Why the Islamic Middle East Did not Generate an Indigenous Corporate Law

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Abstract. Classical Islamic law recognizes only natural persons; it does not grant standing to imagined, juristic persons. This article identifies self-enforcing processes that made this "legal individualism" persist even as corporations came to play a growing role in the global economy. Community building being central to Islam's mission, its early promoters had no use for a concept liable to facilitate factionalism. In subsequent centuries the typical Muslim-owned commercial or financial enterprise was too small, and too limited in scope, to justify lobbying for advanced organizational forms. For their part, Muslim rulers made no attempt to supply the corporate form of organization themselves, because they saw no commercial or financial organizations worth developing for their own ends.

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The year 1851 saw the founding of the first predominantly Muslim-owned joint-stock company of the Ottoman Empire: the Şirket-i Hayriye marine transportation company, literally the "Auspicious Company." Headquartered in Istanbul, its ownership was divided into 1,500 tradable shares. Alas, the empire lacked an indigenous legal infrastructure to support this new enterprise. The relevant infrastructure would be transplanted from abroad over the next half-century, through the adoption of the French commercial code, successive amendments to the nascent Ottoman commercial code, and the establishment of specialized commercial courts outside of Islamic law. Nevertheless, Şirket-i Hayriye sold shares and began operation under the patronage of Abdülmecit, the reigning sultan. Abdülmecit himself became the largest shareholder, and the remaining shares were bought by high government officials, almost all Turks, and a few prominent financiers, mostly Armenians.[1]

As significant as the event itself is the Sultan's motive for embracing a new organizational form. The Ottoman economy was now dominated, observed Abdülmecit, by permanent and large enterprises. In the absence of a Turkish word for this form of organization, he described it through a neologism derived from the French "*compagnie*" and English "company": "*kumpaniye*." The empire's existing *kumpaniye*s were owned and operated almost exclusively by foreigners and minorities. It was time, Abdülmecit and his aides thought, for Muslims to begin pooling resources within *kumpaniye*s.[2] This endorsement of organizational transformation represents a milestone on the region's road to economic modernization. The political elites of the mid-nineteenth century had come to consider partnerships based on classical Islamic law ill-suited to the emerging banking, mass transportation, and manufacturing sectors. More generally, they now understood that Islamic contract law, which had not changed significantly since the tenth century, did not accommodate the organizational forms that were coming to dominate the global economy.

The large enterprises that impressed Abdülmecit were joint-stock companies and business corporations. A joint-stock company differs from a partnership, an organizational form supported by Islamic law, in having transferable shares. By virtue of this transferability, it can have an indefinite existence. Whereas a partnership becomes null and void at the withdrawal, incapacitation, or death of even a single member, a joint-stock company can survive any number of membership changes. What the joint-stock company lacks is legal personhood; it cannot sue or be sued as an entity. An organizational form that features both share transferability and legal personhood is the

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[1] Tutel, *Şirket-i Hayriye*, pp. 18-24.

[2] Kazgan, *Osmanlı'dan Cumhuriyet'e Şirketleşme*, pp. 39, 72.

business corporation. This is a profit-seeking legal entity whose standing before the law is independent of the natural individuals who enter into relations with it. Accordingly, it can sue suppliers, clients, agents, and employees on its own behalf, and it can be sued without implicating its workforce. All shareholders of a corporation may change without affecting its existence. Its individual shareholders, who are generally free to transfer their ownership rights to someone else, risk only their contributions to the aggregate capital. They cannot be forced to pay its debts out of personal assets.[3]

At the time when Şirket-i Hayriye was founded Muslim Ottomans were precluded from using these organizational forms, because classical Islamic law recognizes neither and, further, they lacked judicial alternatives. Other Ottoman communities, too, suffered from the organizational limitations of Islamic law, but at least they had the option of switching legal jurisdiction by securing the protection of a western power.[4] Without exception, all joint-stock companies and corporations operating in Ottoman territories, to say nothing of those established in other Muslim-governed states, had been founded by foreigners or, less commonly, non-Muslim subjects.[5] This meant, as Abdülmecit now understood, that foreigners and non-Muslims subjects were better equipped to bringing together multitudes of workers and investors to constitute large and durable enterprises. Although there was nothing to keep Muslims from running proprietary enterprises, family enterprises, or partnerships involving the cooperation of a few people, they could not form enterprises that required the mobilization of vast savings and sustained cooperation among huge numbers of people.

Our challenge is to explain why organizational forms suitable to large-scale profit-oriented business failed to emerge in the Middle East until the modern era, when they were finally introduced in reaction to western economic domination, starting in the nineteenth century with joint-stock companies and continuing, a half-century later, with corporations. Since these organizational forms emerged in western Europe, it makes sense to search for clues in the institutional history of the West. As early as the twelfth century a key difference involved the scope of personhood. Western legal systems came to differentiate between a "natural person" and a "legal person"—the former a flesh-

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[3] This definition of the business corporation follows Kuhn, *Law of Corporations*, pp. 13-14; and Lamoreaux, "Partnerships, Corporations," pp. 29-30. The latter reference draws attention also to competing definitions of the concept.

[4] Kuran, "Economic Ascent," especially sects. 10-13.

[5] Kuran, "Economic Ascent," sects. 2-3; Toprak, *Milli İktisat*, chap. 7.

and-bones individual, the latter a collectivity or organization considered an individual fictitiously, for purposes of the law. By contrast, classical Islamic law recognizes only natural persons. For a contract to carry weight in the eyes of a kadi (judge of an Islamic court), the parties must be real individuals; he cannot grant standing to a corporation, as he can to the individuals who share in the ownership or governance of a collective enterprise.

Documenting this early difference is not enough to explain the observed delay in the Middle East's organizational modernization. The constraints posed by an initial condition need not be insurmountable; given a sufficient demand for change, a way may be found to overcome their resistance. If a condition *does* last for centuries on end, one must explain why sufficiently strong counteracting forces failed to emerge. In the present context, one needs to elucidate why the strict individualism of Islamic law proved so persistent, for centuries on end. It will not do to invoke Islam's alleged traditionalism, conservatism, moderation, or fatalism, all concepts often invoked as fixed elements of the Islamic social order.[6] Societies governed under Islamic law have enjoyed periods of great dynamism; in regard to economic institutions, the eighth and ninth centuries saw revolutionary developments. In certain areas, moreover, innovations never ceased; fiscal policy, tax collection, and military strategy stand out as examples. Evidently precedents of one sort or another were less constraining in some domains than in others. This is why the challenge at hand cannot be attributed to some general and immutable characteristic of Islamic society.

A study that seeks to determine what did not happen, as opposed to recorded events, cannot limit itself to explicating the absence of patterns observed somewhere else. Since there can exist multiple paths to a given outcome, it must look for possibilities also in the society of direct interest. By this logic, it is thus not enough to explain why western paths that led to the joint-stock companies and the business corporation remained closed in the Middle East. We must look also for distinctly Islamic, Middle Eastern, or Ottoman historical paths that may have generated these organizational forms. This will be done in due course, after we peer into certain organizationally, and thus economically and politically, highly significant developments that bypassed the Middle East.

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[6] It is common in academic discourses on Middle Eastern history to treat traditionalism, or some similar attitude, as an independent variable that explains patterns such as low scientific creativity and economic underdevelopment, as opposed to a dependent variable explicable through other factors. For an example from the mid-twentieth century, see Von Grunebaum, *Medieval Islam*; and for a recent influential example, see Genç, *Devlet ve Ekonomi*, especially chaps. 3-4, 21. Genç presents traditionalism as one of three key elements of the Ottoman economic mind. Some of his followers link this mental orientation to verses of the Qur'an that counsel moderation.

The Corporate Revolution of the West

The association of individuals into groups pursuing a common goal extends to time immemorial. So does the concept of a collective entity, of critical importance to the family and the state. Under the Romans, who contributed to these conceptual advances, the state was empowered to hold property and transact with natural individuals, as though it was itself an individual.[7] According to Roman law during the reign of Justinian (527-65), these rights were regulated administratively rather than by a judiciary; only the imperial treasury could sue and be sued in court.[8] However, Roman jurists of the time did not articulate a legally precise definition of what would come to be known as a corporation (usually *universitas*, sometimes *corpus* or *collegium*), to say nothing of identifying its rights and obligations in general terms. They did not specify, for instance, whether collective rights come from a public charter or from the will of its founders. Rarely did they refer to legal personhood. The relationship between the ensemble and its members remained vague.

By the sixth century, two broad trends were discernible as regards the development of the corporation. On the one hand, certain jurists rejected freedom of association on principle and opposed all permanent associations other than the family and the state. The idea of a corporation, they held, was for the convenience of the state's political functions; and none would be served by letting private associations assume corporate powers at will.[9] To the contrary, by segregating the assets of subcommunities from those of the greater aggregate belonging to the state, such associations could undermine state authority and threaten political stability. On the other hand, in lands under the control of the Eastern Roman Empire, but also in former territories of the western Roman Empire, where state power had generally weakened, diverse private associations were demanding and gaining recognition as corporations; to varying degrees, each was coming to enjoy self-governance. These associations included burial clubs, craft guilds, charitable societies, religious cults and, after Christianity became the official religion of the empire, churches and monasteries. Typically these corporations could receive gifts, own property, enter contracts, and act as legal persons through representatives. Some of them, notably certain religious orders and monasteries, exercised a right to elect representatives without outside interference, developed internal procedures

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[7] Kuhn, *Law of Corporations*, pp. 17-18.

[8] Berman, *Law and Revolution*, pp. 215-16.

[9] Kuhn, *Law of Corporations*, pp. 24-29.

for dispute resolution, and ran their own penitential systems.[10] A share of these corporations made of point of withdrawing from local politics, partly to sharpen the boundary between themselves and the outside world.

Thus, diverse corporations emerged in the face of opposition to the idea of free incorporation, with state officials claiming, often without the force to impose their wills, a right to decide what groups may incorporate and under what terms. Corporations spread, moreover, in the absence of a general legal system empowered to adjudicate their disputes with other corporations and with natural individuals. How to interpret these contradictions? The demand for incorporation came from groups that stood to reduce their costs of association by having representatives, owning property jointly, distinguishing between personal and collective property, and having a collective life that might extend beyond that of their own members. For their part, rulers had conflicting motives on the matter. Insofar as incorporation made collectivities more productive, the tax base would rise; but these collectivities could turn into centers of political opposition. Selective incorporation appears as an attempt to balance these conflicting motives. It also enabled the state, as the issuer of corporate charters, to share in the consequent rents. Over the half-millennium that began with Justinian, some rulers managed to restrict incorporation. However, many were too weak to prevent the proliferation of associations claiming rights to self-governance.

Justinian's reign had ended just a few years before Muhammad's birth. A critical step in the development of the corporation was taken in the late eleventh century, about a century after Islamic contract law assumed the classic form that would remain essentially unchanged until the nineteenth century. Following the split of Christianity in 1054, and during the struggle to emancipate religion from the control of emperors, kings, and feudal lords (1075-1122), the Roman Catholic Church began calling itself a corporation. This struggle, considered to have brought about the Papal Revolution,[11] gave rise to the new canon law (*jus novum*) of the Catholic Church. This legal system built on innumerable concepts, enactments, and rules that formed the inherited secular and ecclesiastical legal systems. Unlike all the preceding legal systems, however, it emerged as a systematized and centralized body of law. Articulated in texts, it was supported by theories pertaining to the sources of law and dealing with issues ranging from jurisdiction to property and

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[10] Berman, *Law and Revolution*, pp. 69, 89-91, 98, 182, 215-16. All of these rights were exercised by the Abbey of Cluny, founded in 910 in Southern France.

