2 Beneficence and Difference
Ottoman Awqaf and "Other" Subjects

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INTRODUCTION

As the Ottoman Empire expanded into three continents throughout the fifteenth century, the encounter with the "other" became a generalized condition of governing the empire. From the moment of its conquest by the Ottomans and their realization that governing Constantinople would involve dealing with already constituted social groups, Istanbul has always had to deal with negotiating differences among groups. When Constantinople was conquered in 1453, it was almost deserted. As is well known, Ottomans began repopulating Istanbul by transferring people from other conquered territories such as the Peloponnesian Salonika (modern Thessalonica) and the Greek islands. By about 1480 the population rose to between sixty thousand and seventy thousand (Inalcik). While Hagia Sophia and other Byzantine churches were transformed into mosques, the Greek patriarchate was retained and was moved to the Church of the Pammakaristos Virgin (Mosque of Fethiye), later to find a permanent home in the Fener quarter. The capital of the Ottoman Empire was transferred to Constantinople from Adrianople (Edirne) in 1457. Within a century, *Konstantiniye* (as Ottomans called the city for a long time) was transformed into a "cosmopolitan" imperial city with inhabitants drawn from all corners of the empire and negotiating their differences, inventing along the way various legal, political, social, and cultural institutions with which such negotiations took place. I place the term cosmopolitan in quotation marks to indicate that I will increasingly turn critical toward the concept understood simply as presence of multiplicity, diversity, and plurality in a given space (Zubaida, "Cosmopolitanism and the Middle East"). By contrast, I will work toward a conception of cosmopolitanism as an ethic enabling and instituting practices of negotiation of differences without either reducing them or effacing such differences.

Modern historians of the empire called the variegated Ottoman institutions for negotiating difference collectively as the "millet system" (Braude, "Millet Sistemi'nin İlginç Tarihi"; Reppetto; Stefanov). Millet is a generic term used to describe Muslim or non-Muslim religious groups and their

affiliations. Millet is often translated into English as "nation" though it would be anachronistic to define these groups as modern nations or even modern incipient nations. What complicates this history is that these millets did indeed develop *and* fulfill national aspirations in the modern sense later in the nineteenth century. Thus, I prefer to discuss these with the sociological concept "social group" or simply "group" to avoid anachronism or historicism.

These groups had various governing rights and privileges within the framework of Ottoman imperial administration (Braude and Lewis). The two major non-Muslim groups were Jews and Christians. The latter included Greeks and Armenians. These groups practiced various collective rights and privileges. A religious authority governed each, which was also responsible for its obedience to imperial administration. The head of the Orthodox Greek millet, for example, was the ecumenical patriarch of Constantinople. The patriarch's position as leader of that millet gave him also substantial secular powers. Whether to call these rights and privileges as "autonomous" or even "autocephalous" is open to debate. But not unlike guilds and corporations of medieval European cities these groups were able to negotiate considerable scope for rights and privileges that obviously prompted many historians to use such terms as "autonomy" with relative ease.

Much has been written about Ottoman millets and the way their subjects governed themselves and how the relations between these millets and Ottoman imperial administration were regulated (Braude, "Foundation Myths," "Millet Sistemi'nin İlginç Tarihi"; Karpat; Stefanov). While I will have occasion later to make some observations on these various "autonomous" or even "autocephalous" rights, I shall be chiefly concerned with them within the context of the waqf as an institution of beneficence. Like the millet system, Ottoman awqaf have also been investigated quite extensively (Çizakça; Singer; Van Leeuwen). *I am concerned here with the way in which awqaf were utilized by millets to govern relationships of authority within these groups, between them and other millets and between imperial authorities*. I shall focus on the issue of whether non-Muslim subjects of the empire were able to either establish awqaf as benefactors or use their services as beneficiaries. Thus, I will expand this issue not only to the right and privilege of founding non-Muslim awqaf as *benefactors* but also to use of awqaf-provided services as *beneficiaries*. Thus, neither the Ottoman millet system nor the Ottoman waqf is of concern by itself but the way in which the presence of the waqf institution enabled the constitutive Ottoman social groups to negotiate differences without either reducing or effacing such differences.

We do know that through thousands of awqaf established throughout the empire, neighborhoods and cities were built and governed. Especially in Istanbul the waqf became a beneficence institution that provided considerable amount of what moderns would call social services, ranging from libraries, soup kitchens, baths, fountains, hospitals, and religious buildings. We also know that while its principle was Islamic, awqaf were also founded

