

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

The Foundations of *Waqf* Institutions: A Historical Perspective

Irfan Ahmed Shaikh*

Abstract: The Islamic waqf system is an institution that provides property owners guaranteed financial security as a reward for their societal services. For this reason it became an effective mechanism for the distribution of social services in the Muslim World, and continued to be so for a long time. According to the Islāmic rules governing waqf, the administrator of the waqf, known as the mutawallī, is obliged to follow the conditions of the endowment laid down by its creator, the waqif. However, in reality, the instructions of the wāqif were thwarted or could not be followed, which often resulted in the mismanagement or destruction of the waqf. It was therefore becoming imperative to bring contemporary changes to the waqf system in order to facilitate better management of waqf resources. Governments, however, found it less tedious to seize these resources rather than introducing new waqf governance rules. In the 19th century, with the founding of European-inspired municipalities waqf-based public services were almost completely rejected in favor of state-funded public services. The present study seeks to examine the motives behind the foundation of waqf institutions in the Muslim world and explore its importance for the welfare and development of an Islāmic state and its subjects.

Keywords: financial security, Islāmic state, Muslim World, *mutawallī*, *Waqf*

Abstrak: Waqf di dalam Islām merupakan institusi yang bersistematik dalam memberi pemiliknya sumber kewangan yang selamat dan terjamin sebagai ganjaran kerana memberi kemudahan kepada masyarakat. Oleh sebab itu, waqf menjadi mekanisma yang sangat efektif dalam pengagihan kemudahan dan perkhidmatan sosial dalam Dunia Muslim. Mengikut undang-undang Islām yang mentadbir dana waqf, pentadbir waqf dikenali sebagai mutawallī.

*Department of General History, University of Sindh, Jamshoro, Email: shaikhirfanahmed@hotmail.com

Pihak mutawallī perlu wajib mematuhi syarat-syarat yang ditetapkan oleh penderma waqf atau dikenali sebagai wāqif. Walaubagaimanapun, secara realiti, sebarang arahan dari pihak wāqif biasanya digagalkan atau tidak diikuti dan menyebabkan salah tadbir dan kemusnahan sistem waqf. Oleh itu, adalah sangat penting perubahan kontemporari diintegrasikan kepada sistem waqf untuk memudahkan pengurusan sumber waqf yang lebih sistematik. Bagi pihak kerajaan, sumber-sumber waqf dilihat lebih mudah untuk dirampas atau disita berbanding memperkenalkan sistem pentadbiran waqf yang baru. Pada abad ke 19, majlis perbandaran dengan perkhidmatan awam berdasarkan waqf dan berinspirasi Eropah hampir ditolak penubuhannya untuk memberi jalan kepada penubuhan perkhidmatan awam yang dibiayai oleh kerajaan. Kajian ini akan membincangkan dan menganalisis motif disebalik penubuhan institusi waqf serta melihat kepentingan waqf kepada kebajikan dan pembangunan Dunia Islām dan subjeknya.

Kata Kunci: Dunia Islām, keselamatan kewangan, Mutawallī, Negara Islām, Waqf

Introduction

In pre-modern Middle East, from as early as 750 C.E., waqf, an Islāmic form of trust, was gradually becoming an important vessel for providing public services. Waqf is an institution founded under Islāmic law whereby an individual declares a property under their ownership to be permanently and inalienably dedicated for the sole purpose of providing a specific service. It is a self-sustainable institution whereby the administrative expenditure of the trust would be financed by revenue-earning estates that are designated for the purpose of the trust. In early practice, the waqf property was often required to be immovable. However, this condition was later relaxed in some jurisdictions, thereby introducing a new type of waqf known as “cash waqf”. Although the purpose of a waqf need not necessarily be limited to the “sacred” and its beneficiaries need not be Muslims, because waqf is encouraged under Islāmic law, the act of creating waqf is believed in Islām to be an act of devotion. This may have been part of the reason why the institution was so widely used by pre-modern Muslims.

