ISLAMIC PHILANTHROPY AND THE FOUNDATIONS OF ETHICAL ENTERPRISE

by Raj Brown, Emeritus Professor, International Business, Royal Holloway, University of London
About Penang Story Lectures

The Penang Story Lecture Series aims to create awareness about Penang’s history and heritage. The theme this year is “Penang in Global History” focusing on the role the people of Penang played in local, regional and global histories. Equally fascinating is Penang as a place, a refuge and centre for knowledge development and intellectual movements.

The lecture series also aims to explore Penang’s unique “place-identity” and strengthen the enabling factors that continue to make Penang attractive to talent. These public lectures examine a particular theme from a multi-disciplinary perspective.
Foreword

The Penang Story Initiative: Local, Regional and Global Histories

With UNESCO World Heritage Site Inscription in 2008 and the growing awareness about cultural heritage issues, this new chapter of the Penang Story not only continues to celebrate cultural diversity but expands to include a re-discovery of Penang’s place in local, regional and global history. There will be a special emphasis on Penang as a place of “conjunctures, confluences and contestations”; highlighting the cosmopolitan society that contributed to the making of Penang’s “spirit of place”; and all this by concentrating on Penang’s multi-ethnic community and their contribution to local, regional and global histories.

The Penang Story is an open platform for all those with an interest in Penang from different parts of the world to contribute towards “deepening” the story. The project’s focus is not only on events and people but also on other intangible heritage involving foodways, economic activities, values and beliefs, education and all other aspects related to George Town’s “Outstanding Universal Values”.

The Penang Story will build a greater sense of solidarity amongst locals particularly stakeholders in George Town. It will also deepen the public’s understanding of Penang’s role as a place attractive to talent and a home where ideas germinate and return to influence world affairs. This will boost the sense of possibility so important to Penang’s civil society movement. Lastly, we hope that Penang Story will encourage communities to become proud of their own heritage whilst engendering great respect for the traditions and history of other communities. Ultimately, all communities will become aware of having contributed to Penang’s development and progress.

Dato’ Anwar Fazal
Chairman
Penang Story
About the Speaker

RAJESWARY AMPALAVANAR BROWN, better known as RAJ BROWN, is Emeritus Professor in International Business at Royal Holloway College, London where she taught from 1998-2009. She has a PhD, in History, from University of London, School of Oriental and African Studies. She started her career as a lecturer in the Department of Indian Studies and Department of History, University of Malaya, 1966-76. Her research monographs include The Indian Minority and Political Change in Malaya, 1945-1957, (1981); Capital and Entrepreneurship in South East Asia, (1994); Chinese Big Business and the Wealth of Asian Nations (2000). She has written a 3 volume study guide on China and the International Economy (2008). Her recent book is The Rise of the Corporate Economy in South East Asia, published by Routledge Curzon (2006), and Islam in Modern Thailand: Faith, Philanthropy and Politics, to be published by Routledge (upcoming, 2013). She was the Team Leader of ‘Indigenous Charities in the Modern World’, a four-year project of the Hong Kong University, which involved an extensive programme of research, leading to three annual workshops between 2010 and 2012, held in Penang (2010), Istanbul (2011) and Hong Kong (2012).
DR. MAGDA ISMAIL obtained a Ph.D. in Islamic Civilization (Islamic Economics) from the International Institute of Islamic Thought and Civilization (ISTAC) under the International Islamic University Malaysia (IIUM) in 2003, having completed her Masters in Economics from IIUM in 1996, and her Bachelor in Economics from Cairo University / Khartoum Branch in Sudan in 1984. She visited the United State of America (USA) in 1996 and 2000 for Educational Visit Program whereby she visited San Jose University, Berkeley University, Stanford University and Santa Clara University. She has also visited other countries, such as Kuwait, Egypt, Yemen, Tunis, Algeria, Singapore, and Indonesia, as a moderator, guest speaker, paper presenter or trainer.
Abstract

