

The Economic Ascent of the Middle East's Religious Minorities: The Role of Islamic Legal Pluralism

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ABSTRACT

In the nineteenth century, the Middle East's Christian and Jewish minorities registered conspicuous economic advances relative to the Muslim majority. These advances were made possible by the choice of law available to non-Muslim subjects. Until the late eighteenth century, on matters critical to financial and commercial success, non-Muslims tended to exercise this privilege in favor of Islamic law, and this pattern prompted their own court systems to emulate Islamic legal practices. However, as Western Europe developed the legal infrastructure of modern capitalism, vast numbers of Christians and Jews made jurisdictional switches by obtaining the protection of European states. Along with tax concessions, they thus gained the ability to conduct business under Western laws.

1. INTRODUCTION

Until the late eighteenth century, none of the major religious communities of the Middle East was generally outclassed in either commerce or finance. However, as economic modernization in the West turned the Middle East into an underdeveloped region, local Christians and Jews registered advances that Muslims failed to match. By the nineteenth century, Greeks and Armenians, and to a lesser extent Jews, were playing strikingly

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disproportionate roles in the region's commercial and financial life, especially in cities, and their living standards were now markedly higher, on the whole, than those of Muslims. Consequently, Middle Eastern efforts at economic recovery have involved, along with reforms to restore national economic competitiveness, policies to improve the relative economic standing of Muslims.

The successes of minorities have been attributed to Western favoritism toward non-Muslims, European imperialism, and the clannishness of the minorities themselves. But none of these factors arose in the eighteenth century; for instance, efforts to impose European control over the Islamic Middle East go back to the Crusades. So these factors leave unexplained why the minorities began to pull ahead of the majority then and not before. Also relevant, it is said, is that Muslims shunned interest, looked down on commerce, and had military duties from which non-Muslims were exempt. The first two claims are open to challenge, and all three raise a question of timing. None of these factors elucidates both why no major differences existed before the eighteenth century and why, at this time, Muslim participation in commerce and finance receded in importance.

A weightier explanation is that minorities benefited disproportionately from opportunities to conduct business within networks that included sizable numbers of westerners. Indeed, these opportunities proved increasingly lucrative, and, in time, they increased the competitiveness of local Christians and Jews. Yet we still need to explain, first, why Muslims derived conspicuously limited benefits from new opportunities linked to the economic rise of the West and, second, why it is in the early modern era that networking with westerners proved so beneficial to non-Muslims. In any case, business networks do not necessarily bring net benefits to their members; they may block advantageous exchanges with outsiders.

The key to a comprehensive explanation lies, I argue here, in Islam's distinct form of legal pluralism. Under the Islamic system of governance, non-Muslim subjects were allowed to conduct business outside the jurisdiction of the Islamic court system and, absent Muslim involvement, to seek adjudication in autonomous courts. This choice of law gave Christians and Jews a huge advantage as the West developed the legal infrastructure of the modern economy. Minorities advanced economically simply by adopting Western business methods, forming economic alliances with westerners, and using Western courts to settle disputes. Traditionally denied the same choice of law, Muslims could not take advantage of modern institutions as individuals; they had to wait for

collectively generated legal reforms, and the delay left them economically handicapped. The observed bifurcation in communal economic standings was thus an unintended and unforeseeable consequence of a pluralistic legal system designed, paradoxically, to help Muslims by giving Islamic courts jurisdiction over all their legal affairs.

One may question the intellectual wisdom of partitioning the Middle East's population by religion. At least in contexts relevant here, legal rights and obligations depended on faith, and, as will be shown, faith-based differences in legal options concerning wealth accumulation and commercial organization proved critical to the economic advances of the minorities. To be sure, these differences did not necessarily cause legal practices to diverge. Until the eighteenth century, minorities generally used Islamic business methods, and they tended to seek litigation in Islamic courts. Reconciling these patterns with the multiplicity of minority options is among our challenges.

Initially, the evidence indicates, Christian and Jewish traders enjoyed no major institutional advantage over their Muslim suppliers, clients, partners, and competitors. If anything, Muslims benefited from greater legal certainty and often also from provisions privileging Muslim testimony. Minorities gained an advantage only when they began to exercise their choice of law differently, in favor of legal systems of Western provenance. This flight from Islamic law, and from the laws of local minorities, took place as hundreds of thousands of Christians and Jews acquired Western protection and moved their business dealings partly outside the Islamic legal system.

This article seeks, then, to solve two related puzzles. The first is that in the eighteenth century the minorities began a rapid economic ascent. And the second is that, despite the choice of law they enjoyed, in contexts relevant to economic performance and modernization the earlier legal practices of non-Muslims resembled those of Muslims. It makes sense to start with the second puzzle, because its resolution will help crack the first.

2. THE MIDDLE EAST'S GREAT BIFURCATION

For the premodern period, no aggregate statistics are available on the intercommunal distribution of economic activity. However, historical research is replete with examples of regions whose commerce exhibited substantial, if not disproportionately high, Muslim participation. For

example, documents found in the storeroom (*geniza*) of a Cairo synagogue indicate that around the eleventh century Muslim merchants controlled, in addition to much of Cairo's transit and long-distance trade, much of its local commerce (Goitein 1967, chap. 3). Records from fifteenth-century Egypt and Syria and sixteenth-century Turkey paint a similar picture: although Christians and Jews controlled certain mercantile activities, Muslims dominated others (Lapidus 1967, pp. 117–30; Inalcik 1960).

Equally revealing are judicial records from seventeenth-century Kayseri. At the time, this Turkish town's population was 78 percent Muslim. In credit cases handled by the Islamic courts, the lender was a Muslim 82 percent of the time—evidence that the town's successful financiers included Muslims (Jennings 1973, pp. 181–82). A century later, Muslim merchants played a disproportionately important role in the commercial life of Basra, Iraq (Abdullah 2001, chap. 4). In the same period, commercial activity in the Red Sea was in the hands of Ottoman Muslims, especially Egyptians; the Black Sea trade was conducted primarily by Muslim Turks; and at four major Mediterranean ports—Algiers, Alexandria, Istanbul, and Canea—Turks were the main charterers of caravaning ships (Panzac 1992, pp. 194–95, 202–3). Between 1779 and 1781, Muslims constituted 64 percent of the Ottoman subjects shipping goods from Istanbul, where the Muslim share of the total population was about 58 percent (Panzac 1996, pp. 98–101). True, Muslim participation in the bilateral trade with Western Europe was limited (Goffman 2002, chaps. 15–16). However, until the eighteenth century, the Middle East's trade with other parts of the world carried greater economic weight, and in no other emporium did Muslims fail to play major roles (Risso 1995; Chaudhuri 1985, chaps. 2, 8).

The historical literature thus contradicts the once-prevalent view that Muslims habitually left commerce to Jews and Christians. Yet by the nineteenth century, which is when this misperception took hold, Muslim traders and financiers had yielded enormous market share to local non-Muslims. Already in the late eighteenth century, Greek, Armenian, and Jewish merchants were beginning to dominate the commerce of major cities. Even earlier they formed an overwhelming majority of the brokers who mediated between Western and local traders. Familiar with local economic practices and increasingly also with those of westerners, Christian and Jewish brokers distributed European imports, arranged the purchase and transport of goods destined for the West, and harassed local debtors. Studies of Ottoman maritime change in the eighteenth century

find not only that Muslims played significant roles; in addition, they show that during that century, the Muslim share plummeted (Panzac 1992, p. 193; Eldem 1999b, chap. 8; Issawi 1982).

The trend was to continue. By the end of the nineteenth century, the Ottoman Empire's Muslim merchants played very minor roles in its external trade with Europe, and at home they had lost enormous ground to local minorities. To be sure, the imbalance never became as pronounced as the typical European report made it seem. Turkish, Arab, and other Muslims continued to dominate the rural-urban trade in many heavily Muslim regions, much of the coastal trade done by small vessels, and, in the international arena, the commerce among certain Muslim countries (Owen 1993, pp. 96–97, 158, 276, 291; Raymond 1974, 2: 417–50, 2:464–82; Panzac 1992, especially p. 203; Eldem 1999b, chap. 8). Nevertheless, the general picture was overwhelmingly favorable to minorities.

In the Black Sea region, for example, the import and export businesses had come under the domination of Greek and Armenian merchants. According to a British document from 1884, of 14 major commission agents in Trabzon, three were Persian, one was Swiss, and the rest were Greek or Armenian. Out of 33 exporters, three were Turks, one was Swiss, and the remaining 29 were again Greek or Armenian. Of 63 major importers, only 10 were Turkish merchants; local Christians made up most of the remainder. At the time, 54 percent of Trabzon's population consisted of Muslims, mostly Turks; Greeks and Armenians formed 40 percent (Turgay 1982, pp. 289–92, 303).¹

In the Mediterranean trading emporium, a leading Turkish hub was Izmir. From the late eighteenth century to the early twentieth, ethnic Greeks dominated Izmir's commercial life at all levels. Composing between 20 and 38 percent of the population, they formed between 40 and 60 percent of the city's merchants. Their domination was especially pronounced in large-scale international trade, which they conducted in cooperation with Greek communities in other Ottoman centers and in Western Europe (Frangakis-Syrett 1999; see also Frangakis-Syrett 1992, chaps. 4–8). In Istanbul, at the end of World War I Turks constituted just 4 percent of the merchants specializing in exports and imports. They were hardly represented among the suppliers of skilled services to the ports, where Greek, Italian, and French had become the dominant languages of communication. In this predominantly Turkish city, Turks

1. The population figures are for 1891.

formed only 15 percent of the wholesalers serving the domestic market and 25 percent of the retailers (Başar 1966, p. 53).