by non-Muslim groups to provide various properties and services and were recognized by Ottoman authorities as legitimate and indispensable ways in which these groups were governed. The Islamic institution of beneficence that existed for centuries before the Ottoman Empire, which was then taken up by it, institutionalized, codified, and systematized to the extent that almost all social, cultural, religious, and economic services were provided by this institution by the eighteenth century. Under the Ottoman Empire the waqf became a systematic method of building cities by providing various services in well-thought-out nuclei (*külliye* or *imaret*) through which a definitive shape was given to cities (Ergin, *Türkiye'de Şehirciliğin Tarih-i İnkişafı;* Ergin, *Türk İmar Tarihinde Vakıflar*). Well-known *külliyes* that have given shape to Istanbul, for example, include Süleymaniye, Fatih, Şehzade, Eyüp Sultan, and Lâleli *külliyes* (Eyice; Kuban; Tanman). Throughout the empire thousands of madrasahs, schools, libraries, mosques, caravanserais, business centers (*hans*), bazaars, fountains, bridges, hospitals, soup kitchens or almshouses, lodges, tombs, baths, and aqueducts were founded either as part of such *külliyes* or *imarets* or standing alone (Demirel). Awqaf could also include other immovable property such as rural land that yielded income for urban property as well as movable property such as cash, books, and other valuables. The waqf therefore involves a very complex economy and its urban properties cannot be isolated from rural properties. A waqf scholar, Nazif Öztürk (*Türk Yenileşme Tarihi Çerçevesinde Vakıf Müessesesi*), estimates that throughout the Ottoman Empire more than thirty-five thousand awqaf were founded, the majority of which were urban properties. That means a vast majority of Ottoman architecture and cities were built by the waqf system. According to Öztürk, these awqaf, by employing vast numbers of people and providing income, constituted about 16% of the Ottoman economy in the seventeenth century, about 27% in the eighteenth, and about 16% in the nineteenth century. Similarly, another waqf scholar, Murat Çizakça, estimates that by the end of the nineteenth century awqaf was providing more than 8% of total employment in the Ottoman Empire.

These are significant figures that illustrate the economic role and size of the waqf, but its cultural and social significance cannot be overemphasized (Yediyıldız, "Vakıf Müessesesinin 18," "Müessese-Toplum Münasebetleri Çerçevesinde 18," "Türk Vakıf Kurucularının Sosyal Tabakalaşmadaki Yeri, 1700–1800," "Türk Kültür Sistemi İçinde Vakfın Yeri"). It is important to note that this entire system of beneficence was not a centralized or state-driven practice. It was a gift-giving practice that combined Islamic philosophy with civic engagement: thus it can be appropriately called a civic gift-giving practice that should be distinguished from philanthropy and charity (Isin and Lefebvre). It is this aspect of civic gift giving that would prove crucial for non-Muslim millets to negotiate their differences within the Ottoman imperial legal and political culture. Founding a waqf meant endowing privately held property for civic use in perpetuity for functions that are set out in its founding deed or charter (*vakfiye*) and according to

the conditions specified therein. The waqf deed also set out the way in which the waqf property would be administered and maintained. The charter was registered and authenticated by a local judge (*kadı*) and did not require further approval. The principles underlying the waqf were then civism, perpetuity, autonomy, and beneficence. Among awqaf founders were prominent sultans, sultanas, and pashas, as well as much less prominent members of the Ottoman governing, religious, and merchant groups. More significantly, there were notable numbers of women and non-Muslim waqf founders, which needs to be investigated in terms of rights and duties.

This paper outlines some thoughts on the role awqaf played as beneficence institutions enabling millet subjects to govern themselves, their relations between themselves and Ottoman imperial authorities, and other Muslim and non-Muslim subjects. The subject is vast but this essay aims to provide not only a glimpse of how various groups negotiated otherness and difference but also insights into the rise of modern reformism and nationalism that displaced governing through millets and awqaf. Thus, the paper is part of a broader investigation on "oriental citizenship," which interprets various social and political practices as citizenship (understood as a generalized otherness that enables negotiations of recognition, difference, and identity). I am investigating if, and to what extent, founding awqaf as gift-giving acts can be considered as "acts of citizenship" in Ottoman Empire in its classical age with a focus in Istanbul (Isin, *Being Political;* Isin, "Citizenship After Orientalism"; Isin and Lefebvre). I argue that Ottoman and Istanbul awqaf as institutions of negotiating differences and providing social institutions in the context of awqaf in Delhi, Cairo, Tehran, and Beirut can provide significant comparative insights on how groups both share and contest spaces to negotiate their difference in "cosmopolitan" contexts.

THE CLASSICAL AGE AND THE NON-MUSLIM AWQAF

There is a limited but slowly growing literature on how the non-Muslim awqaf instituted relations of obligations between non-Muslim subjects and imperial authorities (Güneri; Öztürk, *Türk Yenileşme Tarihi Çerçevesinde Vakıf Müessesesi;* Öztürk, *Azınlık Vakıfları*; Soykan 123–7; Stefanov). This literature has increasingly challenged views that often depicted non-Muslim awqaf as relatively stagnant and insignificant aspects of the Ottoman Empire. I will first discuss this literature briefly and then discuss more recent works by Eugenia Kermeli, Colin Imber, and Ron Shaham, which have further deepened and complicated our picture of the relationship between awqaf and millets. They begin to provide us useful insights as to how non-Muslim awqaf were implicated in the negotiation of otherness.

