

## FAMILY WAQF IN ZANZIBAR

PETER LIENHARDT

*Edited with an Introduction by Ahmed Al-Shahi*

### *Editor's Introduction*

WHEN Peter Lienhardt died in 1986 he left a number of papers unpublished. As the executor of his literary estate I have prepared some of these for publication, a number of them for the pages of this Journal (for details, see the bibliography of his works following this article).

The present article comprises the text of a paper read by Lienhardt at a conference held at the East African Institute of Social Research (EAISR) at Makerere College, Kampala (Uganda) in June 1958. The author had been appointed to a Senior Research Fellowship at the EAISR in 1957 and from there he had carried out fieldwork among the Swahili peoples of the East African Coast. Part of this time he spent in the Sultanate of Zanzibar (comprising the islands of Zanzibar itself and Pemba). At the time, the Sultanate was a British Protectorate, which status it retained until 1964 when it united with Tanganyika (independent since 1961) to become the United Republic of Tanzania. The material on which the paper is based forms part of a more detailed study of *waqf* that remained incomplete at the time of the author's death in 1986.

Stencilled copies of the paper, along with others given at the conference, were distributed by the EAISR to subscribers. In Oxford, for example, copies may be found in the Tylor Library of the Institute of Social and Cultural Anthropology and at Rhodes House Library. The paper is thus not unknown; indeed, it has been listed in at least one bibliography (see Norman Robert Bennett, *The Arab State of*

*Zanzibar: A Bibliography*, Boston, MA: G. K. Hall 1984, p. 150 (no. 1809)). Even so, it is not widely available in its stencilled form and it has thus been decided to publish it here for the first time. Only minor changes have been made to the text, mostly comprising corrections of typographical errors and amendments to the punctuation. (Peter Lienhardt also read a paper, entitled 'Social Organisation and Ritual in Kilwa', at the EAISR conference at Paganu in May 1959. This paper was not among those distributed in stencilled form and no copy of it seems to have survived.)

Lienhardt uses a number of Arabic and Swahili words in his text. Given that the paper was prepared for a conference of East African specialists in East Africa, he probably did not feel it necessary to gloss them. It may, however, be useful if I briefly gloss them here. The Swahili word *waqf* comes from the Arabic *waqafa*, meaning 'to grant, create, institute; to make over, to bequeath'. Shariah is the canon law of Islam which governs the lives of Muslims. It consists of the prescriptions stated in the Koran, the traditions of the Prophet (or Hadith), the traditions of his successors and the rulings of Muslim jurists which, over the centuries, came to be incorporated into the shariah. *Raqabah* is an Arabic word meaning 'to observe, to watch, to regard attentively, to guard, to control, to supervise, to keep an eye on'. *Shamba* is the Swahili word for a farm. A *qadi* is a Muslim judge who is versed in the shariah. Shafi'i is one of the schools of law in Islam. The title 'imam' denotes a leader of the prayers, the founder of an orthodox school and, according to the Shi'ites, a descendant of Ali, the Prophet's cousin and son-in-law, who is regarded as the supreme ruler of the Muslim community.

AHMED AL-SHAHI

### FAMILY WAQF IN ZANZIBAR

*Waqf* is well-known as an institution of the shariah law which allows for the dedication of property in support of religious and charitable objects, such as the upkeep of mosques and the payment of their officers, the provision of graveyards and the feeding of the poor. *Waqf* is a form of trust, and indeed the only kind of long-term trust which the shariah permits. It differs conceptually from trust in the English sense of the word in that it partakes by its very nature in good works. Nevertheless, *waqf* includes such trusts as would be considered in English society to be purely secular, particularly those *waqfs* which are made for the benefit of the dedicator's descendants—they might seem to correspond more to the exercise of mortmain than to the practice of charity.