The scale of the use of the waqf institution can be seen in that a number of public services, now largely provided by the state, used to be

provided by means of private charity through waqf. Even a lighthouse was built and maintained near the Romanian port of Sfinne in 1745 using the waqf system. This is truly remarkable from a modern point of view, as services such as securing the safety of seafarers are provided by the state from its own revenues in our times. In fact, it wasn't until the latter half of the 19th century, that the main Middle Eastern cities had established state-owned facilities to provide essential services as part of a centrally administered system.

While the declaration of any given property as an Islāmic endowment takes away the ownership rights of the wāqif (the creator of the waqf) over that property, those who declared a waqf on their property were allowed to include a clause to provide for the shelter and maintenance of certain people through the waqf revenue, thereby securing their livelihoods against future financial hardship. These people may be the administrator of the waqf and their family or members of the family of the wāqif themselves. On top of these benefits, the wāqif also gained a position of respect and dignity within the community.

The main aim of this article is to examine the motives that helped develop waqf as a distinctive method for the provision of public services and the effect it had on development in the Muslim World. The task calls for a probe into why the state permitted changes in the legal status of large quantities of resources in a way that would significantly reduce its tax base. After all, while the system of waqf encouraged charitable funding of public services, it also secured the endowed property against revenue-bearing mechanisms of the state.

Early History and Islāmic Identity

Islāmic jurisprudence primarily relies on the Qur'ān and Ḥadīth - the compilation of sayings and actions of Prophet Muhammad (ﷺ) narrated by his companions. However, due to various socio-political factors, false narrations were also mixed into the more authentic narrations, and therefore needed to be weeded out from the available compilations. Scholars carried out this important work in order to facilitate the continued reference to the lived example of the Prophet (ﷺ) as a source of Islāmic legislation. This was especially important at a time when jurists were trying to form a generally accepted legal framework to govern the increasing number of loosely organised Muslim communities and to

respond to the changing character and needs of the rapidly increasing Muslim population.

Islāmic theologians have interpreted many Qurānic passages as instructing followers to create religious or charitable foundations in the spirit of devotion. One such passage is, “whatsoever ye spend for good, He replaceth it” (34:39). Similarly, another passage orders thus: “O ye who believe! When ye hold conference with the messenger, offer some alms before your conference” (58:12). However, such passages can easily be interpreted in different ways as well, such as instructions to Muslims to practice charity through giving *ṣadaqah* or payment of Zakāh, the annual Islāmic tax imposed on certain types of wealth held by well-off Muslims as part of their main religious obligations. Thus, they cannot be referred to as Islāmic authorities for the legislation of the institution of waqf.

Some researchers believe that the earliest waqfs that were formed to provide public services may have come into existence about a century after Islām’s advent (Gil 1998:125-40; Powers 1999:1171-72). However, the term “waqf” was used by Islāmic theologians from the very beginning of the Islāmic state, and can be traced even as far back as the Caliphate of Umar, when he designated large swaths of land that were held as spoils of war as waqf (Al-Shirwani 1938:263). In the early Islāmic period, the term seems to have been used to refer to valuable conquered land permanently designated to provide a service to the whole Muslim community. This concept is based on a narration where the Prophet Muhammad (ﷺ) instructed one of his companions to contribute a property he owned to charity by making it inalienable and dedicating the proceeds to charity (Bukhari:2586).