Millets and Awqaf

It is now widely accepted that, like the Muslim subjects of the Empire, non-Muslims were indeed allowed to stipulate the income of trust to their descendents in perpetuity (*waqf hürri*). More important, they were also eligible to found endowments with a distinct religious and public or civic nature (*waqf hayri)*. However, there were also certain regulations and restrictions on the establishment of non-Muslim awqaf. For example, non-Muslims were not permitted to establish an endowment and trust for the renovation or establishment of synagogues and churches. Nor can non-Muslim awqaf be founded for the print or distribution of Bible or the Old Testament. Non-Muslims were allowed to found awqaf for churches and synagogues but they were not permitted to register their donations in the name of these religious institutions. In addition, they were not allowed to directly donate endowments and found awqaf for the church or synagogue personnel (e.g., monks or rabbis). But the endowments were permissible as long as beneficiaries were "poor and needy" and these establishments were used to serve "beneficial functions." Just how and for whom a waqf function would be deemed beneficial was obviously contested but a waqf served mostly civic or public purposes. If church and synagogue authorities fulfilled these expectations and convinced authorities, they were eligible to establish these trusts or endowments. It is not surprising then that the use and allocation of sources devoted to churches and synagogues were often contested. Kenanoğlu argues that during the reign of Selim II (1566–1574), some monks attempted to get the approval of Şeyhulislam about the use of monastic or church awqaf. (Şeyhulislam was the highest-ranking member of the Ottoman *ulema* with juridical authority to issue fetwa.) Kenanoğlu documents that Şeyhulislam sent a *fetwa* to *Divan* and decreed that non-Muslim beneficence to *miri* (public) lands, vineyards, mills, gardens, houses, and cattle to churches is illegal and invalid (Kenanoğlu 271). This shows that these negotiations were played out on the Islamic legal field and must have challenged successive interpretations of imperial authorities. On the other hand, Kenanoğlu also contends that after the reign of Selim II, the Ottoman authorities were not that strict and they did not intervene in the allocation of waqf resources to churches or synagogues. The very idea that serving the poor and needy through awqaf would surely open up possibilities for establishing further rights as awqaf themselves, once founded, were relatively autonomous and autocephalous. Moreover, much like medieval European guilds, corporations, and cities, awqaf foundations such as orphanages, synagogues, churches, schools, and hospitals of non-Muslims groups were considered as juristic personas (Güneri 88–89). These possibilities enable us to establish some theoretical and empirical connections among awqaf, beneficence, and difference.

Awqaf and "Other" Subjects

There is limited but significant literature on the status of awqaf properties in conquered territories. Eugenia Kermeli demonstrates that monastic and church awqaf were already common institutions in the Balkans before the Ottoman conquest of these territories. Kermeli argues that the status of the properties owned by monastic groups was always a subject of controversy and negotiation between monasteries and the regional and central authorities. He also points out the scholarly literature is divided over how to interpret the struggles concerning these awqaf (Akgündüz; Fotić; Van Leeuwen). After outlining how these authors approach the status of monastic awqaf, Kermeli brings up the case of the monks of Mount Athos and Ebū's Su'ūd's (one of the mort important Şeyhulislams who served between 1548 and 1576) response to this event. For Kermeli, Ebū's Su'ūd's fetwa decreed to deal with that case calls into question some widely held assumptions about awqaf and religious groups. Kermeli argues that Ebū's Su'ūd was concerned with control of the misappropriation of land and its revenues. Since, according to the prescriptions of Hanefi jurisprudence, monastic awqaf were not permitted in Islamic law and they did not fall into the category of waqf *hayri,* these monasteries became the target of Ebū's Su'ūd's consolidation and confiscation attempts. As a result, Ebū's Su'ūd ordered (1568–1569) the confiscation of church awqaf in the Balkans (Kermeli 144–45). So far this sounds like a simple case of Ottoman jurists applying the letter of Islamic law. However, Ebū's Su'ūd, faced with the threat that the monks would evacuate monasteries in Mount Athos unless their demands were met, eventually produced a divergent interpretation of Hanefi jurisprudence on awqaf. Kermeli contends that Ebū's Su'ūd found a compromise solution that was acceptable to both sides. He defined them differently and categorized them as family waqf, treating the monks of a monastery as the offspring of the deceased monks. However, as Kermeli contends, Ebū's Su'ūd was aware of the pitfalls of this creative legal interpretation, and so hurriedly issued a fetwa restricting similar demands from other monasteries.

As a result, Kermeli rejects the argument that all monastic and church awqaf in the empire operated on the basis of an inflexible legal principle. On the contrary, he argues that the principle was much more flexible and responsive to the call of various groups and always allowed for negotiation. Therefore, he proposes further research on awqaf from different regions of the empire to have a broader and comprehensive view on the institution of waqf. Admittedly, it is very difficult to render broader judgment concerning the ways in which awqaf enabled "minorities" to negotiate their difference; however, it illustrates a possible research approach on awqaf, beneficence, and difference.