Shariah lawyers hold the institution of *waqf* to be grounded in a tradition of the Prophet Muhammad in which he is reported to have said: 'Death sets a term to all the works of man but three: continuing charity, learning in which profit is

found, and a good son who prays for him.' *Waqf* is identified with the expression 'continuing charity' (*sadaqah jariyah*) in this tradition, since it is considered to be a succession of good works: it is not so much in the act of dedication as in the results of that act, the continuing distribution of the income of the *waqf*, that the act of charity is to be found. So long as the income or benefits continue to be enjoyed, religious merit continues to accrue to the dedicator, since it is these, and not the property which is made *waqf*, which are given. Here the benefits of the *waqf*, which are called *manfa'ah*, are distinguished from the corpus of the property made *waqf*, *raqabah*. The latter is not thought of as being given, but rather, as the word *waqf* itself expresses, it is 'detained'. By virtue of this detention, *waqf* property is reserved from the ordinary incidents of ownership such as sale, gift and inheritance so that it may be perpetually and inalienably tied to the good purposes named by the dedicator at the time of dedication.

Herein lies another distinguishing feature of *waqf*: the thing made *waqf*, be it a house, a *shamba* or a book, is detained as a specific object, not as an object representing a certain value in money—money, indeed, is one of the things which cannot be made *waqf*. *Waqf* property is not, therefore, interchangeable with other property of equal value. By virtue of its detention, it is removed from considerations of equivalence. Hence, for example, a house dedicated to the support of a mosque cannot be sold to purchase a more convenient or advantageous property for the mosque, any more than the mosque itself can be sold. Both are detained in the same way.<sup>1</sup>

As the result of a series of acts of legislation beginning in 1905, the greater part of *waqf* property in the Zanzibar Protectorate is now vested in the Zanzibar *Waqf* Commissioners, though considerable properties remain in the hands of private trustees. Some idea of the proportionate value of *waqf* property in the Protectorate can be gathered from the *Waqf* Commissioners' receipts in recent years. In round figures, the income from *waqfs* administered by the Commissioners in the islands of Zanzibar and Pemba together was, in 1957, £45,000; in 1956, £29,000; and, in 1955, £36,000. These figures may be compared with the estimated value to producers of the Protectorate's clove crop, its main source of income, which has varied since 1950 between a little over £2 million and almost £6 million per annum. *Waqf* property, therefore, represents only a minor detail in the economic life of the Protectorate. Its importance is not increasing at any great speed: the approximate value of property newly dedicated as *waqf* in 1956, for example, was £24,500. Within these *waqfs*, the properties dedicated for the benefit of descendants are much more valuable than those supporting mosques, which form the other main category of dedications. Taking Zanzibar island alone, *waqfs*

1. There are certain circumstances in which *waqf* property can be sold, particularly when the property ceases to produce benefits, but only under the most stringent conditions. In Zanzibar, legislation modifying the shariah has increased the range of circumstances in which sale can be allowed.

for the benefit of descendants produced roughly £19,000 in 1957, as against less than £3,000 for the support of mosques. But though only a small part of the total economy, such incomes as *waqfs* provide cannot be dismissed as negligible, particularly when they are thought of in relation to personal incomes and the low standard of living of owners of small properties and of the poor. A tradition of the Prophet in justification of family *waqf* is to the effect that it is good for a man to make charitable provision for his descendants to prevent them falling into want. This is generally said in Zanzibar to be the motive of those who make some or all of their property *waqf* for their descendants.

From the point of view of an outside observer, there is a clear logical difference between a *waqf* made in support of a mosque and one made in support of descendants. In the former case, the mosque receives an income which it would not receive otherwise; in the latter, the descendants receive, in the first generation at least, the income of a property which they could otherwise expect to inherit absolutely. In a sense, therefore, a man who makes a *waqf* to benefit his children and their descendants is not giving his children anything so much as depriving them of the full rights of ownership as his inheritors. In normal circumstances, a man's descendants become at his death his successors. In the case of *waqf* they become for ever his pensioners.

