

Intellectual Discourse

Volume 26

Special Issue

2018



International Islamic University Malaysia
<http://journals.iium.edu.my/intdiscourse/index.php/islam>

CONTENTS

Guest Editor's Note

Arshad Islām 983

Articles

Al-Waqf 'Ala Al-'Awlād A Case of Colonial
Intervention in India
I.A. Zilli 989

Transregional Comparison of the Waqf and
Similar Donations in Human History
Miura Toru 1007

Role of Women in the Creation and Management
of Awqāf: A Historical Perspective
Abdul Azim Islahi 1025

Turkish Waqf After the 2004 Aceh Tsunami
Alaeddin Tekin and Arshad Islam 1047

Maqasid Sharia and Waqf: their Effect on Waqf
Law and Economy.
Mohammad Tahir Sabit 1065

Brief on Waqf, its Substitution (Al-Istibdāl) and
Maqāsid al-Sharī'ah
*Mohammed Farid Ali al-Fijawi , Maulana Akbar
Shah @ U Tun Aung, and Alizaman D. Gamon* 1093

Exploring the Dynamism of the Waqf Institution
in Islam: A Critical Analysis of Cash Waqf
Implementation in Malaysia
Amilah Awang Abd Rahman and Abdul Bari Awang 1109

Historical Development of Waqf Governance
in Bangladesh
Thowhidul Islam 1129

The Chronicle of Waqf and Inception of Mosques in Malabar: A Study Based on the Qiṣṣat Manuscript <i>Abbas Pannakal</i>	1167
The Role of Waqf Properties in the Development of the Islamic Institutions in the Philippines: Issues and Challenges <i>Ali Zaman</i>	1191
The Foundations of Waqf Institutions: A Historical Perspective <i>Irfan Ahmed Shaikh</i>	1213
A Comparative Study of Governance of Waqf Institutions in India and Malaysia <i>Anwar Aziz and Jawwad Ali</i>	1229
The Significant Contribution of Caliphs in the Efflorescence of Muslim Librarianship: A Historical Account <i>Rahmah Bt Ahmad H. Osman and Mawloud Mohadi</i>	1247

Transregional Comparison of the Waqf and Similar Donations in Human History¹

MIURA Toru*

Abstract: We find commonalities between kishin donation in medieval Japan and Islāmic waqf; All the land belonged to the state and the usufruct and the gain were transferred in the form of donation, and transacted in the form of sale and lease, while the donation could not in principle be cancelled. As similar donations to share profit were in Christian Europe and we should analyse donation as a universal system to solve the dilemma between economy and religion, and private and societal interests.

Keywords: kishin, Islāmic waqf, Christian Europe, Japan, China

Abstrak: Kajian ini telah menjumpai persamaan diantara kishin, derma semasa Zaman Pertengahan Jepun dan Waqf, derma orang Islām. Tanah-tanah yang menjadi milik negara serta usufruk dan keuntungan dipindahkan dalam bentuk derma atau diurusniaga secara penjualan dan pajakan. Terdapat juga persamaan sumbangan derma yang diterima dan keuntungan kongsi seperti pada Zaman Eropah Kristian. Walaubagaimanapun, kajian ini akan menganalisis derma sebagai sistem universal untuk menyelesaikan dilema yang boleh memberi kesan kepada ekonomi, agama, kepentingan peribadi dan masyarakat.

Kata Kunci: kishin, Waqf Islām, Eropah Kristian, Jepun, China

1. Urban Development and the Waqf

My interest in the waqf started 30 years ago in a study of the history of a suburban quarter called al-Şālihiyya in Damascus from its beginning in the twelfth century down to the twentieth century, for I knew that waqf institutions and properties were a key factor not only for the

¹ This is a revised version of my recent paper [Miura 2018].

* Research Fellow of the Toyo Bunko, Professor at Ochanomizu University, Tokyo. miura-t@pis.bekkoame.ne.jp

rapid development of this quarter but also its decline. This study was published in late 2015 as *Dynamism in the Urban Society of Damascus* [Miura 2015]. Here I will present features of the relationship between urban development and waqf donation from my study of Damascus and the Şālihiyya quarter, and then move on to a transregional comparative study of the waqf with similar traditions of the donation of immovable properties in human history.

The Şālihiyya quarter was newly founded by the immigration of the Hanbali ulama there in 1158–1159, and it developed rapidly in the Ayyubid period, accruing manifold supporters of religious institutions who belonged to different law schools and strata, as shown by a concentration on madrasa construction (20 madrasas, occupying 70% of the total number). In the mid-fourteenth century, the Şālihiyya quarter was regarded as a city (*madīna*) in itself, with its own Jami‘, the largest madrasa in Damascus (the ‘Umariyya Madrasa), and nine markets. By the end of the Mamluk period, it had 30 madrasas occupying about 20% of the total of Damascus as a whole. Such a concentration of religious institutions suggests the accumulation of a large number of waqf properties, especially rural, to provide financial support for the institutions and their ulama.