As illustrated by Ron Shaham, Christian and Jewish awqaf in Palestine, mainly in the towns of Jaffa and Nazareth, seem to exemplify this pattern. His investigation provides a detailed account of the nature of the founders,

types of property involved, methods of administration as well as beneficiaries of the waqf, and determination of their gradual order. Shaham reveals that in some awqaf in Jaffa the *qadis* permitted exclusive endowments for the benefit of the monks and how these cases were negotiated (Shaham 462). He illustrates that Christians and Jews established awqaf not only because of legal and administrative compulsion, but also because of the practical advantages offered by these institutions. It is fairly straightforward to imagine that these practical advantages would involve the types of social services provided by awqaf as we have seen earlier.

Awqaf, Beneficence, Difference

When we recognize that "other" subjects not only were able to found awqaf but also were beneficiaries of services provided by them, a complex picture begins to emerge where awqaf as beneficence can be seen as a mediating institution of difference. A discussion of the everyday in Istanbul would shed some light on this concept (Ahmet; Bey; Işın). It is well known that while non-Muslim subjects in the empire were recognized with certain entitlements and rights, they were also differentiated. These forms of differentiation changed over time and were complex, ranging from vestiary and sumptuary to spatial regulation. To put it differently, Muslim and non-Muslim subjects of the empire have constituted each other via a whole gamut of orientations, ranging from strangers to outsiders to eventually involving alienation from each other resulting in violence. As strangers, non-Muslim subjects were differentiated via various sumptuary and vestiary regulations that stipulated dress, manners, and conduct in the everyday. Being on awqaf properties such as libraries, markets, or inns or benefiting from awqaf services such as fountains, soup kitchens, or hospitals, Muslim and non-Muslim subjects would easily recognize each other as strangers. In fact, throughout centuries sumptuary and vestiary regulation always attempted that that should be the case (Kenanoğlu 342–54). While these regulations were never consistent or intense, they nevertheless attempted to ensure that, for example, Muslim subjects were easily identifiable by their attire, whether by reserving certain colors for them or designating other colors for Jewish or Armenian subjects (Eryılmaz 54–55). More important, these regulations were also incorporated into social norms and were recognized as expected forms of conduct by both Muslims and non-Muslims (Eryılmaz 55–56).

There were also spatial regulations restricting settlement and movement of non-Muslim subjects in the city (Kenanoğlu 317–29). While these regulations never reached the level of stipulating virtual incarceration as in Jewish ghettos in medieval and early modern European cities, nonetheless there were ongoing problematizations of proximity of judges, for example, to synagogues and churches and proximity of non-Muslim subjects to mosques and masjids. These ongoing problematizations of proximity of

Muslim and non-Muslim subjects to each other were certainly consistent enough to would give each a sense of the strangeness of the other.

It is then possible to argue that difference was no stranger to Ottoman subjects. They well knew the difference between Ottoman, Jewish, Armenian, Christian (Orthodox or Catholic) subjects. Given these differences articulated in law and norms, I would suggest that awqaf properties and services might well be interpreted as mediating institutions of recognition and difference. Being able to found awqaf certainly enabled non-Muslim subjects to enact certain rights such as the freedom of conscience and religion that otherwise would have remained as abstract rights and freedoms. Similarly, being able to found awqaf, non-Muslim subjects were able to negotiate their difference via enduring rather than ephemeral institutions. It is important to recognize that non-Muslim subjects were founding awqaf understood as Islamic endowments and thus were negotiating their difference under the term of Islamic law in general and its interpretations under Ottoman government (Isin and Lefebvre). Moreover, as beneficiaries of awqaf properties and services, non-Muslim subjects were able to constitute themselves by benefiting from properties and services that were understood to be within Islamic and Ottoman law, and enacting their group rights and obligations through them. Their "difference" was neither given nor immutable but constituted through awqaf properties and services as both founders and beneficiaries.

All this is not offered as evidence of Ottoman "tolerance" or Ottoman "multiculturalism" (Gawrych). That would not only be an anachronism but also outright orientalism. Yet, when compared with how non-Muslim subjects begin to appear under universalizing attempts to construct an Ottoman identity during the nineteenth century and later during the collapse of that identity and the birth of nationalism in the late nineteenth and early twentieth centuries, one must recognize that indeed awqaf provided an integrative and accommodating, if not mediating, institution to recognize and negotiate the difference between Muslim and non-Muslim subjects such as Jews and Christians of the empire. The ethic that undergirded awqaf and other subjects can be called Ottoman cosmopolitanism not because Ottoman awqaf were symbols of liberal tolerance or because Ottoman awqaf bred pluralism or multiculturalism but because the Ottoman awqaf enabled the constitutive social groups to negotiate differences without succumbing to grand narratives of nation and nationalism. I shall return to the theme of "Ottoman cosmopolitanism" later but for now we need to attend to the emergence of the question of minorities and the rethinking of awqaf properties during modernization reforms of the empire in the nineteenth century.