The commercial prominence of the minorities was also evident in major Arab trading centers, where Muslims generally outnumbered other religious communities. In 1826, individuals with names identifiable as Muslim constituted only six of the 34 traders included in lists of local Beirut merchants in business with Europe; by 1848, this number had fallen to three; and for the next three-quarters of a century, the city's foreign trade remained almost entirely in the hands of Christian families (Labaki 1998, table 11.14; Owen 1993, pp. 98–99; Gilbar 1992, pp. 61–62). In Aleppo, Muslims maintained a major presence in commerce, but all the wealthiest merchants were Christians (Bowring 1840, p. 80; Masters 2001, p. 143). Meanwhile, Baghdad's foreign trade fell largely under the control of local Jews, who benefited from their ties with Jewish merchant communities abroad (Gilbar 1992, p. 61). In 1837, Alexandria had 72 "merchant houses"—clusters of commercial partnerships that were expected to be renewed repeatedly; 43 of these belonged to Europeans, 27 to local minorities, and two to Muslims (Issawi 1982, pp. 271–72).

These data drawn from European and private local reports are consistent with statistics found in official local publications of the early twentieth century. In 1912, according to Ottoman yearbooks, the shrinking empire's Muslims, by then 81 percent of the population, played a negligible role in its trade with Western Europe. Even in internal trade, their significance was much diminished. They composed only 15 percent of the 18,063 local traders important enough to be listed by name; of the total, 43 percent were Greek, and 23 percent Armenian (Sonyel 1993, pp. 258–59).

3. NOT JUST A MATTER OF NUMBERS

The stunning economic ascent of the minorities was not merely a matter of numbers. Standing at the forefront of economic progress, they established a vastly disproportionate presence in various new sectors. The nascent insurance sector offers a case in point. In the 1890s, European insurance companies drew their agents and appraisers in Trabzon almost entirely from the local Greek and Armenian communities. As such, the city's Turks were practically excluded from the lucrative opportunities generated by the opening of insurance markets. In Trabzon, as elsewhere,

wealthy Muslims used non-Muslim insurance agents, just as they frequented shops, used shipping companies, and stayed in hotels owned and operated by minorities (Turgay 1982, pp. 294–95). In Istanbul, as late as 1922, not one insurance company had been founded by Muslims or counted Muslims among its managers (Başar 1966, p. 53).

The region's religious minorities attained an especially great dominance in finance. Throughout the nineteenth and early twentieth centuries, in Istanbul's Galata district, the financial center of the Ottoman Empire, most owners, managers, and agents of banks and brokerage houses were Greek, Armenian, and Jewish, in that order; foreigners were also prominent, and the language of communication was usually French. The "Galata bankers," as they came to be known, served critical roles as creditors of the state (Pamuk 2000, pp. 200–4; Eldem 1999a, chaps. 2–4; Kazgan 1991a). In Izmir, two-thirds of the major bankers were Greek (Frangakis-Syrett 1999, p. 31). In Egypt, Jews were very prominent in financial activities (Landau 1969, pp. 9–15).

Minorities achieved dominance also in new public services and new industries. In major cities, water, gas, electricity, telephone, tram, and subway services were founded mostly through foreign capital, and the managerial staff was overwhelmingly non-Muslim (Başar 1966, p. 53). In the late nineteenth century, when Muslim Turks constituted 83 percent of Bursa's population, Greeks, Armenians, or foreigners owned 31 of its 41 steam-powered silk-reeling mills (Quataert 1987, pp. 292–96). Bursa's chamber of commerce reflected the commercial dominance of the city's minorities: 58 percent of its membership was non-Muslim (Aktar 1996, p. 133). Conforming to the general pattern, practically all the joint-stock companies established under new laws had been founded by local minorities (Toprak 1995, chap. 7).

The foregoing transformations need not have affected the distribution of wealth across religious communities. In principle, the Muslim majority could have compensated for its relative losses in commerce and finance through higher participation in other lucrative sectors. In fact, no countervailing trends emerged, and the living standards of minorities rose much faster than those of the majority. In some places, widening economic disparities induced massive land transfers to non-Muslims (Karpas 1982, pp. 158–59). These disparities were evident also in the vast underrepresentation of Muslims in the posh neighborhoods that sprung up in major cities,² in the disproportionately low numbers of Muslims

2. On Istanbul, see Çelik (1986, especially pp. 37–39); on Cairo, Behrens-Abouseif (1985, especially pp. 76–77, 89–100); and on Aleppo, Masters (1990, p. 16).

among bank customers and buyers of insurance (Eldem 1999a, pp. 297–99; Hadziiossif 1999, pp. 171–72),³ and in the paucity of Muslim-owned businesses in new commercial centers established outside the traditional guild system (Seni 1994, p. 671).

4. POPULAR EXPLANATIONS

The prevailing explanations for this broad transformation fall into three categories. The first involves Muslim attitudes or practices. A frequent suggestion is that the burdens of conscription and war weakened Muslims at a time when non-Muslims, largely exempt from military duties, prospered through business.⁴ As an explanation for the bifurcation under scrutiny, this point admits two objections. First, from the earliest days of Islam onward, non-Muslims were exempt from military service. Second, militarily active communities do not necessarily fall behind.

A related argument invokes the prominence of Muslims in the state bureaucracy. According to many reformers of the late nineteenth century, not to mention later interpreters, Muslims were conditioned to look down on commerce and to believe in the moral superiority of martial and administrative pursuits (for quotes, see Toprak 1995, pp. 99–100, 129, 151, 162). Yet Muslims were not always uncompetitive in commerce. If the source of previous successes lies in attitudes favorable to commerce, what explains the attitudinal shift? The aversion observed in the nineteenth century may well have been a rational response to handicaps Muslims began to encounter in the commercial arena.

The Islamic prohibition of interest, it is said, limited Muslim participation in commerce and finance. In fact, from the early days of Islam, Muslims routinely gave and took interest, sometimes openly and without apology. Moreover, until recent centuries the profession of money lending included sizable numbers of Muslims (Jennings 1993; Rodinson 1973, especially chaps. 3, 5). If Christians and Jews gained economic prominence the reason was not, then, that they were inherently readier to ignore qualms about interest common to the three Abrahamic faiths.

Although explanations centered on Muslim attitudes are not necessarily irrelevant, clearly they raise more questions than they answer. At

3. At the time, a bank account was a sign of wealth, and borrowing from a bank was a sign of professional success.

4. Numerous observers of the nineteenth century advanced this argument (Salt 1993, pp. 24–27). For recent renditions, see Issawi (1998, pp. 109–10).

best, then, they are incomplete. To turn to our second category of explanations, it is said that groups excluded from political power concentrate on business, encourage their young to follow suit, and, precisely because they endure discrimination, display clannishness. In the case at hand, these observations carry little weight. For one thing, certain Middle Eastern minorities did less well than Muslims as a whole; the Kurds and the Shiites offer examples (Issawi 1982, p. 270).⁵ For another, the successes of Middle Eastern non-Muslims far surpassed the achievements of minorities elsewhere. Nowhere in the West, for example, did Jewish, Protestant, Catholic, or Eastern Orthodox minorities come to dominate the economically most dynamic sectors as in the Middle East.

The third category of explanations invokes the assistance minorities received from foreign powers, partly in the form of legal privileges (Masters 2001, p. 190). Western policies biased in favor of Middle Eastern Christians and Jews, and against the region's Muslims, lead yet again to questions rarely even posed. In view of the long rivalry between Eastern and Western Christians, why were Western Europeans partial to Middle Eastern Christians? Although there were special bonds between them by virtue of a shared faith, doctrinal differences could make a Christian trust Muslims more than fellow Christians of a rival denomination. The period under consideration is replete with examples of Western Christians seeking refuge in Muslim territories, as opposed to places controlled by, say, Orthodox Christians (Lewis 1993, pp. 80–81). As for discrimination in favor of Jews, the history of Western anti-Semitism raises the question of why the Western powers were partial to Jews of the Middle East. To be sure, Western anti-Semitism was weakening, and the geographic spread of the Jewish diaspora gave Middle Eastern Jews advantages in dealing with westerners. Nevertheless, it is hardly self-evident why Jewish communities in the West provided increasing advantages to Middle Eastern Jews at this historical juncture.