What can be said with a fair amount of confidence is that after the spread of Islām, an increasing number of privately administered endowments were initiated to provide public services that were provided by the early Islāmic state either through property seized by the state from non-Muslims or through taxes collected as Zakāh (Kuran 2000a). During the 2nd and 3rd Islāmic centuries, from around the year 755, the juridical system of waqf gained shape. (Hennigan 1999; Deguilhem-Schoem 1986; Kopruli 1942:3-5)

What made Muslims in this period start to rely so heavily on the institution of waqf when it had played no official part in the earliest

Islāmic public service system? Bahaeddin Yediyildiz suggests that in the first Islāmic community, the state could provide public services by itself, because the population was small enough and its demography homogeneous enough to render the basic needs easily identifiable and a make for an efficient centralized delivery system. He concludes that waqf served a bigger and more complex community in which everyone could not be expected to be familiar with each other, nor could one be fully aware of the demand for services, and the state, due to its increased population and vast geographic area, cannot possibly address and meet every need through available technologies, and may not even have been keen on doing so in the first place (Yediyildiz 1990:35-39). He also observed that the increased propagation of waqfs were often correlated with the institution and progress of consecutive Muslim states. These observations are also strengthened by similar observations made by S. D. Goitein, who posited that with the progress of the Fatimid rule in the 12th century, Cairo saw “an immense increase in the number and opportunity of charitable foundations” (1999:133).

The increase in non-governmentally provided public services, however, did not always necessarily fill the requirement of basic necessities. A clue to the reason for this may be found in that while the spread of Islām brought in an increasing class of major property-owners, most wealth was held in the form of chattel and other movable properties by traders and herdsmen in Iraq and the Levant regions, the seats of the Abbasid and Umayyad dynasties which successively governed most of the Arab domain from 661 to 1258. When urban real estate and cultivated land became the more predominant forms of wealth, and started becoming part of the system for the provision of public services, it may not have completely shifted the ownership of movable properties and currency from wealthy traders and herdsmen to the needy.

Traditionally, waqf requires the endowment to be established on immovable property. It also requires that the endowed property be perpetually taken out of the ownership of the wāqif and utilised only for the declared purpose of the waqf. In later developments brought to the principles governing waqf, endowment of certain movable properties such as currency was permitted.

It is important to keep in mind that Islāmic rulings and institutions did not appear in a vacuum. Many of the institutions that were legislated in the Islāmic state through religious law had similar models - if primitive or based on non-Islāmic theological foundations - found in former civilisations: the Persians, ancient Egyptians, Jews, Byzantines, Romans, and others had established similar institutions.

The Roman legal system, for example, had the concept of a sacred object, which provides that religious temples are inalienable. The Byzantines were known to have created philanthropic foundations, and Jews were known to have had the concept of *hekdesh* or consecrated property. It seems almost certain that the founders of Islāmic endowments of waqf, as well as the jurists who developed on the revealed divine legislation by laying down the relevant regulations, were influenced by the practices of the cultures around them.

Still, waqf is very much different from any of these pre-Islāmic models and must as such be acknowledged as an institution that is distinctly Islāmic. While a Roman sacred object was initiated or at least authorised by the state (Barnes 1987:5-8), under Islāmic law, the state was usually not involved in the establishment or governance of a waqf beyond rule enforcement. Byzantine philanthropic foundations were often linked to churches or monasteries and were subject to ecclesiastical control (Jones 1980:25), which was neither a requirement nor a widespread practice in the Islāmic waqf system. Finally, where Jewish laws prohibited, and even considered sacrilegious, the act of consecrating property for personal use (Elon 1971:286), there is no such prohibition in Islāmic law.

Nonetheless, although pre-Islāmic influences were significant in defining its limitations early on, waqf evolved on its own and eventually became an important characteristic of the Islāmic civilization. Furthermore, there is reason to believe that it led to the establishment and growth of trusts in various other regions including Western Europe, where institutions of trust appeared only in the 13th century, more than half a decade since it became a formal part of the public service system in the Islāmic Middle East. In fact, it is observed that early European trust instruments, such as the 1264 statutes establishing Merton College as an unincorporated charitable trust, fulfil the conditions of an Islāmic waqf (Gaudiosi 1988:1254).