[11] Known also as the Gregorian Reform.

contracts.[12]

The road leading to the Papal Revolution was paved, as explained, by a half-millennium of uncoordinated experimentation with the corporate form of organization. In localities all across what became *western* Europe, clergy had developed a collective self-consciousness and assumed corporate powers of their own. Now, by claiming to be a legal person in its own right, the entire Church sought, in addition to differentiating itself from the secular world, to establish a hierarchy of ecclesiastical corporate bodies. It sought to weave detached clerical collectives into what Harold Berman has called a "translocal, transtribal, transfeudal, and transnational" corporation with a well-identified and autonomously shaped chain of authority. Not surprisingly, in view of the preceding history, the eleventh and twelfth centuries saw other attempts to form corporations with larger memberships, and more elaborate legal systems. Thousands of towns in northern Italy, France, England, and Germany began to assert a corporate identity, backed by laws of their own. Although each city had its own "urban law," the legal systems shared many features.[13]

Several economic factors are said to have contributed to the rise of the modern city in western Europe: the revival of commerce, rising agricultural productivity, and migration from the countryside.[14] These developments made cities more prosperous, but also larger. That is one reason why they sought a new organizational form or to codify the prevailing organizational forms. A city could lower its cost of governance through the capacity to enter into contracts, borrow and lend, make and amend bylaws under its own name. Insofar as it was perceived as a long-lived entity likely to outlast the individuals acting on its behalf, it could enter into contracts of longer duration, borrow at lower cost, and threaten punishment more credibly. But this cannot be the whole story, for the towns that assumed corporate powers in this period varied greatly in size.[15] Also, the same set of economic stimuli did not induce urban incorporation everywhere; no such development was observed in, say, the great cities of the Islamic Middle East. The timing must have been influenced also by the fact that other secular associations and religious associations were getting incorporated,

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[12] Berman, *Law and Revolution*, especially chap. 2; Jolowicz and Nicholas, *Introduction to Roman Law*, chaps. 16-17.

[13] Berman, *Law and Revolution*, chap. 12; Pirenne, *Medieval Cities*, pp. 121-51; Stephenson, *Borough and Town*, especially chaps. 2, 6.

[14] Mumford, *City in History*, pp. 253-61; Pirenne, *Medieval Cities*, pp. 55-74, 153-67.

[15] In the area lying north of the Alps and the Danube, there were more than 3,200 cities and towns in 1330; of this number, 9 had more than 25,000 inhabitants, and 3,000 had less than 2,000 each (Pounds, *Historical Geography of Europe*, Table 6.5).

declaring legal systems, and carving out their own jurisdictions. In turning their city into a corporation and adopting a legal system of their own, its residents sought to protect their existing way of life, including rights they were already exercising as collectivities.

Harbingers of the Business Corporation

Given the stimulus that the revival of commerce gave to Europe's Corporate Revolution, it should come as no surprise that merchants themselves, whose numbers grew enormously, contributed to the legal transformations. The late eleventh and twelfth centuries saw the emergence of mercantile law (*lex mercatoria*, known also as the "law merchant"). To the fifteenth century this law governed transactions in the fairs of northern Europe, but also intercity trade and overseas trade, including credit, insurance, and transportation. It was based, of course, on a vast body of rules found in Roman texts. However, the new law was more systematic, and it was circulated through compilations of customs and statutes.[16] The earliest such compilation, published in 1095 and known as the Amalfian Table, gained acceptance from all the city states of Italy.[17] A key characteristic of the mercantile law of this period is that it gave foreigners explicit protection against local laws and customs. In fits and starts, public authorities came to accept the principle that all merchants, regardless of geographic origin, should receive equal treatment. Merchants did not reject other legal systems, but they insisted on autonomy in matters of commerce. Although the boundaries of various jurisdictions (for example, the frontier between mercantile and canon law) was a subject of persistent controversy, on many matters the supremacy of mercantile law attained almost universal acceptance. Accordingly, in a wide class of cases, commercial disputes started to be adjudicated by commercial courts composed of judges elected by the merchants themselves. As early as 1154, northern Italy had commercial courts consisting of merchant judges (*consules mercatorum*).[18]

From the thirteenth century onward, efforts were made to give profit-making enterprises various characteristics that would eventually come to be associated with business corporations. With the merchants of northern Italy leading the way, enterprises became longer-lived and larger. They developed various ways to separate ownership from control, and to give enterprises an existence

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[16] Berman, *Law and Revolution*, chap. 11.

[17] Berman, *Law and Revolution*, p. 340.

[18] Mitchell, *Early History of Law Merchant*, chap. 3. See also Milgrom, North, and Weingast, "Revival of Trade".

independent of the lives of their shareholders. We shall review a few critical developments, in order to place in historical context the subsequent investigation of why business organization essentially stagnated in the Middle East.

Prior to the thirteenth century, a leding form of resource pooling among European merchants was the *commenda*. Like the Islamic *mud*ā*raba*, the *commenda* limited each partner's liability to the resources he himself contributed to the partnership. Under the circumstances, third parties would advance credit to any given partner only up to that partner's payment capacity. This limited the scale of the enterprise as well as its potential for growth.[19] In the thirteenth century, the Italians sought to overcome this limitation through the "family firm." In its original form, the family firm consisted of a partnership known as *compagnia* and formed mostly by kin, with each partner assuming unlimited and joint liability for debts. Although the death of a partner would force the firm to dissolve, it would immediately be reconstituted, usually retaining the name and the capital of the previous firm. The largest family firms accumulated assets and incomes comparable to those of rulers. Consider the Bardi firm (1310-46). In 1335 its income was equal to about half the English king's income a century later, and its assets were 4.5 times greater.[20] This scale was attained partly through deposits from a wide array of sources, including clerics, nobles, and ordinary citizens. Unlimited and joint liability bolstered the credibility of the firm's commitment to repay its debts. And it did so partly because the city in which the firm had its headquarters was expected to enforce its obligations. The city had an incentive to do so because a default by any one firm would cast doubt on the commitments of its other family firms; a default would impose, in other words, a negative externality on the rest of the city's economy.[21] The credibility of the city's role in this arrangement rested, of course, on its own legal personhood. Specifically, its capacity to enforce the commitments of individual firms depended on its power to initiate lawsuits.

Italian family firms introduced other organizational innovations that enabled them to spread geographically and grow in size. These include the posting of paid agents in distant lands, selected mostly from among non-kin and rotated frequently to deter collusion with local interests. Another arrangement, introduced by the famous Medici firm (1397-1494), involved a controlling partnership

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[19] Kuran, "Islamic Commercial Crisis," pp. 417-18, 421-22.

[20] Greif, "Evolving Organizational Forms," pp. 476-77. For many additional details, see Hunt, *Medieval Super-companies*, especially chaps. 1-2.

[21] Greif, "Evolving Organizational Forms," pp. 489-90.

that established numerous subsidiary partnerships, each with a branch manager who assumed joint and unlimited liability for the activities of his own branch. The liability provisions of the subsidiary partnerships were meant to discourage branch managers from taking steps that would benefit them personally, at the firm's expense.[22] Such complexities stimulated the development of double-entry bookkeeping, doubtless to depersonalize accounting, making the profitability of each branch transparent and the books of various branches comparable.[23]

Among other organizational developments on the road to the business corporation, one involved attempts to make *commenda* more durable. In thirteenth-century Genoa and Venice the posting of resident merchants in distant lands transformed the *commenda* into a quasi-permanent association. Instead of returning home at the conclusion of a contracted trading mission, these resident merchants would send profits to their inactive partners at home, receive a further investment to undertake further transactions, send back profits again, and so on indefinitely. These spatially separated partners thus became, for all intents and purposes, a permanent enterprise enjoying a commercial identity of its own. Before the law, however, their association continued to be treated as temporary. In 1271 Venetian authorities drove home the point by limiting the duration of a partnership to two years and banning the practice of sending profits and receiving capital without a personal appearance.[24] Presumably the objection was aimed at reducing the misunderstandings and disputes liable to arise in the absence of periodic face-to-face meetings. However, the restrictions were frequently circumvented—evidence that the gains from enterprise longevity were starting to outweigh the costs of infrequent communication. One benefit is that a partnership with a long history could more credibly make long-term commitments than one just established. Another is that a merchant who establishes long-term residence in a foreign land can develop a reputation that will lower the transaction costs of his dealings.

A key feature of a full-blown business corporation, shared also by the joint-stock company, is the tradability of its shares. By the fourtheenth century certain Italian enterprises were being established as a type of joint-stock company. The maritime partnership (*societas navalis*) involved a ship as capital, divided into shares (*carati*) that were tradable, though often subject to an option of first purchase by, or the permission of, other shareholders. A shareholder's liability was limited

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[22] De Roover, *Medici Bank*, chap. 5; Greif, "Evolving Organizational Forms," pp. 494-95.

[23] De Roover, *Business, Banking*, chap. 3; Hunt, *Medieval Super-companies*, chap. 4.

[24] Kedar, *Merchants in Crisis*, pp. 25-26.

to his interest in the ship.[25] Even with its restrictions on tradability, each intended to prevent unapproved people from gaining managerial control, this organizational innovation allowed the private financing of relatively large enterprises. Maritime partnerships usually involved 5, 8, 14, or 24 shares, with as many investors.

Yet another harbinger of the business corporation is the Bank of San Giorgio, founded by the Genoese in 1407. The shareholders of this chartered bank received dividends based on profits from various activities. The bank's management was controlled by its largest shareholders; the smallest did not even vote in the general assembly.[26] This voting rule represented a step toward the separation of ownership and management, which is a basic characteristic of the modern firm. In a simple partnership, including the commenda, even the member contributing least to joint resources enjoys veto power; he may block a policy change unilaterally. Likewise, any partner can terminate the enterprise by pulling out. In concentrating authority in the hands of large shareholders, certain enterprises of fourteenth- and fifteenth-century Italy deprived their lesser members of unilateral power over their decisions. They could grow in size, therefore, without necessarily sacrificing governability. Insofar as their shares were tradable, they also enjoyed greater longevity than a simple partnership. A member who lost interest in the enterprise could pull out without endangering the enterprise itself. The resulting operational continuity enabled these enterprises to accumulate commercial knowledge.

These innovations of profit-making enterprises fed on advances in corporate governance within the broader social system. In a large organization, insisting on unanimity will usually paralyze governance. Requiring only majority approval, or the decision of a representative body, enhances organizational responsiveness to changing opportunities and group needs. Parliamentary democracy, the crowning political achievement of western Europe, rests on a separation between the electoral rights of voters and the legislative and executive rights of their elected representatives. Revealingly, the papal assemblies and parliaments of the thirteenth century were considered corporations. The emergence of parliamentary democracy moved European citizens away from the Roman maxim, *Quod omnes tangit ab omnibus approbetur*—what touches all must be decided by all. It acknowledged that in the presence of large numbers of principals, the power to govern is best

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[25] Çizakça, *Business Partnerships*, pp. 27-32.