In Zanzibar, the common explanation given as to why people make their property *waqf* for their descendants, instead of letting it be inherited in the normal way, is that it is to prevent them from living beyond their income and wasting the estate—in extravagance and often in enjoyments forbidden by religion. This motive shows clearly in many of the deeds of dedication. The following is an example:

N. hereby dedicates as *waqf* his two *shambas* at A [the position and boundaries of the property are described]. They are to be *waqf* for the benefit of his children, male and female, and of his grandson X; and the share of the male among them is to be equal to the share of two females. He makes the condition that so long as he lives the income of the *waqf* shall be divided into ten equal parts, five of which shall be paid to the dedicator himself and the remainder, that is five parts, shall be divided amongst his children and aforementioned grandson, the share of a male being equal to the share of two females. After the death of the dedicator, the portion which he has reserved to himself is to devolve upon his children and his aforementioned grandson, the share of the male being equal to the share of two females. When God decrees that any of the first rank of beneficiaries, male or female, shall die, if he has children his share in the *waqf* shall devolve upon his children, and so the division shall continue from generation to generation amongst the descendants of the dedicator, with the exception of those descended from him through women. When any of his descendants dies without issue, his share shall devolve upon the other existing descendants, for ever and in perpetuity. After all these beneficiaries become extinct, the *waqf* is to devolve upon the dedicator's siblings, namely O, P and Q and their descendants male and female, together with the dedicator's descendants through females, until they become extinct. After that,

it is to devolve upon his cognatic kin, and at their extinction the *waqf* is to devolve upon the poor and needy of the dedicator's sect, the Ibadis. This *waqf* is lasting and perpetual and effective as from this moment. Beneficiaries of the *waqf* who wish to enjoy residence on the *waqf* property are free to do so. The beneficiaries are to enjoy the income of the *waqf* after such expenses as are necessary for cultivation and the planting of trees have been covered. Any of them who wishes to live on the *waqf* property is free to build there. Creditors of the beneficiaries are to have no claim on the income or the corpus of the *waqf*, since it is made *waqf* in order to support them and provide them with a livelihood and is not to be spent except upon that object. The beneficiaries are not to sell the crops in advance before the harvest and they are not to lease out the *waqf* property for periods of years in order to get the benefit in advance and avoid having it cut off. This *waqf* is not to be exchanged or altered or transferred until God inherits the earth and those upon it....

Some of the later clauses of the foregoing dedication reflect particular circumstances of agriculture in Zanzibar which tend towards producing extravagance and debt. The economy of the Protectorate depends almost entirely upon the clove industry, and clove trees have the disadvantage of providing highly irregular crops from year to year. Total clove crops for the Protectorate in recent years have been as follows: 1950-1: 19,381 tons; 1951-2: 5,284 tons; 1952-3: 2,715 tons; 1953-4: 20,019 tons; 1954-5: 8,545 tons; 1955-6: 13,832 tons. As these figures suggest, fluctuations in the size of the crop are both extreme and unforeseeable. The crops follow no cycle of sufficient regularity to enable a *shamba* owner to calculate even roughly what his income is likely to be for two or three years ahead. The alternatives before him, therefore, are either to keep enough cash in hand to tide him over bad years, which may come one after another, or else to trust to luck and risk falling into debt. Many spend money extravagantly during the good clove years and find themselves obliged to borrow later. It is also quite common for *shamba* owners to find themselves in such need of money that they are ready to sell part or all of the year's crop at two-thirds of its normal value in order to have the money six months in advance. There now exists legislation, the object of which is to limit the extent to which agricultural property can pass out of local hands through failure to redeem mortgages.

Declines of fortune over a period of a generation or two are a common feature of local life, giving rise to a rueful proverb to the effect that ill-gotten wealth does not survive the third generation. It is remarked that often when there has been a tradition of inter-marriage between families one of which is much wealthier than the other, the roles of inferior and superior are found after a time to have been reversed. One of the main causes for spectacular changes of fortune is the simple one of business ability; even in the case of a man who is a landowner and not a merchant, much depends on his skill in judging the state of the market for selling his produce and in judging when to buy land and when to sell. There are many cases where the sons of successful fathers have been more ambitious than their abilities warranted and have ruined themselves by grandiose schemes and wild

speculations. In other cases, impoverishment can rightly be attributed to extravagant living. It is not unnatural that much should be blamed on drunkenness in a country where the drinking of alcohol is legal but religion forbids it absolutely. Many of the Arabs of Zanzibar are first- or second-generation immigrants from the interior of Oman, where religious law is said to be strictly administered and drinking and smoking are both serious punishable offences. It tends to be more readily assumed in Zanzibar than in Christian and agnostic countries that divine rewards and punishments may be expected in this life as well as in the next.

