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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-reinforcing processes that kept Islamic law from developing a concept of legal personhood indigenously. Community building being central to Islam’s mission, the early promoters of Islam 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; and Muslim rulers made no attempt to supply the corporate form of organization, because in the absence of merchant organizations they saw no structures worth exploiting 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 1500 tradable shares. Alas, the empire lacked an indigenous legal infrastructure to support this new enterprise. The relevant infrastructure would be transplanted from abroad a few years later, through the adoption of the French commercial code and the establishment of 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 kumpaniyes were owned and operated almost exclusively by foreigners and minorities. It was time, Abdülmecit and his aides thought, for Muslims to begin pooling capital within kumpaniyes.2

This endorsement of organizational transformation represents a milestone on the region’s road to economic modernization. The ruling classes of the mid-nineteenth century had come to recognize that partnerships based on classical Islamic law are poorly suited to forming and running the typical enterprise of the emerging banking, mass transportation, and manufacturing

1 Tutel, Şirket-i Hayriye, pp. 18-24.
2 Kazgan, Osmanlı dan Cumhuriyet’e Şirketleşme, pp. 39, 72.
sectors. More generally, they now understood that traditional Islamic law is ill-suited to certain complexities of a modern economy.

The large enterprises that impressed Abdülmecit included not only joint-stock companies but also business corporations. A business corporation is a profit-seeking legal entity whose standing before the law is independent of the natural individuals who enter into relations with it. 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 their personal assets. Classical Islamic law recognizes neither organizational form, which precluded their use among Muslims. Nevertheless, they were now seen as beneficial instruments for addressing a serious social problem: the paucity of Muslim capital. Although all Ottoman communities suffered from organizational handicaps rooted in Islamic law, Muslims were held back most tenaciously, because as individuals they lacked judicial alternatives.

Our challenge is to identify the roots of the institutional deficiencies in question and to explain why these persisted long enough to harm the Middle East’s relative economic standing. Since the region’s organizational infrastructure became deficient in relation to that of western Europe, it makes sense to look for clues in the institutional history of the West. As early as the

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3 This definition 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.
start of the second millennium 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-and-bones individual who can act on his or her behalf, 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), it must be between real individuals; under Islamic law a kadi cannot grant standing to a corporation, as he can to the individuals who share in the ownership or governance of a collective enterprise.

Understanding why a kumpaniye was such a novelty as late as 1851 requires explaining, therefore, why Islamic law remained strictly individualist for centuries on end. This agenda may puzzle readers accustomed to viewing Muslim societies as “communalist,” as contrasted with “individualist” societies of the West. The individualism of immediate interest in this article pertains to the law, not social relations in general. Legal individualism entails treating contracts as valid only when they involve an exchange of obligations among natural individuals. General individualism lays emphasis on individual needs, interests, and rights, 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.\footnote{Hayek, \textit{Law, Legislation, and Liberty}, develops this theme, though using different terminology. Greif, “Cultural Beliefs”; Lal, \textit{Unintended Consequences}, chaps. 1, 4-6; and Rosen, \textit{Anthropology of Justice}, put forth related ideas, the latter in respect to the Islamic world 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 (Islamic trusts) pursuing goals of their own choice, it denied these waqfs legal personhood. As late as Abdülmecit’s time, an Ottoman subject wronged by a waqf was unable to sue the waqf itself; he could sue only a trustee or employee that waqf.

To establish a basis of historical comparison, we shall first peer into the process through which the concept of a corporation came to see progressively greater use in Western Europe.

The Corporate Revolution of the West

The association of individuals into groups pursuing a common goal goes back to time immemorial. So does the concept of a collective entity, of critical importance to the family and the state. In the Roman Empire, which contributed to these conceptual advances, the state was empowered to hold property and transact with natural individuals, as though it was itself an individual. At the same time, it enjoyed special rights and privileges. Yet Roman jurists did not articulate a general and legally precise definition of a collective entity. Nor, and more critically for our present purposes, did they apply the concept of legal personhood to business associations of the kind that Abdülmecit urged Muslims to form. Rejecting freedom of association on principle, Roman jurists opposed all permanent associations other than the family and the state. The idea of a corporation, they thought, was for the convenience of the state’s political functions; and none would be served by letting private commercial associations assume corporate powers. To the contrary, by segregating the assets of subcommunities from those of the greater aggregate

6 Kuhn, Law of Corporations, pp. 24-29.
belonging to the Roman state, such associations would threaten political stability.

Although Roman jurists did not develop what we now call a business corporation, or simply a firm, they established a body of administrative law readily adaptable to commercial and financial organizations formed through private initiative. This corpus became available to successor civilizations throughout the Mediterranean world. These civilizations were free to use the corporate idea creatively, to meet new economic challenges.  