[26] Epstein, *Genoa*, pp. 260-61, 277-81, 304-6; and Kuhn, *Law of Corporations*, pp. 34-38.

relegated, at least temporarily, to a representative body.[27] The underlying logic applies, of course, as much to shareholders of a profit-making organization as to citizens possessing democratic rights. In each case, the separation of ownership from control results in efficiency gains.

The foregoing organizational innovations—separation of ownership from management, tradability of shares, and long-lived associations—spread slowly among profit-making enterprises. Nevertheless, these often disparate attempts at improving commercial organization along one dimension or another helped to habituate business communities to thinking of organizations as economic players with identities of their own. At a time when collectives with legal personhood were being founded for political, educational, civic, and religious purposes, they demonstrated how corporate features could also be useful in commerce and finance. They broadened the options of individual investors and merchants seeking to limit risk. In sum, they served as stepping stones on the evolutionary path leading to the modern business corporation.[28] Also critical to the argument to follow on the Middle East is that new initiatives involving commerce came largely from the business community itself—from "below" rather than "above." The state might, of course, play a facilitative role, for example, in helping to enforce commitments.

Overseas Trading Companies

The sixteenth century brought a new development on the path to the modern business corporation: the establishment of large and effectively permanent companies specializing in trade with a specific region outside of western Europe. They included the Levant Company, formed by English traders doing business in the area characterized here as the Middle East, as well as the East India Companies of the Dutch and the English, which conducted business in a region governed partly by Muslims and visited regularly by Middle Eastern traders. In terms of organization, these companies differed from one another and across time. But the general drift was toward adoption of key features of the modern firm: large amounts of capital maintained in perpetuity, impediments to free riding on the part of the beneficiaries of company-provided public goods, transferability of shares, and legal personhood. The underlying motives are of interest in their own right: they demonstrate how organizational creativity

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[27] Tierney, *Growth of Constitutional Thought*, pp. 21, 24-25.

[28] For further details on medieval advances in the organization of business, see Baskin and Miranti, *History of Corporate Finance*, chap. 2. Hunt and Murray, *Business in Medieval Europe*, especially chaps. 6-10; and Greif, "Evolving Organizational Forms."

fed on itself, as each innovation fostered problems that induced further adjustments. Reviewing this evolution will also contribute to identifying critical organizational developments that did not occur within Islamic law, thus generating clues as to why Abdülmecit's *kumpaniye* was a novelty, and, more generally, as to why Islamic law remained strictly individualist for centuries on end.

The overseas trading companies, as they are collectively known, held state-issued corporate charters that enabled them to form and enforce cartels. A monarch agreed to provide a charter as part of an implicit bargain. A selected group of merchants would enjoy the right to conduct trade with a designated part of the world, regulate the actions of its members, and control entry into its ranks; and the group would then share the consequent rents with the state through taxes and cheap loans. Chartered merchants also fulfilled tasks that would otherwise fall upon the state: the maintenance of embassies, consulates, trade facilities, and even military assets, such as ships deployable in warfare.[29] The charter of an overseas trading company did not necessarily include a formal incorporation clause. At its inception in 1581, the Levant Company was declared a "society" consisting of 20 merchants authorized to conduct trade in the Ottoman Empire for seven years. Though these merchants began to trade on a joint-stock basis, the state negotiated with them as a group, implicitly granting them legal personhood.[30]

No such ambiguity was present in the case of the English East India Company. Its charter of 1600 incorporated 218 persons, with the right to have a common seal, elect officers, and regulate changes in membership.[31] The feasibility of these bargains depended on the monarch's power to grant legal personhood by decree. The prevailing law recognized natural individuals automatically, and a partnership could be formed through a handshake, without involving any arm of the state. To gain legal personhood, however, a company needed a state-issued charter; without one, it would lack existence before the law as a collectivity.[32] It is by chartering selectively, and vowing to protect chartered groups against unauthorized competition, that European states generated appropriable rents. If a rent failed to materialize, or the state received less than what it considered its rightful

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[29] Because of its stake in the chartered company's profitability, the state sometimes supervised the appointment of its managers and apportionment of its dividends. See, generally, Ekelund and Tollison, *Politicized Economies*, esp. chap. 6; Harris, *Industrializing English Law*, chap. 2; Wood, *Levant Company*, chaps. 1-7; Brenner, *Merchants and Revolution*, especially chaps. 1, 12; Davis, *Corporations*; and Berman, *Law and Revolution*, chap. 11.

[30] Scott, *Joint-Stock Companies to 1720*, vol. 2, p. 84.

[31] Scott, *Joint-Stock Companies to 1720*, vol.2, pp. 92-93.

[32] Roy, *Socializing Capital*, p. 12. Depending on the polity, the charter, or letter of patent, could require an act of parliament.

share, it might revoke a charter. In 1600, when an unchartered group of merchants promised to pay higher taxes in return for the Levant Company's privileges, the Queen of England revoked the Levant Company's charter, restoring it only in return for a promise of higher annual contributions.[33] Such rivalry among merchant groups undoubtedly boosted the Crown's capacity to extract rents from the chartering process.

From the standpoint of a group of merchants, limiting competition was not necessarily the main justification for acquiring a charter. Although the group blocked entry by nonmember co-nationals, its own members competed with one another and, in overseas markets, with both other foreigners and local merchants. Whatever the gains from entry barriers, overseas merchants benefitted also from a vast increase in the availability of capital. In particular, people without any commercial experience began to invest in this trade, encouraged by the transparency of the company's accounts and, more critical, the freedom to buy and sell company shares at will.[34] By the late seventeenth century, share transfers were so common that they took place through organized markets.[35] Still another benefit of having a charter was that it enabled the group to finance collective expenditures in foreign lands, including the building of forts and secure residences. In 1685 22.4 percent of the East India Company's gross assets consisted of immovables shared by the entire membership.[36] By virtue of its corporate status, the company could compel its members to share in the requisite financing.[37]

As significant as the organizational capabilities of the overseas trading companies are the mechanisms through which they arose. Reviewing a few of these will demonstrate how key features of the modern firm could arise through multiple evolutionary paths. It will serve also to draw additional attention to an organizational dynamism that, we shall see, the contemporaneous Middle East lacked.

Certain English trading companies, including the Levant Company, were chartered, at least initially, as regulated enterprises whose members traded on their own account, rather than on behalf

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[33] Wood, *Levant Company*, p. 36.

[34] Scott, *Joint-Stock Companies to 1720*, vol. 1, pp. 442-43.

[35] Neal, *Rise of Financial Capitalism*, chap. 2.

[36] Scott, *Joint-Stock Companies to 1720*, vol. 2, p. 147.

[37] Without this coercive ability, members would have been tempted to enjoy the investments of others without paying. However, in the presence of free riding, collective goods would not be provided in the first place. For the underlying logic, see Olson, *Logic of Collective Action*; and Sandler, *Collective Action*.

of the collectivity. Membership could not be obtained merely by purchasing a share; an apprenticeship was also necessary. Moreover, the share itself was not freely transferable; it required the consent of other members. These enterprises provided public goods to their members, including rules and regulations in the membership's collective interest.[38] The public goods made a share valuable, and its market price depended, naturally, on the ease of liquidation as well as on the size of the market for shares. Before long, constituencies emerged for relaxing restrictions on stock transferability. So the existing companies evolved into, and new ones were organized as, joint-stock companies. Interest in a joint-stock company could be transferred at will, without impacting the enterprise or its work. A different set of circumstances led the Dutch East India Company to institute share transferability at will. At its establishment in 1602, this Dutch company's charter was to last until 1612, when it would be liquidated and its assets distributed to its shareholders. The company proceeded to invest heavily in a chain of fortresses along the West African coast, to protect the company's ships. When the ten-year period was over, the fortresses could not be liquidated. With certain shareholders clamoring for a return on their investments, the Dutch parliament decided to renew the company's charter and convert it into a joint-stock company. Under this solution, liquidation was no longer necessary, the company was to have a perpetual existence, and partners wishing to exit needed simply to sell their shares.[39] In this case, then, share transferability emerged as a instrument of preserving the value of illiquid assets.

The organizational transformation of England's overseas companies displays a sequence of steps taken, in each case, to economize on identifiable transaction costs. It also shows, again, how organizational innovations can feed on themselves. Initially, the members of an overseas company pooled resources for a specific commercial voyage, as they might under a *commenda* partnership. Thus, a share of the Levant Company entitled its bearer to a portion of the returns from a specific commercial voyage. If merchant *i* held shares in a voyage beginning March 1602, and merchant *j* in one beginning in June 1602, in principle their returns were independent of one another. However, because goods from separate voyages were often marketed jointly, and also because various other forms of overhead supported multiple voyages, allocating profits sowed administrative confusion and general mistrust. In response, the companies began issuing terminable stock, which provided a claim not on returns from a specific voyage but from those earned during a designated period. This

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[38] Harris, *Industrializing English Law*, pp. 32, 146-47; Kuhn, *Law of Corporations*, pp. 46-48.

[39] Blussé and Gaastra, "Companies and Trade," p. 8; Hyma, *Dutch in the Far East*, chap. 2.

arrangement had the drawback of poor synchronization between income streams and liquidity needs. The next logical step was the issuance of permanent stock, which entitled the owner to returns over an indefinite period, until the stock passed to a new owner.[40]

Through this sequence of transformations each trading company developed a collective identity and reputation of its own—one capable of outlasting its owners at any given time. At this point, it differed from a corporation only in lacking legal personhood.[41] In the eyes of the law, it operated as a cluster of linked and coordinated partnerships, except that the partners themselves could change over time. Nevertheless, by virtue of this separation from its individual shareholders, the joint-stock company could be managed on a time scale much longer than the life of a simple partnership, whether a *commenda* or a *mudārabah*. It could also pursue more ambitious goals, diffuse risks more reliably, exploit economies of scale and scope, and grow much bigger, whether measured in capital or number of shareholders. Established by 20 merchants in 1581, the Levant Company had 87 members in 1600, and a century later it had 200.[42] In the course of these organizational developments, the trading companies gained sophistication in management. Strategic administration, generally centralized, became separated from operations, usually decentralized.[43]

Spread of the Business Corporation in the Industrial Age

Such advances did not follow a linear path. New organizational features emerged and spread through trial and error, with business practices often leaping ahead of legal doctrine, as with the spread of corporations in the centuries following Justinian, in the absence of a clear legal system to govern their relationships with other bodies, and the quasi-permanent *commenda* of Venetian merchants, which authorities considered illegal. There was abundant variation across regions and countries. Resistance occurred at every step of the way. The process of chartering corporations drew objections, for example, from people concerned about the potential for abuse; the rents obtainable through selective chartering would create vested economic interests, they said, and give governments the

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[40] Ekelund and Tollison, *Politicized Economies*, pp. 190-91. Kuhn, *Law of Corporations*, pp. 48-50; Steensgaard, "Companies," pp. 246-51; Scott, *Joint-Stock Companies to 1720*, vol. 2, p. 97-98; Baskin and Miranti, *History of Corporate Finance*, chap. 2.

