1. Islamic law and economic development

Jared Rubin

1. INTRODUCTION

This chapter discusses the connection between Islamic law and economic development in the historic and contemporary Middle East. I make the case that Islamic law has had a detrimental impact on Middle Eastern economic growth for two related reasons. The first is that there are elements of Islamic doctrine which make Islam conducive to legitimizing political rule. This entails that Muslim rulers have historically given religious authorities a seat at the bargaining table over laws and policies. Secondly, this is problematic for economic growth because until quite recently rulers gave the clerical class purview over commercial law. Islamic law addresses many aspects of business, including laws of partnership, trusts, lending, and finance. Most of these laws were formed in a pre-modern economic context and are thus not conducive to supporting business in a changing economic environment.

One of the most important consequences of the processes described in this chapter is that the idea of the corporation was completely absent in Islamic law until it was imposed by Europeans in the middle of the nineteenth century (Kuran 2005, 2011). Despite the fact that the Middle East was economically far ahead of Europe for centuries following the spread of Islam, Islamic partnerships rarely included more than three or four partners and rarely lasted for any significant duration. Why did Islam lack the concept of a corporation – or anything close to a corpus of corporate law? This chapter argues that, like numerous other commercial laws under the purview of the clerical class, the absence of legal change to accommodate a changing economic environment was part of a broader political economy equilibrium in which the religious elite played an important role in legitimizing political rule.

Indeed, it is not enough to simply claim that Islamic law is not conducive to economic growth and thus economic growth did not occur. After all, Christian canon law was also not suited for a modern economy, but it hardly hampered economic growth in Western Europe. In Medieval Europe, secular law replaced canon law in nearly every aspect of law except those confined to strictly religious matters (Berman 1983). The real question, therefore is why secular law did not replace Islamic law in the Middle East until the nineteenth and twentieth centuries. The answer to the question is not solely a demand-side one; when secular law arose to preeminence in Europe, the Middle East was ahead of Europe economically, technologically, and scientifically. So it cannot merely be the case that Middle Eastern populations did not demand change to outdated commercial laws. This chapter argues that the lack of change in Islamic law is a supply-side phenomenon. In other words, there was little will to update laws from those in charge of creating and interpreting laws: the rulers and the religious elite. The lack of will to update laws was not due to conservative preferences, but was a result of the incentives faced by all of the relevant players. This insight was explicated in a game theoretic model laid out in Rubin (2011, 2017), and I briefly spell out its intuition in the following section.

In short, this chapter argues that there is indeed a negative connection between Islamic law and economic growth. But understanding the causal connection between the two is important, because it is easy to derive simple but misinformed connections between the two. I argue that the primary causal link is not some inherent conservatism in Islam or any notion that Islam is inherently antithetical to commerce. Instead, I focus on the role that religious legitimacy played in Middle Eastern rule and how this affected the incentives of all the relevant players who had some power to affect laws and policies.

2. STAGNATION IN ISLAMIC LAW

It was a well-worn trope among the Orientalists of the mid-twentieth century that the ‘gate of *ijtihad*’ was closed at some point around the tenth century (Schacht 1964, Ch. 10; Coulson 1969; Weiss 1978). *Ijtihad* is a term for ‘independent reasoning’, and clerics practiced it frequently in the first three to four Islamic centuries as new situations called for new interpretations of old laws. Yet, the Orientalist literature claims that an informal consensus arose among the clerical elite around the tenth century that *ijtihad* was no longer a valid way of seeking truth. Instead, jurists were supposed to only follow precedents (*taqlid*). This meant that juristic ingenuity was stifled precisely at the time that Sunni Islam consolidated into four schools: Hanafi, Hanbali, Maliki, and Shafi’i. To the extent that this is true, it meant that Islamic law was incapable of responding to changes in the economic, political, and social environments where it was practiced.

A recent literature challenges the idea that the gate of *ijtihad* was ever really closed in theory or in practice (Hallaq 1984, 2001; Gerber 1999). But even this literature suggests that *ijtihad* was practiced less frequently after the tenth century than it was in the first few Islamic centuries. It is not the intention of this chapter to enter into this debate. The only point that matters is that Islamic law did seem slower to respond to new exigencies after the tenth century. The questions this chapter addresses are: 'why did reinterpretation of Islamic law slow down after the tenth century?' and 'What did this mean for Middle Eastern economic outcomes?'