These facts tend to conceal one of the basic dynamic elements in the structure of Muslim society: the redistribution of wealth in the society through the normal functioning of the law of inheritance. One of the characteristics of a *waqf* is that it is not inherited. Ordinary property, on the other hand, must be inherited in the divisions laid down by the law, the basic principle, described in the Koran itself, being that the share of the male is to be equal to the share of two females. The details of shariah inheritance law are extremely complicated, but it suffices to say here that in normal circumstances most of a parent's estate is inherited by his children, all the sons receiving equal shares and all the daughters receiving half shares. There is no preferential system, such as that of primogeniture, whereby one son is regarded as the superior of the rest and can succeed to his father's whole estate and social position to the virtual exclusion of his brothers and sisters—those in Zanzibar who have heard that such a system applies in England regard it as almost unbelievably unjust. In accordance with the law of inheritance in Zanzibar therefore, the more sons a man has the more his estate is divided up at his death.

The social result of this system of inheritance is that the father's death tends to set in motion a process whereby the sons decline in social status, which is closely connected with wealth. The wealth which was concentrated in the hands of the father is divided, and each son, instead of deriving his status from his father, must now support his own status himself out of his share of the estate. He may well find that it costs him more than he can rightly afford, with the result that he actually accelerates the process of decline by spending his capital.

This is a process of some subtlety, since it involves a conflict of values. On the one hand, a great deal of importance is attached to wealth, the power to give, support and entertain and also to enjoy a life of comfort. The status of a family is closely related to the wealth of its richer members. On the other hand, there is a strong desire to have numerous children. They are believed both to bring religious rewards and to raise the status of the family. An Arabic proverb says, 'Everything that is scarce is highly valued except men', which is explained to mean that a man is treated with greater esteem if he is a member of a numerous family, a great tribe or a powerful nation. The relics of tribal political structure are still in evidence.

That these values are in conflict is not usually perceived. Also, the point at which a real change of status in the position of the numerous sons of a rich father logically begins is concealed by the customs relating to seniority and juniority in

the family. Sons are identified with their father, but during his lifetime they efface themselves. It is he who does the family entertaining, in which he represents the sons as well as himself. If his sons are with him in company, they take an inferior position not only relative to their father but also to his guests—they are reticent in speaking except when spoken to, they sit in the lower places and often they do such things as pouring coffee, holding water for washing the hands and other slightly servile tasks. The extremes to which the rules of status apply are illustrated by a story—told as being true—of a Zanzibari learned man who is now dead who had a son equally learned. Religious learning and holiness are associated with the ability to perform wonders. On one occasion the father and son were present together when unexpected guests arrived and there was a shortage of food for entertaining them. The son miraculously produced food in covered dishes which had been empty. Instead of being proud of his son, the father was highly displeased, regarding it as an impertinence that the son should do in his presence what he could equally well do himself if he chose. At their father's death, therefore, his sons acquire what is in a sense an increase of status, which helps to conceal a decline following from the causes which I have described.

A further way in which the law of inheritance leads to the redistribution of wealth follows from the inheritances accorded to women. The family, considered as a group which maintains continuity and coherence through a number of generations, is conceived of in agnatic terms. The children of daughters are the children of the families into which the daughters have married. In inheritance, a daughter receives only half of a son's share but, regarded from the point of view of alienation of property from an agnatic line, over a number of generations the effect of daughters' inheritance is of course cumulative. In generational terms of time, alienation is quite rapid. Taking a hypothetical case where only sons and daughters inherit and they are of equal numbers at each generation of inheritance: at the first stage of inheritance the daughters will alienate one third of the property from the agnatic line and at the second stage of inheritance the second generation of daughters will alienate an additional two-ninths of the original property. Hence, already in two stages of inheritance, five-ninths of the property have been alienated. After the original property has been divided for a third time, the agnatic line is left with only eight twenty-sevenths of the original estate. At the same time, of course, the family is receiving property through the women who marry into it, so that the function of women's inheritances can be seen to be the circulation and redistribution of wealth. In these circumstances, it is unlikely that the substantial part of any particular property should retain its connection with any particular line of agnates for more than three generations. There can be no strong traditional connection of a particular property with a particular family.