The Şālihiyya quarter began to decline from the latter half of the fifteenth century as a result of the decay of its religious institutions. The turning point was the opening of the ‘Umariyya Madrasa to all four law schools, owing to the financial crisis caused by its extension. Though the madrasa succeeded in obtaining new waqf properties from a broad stratum of supporters, ironically it was this that led to the embezzlement of waqf properties and the madrasa itself by the superintendent (*nāzīr*). Such embezzlement caused the decay of madrasas in Damascus, and half of its 152 madrasas had disappeared by the beginning of the twentieth century. The buildings of 18 madrasas still remain in the Şālihiyya quarter as mosques, private houses, or in some state of ruin.

While the formal purpose of waqf endowment was donation to religious institutions and for social welfare, its actual purpose was to gain, keep, and circulate the usufruct of the waqf properties under the shelter of Islāmic law. Its socio-economic role was to transfer the profits of rural and agricultural resources to the city, its religious institutions, and their beneficiaries. The ambiguous combination of this twin purpose, both religious and economic, is a key to the waqf system.

Religious and economic institutions are all constructed in a quadrilateral form, whether a mosque, a madrasa, a shop in the market, a caravanserai, or a private house. In other words, urban space is composed of quadrilateral blocks. The physical border (wall) of an architectural block also marks out the boundary of the rights associated with the block, which may be related to ownership or usufruct; an individual person can use any block, or any unit of a block, as the owner, lessee, or beneficiary. The physical form of a block corresponds to the unit of ownership or usufruct for its use. The act of waqf donation itself, as well as the use of waqf property, is done based on this kind of “block” as a unit (see Fig. 1). Any individual, whether a city or a rural dweller, could carry out economic activities by either owning or renting by contract the block, or a part of the block, where the facility was located. Urban space and the economic activities performed in it were organised through such flexible combinations of quadrilateral blocks. Therefore, a city or a quarter could grow rapidly by bringing religious and economic institutions together by means of the waqf, as did the Şālihiyya quarter. However, the wealthier waqf institutions became, the greater was the struggle for their benefice and interest. Therefore, waqf properties, as well as religious institutions, were easily usurped by embezzling them block by block, and this caused the religious institutions to decline and decay, especially in times of economic difficulty. As growth or decline of an institution depended on the management of its superintendent and on a qadi as waqf supervisor, urban space changed due to the personal networks operating in the city. In this sense, a city is not a place separated from the larger society, but a focal point of social networks [Miura 2015:293–295].

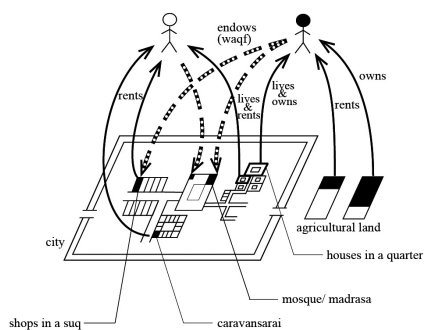


Figure 1: Combination of Religious and Economic Institutions by Waqf Endowment

2. Joint Research Program of the Waqf Endowments

The Toyo Bunko, a research library for Asian Studies in Tokyo, has, for seven years from 2011, been conducting a comparative study of waqf endowment, in collaboration with Le Centre National de la Recherche Scientifique (CNRS) Program, Groupements de Recherche Internationaux (GDRI) centred at Temps, Espaces, Langues, Europe Méridionale - Méditerranée (TELEMMé), Maison Méditerranéenne des Sciences de l'Homme (MMSH), Aix-Marseille Université, headed by Professor Randi Deguilhem, holding the following workshops in Aix-en-Provence, Tunis, Birzeit (Palestine), Mascara (Algeria), and others in order to extend our knowledge about the regional variety of waqf.

July 2012. Aix-en-Provence in France

December 2012. Tunis University in Tunisia, "Pour une formation en matière d'exploitation informatisée des documents waqf"

July 2013. Aix-en-Provence, "From Practice to Norm: Administering Waqf and Other Endowment Foundations"

October 2013. The Middle East Studies Association of North America (MESA) 47th annual meeting in New Orleans, "The Need to Compare: Going beyond the Area Studies Approach for 'Thinking Waqf'"

June 2014. Mascara University in Algeria, "Waqf and Its Terminology: Between Local Social Practices and Jurisprudential Norms"

August 2014. The World Congress for Middle Eastern Studies (WOCMES) 5th meeting in Ankara, "Diversity and Commonality in Theory and in Practice: Analysing Waqf and Other Endowment Models in the Islāmic World, Europe and Beyond"

October 2014. Birzeit University in Palestine, "Reading the History of Cities via Waqf Documents"

June 2015. Aix-en-Provence, "Leaving One's Trace in Society: Individuals and the Institutionalisation of Their Networks in Society via Their Waqf Foundations"

We held an international symposium entitled "Comparative Study of the Waqf from the East: Dynamism of Norm and Practices in Religious and Familial Donations" as the fourth international symposium of Inter-Asia

Research Networks at the Toyo Bunko in Tokyo on December 5–6, 2015 (jointly supported by the Scientific Grant-in-Aid program “International Joint Research of the Waqf” headed by Miura Toru). This symposium aimed to clarify the socio-economic role of waqf donation by cross-area comparisons among waqf, not only within the Middle East, but also across a wider regional scope to include Central Asia, South Asia, Southeast Asia, and similar endowments in China and Japan.