**Earliest Western Corporations**

A critical development took place in the eleventh century, just as Islamic law was taking its classical form: the Church in Rome began calling itself a corporation (universitas) and came to be treated as a legal person. It could now enter into contracts, borrow and lend, make and amend bylaws, under its own name. Other European associations followed suit, including religious orders and convents, but also secular associations such as towns, colleges, and universities. All these associations were meant to enjoy permanence, outlasting each of their representatives, employees, and beneficiaries.

Meanwhile, attempts to extend the horizons of associations were observed in commerce as well. In thirteenth-century Genoa and Venice the posting of resident merchants in distant lands transformed the basic partnership 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 another transaction, send back profits again, and so on indefinitely. The merchant and his investor thus became, for all intents and purposes, a permanent enterprise with a commercial identity of its

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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.8

By the fourteenth century, Italian traders were also using key features of the corporation to organize profit-oriented private activity within durable associations. 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 to his interest in the ship.9 Another corporate-like development is observable in 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.10

In a simple partnership 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, the new 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

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8 Kedar, Merchants in Crisis, pp. 25-26. These restrictions were often circumvented.


10 Epstein, Genoa, pp. 260-61, 277-81, 304-6; and Kuhn, Law of Corporations, pp. 34-38.
accumulate knowledge about the most effective way to pursue profits.

The organizational features in question, which foreshadowed key characteristics of the modern corporation, spread slowly among profit-making enterprises. No other corporate-like bank emerged in western Europe until the founding of the Bank of England in 1694.11 Nevertheless, the early attempts at giving business enterprises permanence helped to habituate business communities to thinking of organizations as economic players with identities and thus legal rights and responsibilities 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. They served as stepping stones on the evolutionary path leading to the modern business corporation.12

Overseas Trading Companies

The sixteenth century saw critical developments on the path to the modern business corporation. Among the most significant is the establishment of joint-stock companies doing business with the Middle East. English monarchs began chartering merchant groups active in overseas trade, including those trading in “Turkey” or the “Levant”—the area characterized here simply as the Middle East. In obtaining corporate charters, these groups acquired the ability to form and enforce cartels. The consequent trading companies, like the structurally similar companies of the Dutch and others, stand out as early examples of state involvement in private corporate-like structures. Monarchs agreed to charter them as part of an implicit bargain: selected merchants

11 Kuhn, Law of Corporations, p. 38.

12 For further details on medieval advances in the organization of business, see Baskin and Miranti, History of Corporate Finance, chap. 2.
would earn monopoly rents, and these merchants would then share their rents with the state by paying taxes and supplying 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.\textsuperscript{13} The feasibility of the bargain depended on the state’s power to grant legal personhood by decree. The law recognized natural individuals automatically, and a partnership could be formed through a handshake, without involving the state. To gain legal personhood, however, a company needed a state-issued charter; without one, it would lack existence before the law.\textsuperscript{14} It is by chartering selectively, and vowing to protect chartered groups against unauthorized competition, that the state generated appropriable rents. If the state’s returns failed to meet expectations, it might withdraw a charter. In 1600, when a rival group of merchants promised to pay higher taxes in return for a charter, the Queen of England revoked that of the Levant Company, restoring it only when the company agreed to raise its annual contributions.\textsuperscript{15}

There is no need to review every step taken on the way to the modern business corporation. But a few of these are worth considering, to highlight the organizational dynamism lacking in the coeval Middle East. Certain trading companies were organized, at least initially, as regulated enterprises whose members traded on their own account, rather than on behalf of the

\textsuperscript{13} 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, \textit{Politicized Economies}, esp. chap. 6; Harris, \textit{Industrializing English Law}, chap. 2; Wood, \textit{Levant Company}, chaps. 1-7; Brenner, \textit{Merchants and Revolution}, esp. chaps. 1, 12; Davis, \textit{Corporations}; and Berman, \textit{Law and Revolution}, chap. 11.

\textsuperscript{14} Roy, \textit{Socializing Capital}, p. 12. Depending on the polity, the charter, or letter of patent, could require an act of parliament.

\textsuperscript{15} Wood, \textit{Levant Company}, p. 36.
collectivity. One could not gain membership in them merely by purchasing a share; an
apprenticeship was also necessary. Moreover, the share itself was not freely transferable. But
these enterprises provided public goods to their members, including rules and regulations in the
membership’s collective interest.16 Before long, constituencies emerged for relaxing the
restrictions on stock transferability. So new trading companies were organized as, and older ones
evolved into, joint-stock companies. Interest in a joint-stock company could be transferred at
will, without impacting the enterprise or its work. By the same token, co-owners of a joint-stock
company could sue one another without triggering the company’s dissolution.