NON-MUSLIM AWQAF AND *TANZIMAT*

It is important to focus on how Ottoman awqaf were approached during the modernization period in the nineteenth century when the grand

narratives of nations and nationalism became gradually dominant. Nazif Öztürk (*Türk Yenileşme Tarihi Çerçevesinde Vakıf Müessesesi*) and Hasan Güneri have provided a glimpse of how *Tanzimat* reforms brought about important changes as to how the Ottoman authorities dealt with the non-Muslim awqaf and non-Muslim subjects.

As part of this broad transformation, reforms reconfigured the status of non-Muslim groups and their institutions including non-Muslim awqaf. As we have seen earlier, according to a widely accepted understanding in the millets in the empire, before the *Tanzimat* the Ottoman authorities governed the monotheist non-Muslim subjects of the empire, known as *dhimmis,* by recognizing their communal religious leaders (autocephaly) and ecclesiastical personnel as well as their relative judicial and fiscal autonomy. Thus, protected by the Ottoman authorities, these non-Muslim subjects were subject to poll taxes as their obligation. The Greeks, the Armenians, and the Jews were the main constitutive groups of the structure of millets. Throughout the *Tanzimat,* Ottoman authorities proposed a new conception of universal citizenship—Ottomanism—and attempted to transform the previous practices and principles, which organized the relations between Muslims and non-Muslim groups and their relations with the governing authorities. The Ottoman authorities introduced this principle in *Gülhane Hatt-ı Hümayun* in 1839 and took a step toward abandoning the principle based on what was then being perceived as "fragmentation" of religious groups and adopting the principle of universal Ottoman citizenship. In this conception, regardless of their religion, the subjects of the empire were considered all equal. In addition, it legalized the recruitment of non-Muslims in government services and their enrollment in both military and civilian state schools. These proclamations were reaffirmed in the Imperial Reform Edict of 1856 (*Islahat Fermanı*) and the constitution of 1876. The non-Muslims of the empire "were accorded the right to be represented in local and regional parliaments as well as in important state institutions such as the Council of State (Şura-yı Devlet), which served useful functions in legislative matters" (Aral). Simultaneously, the Ottoman authorities attempted to reform the institutions and regulate the practices of non-Muslim groups. To that end, they issued several legislative documents to restructure religious institutions of the Armenians, the Jews, and the Greeks (Eryılmaz 138–39). While maintaining the hitherto communal autonomy and rights in organizing civil and family affairs, new regulations limited the authority of the chief religious leaders and enabled members of newly found *cismani* (nonreligious) councils to become important actors within their groups. With this restructuring, the members of *cismani* committees became participants in decision-making processes regarding judicial and administrative affairs relating to their groups. More important, as part of the centralization of the state and its bureaucracy, the Ottoman authorities incorporated the non-Muslim awqaf into the *Evkaf-ı Hümayun Nezareti* along with the Muslim awqaf. As a result, the judiciary, the

Ministry of Awqaf, and *Mezahip Nezareti* (Ministry of Sects) were put in charge of administering and controlling awqaf properties and services (Öztürk, *Türk Yenileşme Tarihi Çerçevesinde Vakıf Müessesesi*).

While the Ottoman authorities were undertaking these modernizing and centralizing reforms and endorsing the principle of universal Ottoman citizenship, the hegemonic states declared themselves as the guardians of the non-Muslim groups in the empire and non-Muslim groups as their "subjects." The hegemonic states intervened with the Ottoman affairs of the state and played a crucial role in the reforms concerning non-Muslim subjects in the empire. The hegemonic states—such as Russia, France, Britain, and the United States—problematized the social and political status of Ottoman non-Muslim groups in the empire as well as their "own" citizens residing in the empire. This is, at least, as old as the *Treaty of Küçük Kaynarca* of 1774 signed between Russia and the Ottoman Empire. With this treaty, the Russian authorities' intervention in the name of protecting the Orthodox Christian groups in the empire became legalized (Eryılmaz 96). This process gained momentum in the nineteenth century and after the empire signed the *Paris Peace Treaty* with the hegemonic states in 1856, each state imposed a reform program to benefit the empire's non-Muslim subjects. Despite the effort of the *Tanzimat* reforms to unite the Muslim and non-Muslim subjects under the rubric of Ottoman citizenship, the social, political, and legal status of the non-Muslims constituted a point of controversy between the Ottoman authorities and the foreign states. While the Ottoman authorities were attempting to create the image of universal Ottoman citizenship, the hegemonic states constantly put forward the status of non-Muslim subjects to the fore. By emphasizing their differences and distinct status among the subjects of the empire, the hegemonic states demanded extended privileges and special rights for the non-Muslim subjects. These events occurred at a time when the hegemonic states themselves were inventing and dealing with the problem of minorities in their own nation-states. During the eighteenth and the nineteenth centuries, the creation of homogeneous populations became a major, if not the primary, concern of the European nation-states. Undertaking these homogenization strategies, European states constituted certain groups as "minorities" and dealt with them through alienating strategies and technologies. Therefore, in order to understand how the Ottoman authorities oriented toward non-Muslim groups in the nineteenth century, we should acknowledge the link between the invention of the question of minorities in hegemonic nation-states and the concern for the status non-Muslim groups in the empire. The Ottoman authorities did not officially recognize the minority status of the non-Muslim subjects in the way the concept was constructed within the dominant European discourse of the nation. Nonetheless, the Ottoman authorities found themselves forced to engage with the dominant European orientation toward "minorities."