A simple explanation for the slowdown of reinterpretation is that Islam is simply 'mystical' or 'conservative' and thus not amenable to change. Indeed, a large literature dating to at least Max Weber suggests just this (Weber 1922; Cromer 1908; von Grunebaum 1966; Lewis 1982, 2002). But such an explanation cannot explain why reinterpretation of Islamic law was so active in the first few Islamic centuries. If Islam is inherently conservative, why did the corpus of Islamic law change so much prior to the tenth century? Why did Islam apparently not impede the growth of Middle Eastern economies after its spread?

A satisfactory explanation must be able to account for the ultimate slowdown in reinterpretation of Islamic law without appealing to anything inherent about the 'nature' of Islam. Indeed, it is useful to consider what it means for a religion or a corpus of law to be 'conservative'. One may consider a religion to be conservative if it does not change in the face of changing circumstances. But this does not necessarily mean that a conservative religion is incapable of change. The key point this chapter makes is that conservatism is an *outcome*, not a cause or a preference. The same laws or doctrine remain in place because it is not in the incentive of those with capacity to change them to do so. Conservatism is therefore not the result of some desire to 'stick to old practices' or 'return to the past' regardless of the circumstance. This idea of conservatism is useful for analysis, because it points us to the key players involved in the creation of law and focuses our attention on the incentives they face.

Rubin (2011, 2017) provides a framework for thinking through who the key players are in the creation of laws and policies and how their incentives may result in conservative outcomes. It focuses on rulers and the people and organizations (hence, agents) that *propagate* rule. Agents propagate rule by helping keep a ruler in power. They can do this by providing legitimacy or coercion. Legitimacy is useful because it increases the number of subjects who believe the ruler is the rightful ruler and thus has the right to make laws and policies. In the Middle East, religious authorities have historically been among the most important legitimizing agents. They have the capacity to legitimize for two reasons: (1) they have influence with the population; and (2) Islam is particularly conducive to legitimizing rule. The latter point is important. Numerous passages in the Qur'an and hadith literature support the legitimizing role of Islam. For instance, the hadith of al-Bukhari states:

> The Prophet said, 'It is obligatory for one to listen to and obey (the ruler's orders) unless these orders involve one disobedience (to Allah); but if an act of disobedience (to Allah) is imposed, he should not listen to or obey it.' (Vol. 4, Book 52, No. 203)

In short, this hadith supports the idea that subjects should obey a ruler who 'acts like a good Muslim'. This notion has been incredibly useful for Middle Eastern rulers, who have frequently relied on religious authorities for justification for controversial actions, from permitting tobacco to attacking fellow Muslims. So long as the action could be construed as being consistent with Islam, 'good Muslims' were supposed to follow the ruler.

The importance of religious legitimacy in determining Middle Eastern legal and economic outcomes becomes clearer when one considers its implications for political economy. Assuming that the ruler's primary objective is to stay in power, he must bring those people capable of propagating his rule – his propagating agents – to the political bargaining table. These agents will not propagate his rule for free: they will expect some say in laws and policies in return. This is the main reason that Islamic law affects economic outcomes. Religious authorities had something they could offer Middle Eastern rulers: legitimacy. In return, they wanted Islamic law to cover as many aspects of society as rulers would allow. This did not mean that rulers gave clerics free reign over all aspects of law; where it suited them, rulers decreed laws over which religious authorities had no purview. For instance, the Ottomans established the *kanun*, or 'secular law'. The *kanun* and Shari'a were not always consistent, and when they clashed the religious establishment generally found some way to cloak the Sultan's desires in a veil consistent with Islamic principles.

Importantly, Middle Eastern rulers generally left purview over most aspects of commercial law to the religious class. The reason is simple: commercial law only indirectly affected the ruler's capacity to rule, so it was worth the cost of ceding domain over commercial law in return for legitimacy. This is not true of laws regarding taxation, for instance, and therefore rulers generally maintained flexibility to tax in any manner they desired.

Understanding this dynamic between political and religious authorities helps shed light on why a ‘conservative’ outcome arose in the Middle East with respect to Islamic commercial law. Consider the incentives and actions of the key players: rulers, the religious establishment, and the economic elite (e.g., merchants, money-changers, and producers). The economic elite are a player in the game over commercial law because it is in their interest to have the law updated in response to economic exigencies. However, they are only minimally incentivized to ‘push the envelope’ and act outside what the prevailing legal regime permits. On the one hand, the economic elite may find some benefit in transgressing some aspects of Islamic commercial law if the law is unsuitable for the prevailing economic conditions. However, they face a ‘double cost’ from doing so: a ‘spiritual’, intrinsic, cost from breaking the dictates of religious authorities (whose opinion they presumably care about) and a worldly, explicit, cost associated with their actions potentially being voided in court. Where the cost is large enough it will not outweigh the benefits and the economic elite will refrain from transgressing the law.