[41] Accordingly, it could turn into a corporation merely by obtaining the appropriate charter. Certain joint-stock companies did undergo this transformation.

[42] Wood, *Levant Company*, pp. 23-24, 151.

[43] Ekelund and Tollison, *Politicized Economies*, chap. 7.

power to limit political competition.[44] Furthermore, simple partnerships have remained a popular enterprise form down to the present. Even today the commonness of corporations is of little structural consequence to small business operations, which are typically organized as sole proprietorships, family enterprises, or simple partnerships, as was the case a millennium ago throughout the Mediterranean basin—in Italy and Spain as surely as in Egypt and Turkey. Before 1800 the corporation remained the least common form of commercial and financial organization throughout the West. As for joint-stock companies, they became widespread only in the early eighteenth century; in 1717, according to one estimate, 5.2 percent of England's national wealth belonged to organizations established as joint-stock companies, up from 0.013 percent in 1560.[45]

However, the developments in question ensured that the corporate form was in existence, and the necessary experience available, if ever deploying it widely became optimal. As the Industrial Revolution unfolded, the corporate form proved useful especially in sectors that offer economies of scale and scope, and where, to attain these advantages through new technologies, large numbers of workers had to use large amounts of capital. In effect, it gave entrepreneurs the means to pursue commercial and financial ventures once unimaginable. It also gave a further stimulus to the mobilization of capital, by limiting the liability of investors to the amount they could invest. The spread of the business corporation thus proved essential to the financing and management of industrial capitalism.[46]

The development of the business corporation would continue, as would that of the law delineating its capabilities.[47] A key development of the nineteenth century was the spread of "free incorporation"—the freedom to incorporate through a routine procedure, without the blessing of a monarch, president, or parliament. The 1840s saw the passage of "free" or "general" incorporation

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[44] Wallis, "Concept of Systematic Corruption," forthcoming.

[45] Scott, *Joint-Stock Companies to 1720*, vol. 1, p. 439. The figure includes land owned by joint-stock companies. As a result of the financial bubble generated by the South Sea Company, the share rose to 13 percent in 1720.

[46] Harris, *Industrializing English Law*, pp. 282-85; Wallis, "Concept of Systematic Corruption," forthcoming. In parts of western Europe where incorporation remained restrictive, such as France, its advantages were replicated by creating corporate-like partnerships endowed with legal personhood. Thus, in the second half of the nineteenth century, French merchants and financiers could obtain most advantages of incorporation through registered partnerships. See Lamoreaux and Rosenthal, "Organizational Choice and Economic Development."

[47] See Roy, *Socializing Capital*, especially. chaps. 6-9; Chandler, *Visible Hand*, especially chaps. 12-14; and Williamson, *Economic Institutions of Capitalism*, especially chaps. 11-12.

acts in Great Britain and the United States.[48] Meanwhile incorporation itself gained flexibility; for example, it came to be routine to allow voting rules to be modified to suit special needs. There have also been periodic scandals.[49] But each scandal has triggered measures to safeguard the interests of shareholders and society at large through disclosure requirements. In any case, for every modern organization that spawned financial disaster, multitudes of others have produced vast gains on a wide scale. The unprecedented prosperity of the modern age, like the economic leadership of the West, has depended critically on a movement toward larger, more complex, and more durable commercial and financial enterprises.

The Roman Corporate Tradition and the Development of Islamic Law

We are left with the puzzle of why the Islamic Middle East did not generate such a movement toward organizational complexity. During Islam's formative period Muslims had exposure to the Roman institutional heritage that, in Europe, inspired and facilitated the incorporation of churches, cities, and ultimately business enterprises. The peoples of the early Arab empires, especially those of Syria and Egypt, studied and practiced Roman law, though usually in forms supplemented and modified by local customs. Moreover, converts brought into Islamic discourse legal concepts with which they had familiarity. Islamic law thus borrowed from Roman law directly as well as indirectly, through the region's indigenous communities.[50]

True, in schools that trained Muslims to join the learned class (*ʿulamā*'), Roman law was not part of the curriculum. Also, insofar as Muslims gained exposure to Roman legal culture through informal interactions, they would have encountered not only permissive attitudes toward corporations but also the counter-view that treats the corporation as an instrument of state power rather than one of decentralized wealth creation. Furthermore, the availability of a concept does not

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[48] In England, where the corporation came to dominate business organization in the second half of the nineteenth century, not until 1844 could corporations be formed without explicit state permission. See Harris, *Industrializing English Law*, pp. 282-85. On general incorporation acts in the United States, see Wallis, "Concept of Systematic Corruption."

[49] They include the South Sea Bubble of 1720 and the Enron meltdown of 2001.

[50] Crone, *Roman, Provincial, and Islamic Law*, especially chaps. 1, 5-6. The local forms of Roman law are known collectively as "provincial law." The degree to which Roman law influenced the development of Islamic law is a matter of controversy. For a review of the relevant literature and a critique of Crone's work, see Hallaq, "Quest for Origins." Hallaq proposes that the origins of Islamic law lie in Arabian customs rather than in derivatives of Roman law. Yet, there is no reason to suppose that a choice has to be made, for the influences in question are not mutually exclusive. Just as students learn from multiple teachers, so in the course of its evolution Islamic law most certainly absorbed elements from multiple legal traditions.

imply the ready availability of practical applications. During the early Islamic period, as corporations began multiplying in western Europe, no parallel movement is observed in the Middle East. In cities that fell under Muslim domination, Christian and Jewish communities were ruled by chiefs, who took charge in times of turmoil. But the cities themselves did not assert a corporate identity or develop municipal institutions; the heterogeneity of the population might have posed an obstacle. Nor did religious organizations such as churches and convents assert corporate rights, as their counterparts were doing in the West.[51] Islam did grant Jews and Christians legal autonomy, it might be noted, except on criminal matters. However, individual non-Muslims could ask unilaterally to be judged by an Islamic court, whose decision would trump that of a non-Islamic court. The hierarchical characteristic of Islam's distinct form of legal pluralism thus undermined the collective powers of minority communities, hindering their evolution into corporations.[52]

The point remains that during the seventh through tenth centuries, the period when classical Islamic law took shape, the idea of a corporation was available to the Middle East, if in rudimentary form. It is not self-evident, therefore, why corporations did not spread in the Middle east as well or why the corporation was excluded from the corpus of concepts that characterize Islam's legal system.

A major clue lies within the communal organization of pre-Islamic Arabia. At the birth of Islam the mostly nomadic Bedouins who populated the Arabian peninsula were divided into tribes bound together by often fictitious blood ties. The individual was expected to stand up for his fellow tribesmen and to assume responsibility for their acts. This system promoted unending intertribal feuds. Although tribes might seek alliances for defensive purposes, the resulting groupings were inherently unstable; routine conflicts triggered escalating violence and a scramble for new alliances.[53] Because of the resulting insecurity, people stood to gain, individually and collectively, from replacing the region's incumbent sociopolitical equilibrium with a new equilibrium more conducive to wealth creation. They could all benefit from an ideology that would unify the region's peoples

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[51] Stern, "Constitution of the Islamic City," pp. 30-36.

[52] On the logic of how Islamic legal pluralism undermined its own ostensible objectives, see Kuran, "Economic Ascent," esp. sects. 8-9.

[53] This "tribal responsibility system," evokes the "community responsibility system," which, in twelfth- and thirteenth-century Europe, promoted the trust essential to the growth of long-distance commerce (Greif, "Impersonal Exchange without Impartial Law"). As under the latter system, tribes had an incentive to keep their members from cheating outsiders, lest the entire group suffer retaliation. Each system generated strategic uncertainty: retaliations could serve to deter cheating, or to trigger spiraling counter-retaliations. Retaliations could also encourage alliance building. The case of pre-Islamic Arabia suggests that any responsibility system based on communities may foster either growth-promoting or growth-obstructing activity. There is more than one equilibrium.

through all-inclusive bonds of solidarity.[54] Islam responded to this broad need by promoting a concept of community based on religion rather than descent. "Hold fast, all of you together, to the cable of Allah, and do not separate," says the Qur'an (3:103). "And remember Allah's favor unto you: how you were enemies and He made friendship between your hearts so that you became brothers by His grace; and how you were upon the brink of an abyss of fire, and He saved you from it." The community-building described in this verse was undoubtedly critical to Islam's massive success, as measured by its rapid spread across the eastern Mediterranean basin and beyond. It fostered an ideology conducive to weakening real or imagined kinship bonds, reducing intertribal violence, and enhancing the material security of those who accepted conversion. To converts, a complementary benefit of this ideology is that it facilitated collective action against outsiders, as evidenced by the early wars of conquest.

Islam's initial emphasis on community building is reflected in the duties enunciated in the Qur'an. Eight of its verses call for "commanding right and forbidding wrong."[55] Four of these assign this obligation to individuals, the remainder to the collectivity of Muslims (*umma*).[56] None imposes the duty on a subgroup of the community, such as an assembly of elites or elders. In fact, the Qur'an contains no references to the internal organization of the Muslim community. Although it does not ban associations formed to pursue legitimate ends, it intimates that all Muslims, provided they are sane, are to participate in the regulation of public conduct, in all spheres of activity.[57] But they must do so as individuals, except insofar as they act as a community. Accordingly, no collective economic actor makes an appearance in the Qur'an, let alone one treated as a legal person. Islam's most authoritative source of guidance harbors nothing obvious or salient, then, that might have inspired a commercial or financial corporation, or justified borrowing the corporate form of organization from a non-Islamic source.

The Qur'an became a closed book in 632, at Muhammad's death. At that point, tribal bonds remained strong, as evidenced by the important role that tribal allegiances played in the subsequent

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[54] Goldziher, *Muslim Studies*, vol. 1, chap. 2; Shaban, *Islamic History*, vol. 1, chap. 1.

[55] 3:104, 3:110, 3:114, 7:157, 9:71, 9:112, 22:41, 31:17.

[56] For a detailed exegesis, see Cook, *Commanding Right and Forbidding Wrong*, chap. 1.

[57] "The Qur'an," writes Fazlur Rahman,"Principle of *Shura*," p. 4 (italics removed), "tolerates no distinction between one believer and another, male and female, in their equal participation in the life and conduct of the community." There is exaggeration here. For one thing, women are to receive smaller inheritance shares than men, which will limit their capacity to influence political outcomes. For another, slavery is not banned. But it is clear that the Qur'an seeks to broaden political rights.

succession struggles. Nonetheless, Islam had unleashed a powerful counter-force that now denied tribalism legitimacy and forced Muslims to cloak various forms of nepotism, clannishness, and prejudice in a rhetoric of Muslim unity and brotherhood. Though tribalism was not extinguished, it had ceded the high moral ground to a pan-tribal religious ideal.

The endurance of the communal vision embodied in the Qur'an is observable in classical Islamic political theory, which matured over several centuries. This largely normative discourse recognizes no political boundaries except that between the abode of Islam (*dār al-Islām*), consisting of territories inhabited and ruled by Muslims, and the abode of war (*dār al-harb*), ruled and inhabited by non-Muslims.[58] Tribal loyalties having given way, in principle, to bonds of religious brotherhood, the global community of Muslims was to be undivided.[59] This principle constrained the grouping of individuals for purposes of administration, at least in regard to the dominant religious group. Non-Muslims could be categorized according to their relation to Muslims, as with the distinction between protected "peoples of the book" (*ahl al-dhimma*) and unprotected foreigners; and either subcategory could be divided further, as the need arose. For example, the Venetians could be classified as "friendly" and empowered with rights denied to Spaniards. By contrast, all Muslims, at least those of similar social status, had to have essentially equal political and economic rights, regardless of ancestry, language, or place of residence.