Our goal was to find and locate both regional features and historical changes of the waqf and similar donations within the sweep of human history, based on a common definition of the waqf (see below), by analysing historical materials of each region from comparative perspectives on topics such as purpose, management, profit and its distribution, transformation and abuse, etc., and searching for a dynamism of the waqf and similar donations and their potential in the contemporary world.

Definition of the waqf for comparison:

Irrevocable property donation to distribute the profit to the donor’s family or other beneficiaries as well as for a charitable/philanthropic purpose, by creating a management body independent of the donor and the state.

Viewpoints (list of questions):

- (1) Who are the donors? Rulers (nobles, the military elite, citizens, officials, intellectuals, notables), merchants and artisans, and the common people.
- (2) What is donated? Immovable property (land, buildings, etc.), movable property (food, clothes, etc.), cash, labor and service, immaterial rights.
- (3) Who receives the donation? Religious institutions (churches, monasteries, temples, shrines, convents, colleges, etc.), a higher authority/person, lineage, community and association, etc.
- (4) For what? Purpose and motive of donation: what return is expected?
- (5) Who owned the donated properties?

- (6) Who managed the donated properties and how were they managed? Appointment of superintendents, regulations for management, and account books.
- (7) For what was the income used?
- (8) Did the state tax the donated properties?
- (9) Deeds of donation: their content, authorisation, and preservation.
- (10) What kind of social relationship is organised by the donation?
Corporate body, personal network, etc.

Donation of properties has been prevalent in all regions throughout human history, but the redistribution of properties and wealth has been so far overlooked because both historical studies and economics focus mainly on the production and accumulation of wealth. The fundamental question is why one performs the paradoxical act of donation, giving one's own property to a third party.

The interest in the transregional and comparative study of waqf endowment has grown stronger, as epitomized by the following conferences held in 2016; First, Muslim Endowments in Asia: Waqf, Charity and Circulations, 19–20 October in Singapore organised by Asia Research Institute at National University of Singapore and secondly Waqf Workshop, 4–5 December at Georgetown University in Doha. Furthermore, Michael Borgolte organised a conference titled “Stiftungen in der Weltgeschichte (Foundations in World History)” on 9–10 February, 2017 at Humbolt University in Berlin. He edited *Enzyklopädie des Stiftungswesens in mittelalterlichen Gesellschaften* as a result of a five-year program, “Foundations in Medieval Societies: Cross-cultural Comparison” at the Humbolt University in Berlin [Borgolte 2016–2017]. In this encyclopedia, the features of donation in five religio-cultural regions (Latin-Christian, Muslim, Jewish, Greek-Orthodox Christian, and Indian) are described by historians studying each region, and concluding remarks titled “Intercultural Perspectives” are written by Borgolte in each volume in the following terms: definition; research trends; typology; periodisations; written sources; material sources; religious merit and temporal ambitions; commemoration and cult; charity and education; endowment and revenues; founders; social positions of the actors; gender; space; societal change; critique, reform

and liquidation; inventions, innovations and imitations in intercultural contract. Brill, a globally known publisher in the field of Asian Studies, began publishing a new journal, *Endowments Studies*, in 2017.

Here I would like to present a perspective of the transregional and comparative study of waqf and similar donations (religious and familial donations) in human history, through the comparison of the waqf with donations in pre-modern China and Japan.

I have presented a comparative model of religious donation in three regions: Western Europe, the Byzantine Empire, and the Islāmic Middle East in pre-modern times.¹ Paying attention to the relationship between the donor, the organisation receiving the donation, and the state over the donated properties, we can discern the following differences. In medieval Europe, the religious organisations (churches and monasteries) formed political and economic entities independent from the feudal state by managing the donated properties, while the Byzantine state supported and controlled the religious organisations which received the donation from members of secular society, by legitimating the organisations as judicial bodies and by means of taxation and tax-exemption. Waqf donation in the Islāmic Middle East was basically the personal act of an individual donating his/her private properties for the religious institution or a charitable purpose, as well as for donor's relatives. The superintendents appointed by the donor or the government managed the properties according to the waqf deed regulations. The state could not interfere in the management other than registering the donation at the sharia court and appointing the administrative staff of the institutions.

However, this model of distinct separation of the church and the state or the secular authorities in Europe is too simple, if we consider the “mortmain” in Western Europe in the early modern period, as Jean-Pierre Dedieu it discusses in his paper [Dedieu 2018]. The mortmain assets could not be sold and inherited, but their donor, administrator, and beneficiary, whether ecclesiastical or secular, gained the profit generated from them. They served religious, charitable, and familial purposes simultaneously. Due to this ambiguity, similar to the waqf, mortmain grew in early modern Spain.