Consider how this affects the incentives of rulers and religious authorities. If few people transgress the law, rulers have little incentive to change it. Even if it might mean an expanded tax base, changing laws over which religious authorities have purview threatens to undermine one of their primary sources of legitimacy. The costs of changing the law are therefore immense, and if the economic elite largely abide by the law in any case, the perceived benefits are low. The cost-benefit calculation for religious authorities can be thought of in a similar manner. They stand to lose credibility – and hence their capacity to legitimize – if people openly disobey their dictates. But in the situation described above, this does not happen; the economic elite find it too costly to disobey the laws and so they rarely do. Meanwhile, reinterpreting Islamic law is quite costly. Part of the reason religious authorities have the power they do is their monopoly over what are perceived as ‘eternal’ truths. Reinterpretation of these truths threatens to undermine their eternalness and thus the relevance of the interpretations of religious authorities. Hence, if the economic elite rarely transgress commercial laws, it is not in the interest of the clerical class to update these laws, even if economic circumstances have changed significantly since the time the laws were initially enacted.

This logic explains how conservativism in Islamic law is an equilibrium *outcome*. It is not necessarily an inherent feature of Islamic law itself. It can also help explain why there was a flurry of reinterpretation in the first few Islamic centuries. As the corpus of Islamic law grew in the first few centuries, jurists were generally willing to codify legal practices that had been custom for generations. Where practices flew in the face of Islamic law, economic actors generally found workarounds. A famous example is the double sale, a ruse meant to skirt the ban on interest. The double sale consisted of two sales, one for a good at a set price, the second for the same good at a higher price, payable at a future date. It could be conducted as follows: Omar sells a rug to Mahmud for 100 dinars and immediately buys it back for 110 dinars, payable in a year. The upshot is that Omar keeps his rug, receives 100 dinars from Mahmud, and owes Mahmud 110 dinars in a year. This is ostensibly a 100 dinar loan at 10 per cent yearly interest. Yet, because it is construed as two sales, both of which are legal in Islamic law, jurists upheld the legality of such transactions. It was in the interest of clerics to permit such ruses. If the economic elite commonly and openly disobeyed the religious establishment, the clerics risked losing their primary source of influence: moral authority. Hence, as the corpus of Islamic law formed in the first few Islamic centuries, jurists had incentive to reinterpret law to accommodate pre-existing practices.

The intuition laid out above also indicates that once economic actors were able to act within the confines of the law – even if they had to incur a cost associated with a ruse to make their actions cohere to the law – they had little incentive to 'push the envelope' any further. They received most of the benefits from economic interactions while not incurring the potential costs associated with breaking the law. Even when new economic circumstances arose – meaning new chances for increased profits – the costs of breaking the law were too high relative to the marginal benefits. And since rulers were unlikely to permit anything forbidden by the religious establishment, it was in the interest of the economic elite to continue with 'business as usual', even if it meant forgoing new economic opportunities. This also entailed that there was little incentive for clerics to adapt Islamic law to the new environment; if few were pushing for change and change is costly, change will not result. Hence, at some point Islamic law stagnated. This was a consequence of the incentives faced by the relevant players, not some attribute inherent to Islamic law.

This confluence of events had a retarding impact on the long-run development of Middle Eastern economies. Religious scholars had purview over commercial law, which they had little incentive to reinterpret. Merchants, manufacturers, and money-changers were not give a seat at the bargaining table and therefore had little ability to affect commercial policy or law (Pamuk 2004a, 2004b). This stifled or prevented the adoption and creation of new institutional forms such as the corporation and bank, neither of which arose in the Middle East until the nineteenth century. The following section highlights how these and numerous other outcomes arose in the Ottoman Empire because of the political economy equilibrium where Islamic law played a central role in commerce.