By no means do the identified deficiencies establish that networking is irrelevant to the issue at hand. Rather, they show that this networking itself requires explanation. To observe that westerners favored minorities points in the right direction, but without specifying why Western assistance became increasingly valuable. The use of networks in cross-cultural trade, even if statically efficient, could be dynamically inefficient (Greif

5. Also true is that certain Christian communities did less well than the broader Christian population. For example, the Nestorians of Iran and Iraq did not share in the advances of other minorities, doubtless because their geographic distribution limited their contacts with westerners.

1994; see also Rauch 2001). Nor is it obvious why Muslims were relatively slow at emulating the business practices of increasingly successful Europeans. A fuller understanding of the Middle East's great bifurcation requires focusing on how Middle Easterners conducted business and, in particular, on how their practices changed. Why did trends vary across communities, and why, from the eighteenth century onward, did differences gain increasing significance? For answers, we must turn to the legal framework within which Middle Easterners did business.

5. ISLAMIC LEGAL PLURALISM

When communities differ in their economic accomplishments, the reason often lies in the legal regimes under which they conduct business. The comparison critical here is between the legal rights of Muslims and those of non-Muslim peoples of the book, the latter consisting of Jews and Christians, and known as *dhimmis* (*ahl al-dhimma*). Though subject to various discriminatory restrictions, *dhimmis* enjoyed an ultimately critical right denied to Muslims. From the rise of Islam to the secularist reforms of the nineteenth century, they were entitled to choice of law, except on criminal matters, which fell exclusively within the jurisdiction of Islamic courts. Although the doctrinal basis for this choice varied over time, its fundamental principles remained fixed.

Choice of law, which will be treated as synonymous with jurisdictional choice, is not the same thing as choice of forum or court; in principle, two courts may litigate a given case under the same law. In the present context, however, choice of law almost always amounted to choice of forum, because each religion or denomination's courts applied its own distinct law. Known collectively as "denominational courts," the non-Islamic courts were among the institutions that enabled Middle Eastern Christians and Jews to maintain distinct communal identities.

It was not Islam that introduced choice of law into the region. The Romans and Byzantines had granted jurisdictional choice to Jews, to assorted Christian communities, and, later, to Muslims (Bosworth 1982, p. 37). But the earliest basis for the form of concern here was a distinctly Islamic intercommunal arrangement known as the "Pact of Umar" (*'abd 'Umar*) and commonly attributed to the caliph Umar I (died 644) or his namesake Umar II (died 720).⁶ Over the centuries many rulers invoked

6. This pact has many variants. Some begin with a petition from Christian subjects, requesting security in return for submission; they conclude with Umar's favorable re-

it in setting policies vis-à-vis minorities.⁷ To be sure, the pact ceased to serve as a common point of reference as Islamic legal pluralism adapted to changing administrative needs. Consider the *millet* system, through which Ottoman ethnoreligious communities preserved their customs and languages (Karpas 1982). Although Ottoman rulers sometimes invoked the Pact of Umar, often they appealed simply to Ottoman precedents. Yet those precedents served to maintain rights and responsibilities enshrined in Islamic law through the Pact of Umar. The functional commonalities between this pact and the *millet* system are unmistakable.

No text of the Pact of Umar has been dated to earlier than the ninth century, so it must have had a long gestation period. Its attribution to a revered era—the first Umar’s rule fell within Islam’s canonical “Age of Felicity”—would have enhanced its authority and protected it against challenges. What matters is that it came to be associated with early Islam and that it allowed *dhimmis* to avoid Islamic courts in contexts relevant to the puzzles under consideration. One variant of the pact (Lewis 1974, pp. 220–21) instructs Arabia’s *dhimmis* as follows:

We shall supervise all your dealings with Muslims. . . . We shall not supervise transactions between you and your coreligionists or other unbelievers nor inquire into them as long as you are content. If the buyer or the seller among you desires the annulment of a sale and comes to us to ask for this, we shall annul it or uphold it in accordance with the provisions of our law. But if payment has been made and the purchase consumed, we shall not order restitution. . . . If one of you or any other unbeliever applies to us for judgment, we shall adjudicate according to the law of Islam. But if he does not come to us, we shall not intervene among you.

According to these provisions, Christians and Jews were subject to Islamic law in all commercial and financial dealings involving Muslims. In interacting with other non-Muslims, however, they were free to choose among jurisdictions.

Jurisdictional choice may be exercised either *ex ante* (at the stage of contract negotiation) or *ex post* (after contractual agreement). Necessarily consensual, *ex ante* jurisdictional choice enhances efficiency; the parties would not agree to law A over law B unless each expected to do

sponse. Omitting the letter, others consist of a decree from Umar. For prominent variants, see Lewis (1974, pp. 217–23). Cohen (1994, pp. 54–58; 1999) reviews what is known about the pact’s origins, and Bosworth (1982) puts this research in historical context.

7. For example, in the fifteenth century, the pact was ceremonially reimposed on the *dhimmis* of Cairo (Cohen 1999, pp. 130–31).

at least as well under A and possibly better. By contrast, ex post jurisdictional choice may be exercised unilaterally, to secure an advantage at the expense of others. Suppose that two individuals form a partnership under Jewish law. At the end of the contract period, a dispute erupts over the division of profit, and the first appeals for a resolution under Islamic law. He does so in the expectation of benefiting in a legal game that appears to have acquired a zero-sum quality; he senses that he will gain at the expense of his partner. The Pact of Umar gave *dhimmis* both forms of jurisdictional choice. It allowed contracts made outside the Islamic legal system to be voided opportunistically simply by appearing before a *kadi*, or Muslim judge. Such opportunism was impossible in relation to contracts sealed by a *kadi*. A *dhimmi* could move a case out of Islamic court only if all parties agreed.

For their part, Muslims enjoyed no comparable choice of law. True, in some localities and periods they could pick and choose among judges belonging to different schools of Islamic jurisprudence (*madhhabs*) (Winter 2001; 1992, pp. 111–14). There existed religious scholars (*‘ulamā’*) who facilitated school switching by issuing opinions (*fatwās*) according to the teachings of all major schools. Some of them explicitly endorsed switching, even temporary switching, provided the motivation was a belief in the superiority of another school on the matter at hand (Winter 1992, p. 121; Wiederhold 1996, pp. 251, 255, 257–58). However, school switching could require a formal change of allegiance. In any case, where it became common rulers took to banning it. Or they made it unfeasible by withholding appointments from *kadis* belonging to unfavored schools.⁸

Differences among the four major Sunni schools of jurisprudence were merely symbolic on most commercial and financial matters. On other matters, they could be of significant consequence to potential litigants (Bakhtiar 1996, pt. 2). For example, whether an estate was divided according to Hanafi or Maliki rules could affect the set of beneficiaries as well as the distribution of shares. Yet in estate divisions, judicial chaos was hardly the norm. For one thing, families were expected to have inheritance cases adjudicated according to their own school of law. For

8. Ebussuūd Efendi, the chief religious officer (*şeyhülislam*) of the Ottoman Empire between 1545 and 1574, reports that the Ottoman sultan banned school switching in Anatolia and the Balkans (Düzdağ 1983, p. 44, ruling 80). Earlier, the Fatimid rulers of Egypt appointed judges belonging to a single school (Al-Azmeh 1988, pp. 204–5). See also Ekinci (2002, chap. 5), Wiederhold (1996, pp. 251–53, 256, 258), and Aydın (1985, pp. 71–75).

another, judges rarely honored unilateral school switching, and any member of a family belonging to a particular school could block the settlement of an estate according to another school. On commercial matters, too, opportunistic school switching was discouraged. In Ottoman territories where judges belonging to different schools worked in proximity, Hanafis could take disputes to a non-Hanafi judge only by common agreement (Ekinci 2002, chap. 5). Ex post choice of law was less of a problem, then, for Muslims than for Jews and Christians.

On civil matters, Muslims, like *dhimmis*, could seek informal arbitration. However, all parties had to agree, so arbitration could not provide a predictable advantage at someone else's expense. In practice, therefore, an arbitrator (*hakam*) could not trump a contract formed under Islamic law, and arbitration was not a source of contractual uncertainty, as Islamic law was for *dhimmis*. In any case, an arbitrator's decision was not an enforceable judgment; rather, it was an opinion concerning the facts of a dispute and the relevant rights. It could be appealed before a judge, who was free to annul it as contrary to his own school of jurisprudence (Tyan 1960, pp. 342–57). A Muslim seeking a binding decision had no choice, therefore, but to approach an Islamic court. That court would expect contracts to satisfy Islamic law.

At least in principle, we have seen, Christian and Jewish merchants could choose from larger sets of contractual forms, debt instruments, deeds, and inheritance arrangements. Where they found it convenient, they could follow the rules of their own communities. At the same time, they were free to use Islamic business methods, emulate Islamic inheritance practices, and take disputes to a *kadi*. Ordinarily a *kadi* was obligated to try all cases presented, including those initiated by *dhimmis*.

“Legal pluralism” describes a condition found to a greater or lesser extent in every social system: multiple and possibly conflicting layers of social organization.⁹ Like other forms of legal pluralism, its Islamic form allowed legal variety and experimentation. Accordingly, both Muslims and non-Muslims endured tensions between legal requirements and customs and between the often divergent claims of overlapping social networks defined along geographic, linguistic, or familial lines. Nevertheless, and curiously in retrospect, Islamic legal pluralism gave Muslims, who were politically and militarily dominant, fewer legal options than it did to communities expected to remain subservient.