It is easy, of course, to identify practices in conflict with this broad ideal. By no means, however, was the ideal honored only in the breach. Up to modern times, trade tariffs distinguished in the first instance between Muslims and non-Muslims. Whereas the latter could pay duties at various rates, a single rate applied to all Muslims, including the subjects of unfriendly Muslim polities. In spite of a long history of Turkish-Iranian rivalry, the Ottoman and Safavid Empires charged Muslim subjects of the other the same duties that they charged their own. The procedures of pre-modern Islamic courts offer a second example. Whereas a Greek or Armenian would be identified as such, a Muslim Arab, Muslim Turk, or Muslim Albanian would be identified simply as a Muslim, often implicitly. National self-awareness is a concept that arrived in the region in the nineteenth and twentieth centuries, partly in reaction to secession movements of the region's

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[58] The distinction is customarily based on Qur'an 47:4.

[59] Dallal, "Ummah"; Lambton, *State and Government*, pp. 13-14.

religious minorities.[60]

If community building was indeed central to Islam's initial mission, the early promoters of Islam would have been suspicious of any concept liable to facilitate factionalism. In particular, the fear of stoking the embers of tribalism, or stimulating similarly exclusive forms of solidarity, would have made them spurn the idea of a corporation. They would have done so even as they borrowed extensively from the Roman institutional heritage, in various areas.[61]

Missed Opportunities to Relax Islamic Legal Individualism

The early Islamic opportunities and constraints described thus far define only the initial conditions on the matter at hand: the development of complex and autonomous organizational forms conducive to capital accumulation on a large scale. By themselves, they do not explain why, more than a millennium later, at the founding of Şirket-i Hayriye in 1851, there were no Muslim-founded corporations, not even a pre-existing joint-stock company. A complete explanation calls for identifying one or more social mechanisms that prevented early and subsequent opportunities. In other words, it requires finding chains of causation that jointly blocked the organizational developments of interest. These chains of causation could, of course, have included opposing processes. Insofar as that was the case, the challenge becomes to elucidate why one chain, rather than another dominated.[62]

The early goal of community building did not determine, then, that Islamic law would remain forever strictly individualistic.[63] Though it undoubtedly constrained subsequent legal and

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[60] McCarthy, *Ottoman Peoples*; Kayalı, *Arabs and Young Turks*; Khalidi et al. (eds.), *Origins of Arab Nationalism*.

[61] Numerous institutions that contributed critically to the functioning of Muslim-governed empires have Roman precedents. They include the waqf (Islamic trust) and tax farming, each of which underwent extensive development within the fold of Islam. See Barnes, *Religious Foundations*, p. 8; and Jones, "Taxation in Antiquity".

[62] On the methodology involved, see Hedström and Swedberg (eds.), *Social Mechanisms*.

[63] This terminology may puzzle readers accustomed to viewing Muslim societies as "communalist," as contrasted with "individualist" societies of the West. The individualism of immediate interest here pertains to the law, not to social relations in general. Legal individualism entails treating contracts as valid only when they involve an exchange of obligations among natural individuals. What, for lack of a better term, may be called "general individualism" lays emphasis on individual objectives, interests, rights, and capabilities, and it allows these to differ from those of the broader society. In a generally individualist society, the individual is free to form associations of his own choice; and he is not required to participate in efforts to uphold social norms. Insofar as general individualism promotes the freedom to join associations with legal standing, it is incompatible with legal individualism, which denies standing before the law to associations and insists on dealing with their members only as individuals. Hayek, *Law, Legislation, and Liberty*, develops this theme, though using different terminology. Greif, "Cultural Beliefs"; Lal, *Unintended Consequences*, chaps. 1, 4-6; and Rosen, *Anthropology of Justice*, advance related ideas, the last in respect to the Islamic world

organizational choices, in principle the barriers were not insurmountable. The centuries following the rise of Islam presented opportunities to reconsider Islam's strictly individualistic legal ethos. One is that the reality of effectively permanent Muslim subcommunities drove a wedge between the ideal of undifferentiated communal unity and evolving social, political, and economic realities. Another opportunity presented itself through the efflorescence of corporate life in western Europe and, more critically, organizational advances among western traders who came to dominate trade between the Middle East and the West.

From the dawn of Islam, every generation of Muslims faced situations that made it convenient to grant or utilize a group identity less inclusive than that of the community of all Muslims. The exigencies of daily life thus exposed the impracticality of keeping the ever-expanding global Muslim community undivided and undifferentiated. By the end of the seventh century, with Egypt, Syria, Iraq, and other regions in the Islamic fold, it was no longer realistic, if it ever was, to expect the full community to enforce the duty of "commanding right and forbidding wrong."

If the jurists and political theorists who shaped Islamic legal discourse needed additional reality checks, they presented themselves through political divisions and ethnic rivalries. By 661, less than three decades after Muhammad's death, the Muslim community split into warring Sunni and Shiite camps. Meanwhile, converts to Islam maintained tribal, ethnic, linguistic, and geographic loyalties. Nor were these the only signs of persistent division. The early Islamic centuries spawned movements seeking a privileged status for Arabs within the broader community of Muslims, along with counter-movements defending the rights of non-Arabs.[64] Every Muslim empire featured one or more politically dominant ethnic group, along with minorities dominant in one economic sector or another. Finally, after Muhammad no Muslim sovereign managed to govern the entire Muslim community.

In adhering to the ideal of a unified community and withholding legal rights from subcommunities, theorists and jurists sought, perhaps, to deny subcommunities legitimacy, with an eye toward limiting political fragmentation and minimizing the gap between ideal and reality. They

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specifically. By these definitions, traditional Islamic society was not individualistic in the general sense. Although it allowed freedom of association, most significantly in permitting, even encouraging, individuals to pour resources into waqfs pursuing goals of their own choice, it denied these waqfs legal personhood. As late as Abdülmecit's time, Ottoman subjects wronged by a waqf were unable to sue the waqf itself; they could sue only a trustee or employee of that waqf.

[64] On racial divisions, see B. Lewis, *Race and Slavery*, especially chaps. 3-5; and on group-based economic inequalities, Marlow, *Hierarchy and Egalitarianism*, especially chaps. 4, 6-7.

may also have sought to inspire and sustain unifying efforts. But established subcommunities need not have accepted this fiction. Constituencies with something to gain from forming collective entities could have raised objections. Existing and potential subcommunities could have developed movements to make states embrace the corporation, or some analogue, as a useful innovation. Such goals could have been pursued without challenging incumbent political authorities. In the West, we saw, during the period corresponding to Islam's first few centuries, innumerable clerical and charitable societies gained recognition as corporations. Evidently they managed to appear politically innocuous. Allowing corporations formed to pursue economic or social objectives is compatible, then, with rejecting ones founded for political ends.

Trends and circumstances that might have triggered an incorporation movement in the Islamic Middle East need not have been limited to developments within the region itself. Opportunities existed to benefit from the evolution of other societies. Most relevant is the spread of long-lived organizations and legal personhood in the West. This made it possible, simply by observing neighboring lands, to encounter new organizational forms. True, in the early Islamic centuries few Middle Easterners travelled to the West, which would have slowed the diffusion of new organizational technologies. But some did so, and Western traders visited or settled in the Middle East. There was also a steady flow of pilgrims to the holy sites of Christianity and Judaism. It was possible to learn about organizational advances from them.

The most significant opportunity for learning about western organizational advances presented itself in the late sixteenth century, with the formation of the overseas trading companies. Among other groups, merchants, financiers, customs officials, and judges came into contact with chartered trading companies; merchants who ventured to India and beyond encountered overseas companies also outside their own base. We do not know how Middle Eastern merchants of the time viewed the companies, because no pertinent writings have survived. However, it should have been obvious that these companies raised capital in novel ways, limited their shareholders' exposure to risk, benefitted from more or less centralized management, and enjoyed unusually great longevity. In the late seventeenth and early eighteenth centuries Aleppo featured dozens of English "trading houses," each operated by a durable partnership regulated through the Levant Company. Each of these partnerships had an indefinite existence; many lasted for decades. Most houses employed

wage-earning factors, whose employment could last, again, for decades.[65] When an English, Dutch, or French merchant died overseas, his son or widow might take over, keeping his enterprise alive.[66] Local merchants, whose own commercial operations were poised to dissolve after they died, must have realized that their foreign competitors enjoyed capabilities lacking under Islamic law. Under Islamic inheritance law, a successful merchant's wealth usually got dissipated after his death; and, in any case, commercial partnerships were established for short periods.

For their part, Middle Eastern statesmen could see that the western diplomats who negotiated the trade treaties known collectively as the "capitulations" attached enormous importance to the privilege of settling estates as they saw fit, without being hampered by Islamic inheritance regulations.[67] By the mid-fifteenth century, it was the norm for the capitulations to give sole jurisdiction over the disposition of estates belonging to their countrymen.[68] This right enabled western merchants in the Middle East to prepare enforceable wills that did not conform to Islamic inheritance law; if they died intestate, the consul would follow the inheritance procedures of their own nation. As trade with the West became increasingly important to local rulers, and Middle Easterners began losing market share to western traders in third markets, connections might have been sought between the content of the capitulations and the methods of organization in vogue among foreign merchants.

Yet in the fifteenth through eighteenth centuries, a time when in the West commercial organization advanced by leaps and bounds, the Middle East produced no interpretation of these developments, or of their links to capitulary privileges, not even a factual report. No writings appeared, for instance, on the management of overseas trading companies, the consuls who represented foreign merchants and settled their disputes, or foreign inheritance practices. This may appear as evidence of general apathy or ingrained traditionalism, especially when coupled with

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[65] Davis, *Aleppo and Devonshire Square*, especially chap. 13.

[66] Frangakis-Syrett, *Commerce of Smyrna*, p. 77.

[67] On the forces that generated successive capitulations, see Kuran, "Logic of Capitulations."

[68] See art. 9 of the capitulations granted in 1497 to Florence, modeled after those granted in 1442 to Venice (reproduced by Wansbrough, "Venice and Florence," pp. 509-23). The Ottomans reaffirmed these capitulations in 1528. See also art. 9, capitulations given by the Ottomans in 1535 to France (text in Kurdakul, *Ticaret Antlaşmaları ve Kapitülasyonlar*, pp. 41-48); and art. 9, capitulations given by the Ottomans in 1580 to England (text in Hurewitz, *Middle East and North Africa*, doc. 1).

examples of other western advances that failed to spark attention.[69] But attitudinal factors furnish at best a proximate explanation. In the period in question, the Middle East imported goods from the West and borrowed western military technologies; so its rulers were not completely closed to the West. Evidently they knew that it produced useful things, and they made connections between certain western products and certain achievements, such as western shipping technology and the changing balance of power in the Mediterranean. Nor was their curiosity about the outside world deficient across the board. Where Muslim leaders sensed an advantage to learning about non-Muslim practices or know-how, they managed to become informed and transplant innovations. Once again, what requires explanation is not Middle Eastern apathy per se. Rather, it is why no notable attempts were made, until the nineteenth century, to benefit from European advances in pooling capital, maintaining enterprise continuity, and extending the scale of profit-oriented business. We need to explain why, prior to Abdülmecit's generation, the regions Muslims exhibited apathy in regard to alternative institutions, remaining oblivious to the organizational foundations of western economic successes.