Through the modernization and centralization of the institutions in the empire, the situation of non-Muslims and the demands and policies

of the hegemonic states posed difficulties for Ottoman authorities to accomplish reform projects. According to Öztürk (*Türk Yenileşme Tarihi Çerçevesinde Vakıf Müessesesi; Azınlık Vakıfları*), non-Muslim awqaf posed an important problem to the reform and centralization agenda of the Ottoman authorities. Öztürk contends that non-Muslim awqaf played a crucial role in the emergence of this problem. Öztürk argues that it was the *Islahat Fermanı* that allowed the European citizens to invest in real estate and the Ottoman authorities legalized these transactions in 1867 (*Türk Yenileşme Tarihi Çerçevesinde Vakıf Müessesesi* 319–21). For Öztürk, following the legislation of this law, many non-Muslim citizens of the hegemonic states invested in a considerable amount of real estate in the empire. These lands and properties were registered under either their names or the name of their relatives. Yet in other occasions, the Ottoman non-Muslims became citizens of hegemonic states in order to benefit from these privileges. To that end, Ottoman authorities enacted another law in 1869 to prevent the non-Muslims from changing their citizenship illegally. According to Öztürk, despite the legislative attempts of the Ottoman authorities to control the ways in which non-Muslims invested in real estate, the ministry of awqaf and other institutions fell short of controlling and regulating these processes outlined above (*Türk Yenileşme Tarihi Çerçevesinde Vakıf Müessesesi*).

Moreover, Öztürk (*Türk Yenileşme Tarihi Çerçevesinde Vakıf Müessesesi; Azınlık Vakıfları*) argues, missionary activities of the hegemonic states were influential in determining the structure of non-Muslim awqaf especially in the second half of the nineteenth century. Under the protection of the hegemonic states, especially France and the United States, non-Muslim groups and missionaries established a considerable number of social institutions. Schools, temples, hospitals, and churches were built to improve the situations of non-Muslims in various regions of the empire. Again, the Ottoman authorities were unable to control and monitor these institutions and activities. For Öztürk (*Türk Yenileşme Tarihi Çerçevesinde Vakıf Müessesesi* 328), in some cases, although there was no necessity to found a waqf, the Ottoman state nonetheless issued licenses to these buildings due to the intervention of the hegemonic states. In other cases, he argues, non-Muslims established churches, schools as well as factories without attaining license. Thus, Öztürk points out how non-Muslim groups contributed to the usurpation of awqaf properties near the buildings of religious, medical, and social institutions (*Türk Yenileşme Tarihi Çerçevesinde Vakıf Müessesesi* 329).

In 1912, the Ottoman state forbade the citizens of the hegemonic states to attain real estate in the empire under juristic personas. Only Ottoman citizens were allowed to establish a juristic persona and to invest in real estate. At the same time these regulations allowed non-Muslim groups to register the social, religious, and pious foundations under the name of communal juristic personas. As we have seen, awqaf founda-

tions such as orphanages, synagogues, churches, schools, and hospitals of non-Muslims groups were considered as juristic personas (Güneri 88–89). The creation of juristic personas under the names of non-Muslim groups indicates that Ottoman authorities oriented toward these groups by applying modern legal codes and principles, which always questioned any group existence between the state and individual. In other words, this should be seen as continuation of modernization efforts of the Ottoman authorities.

After the Lausanne Treaty, signed in 1923 between the Turkish Republic and the Allied Forces, the Turkish nation-state—as the successor of the Ottoman Empire—recognized the minority status of the Greeks, the Armenians, and the Jews. This treaty approved the maintenance of the rights granted to the non-Muslim awqaf up until the Lausanne Treaty (Öztürk, *Azınlık Vakıfları* 132). In the following years, the republican state invited a Swedish expert, Hans Leeman, to join the committee preparing the Awqaf Law. The committee was organized in order to examine the situation of minority awqaf founded before 1926 and their compatibility with the new civil law of the Turkish republican state. According to Güneri (98–99), Hans Leeman prepared a report in 1929 and recommended the transfer of minority awqaf properties and institutions to the state along with those Muslim awqaf. However, rather than following the recommendation of Leeman and confiscating minority waqf properties and institutions, the Turkish parliament recognized the special status of minority awqaf with the new waqf law of 1936. The law charged the trustees and elected commissions with the administration of awqaf and thus the minority awqaf were incorporated into the state structure (Güneri 98–99).

