

What is called an Act of Donation?: A Comparative Terminology

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ملخص:

ساد التبرع بالملكات العديد من المناطق عبر التاريخ، وبالرغم من أن المعنى الأصلي للوقف وللحبوس في اللغة العربية هو ببساطة "الوقف" أو "الحبس" عن التصرف في الملكات بشكل دائم، وقانونيا يعني حق الوقف أو الهبة، إلا أن تعريف الوقف في الشريعة الإسلامية فريد من نوعه فهو: "عمل من أعمال تأسيس الأوقاف الخيرية، مع نية العمل الخيري، بتعيين الأشخاص أو المرافق المستفاد منها. وينشئ الوقف في الحقيقة علاقة ثلاثية بين الواقف والمادة التي تمنح للمستفيدين وخصائص تعميم إراداته.

أما قبل العصر الحديث، فقد كان هناك ثلاثة أنواع من العطاء ومن إدارة العقارات في الصين منها: الخاصة بالعائلات، والمؤسسات الدينية، والأنشطة الخيرية، لقد عملوا لوقف الأسرة الحاكمة والمؤسسات الدينية والاجتماعية، في حين اتسم المجتمع الياباني خلال القرون الوسطى بعدة أنواع من التبرع: كالأراضي بين القادة المحليين، أمراء الجيش والنبلاء من المحليين، والمؤسسات الدينية، "شوغون" (قائد عسكري) والإمبراطور. لقد أسس فعلا العطاء علاقات اجتماعية وسياسية منظمة، وروابط متبادلة بين المتبرع والمتلقي، وبين هذا العالم والعالم الآخر، أي بين المجتمع البوذي والمجتمع العلماني. ومع ذلك، كان مفهوم الملكية نفسها غامضا جدا بالمقارنة بين المفهوم الأوروبي الحديث والشريعة الإسلامية، إذ من

الضروري الإشارة إلى أن الناس في هذه المناطق الثلاث كانوا يتوقعون عودة العطاءات. لكن من كان يضمن عودة مصطلحات فعل العطاء والوقف؟.

وأود من خلال هذه المداخلة الإجابة على هذا السؤال الجوهرى، ومناقشة معنى وتعريف المنشأ المعبر عن العطاء والثقة في كل منطقة (العربية والصينية واليابانية).

Abstract

The donation of property has been prevalent in a great many regions throughout history. Though the original meaning of waqf/habs in Arabic is simply to 'stop' or to 'block' the alienation of one's property permanently, the act really means endowment or donation. The waqf in Islamic law seems to be unique in its definition that «the act of founding a charitable trust, and, hence the trust itself, ... with the intention of a pious deed, to designate persons or public utilities as beneficiary» (EI2, R.Peters, 2000). Therefore the act of waqf creates a triangular relation among the endower, beneficiaries, and the endowed properties (or their administrator) to circulate revenue of the trust (R. Deguilhem, 2005).

There were three kinds of donation and management for immovable property in pre-modern China ; for family lineages, religious institutions, and philanthropic activities. They worked as a trust for family lineage and religious-social institutions. Medieval Japanese society was characterized by many kinds of land donation among local notables, military lords, court nobles, religious institutions, the Shogun(military ruler) and the Emperor. The act of donation organized socio-political relations among them, by creating reciprocal ties between donor and receiver, and this world and the next, that is Buddhist society and secular society. However the concept of ownership itself was very ambiguous, compared to clearness in modern Europe and

Islamic law. It is noteworthy that people in these three regions did expect a return from donated properties such as a trust. What guaranteed such a return? It relates to terminology expressing an act of donation as well as a trust.

In this presentation, I would answer this fundamental question, discussing meaning and definition of original words (Arabic, Chinese and Japanese) expressing donation and trust in each region.