This lecture emphasizes the deeply embedded economic interests of Islamic charities: the accumulation of land and property, commercial and financial activities, in addition to their role rather than their role in providing social welfare, educational opportunities, and cash waqf and hawala facilities for individuals to perform the Hajj. These entrepreneurial priorities are global, since the waqf (Islamic endowment) is linked to the homeland of the founders in the Middle East and South East Asia, the historical diasporas of Persians, Arabs, Hadhramis, Indians and Malays. The lecture appraises the application and success of Islamic finance in the commercial exploitation of these assets. The focus then shifts to the role of shari’a law in determining and shaping the issuance of bonds and derivatives. Throughout the paper, attention is given to the nature of an ‘ethical capitalism’ that emerges, and a brief comparison is drawn with the Chinese or Confucianist Tong (lineage).
The regional focus is concentrated on three countries: Bahrain, Singapore and Thailand.

The questions raised in this context are:

- What are the different kinds of activities in which the major charities engage?
- What are the land, property assets and businesses they own?
- Are Islamic banking and finance and Islamic microfinance initiatives sustaining this wealth creation?
- Who are the beneficiaries of these local, regional, national and international networks of philanthropy?
THE WAQF & THE CASH WAQF

By RAJ BROWN  Emeritus Professor, International Business, Royal Holloway, University of London
The *waqf* is a highly significant legal mechanism and a unique Islamic institution, recognised and developed under the *Shari’a* since the earliest period within the Muslim world, but evolved systematically from the seventh to eighth century. At its heart the Islamic endowment is connected firmly with the Muslim precept of charity. For centuries, wherever there was an established Muslim community, one was likely to find at least one *waqf*, although each was influenced by the political, economic and social conditions of its local environment. They dot the Islamic landscape, and some of the most obvious are the great monuments and religious buildings such as the historic *awqaf* of the Jerusalem Al-Aqsa mosque and the Bosnian Mostar bridge, and services in hospitals, schools, universities, soup kitchens and waterways of the Middle East, Asia and Africa. Even in countries where Muslims are a minority population, their endowments have extensively contributed towards the drawing of the urban landscape. There are, for instance, at least 100 registered *waqf* in Singapore, including significant buildings such as the Omar Kampung Melaka mosque dating back to 1826\(^1\). However, contemporary visible expression of these *awqaf* can also be seen in new commercial residential developments, developed from pre-existing unproductive *waqf* lands, through

---

\(^1\) Another obvious example is Pulau Pinang, in Malaysia, where Muslims were and are a local, although not national, minority, which also saw widespread endowments which shaped the city of George Town. One public endowment alone, from Mohammed Noordin, a wealthy Muslim, in 1869 involved 11 pieces of land and 13 shophouses, in the key commercial section of the urban environment (Chung, Nasution and Brown 2010).
the skilful deployment of various Shari’ā-compliant financial instruments, which have involved both local Muslims and the wider umma (Hanefah et al undated; Brown 2008a:369-377)\(^2\). Thailand’s diverse Muslim communities, including the Hui in Chiangmai, the Malay Muslims in Pattani, the Cham and South Asians in Bangkok have all endowed waqf, thereby revealing the pluralism of its adherents.

Under the waqf, an owner permanently settles property, its usufruct or income, to the use of beneficiaries for specific purposes (Lim 2000). Waqf by its very nature denotes the tying up of property in such a way that proprietary rights cannot be exercised over the property itself, but only over the usufruct or income. The majority of awqaf are real property (land), where the security of the act of ‘continuous charity’ is easily evidenced, although classical Muslim jurists referred to waqf of mobile assets such as farm animals or furniture from the earliest times (Kahf 1999). During the Ottoman period, however, in the fifteenth and sixteenth centuries, a particular form of endowment fund, the cash waqf, by which money was settled for social and pious purposes, came to be approved by the courts. As will be considered briefly below, the legitimacy of the cash waqf has not gone uncontested, since it challenges the general rule of perpetuity of the waqf. However, these endowments were a driving force in economic development in the Ottoman world, particularly as a source of credit for city merchants and traders (Cizakca 2004). In the