If we return now to the *waqf* dedication quoted earlier in this paper, we may observe a contrast between the implication of *waqf* and that of ordinary inheritance. In the first place, the corpus of the property has been 'detained', so that it passes out of normal ownership. There is a difference of opinion between the various schools of Islam as to who can be said to own the corpus in these circum-

stances. Since almost all the powers which normally go with ownership are removed by the 'detention' of the property as *waqfs*, these differences are largely academic. Some say that the property is owned—under restrictions—by the dedicator, some that it is owned—under restriction—by the beneficiaries, and others that it falls under the implied ownership of God. Setting aside questions of ownership, we may observe that the property is identified with an act of will on the part of the dedicator, to the exclusion of all other wills, for ever.

Providing that the law is strictly observed, therefore, the dedicator of a *waqf* enjoys a perpetual social survival. He is able to stipulate how the benefits are to be divided for ever, and even how they are to be enjoyed. This explains why the author of the foregoing dedication goes to the lengths of including a clause to enable any beneficiary who wishes to do so to live on the *waqf* property. One dedicator in Zanzibar was so lacking in foresight as to make his house *waqf* and to add to the normal and necessary conditions against alienation by sale, gift or inheritance, a prohibition against renting the house. Judging from conversation, it appears to be quite a common motive among Zanzibaris for a man to make his house *waqf* for his descendants with the wish that some of them should live in it and thus retain a tangible connection with him after his death. But the strict prohibition against renting in the case of the house in question prevented even one of the beneficiaries renting it from the rest, so that when the family grew too big for all of them to live in the house together a problem arose which was incapable of reasonable legal solution. One *qadi* suggested that there remained a legal way in which the beneficiaries could, in accordance with the terms of the dedication, derive equal benefit from the house, which was for them to occupy it by turns for a year at a time each—an arrangement which he admitted to be more ingenious than convenient.

The social survival which the dedicator of a *waqf* enjoys is sometimes used by him in order to hand on to his descendants the role he holds in society, as in the following dedication of a book:

This book passed [from the hands of its former owner] into the possession of the poor-before-God X, and he hereby makes it *waqf* for his children and his agnatic descendants through them; a *waqf* not to be sold or loaned or given or inherited; and he reserves to himself the custody of the *waqf* during his lifetime, after which its custodian is to be the most religious of his male children and of the [subsequent] beneficiaries, and God is the best witness...[signed and dated].

The author of this dedication was a Shafi'i *qadi* and he made all his religious books *waqf* in the same way. The office of *qadi* tends to run in families, and by making his library *waqf* in this way the *qadi* tries to assure that it will remain intact for the use of any of his sons and descendants who may wish to follow in his footsteps. It will be noted, however, that the dedicator does not make the book *waqf* for the benefit of the most religious of his sons to the exclusion of the others. He seeks to achieve his object in another way, by making the book *waqf* for all



his children and agnatic descendants but reserving the custody of the book to the most religious of them.

The alternative method, that of selective dedication, would not be illegal according to the Shafi'i commentators, but there is an important reason why the other method has been chosen to accomplish the same purpose. By making the dedication as he has done, the *qadi* technically avoids favouring one of his children at the expense of the others, which would be an act strongly disapproved of in religion.