There is a voluminous literature on how jurisdictional choice facili-

9. For surveys of the pertinent literature, see Merry (1988) and Griffiths (1986).

tates the evasion of inefficient rules and arrangements (Guzman 2002; O'Hara and Ribstein 2000; Posner 1998, pp. 645–46, 709–10; Kramer 1990). People choose among legal systems according to cost-benefit calculations, it says, disfavoring those reputed to litigate unfairly, inconsistently, or slowly. This logic treats contractual choices as binding, so it does not apply to the case at hand. Only if Islamic legal pluralism had limited *dhimmi* legal choice to its ex ante form might *dhimmi* legal behavior have furnished reliable clues as to the perceived merits of Islamic law.

As we have seen, the system allowed *dhimmis* to appeal to an Islamic court at any time, even after agreeing to the jurisdiction of a denominational court. Therefore, minority legal practices did not reveal unambiguous information about relative efficiency. Any given legal choice of a non-Muslim plaintiff could indicate that he considered Islamic law more favorable than its alternatives or that he put a premium on legal certainty and enforceability. Of course, these motives for choosing Islamic law were not mutually exclusive, nor were they invariant to context. Changes in other legal systems could have turned the advantages of Islamic contractual forms into manifest disadvantages. Whether choice of law benefited the Middle East's religious minorities is, then, an empirical matter capable of yielding a different answer in one domain than another. I turn, therefore, to the historical record.

6. JURISDICTIONAL CHOICES BEFORE ECONOMIC MODERNIZATION

The natural domain of the denominational courts consisted of matters connected directly to religion: marriage, divorce, custody, inheritance, and slavery. However, they were also empowered to litigate commercial and financial disputes. Each denomination's courts had distinct features—unsurprising in view of their mutual autonomy. A Jewish congregation operated a law court mandated to base its judgments, including those concerning business, on Jewish law. The judges of this court helped investors, creditors, and merchants draw up contracts likely to hold up before a Jewish tribunal. Temporary Jewish courts were set up at trade fairs to assist Jewish merchants in establishing partnerships and making credit arrangements (Goitein 1999, chap. 11; Shmuelevitz 1984, pp. 41–54, 137–38; Goodblatt 1952, pp. 86–88).¹⁰ For their part, Orthodox

10. The Jewish court system was not organized hierarchically. This allowed for diversity in legal interpretation.

Christians operated ecclesiastical courts headed by a bishop, metropolitan, archbishop, or patriarch. The officials of these courts helped their coreligionists draft deeds, wills, and commercial agreements. When a case came before an ecclesiastical court, it was supposed to be settled according to canon law. After 1453, when the Ottoman Empire absorbed the last remnants of Byzantium, the most important of these courts was that operated by the Orthodox patriarch (Eryılmaz 1996, pp. 46–47; Pantazopoulos 1984, especially pp. 42–44; Sugar 1977, pp. 45–47).¹¹ Armenian merchants could take intracommunal disputes to courts that relied solely on Armenian witnesses (Steensgaard 1973, p. 26; Sanjian 1965, p. 33).

Notwithstanding these facts, local Jews and Christians tended to rely on the Islamic legal system. Evidence pertaining to Christian courts in the region is quite limited relative to documentation on Christians appearing in Islamic courts as litigants, witnesses, guardians, and agents (Al-Qattan 1999, p. 439). Non-Muslims often appeared before a *kadi* with complaints against their coreligionists. Even intracommunal disputes among Christians of the same denomination, like those among Jews, were frequently adjudicated by a *kadi*. In some places and periods, in fact, there is no evidence at all that *dhimmis* operated denominational courts. In the Islamic court registers (*sijills*) of Damascus for 1775–1860, Najwa Al-Qattan (2002, especially pp. 514–17) found not a single reference to denominational courts. From this and the frequency with which minority-initiated cases appear in the registers, she infers that in Damascus none existed, and she proceeds to question whether the city's *dhimmis* enjoyed meaningful legal autonomy in regard to personal life.

However, Al-Qattan's findings do not conflict with the earlier reported evidence of legal autonomy. Just as one can refrain from exercising a constitutional right to free speech, one may be free to file a case in a denominational court yet opt to appear before a *kadi*. And Al-Qattan's data certainly do not establish that minorities never enjoyed choice of law. Her discoveries merely call for an explanation of why the *dhimmis* of Damascus made heavy use of Islamic courts on the eve of the region's Western-inspired institutional reforms.

Yet the finding that *dhimmis* frequently used Islamic courts is commonplace in the historical literature on Middle Eastern legal practices.

11. See also Runciman (1968, pp. 165–85), who remarks that the Turkish conquest did not weaken the legal powers of the Orthodox Church. "On the contrary," he writes (p. 181), "it was firmly established with new powers of jurisdiction that it had never enjoyed in Byzantine times."

In the seventeenth century, Kayseri's Greek and Armenian minorities took financial and commercial disagreements to Muslim courts at about the same per capita frequency as the city's Turks (Jennings 1973, pp. 181–82). In the same period, one-third of all cases tried by the Islamic court in Nicosia, Cyprus, involved at least one non-Muslim; 5 percent included only non-Muslims, generally just Christians; and 13 percent were initiated by Christians or, in a few cases, Jews (Jennings 1993, pp. 166, 193–94).¹² At the time, less than half of Nicosia's population consisted of non-Muslims, so a sizable share must have found the Islamic court system somehow advantageous. Two other studies show that Egyptian Jews of the eleventh century and Ottoman Jews of the fifteenth and sixteenth centuries made heavy use of Islamic courts (Goitein 1999, pp. 172–79, 188–93; Cohen 1984, chap. 6; Shmuelevitz 1984, chap. 2).¹³

7. MOTIVES FOR CHOOSING ISLAMIC COURTS

If *dhimmis* were free to operate courts of their own, why might they have used Islamic courts so frequently? Most obviously, they had extensive dealings with Muslims, and *kadis* had sole jurisdiction over all disagreements in which at least one party was Muslim. Although there exist examples of Muslims agreeing to settle cases before a denominational court, these were exceptional.¹⁴ By appearing before a denominational court, a Muslim risked being charged with apostasy. There were also interactions among *dhimmis* belonging to separate religious communities. Because each side considered the other's court biased, cross-communal lawsuits usually came before the *kadi* in the expectation of relatively impartial adjudication.

Christians and Jews also used Islamic courts to register financial transactions and record ownership claims. If any problem arose, so they thought, the facts could be checked and verified by the most authoritative court of the land, which served as a public notary. Through Islamic

12. The cases initiated by non-Muslims usually involved Muslims as defendants or as fellow plaintiffs.

13. For a sampling of further evidence, see Çiçek (2001), Faroqhi (1987, pp. 183, 191), and Bakhit (1982, pp. 22–28).

14. In eleventh-century Cairo, both Christians and Muslims occasionally agreed to settle disputes with Jews before a Jewish court (Goitein 1999, p. 193). Marcus (1985, p. 114) and Shmuelevitz (1984, pp. 46–47) cite similar cases from the fifteenth through eighteenth centuries, noting that rabbis settled some of them according to their own interpretation of Islamic law. The underlying circumstances are unknown.

registration they also hoped to safeguard their interests in the event the state or individual Muslims challenged their rights. *Dhimmi*s made a point of keeping copies of *kadi* decisions, and of contracts made before him, for use as proof. Consequently, the appropriate venue for suing was often the Islamic court (Çiçek 2001, pp. 47–48; Goitein 1999, pp. 190–92; Ivanova 1993, pp. 63, 67; Al-Qattan 1999, p. 433; Faroqhi 1987, p. 183; Shmuelevitz 1984, pp. 50–68, 75). Variations in court fees must have played a role. Wherever a denominational court charged more than the area’s Islamic court,¹⁵ some cases may have been taken to the *kadi* simply to minimize litigation costs (Çiçek 2001, p. 41).¹⁶ Also relevant were the Islamic court’s superior powers of enforcement. Most denominational courts lacked authorization to impose temporal penalties, and they were particularly powerless when the parties belonged to multiple faiths (Cohen 1984, pp. 126–27; Argenti 1970, pp. 208–9; Goodblatt 1952, p. 92). Accordingly, some scholars view the denominational tribunals as “arbitration boards” rather than as bona fide courts (for instance, Ekinçi 2002).

Still other reasons to favor the Islamic courts lay in the substance of Islamic law. Until modern times, the Islamic partnership rules offered at least as much flexibility as those of the Middle East’s Christian communities. And they offered clear advantages over the closest contractual form found in the Talmud, the *isqa*. For all its affinities with its Islamic analog, the *mudāraba*, the *isqa* required equality between partners in terms of either profit shares or shares of liability. By contrast, the *mudāraba* allowed partners to choose these shares to achieve whatever risk-return trade-offs they found convenient (Udovitch 1970, especially pp. 74–75, 199–201, 209–10, 257–58). Unsurprisingly, right up to the eight-

15. In the seventeenth century, Bulgarian priests charged more to perform a marriage than the region’s *kadis* (Ivanova 1993, pp. 63–64). But the *kadi* courts were not consistently cheaper; there is evidence from Turkey that their fees escalated over time (Ergene 2002). In eleventh-century Egypt, litigation before a Jewish court was relatively inexpensive, the only required payments being those to the scribe who drew documents (Goitein 1999, p. 306).