In conclusion, from the first half of the nineteenth century, the Ottoman state authorities aimed to centralize and control awqaf institutions as part of broader transformation of the empire. Through these initiatives non-Muslim awqaf became the object of regulation for the reform movements. The authorities aimed to take them under the control of the Ministry of Awqaf. However, the Ottoman authorities had difficulties accomplishing this task. According to Öztürk, until the law of 1912, both the citizens of the hegemonic states as well as the Ottoman non-Muslims enjoyed the protection and privileges, and captured a considerable amount of waqf property and land in illegal ways. For the state authorities the waqf question was entangled with the question of the status of non-Muslim groups in the empire. Whether established by missionaries or built by non-Muslims groups, many awqaf went beyond the control of the state authorities. Seen in these terms, this question retained its relevance until the Turkish Republic—the successor of the Ottoman Empire—succeeded in completely controlling and incorporating non-Muslim awqaf into the new waqf legal structure, which emerged between 1929 and 1936.

ORIENTALISM, COLONIALISM, AND LEGAL HISTORY: THE ATTACK ON MUSLIM FAMILY ENDOWMENTS IN ALGERIA AND INDIA

It is instructive how non-Muslim awqaf became an object of regulation for the reform movements in the empire. Along with Muslim awqaf, non-Muslim awqaf were deemed as archaic structures in need of centralized control. Attempting to institute the society with the principles and discourses of modernization, the state authorities in the Ottoman Empire and the Turkish Republic targeted awqaf. As we have seen, as part of broader transformations, the non-Muslim awqaf became also a problem. We are told that under the protection of hegemonic states, non-Muslim subjects of the empire started to misuse these institutions and the state authorities. Depicted in this way, the incorporation and transformation of these institutions seemed inescapable. What is also at stake here is that the non-Muslim awqaf were situated in the constitution and problematization of otherness. As we have seen, the creation of minority groups and protected religious groups ran parallel to the problematization of non-Muslim awqaf. In other words, non-Muslim awqaf were implicated in the process of production of subjectivities such as legal and illegal, majority and minority, Muslim and Non-Muslim.

The case of Muslim awqaf investigated by David Powers and Alisa-Rubin Peled in colonial Algeria and India is useful for purposes of comparison. The colonization of Algeria and India created important conflicts between the colonized groups and the colonial authorities. Once the modern state and legal discourses diffused and attempted to transform premodern institutions, Muslim awqaf and practices became a problem. Although Algerian, Indian, and Ottoman experiences were different, similarities can also be drawn among them. While Ottoman state authorities adopted these modernization discourses and practices, in Algerian and Indian experiences it occurred through imposition and invasion. However, juxtaposition of these three trajectories and historical parallels may well yield important insights on how modern legal and state discourse came to perceive these nonmodern institutions and practices and legitimized their dismantling. Quoting Barnes, Powers and Peled state that "at the beginning of the nineteenth century, from one half to two-thirds of the landed property in the Ottoman Empire had reportedly been sequestered as endowment land" (XXX).

In Algeria, beginning in 1844, French property law began to replace Muslim laws controlling ownership of land. By 1873, the only area of Islamic law that remained under the control of Muslim judges was that of personal status—that is, marriage, divorce, and inheritance. Powers and Peled argue that Muslim religious endowments were a stubborn obstacle to the colonizers because these properties were inalienable in perpetuity according to the Islamic laws (540). The colonial government sought to mitigate the effects of this institution through a series of legislative enactments intended to bring all transactions and litigations involving land, including *habous* land

(land of family endowments), under the aegis of French civil law. According to Powers and Peled, due to the disagreement of French jurists on interpretations of these Muslim family waqf, these attempts became unsuccessful. However, as Powers and Peled contend, in the interest of colonial land policy, French orientalists invented a threefold interpretation of the institution according to which (1) public endowments were historically prior to family endowments; (2) family endowments were, from an Islamic perspective, an illegal and unethical means of circumventing the Koranic inheritance laws; and (3) family endowments and inheritance were mutually exclusive and incompatible (554). For Powers and Peled, orientalist discourses became dominant by the first decade of the twentieth century and displaced previous interpretations. Moreover, with this discursive shift, the structure of family awqaf in Algeria began a decline.

Powers and Peled argue that in British India, the government was in theory indifferent to family endowments, so long as land was productive and Muslims paid their taxes (563). However, eventually they became the subject of litigation in the imperial courts. They contend that British, Muslim, and Hindu magistrates, who were largely ignorant of Islamic law, undermined the status of Muslim family waqf as "charitable or religious" (563). As a result, between 1879 and 1893 the High Courts of India passed decisions that invalidated any endowment with the benefit of the founder and his family. As Powers argues, the British Indian experience takes a different path when Muslim political associations campaigned against policies nullifying family endowments. They had a considerable achievement in 1911 when Jinnah introduced the Muslim Awqaf Validating Act eliminating the ground on which the High Courts and Privy Council had refused to recognize family endowments as charitable and religious (Powers and Peled 561).