At the Levant Company’s founding, and in keeping with the spirit of a traditional
partnership, a share in a chartered trading company entitled its bearer to the returns from a
specific commercial voyage. If merchant A held shares in a voyage beginning March 1612, and
merchant B in one beginning in April 1612, in principle their returns were independent of one
another. Also, because goods from separate voyages were often marketed jointly, allocating the
profits from these voyages sowed administrative confusion and general mistrust. In response, the
companies began issuing terminable stock, which provided a claim not on the returns from a
specific voyage but from those obtained during a designated period. 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.17 Through this sequence of transformations the joint-stock
company developed a collective identity and reputation of its own—one capable of outlasting its

16 Harris, Industrializing English Law, pp. 32, 146-47; Kuhn, Law of Corporations, pp.
46-48.

17 Ekelund and Tollison, Politicized Economies, pp. 190-91. Kuhn, Law of Corporations,
pp. 48-50; Steensgaard, “Companies,” pp. 246-51; Baskin and Miranti, History of Corporate
Finance, chap. 2.
owners at any given time. At this point, it differed from a corporation only in lacking legal
personhood. 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 that of a simple partnership, be it a commenda or a mudaraba. 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. In
1600, the Levant Company had 87 members, and a century later it had 200. In the course of
these organizational developments, the trading companies gained sophistication in management.
Strategic administration, generally centralized, became separated from operations, which were
usually decentralized.

The Industrial Age

These foregoing advances did not follow a linear path. New organizational features emerged and
spread through trial and error, with business practices often getting ahead of legal doctrine. There
was resistance at every step of the way and abundant variation across countries. Furthermore,
simple partnerships have remained a popular enterprise form down to the present. Even today the
spread of corporations is of little structural consequence to small business operations, which
continue to be run by sole proprietorships, family enterprises, or simple partnerships, much as
they were a millennium ago throughout the Mediterranean basin—in Italy and Spain as surely as

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


20 Ekelund and Tollison, Politicized Economies, chap. 7.
in Egypt and Turkey. Before 1800 the corporation remained the least common form of commercial and financial organization throughout the West. However, the developments in question ensured that the corporate form was in existence, and the necessary experience available, if ever it became optimal to use it widely. 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 that in earlier times could not even be imagined.\textsuperscript{21} This “Corporate Revolution,” as it has been dubbed, was essential to the tasks individuals had no incentive to perform on their own, or even within small groups.\textsuperscript{22}

The development of the business corporation has continued.\textsuperscript{23} In contrast to the days of Europe’s famous trading companies, establishing a corporation is now a routine process, which does not require the blessing of a monarch or parliament.\textsuperscript{24} Incorporation itself has gained flexibility; for example, voting rules may be modified to suit special needs. There have also been periodic scandals. The South Sea Bubble of the 1710s was just one precursor of the Enron

\begin{itemize}
\item \textsuperscript{21} Berman, \textit{Law and Revolution}; and Tierney, \textit{Growth of Constitutional Thought}.
\item \textsuperscript{22} Where incorporation has remained restrictive, its advantages have been replicated by creating corporate-like partnerships endowed with legal personhood. Thus, in the second half of the nineteenth century, in France, where forming a corporation was more difficult than in Great Britain or the United States, most advantages of incorporation could be obtained through registered partnerships. See Lamoreaux and Rosenthal, “Organizational Choice and Economic Development.”
\item \textsuperscript{23} See Roy, \textit{Socializing Capital}, esp. chaps. 6-9; Chandler, \textit{Visible Hand}, esp. chaps. 12-14; and Williamson, \textit{Economic Institutions of Capitalism}, esp. chaps. 11-12.
\item \textsuperscript{24} 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, \textit{Industrializing English Law}, pp. 282-85.
\end{itemize}
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meltdown of 2001. 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 on an unmistakable movement toward larger, more complex, and more durable commercial and financial enterprises.

Absence of a Corporate Revolution within Islamic Law

The foregoing sketch of the Western organizational trajectory raises the question of why no corporate revolution occurred in the Islamic Middle East. After all, during Islam’s formative period Muslims had exposure to the Roman institutional heritage. The peoples of the early Arab empires studied and practiced Roman law, and 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.25 True, in schools that trained Muslims to join the learned class (‘ulamā’), Roman law was not part of the curriculum. However, during the period when classical Islamic law was taking shape, the idea of a corporation was available to the Middle East, if in rudimentary form. If it was excluded from the corpus of concepts that characterize Islam’s legal system, this requires explanation.

One 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 held 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 could trigger escalating violence and a scramble for new alliances. Because of the consequent insecurity, everyone stood to gain from unifying the region’s peoples through transcendent bonds of solidarity. 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 ye were enemies and He made friendship between your hearts so that ye became as brothers by His grace; and how ye were upon the brink of an abyss of fire, and He saved you from it.” Given the centrality of community building to Islam’s mission, the early promoters of Islam would have rejected any concept liable to facilitate factionalism. However receptive to Roman legal concepts, they would have spurned the idea of a corporation.