¹ Presentation at the Thematic Conversation at the MESA 47th annual meeting in New Orleans in 2013.

3. Pre-modern China

There were three kinds of donation and management for immovable property in pre-modern China. The first was a form of donation called *yizhuang* 義莊, *yitian* 義田 or *zu tian* 族田, where a family (lineage) assigned the property to be jointly owned by the lineage and used for all its members. Such property could neither be inherited by any lineage member nor be transferred to others. The income from it had to be used for the lineage; regulations specified items such as the maintenance of the ancestral hall, the education of children, and the support of the poor. This type of donation began in the eleventh century (Song period) and grew down to the nineteenth century (Qing period). This lineage foundation was given exemption from, or a reduction in, tax. When the foundation became large and wealthy, financial crises occurred as the result, for example, of embezzlement of the income by superintendents and wasteful spending on the repair and enlargement of the ancestral hall [Kondō 1963]. Joseph McDermott describes and analyses the development of ancestral halls in villages in the Ming to the Qing periods (fourteenth to twentieth centuries) [McDermott 2018]. He calls them “trusts” or “banks” by stressing their financial function of investment and pawning.

The second kind was donation to Buddhist and Daoist religious institutions. Though Buddhism and Daoism were not as influential in the Ming and Qing periods as they had been earlier, temples existed for study, practice, and worship. Wealthy people donated their property to the temples, which spent the income from the land on the repair and maintenance of temples, and to provide for monks. The donors did not expect just the Buddha’s blessing, but also wanted to support and protect the local religious facilities where lineage members and neighbors would meet together. Donated properties were taxed in the Ming and Qing periods. By comparison, Confucianism was studied and taught in many kinds of colleges, but had no separate institutions for practice and worship [Chikusa 1983; Usui 2000].

Third, voluntary philanthropic associations (*shanhui* 善會) were organised by local notables in the cities of China from the end of the Ming period down to the Qing period (sixteenth to twentieth centuries). They founded charitable halls called *shantang* 善堂 and conducted many kinds of philanthropic activities such as raising abandoned children, distributing relief rice, providing free medical treatment, and building

public tombs. They were financially supported by donations from local notables and government officials, and owned immovable properties which were bought or donated. These properties gave the associations a great deal of rent income, which was spent on association activities. Members made the regulations themselves, appointed superintendents from among themselves, and provided annual reports of their activities and accounts. The annual reports were published and distributed both to members and the government, and submitted to the guardian god of the city to swear their veracity. The Qing state approved voluntary associations which owned immovable properties such as land and houses and gained rent income from them, and honored their activities. Association members, especially the superintendents serving without salary, participated in the activities, pursuing the ideal of Confucianism by relieving the poor and destitute, and hoping for blessings in return. A warning that an embezzler would be killed by a thunderbolt was written on the cover of one annual report. The people must have believed that reward and retribution would inevitably follow their good and evil activities. Their activities drew the attention of Europeans and Japanese who visited China; they recorded them and compared them to those in their home countries. The organisation and management of the associations-cum-halls can be regarded as the forerunner of corporate and public associations in pre-modern China [Fuma 1997].

The three kinds of donation were socio-economically interrelated and a feature of Chinese society. In brief (and perhaps to oversimplify), the basic social organisation was the lineage (*zongzu* 宗族), a group of descendants of a particular ancestor which was understood to exist eternally united by the same spirit. Though property was divided among the inheritors, according to Confucian ideas lineage members were obliged to cooperate and support each other in order to have their lineage prosper. To do so, they created a foundation among themselves by donation in order to support members; such an action was regarded as righteous (*yi* 義) conduct. On the other hand, donation to people outside the lineage might be regarded as improper, since this diminished lineage property. There had to be an ethical or religious reason to donate private property to society as a whole or to institutions outside the lineage. In Chinese society, charity, religion and the redistribution of wealth were not combined in a single institution, but were basically differentiated from one another.

4. Donation (*Kishin*) in Medieval Japan

4.1. Land Ownership in Ancient and Medieval Japan

Under the ancient Japanese state from the seventh century, all land belonged in principle to the state, which distributed agricultural land (rice fields) at a fixed rate to subjects who were obliged to pay tax to the state. This state ownership of land seems similar to that of the early Islāmic state in the Umayyad period, called the *faqh* in Islāmic law. The sale of agricultural land was prohibited except for newly cultivated land, for which a law of 743 (*konden einen shizaino hō* 墾田永年私財法) permitted permanent ownership. After this law was issued, the cultivation of privately-owned lands rapidly increased, and large Buddhist temples and Shinto shrines as well as prominent local leaders organised and managed large private estates called *shōen* 莊園, like the manor in medieval Europe. Such lands were donated to a superior authority in order to ratify the donor's right to the property, and to protect it and him from external interference. Such protection was provided by the military clans (*bushi* 武士) and the religious authorities in charge of large temples and shrines, and they received tribute (tax) from the land in reward for their protection. Both the military lords and the religious authorities held a large number of *shōen* as their economic foundation, and installed subordinate officials on them. During the medieval period, from the tenth to sixteenth centuries, they competed with each other to gain political authority.