Here we reach a point at which the underlying principle of charity inherent in the concept of *waqf* exercises a telling influence upon the institution as it is actually practised. This influence emanates more from the popular conception of what is right and proper than from the works of the legal commentators. The latter mention many subtleties and legal devices, but the lines of argument which they adopt are naturally more sophisticated than those which occur to the ordinary makers of *waqfs*, or often to ordinary *qadis* when a *waqf* dispute comes before them for judgement. Even the validity of the dedication quoted at length earlier in this paper was questioned on the grounds that the dedicator had included one of his grandchildren in the first rank of beneficiaries together with his children but left the other grandchildren without any share in the *waqf* until the beneficiaries of the first rank died. In another *waqf* case, a woman included her half-brother and half-sister among the beneficiaries of her *waqf* but excluded her full brother. It was eventually ruled by the High Court of Zanzibar that the terms of the dedication were valid, and there can be very little doubt that the ruling was correct. Nevertheless, before the dispute reached the High Court, *qadis* in Zanzibar had given their opinion that in spite of the explicit terms of the dedication the benefits of the *waqf* should be enjoyed by the full brother, and the half-brother and half-sister excluded on the grounds that the full brother was the closest inheritor of the dedication. They said:

It is established that this dedicatrix has committed an act which is irreligious, contrary to what God and His Prophet have commanded, and contrary to what God has required his worshippers to do: namely that they should not commit acts contrary to divine equity, opposed, that is, to the equity of the shariah. This matter is made clear by the learned 'Abdullah bin Humaid as-Salimi on page 85 of *Kitab al-Jami' as-Sahih* in his discussion of the rejection of innovations and heresy on the part of imams and others. This book has spoken clearly enough on the matter to relieve anyone of doubt and to satisfy the inquirer that in making this *waqf* the dedicatrix has performed an act unacceptable in the shariah by abandoning her full brother and failing to allot to him any part of the *waqf* whilst granting benefit to others who are more remotely related to her. This, as we have stated, shows that the transaction is contrary to the dictates of the shariah. It should, therefore, be rectified, that is, we should let the *waqf* be enjoyed by the dedicator's full brother so long as he lives and if he dies without issue the *waqf* should revert to the half-brother and half-sister in the manner stated in the *waqf* deed.

The authority referred to says only that conditions which are opposed to the shariah are void—a rule of which one of the usual examples is that of making a condition that the beneficiary should not become a Muslim and another that he should remain celibate. The argument of the *qadis* in the foregoing passage is far removed from the sophistication of some legal authorities such as the Shafi'i lawyer who argues that a man may validly, in his lifetime though not by will, make *waqf* to benefit his sons and exclude his daughters. To make such a dedication is much more acutely against general shariah principles than the terms of the dedication in question, but it is argued, firstly, that it is not proved that the desire to exclude the daughters is necessarily and invariably sinful since it is usually allowed in the making of gifts, and secondly that even if sinful the sin is not material to the *waqf*, just as the purchase of grapes for making wine is a valid act of purchase although the making of wine is illegal (Saiyid Al-Bakri 1307 AH: III, 161).

The case above-mentioned in which a full brother was excluded is the only case I have come across in some hundreds of Zanzibar *waqf* dedications in which the powers legally accorded to the dedicator have clearly been taken advantage of in order to pervert the normal law of inheritance. It seems more likely than not that in the *qadis'* courts it would have been void. The idea of driving a coach and horses through the shariah law is not common in Zanzibar, and efforts of that kind might well meet with failure when assessed by *qadis* who take no delight in legalisms. Further, the maker of a *waqf* believes himself to be performing an act which brings him religious merit: a different matter from devices which lie within the margins of secular legality.

As it happens, *waqf*, like the making of wills, is believed to have been practised by the early Muslims before the revelation of the laws of inheritance. *Waqf*-making and will-making are seen by local commentators as having been the earliest ways in Islam of giving to women the rights which the pagan Arabs of the Days of Ignorance denied them. According to traditional Muslim belief, the society of the pagan Arabs before Islam was one in which women were of no account, female infanticide was practised and agnatic descent was stressed to the exclusion of all other principles. Islam was far from helping or being helped by tribalism of this sort: the tribal leaders of Mecca were the earliest opponents of the new revelation. It is significant that when the revelation of the laws of inheritance occurred it was of the kind and with the implications which I have mentioned earlier, especially with regard to the function of female inheritors in procuring the circulation of property, at a time when the Muslim armies were beginning to spread out into the conquered agricultural territories and individuals were beginning to acquire great holdings of land as the spoils of war.