Eight verses of the Qur’an call for “commanding right and forbidding wrong.” Four of these assign the obligation to individuals, the remainder to the collectivity of Muslims (umma). None imposes the duty on a subgroup of the community, such as an agency composed of elites or an assembly of elders. In fact, the Qur’an contains no references at all 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 equally in the regulation of public conduct. “The Qur’an,” writes Fazlur Rahman, “tolerates no distinction between one believer and another, male and female, in their equal participation in the life and

26 Goldziher, *Muslim Studies*, vol. 1, chap. 2; Shaban, *Islamic History*, vol. 1, chap. 1.


28 For a detailed exegesis, see Cook, *Commanding Right and Forbidding Wrong*, chap. 1.
conduct of the community.”

In line with these observations, 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 contains nothing, then, that might have inspired a commercial or financial corporation, or justified borrowing the corporate form of organization from a non-Islamic source.

This emphasis on communal unity is reflected in classical Islamic political theory, which matured over several centuries. This discourse recognizes no political boundaries except that between the abode of Islam, consisting of territories inhabited and ruled by Muslims, and the abode of War, inhabited by non-Muslims. Tribal loyalties having given way to bonds of religious brotherhood, the global community of Muslims was to be undivided. This principle constrained the grouping of individuals for purposes of administration. Non-Muslims could be categorized according to their relation to Muslims, as with the distinction between dhimmis and unprotected foreigners; and these groups could be further subdivided, as the need arose. For example, the Venetians could be classified as “friendly” and empowered with rights denied to the Genoese. By contrast, all Muslims had to have equal political rights. Nor was this egalitarianism 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 enemies. 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.

None of this implies that the early goal of community building determined, once and for

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30 Lambton, *State and Government*, pp. 13-14; and Dallal, “Ummah.”
all, that Islamic law would remain strictly individualistic. To observe that an early Islamic objective constrained legal choices is not to claim that the resulting barriers to legal development were insurmountable. Nor does it imply that the failures Abdülmecit tried to address in the mid-nineteenth century followed inexorably from early Islamic characteristics. In the course of Islamic history Muslims certainly faced situations that made it convenient to grant or utilize a group identity less comprehensive than that of the community of all Muslims. Besides, the exigencies of daily life made it clear that the ideal of an undivided and undifferentiated religious community never materialized.

The jurists and political theorists who shaped Islamic legal discourse could see that the Muslim community split into warring Sunni and Shiite camps less than three decades after the Prophet’s death. Doubtless they realized, too, that 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. Every Muslim empire featured a politically dominant ethnic group, along with minorities dominant in one economic sector or another. Finally, after Prophet Muhammad’s death no Muslim sovereign managed to rule 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 limit political fragmentation, thus minimizing the gap between ideal and reality. Even if fragmentation was unavoidable, the ideal of an undivided community would have inspired and sustained unifying efforts.

31 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.
The fiction of an undivided Muslim community would certainly have denied legitimacy to groups asserting a distinct subidentity. But such groups need not have accepted this fiction. Constituencies with something to gain from recognizing or forming collective entities could have raised objections. They could have developed movements to make states embrace the corporation, or some analogue, as a useful innovation. They could have sought to rationalize the notion of legal personhood in Islamic terms. Finally, they could have pursued such goals without challenging incumbent political authorities. To allow corporations pursuing economic or social objectives is compatible, in principle, with rejecting ones founded for political ends.

**Opportunities for Imitation**

The inspiration for developing corporations need not, of course, have originated from within the Islamic world. Opportunities existed to benefit from developments occurring outside the Islamic world. Most relevant is the spread of permanent organizations and legal personhood in the West, which made it possible, simply by observing neighboring lands, to encounter new organizational forms. Early on, the evolving corporate structures of western towns and universities, not to mention the Church, might have inspired institutional reforms. True, a Middle Easterner seeking practical information about these structures would have had to live for a while in the West, where few Middle Easterners traveled. The point remains that information about the West’s Corporate Revolution was available to anyone interested in learning about it.

In any case, from the sixteenth century onward, one could follow the West’s organizational evolution without ever leaving home. Among other groups, merchants, financiers, customs officials, and kadis came into contact with chartered trading companies; merchants who ventured to India and beyond encountered them also outside their own base. We do not know
what Middle Eastern merchants of the time thought about the companies, because no pertinent writings have survived. However, it should have been obvious that they raised capital in novel ways, limited their shareholders’ exposure to risk, and enjoyed unusually great longevity. When an English, Dutch, or French merchant died overseas, his widow took over, keeping his enterprise alive.32 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. For their part, Middle Eastern statesmen saw that the diplomats of capitulary states attached enormous importance to the privilege of settling estates as they saw fit, without being hampered by Islamic inheritance regulations. This pattern might have aroused interest in the methods of organization in vogue among foreign merchants.