Impact of *Waqf* on Development

Where the waqf system had played a significant role in the development of the pre-modern economy of the Muslim world, especially the public service system, it may perhaps have also played a role in making the region an underdeveloped section of the world. Many claims have been made that because it was required by the Islāmic law for the *mutawallī*, or the administrator of waqf, to strictly follow the terms laid down by its creators, the system of waqf lacked flexibility, which was required for well-organized resource management and consumption, especially with the passage of time. It is claimed that it thus became unsuitable to the more dynamic financial environment of the industrial era due to its slow-changing and primitive nature. In the 19th century, the system's inflexibilities rendered it a completely inefficient instrument for the provision of public services, resulting in the newly emerging states of the Middle East nationalising large swaths of waqf properties.

While it can be historically observed that following changes to the waqf governance principles, waqf were later viewed as enterprises having corporate status, these changes were not intrinsic to the system itself.

Contrary to the theory presented above, some researchers believe that in reality, the waqf governance system wasn't as rigid as the strict application of the traditional waqf principles might permit. To prove this, they point to the manipulation of juristic differences of opinion in conducting waqf activities, innovative interpretations on the part of trustees and judges, as well as widespread corruption within the waqf governance system.

It must, however, be noted that the frequent avoidance of particular principles does not mean that those principles were of no material significance. Even a routinely avoided law can slow or halt economic development as a result of the incremental costs of adaptation. Moreover, the legal status of the regulations will impact economic possibilities in the long run. Had waqfs been permitted to restructure themselves and reorient their missions within the legal governance framework, they could have generated a more enthusiastic "civil society." The Middle Eastern communities may have boosted their capacity to solve their problems by themselves, without interference from the state, which was responsible for the implementation of relevant laws. The

modern Muslim world could have thus avoided being weakened into communities governed by authoritarian regimes and high-handed policies. In the same way, and perhaps even more critically, corruption could have flourished less.

An inadvertent result of the rigid rules set up, that forced generations of *mutawallīs* to bring alterations to the terms of the waqf they were administering by means of doubtful authority, was the deterioration in the respect for the law and legitimizing of rule-breaking.

Major developments in waqf governance followed the ‘Economic Westernization Drive’ of the 19th century and, consequently, waqf became economically noteworthy due to its potential as an Islāmic financial instrument. Currently, in the early 21st century, the institution of waqf has been adapted to include the flexibility it lacked in the past while remaining true to the core of its traditional requirements. Most importantly, waqfs are now recognised by law as juristic persons having their own rights and responsibilities and may be party to legal action in their own capacity. This is in contrast to the previous legal status of waqf, whereby the *mutawallī* used to appear in the courts as a defendant or an applicant. Another fundamental reform that has been made is that under modern waqf governance systems, the administration of a waqf will be overseen by a board of *mutawallīs*, rather than an individual, and the board will be granted powers very much like those of a company’s board of directors.

Motives for Founding a *Waqf*

It is primarily the sense of religious duty in Muslims that led to the vastness of the impact of the waqf institution. As stated earlier, there are many verses in the Islāmic scripture that encourage Muslims who are well-off to be charitable towards their fellow Muslims and wider humanity. However, while the importance of devotion as a motivation, which led to vast properties being endowed as waqf, should not be understated, it is also essential not to view it as the only or most important motive.

In the medieval Islāmic world, just like in the medieval West, the rich would usually keep aside a portion of their wealth to be spent purely for spiritual devotion. Just like numerous Christians with means supported the construction and beautification of churches (Jardine

1996:124-26), so too were Islāmic madrasas and mosques funded by Muslims with means, out of a desire to do good. As in Christendom, the concept of charitable work included providing for the poor and those that were unwell (Yediyıldız 1990:41-44; Lambton 1997:308). Similarly, contained within donations made to the refugees of Makka and Medina were the Islāmic correspondent of distribution of funds to the Holy See (Faroqhi 1994: 76; Hoexter 1998). Nonetheless, waqf as an Islāmic charitable institution seems to have taken on a life of its own, extending its contribution towards providing public services in a way that seems to not have been done by private charities carried out as acts of devotion by members of other pre-modern faith communities.