16. Until the mid-nineteenth century, and in parts of the Middle East until much later, judges drew their incomes largely, if not entirely, from such fees. However, the costs that mattered to litigants involved more than monetary payments. The time required to adjudicate a case could also be a factor. According to Goitein (1999, p. 313), in eleventh-century Cairo certain Jewish courts had trouble assembling judges to litigate commercial cases, because the qualified individuals knew at least one litigant personally. Consequently, Jewish plaintiffs in a hurry for a settlement went to the *kadi*. According to Ivanova (1993, pp. 61, 63, 71), in Bulgaria Islamic courts performed certain procedures more simply than Christian courts.

teenth century, Jewish traders routinely opted for Islamic partnerships even when their partners were exclusively Jewish. Here is an example, then, of non-Muslims favoring Islamic law through mutual agreement, at the stage of contract negotiation. In forming Islamic partnerships, merchants and investors also made their agreements binding. There were contexts, of course, in which the substance of Islamic law would have seemed disadvantageous. Even then, however, Islamic law might have been favored as a means of preventing opportunistic jurisdictional switches. An economically important example will be presented shortly.

The principles of Islamic legal pluralism are consistent, then, with the record of *dhimmi* legal practices. Minorities who were free to use an autonomous denominational court had diverse reasons to favor Islamic justice. Where no evidence of denominational courts has emerged, it could be that the advantages of Islamic courts were sufficiently great to make them superfluous.

The foregoing logic carries implications for the evolution of the Middle East's entire legal infrastructure. As I will show next, the incentives in question caused minorities to make their legal systems more similar, at least in application, to those of Muslims. Islamic legal pluralism thus became self-destroying. Indeed, and paradoxically, it undermined the very legal diversity that, in principle, it allowed and protected. So the legal uniformity Al-Qattan found in Damascus is an explicable consequence of the legal pluralism inherent in the Ottoman *millet* system. Insofar as the region's legal systems converged, another conclusion follows. Like Islamic law, which became stagnant in domains relevant here, the legal systems of the minorities would also have delayed economic modernization.

8. THE DYNAMICS OF ISLAMIC LEGAL PLURALISM

In another article, I showed how the Islamic inheritance system contributed to preventing the Middle East from developing the organizational capabilities essential to remaining competitive with westerners (Kuran 2003). By fragmenting the estates of successful merchants, it helped to keep Islamic commercial partnerships small and short-lived; it also dampened pressures to develop complex partnership forms. The consequent lack of organizational progress did not pose a major problem as long as no other region had modernized. But it became a huge handicap for merchants operating under Islamic law as organizational ad-

vances in the West, where inheritance practices varied greatly, allowed the formation of larger and more durable enterprises, including joint-stock companies and corporations.¹⁷

Choice of law allowed *dhimmi* communities to settle estates according to inheritance rules of their own and to develop new forms of commercial organization, including complex partnerships and even the business corporation. In principle, then, non-Muslims could have avoided the organizational stagnation experienced by Muslims. In practice, however, legal homogenization burdened the entire indigenous population with the same developmental handicaps. The tendency toward legal homogenization is abundantly visible in relation to inheritance—the principal contributor, for reasons just noted, to the region’s looming economic backwardness.

The Islamic inheritance system rests on the Qur’an. Limiting the individual’s testamentary privileges to one-third of his or her estate, it assigns a minimum of two-thirds to children, spouses, parents, siblings, and possibly even distant relatives, according to rules sensitive to the exact combination of heirs. These rules differ in some respects between the two major denominations and, within the Sunni denomination, across schools of law. But all the variants promote material equality through mandatory sharing rules that spread a deceased person’s wealth among his or her relatives. Female heirs are usually entitled to half as much as males of the same category; for example, a daughter receives half as much as a son. Two points are critical: women have irrevocable inheritance rights, and children of both sexes share in a parent’s estate (Powers 1990; Fysee 1964, chaps. 13–14).

Like the Islamic inheritance system, that of Greek Orthodoxy tied inheritance rights to the combination of heirs. Under the latter, however, legal heirs were generally limited to the nuclear family and surviving parents. In addition, daughters usually lacked inheritance rights (Pantazopoulos 1984, especially pp. 67, 83). Thus, the estate of a man survived by a wife, two sons, and two daughters would be divided differently depending on whether Islamic or Greek Orthodox inheritance rules were followed. In the traditional Jewish system, a father was entitled to disposal of his property through a will. He could single out one or more children for special treatment. If a parent died intestate, daughters did

17. There are other social mechanisms that help explain the organizational divergence in question. Greif (1994) attributes it to self-sustaining differences in the cultural beliefs prevailing in Europe and the Middle East. For a critical survey of relevant theories, see Kuran (1997).

not inherit when there was a son, although each had to be maintained out of the estate until she attained her majority or got married. When there was more than one son, the oldest received twice the share of any other. A husband inherited from his wife, but a widow was entitled only to maintenance (Radford 2000, especially pp. 159–63, 171–81; see also Neusner, Sonn, and Brockopp 2000, pp. 94–104; Goitein 1978, pp. 250–60, 277–92).¹⁸ Obviously a person's inheritance rights could differ markedly under Jewish law than under Islamic law. Consider a married Jewish woman who under Jewish law would inherit nothing from her father. Under an Islamic settlement, she would be guaranteed a portion of the estate. Not surprisingly, Jews and Christians regularly took inheritance disputes to the *kadi* in the expectation of benefiting personally, sometimes after losing in their own courts (Goitein 1999, pp. 425–27; Pantazopoulos 1984, p. 106; Shmuelevitz 1984, p. 66).¹⁹

Precisely because the prevalence of such cases was common knowledge, many *dhimmi* families took steps to keep their members from carrying inheritance matters to Muslim judges. Thus, they allowed daughters to inherit some property and restricted bequests to nonrelatives. The denominational courts often condoned these concessions to Islamic law; some even encouraged them in order to minimize interferences in the affairs of their communities (Libson 2003, especially chap. 7; Goitein 1999, pp. 190, 425; Cohen 1994, pp. 94–96; Pantazopoulos 1984, pp. 56–57; Shmuelevitz 1984, pp. 69, 181). Nevertheless, rabbis and priests harbored misgivings about granting legitimacy to Islamic practices. The twelfth- and thirteenth-century responsa of Moses and Abraham Maimonides, like the sixteenth-century responsa of Samuel de Medina, are replete with complaints about Jews litigating cases in Islamic courts (Goitein 1999, p. 192; Goodblatt 1952, pp. 87, 92, 122).²⁰ Also in the sixteenth century, Orthodox prelates of Bulgaria appealed to Istanbul for help in keeping the local Islamic courts from serving Christians; Bulgarian *kadis* were encouraging Christians to use their services, the prelates complained, in violation of the judicial authority vested in the Church (Ivanova 1993, pp. 55, 63). The countermeasures of *dhimmi*

18. The system was subject to persistent controversy, and applications varied.

19. In 1783, a Jewish resident of Damascus successfully sued her male relatives to obtain the share of her deceased son's estate to which she was entitled under Islamic law. Around the same time, a Jewish man sued his half-brother, also successfully, claiming that the division of their maternal inheritance violated Islamic law (Al-Qattan 1999, p. 435).

20. In his 1191 classic, Moses Maimonides (1963, p. 179) scolds Jews who "imitate [Muslims] and follow their ways."

leaders included ostracism, even excommunication. Excommunicated individuals were banned from certain components of daily communal life, including weddings, funerals, and worship services (Shmuelevitz 1984, pp. 41, 72; Goodblatt 1952, pp. 122–23).²¹

In the Middle East, as in other places, to belong to a religious minority amounted to accepting an implicit contract. The sanctions in question counteracted the temptation to challenge that contract *ex post*, by reopening it in Islamic court; they made the contract relatively more binding. To a degree, therefore, they preserved communal legal norms, thereby enforcing a right enshrined in the Pact of Umar.

On occasion, Middle Eastern rulers took steps to bolster denominational courts. For instance, they issued edicts endorsing or reconfirming the legal privileges of religious minorities (Çiçek 2001, p. 46; Ivanova 1993, pp. 55, 63), sometimes during negotiations with a strategically placed community. For their part, certain *kadis* refused to accept non-Muslim cases indiscriminately.²² As with the sanctions minority communities imposed on their own members, such official policies enhanced the credibility of contracts made under non-Islamic systems. They also enforced legal pluralism.