Alas, in the sixteenth through eighteenth centuries, a time when commercial organization advanced by leaps and bounds in the West, the Middle East produced no interpretation of these developments, not even a factual report. No writings appeared, for instance, on chartered trading companies, consuls, or foreign inheritance practices. Following Bernard Lewis, who sees the failure to produce treatises on Western science and dictionaries of European languages as evidence of deficient curiosity,33 one might attribute this void to general apathy. But attitudinal factors would provide at best a proximate explanation for the patterns of interest here. In the period when inquisitiveness was supposedly in short supply, the region imported goods from the West and borrowed Western military technologies; so its rulers could not have been completely closed to the West. Evidently they knew what it was good at producing and what accounted for

32 Frangakis-Syrett, Commerce of Smyrna, p. 77.

33 B. Lewis, Muslim Discovery of Europe, esp. chaps 3-5; and What Went Wrong?, chap. 3.
its performance on the battlefield. 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. What requires explanation is not,
then, 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 business. We need to explain why, prior to Abdülmecit’s
generation, Muslim Turks, Arabs, and Persians remained oblivious to the organizational
foundations of Western economic advances and why they took so long to transplant joint-stock
companies and corporations to their own economies.

**Demand for Legal Personhood**

A key factor concerns the demand for organizational innovation on the part of the business
community. As late as the nineteenth century, the typical privately owned commercial or
financial enterprise was too small, and too limited in scope, to justify lobbying for an
organizational form akin to the joint-stock company or the corporation. Two-person partnerships
did not encounter coordination, communication, and agency problems of the sort that could make
it profitable to separate ownership from management. Likewise, their short horizons kept stock
transferability from becoming a pressing issue.

In the West, it bears emphasis, the corporate form gained applications in business only
after generations of experimentation with coordinated partnerships and joint-stock companies.
As this revolution unfolded, the Middle East’s organizational menu remained limited, outside of
sectors 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 finds no cases involving the transfer of a living person’s share in an ongoing commercial partnership. Kadis were accustomed to resolving conflicts over the apportionment of commercial assets. However, because the joint-stock company was unknown, they faced no pressure to reinterpret or amend Islamic law with an eye toward facilitating share transfers. So if any merchant thought of establishing a commercial enterprise functionally similar to a business corporation, he would have found the required legal reforms daunting. Absent preliminary steps toward organizational modernization, he would have considered it prudent to work within the existing institutional order.

In every age the Middle East produced successful merchants who participated in dozens of partnerships, sometimes simultaneously. Such merchants might have wanted to consolidate and coordinate their operations within longer-lived enterprises. They may also have believed that an organizational form conducive to share transfers would enable them to attract capital more cheaply. But successful merchants—the very people who might have formed coalitions pursuing organizational innovation—tended to invest in tax farms and to shelter wealth within waqfs chartered to remain under their control. Through such choices they dampened the risk of expropriation, which they might have aggravated by using legally tenuous corporate-like structures.

Supply of Legal Personhood

An inquiry into the persistent simplicity of Middle Eastern enterprise forms cannot be confined to the incentives and opportunities of merchants. Muslim rulers and officials would have had to consent to the granting of legal personhood to groups. However, for precisely the same political
reasons that the jurists of early Islam rejected the corporation, they might have been reticent to equip merchants with the means for forming permanent, and potentially hostile, organizations. But we should avoid a hasty interpretation, for there were also advantages to having long-distance traders organized into groups. Like their counterparts in England, Muslim sovereigns might have relied on merchant organizations to collect taxes.

Cases of Group-Based Taxation

Precedents existed for taxing groups instead of individuals and for appointing functionaries to levy taxes from collectivities. It will be instructive to review several of these. In eighteenth-century Istanbul, the importers of honey, butter, and flour were organized in special guilds known as *kapan*, each endowed with monopsonistic rights vis-à-vis its suppliers. In return for its privileges, each *kapan* agreed to sell only in Istanbul and to submit to indirect taxation, in the form of price and quality controls. The state controlled its membership, replacing members who died, resigned, or violated regulations. Like a corporation, a *kapan* could outlive its members. Though lacking legal personhood, at least it enjoyed permanence for administrative purposes.

Another group-based taxation method was tax farming. It entailed selling the right to “farm” a tax constituency, usually through an auction. Typically bidders were people knowledgeable about the group’s taxable capacity, and competition among them served to maximize the revenue the ruler received at least partly in advance. Ordinarily, the higher the rents earned by the group being taxed, the greater the expected returns of the tax farm, and the higher the bids.