In the pre-modern Islāmic world, like in other pre-modern communities, piety was seen as a primary gauge of truthfulness. Muslims that did not perform their religious duties accordingly - such as not attending the Friday prayers, for example - were thought to be untrustworthy witnesses in court. The establishment of a waqf was viewed as a spiritual act and it served to promote a favorable status for the wāqif in the community, just like a gift presented to a modern university sustains the social importance and public-mindedness of its contributors. The similarities do not end there. To maintain their status, modern philanthropists would often connect their names to the structures made with their contributions. Waqf founders, too, would often name their initiatives after themselves, perhaps, in the hope of memorializing the obtained status. This includes buildings erected in 18th-century Aleppo, such as the Bahramiyya Mosque named after Bahram Pasha and the Ahmadiyya College named after its founder Ahmad Efendi Taha Zadeh (Marcus 1989:304). Founders of mosques would usually try to extend their social recognition by specifying that worshippers should remember their kindness and pray for them after every formal prayer. Such requirements could stay effective for many generations on end. For half a century after the end of the Turkish empire and the move of Turkey's capital to Ankara, prayer congregations at certain Anatolian mosques, in keeping with their performances, were ended with prayers for the health of the governing sultan in Istanbul (Yediyıldız 1990:214).

Successive sultans or their wives constructed some of the finest, most wonderful mosques as part of their waqfs.

Furthermore, governments often utilized the waqf system to boost certain communities. The Haseki Sultan Waqf did more than merely

providing social services, it also strengthened the Ottoman government's political authority through the allowance of investment (Peri 1983:47-62).

Waqf development, similar to gift-giving, may also be motivated by a wish to propagate an ideology. When a donation to a modern institution of learning may serve to boost a political plan, a donor may fund an ideologically aligned program. Similarly, educational waqf founders often required the selected instructors to patronise the ideas they held and resist apparently insubordinate ideas. Ultimately, such founders may have wanted to propagate the views they held to the students and, consequently, to control public opinion at large (Yediylldiz 1990:215, Ch. 12; Lambton 1981:307-8; Doumani 1998:10-12).

The three motives that have been discussed so far - piety, status, and politics - are not at all exhaustive.

The operation of a fourth motive was that the Islāmic world needed to develop a safety device against resourceful taxation or expropriation by the state. Sultans often changed tax rates and systems whenever it suited their objectives. Part of the reason for the relative freedom they had to do so is that the Qur'an, which is the primary source of Islāmic law, comprises a small number of details on taxation (Kuran 2000b). Like any sensible ruler, sultans too preferred taxation over confiscation, so as to maximize their subjects' motivation to produce. Still, in times of financial crises, they freely succumbed to the temptation to confiscate properties. This is largely due to the fact that they could not borrow from their subjects directly, not enough to cover their needs at least, due to the fact that they lacked credibility in their repayment promises. Rulers took away private properties, usually by applying the Islāmic principle that all possessions belong to God.

As alluded to earlier, properties that were endowed as waqf were not subject to taxation under the Zakāh regime. Furthermore, as the declaration of waqf is legally considered perpetual, the tax benefits granted for waqf were also treated as long-lasting. The institution of waqf, therefore, became an appropriate means of safeguarding wealth against state predation due to weaknesses of private possession rights.

Waqf properties were expropriated, usually following invasions or the ousting of one empire by another. When they took place, however,

they generally faced severe opposition. At least six different Mamluk rulers tried to take away prominent waqfs over the 250 years before the loss of Egypt to the Turks in the year 1517. Because of judicial opposition, however, their attempts were mostly ineffective (Yediyildiz 1982a:161). Mehmet II, the Ottoman sultan in the 1470s, expropriated many waqfs to increase resources for his widespread community works program as well as his army. His expropriation of waqf-owned villages and declaring them government property evoked a strong public reaction, which had a great effect on the succession struggle that preceded his death. When his son Bayezid II took claim of the throne, he returned the properties to their previous status (Repp 1988:128-29; Inalcik 1955:533). Such incidents emphasise the relative safety of waqf properties from potential state aggression.