Nevertheless, only rarely would a *kadi* deny a subject's right to adjudication under Islamic law. Nor did any Muslim official succeed in keeping Jews or Christians from appealing to the *kadi*, if indeed any tried to go that far. On balance, therefore, Islamic law exerted a huge influence on both the practices of the denominational courts and the evolution of *dhimmi* legal doctrines. The legal practices of Middle Eastern minorities thus underwent Islamization, weakening their motives for favoring one legal system over another *ex ante*. This is an additional reason why the religious minorities so often took cases to Islamic courts.

9. ADVERSE ORGANIZATIONAL EFFECTS ON NON-MUSLIM COMMUNITIES

Against this background, let us reconsider the lack of major differences, until the eighteenth century, in economic achievements of the region's religious groups. Insofar as Islamic law hindered development, people

21. To a pious person of the period, excommunication might have seemed worse than death (Çiçek 2001, p. 48).

22. Some Egyptian *kadis* of the twelfth century referred cases by Jews to Jewish courts; they also avoided retrying cases already adjudicated according to Jewish law, unless the rabbinate had annulled them (Goitein 1999, pp. 192–93).

of all faiths would have been held back. In particular, the financial rules and organizational forms of non-Muslims would have stagnated along with those of Muslims. Indeed, and for reasons discussed, no group made primogeniture the norm in settling estates, and none developed the advanced organizational structures that the Middle East eventually transplanted from Western Europe. In the early eighteenth century, all confessional groups continued to form partnerships according to Islamic law (Kuran 2003; Gedikli 1998; Udovitch 1970). From an institutional standpoint, then, native Jews and Christians were conducting business much like Muslims. In tolerating, even encouraging, this institutional standardization, the denominational courts contributed to making all groups operate under similar rules in domains critical to material advancement (Cohen 1994, chap. 5, especially pp. 94–96). To observe that Islam's inheritance system and partnership rules kept peoples of the Middle East from achieving organizational modernization is not to assert that these institutions are incompatible with a modern economy. Once an advanced legal infrastructure has somehow emerged, each may be used without shrinking the menu of available organizational choices. More specifically, institutions inimical to organizational modernization need not interfere with the operation of modern organizational forms, once those forms have been transplanted from elsewhere. Imagine that an owner of 1,000 shares in an Egyptian corporation dies, and the shares are divided according to Islamic inheritance law among her husband and five children. This distribution will not undermine the company's survival, as it might if it were a simple partnership.

Responsibility for the dynamic inefficiency of Middle Eastern economic institutions belongs partly, of course, to the inequities of Islamic legal pluralism, including its late variants such as the Ottoman *millet* system. Suppose that all communities had choice of law and also that all court decisions were equally well enforced. With opportunities for ex post jurisdictional switches curtailed, the legal systems of the minorities might have enjoyed greater popularity, and the ensuing legal competition might have induced Muslims to reform the Islamic inheritance system. Conceivably, a system conducive to organizational modernization would have gained popularity. Yet Islamic legal pluralism was not a sufficient condition for the observed dynamic inefficiency. Also relevant were particulars of the prevailing inheritance system. Had that system been more conducive to organizational change, the legal homogenization resulting from Islamic legal pluralism would not have harmed economic development.

10. MIDDLE EASTERN CONSEQUENCES OF THE ORGANIZATIONAL REVOLUTION IN THE WEST

A new master pattern took shape as the organizational revolution in the West led to an explosive growth in global commerce, including trade between the Middle East and Western Europe. This is not the place to review the rise of the West. It is the effects on the Middle East that are relevant here. In a nutshell, the Middle East's minorities managed to overcome the limitations of indigenous legal systems by exercising their legal choices differently, in favor of modernizing systems of the West. As groups, they thus pulled ahead of Muslims, who lacked options.

The advantages of Western law lay partly in the superiority of new and increasingly complex business methods, as measured by capability to confer competitive advantage in international markets. To identify the underlying sources, let us compare how two long-distance traders of the early eighteenth century, one a Frenchman and the other a Muslim Arab, might have conducted commerce between Egypt and France. The Frenchman would insure his goods through a formal insurance market. In the absence of Middle Eastern insurance companies, his Arab competitor would keep many of his assets liquid as a precautionary measure, tying up resources that might have produced income.²³ The French merchant would have access to cheap credit from financial enterprises that pooled the savings of thousands of individuals. Insofar as he chose to borrow, the Arab would incur considerably higher costs, because most Middle Eastern lenders raised capital from personal accounts or through small partnerships.

The Frenchman would also have enjoyed advantages in regard to dispute resolution. In settling conflicts with corporations, he could rely on courts accustomed to dealing with juridical persons. By contrast, Islamic law would have precluded the Arab merchant from suing, or being sued by, a corporation. The Frenchman would more easily earn the trust of major clients or suppliers, for French courts were relatively more consistent in giving evidentiary weight to business documents. Courts available to the Arab were more likely to allow oral evidence to trump documentation, especially where testimony came from a Muslim; this would have made large enterprises, which had to keep written records, reluctant to establish an ongoing relationship with him. Another

23. Raymond (1974, 1:291–94) finds that at the end of the eighteenth century, leading merchants of Cairo either kept their wealth liquid or invested in tax farms. They tended not to invest in shops or commercial shipping.

advantage of the French merchant was that he was more likely to work for, or hold shares in, an enterprise with an established reputation and abundant international contacts. In all likelihood, his Arab competitor would have had to build an enterprise from scratch. This enterprise would have been a small and ephemeral partnership with few employees.²⁴

Still another difference is that the Frenchman was likely to benefit from the assistance of French consuls posted in the Middle East. These consuls gathered information about bureaucratic procedures, local customs, commercial opportunities, and individual reputations. They helped to resolve conflicts among non-Muslims, including disagreements involving local Christians and Jews. True, consuls were not equally powerful everywhere; outside of major centers, officials constrained their activities, burdened them with arbitrary fees, and refused to honor treaties (Goffman 2002, pp. 196–99; Shields 2000, chap. 3; Mumcu 1985, especially p. 139). However, in economically important centers, consuls served their constituents with increasing effectiveness. Thus, in the eighteenth century, a French businessman could operate in Alexandria largely within an institutional framework developed in France. At the time, no Middle Eastern consuls existed in Europe. If only because of this asymmetry, the French merchant could establish a local network in Alexandria more easily than an Alexandrian Muslim merchant could do so in, say, Marseille. Whereas the Frenchman would have had access to Ottoman agents accustomed to serving foreigners, his Arab rival might have had to start from scratch. The assorted advantages of the Frenchman meant that in all probability he was more experienced.

Like any crisis of global significance, the crisis instigated by this rise in Western competitiveness produced both winners and losers. Exposure to the West's steadily developing commercial culture expanded the jurisdictional choice set of local non-Muslims. If a group of Greeks wanted to form a legal partnership, no longer were their options limited to signing documents before a *kadi* or a metropolitan. Provided at least one enjoyed Western legal privileges, they could sign a contract based on modern concepts. In the course of the eighteenth century, we shall now see, growing numbers of local Christians and Jews took advantage

24. There also existed family enterprises, which need not have been organized as partnerships. Whatever their structure, they seldom lasted beyond a generation, in part because of the Islamic inheritance system. Family enterprises were also limited in the amount of capital at their disposal.

of new options. They did so to escape the limitations of both Islamic law and legal practices associated with their own religion.²⁵

11. JURISDICTIONAL SHIFTS BY MINORITIES

To do business under the laws of a Western country, a Middle Eastern Christian or Jew had to acquire the protection of that country, becoming a protégé. Achieving this status initially required a letter of patent (*berat*) that a Western representative would obtain from the local ruler, for example, the Ottoman sultan. Patent-bearing *dhimmis* became eligible for all the fiscal, judicial, financial, commercial, and personal rights that westerners on business in the Islamic world had long exercised through privileges known as capitulations.

Established before the Middle East became underdeveloped, the capitulations initially served to reward friendly European states, build alliances, and stimulate imports deemed essential. In time, as the West leapt ahead in organizational development, they came to provide significant tax breaks (Kurdakul 1981; İnalçık 1971; Liebesny 1955). Patented Ottoman subjects thus acquired privileges akin to diplomatic immunity. They started paying only a 3 percent tax on imports instead of the 10 percent generally required of *dhimmis* (Bağış 1983, p. 28).²⁶ They also gained the right to be tried in a consular court, even in a court on West European soil, provided no Muslim was party to the dispute. Accordingly, they could use business methods supported by European courts but unrecognized by either Islamic or denominational courts. Consuls spread across the Middle East strove to have local protégés treated like European expatriates (Masters 2001, p. 152; Eldem 1999b, especially pp. 281–83; Sonyel 1991; Goffman 1990, p. 86).

In itself, Western protection was nothing new. Well before the West achieved economic dominance over the Eastern Mediterranean, its consuls were hiring dragomans (Latinized form of *tercüman*, Turkish for interpreters) to serve as translators, negotiators, and advisors. Most of their hires consisted of Greeks, Armenians, and Western expatriates. Rarely did consuls hire Muslims, for they were averse to confronting an

25. Some Egyptian Jews used Western protection to prevent rabbinical courts from enforcing judgments against them (Landau 1969, p. 23). Karpat (1986, p. 151) observes that the nineteenth century saw “the liberation of the Orthodox Christians not only from Ottoman rule but also from the jurisdiction of their own Church.”