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35 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
A third group-based method was to delegate the task to a communal leader abreast of his constituents’ taxable capacities. For Jewish and Christian communities, but also tribal Muslim communities, this leader was frequently a religious authority. He and the sovereign would negotiate a tax for the entire “contribution unit” (avarızhane), and it was up to him to apportion the imposed burden among households of the unit, presumably on the basis of private information on ability to pay. In negotiating with the ruler the leader would try to minimize his community’s tax burden, often through tricks such as doctoring birth registers and understating the cultivated area.36 For his part, the ruler tried to co-opt him to serve, in effect, as his agent.

These three examples show that even before the Western-inspired administrative reforms of the nineteenth century alternatives existed to taxing people as individuals. Evidently, the idea of treating a group as a unit for administrative purposes was not foreign to Islamic civilization. The kapan, collective taxation, and tax farming all presuppose a group whose existence is independent of its individual members. A collectively regulated group can survive changes in membership through births and deaths. All the more puzzling, then, that the concept of legal personhood did not evolve indigenously, through changes in Islamic law. Had this happened, the courts could have handled disagreements between the state and entire communities. Contribution units could have sued tax farmers as legally recognized groups, rather than as aggregations of

36 Bowen, “‘Awārīd”; Darling, Revenue-Raising, pp. 100-8.
individuals. Furthermore, *kapans* could have challenged restrictions on behalf of their members. Yet, even in the mid-nineteenth century, as Sultan Abdülmecit was forming the first Muslim-led joint-stock company, the Islamic court system remained highly individualistic.

**Significance of Organizational Preconditions**

As the question is framed, we are asking why, in regard to corporate law, the Middle East did not follow the Western path. We could ask, conversely, why the Western institutional path differed from that of the Middle East. What made English monarchs seek to stimulate tax revenue by chartering commercial companies, when they might have pursued the same outcome through tax farming, a method with which they were familiar? Part of the explanation, already given, is that a charter enhanced commercial returns by enabling the monopolization of international markets and the exploitation of economies of scale. Also critical is that at the time the chartered companies came into being Western overseas merchants were already organized under consuls. Accordingly, allowing them to form chartered companies broadened their existing capabilities. In the Middle East, by contrast, long-distance merchants had no permanent organizations to start with, or ones of a scale comparable to the “nations” led by consuls. They formed small-scale associations for temporary missions. This would have diminished the incentive to grant them a collective identity or legal personhood. Support for this interpretation lies in the administrative treatment of minority communities. Jewish and Christian communities were already organized under rabbis and priests, and they possessed collective identities. Therefore, the state did not have to create them from scratch; it simply took advantage of pre-existing communal structures. Had Middle Eastern long-distance merchants formed even rudimentary associations of their own, the state might have sought to utilize these as instruments of tax collection; and it might have discovered the advantages of helping the associations gain and preserve monopoly powers.
If this argument is correct, how to make sense of the kapans of Istanbul’s food importers? Each of these kapans developed from guilds, which, like the communual organizations of minorities, were already in existence. The state sought to exploit, therefore, existing organizational capacities. What it wanted from the kapans was, above all, to supply the Ottoman capital at affordable prices, in order to protect the regime by forestalling popular discontent.\textsuperscript{37} This is why its regulation took the form of price ceilings and restrictions on sales outside Istanbul. Had the guilds in question been located in a strategically unimportant part of the empire, the state might have tried to use them as instruments of tax collection.

\textit{Conservatism of the Court System}

Whatever the nature of the restrictions imposed on the kapans, the fact remains that the state treated them as organizations with lives separable from those of their individual members. In principle, these organizations, like the tax farms active in the empire, and like the communities of the minorities, could have obtained legal personhood. If this did not happen, part of the reason is that the concept was alien to the court system. Unlike Western Europe, where profit-oriented enterprises claimed legal personhood in societies accustomed to dealing with religious, educational, and municipal corporations, in the Islamic Middle East there were no precedents that might have made judges and other officials receptive to the concept. Hence, opportunities to introduce legal personhood into the workings of the Islamic court system went unnoticed. In fact, when judges relied on the concept in practice, they resorted to legal fictions to cover up their departures from the strict individualism of traditional Islamic law. When representatives of a

\textsuperscript{37} Keeping urban populations content has been a government objective throughout history. In the Ottoman Empire this goal undergirded one of its three principles of governance, namely, provisionism. As Genç, \textit{Osmanlı İmparatorluğu Dağında Devlet ve Ekonomi}, chap. 3 explains, provisionism entailed keeping the capital well-stocked with food, to deter uprisings.
collectively taxed group appeared in Islamic court, they were heard and judged as individuals. Likewise, the members of the group owed taxes to the state as individuals, rather than to their community. From a legal standpoint, the community simply served, through its representatives, as an intermediary, but without enjoying a legal status of its own.