Variations in the motives of the establishment of waqf form the core difference between “charitable waqf” (*waqf khayrī*) and “family waqf” (*waqf ahlī*). To a great extent, upon the endowment of a property for a charitable waqf, the economic value that is intrinsic to the property is taken out of the control of the wāqif, leaving the wāqif with little rights over such value. In contrast, in a family waqf, the revenues derived from the waqf will go towards the wāqif’s family.

It may perhaps appear that establishment of a waqf for the purpose of providing for one’s own family is in contradiction with the objective of legislating the allowance of such endowments: the encouragement of private parties to provide public services. However, the initial interpreters of Islāmic legal principles seem to have perceived no such contradiction. They took a family waqf to be as much an act of devotion as a charitable waqf, keeping in view that charity starts from home. This relatively generous understanding regarding charitable donations is based on sayings attributed to the Prophet (ﷺ). For example: «Of the Dinar spent in the Way of Allāh, the Dinar spent to free a slave, the Dinar spent as charity on a needy person and the Dinar spent as provision for one’s family, the most worthy of reward is that which is spent providing for one’s family.» (Muslim:1667).

In reality, however, the difference in question between charitable waqf and family waqf was often one of degree. While the stress was ever on the family’s own welfare in family waqf, the beneficiaries (i.e. the family of the wāqif) often provided from the revenues of the waqf properties toward some social cause.

It seems apparent, from a superficial reading of the available information on historic waqfs and the social make-up of the waqf founders, that loyal servants of the sultan were often privy to information regarding the changes in the policies of the state, especially when those close to the ruling class encountered threats to their property. Thus, those belonging to the politically-dominant class, comprising bureaucrats, statesmen, judges, military officials, clerics, and educators, were the majority of those who utilised the waqf system to protect their properties. In 17th and 18th century Egypt, members of the military founded waqfs which were economically significant, since it was them who attained the largest properties (Crecelius 1986:185). Similarly, in 18th century Turkey it was members of the ruling class that founded 80-90% of all waqfs (Yediylldz 1990:ch. 6, Table 8, 132-33). While this estimate includes both family and charitable waqfs, less than a fifth were of the charitable category, while the majority fell into the former category (Yediylldz 1982b:28-33, Table 1). Those belonging to the ruling class utilised family waqfs to secure their families against the harm of political impact or loss of earning capability. Across the years, many state officials, who did not secure their properties, saw their properties acquired by the state and their families subsequently forced into deprivation. (Rafeq 1970:122, 180; Findlay 1980:100-6; Zilfi 1988:205-6; Kuran 2000b).

An extremely important element that motivated the establishment of waqfs is that the many expected the wealthy and socio-politically dominant persons to share their good fortunes with others. The French quote, "*noblesse oblige*", best reflects the social pressure created by this societal expectation. This expectation was so strongly felt that when a wealthy person did not establish a waqf, the ruler gained a socially sanctioned reason for the removal of such property from the wealthy person's ownership (Kunt 1983:68). Thus, the cost of guarding one's wealth was to apportion some of it away. If the threat of expropriation was lower, this price might have been thought to be excessively high and the number of new waqfs might have receded.

The establishment of waqf also gives some testamentary ease that is otherwise not available under Islāmic laws of inheritance. Subject to certain conditions, the wāqif can legally cut out Qur'anic inheritors of his choosing, potentially even all, in service of a non-relative; he can support one family member over another to whom the Qur'an

gives equal treatment, for instance, an elder son over a younger one, or offspring from one wife over those from another; he can interfere with the gender supply of his domain; he can control the communication of usufruct rights through future generations of his offspring; last but not least, he can prevent the destruction of his estate. The creator of a family waqf may achieve any one of these aims by naming selected individuals as recipients. Furthermore, both family and charitable waqf founders will likely appoint themselves as the waqf's primary *mutawallī* for life, and name their successors, and assign well-paid posts to individuals of their choice. (Baer 1997:275)