\(^2\) The Hadhrami Arab and Indian Muslim communities of Singapore were to a greater degree than the Malay Muslim community, involved in endowing waqf. The enduring Islamic pluralism and pragmatism of these diasporas is evident in the way that over time an authentic Islamic urban landscape has been preserved and escalated through the waqf. From the establishment of the Mohammedan and Hindu Endowment Board 1905, under the colonial Mohammedan and Hindu Endowments Ordinance, to administer large religious trusts and more recently since the formation the Majlis Ugama Islam Singapore (MUIS), as a consequence of the Administration of Muslim Law Act 1968, waqf have been redeveloped in ways which have fused mutual aid with capitalism. The deployment of the other shari’ā financial instruments, particularly cash waqf certificates and sukuk bonds, in funding these projects have revitalised transnational and local economic and welfare networks.

\(^3\) Often this is a combination of the cash waqf and the mudaraba principle, which is a form of limited partnership or trust financing.

\(^4\) National recognition of the cash waqf in Indonesia and a system of certification to support it came to fruition in Act No 41, 2004 and pioneering organisations include: Indonesia Waqf Deposit, Centre for Justice and Caring of Ummah and Caring of Ummah Daarat Tawhid.

\(^5\) Legitimacy of the cash waqf in Singapore has been accepted since the late 1960s and Singapore has been a pathbreaker in its development, under the MUIS and its subsidiary Wareesplc (Brown 2009; Hanefah et al undated).
contemporary context, Islamic banks and microfinance institutions (MFI) have recognised its potential for wealth creation by creating interlocking circuits of capital and developing combinations of the cash waqf with other Islamic financial mechanisms. Benthall and Bellion-Jordan (2007:33) recently commented that ‘Islamic finance and charity are interdependent’ and these initiatives are a good illustration of this ‘seamless discourse’, between the marketplace and philanthropic activities. For instance, the wealthy may deposit funds as an endowment with the bank or MFI, which manages the funds and uses them for benevolent purposes (Sait and Lim 2006:188; Pollard, Lim and Brown 2008:144) or the waqf may be used to guarantee Islamic microfinance projects (Brown 2008). The cash waqf as an instrument of poverty alleviation, welfare provision and community development has not been fully realised, but notably in South East Asia there have been important developments in Indonesia and particularly Singapore.
LEGITIMACY OF THE CASH WAQF

Cash *awqaf* offer a potential challenge and concern, since classical *Shari’a* law was widely held to stress perpetuity in the holding of the assets, although there is no consensus of the companions of the Prophet or subsequent generations of jurists on this subject. Cash, a moveable asset, subject to fluctuations in value and without the enduring qualities of, for instance real estate, was difficult to legitimize within the *waqf* framework. The basic principles on *awqaf* remain the same throughout the Islamic world, there are, however, variations in Islamic jurisprudence between the different Sunni *maddahib* – Hanafi, Maliki, Shafi’i and Hanbalii, as well as diversity in social practices, judicial attitudes and implementation by states. On the particular issue of cash *waqf* ownership, juristic opinion is divided. *Shafi’i*is argue that property is simply owned by God which in practice restricts human choices. *Hanbalis* say that ownership is transferred to the beneficiaries. However, *Malikis* consider that ownership rests on the *waqif* and is inherited from him by his legal heirs. Thus *Malikis* did not insist on the perpetuity and continuity of endowment in the manner of the other schools and recognised *manafi* (usufruct) *awqaf* (Kahf 1999), providing opportunities for easier acceptance of the cash endowment.

