. Abu Hanife also states that: «the consignment of the vakf to a *Mütevelli* (administrator) is indispensable for the validity of an endowment, otherwise it is not complete, and likewise the declaration must be confirmed by a Kadi's decree. (30).

For instance if a person says that «I have made over this thing or property for such and such purpose», in that case the vakf without the delivery to a *Mütevelli* is not valid and complete. Therefore, Abu Hanife held a vakf to be revocable by its founder unless the declaration had been confirmed by a Kadis decree. (31)

According to Abu Yusuf merely saying that «I have made this property vakf» is sufficient. The proprietary right of the Vâkîf (founder) over the property is in this way assigned over to God like the emancipation of a slave; and in this view Shafi'i, Maliki, and İbn Hanbel all agree. (32) Abu Yusuf bases his view on the rule laid down by the Prophet, who only declared to Ömer to tie up the property and apply its usufruct to human benefit.» and did not make delivery a condition for the validity of the endowment. (33)

So as a principle in the constitution of a vakf (valid vakf), perpetuity is necessary condition, but it is not necessary that it should be expressly mentioned at the time of vakf.

The Legal effect of a vakf foundation produces three different results: Traditions of the Prophet state that «A thing or property endowed cannot be sold inherited or transmitted.» Therefore, the vakf became permanent charity in perpetuity.

(29) MS. *Kitabul Vakf*, fol. 7.; and *Hidaya*, II. p. 334. Hassaf, p. 110.

(30) ibids, *Hidaye*, Halebi, and Baillie, (*A Digest of Muhammedan law*), Lahore, 1965, p. 357.

(31) Tyabji, and Trabulusi, İbrahim ibn Musa, *Kitabul 'Is' Af fi Ahkamil Evkaf*, Egypt, 1902, p. 3-5.

(32) *Kitabul Evkaf*, fol. 1-5 (the said Ms.); *Hidaye*, A. Ali, p. 231, İbn. Kemal, MS. fol. 147.

(33) *Buhari*, and ibids. İbn. Kemal, in ibids, statements are as follows: In nel vakfe yetim mü bi fii'lil Vakı fı min gayri teslimin...

According to İmam Muhammed «there are four conditions for the validity of a vakf, (34) to consign it to a Mûtevellî, to separate it (from the other property of the Vâkîf) not to reserve for oneself any interest from the income of the vakf, and to make it perpetual, and that its ultimate application should be for the poor.

Abu Yusuf however, laid down that no such condition is necessary. The result of this definition, as it was accepted substantially by later Hanefî Jurists is very significant; and there are essentially here three elements (35).

The first is a) the ownership of Almighty in perpetuity and irrevocality; the second is b) the extinction of the founder's right, and last c) the benefit to mankind.

So an essential feature of the vakf charity in the Hanefî law is the permanence of its purpose, and if the beneficiaries are for instance, the descendants of the founder, the poor or some other permanent purpose must be appointed as subsidiary beneficiaries. (36)

Basically the difference between Abu Hanîfe and his students İmam Ebu Yusuf and Muhammed is as follows: According to Abu Hanîfe, vakf is the tying up of the substance of a property in the ownership of the Vâkîf, the founder, so that, the right of the owner continues. The possession of vakf thus belongs to the Vâkîf (the founder).

On the other hand the argument of İmam Yusuf and İmam Muhammed is that vakf is «the tying up of the substance of a thing under the rule of the property of Almighty God», so that the property rights of the Vâkîf become extinguished, at the moment of his saying» I have made over this property for such and such a purpose. (37)

D — *The Purpose of the Vâkîf :*

The main object of the endowment charity is to bestow it as a

(34) see for details, İkhtiyar; A. Ali; Baillie, These are four kinds, conditions that relate to Mevkuf, the Vakîf, the Mevkuf'un aleyh, and the vakf itself...

(35) in this respect, viz on the validity of delivery of possession to a Mûtevellî on behalf of the beneficiaries, İmamî Malik differs from Abu Yusuf, but agree with İmam Muhammed, and Shi'a, see Ali, p. 539 - 40.

(36) J. Schacht, An Introduction to Islamic Law, Oxford, 1971. *Hidaye*, chapter vakf, *Mülteke*, Baillie, S. W. Fitzgerald *Muhammedan Law*, an, an abridgment according to its various school London, 1931, p. 206.