I. Introduction

The donation of property has been prevalent in a great many regions throughout history. Though the original meaning of *waqf/habs* in Arabic is simply to 'stop' or to 'block' the alienation of one's property permanently, the act really means endowment or donation. The *waqf* in Islamic law seems to be unique in its definition as "the act of founding a charitable trust, and, hence the trust itself, ... with the intention of a pious deed, to designate persons or public utilities as beneficiary" (*Encyclopaedia of Islam*, New edition, R. Peters, 2000). Therefore the act of *waqf* creates a triangular relationship among the endower, beneficiaries, and the endowed properties (or their administrator) to circulate the revenue of the trust (Randi Deguilhem, 2005¹).

In pre-modern China, there were three kinds of donation and management for immovable property; for family lineages, religious institutions, and philanthropic activities. They worked as a trust for family lineages and religious-social institutions. There is no specific Chinese term for charitable donation, but it was expressed by combining words such as *yi* (righteous) and *juan* (contribution). Medieval Japanese society was characterized by many kinds of land donation

¹ Randi Deguilhem, « Understanding *waqf* in the Islamic and Eastern Christian world », *Historical Journal*, Lomonosov Moscow State University, vol. 4, 2005.

among local notables, military lords, court nobles, religious institutions, the Shogun(military ruler) and the Emperor. The act of donation orchestrated socio-political relations among them by creating reciprocal ties between donor and receiver. However the concept of ownership itself was very ambiguous, compared to its clarity in modern European and Islamic law. I would like to attempt a comparison of donation in medieval Japan and the Islamic waqf to make clear what kind of relationship an act of donation creates, by exploring original terms and descriptions relating to the donation .

II. Donation (*kishin*) in Medieval Japan

1. Land ownership in ancient and medieval Japan

In the ancient state of Japan, 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 from the seventh century. This state ownership of land seems similar to that of the early Islamic state in the Umayyad period, called the *fay'* in Islamic law. The sale of agricultural land was prohibited except for newly cultivated land, for which a law of 743 (*kondeneinenshiyū hō*) 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 organized and managed large private estates called *shōen*, 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*) 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.

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* (the Buddha's domain), *sōmotsu* (the clergy's domain) and *jinmotsu* (the layman's domain), and this main division was strictly perceived. These regulations were not perfectly observed in medieval society as a whole, but were influential both within Buddhist society and among lay people.²

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

²Makoto Mizumura, « Kishin » (donation), *Rekishigaku jiten* (Encyclopedia of History), vol. 1, Tokyo: Kōbundō, 1994, pp.155-159 (in Japanese); Hiroshi Kasamatsu, « Budda senyū no chi kuikaesu bekarazu (The principle of no returning the land in the domain of Buddha (the religious authority) to the layman's domain) », in id., *Chusei Nihon hōshiron (Legal history of medieval Japan)*, Tokyo : The University of Tokyo Press, 1979. « Butsumotsu, sōmotsu, jinmotsu (Properties in the Buddha's domain, the clergy's domain and the layman's domain) », in id., *Hō to kotobano chūseishi* (Medieval history of law and legal terms), Tokyo Heibonsha, 1984 (in Japanese).

seek merit in this world and blessings in the next. For example, Ashikaga Takauji, the first Shogun of the Muromachi period (in office 1338-58) donated a *shōen* to Tsurugaoka Shrine hoping for the peace of the whole world and continued success in war (*tenka anzen buunchōkyū*). In 997, a local *shōen* lord, Tamate Norimitsu, 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.³ The third example is that of a nun who donated a farm in 1243 for the expenses of votive lights at the temple of Todaiji, hoping for relief from her pain after death and rebirth in Paradise, for the salvation of her parents, and for welfare of the universe (*hōkaibyōdōriyaku*).⁴

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 was *kishin* which means a present from 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 Tōji (*ji* in Japanese means temple) in Kyoto and to a local temple called Kannonji in Ōmi province (Shiga Prefecture) near Kyoto.

3. Donations to Tōji Temple

Tōji was founded in 796 as a temple of the Shingon sect, two years after the state capital moved to Kyoto (then known

³ *Tōji hyakugōmonjo* yo/84/10, cited in the article *Kishinjō* (Deeds of donation), in *Nihonshi jiten*, Tokyo: Heibonsha.