When we compare and contrast these three experiences—the Ottoman, Algerian, and Indian—we see similar effects of centralization and modernization on awqaf properties and services. Whether family or communal awqaf, we have enough evidence that in all three experiences the charitable and religious status of awqaf were questioned, contested, and negotiated. Modern legal and state discourses depicted them as archaic, uncontrollable, and unreasonable and interpreted them as threats to the state and its sovereignty. If we expand this comparative context, we can also argue that the attack on medieval European intermediate groups such as cities, guilds, and corporations that were able to negotiate rights to mediate differences was quite similar to the modern attacks on the waqf (Frug; Gierke; Isin, *Cities Without Citizens*).

CONCLUSION: ORIENTAL CITIZENSHIP

Modernity has instituted itself as progress in our imagination and our practices. The state with its twin principles of sovereignty and unity has

become the bearer of that modernity. Modernization appears an inevitable and inexorable march toward progress guided by the state and its centralizing drives. As regards Ottoman awqaf I have attempted to illustrate some of the results of these drives. For centuries Ottoman awqaf had served as a mediating institution between and among various constituent Ottoman social and religious groups that enabled recognition and negotiation of difference via political strategies and technologies. In other words, the ways in which awqaf were utilized by millets to govern relationships of authority within these groups, between them and other millets and between imperial authorities indicate that awqaf provided grounds for negotiating and instituting group rights. That regime can be called "oriental citizenship." It had all the elements of citizenship understood as institutions of negotiating difference. That regime can also be broadly called "Ottoman cosmopolitanism" without reducing it to a romantic notion of "multiculturalism" or a proto-liberal regime of pluralism and tolerance (Armağan; Zubaida, "Middle Eastern Experiences of Cosmopolitanism"). I use "cosmopolitanism" here to describe an ethic toward the other that recognizes ecumenical or civilizational difference while engaging in negotiation, articulation, and affinity rather than assimilation, alienation, and absolute differentiation. In that sense, while Ottoman cosmopolitanism may not have been an explicitly articulated ethic, it was built into and embodied in various practices and institutions that made up the so-called millet system that responded to the need to recognize ecumenical religious differences: Islamic, Jewish, and Christian. Among these institutions the significance of Ottoman awqaf cannot be overestimated as both a citizenship institution (because it enabled negotiation of difference) and cosmopolitan (because it enabled negotiation of differences that were civilizational, ecumenical, and denominational). The Ottoman awqaf were also civic institutions. While some awqaf properties could be located in the countryside or just simply outside cities, they would still be related to properties located in cities. Moreover, and more important, the awqaf were by function and operation civic properties. As I have argued, they were built for civic functions such as public baths, fountains, and inns and they operated as civic properties involving the formation of civic identities by those who were either users or providers. As a gift-giving institution that was both cosmopolitan and civic, Ottoman waqf can and must be considered an "oriental citizenship" institution that was deeper and more inclusive than its modern version constituted as universal legal status.

As civic and cosmopolitan gift giving practices, Ottoman awqaf enabled various Ottoman subjects to institute their own practices of solidarity and sociability and negotiate their belonging to wider Ottoman government as citizens. That such recognition existed and that the terms of belonging were negotiated does not mean either harmony or absence of conflict. There were often conflicts but these conflicts found means for

mediation in and through awqaf. Nor does it mean that such recognition and negotiation were open and available to *all* Ottoman social groups. The fact that the ecumenical religions of the book also constituted the main Ottoman social groups raises the question how other subjects were unable to constitute themselves as social groups and the attendant difficulties this may have created for them. As well, whether the difficulty to constitute themselves through the millet system meant a parallel absence in Ottoman awqaf is another issue. These matters await investigation, and the role of Ottoman awqaf as civic gift practices in negotiating difference and identity needs further research.

Yet, it can be argued that modernization of awqaf involved their centralization within the incipient Ottoman and then Turkish state and their removal from the institutions and practices of negotiating difference, identity, and belonging. To put it differently, without lapsing into a romantic image of Ottoman multiculturalism, it is possible to document awqaf as beneficence institutions enabling the negotiation of group rights within Ottoman law as Ottoman cosmopolitanism and their eventual destruction by the modern state. Modern law, being built upon the principle of sovereignty (indivisibility of power, unity of authority, and universality of status) made it impossible to negotiate group rights and thus made it impossible to find a workable system of "living together" of various Ottoman social groups that provided an autocephalous and autonomous order. Both modernization and centralization of awqaf illustrate this drama of the integration of Ottoman law and order in a rather poignant manner. All those properties and services that were endowed as awqaf throughout the empire were gradually squandered and dilapidated once the logic of waqf that sustained the negotiation of difference was displaced by the logic of the state and its inheritor, the nation.

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