4.2. Donation to Temples and Shrines

Buddhist regulations prohibited the clergy from earning money and owning private property, and so they depended on donations from lay people for food, clothes, cash, land, and building projects. The properties donated belonged eternally to the Buddha and the clergy who served him, and were controlled by the temples, which collected revenue from them or sold them to raise funds. Taxation by the secular authorities was rejected as intruding on the Buddha's domain, and the properties commended to religious institutions could not be returned to the secular donors and their families. There were three kinds of property domain: *butsumotsu* 仏物 (the Buddha's domain), *sōmotsu* 僧物 (the clergy's domain), and *jinmotsu* 人物 (the layman's domain), and this main division was strictly perceived. While these regulations were not perfectly observed in medieval society as a whole, they were influential

both within Buddhist society and among lay people [Nagamura 1994: 155–159; Kasamatsu 1979; 1984].

Wealthy persons such as court nobles and military leaders made donations to religious institutions. The purpose of the donor, which was written on the donation deeds, was to seek merit in this world and blessings in the next. For example, Ashikaga Takauji 足利尊氏, the first Shogun of the Muromachi period (in office 1338–1358) donated a *shōen* to Tsurugaoka 鶴岡 Shrine hoping for the peace of the whole world and continued success in war (*tenka anzen buun chōkyū* 天下安全武運長久). In 997, a local *shōen* lord, Tamate Norimitsu 玉手則光, donated his land to a court lady serving the wife of the Emperor hoping for her protection and for her to secure his tenure as fief holder which could be inherited by his descendants [*Tōji hyakugō monjo yo/84/10*]. The third example is that of a nun who donated a farm in 1243 for the expenses of votive lights at the temple of Tōdaiji 東大寺, hoping for relief from pain after death and rebirth in Paradise, for the salvation of her parents, and for welfare of the universe (*hōkai byōdō riyaku* 法界平等利益) [*Hyakkan hon Tōdaiji monjo* 15 (the year 1243)].

A huge number of donation deeds were written in medieval times and are still kept in temples and shrines in Japan, which suggests the importance and prevalence of donation in medieval Japan. The Japanese term for donation is *kishin* which means a present from a person of lower status to one of higher, with respect and veneration. However, such donations were not necessarily made just for religious reasons, but also for socio-political purposes. I will examine the relation of these twin purposes by focusing on donations to the temple Tōji 東寺 in Kyoto and to a local temple called Ōhara Kannonji 大原観音寺 in Ōmi 近江 province (modern Shiga Prefecture) near Kyoto.

4.3. Donations to Tōji

Tōji was founded in 796 as a temple of the Shingon 真言 sect, two years after the state capital moved to Kyoto (then known as Heian-kyō, meaning *Madīnat al-Salām* in Arabic, the name of Baghdad at its foundation) and was located in its south-east district, as the name “eastern temple” denotes. The well-known Buddhist priest, Kōbō Daishi 弘法大師 (Kūkai 空海) was put in charge of Tōji in 823 by order of the Emperor Saga 嵯峨, and the temple gained supporters and donations as devotion to the cult of Kōbō Daishi spread in the medieval period. The

temple has more than 27,000 documents which have been studied by many Japanese scholars to reveal the management of the temple and its *shōen* lands.

Uejima Tamotsu, a Japanese historian, has pointed out that there were three kinds of donor to Tōji [Uejima 1989]. The first group were rulers such as the emperors and their relatives, and the shoguns. They donated large *shōen* lands within their domain to Tōji to sponsor the priests there who performed the regular rituals. The daughter of the Emperor, Sen'yōin 宣陽院, donated land (rice fields) to Tōji in 1242, assigning its revenue to the temple. Land in regions far from Kyoto was also donated. The living costs for the priests as well as expenses for rituals and construction were covered by the revenue from the donated lands. The second kind of donor gave smaller amounts of land in the regions near Kyoto. They were donated by citizens of the higher stratum, including Buddhist priests (both male and female), to cover the regular expenses of the lodgings and halls belonging to Tōji. The third type of donor donated small landholdings for memorial rites for a specified person (*tsuizen kuyō* 追善供養). When smaller amounts of land were donated by an intermediate owner, the authorisation of the *shōen* proprietor was needed for the transfer of land tenure. The donation deeds had attached to them the deeds to certify the transfer of ownership before the donation, and sometimes the records and registers of tax collection from the donated land. The latter records were useful for tax collection after the donation. There also exist lists of documents related to the management of the donated properties. The *shōen* donations and their management at Tōji show that the acts of donation connected many kinds of people who were interested in religious matters.