Among the non-relatives commonly named as waqf recipients were freed slaves who could not, according to some interpretations of Islāmic law, receive property even if their master had died without leaving behind any successors. Waqf founders thus opted to include manumitted slaves as beneficiaries of their waqf, in the hopes of ensuring, and frequently achieving, the latter's loyalty and gratitude. This way they also prevented the danger of their Qur'anic successors, lacking emotional attachment to the freedman, neglecting the slave. Gabriel Baer in the 16th and 17th centuries in Turkey and Egypt, observed that the founders of some large waqfs reserved major roles in the administration of the waqf for autonomous slaves and their children, sometimes at the cost of Qur'anic inheritors (Baer 1997:275-80).

Many researchers of the Qur'anic inheritance system frequently pointed out the apparent inequality in the treatment of women. Although the rights of female successors were set at half of those allowed to male successors of the same category (for instance, a daughter's share of a land was half that of a son's), these characterized an improvement for women. Their financial status was further strengthened through other areas of Islāmic law, such as family maintenance requirements laid down only on the male members of the family. However, there is evidence from the 8th and 9th centuries that the waqf system was extensively used to reserve pre-Islāmic inheritance portions. William Jones suggests that among the reasons for the popularity of waqfs was that wealthy Arab converts wanted to avoid the inheritance rights Islām prescribed for female family members. In fact, some of them founded waqfs particularly to keep up the pre-Islāmic Arab custom of apportioning estates among male heirs only (Jones 1980:27). Further strengthening this claim, Yediyildiz (1982a: 156; 1990) says that several

Turkish families that adopted Islām used the institution of waqf to achieve the exact opposite, i.e. to balance their children's shares in line with the gender-neutrality that was characteristic of their pre-Islāmic inheritance practices.

Conclusion

In conclusion, it can be said that, there were many reasons that motivated Muslims to create waqfs—religious, social, economic, and political. The motives are in no way mutually exclusive: a person may create a waqf both to secure his wealth from expropriation and also as an act of devotion. The economic motives were rooted in two factors: first, weak private property rights and second, limited testamentary justice. Early generations of Muslims recognized the importance of the institution to increase the safety of property and especially to accomplish long-term control over the property. Regardless of the motives for the foundation of waqf, the institution provided an effective instrument for the provision of important public services. These services rendered later became obsolete, when states took over the responsibility for providing public services through municipalities. Perhaps, the inflexibility of the waqf governance regime, because of its inability to adapt, had rendered it incapable of offering the same kind of services in the industrial and post-industrial economies. Such inflexibilities have, thankfully, been addressed through 21st century amendments to waqf administration rules in many countries of the world, rendering Waqf estates, and endowments in other forms, capable of raising their intrinsic worth, and, thereby, growing the value of the usufruct..

References

- Al-Shirwani, Abdul Hamid, (1938) *Hawashi Tuhfat Al-Minhaj bi Sharh Al-Minhaj*, volume. 9, Egypt: Al-Maktabah Al-Tijariyyah Al-Kubra.
- Baer, Gabriel, (1997) "The Waqf as a Prop for the Social System (16th-20th Centuries)," 4 *Islāmic Law & Society* 264-97
- Creelius, Daniel (1986) "Incidences of *Waqf* Cases in Three Cairo Courts: 1640-1802," 29 *J. of the Economic & Social History of the Orient*, 176-89.
- Deguilhem-Schoem, Randi Carolyn (1986) "History of Waqf and Case Studies from Damascus in Late Ottoman and French Mandatory Times," Ph.D. diss., History Department, Columbia University, New York, June.