Such stratagems were used also in dealings between religious minorities and state officials. In sixteenth-century Jerusalem the Jewish community sought to lease a plot for use as a cemetery. Because no collective entity had standing before the courts, it could not do so as a community. Three members of the community leased a plot in their own names, and they, as individuals, became responsible for paying the rent. The court 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 personally liable. An odd situation arose in 1596 when a poor Jew complained that his community required him to repay a share of a debt incurred for the benefit of the entire Jewish community. Challenging the validity of the requirement, he noted that the Jewish community lacked legal standing. Although the plaintiff was interpreting the prevailing law correctly, the kadi decided, pragmatically, that he had to pay his share.

Anticipating this sort of challenge, leaders of the Jewish community 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 of the community had agreed to bear liability, they satisfied the requirement that only natural persons have standing before the law. And, by accepting this fiction, the kadis of Jerusalem effectively recognized the existence of an entity empowered to impose its will upon

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38 A. Cohen, “Communal Legal Entities in a Muslim Setting,” p. 77-79.
its members. However, they did not seek to give groups formal standing before the law. Nor did the Ottoman state encourage them to do so.

**Evolution of State Finances**

We must remember at this point that there can be multiple paths to corporate law. To explain why the Middle East did not generate its own concept of corporation, we need to do more than identify why the Western road was not taken. We must also explore why alternative paths of organizational modernization were blocked.

On the face of it, Ottoman tax farms themselves might have resulted in an indigenous concept of corporation. Beginning in the late seventeenth century, and in the face of escalating budget deficits, Ottoman rulers opted to extend the duration of their tax farms. This period had varied between one and twelve years; now a tax farmer could keep his farm for a lifetime. The state would reserve a larger downpayment, in addition to annual payments from the tax farmer. The lifetime farm (*malikane*) raised the scale of private financing needed to purchase a tax farm, prompting the formation of long-lived partnerships, whose longevity produced a market for shares in tax farms. The partners of any given tax farm took turns in managing it.40

This rotation system imposed huge transaction costs, so one might have expected some of the resulting partnerships to appoint professional managers. In turn, this development might have given rise to 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. Alas, the state blocked these transformations and, hence, the emergence of an indigenous joint-stock company. It did so through restrictions on the number of shares that any given tax farm could issue, apparently in an effort to keep track of the membership and

40 Çizakça, *Business Partnerships*, pp. 159-78.
maintain the right to put the tax farm back on the auction block.

The private sector in general, and the shareholders of tax farms in particular, were too weak to resist the state-imposed restrictions. This brings us back, once again, to a key contrast: from an early period, larger and more complex private enterprises in the West than in the Middle East. This divergence was a consequence of differences in inheritance systems. In particular, Islam’s relatively egalitarian system fragmented successful enterprises, even as widely used Western inheritance practices, for example primogeniture, allowed the preservation of enterprises across generations and stimulated their growth. Another long-term consequence, we now see, was to allow Muslim rulers to restrict organizational development for their own needs. Opportunities taken in the West were missed in the Middle East because there was little to oppose the state.

**Self-reinforcement of Organizational Divergence**

This article has documented the divergence between the organizational trajectory of the Middle East and that of the West. Self-reinforcing processes played a role in this divergence. In the sixteenth century, western Europe was already on the path of organizational modernization; its merchants had considerable experience with large, durable, and structurally complex organizations. In exploiting these developments for their own ends, states induced further organizational advances. In the pre-modern Middle East, by contrast, the menu of organizational options remained fixed. As late as the early nineteenth century, merchants remained limited to enterprise forms in use at the start of the millennium. Under the circumstances, the region’s ruling classes noticed no structural transformation worth exploiting.

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41 Kuran, “Islamic Commercial Crisis.”
In sum, within each region political authorities strengthened evolutionary processes already under way, rather than initiating organizational patterns on their own. English monarchs took steps that reinforced the longevity and resource-pooling capacity of English overseas trading associations. For their part, Ottoman sultans contributed to the prevailing organizational stagnation of the Islamic world.

The capitulations compounded the consequent divergence. In granting capitulations as a means of encouraging westerners to trade across the Mediterranean, Middle Eastern rulers enhanced the profitability of western merchants, along with the viability of permanent commercial enterprises. By the same token, these developments made Middle Eastern merchants less competitive vis-à-vis foreigners, diminishing even further their usefulness to revenue-pursuing rulers.