26. The latter figure includes various charges imposed on all subjects, including Muslims.

employee in Islamic court, where foreign testimony could be discounted. Dragomans enjoyed the privileges traditionally granted to resident foreign merchants. Until the eighteenth century, the typical consul had two or three dragomans. As the demand for protection rose, many consuls started hiring them in much larger numbers.

An incentive for meeting the growing demand was that protégés paid consulage fees.²⁷ These fees were imposed with an eye toward appropriating a share of the rents produced by the rising efficiency of Western legal systems.²⁸ That the consuls sought to extract rents is evident from variations in their fees, which depended on the value of the protection provided. In 1795, when the Black Sea trade was opened to foreign shipping, the price of English protection rose from around 2,500–6,000 kuruş to 10,000 kuruş (Sonyel 1991, p. 87; Bağış 1983, pp. 29–30). A century later the Russian consul in Trabzon charged an ordinary resident 5 roubles but a “first-class merchant” 700 roubles (Turgay 1982, p. 298).²⁹ Consuls created and appropriated rents by extending privileges to a widening circle of nonemployees. The vast majority of the new hires became “honorary dragomans”—consular servant-interpreters in name only.

We have seen that the minorities distinguished themselves especially in modern economic sectors, such as banking and insurance. These sectors could not have operated under Islamic law—one reason why all of the Middle East’s earliest banks and insurance companies were headquartered in Paris, London, or some other Western city, where they could function under a convenient legal system. These companies drew almost all of their Middle Eastern agents, correspondents, and managers from local minorities enjoying the status of “honorary dragoman.” This hiring pattern served to minimize the companies’ dealings with Islamic courts. For the minorities themselves, it created opportunities for forming long-lasting business relationships with foreigners, including more or less permanent partnerships. These relationships were governed largely by Western laws (Frangakis-Syrett 1992, pp. 111–12). It is true, then, that

27. Often these were shared with officials who expected bribes (Bağış 1983, pp. 25–26).

28. Even if the fees made “Western justice” more expensive than the “Islamic justice” available from *kadis*, merchants might have agreed to them for the sake of gaining competitiveness.

29. For further evidence of consulage charges on protégés, see Frangakis-Syrett (1992, pp. 80–81), who shows that patented merchants were willing to change consuls to escape high fees, Sonyel (1991, pp. 58, 64), Anderson (1989, especially pp. 118–25), and Wood (1935, p. 135, n. 2).

the minorities owed their advances to networking with westerners. Yet the value of that networking lay in opportunities linked to Western institutions. Without privileged access to new economic sectors supported by advanced legal codes, such networking would not have been lucrative enough to enable the observed economic advances. Middle Eastern Christians and Jews purchased Western protection not merely to expand their networks but specifically to join networks using modern organizational forms, financial techniques, and litigation practices.

Collectively, these honorary dragomans formed a class of “native foreigners”—locally born and raised functionaries who were well integrated into domestic life and spoke local languages, yet held the same legal status as foreign non-Muslims. Before long, European powers began viewing local minorities not only as useful middlemen, brokers, interpreters, and consorts but also as instruments of political influence. France took a special interest in Catholics, Britain in Protestants, and Russia in Orthodox Christians, each claiming a right to protect whole communities (Sonyel 1991, p. 677; Masters 2001, especially chap. 5; Eryilmaz 1996, pp. 147–50; Turgay 1982, pp. 293–94; Haddad 1970, pp. 29–49). Seeking to protect their tax bases, local rulers put limits on dragoman patents. So consuls found a way to grant legal protection without local authorization. For a fee, they would give *dhimmi*s citizenship documents entitling them to foreign privileges, including consular justice. These documents were known as “consular patents,” as distinct from the official patents issued by Ottoman authorities (Bağış 1983, pp. 30–31).

The available figures concerning the size of the patented merchant community can be confusing. Some scholars have estimated the number of officially patented residents of one city or another, generally using Middle Eastern archives; others have estimated the number of protégés of a particular Western state, relying on its diplomatic archives. Only the latter estimates include the holders of consular patents. Collectively, the figures confirm that, starting in the eighteenth century, the total protégé population grew by orders of magnitude. By the end of the eighteenth century, when the Ottoman Empire had a population of around 30 million, the Austrians alone were protecting 200,000 Ottoman subjects; few of these protégés had ever set foot in Austria, and even fewer served a consul (McGowan 1994, p. 696). By 1808, Russia had extended protection to 120,000 people, mostly Greeks (Quataert

1994, p. 839).³⁰ In 1882, “foreign subjects” accounted for 112,000 of the 237,000 residents of Galata, Istanbul’s leading commercial district; most were natives (Rosenthal 1980, p. 243, n. 1).³¹ In 1897, half of all the Jews in Egypt were foreign nationals, including both patented natives and European-born residents retaining foreign citizenship (Landau 1969, p. 23). As of the mid-nineteenth century, in Aleppo alone more than 1,500 non-Muslim Ottomans were engaged in international trade under the protection of a foreign government (İnalçık 1971, p. 1187).³²

As the protégé population mushroomed, it became apparent that protégés could compete effectively not only with local Muslims and non-Western foreigners but also with westerners. Thus, from 1770 onward, the growth of Izmir’s external trade was driven more by the successes of native non-Muslims, particularly the initiatives of local Greeks, than by further advances of westerners (Frangakis-Syrett 1992, chap. 4 and especially p. 111). Around the same time, in the major commercial centers of the Arab world, including Aleppo, local Christians and Jews began replacing European merchants, bankers, and insurance brokers (Masters 2001, especially p. 81). By 1911, only 3 percent of the merchants registered in Istanbul were identifiable as French, German, or British (Quaert 1994, pp. 839–40).³³ In the course of these developments, religious minorities of the Islamic world, including those the Balkans, established a salient presence in the commercial life of Leghorn, Naples, Trieste, Vienna, Leipzig, Amsterdam, and other Western centers (Ortaylı 1999, pp. 74–75; McGowan 1994, pp. 699, 702–3).

12. THE LOGIC OF WESTERN LEGAL PROTECTION AND ITS RELIGIOUS EXCLUSIVENESS

To acquire the capabilities of Western merchants, patented Middle Eastern merchants had to learn European languages and familiarize themselves with European customs. As they took these steps, their consumption patterns became “Westernized,” initiating a process that would eventually draw in Muslims as well. Such developments made it easier

30. This figure, like the previous one, includes family members.

31. A quarter-century earlier, the American embassy put the figure at 50,000 (Sonyel 1991, p. 64).

32. Masters (2001, p. 125) estimates that there were “a few hundred European protégés” in Syria in the eighteenth century, “thousands” a century later.

33. For complementary evidence, see Clay (1994, especially pp. 594–96), Kasaba (1988), and Issawi (1980, pp. 62–71).

to take advantage of the new economic opportunities provided by Western laws. Thus, Western languages facilitated entry into the class of protégés, and Western lifestyles became increasingly advantageous with the rise in returns to interacting with foreigners. Yet Westernized Middle Easterners remained distinguishable from expatriate westerners. They retained the local knowledge that kept Western traders chronically dependent on dragomans. Consisting of familiarity with local vernaculars, customs, and mores, this “knowledge of things oriental” enabled patented non-Muslims to retain influence within commercial networks that included Muslims.³⁴ It is thus a combination of two types of knowledge—“knowledge of things oriental” and “knowledge of things occidental”—that gave patented businessmen a pivotal position in trade with the West.³⁵ Their competitiveness grew as an Ottoman diaspora composed overwhelmingly of minorities took hold in Western Europe.

That this rise in competitiveness depended on Western know-how and institutions is evident from the organizational choices of minorities. In the literature on the eighteenth century, a new enterprise form emerged and became increasingly common: the merchant house. It consisted of a partnership, or set of partnerships with overlapping memberships, established for an indefinite period rather than to carry out a designated mission planned to last a few months. Many merchant houses had collateral branches operated by family members; some were also active in manufacturing (Masters 1999, pp. 58–62; Quataert 1994, pp. 837–41; Kazgan 1991b, pp. 39–43). As with a joint-stock company, a merchant house could enlarge or change its membership without loss of continuity. In fact, it could become a joint-stock company simply by issuing explicitly tradable shares. Obviously a merchant house did not conform to long-standing organizational practices based on Islam’s partnership rules. Indeed, *kadis* steeped in traditional Islamic law had trouble grasping the accounting problems and profit allocation disputes of the merchant houses. This is why most, and the vast majority of the largest as measured by capital or membership, were formed exclusively by non-Muslims, who could appeal to Western courts. True, modern courts were not essential to the operation of merchant houses. The members of a house could willingly assume the risks of illegality, agreeing, and having their customers and suppliers agree, to settle disputes through informal

34. The phrase belongs to Eldem (1999b, p. 217).

35. For related points, see Eldem (1999b, especially pp. 170–71, 217), Panzac (1992, p. 203), Bağış (1983, especially pp. 54–57), and Haddad (1970, pp. 34–36).

arbitration. Nevertheless, access to consular courts constituted an enormous advantage, which increased with the scale of operation.³⁶