Two possible explanations for this apathy may be ruled out quickly. The first is that Islamic law was frozen by a "closing of the gate of innovation (*ijtihād*)" just a few centuries after the birth of Islam, before the western Corporate Revolution. In fact, Islamic law never became literally frozen. In principle fixed and all encompassing, in certain areas it became secularized and subject to revision as a matter of practice. For example, from an early period onward, sundry fines and tolls were imposed, the tax system was changed, and rules governing the inheritance of agricultural land were revised by decree and with only the flimsiest basis in Islamic law.[70] The second possibility is that the legal ethos of Islam made it impossible to accommodate imagined, juristic persons, without challenging the very core of the religion. Although the Qur'an would not be of help in this regard, with a modicum of imagination a person steeped in Islamic legal history could have found Islamic precedents showing that the Islamic legal tradition already harbored a concept of a legal personhood.

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[69] B. Lewis, *Muslim Discovery of Europe*, especially chaps. 3-5; and *What Went Wrong?*, chap. 3 draws attention to various western developments that went unnoticed in the Middle East, inferring that this reflected a lack of curiosity in general. As Lewis notes, the failure to produce treatises on western science and dictionaries of European languages points to the absence of curiosity about the West. It shows also, however, that Middle Easterners considered it feasible to transplant whatever was useful without taking the trouble to learn new languages or become familiar with western cultures in general.

[70] Barkan, "Din ve Devlet İlişkileri," especially pp. 70-83; Repp, "Qānūn and Sharī'a"; Zubaida, *Law and Power*, chap. 3; Imber, *Ebu's-Su'ud*, especially chaps. 2, 5-6.

Indeed, numerous historical episodes, some from the revered seventh century, could have been used to justify endowing associations with fictitious personality. Faced with the question of whether it is legitimate to bequeath property to a mosque, which is not a natural person, certain early jurists had ruled in the affirmative.[71] Likewise, the fourth caliph Ali (d. 661) is reputed to have said that the furnishings of the Kaba, Islam's most sacred sanctuary, are owned by the Kaba itself.[72] Such precedents could have served as justification for granting legal recognition to an entity other than a natural person.

Lack of Demand for Organizational Change

It appears, then, that if some major constituency had pressured the Islamic court system to grant legal personhood to commercial organizations, religious obstacles could probably have been circumvented. Over time, moreover, opportunities arose for learning about new organizational possibilities. However, with one late exception to be covered below, no demand emerged for organizational changes of the sort that Abdülmecit was to introduce from above, in 1851. This observation pushes the question one step back. Why this organizational apathy? Recall that in the West the joint-stock company, and eventually the corporation, gained commercial applications only after generations of experimentation with simpler and more restrictive organizational forms, such as family firms and coordinated partnerships. Liability rules, accounting practices, and management patterns changed and developed incrementally, as circumstances made it profitable to innovate. The pattern of evolution was not linear or uniform across regions. The transferability of shares arrived in the Netherlands and Italy through quite different circumstances.

The commercial and financial history of the Middle East offers no counterpart to the organizational variety observed in the West, during and after its Corporate Revolution. As the West was developing increasingly advanced organizational forms, the Middle East's organizational menu remained limited, outside of sectors that the state sought to regulate, to simple partnerships. There emerged no private networks of coordinated partnerships comparable in complexity to, say, the Medici conglomerate of the fourteenth-century. Even in court records of the early modern era, one looks in vain for cases involving the transfer of a living person's share in an ongoing commercial

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[71] These jurists belonged to the Shafii and Maliki schools of law. See Karaman, *Mukayeseli İslam Hukuku*, p. 210.

[72] Hatemî, *Vakıf Kurma Muamelesi*, pp. 22-23.

partnership. Kadis were accustomed to resolving conflicts over the apportionment of commercial assets. However, because nothing similar to the joint-stock company was known, they faced no pressure to reinterpret or amend Islamic law with an eye toward facilitating share transfers. This alone may have discouraged merchants from introducing organizational forms more complex than simple partnerships. The absence of preliminary steps toward organizational modernization may have been self-enforcing, in the sense that it made merchants consider it prudent to work within the existing institutional order, thus reproducing the underlying incentives. But the incentives in question were shaped also by other factors.

Over the period in question, there is no sign of a protracted decline in commercial activity in the region. Nor is there ever any lack of successful merchants and financiers. There is a voluminous literature, consisting of case studies, that provides evidence of wealthy merchants and moneylenders, both Muslim and non-Muslim.[73] Taken as a whole, however, this literature confirms also that the organization of commerce and finance hardly changed. For centuries on end the supply of credit remained an activity directed by individuals and ephemeral partnerships; moneylenders did not give way to durable banks that pooled the savings of the masses and was capable of making large loans. In eighteenth century Aleppo or Cairo, the pooling of commercial resources generally took place through *mudāraba*, much as a millennium earlier. Outside the guilds, discussed further on, successful commercial businesses rarely survived their founders; they were not retained and developed by heirs.[74]

This stagnation was among the unintended consequences of Islam's relatively egalitarian inheritance system, which fragmented successful enterprises, even as widely used Western inheritance practices, for example primogeniture, facilitated the preservation of enterprises across generations and stimulated their growth.[75] In principle, the heirs of a deceased *mudāraba* partner could renew the partnership with the surviving partners. In practice, however, the costs of restarting an interrupted enterprise proved prohibitive. But it is the dynamic consequence of this limitation that is critical here. It had the effect of restricting the demand for institutional change. In particular,

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[73] For a few exceptionally rich examples, see Abdullah, *Merchants, Mamluks, and Murder*; Doumani, *Rediscovering Palestine*; Jennings, "Loans and Credit"; and Marcus, *Middle East on the Eve of Modernity*.

[74] In a developing data set, now consisting of over 700 court cases between 1579 and 1692, all involving commercial and financial disputes litigated by Islamic courts in and around Istanbul, no evidence has emerged of a commercial organization more complex than *mudāraba*. The same is true of similar data sets used by Gedikli, *Osmanlı Şirket Kültürü*; and Çizakça, *Business Partnerships*.

[75] Kuran, "Islamic Commercial Crisis."

privately owned commercial or financial enterprises remained too small, and too limited in scope, to make it worthwhile to introduce the types of incremental changes that initiated the organizational modernization of the West. Absent these early steps, merchants and investors never encountered the coordination and communication problems that would have justified developing an organizational form akin to the joint-stock company and then lobbying for a supporting legal system, to say nothing of working for a law of corporations. The short horizons of *mudārabа* partnerships kept stock transferability from becoming an issue. Moreover, in the absence of the durability that would have come from the emergence of joint-stock companies, legal personhood was of little use.

Another obstacle to the enlargement of commercial enterprises and, hence, to organizational evolution was that successful merchants tended to convert their wealth into real estate, which they would then endow as a type of trust known as waqf. They did so because, from its inception in the eighth century, the waqf was considered a sacred institution, and this characteristic gave its assets considerable immunity against confiscation.[76] Although a waqf was generally expected to provide social services, it served as a device for securing assets and sheltering some income, in particular, income committed to social services.[77] This flow of mercantile wealth into waqfs lessened the likelihood of partnerships giving way to joint-stock companies and corporations. The very merchants whose successes might have induced the introduction of organizational innovations opted to withdraw wealth from commerce, thus dampening the need for institutional innovations conducive to larger commercial operations. In the West, after all, organizational innovations went hand in hand with growth in enterprise size and longevity. It is in the process of becoming larger and longer-lived that traders pushed out society's organizational possibility frontier. An unintended consequence of the waqf system, then, was that it furnished opportunities that undermined the demand for organizational innovations.

The Unfulfilled Potential of the Waqf

Although the existence of the waqf helped to close off one path to organizational modernization, it came close to opening up an alternative. Indeed, the waqf itself might have become the starting

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[76] On the origins of the waqf, its characteristics, and Islam's role in its evolution, see Kuran, "Provision of Public Goods under Islamic Law," especially pp. 844-48. See also Arjomand, "Philanthropy in the Islamic World"; and Gil, "Earliest Waqf Foundations".

[77] There were also non-pecuniary motivations for forming waqfs. See Kuran, "Provision of Public Goods under Islamic Law," pp. 853-61.

point for a distinctly Islamic or Middle Eastern corporate revolution. Of all the characteristically Islamic institutions of the medieval era, the one that resembles the corporation most closely is the waqf. This is because the waqf was meant to exist "in perpetuity," enabling it, in the spirit of a corporation, to outlive not only its founder but every successive trustee (*mutawalli*) as well as generations of beneficiaries. Yet, the waqf was meant also to fulfill its founder's wishes, as expressed in its deed (*waqfiyya*). Not even the founder himself or herself (up to a third of founders were women) could alter the stated mission. Equally problematic from the standpoint of generating the corporation, the waqf was not a rule-making body; its rules of internal operation were set by the founder and enforced by the state through judges and, where the founder was silent, according to local custom. In sum, the waqf was conceived as a static organization, doubtless to solve the agency problem inherent in having the founder's instructions implemented by individuals who might be tempted to divert assets to their own uses.

Although the waqf gave the founder immense flexibility in choosing the waqf's mission, it drastically curtailed the flexibility of its trustees. In response to the consequent inefficiencies, in some places and times the standard formulary for establishing a waqf contained a list of allowable operational modifications.[78] However, only one set of changes could be made; once the right was exercised, the "static perpetuity" principle had to be enforced. Sooner or later, therefore, the judgments and preferences of trustees, employees, and intended beneficiaries ceased to matter; in principle, both the waqf's mission and its mode of operation stayed fixed forever. What if there came a point when the mission could no longer be met? Suppose, to put the question in a concrete form, a waqf-financed inn established to serve long-distance traders were to fall into disuse as a result of changing trade routes. Could this waqf's mission be redefined? In principle, the trustee lacked the necessary authority. If the inn were to be abandoned, by default its supporting assets would accrue to the poor. Yet another manifestation of the static perpetuity principle is that two or more established waqfs could not pool their resources in order to take advantage of economies of scale and scope. This restriction prevented the emergence of organizations dependent on compromises reached through internal negotiation. Thus, the lack of organizational autonomy could get carried to great extremes.