⁴ *Hyakkan hon Tōdaiji Monjo* 15 in the year 1243.

as Heian-kyō, meaning *Madīnat al-Salām* in Arabic, 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 (Kūkai) was put in charge of Tōji in 823 by order of the Emperor Saga, and the temple gained supporters and donations as the worship of Kōbō Daishi spread in the medieval period. The temple has more than twenty thousand documents which have been studied by many Japanese scholars to reveal the management of the temple and its *shōen* lands.

Osamu Ueshima, a Japanese scholar of history, has pointed out that there were three kinds of donor to Tōji.⁵ 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, Senyōin, 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 (*tsuizenhōyō*). When smaller amounts of land were donated by an intermediate owner, the authorization of the *shōen* proprietor was needed for the transfer of land tenure. The donation deed had attached to

⁵Osamu Ueshima, « Shōen Documents », *Shōen nyūmon* (Introduction to Shōen), *Kōza Nihon shōenshi* vol. 4, Tokyo: Yoshikawa kōbunkan, 1989 (in Japanese).

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 shows 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 six hundred medieval documents, about 40 per cent of which are related to donation and sales. Haruhisa Yuasa has demonstrated that the temple formed a local community of priests, military lords, and other notables in the region.⁶

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*) 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 service 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

⁶Haruhisa Yuasa, “Nihon chūseino zaichishakainiokerukishinkōi to shokaisō (Acts of donation and various classes in local society during Japan’s late medieval period), *Rekishigaku kenkyū*, 737, 2000 (in Japanese); “Nihon chūseishakai to kishinkōi – zōyo, shinbutsu, kyōdōtai” (Acts of donation and Japanese medieval society: Donation, the gods and buddhas, and community), *Rekishigaku kenkyū*, 833, 2007 (in Japanese).

registers in a store. Kannonji must have gained a great deal of economic resources and been the center 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*) 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 within the temple domain of rice collected as land tax, 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 organizations of Kannonji and among outsiders as well. Yuasa sees local/regional communities being organized around leading temples such as Kannonji, by reciprocal relations among the domain lords, the priests and the local people in medieval Japan.

III. Comparison between waqf and *kishin* Donation

Both waqf donation in the Islamic 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 recognize three points of commonality between the two.

Regarding land ownership, all the land belonged to the state in the classic theory of the Islamic 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 *asjobun*, *tokubun*, *chigyo* and *shiki*. 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. This reciprocal tie is a feature of Japanese donation. A nexus of reciprocal relations was created among the territorial lords (*daimyo*) 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 thirty years by redemption, or without redemption if the government ordered its return for social welfare (*tokuseirei*). 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.⁷ 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

⁷Shizuo Katsumata, « Baibai, shichi to shoyu gainen (Sale, pawn and the concept of ownership) », in, *Nihon no shakaishi* (Social history of Japan), vol.4, *Futan to zōyo* (Tribute and donation), Tokyo : Iwanami shoten, 1986. Citation is from p. 194.

buddhas.” On the other hand, loans by pawning property is not in principle permitted under Islamic law, but we know of the existence, 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. Japanese society was re-organized under the so-called *Bakuhatsu* system of the early modern period (sixteenth-nineteenth centuries), where the Shoguns (the Tokugawa family) ruled at a national level and the *daimyo* 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.⁸ However donation and the notion of reciprocity continued into the modern period.

We have found here commonalities between *kishin* donation in medieval Japan and Islamic waqf donation. What caused such commonalities, though there was no direct relation between the two regions and two religions of Islam and Buddhism? It might be fundamentals of human society that caused such a common system of donation. If this is true, we should re-examine the differences between the two, not attributing them to either society, but searching for alternatives in the other society. We can call this approach ‘an interactive comparison’.

⁸Haruhisa Yuasa, “Nihon chūseishakai to kishinkōi – zōyo, shinbutsu, kyōdōtai” (Acts of donation and Japanese medieval society: Donation, the gods and buddhas, and community), *Rekishigaku kenkyū*, 833, 2007 (in Japanese).