The second example is Ōhara Kannonji, a temple in Ōmi (now Shiga Prefecture). It was moved there in the twelfth century and holds 600 medieval documents, about 40% of which are related to donation and sales. Yuasa Haruhisa has demonstrated that the temple formed a local community of priests, military lords, and other notables in the region [Yuasa 2000; 2007]. Kannonji received a donation of fields in 1260 from a *shōen* official (deputy steward) for prayers for both the domain lord and the steward (*jitō* 地頭) of the Ōhara clan, and continued to receive several donations from the domain lord and the Ōhara clan down to the beginning of the fourteenth century. Furthermore, in the fifteenth century, Kannonji collected donations from other powerful clans and

peasants who sold their small holdings to the priests, and the latter donated them to the temple for the regular ritual services there. The peasants participated in these meetings, which included both priests and people of the region. The temple compiled land registers that showed their revenue and kept the documents and registers in a store. Kannonji must have gained a great deal of economic resources and been the centre of the regional community. On the other hand, sales documents have been found in which Kannonji sold their land to others. As the sale of property once donated to the religious authority was against the general principle of religious property (*butsumotsu* 仏物) as mentioned above, these were temporary sales on the condition that the seller (Kannonji) could buy back the land by paying the sale price to the buyer within a limited term. The purpose of the land sale was to gain money for temple management. We can regard it as a loan where land was pawned. The regulations issued by Kannonji in 1529 approved the sale of land within the temple domain, but it was prohibited to sell it outside. They show the existence of loans in the form of sales among the priests and the internal clerical organisations of Kannonji and among outsiders as well. Yuasa sees local/regional communities being organised around leading temples such as Kannonji, by reciprocal relations among the domain lords, the priests, and the local people in medieval Japan.

5. Comparison between Waqf and *Kishin* Donation

Both waqf donation in the Islāmic world and *kishin* donation in medieval Japan were prevalent, and supported religious institutions by creating a regular source of income, like a trust. We can recognise three points of commonality between the two.

Regarding land ownership, all the land belonged to the state in the classic theory of the Islāmic state as well as in the ancient state of Japan. In the case of waqf, it is the usufruct that is donated, though the transfer of the land itself (*rakaba*) is prevented. Similar to this usufruct, the gain (tribute) from the land collected by the state as tax was donated to religious institutions and secular lords in medieval Japan. This gain was known variously as *jōbun* 上分, *tokubun* 得分, *chigyō* 知行, and *shiki* 職. Both the usufruct and the gain were transferred in the form of inheritance and donation, and transacted in the form of sale and lease. The donation could not in principle be cancelled either in the waqf or the *kishin* donation.

On the other hand, we can point out the following differences. In medieval Japan, the land was donated to proprietors, whether religious or secular, hoping for their protection in exchange for being presented with part of the land's gain, while the waqf was donated for charitable purposes and for the family of the donor. The reciprocal tie is a feature of Japanese donation. A nexus of reciprocal relations was created among the territorial lords (*daimyō* 大名) and religious authorities, local lords and leaders, and the local people. The notion of reciprocity of donation worked as a tie between this world and the next, Buddhist society and secular society, and the donor and donee. This created a kind of publicness that influenced people's actions and relationships in medieval society. The owner of the land retained strong ties to it, in that property sold could be returned to the seller within 30 years by redemption, or without redemption if the government ordered its return by issuing *tokusei-rei* 徳政令 (literally, "virtuous government orders"). Therefore, medieval merchants transacted their goods at markets in the domain of the religious authorities, thus breaking off the rights of the original owner to the merchandise [Katsumata 1986: 194]. The market was a place of free-trade where "the ties of the secular domain were cut off and individual persons could conclude equal relations under the sole and absolute authority of the gods and buddhas." On the other hand, we know of, in Qajar Iran and nineteenth-century Central Asia, of sales contracts with the stipulation that the seller can take the property back by repaying the sales price to the buyer within a specified period, similar to pawning property. Japanese society was re-organised under the so-called *Bakuhan* 幕藩 system in the early modern period (sixteenth–nineteenth centuries), where the Shoguns (the Tokugawa family) ruled at a national level and the *daimyō* ruled at a local level. Religious factors became less dominant than in the medieval period and in 1762 the Tokugawa Shogunate prohibited donations to temples and shrines by public authorities [Yuasa 2007]. However, donation and the notion of reciprocity continued into the modern period.

We have found here commonalities between *kishin* donation in medieval Japan and Islāmic waqf donation. What caused such commonalities, though there was no direct relation between the two regions and the two religions of Islām and Buddhism? It might be that a fundamental of human society caused such a common system of donation. This fundamental is the redistribution of wealth to share

profit. A necessary condition for sharing profit by the donor and the donees is that the usufruct is legally separated from the property owner, or property ownership, and so can be freely transferred. A second condition is a reason to justify the donation, that is, the transfer of the property right to others, whether it is religious, ethical, or social. We can find such conditions in the Islāmic region, Europe (Spain), China and Japan in pre-modern times. If this is true, we should re-examine the differences between them, not attributing them to either society, but searching for alternative factors in them or in other societies at a more fundamental level. On the other hand, we should note differences and changes in social systems/networks as McDermott points out, specifically the strength of the lineage and rituals in Chinese donation/charity in contrast to that of the individual and the law in the Islāmic waqf, and their change to a more commercial society [McDermott 2018]. Furthermore, we should pay attention to changes during colonial rule, especially the separation of religious waqf and familial waqf; the latter was once invalidated under British rule in India and Southeast Asia. [Khoo 2018: 155-56; Alias 2018: 245; Zilli 2018: 14]. We can call this approach “interactive comparison” (See Fig. 2).