The consequences of static perpetuity become abundantly visible if we contrast the colleges

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[78] Akgündüz, *Vakıf Müessesesi*, pp. 257-70; Little, *Catalogue of Islamic Documents*, pp. 317-18.

established in the Middle East as waqf-financed *madrasa*s with those founded contemporaneously in the West as universities. Whereas the latter have remained, by and large, founts of creativity down to the present, the great colleges of the Islamic world, such as Baghdad's Madrasa Nizamiya (founded 1065), eventually ceased to serve as a major source of scientific innovation. Having spearheaded the revival of interest in Hellenic philosophy and contributed to advances in astronomy, optics, and metallurgy, among many other fields, the *madrasa*s ceded intellectual leadership to universities in the West.[79] Although many factors contributed to this reversal of roles, a basic cause lies in the difference in organizational autonomy. Whereas the early universities of Europe, such as Paris (1180) and Oxford (1249), quickly became self-governing and thus self-renewing organizations through incorporation, *madrasa*s continued to be constrained by the directives of their founders.[80]

In sum, down to the modern era the waqf remained an essentially static organization with limited capacity for self-governance. Insofar as changes were introduced, these happened through extra-legal acts that involved bribing judges or getting them to look the other way, rather than acts enjoying legitimacy. Changes in mode of operation or objectives, when they occurred, were not packaged as exercises of an organizational right but as unavoidable deviations from a sacred norm. Why, if western trusts could evolve into corporations, as did the early universities, did the waqf fail to acquire more dynamism? Part of the answer—the issue merits more thought than can be provided here—rests on the organizational milieus in which the two types of college operated. In the West, the observed institutional conversion presented nothing unusual; corporations were emerging in diverse contexts—urban, ecclesiastical, mercantile. Given the incorporations accomplished in other contexts, this was a logical step to advance instructional efficiency. In the Middle East, by contrast, there were no corporate models to imitate. In itself, this would have dampened the demand for turning a *madrasa*, or any other waqf, into a self-governing organization. It is easier to develop a new application of a known structure than to develop that same structure from scratch.

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[79] Makdisi, *Rise of Colleges*; Huff, *Rise of Early Modern Science*, chap. 5; Hoodbhoy, *Islam and Science.* For stark comparative statistics relating to the modern era, see United Nations Development Programme, *Arab Human Development Report 2003*, chap. 3.

[80] There is evidence, presented by Gaudiosi, "Development of the Trust in England," that the initial organization of western universities was influenced by the law of the waqf, and, in particular, the structure of the *madrasa*. However, western universities evolved into very different organizations. To provide one revealing difference, only the university enjoyed legal personhood. Where it granted degrees as an organization, successful *madrasa* students received certificates of competency (*ijāza*) from their individual teachers. See Makdisi, *Rise of Colleges*, pp. 140-52.

Role of the State

A full inquiry into the persistent simplicity of the organizational forms used by profit-seeking Middle Eastern enterprises must address more than the incentives and opportunities of individual subjects pursuing personal profit or security, or contributing a social service. In theory, states might have found it beneficial to assist private organizational development. They might have gained, for example, from helping business enterprises develop larger, longer-lived, and more complex organizational forms. In England, we saw, a revenue-seeking state chartered overseas trading companies, and endorsed successive steps in their development, through accommodating administrative and legal modifications. Organizational assistance motivated by revenue enhancement need not have been limited to groups composed of profit seekers. Any number of constituencies might have been restructured for the purpose of greater or more efficient taxation.

In fact, the idea of treating groups as administrative units for taxation or some other purpose was not foreign to Islamic civilization. This raises the question of why established administrative units, once recognized as collectivities, did not discover and assert rights of self-governance. After all, the very reason why the jurists of early Islam avoided equipping groups with the means to assert autonomy appears to have been the risk of political instability. By that very logic, one would expect the act of establishing a tax unit to have stimulated demands for organizationally creative autonomy. It is not obvious why that danger failed to materialize.

Let us consider three cases, starting with the most recent.[81] The fifteenth century saw the emergence of craft guilds in Anatolia (Ar., *asnāf* or *hirfa*; Turk., *esnaf* or *loncalar*), which then spread to every major town in the region. Many of these guilds enjoyed state-supported monopolistic, and sometimes also monopsonistic, rights. In return for such privileges, they agreed to price controls and territorial restrictions. Each guild enjoyed considerable autonomy in setting membership requirements and selecting members. Although taxes were sometimes levied directly from individual members, the state often delegated the responsibility to the head guildsman.[82] A second method of group taxation was tax farming, which was known to the region in antiquity and, under Islam, used from an early period. It entailed auctioning off the right to "farm" a tax constituency. Typically bidders were people knowledgeable about the constituency's taxable capacity, and competition among them served to maximize the ruler's tax revenue, which he received at least partly in advance.

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[81] These do not exhaust the class of relevant cases.

[82] Baer, "Guilds in Middle Eastern History"; Kuran, "Islamic Influences on the Ottoman Guilds."

Ordinarily, the higher the taxable capacity of a tax farm, the greater the expected returns of potential farmers, and, hence, the higher the winning bid.[83] Finally, the task of tax collection could be delegated to a communal leader abreast of his constituents' capacity to bear taxes. For Jewish and Christian communities, but also tribal Muslim communities, this leader was frequently a religious authority. The communal leader would negotiate a tax for his "contribution unit" (under the Ottomans, *avarızhane*) and then apportion the burden among the unit's households, presumably on the basis of private information on ability to pay. In negotiating with the sovereign the communal leader would often seek to minimize his community's collective tax burden, through tricks such as doctoring birth registers and understating production capacity.[84]

Religious and tribal communities, like guilds, could outlive their members; so could a tax farm, although the ruler was free to alter its boundaries or switch to direct taxation through salaried agents. In other respects, however, all such state-recognized tax units departed from the spirit of incorporation. To start again with the guilds, their leaders were recommended by the membership but ultimately appointed by the state, and guilds avoided recommendations likely to be vetoed.[85] The state gave the guilds autonomy only insofar as this would serve such goals as revenue generation and urban political stability.[86] In effect, the state offered an implicit bargain: in return for state-enforced economic protections and limited freedom to manage their own affairs, the guilds would submit to state supervision, avoid actions harmful to other protected groups, and pay taxes faithfully, usually through the head guildsman. The guilds commanded neither legal personhood nor the right to restructure themselves at will. Moreover, to solve their internal problems they often went to state-

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[83] A tax farmer could appropriate more rents insofar as his demands enjoyed legitimacy. Accordingly, rulers imposed tax schedules for tax farmers to follow. These schedules limited what tax farmers could demand, but they also put the state's authority behind levies respectful of the specified limits. Consider the customs duties that merchants paid at ports and borders. These were collected by tax farmers, whose rates were set, in principle and largely also in practice, by the sovereign. Their role in the maximization of customs revenue focused, then, not so much on setting rates as on weighing, identifying, and categorizing shipments. Part of their expertise lay in familiarity with the techniques merchants used to smuggle goods or misrepresent their value. That is what enabled them to generate more revenue from merchants than the ruler could through direct taxation, using officials under his personal command. On tax farming practices by the Abbasids, see Løkkegaard, *Islamic Taxation*, pp. 92-108; and by the Ottomans, Çizakca, *Business Partnerships*, chap. 5; Darling, *Revenue-Raising*, chaps. 4-5, 8; and Coşgel and Miceli, "Transaction Costs and Tax Assignment".

[84] Bowen, "ʿAwārid"; Darling, *Revenue-Raising*, pp. 100-08.

[85] Rarely, as far as one can tell, did a dispute arise over an appointment.

[86] Keeping urban populations content has been a government objective throughout history. In the Ottoman Empire this goal undergirded one of its main principles of governance: provisionism. As Genç, *Devlet ve Ekonomi*, chap. 3 explains, provisionism entailed keeping the capital well-stocked with food, to deter uprisings.

appointed officials outside the guild system.[87]

To turn to the case of tax farms, they were formed by the state, rather than tax constituencies themselves. At least from the standpoint of the state, it was not the ideal method of tax collection. Where it could collect taxes through its own paid agents, ordinarily it chose direct taxation over tax farming. Tax farming was an inferior alternative, used where the transaction costs of direct collection were exceptionally high.[88] It brought the danger, of course, of giving the tax farmer a local power base for challenging state authority. Another potential problem is that the established tax constituencies could develop a common identity conducive to collective opposition. Aware of these risks, successive Muslim-governed states kept the tax farm period short enough to enable frequent rotation among tax farmers; depending on the context, the term was one to twelve years. They also adjusted farm boundaries and took action against tax farmers gaining political roots. From the start, then, state-formed tax units served as instruments of state power rather than as means of collective empowerment on the part of subcommunities. As such, they were unlikely to ignite an incorporation movement.

Finally, at the dawn of Islam, Jewish and Christian communities were already organized under rabbis and priests, and they possessed collective identities. Accordingly, successive Muslim-governed states simply took advantage of their existing communal structures. By and large, only where convenient to the state were the communities granted internal autonomy. Thus, minorities were granted the freedom to adjudicate internal civil lawsuits on their own, but civil cases involving at least one Muslim, and all criminal cases, had to be tried by Muslim judges.[89] Up to the eighteenth century, states of the region were generally strong enough to dictate the dividing line. Taxation was a matter on which they often found it advantageous to relegate responsibility to communal leaders. They tried, doubtless with varying success, to co-opt these leaders to serve as state agents, and when

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[87] There is a huge literature on whether "Middle Eastern" or "Islamic" guilds were corporations. The preponderance of the evidence points to a negative conclusion. They enjoyed far less autonomy than did their west European counterparts. See Cahen, "Corporations Professionelles"; Baer, "Guilds in Middle Eastern History," pp. 17-22; and Kuran, "Islamic Influences on the Ottoman Guilds," pp. 46-53. For a recent rendition of the dissenting view, see Gerber, *State, Society, and Law in Islam*, pp. 113-26. Gerber's argument hinges on variations among guild policies and privileges. Such variations are consistent, however, with heavy state supervision. The forms and degrees of autonomy compatible with state objectives could change over time, across space, and according to context, depending on circumstances.

[88] Coşgel and Miceli, "Transaction Costs and Tax Assignment," find that in the Ottoman Empire direct taxation was more likely in areas close to Istanbul than in distant provinces, because the cost of measuring the tax base through appointed agents rose with the distance from the capital.

[89] On the rights of religious minorities in general, see Braude and Lewis (eds.).

the leaders failed to deliver, tax officials might be used to collect directly from individual members. The key point is that the state would have been inclined to quash any move to assert genuine corporate power, and until the eighteenth century it was generally powerful enough to prevail.

That minority communities would be recognized as groups only insofar as the state stood to derive an advantage is abundantly clear from a series of dealings, in the late sixteenth century, between the Jewish community of Jerusalem and the incumbent Ottoman authorities. The city's Jews sought to lease a plot for use as a cemetery. Because no collective entity had standing before the courts, they could not do so as a community. Three of its wealthiest members stepped forward to lease a plot in their own names, and each one, as an individual, assumed responsibility for paying one-third of the rent. The Islamic court that registered the thirty-year lease contract did not treat this trio as representatives of the city's Jews; rather, it addressed them as "members" of the Jewish community and held them each personally liable.[90] This is highly significant. Overcrowding in existing cemeteries could not have been a matter of primary concern to state authorities. There would have been no need, from their perspective, to grant the Jews legal recognition as a community in this particular context.

The same authorities faced different incentives when debt restitution or tax collection was at stake. Around the same time, in 1596, an impoverished Jew appeared before a Muslim judge to complain that his community had ordered him to repay a share of a debt incurred for the collective benefit of the city's Jews. Challenging the requirement on legal grounds, he testified that the Jewish community lacked standing before the law. Although the plaintiff was interpreting Islamic law correctly, the judge decided that he had to pay his share.[91] In this context, therefore, the Jewish community was effectively granted legal personhood. Why the difference between the community's legal standing in this case and the above case of leasing a cemetery? The creditors of the community included people of all faiths, but most were Muslims, and many were high officials. For this reason alone, the restitution of Jewish debts was a matter of concern. The identity of the creditors aside,

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[90] A. Cohen, "Communal Legal Entities in a Muslim Setting," p. 77-79.