(37) ibids, see for details *Khassaf*,

permanent Sadaka, (Sadaka-ı Cariya), for the sake of God for the public weal. Therefore, the purpose of the vakf must be a work pleasing to God, (Takarub-u İllallah), as stated in the various Traditions, concerning Bani Najjar (sons of Najjar) and the Caliph Omar's vakfs. (38)

The Caliph Omer, having acquired a piece of property (land) in Khayber, asked the Prophet for suggestion as to how he could devote this property to a religious purpose. The Prophet replied that: «Retain the thing (property - land) itself and bestow its fruits to pious purpose.» So the Caliph Omer made it a charity for the needy and for the poor among his relatives, to provide money to set free slaves and for entertaining travelling and guests, and for the Glory of God. There would be no blame on him who administered it, if he ate out of it and gave food to others. (39)

In this respect, Ömer Hilmi Efendi says that «to motive of vakf institution is the desire to approach God and worship Him by the gift of property for philanthropic. (*Ahkamul-Evkaf*, İstanbul, 1889, p. 7).

It is not sufficient that a vakf enables the founder to approach God. There must be some advantage resulting to God's creatures. Therefore, the endowment properties are divided into three classes according to the objects for which the property is made vakf. (40)

There must be some advantage resulting to God's creatures. Therefore, such as *Mosques, Tekkes, Medreses*, etc. Secondly, properties endowed for the public benefit and possessing a definitely social character, i.e. institutions like *İmarets, public Inn, Caravanserais, Hospitals and Guest-house; Libraries, Wells, bridges*, and so on; and thirdly, a vakf with a more personal function, for the benefit of his family and offspring.

Besides these, religious, social and customary vakf foundations many endowment charities were established for the supply of money to the need; dowries, for orphan girls, erpayment of their debts for imprisonment debtors; and the payment of fees for the release of penniless prisoners.

Others were founded for the supply of assistance in kind: for example, clothes for aged villagers, food and clothing for school-children; while others were founded in aid of the armed forced. (41) In such a vakf the

(38) Buhari, and ibids.

(39) Buhari, Ömer Hilmi Efendi, and ibids.

(40) İbids, A. Ali, 275, Ali Haydar Efendi, *Ahkamul Evkaf*, İstanbul, 1824.

(41) ibids. and A. Kunter, *Vükıflar Der.* p. 110 - 11, quoted also by Gibb. H.R.A. Bowen H. Islamic Society and West, Oxford 1969. s. 167 - 68.

element of charity *Tasadduk* may be pure and *Qurba* realized since according to the Tradition actions depend on intentions, (*Inne mel'âmalu bin niyât*). *Buhari*, bab al Niyah.

In short, the ultimate destination of an endowment charity should be for an object of piety which is not likely to fail but to exist in perpetuity. (42)

E — *Zekat, Sadaka, Hiba* and a *Vakf* :

These four religious institutions ought to be distinguished from one another. *Vakf* can sometimes be confused with the three others, *Zekat*, *Sadaka*, and *Hiba*.

Zekat is established by certain injunctions in the Kuran and Traditions (in the Hadis) of the Prophet. It is incumbent upon every person who is free, sane an adult and a Muslim, provided he be possessed, of sufficient property which is termed. (43)

In the language of Islamic law a *Nisab*, (44) and that he has been in possession of the same property for the space of one complete year, which is known as *Havli hevelan*. Therefore, *Zekat* is obligatory and one of the five religious duties as stated in a Tradition. (*Buhari*).

Sadaka is an offering or a gift made with the intention of obtaining favour in the sight of God. In *sadaka*, both substance (*Ayn*) and proceed are given, thus giving absolute possession to a second person. In discussion in *Fiqh* (in the Islamic law), on financial bases of Islam, *Zekat* and *Sadaka* are used interchangeably. (45) *Sadaka* «the term is

(42) *Buhari*, and J.N.D. «Recent Development in Shari'a Law, IX,» the *Wakf*, System. *M W*, 42 (1952) p. 257 - 76. Idem, «Waqfs in East Africa,» in *Journal of African Law* (JAL), III. (1959), p. 153 - 164; Idem, viz, same author, «The religious Element in Waqf endowment,» in *JRCAS*, XXVIII. (1951) p. 292 - 99.