In the present practice of *waqf*, this early history still has its influence. It is believed to be more charitable to give to one's kin through female links than to one's agnates. It is no doubt with this in mind that many dedicators have chosen to have the benefits of the *waqf* divided equally among all their descendants, making no difference between women (and descendants through women) and

agnates. It will immediately be obvious that over a long period this sort of dedication is highly impractical, since unless the descendants become extinct in their early stages they will tend to increase by something approximating to a geometrical progression. Such a case is one *waqf* in Pemba, probably not more than a hundred years old, where the number of beneficiaries now approaches a thousand. Each beneficiary at present receives about ten shillings every ten years—scarcely enough, in the words of the tradition, ‘to prevent their falling into want’.

The charitable principle encourages the widening of the range of beneficiaries to its maximum, so that it includes descendants of all kinds. This is by no means obligatory, but even if the range is narrowed, as it often is, to exclude other than agnatic descendants, the results can be, for practical purposes, much the same. Purely agnatic descendants tend either to die out or to grow into large numbers to a point where the *waqf* benefits are dispersed among too many to provide a minimal livelihood, let alone a prosperous estate, for any single beneficiary. What religion discourages, or even forbids, is the selection of an arbitrary line of beneficiaries to enjoy the *waqf* singly. Arab society, in fact, provides no institution at all similar to the English noble family, the holder of entails and hereditary lands, in which a senior line can perpetuate itself in an attachment to property by the rejection of juniors at each generation. In such a family, the senior line is identified with the ancestor and with the ancestral property. In the case of the Arab family, on the other hand, the ancestor is represented by all his agnatic descendants inclusively. If he makes a *waqf*, he may formally perpetuate his own connection with a property and formally retain the property intact, but there is no social group enjoying sufficient continuity to have the property vested in it.

This often shows in a *waqf* in its early stages—even the children of the dedication often have difficulty in managing the *waqf* for themselves. Either they treat it as the property of every one, each taking what he can get, or else they make an informal division and try to treat the property as a personal possession rather than as a communal trust. In the past it seems quite frequently to have happened that *waqfs* reverted to the status of private property through quite illegal transactions.

At the later stages, it is scarcely avoidable that this should happen. In spite of the religious background, a *waqf* on descendants tends to be regarded as the concern of the descendants rather than the rest of the society. The legal commentators imply that these descendants can continue to remain a group for as long as they exist, but as the generations grow the group divides and subdivides. There is no senior line of the family to monopolise the family succession, the ancestors and the lands, rejecting its juniors in the process. Rather does the Arab family divide by a mutual exclusion of parts, implying, of course, if not the rejection at least a change in the status of the ancestor from whom the parts branched out. Either he is forgotten or he is remembered only as a link in a chain of ancestry going backwards through time—he validates certain social claims but he no longer unites social groups.

*Waqf* law disregards this dynamic social process. The group is counted a logical whole, since it can logically be defined relative to an ancestor and to the

property upon which he has imprinted his will. In the most common type of dedication, which says '*waqf* upon only agnatic [or cognatic] descendants, generation by generation', the succession to benefits remains exclusively for each generation until every member dies out and the benefits pass to the next, so that after some generations from the dedicator members of a later rank of beneficiaries will succeed from the last surviving member of the preceding generation with whom most of them have only a remote connection in kinship. By implication, *waqf* denies the need for any closer relationship between the beneficiaries than that to the dedicator. It is as though he were perpetually present, himself the senior line—but of course he is not. Closer interests, private or small family gain, assert themselves. The *waqf* is improperly handled and treated as private property, since the institution itself as existing in the law is not strong enough to stand against the other institutions of the society.

After a length of time in which the dedicator survives his death as a distinct social person, as an owner of property and a person in whom descendants are united, he then passes away into the anonymous dead—a generalized social presence corresponding in a way to the living poor or Muslims in general, to whose benefit, as we have seen, some *waqfs* are made and others are made to revert.

It is ironical that one of the purposes for which a *waqf* cannot be made is the maintenance of ordinary graves because, as the commentators say: 'the dead are passing into dissolution and the repairing of their tombs is not appropriate to them, though we should except the repairing of the tombs of prophets, learned men and saints.'

#### REFERENCE

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