[91] A. Cohen, "Communal Legal Entities in a Muslim Setting," p. 80. Anticipating this sort of challenge, Jewish leaders typically cloaked their communal debt agreements in a legal fiction. Specifically, they listed all members of the community as co-debtors, whether or not they had consented to the debt. In claiming implicitly that every member had agreed to bear liability, they satisfied the requirement that only natural persons have standing before the law. For their part, by accepting this fiction, the kadis of Jerusalem effectively recognized the existence of an entity empowered to impose its will upon its members, though only in a tightly regulated set of contexts, and without violating the letter of the law.

both the smooth functioning of financial markets and intercommunal harmony required orderly repayment of these debts. Communal leaders were thus authorized to decide how the burden of payment would be allocated among their constituents, because this served the state's interest. As in the context of taxation, these leaders possessed the local knowledge necessary to exact the necessary resources; the state's own agents did not.

A Blocked Ottoman Path to the Business Corporation

It bears repetition that any given institution can be reached through multiple historical paths. In the West, we saw, the joint-stock company and the business corporation emerged in various places and under numerous circumstances. Outside of commerce, likewise, the corporation emerged in diverse places, in various forms, over many centuries. It is worth remembering, too, that paths followed in the West do not exhaust the possibilities. The waqf might have provided a distinctly Islamic path to the corporation. Another opportunity emerged in the eighteenth century, of all places, from the financing of tax farms. Once again, we shall see, the state proved strong enough to block a highly promising organizational development.

In the face of mounting budget deficits, during a war that ended in defeat, the Ottoman state decided in 1695 to extend the terms of a large class of tax farms. In particular, short-term tax farms were converted into life-term tax farms (*malikane*s). The purpose of this move was, of course, to induce higher bids.[92] Unsurprisingly, the amount required to purchase a tax farm was now higher. Tax farmers responded by forming partnerships intended to last for the full duration of the farm, possibly decades. Before long, personal emergencies and other business opportunities prompted partners to withdraw from established tax farms by selling their remaining rights for whatever the market would bear. Under the strict interpretation of the prevailing laws of the Ottoman Empire, this was illegal; the existing partnerships would have had to disband and be renegotiated. However, both the state and the empire's tax farmers had a common interest in ensuring the viability of the new system. There thus emerged a flourishing and officially tolerated market in tax farm shares. Another induced innovation involved management. Partners found it advantageous to institute a rotating division of labor. Specifically, took turns as managers.[93]

Just as the western organizational developments fed on themselves, it appears that the

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[92] Bidders stated a down payment they were willing to make, along with a schedule of annual payments.

[93] Çizakça, *Business Partnerships*, pp. 159-78.

Ottoman tax farming sector was now, as an unintended consequence of a state policy motivated by immediate revenue generation, on a path to self-sustaining organizational modernization. Just as the rising incidence of western share transfers led to the establishment of organized capital markets in London and Amsterdam, so the spread of transactions involving tax farm shares might have generated an organized capital market in Istanbul. Likewise, the managerial rotation system might have induced organizational advances. It imposed huge transaction costs on the partnership, so one might have expected the hiring of professional managers. In turn, this development might have generated a demand for indefinitely lived partnerships. After all, in a professionally managed partnership with a frequently changing set of owners "lifetime ownership" would be a meaningless concept. In brief, the Ottoman tax farming sector was on its way to discovering an indigenous form of the joint-stock company, through a distinct evolutionary path.

Yet again, a path to organizational modernization was blocked by a state focused on protecting sources of revenue and unconcerned with organizational opportunities, except insofar as they affected its own ability to govern in transparent ways. Worried about the growing difficulty of keeping track of the membership and afraid of losing the right to put tax farms back on the auction block, authorities restricted the number of shares that any given tax farm could issue and, beginning in 1812, they started taking over the management of many tax farms.[94] These moves had the effect of alleviating pressures for further organizational innovation, and opportunities that contributed to economic modernization in the West remained were not pursued. Private financiers in general, and the shareholders of tax farms in particular, were too weak to resist the state-imposed restrictions. Had organizational development not lagged elsewhere in the social system, perhaps the outcome would have been different.

Conclusions

It is time to pull together the threads of a long argument. In the early Islamic centuries, from the seventh century onward, the conditions governing organizational evolution differed between the Islamic Middle East and the West. Born in a society held back by endemic tribal warfare, Islam developed a legal system lacking instruments that might legitimize politically destabilizing divisions.

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[94] Çizakça, *Business Partnerships*, pp. 184-86. In taking over the management of tax units, the Ottoman government started selling "profit shares" (*esham*). In the course of the nineteenth century these turned into tradable bearer shares. Significantly, the Ottoman state allowed the tradability of government-issued shares, after having blocked the development of an analogous market for privately-issued shares.

Legal personhood, essential for the development of large and complex self-governing organizations outside the purview of the state, was excluded. Accordingly, neither the Roman concept of a corporation nor its rudimentary regional applications influenced the evolution of Islamic law. Meanwhile, the same Roman heritage had a far-reaching impact on the legal evolution of western Europe. In a political environment marked by weak, if not nonexistent, central authority, a wide array of collectivities became corporations and took to governing themselves autonomously, according to largely self-chosen laws. Thus, the initial organizational divergence between the Middle East and the West, visible early in the second millennium, reflects legal choices made, in both regions, during the first few centuries following the rise of Islam.

As for the subsequent divergence, it is not attributable solely to the initial conditions defined by those early choices. Three distinct mechanisms helped to keep the Middle East organizationally lethargic in certain areas critical to economic performance and political power, even as west European organizational forms continued to evolve.

The first mechanism involves the emergence of the joint-stock company out of simple partnerships. In the Middle East, until quite late and then in only one context, practically no demand emerged for transferable shares in profit-making ventures. This is because the Islamic inheritance system dampened incentives to form large and long-lived partnerships; and, in turn, the persistent smallness and shortness of established partnerships obviated free transferability. Consequently, various innovative business practices that in the West accompanied the emergence of coordinated partnerships, joint-stock companies, and eventually business corporations failed to materialize in the Middle East. These include standardized bookkeeping and professional management. The causal connection between, on the one hand, enterprise size and longevity, and, on the other, organizational innovation is evident in the observed responses to the one major opportunity for developing an indigenous joint-stock company. When in 1695 a cash-strapped Ottoman government extended the terms of its tax farming contracts, the consequent growth in the size and length of tax farming partnerships spawned a market in tax farm shares. By this time, though, western Europe was well on its way to organizational modernization; the difference in organizational capabilities went beyond free tradability of enterprise shares.

The second key contributor to the steady divergence in business organization involves the establishment of civic, non-commercial corporations. In the West, the incorporation of ecclesiastical bodies, cities, universities, and various other collective entities enhanced familiarity with the notion

of legal personhood. As the spread of corporations generated new problems of coordination, communication, and control, the resulting responses produced benefits for other corporations. Accordingly, when in the seventeenth century business corporations emerged, they could draw on centuries of experience with corporate management, and the courts were ready to handle their disputes. In the Middle East, meanwhile, the organizational form that comes closest to a corporation, the waqf, was denied opportunities for genuine self-governance, probably to solve an agency problem. Conceived as a static organization, it was unable to restructure itself, at least not through legal means. The absence of fundamental change in the waqf's structure is probably related to the lack of an Islamic or Middle Eastern corporate culture in general. Whatever the full explanation, the restrictiveness of the waqf blocked the emergence of civic corporations capable of inspiring an indigenous form of the business corporation. In addition, the court system remained unaccustomed to dealing with legal persons and addressing their special needs.

The third mechanism contributing to the observed divergence worked, from the sixteenth century onward, through states. In the West states enhanced the profitability of overseas trading companies by chartering them as regulated companies, joint-stock companies, and eventually corporations. They did so in order to stimulate tax revenue. What is critical is that at the time of the initial charters, western overseas merchants were already organized as "nations" under consuls. In fact, for several centuries they had benefitted from merchant guilds of one form or another—organizations that provided collective protection, disseminated information, coordinated relationships with outsiders, and negotiated treaties. Accordingly, western states sought to exploit, for their own ends, existing mercantile organizations, which had deep historical roots. In the contemporaneous Middle East, by contrast, long-distance merchants developed no permanent organizations, let alone ones of a scale comparable to European "nations." As in the early Islamic centuries, they formed small associations for temporary missions. This lack of durable organization would have dampened incentives to grant them a collective identity or legal personhood. There is no reason to suppose that states of the Middle East were unwilling to treat collectivities as groups, as a matter of principle. Notwithstanding the strict individualism of Islamic law, they accorded *de facto* recognition to certain groups, on a selective basis, to facilitate tax collection or debt restitution. There was no insurmountable obstacle, then, to the treatment of Middle Eastern or Muslim long-distance merchants as groups. Had they already been organized within merchant guilds or under consuls, the Ottomans or other Muslim-governed regimes might have found reasons to assist their

further development.

We now have a general, if necessarily tentative, explanation for why Abdülmecit, contrasting his shrinking empire with the states that had come to dominate the global economy, noticed a vast difference in the organization of business. For at least a millennium, the West had been developing ever newer organizational forms, to suit the needs of diverse subcommunities. And from the sixteenth century onward, its merchants had been developing large, durable, and structurally complex organizations. States had induced further advances for their own ends. In Abdülmecit's own corner of the world, by contrast, the organizational options available to merchants operating under Islamic law hardly differed from those available to the contemporaries of Osman I, founder of the Ottoman dynasty in 1299. His predecessors, or, for that matter, other Muslim rulers of the second millennium, had not encountered commercial organizational transformations worth stimulating for their own benefit. Moreover, where such transformations did get under way, as with the long term partnerships induced by the shift to life-term tax farms, his predecessors found these inimical to their immediate fiscal needs; in other words, they had seen not an opportunity for spiraling social gain but an immediate political threat.

Nothing in the foregoing interpretation rests on the view that Islamic law is inherently unchangeable. It is true, of course, that the Islamic heritage is replete with elements that would appear to promote traditionalism or conservatism. Equally true is that successive generations of Muslims have invoked scripture and perceived historical precedents to justify opposition to social change. However, reformers have been able to draw legitimacy from the very same sources. Had a significant demand emerged for expanding the organizational options of the mercantile community, religious sensibilities would not have posed an insurmountable barrier. From the early Arab empires onward, when Muslim regimes saw benefits in treating groups as units, they circumvented the principle of legal individualism with impunity.

The most telling evidence in support of these conclusions lies in the legal reforms that followed Abdülmecit's initiative, all across the Islamic world. By the early twentieth century, the corporation was being transplanted to the legal systems of the Middle East. Nowhere did the recognition of legal personhood generate reactions in the name of Islamic purity. Today's Islamist movements do not demand a return to strict legal individualism. Although the institutions of the early Islamic centuries jointly kept the corporation from *emerging* from within Islamic civilization, once borrowed from abroad, it has faced no further resistance.

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