The conventional wisdom holds that Middle Eastern rulers favored western merchants because Islamic law permitted foreigners to be taxed more heavily. Whatever the relevant doctrinal considerations, as a matter of practice foreigners did not pay substantially higher customs duties. Also, because the capitulations shielded them from sundry levies borne by local merchants, for any particular transaction their total tax burden was often lower. If fiscal reasons existed to favor western merchants, these lay elsewhere. Because westerners were more efficient at financing trade, transporting goods, and adjudicating conflicts, the volume of trade between the two regions was higher than if all exchanges were mediated by Middle Eastern merchants. At any given tax rate, therefore, customs revenue would depend positively on the share of trade

42 Kuran, “Logic of Capitulations.”
43 For a critique of the competing explanations, see Kuran, “Logic of Capitulations.”
conducted by foreign merchants. Thus, a ruler could gain from tax concessions to westerners.\footnote{Suppose that a ruler can raise revenue from two groups: foreign merchants ($F$) and local merchants ($L$). The volume of trade will be $V^F$ if trade is conducted by the former, and $V^L < V^F$ if conducted by the latter. Consider now a ruler in need of revenue $R$ to meet urgent needs. If local merchants have monopolized trade, the tax rate required to meet the ruler’s revenue constraint is $t^L = R/V^L$. By virtue of the inequality stated above, the same revenue, $R$, can be raised from foreign merchants through a tax rate $t^F < t^L$. In fact, there is a range of tax rates for foreigners that satisfy the latter condition while also yielding revenue $R > R$.}

The tolerable concessions would depend on the degree to which foreigners were more efficient. As the organizational evolution of the West progressed, these concessions would have become increasingly affordable. Every tax concession by a Middle Eastern ruler compounded, of course, the profitability of western organizational forms, which then stimulated further organizational advances. The organizational divergence of the two regions was reinforced, then, by fiscal policies stimulated by the divergence itself.

The Persistence of Islamic Legal Individualism

If Sultan Abdülmecit had to launch Şirket-i Hayriye without any law to govern its operation, this was because, over many centuries, the demand for relaxing the strict individualism of Islamic law and the supply of durable organizational forms were both highly limited. The successes of western merchants might have triggered legal innovations to facilitate the formation of larger and longer-lasting enterprises under Islamic law. But the very western advances that undermined the viability of Islamic legal individualism also enabled Middle Eastern rulers to raise revenue, stimulate commerce, and make trade flows more reliable without pursuing costly reforms at home. They permitted Middle Eastern rulers to take free rides on western institutional advances and, in particular, to benefit indirectly from new enterprise forms without participating in their development. Over the long run, this choice produced an impasse, making massive reforms
unavoidable. In the sixteenth century, however, and even in the following two centuries, it offered a viable response to the limitations of Islamic business practices. It solved an immediate problem, albeit by shifting the risks of structural change onto later generations.

Nothing in this interpretation rests on the old canard 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, conservatism, or even fatalism. Equally true is that successive generations of Muslims invoked scripture and perceived historical precedents to justify opposition to social change. However, reformers, including successful ones, have been able to turn for legitimacy to the very same sources. With regard to law in particular, its development was influenced by pre-Islamic legal traditions, including Roman law, which harbored the rudiments of a corporate concept. More to the point, Islamic law never became literally frozen. Although in principle it is all encompassing, in certain areas it became secularized, as official rulings came to define rights and obligations. For example, sundry fines, taxes, and tolls were imposed, and the rules governing the inheritance of agricultural land were changed, by decree and without any basis in Islamic law.

Therefore, if some major constituency had wanted the Islamic court system to grant legal personhood to commercial organizations, religious obstacles could probably have been circumvented. However, merchants who might have benefited from the corporate form did not demand the relaxation of Islamic legal individualism, because their traditional partnerships did

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45 According to Genç, *Devlet ve Ekonomi*, traditionalism was among the basic principles of Ottoman governance, and both he and his followers consider this principle to be supported by, if not grounded in, religion.

not spawn a need for more complex forms of resource pooling. For their part, rulers saw no advantages to reforming the legal system governing commercial organization.

Legal particulars were not irrelevant to later developments. In recognizing only natural persons, to the exclusion of imagined, juristic persons, Islamic law limited the types of enterprises that investors and merchants would have considered. It also shaped the worldviews of officials ranging from sultans to judges. But these difficulties were not insurmountable. With a modicum of imagination, a person steeped in Islamic legal history could have found Islamic precedents showing that the concept of a juristic personhood was already present within the Islamic legal tradition. Had the will been present, numerous historical episodes, some from the revered seventh century, could have been used to justify endowing associations with legal personhood. Faced with the question of whether it is legitimate to bequeath property to a mosque, which is not a natural person, early jurists of the Shafii and Maliki schools of law had ruled in the affirmative.47 Likewise, the fourth caliph Ali (d. 661) is reputed to have said that the furnishings of the Kaba, Islam’s most famous sanctuary, are owned by the Kaba itself.48 Such precedents could have been used as justification for granting legal recognition to an entity other than a natural person.

48 Hatemî, Vakif Kurma Muamelesi, pp. 22-23.
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