- Doumani, Beshara (1998) "Endowing Family: *Waqf*, Property Devolution, and Gender in Greater Syria, 1800 to 1860," 40 *Comparative Studies in Society & History* 3-41.
- Faroqhi, Suraiya (1994) *Pilgrims and Sultans: The Hajj under the Ottomans, 1517-1683*. London: I. B. Tauris.
- Findlay, Carter V. (1980) *Bureaucratic Reform in the Ottoman Empire: The Sublime Porte, 1789-1922*. Princeton: Princeton Univ. Press.
- Gaudiosi, Monica M. (1988) "The Influence of the Islāmic Law of *Waqf* on the Development of the Trust in England: The Case of Merton College," 136 *Univ. of Pennsylvania Law Rev.* 1231-61.
- Gil, Moshe (1998) "The Earliest *Waqf* Foundations," 57J. of *Near Eastern Studies* 125-40.
- Goitein, S. D. (1999) *A Mediterranean Society: An Abridgment in One Volume*. Rev. & ed. By Jacob Lassner. Berkeley: Univ. of California Press.
- Hennigan, Peter Charles (1999) "The Birth of a Legal Institution: The Formation of the *Waqf* in Third Century A. H. Hanafi Legal Discourse," Ph.D. diss., History, Cornell University, Ithaca, NY, May.
- Hoexter, Miriam (1998) *Endowments, Rulers, and Community: *Waqf al-Haramayn* in Ottoman Algiers*. Leiden, Netherlands: E. J. Brill.
- Jardine, Lisa (1996) *Worldly Goods: A New History of the Renaissance*. New York: Doubleday.
- Jones, William R. (1980) "Pious Endowments in Medieval Christianity and Islam," 109 *Diogenes* 23-36.
- Kunt, Metin (1983) *The Sultan's Servants: The Transformation of Ottoman Provincial Government, 1550-1650*. New York: Columbia Univ. Press.
- Kuran, Timur, (2000a) "Islāmic Redistribution through Zakāh: Historical Record and Modern Realities." Presented at the Conference on Poverty and Charity in the Middle East, University of Michigan, Ann Arbor.
- _____ (2000b) "Opportunistic Taxation in Middle Eastern History: Islāmic Influences on the Evolution of Private Property Rights," unpublished paper, Department of Economics, University of Southern California, Los Angeles, July.
- Lambton, Ann K. S. (1981) *State and Government in Medieval Islām: An Introduction to the Study of Islāmic Political Theory*. Oxford: Oxford Univ. Press.
- _____ (1997), "Awkaf in Persia: 6th-8th/12th-14th Centuries," 4 *Islāmic Law & Society*, 298-318.
- Marcus, Abraham (1989) *The Middle East on the Eve of Modernity: Aleppo in the Eighteenth Century*. New York: Columbia Univ. Press.

- Peri, Oded (1983) "The Waqf as an Instrument to Increase and Consolidate Political Power: The Case of Khasseki Sultan Waqf in Late Eighteenth Century Jerusalem," 17 *Asian & African Studies*, 47-62.
- Powers, David S. (1999) "The Islāmic Family Endowment (*Waqf*)," 32 *Vanderbilt J. of Transnational Law* 1167-90.
- Rafeq, Abdul-Karim (1970) *The Province of Damascus*. Beirut, Lebanon
- Repp, Richard C. (1988) "Qanun and Shari'a in the Ottoman Context," in A. Al-Azmeh, ed., *Islāmic Law: Social and Historical Contexts*. London: Routledge.
- Schoenblum, Jeffrey A. (1999) "The Role of Legal Doctrine in the Decline of the Islāmic *Waqf*: A Comparison with the Trust," 32 *Vanderbilt J. of Transnational Law* 1191-227.
- _____(1990) *Institution du Waqf au XVIIIe Siecle en Turquie: Etude Socio-Historique*. Ankara, Turkey: Editions Ministere de la Culture.
- Zilfi, Madeleine C. (1988) *The Politics of Piety: The Ottoman Ulema in the Postclassical Age (1600-1800)*. Minneapolis: Bibliotheca Islāmica.

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)