My goal is not to stress differences in donation among the regions, but rather to find a common viewpoint for comparison which analyses donation as a universal system to solve the dilemma between economy and religion, and private and societal interests.

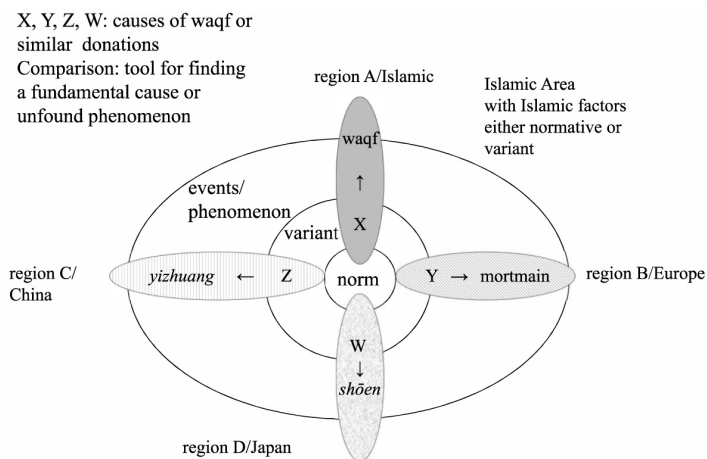


Figure 2: Comparative Model of the Waqf and Similar Donations

Bibliography

- Alias, Tunku Alina. 2018. The Spread of Waqfs Following British Colonial Trade in the Indian Ocean: A Comparison with the Atlantic Trade In *Comparative Study of the Waqf from the East: Dynamism of Norms and Practices in Religious and Familial Donations*, ed. by Toru Miura, Tokyo: Toyo Bunko, 2018
- Borgolte, Michael, ed. 2016–2017. *Enzyklopädie des Stiftungswesens in mittelalterlichen Gesellschaften*. 3 vols. Berlin: De Gruyter.
- Chikusa, Masaaki 竺沙雅章. 1983. Mindai jiden no fueki ni tsuite [Corvée on Buddhist landed property in the Ming period]. In *Min Shin jidai no seiji to shakai* [Politics and society in the Ming and Qing periods], ed. Ono Kazuko, 487–512. Kyoto: Institute for Research for Humanities at Kyoto University.
- Didieu, Jean-Pierre. 2018. Christian Religious Foundations in Western Europe: Between Spirituality and Wordliness. In *Comparative Study of the Waqf from the East: Dynamism of Norms and Practices in Religious and Familial Donations*, ed. by Miura, Tokyo: Toyo Bunko, 2018
- Fuma, Susumu 夫馬進. 1997. *Chūgoku zenkai zendō shi kenkyū* [A study of benevolent societies and benevolent halls in China]. Kyoto: Dōhōsha.
- Hyakkan hon Tōdaiji monjo* 百卷本東大寺文書 [Tōdaiji Archives] 15 (1243).
- Kasamatsu, Hiroshi 笠松宏至. 1979. Buddha senyū no chi kuikaesu bekarazu [The principle of not returning land in the domain of the Buddha (the religious authority) to the layman's domain]. In *Nihon chūsei hōshiron* [Legal history of medieval Japan], by Kasamatsu Hiroshi, 249–283. Tokyo: The University of Tokyo Press.
- . 1984. Butsumotsu, sōmotsu, jinmotsu [Properties in the Buddha's domain, the clergy's domain and the layman's domain]. In *Hō to kotoba no chūseiishi* [Medieval history through the law and legal terms], by Kasamatsu Hiroshi, 93–126. Tokyo: Heibonsha.
- Jafri, Saiyid Zaheer Husain. 2018. The Mughal-Nawabi Legacy under “Siege” in the Age of Empire (1860s–1880s): Familial Grants and the Waqf of Khanqah-e Karimia, Salon, India. In *Comparative Study of the Waqf from the East: Dynamism of Norms and Practices in Religious and Familial Donations*, ed. by Toru Miura, Tokyo: Toyo Bunko, 2018
- Katsumata, Shizuo 勝俣鎮夫. 1986. Baibai, shichiire to shoyū kannen [Sale, pawn, and the concept of ownership]. In *Nihon no shakaishi* [Social history of Japan], vol. 4, *Futan to zōyo* [Tribute and donation], 181–209. Tokyo: Iwanami shoten.
- Khoo Salma Nasution. 2018. Waqf and Social Patronage among the Tamil Muslim Diaspora in the Straits Settlement of Penang. In *Comparative*