Within the dominant Hanafi tradition the *waqf* doctrine has raised complex jurisprudential issues from earliest times (Hennigan 2004). However, with
respect to cash *waqf*, it is their emergence as early as the fifteenth century ‘as an indigenous product of a flexible Ottoman judiciary’ (Mandeville quoted in Hoexter, Eisenstadt and Levtzion 2002:126), and eventual acceptance, following learned and vibrant debate amongst the *ulama*, in the Ottoman Empire which provides the basis for its acceptance within this scholarly tradition. Cizacka (2004) indicates that through a three-fold process Ottoman jurists came to legitimise the cash *waqf*: ‘the approval of a moveable asset as the basis of a *waqf*, acceptance of cash as a moveable asset and, therefore, approval of cash endowments’. However, it is also worth noting the work of the influential mufti Ebu Suud (d. 1574) who wrote a treatise on the subject during the period of most vibrant debate, summarised by Mandaville (quoted in Hoexter, Eisenstadt and Levtzion 2002: 126) as “an appeal to continued popular usage (*ta’amul, ta’aruf*), to the welfare of the people (*istihsan*), and to both throughout with a tone of “Let’s be practical,” an appeal to common sense’.
In the particular context of this paper, however, as indicated above cash endowments became an important source of credit in the fifteenth and sixteenth century Ottoman sphere, with the endowed capital lent to borrowers. The returns were used for charitable purposes, after any deductions for expenses incurred by the mutawalli or nazir (the administrator, manager or superintendent of endowment) and any taxes. Money earned through provision of credit that was not distributed according to the terms of the *waqf* in any particular year was added to the endowed capital. In practice cash *awqaf* could be as ‘perpetual’ and resilient as those involving real estate, with the endowed capital added to year by year, including new contributions (Cizakca 2004). This credit provision itself raises interesting questions for Islamic law and has proved a modern debating point for jurists and historians. Some have suggested that money was lent on the basis of interest (*riba*), others that transactions were used to circumvent the legal prohibition against *riba*, through mechanisms providing an ‘interest like’ payment. On the other side of the debate is the point that since the Ottoman courts examined these endowments they must be legal and that the return paid to the *waqf* by the borrower was a share of profit as opposed to interest (Cizakca 2004). While it is beyond the scope of this paper to offer more than a flavour of the vibrant and continuing debate concerning the legitimacy of cash endowment, it is notable too that some Shafi’i scholars accepted the principle of ‘recurrence’, that provided something – cash, precious metals and rental income or usufruct from a *waqf* property – can be used recurrently and benefits can be received, it can be subject matter of a *waqf* (Inalcik 1998; Imber 1997).
Joint Organisers

THINK CITY SDN BHD (TCSB) is a subsidiary of Khazanah Nasional Berhad, the investment arm of the Malaysian government, and an urban regeneration agency operating in the historic city of George Town. It manages the George Town Grants Programme (GTGP), which is a public grants programme designed to protect and preserve George Town’s Outstanding Universal Values. These include the city’s multi-ethnic and multi-cultural living heritage, architectural legacy and intangible heritage as a historic port city in the Straits of Malacca. Think City’s involvement in this project provides focus on the cultural mapping process (documentation and outreach activities involving local histories and heritage) and the intangible heritage of the city.

THE PENANG HERITAGE TRUST (PHT) is one of Malaysia’s most successful non-governmental organizations championing the heritage conservation with special emphasis on Penang and George Town. The PHT played a pivotal role in the nomination of George Town as a UNESCO World Heritage Site. It was also a key partner in the 2001/02 Penang Story Project bringing together local communities through a celebration of cultural diversity.

Knowledge Partners

GEORGE TOWN WORLD HERITAGE INCORPORATED (GTWHI) is the area manager of the George Town UNESCO World Heritage Site. It provides consultation and public awareness regarding the World Heritage Site. GTWHI also provides advice to the State and Local governments regarding heritage conservation issues and assists private property owners about best practices in conservation.

UNIVERSITI SAIRN SABAH (USM) is Malaysia’s Apex University with wide-ranging research programmes. USM initiated several projects directly related to heritage conservation work in Penang and elsewhere.