(43) the word *Zekat* literally means to purify, *Kuran*, 2/43, *Hidaye*, chapter *Zekat*.

(44) *Nisab*, in the terminology of Islamic law, the minimum taxable limit is referred to as *Nisab*, (*zekat*). on this point M. Hamidullah states that *Zakat*, does mean a charity, in the sense of *vakf*, but it is a State-tax imposed on Muslim subjects. Non-Muslim are exempted from the *Zekat* which all the Muslim. male or female, young or old, pay every year at the rate of 2,5 %. see *The Muslim conduct of State*, p. 110, quoted from MS? fol 70, of *Sharhi-Kitab al Kharaj* of Abu Yusuf (Ms. No: 1609, Laleli, İstanbul). see also, Zayas G. de Ferishta, *The Law and Philosophy of Zekat* (the Islamic Social Welfare System), Damascus, 1960.

(45) *Kuran*, *tevbe*, viz IX.

used in a still wider sense of the purpose of a vakf, which may be anything not incompatible with the tenets of Islam. (46)

Hiba: A hibe is a gratuitous transfer of property. (47) It is defined as the transfer of the right of property in the substance (*temlik-al Ayn*) by one person to another without any consideration. In other words a hibe is a voluntary gift. In a *hibe*, the recipient is a human-being; in a vakf the recipient is the Almighty (Allah).

In hibe the object is to pass the property from one human-being to another, in vakf, the object is to keep the property in the custody of the the Almighty, for the benefit of mankind.

Vakf or *Habs* in the Muslim legal terminology means: to protect a thing, or to prevent it from becoming the property of a third person. (48)

In this sense, its substance cannot be sold, changed and inherited, but revenues or profit obtained from it is given to stipulated persons or places, for the public use. (49)

In short, after giving this very brief explanation of them the basic differences between them can be summarized as follows:

a) In order to pay, a person must be possessed of *Nisab*, but no such condition is necessary, when a vakf is made.

b) When a person refused to pay *Zekat*, force can be used by the authorities (nemely by the government) to collect the tax, as the Caliph Abu Bekir did. (50)

c) *Zekat* is not given to the Donor's children, Whereas vakf can be made, in favour of his progenies, or offsprings.

d) Muslims who possesses *Nisab* are responsible for paying *Zekat*, but non-Muslims are exempted from *Zekat*, however, non-Muslim can make a vakf if they wish. It can thus be said that gifts, *sadaka*, *zekat* resemble vakf or bahs in that they are four acts of goodwill and generosity. The object of a vakf, as well as of others is to obtain the favour of God (Allah).

(46) Schacht J. *An Introduction*, and Sidi Khalil, *Maliki Law*, p. 263.

(47) S. Khalil, 263, A. Ali *Hidaye*, (*hibe*), *El «Hiba»*.

(48) *ibids*, *El «Waqf»*, *Buhari*.

(50) *ibids* and Bayhaki, *Sünen al-Kubra*, Khaydarabad, 1344, 1925, quoted by M. Hamidullah, chapter tax, p. 167. Turkmani, II. p. 64-65 (İbn. turkmani, Jawahir al Naqi, 2 vols. Haydarabad d. 745/1343.

ÖZET

Vakıf müessesesi, tarihi, dini, hukuki, sosyal ve kültürel bakımdan önemli bir kuruluştur. Menşei hakkında çeşitli görüşler vardır. Biz bu makalemizde, vakfın orijinalitesini, Romalılara bağlayan veya Bizans'tan alınmıştır diye, bu kuruluş, Hristiyanlardan İslam'a geçmiştir, görüşleri üzerinde durarak, konuya bilimsel bir açıklık getirmeye; Ayrıca, vakfın tarif ve kuruluşu, amaç ve gayesini, bu arada zekat, sadaka, hibe gibi dini kuruluşlarla aralarındaki farkı belirtmeye çalışacağız.

Hülasa, burada şunu belirtelim ki, vakıf hayır kuruluşu olarak diğer dinlerde de var ise de, İslami vakfın, tamamen İslam'ın hayır-hasenat anlayışından ve sosyal dayanışma esprisinden kaynaklandığını, bu Müessesenin yine İslam'ın kendine özgü, düşünce ve Sadakayı - Cariye felsefesinden doğmuş olduğu kanaatine varmak mümkündür. Kaynaklarımız bunu amirdir.