- Study of the Waqf from the East: Dynamism of Norms and Practices in Religious and Familial Donations*, ed. by Miura, Tokyo: Toyo Bunko, 2018
- Kondō, Hideki 近藤秀樹. 1963. Hanshi gisō no hensen [The Development of common clan land]. *Tōyōshi kenkyū* 21(4): 461–506.
- McDermott, Joseph P. 2018. The Emergence of the Ancestral Hall as a Financial Institution in Sixteenth and Seventeenth. In *Comparative Study of the Waqf from the East: Dynamism of Norms and Practices in Religious and Familial Donations*, ed. by Toru Miura, Tokyo: Toyo Bunko, 2018
- Miura, Toru. 2015. *Dynamism in the Urban Society of Damascus: The Ṣālīhiyya Quarter from the Twelfth to the Twentieth Centuries*. Leiden: Brill.
- ed. 2018. *Comparative Study of the Waqf from the East: Dynamism of Norms and Practices in Religious and Familial Donations*, Tokyo: Toyo Bunko.
- 2018. Transregional Comparison of the Waqf in Pre-modern Times: Japan, China, and Syria. In *Comparative Study of the Waqf from the East: Dynamism of Norms and Practices in Religious and Familial Donations*, ed. by Toru Miura, Tokyo: Toyo Bunko, 2018
- Nagamura, Makoto 永村眞. 1994. Kishin [Donation]. In *Rekishigaku jiten* [Encyclopedia of history], vol. 1, 155–159. Tokyo: Kōbundō.
- Tōji hyakugō monjo* 東寺百合文書 [Hyakugo Archives]. yo ㊦/84/10. 1989. Cited in the article Kishinjō [Deeds of donation]. In *Nihonshi jiten* [Encyclopedia of Japanese history], 668. Tokyo: Heibonsha.
- Uejima, Tamotsu 上島有. 1989. Shōen monjo [Shōen documents]. In *Shōen nyūmon* [Introduction to Shōen], Kōza Nihon shōenshi, vol. 4. Tokyo: Yoshikawa kōbunkan.
- Usui, Sachiko 臼井佐知子. 2000. Monjo kara mita Chūgoku Min Shin jidai ni okeru “kishin” [“Donation” as seen in Ming and Qing period documents in China]. *Rekishigaku kenkyū* 737: 45–57.
- Yuasa, Haruhisa 湯浅治久. 2000. Nihon chūsei no zaichi shakai ni okeru kishin kōi to shokaisō [Acts of donation and various classes in local society during Japan’s late medieval period]. *Rekishigaku kenkyū* 737: 58–69.
- . 2007. Nihon chūsei shakai to kishin kōi: Zōyo, shinbutsu, kyōdōtai [Acts of donation and Japanese medieval society: Donation, the gods and buddhas, and community]. *Rekishigaku kenkyū* 833: 12–21.
- Zilli, Ishtiyāq Ahmad. 2018. *Waqf al Awlad* A Case of Colonial Intervention in India (keynote Lecture in the International conference on *History and Governance of Awqaf in South and Southeast Asia: Colonial Interventions and the Modern State*, organized by the Department of History & Civilization, IIUM

In This Issue

Guest Editor's Note

Articles

I.A. Zilli

Al-Waqf 'Ala Al-'Awlād A Case of Colonial Intervention in India

Miura Toru

Transregional Comparison of the Waqf and Similar Donations
in Human History

Abdul Azim Islahi

Role of Women in the Creation and Management of Awqāf:
A Historical Perspective

Alaeddin Tekin and Arshad Islam

Turkish Waqf After the 2004 Aceh Tsunami

Mohammad Tahir Sabit

Maqāsid Sharia and Waqf: their Effect on Waqf Law and Economy.

**Mohammed Farid Ali al-Fijawi , Maulana Akbar Shah @ U Tun Aung
and Alizaman D. Gamon**

Brief on Waqf, its Substitution (Al-Istibdāl) and Maqāṣid al-Sharī'ah

Amilah Awang Abd Rahman and Abdul Bari Awang

Exploring the Dynamism of the Waqf Institution in Islam:
A Critical Analysis of Cash Waqf Implementation in Malaysia

Thowhidul Islam

Historical Development of Waqf Governance in Bangladesh

Abbas Pannakal

The Chronicle of Waqf and Inception of Mosques in Malabar:
A Study Based on the Qiṣṣat Manuscript

Ali Zaman

The Role of Waqf Properties in the Development of the Islamic
Institutions in the Philippines: Issues and Challenges

Irfan Ahmed Shaikh

The Foundations of Waqf Institutions: A Historical Perspective

Anwar Aziz and Jawwad Ali

A Comparative Study of Governance of Waqf Institutions
in India and Malaysia

Rahmah Bt Ahmad H. Osman and Mawloud Mohadi

The Significant Contribution of Caliphs in the Efflorescence
of Muslim Librarianship: A Historical Account

ISSN 0128-4878 (Print)

ISSN 2289-5639 (Online)