If Western protection became so valuable, Muslim traders too would have had incentives to switch legal jurisdiction. Why, then, did the practice not spread to them as well? For a Muslim to accept Western legal protection would have represented a radical challenge to the Islamic legal system, which required him to live by Islamic law; this must have dampened the Muslim demand for protection. In any case, consuls were reluctant to extend protection to Muslims, lest this anger religious authorities and complicate relations with rulers. It was safer to protect local Christians and Jews, for whom acquiring the status of a “local foreigner” was, in principle, like opting to litigate a dispute in a denominational rather than Islamic court. Provided they remained under the jurisdiction of Islamic courts on criminal matters, foreign-protected non-Muslim subjects could be considered as living within the guidelines set by the Pact of Umar and maintained through the *millet* system.³⁷

The foregoing interpretations accord with the continued successes of Muslim merchants in overwhelmingly Muslim areas. Few foreigners settled in such areas, partly, no doubt, to minimize encounters liable to land them before the *kadi*. Consequently, merchants dependent on Islamic law endured no major handicaps in heavily Muslim inland towns. The same logic explains why non-Muslim merchants were relatively less successful in cities without European consuls.³⁸ We can lay to rest, then, the common argument that the continuation of Muslim successes in some places absolves Islamic institutions of responsibility for the difficulties Muslims endured in leading commercial centers.³⁹ Geographic variations

36. Precisely because the merchant houses settled disputes outside the purview of the Islamic courts, the *kadi* registers (*sicils*) contain little information on their modes of operation. Their transactions can be tracked through customs registers. Masters (1999, p. 62) offers these observations in regard to houses established by Jewish and Catholic Arab families in Aleppo.

37. It is beside the point that the Pact of Umar and the capitulations emerged in response to different problems. Each provided local minorities legal options unavailable to Muslims.

38. As late as the early nineteenth century, Christian merchants had achieved few successes in Damascus, where no consuls had been posted (Masters 2001, p. 120). Bowring (1840, p. 94) observes that “as a body,” the Christian commercial houses of Damascus were “less opulent than those of the Mussulmans and Jews.”

39. In an otherwise commendable book, Eldem (1999a, pp. 14–15) writes, “A closer look at the French trade in the Levant in the eighteenth century reveals that any advantage or leverage western traders may have gained against strongly implanted local trading communities were due to extra-economic interventions—diplomacy, political pressure, capit-

in Muslim participation—Aleppo versus Damascus, Alexandria versus Asyut, and Istanbul versus Sivas—were not due to esoteric factors. They stemmed from systematic practical benefits that Western institutions conferred upon foreigners and their protégés.

That Western protection was sought for its practical advantages is evident in selections made among its suppliers. The legal systems through which patented non-Muslims advanced economically were not identical. Nor were the services of consuls interchangeable. Ordinarily a French consul carried greater influence than one from Piedmont, and many more consuls were French than Piedmontese. Such differences influenced jurisdictional selections, and switches occurred as a foreign power gained or lost influence. In nineteenth-century Beirut, observes a historian, “local merchants did not hesitate to switch from one consul’s protection to another’s, according to the needs of the moment.” The same historian also finds that “when it suited their interests best,” merchants would give up consular protection. “At those times they claimed to be first and foremost Ottoman subjects, at least until they won the matter at issue, usually a judicial case” (Fawaz 1983, p. 86).⁴⁰ Another historian relates that Egyptian Jews kept close watch over duties imposed on protégés. The French consular corps was considered undemanding. By contrast, Austro-Hungarian protection appeared a mixed blessing after patented Jews were asked to join the Hapsburg military campaign against Italy (Landau 1969, pp. 22–23).

The number of Western protégés skyrocketed, it is sometimes argued, because of faltering local security and rising European military strength. These were relevant factors. However, by themselves they explain neither why Muslims lost competitiveness, nor why their handicaps were greatest in cities most exposed to the West, nor why European expatriates eventually lost market share to their own protégés.

13. UNINTENDED CONSEQUENCES OF ISLAMIC LEGAL PLURALISM

This article has furnished a unified explanation for two broad historical patterns: (1) the absence, before the rise of the West, of striking imbalances among the Middle East’s major religious communities and (2) the

ulation treaties—rather than to a real economic domination.” For similar claims, see Quartaert (1994).

40. In matters of divorce and inheritance, incentives to use Islamic courts never disappeared.

ascent of the region's religious minorities in the course of the West's economic modernization process. I have also laid the groundwork for explaining why the nineteenth century witnessed feverish legal reforms to improve local competitiveness, especially the productivity of Muslims. What drove these reforms were the very incentives that made local Christians and Jews seek Western legal rights. Significantly, they involved the adoption of Western commercial codes.

On the surface, the analyzed patterns are emblematic of the social adjustment mechanism named after Charles Tiebout (1956). Known also as "voting with one's feet," the Tiebout mechanism enhances social efficiency as individuals move across legal jurisdictions and, in response, disfavored jurisdictions undertake reforms. In keeping with this mechanism, before the eighteenth century non-Muslim merchants frequently opted to do business and apportion estates under Islamic law, partly because of its superior enforceability. These personal choices induced the Islamization of minority legal practices. When Europe's institutional transformation created new legal opportunities, the same mechanism produced a mass countermovement away from Islamic law. This helped to publicize the growing inadequacies of Islamic commercial law—much as an exodus from a residential area exposes its loss of appeal.

However, each of these adjustment processes—the Islamization of minority legal practices and, subsequently, the Westernization of Middle Eastern practices—also had unfavorable effects on economic efficiency. In the earlier period, Islamic legal pluralism allowed minorities to make jurisdictional switches *ex post*, imparting uncertainty to their business agreements. As such, it undoubtedly discouraged potentially profitable investments. The surest way for a Christian or Jewish community to raise the credibility of its agreements was to make its own legal practices resemble those of Muslims. The consequent Islamization of non-Muslim legal practices did not necessarily produce a net gain in commercial efficiency. Insofar as this legal convergence was motivated by uncertainty reduction rather than the substance of the adopted practices, the Middle Eastern economy may have suffered. There would also have been dynamic losses insofar as legal uniformity extinguished incentives to improve organizational forms. Islamization of the region's inheritance practices created just such an evolutionary barrier, I have maintained. Had these practices not converged, the region's peoples may well have generated large and durable private enterprises on their own. Moreover, they might not have sought foreign protection or chosen to transplant

foreign laws. The modern history of the Middle East would have been markedly different.

Does the identified rigidity point to a failure of the Tiebout mechanism? And do economic historians err in invoking this mechanism, or some functional equivalent that produced jurisdictional competition, to explain why the West took the lead in economic modernization?⁴¹ Such conclusions are unwarranted, because the Islamic legal system violated two of Tiebout's assumptions. The Tiebout mechanism entails symmetric legal pluralism—equal rights to move across legal jurisdictions. Islamic legal pluralism amounted to asymmetric legal pluralism—broader legal options for some communities than for others. Had Islam given all groups identical legal options, competitive pressures might have induced Islamic law to be more responsive to the evolving global economy.

Another Tiebout assumption is that individuals can enter into contracts binding in regard to jurisdiction. This rules out switches made after contract negotiation. Had Muslims blocked ex post switching, decisions in favor of Islamic law could have been viewed as efficiency improving. In fact, the contractual decisions of minorities were driven partly by concerns about enforceability. By the same token, legal Islamization was driven by incentives to curb opportunism rather than substantive advantages of Islamic law.

The jurisdictional switches of the eighteenth and nineteenth centuries were motivated largely by identifiable benefits of Western law. The legal transformation in the West raised the advantages of trading with westerners, joining their networks, and using their methods. The realization of the huge new potential depended, however, on extinguishing opportunities for ex post jurisdictional change, which, under Islamic legal pluralism, even a westerner could force on associates by fabricating a story of Muslim involvement. Unsurprisingly, Western statesmen used their growing diplomatic influence, itself a by-product of economic success, to shield their citizens and protégés from Islamic trials. This contributed to excluding Muslims, considered especially prone to seeking Islamic justice, from the most dynamic sectors of the global economy. Imposed initially to benefit Muslims, the Pact of Umar, and specifically its provision giving the *kadi* sole jurisdiction over cases involving Muslims, thus had the unintended effect, a millennium later, of seriously harming Muslim economic opportunities. In reaction, many Muslim

41. For influential variants of this argument, see North (1995, especially pp. 26, 30), Mokyr (1990, pp. 206–8), and Jones (1987, chaps. 6–7).

merchants and investors sought to remove finance and commerce from the jurisdiction of Islamic courts.

The secularization of Middle Eastern economic law began in the mid-nineteenth century with the establishment of special tribunals authorized to try people of all faiths, and it proceeded in steps. There was resistance from the Islamic courts. The process took decades longer in small towns than in major commercial centers. Along the way, people continued to suffer from judicial uncertainty. The losses fell disproportionately on Muslims, precisely because they lacked the option of foreign legal protection. Therein lies yet another reason why the Middle East's Muslims lost economic ground to its Christians and Jews.

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