3. ECONOMIC STAGNATION IN THE OTTOMAN EMPIRE

3.1 Stagnation in Commercial Law

While this chapter is about the connection between Islamic law and economic outcomes in general – not just in the Ottoman Empire – the Ottoman case is useful to study for numerous reasons. First, the data are much better and we know a lot more about the empire than we do about previous Muslim polities in the Middle East. Second, and more important, the empire very clearly stagnated just as parts of Western Europe were taking off. It was by no means obvious in the sixteenth century that the Ottoman Empire would eventually fall behind its Western European rivals. Territorially, the Empire expanded throughout the century and eventually ruled most of the North African coast, the Arabian Peninsula, the Balkan Peninsula, and most of the Middle East. The Ottomans threatened the great powers of central and southern Europe – Spain, Venice, and the Holy Roman Empire. Yet, by the end of the seventeenth century, the Ottomans had clearly fallen behind. One of the more overt symptoms of their relative stagnation was the trade capitulations the Sultan offered to many of the European powers. These capitulations gave the European economic elite customs relief, legal jurisdiction, and freedom from prosecution within the empire at the expense of the empire's own economic elite.

The intuition explained in the previous section sheds some light on why the Ottomans fell behind. The economic elite did not have a seat at the political bargaining table, and Sultans therefore enacted policies that were in their own interests or the interests of their legitimizing agents. One of the most important consequences of this arrangement was that the protection of property rights was highly irregular throughout most of Ottoman history. For instance, one of the most important Sultans, Mehmed II (r. 1444–46 and 1451–81) – conqueror of Constantinople, hence his name Mehmed the Conqueror – confiscated land held by both private owners and pious foundations (*waqf*) throughout his reign (Karaman and Pamuk 2010). These confiscations were highly unpopular and had to be scaled back by his successors. Another example comes from the early eighteenth century, when Sultans retracted tax farming contracts at will when in a fiscal bind. By the end of the century, tax farm confiscations were commonplace (Balla and Johnson 2009).

A more overt consequence of Ottoman legitimizing arrangements was that commercial law remained within the purview of the religious establishment. The logic laid out above indicates why. The Ottomans benefitted immensely from religious legitimacy and therefore never had to negotiate with the economic elite. Indeed, ceding Islamic commercial law to some secular power would have undermined the very group supporting the Sultan's rule. What incentive was there for an Ottoman Sultan to undermine the clerical class for the benefit of the economic elite, a group with no seat at the bargaining table? As a result, commercial law rarely changed to address the changing needs of the economic elite because the group capable of changing the law – religious clerics – had little incentive to do so.

One consequence of inflexibility in commercial law was that restrictions on interest were never fully alleviated. From the first Islamic century it was possible to circumvent interest restrictions with *hiyal*, or ruses meant to have a transaction abide by the letter of the law de jure but simulated interest-bearing loans de facto. A classic example is the double sale discussed in the previous section. Such transactions permitted lending moderate amounts to known relations for centuries following the spread of Islam. As long as the ruse was conducted and the good exchanged could reasonably be construed as having the value of the transaction, both parties could be assured of the validity of the transaction. And Islamic courts usually supported such transactions. But the fact that such transactions were possible – at a cost – stifled the development of large-scale lending institutions like banks. For one, Islamic jurists would have disapproved of an institution that took deposits – and paid interest on those deposits – with the sole purpose of lending the deposits at higher interest. There was enough gray area in a transaction like the double sale conducted between two acquaintances that jurists were willing to turn a blind eye to a transaction that violated the spirit, though not the letter, of the law. There was no such gray area for a bank or any other type of institution whose sole purpose was borrowing and lending money. Consequently, no class of money-lenders existed in the Ottoman Empire – nor, likely, in previous Muslim polities – and lending remained relatively small in scale and conducted primarily among known relations (Jennings 1973; Kuran 2013). It was not until 1856 that the first successful bank opened in the Ottoman Empire, and even this bank was backed financially primarily by the British and French.

Rubin (2010) highlights another unforeseen consequence of Islamic interest restrictions: institutions capable of transacting impersonally on a large scale never emerged indigenously in the Middle East. The European experience is instructive for comparative purposes here. Rubin traces how the bill of exchange emerged in Western Europe as a credit instrument that permitted lenders to evade the Church's usury restrictions. The key difference between the Middle East and Western Europe was that secular authorities permitted evasions of interest that were prohibited by the Church. This entailed that medieval European lenders could be assured that their contracts would be upheld – generally in merchant courts – even if there were spiritual consequences. The upshot was that European lenders had incentive to engage in *interregional* lending; bills of exchange were only profitable as a financial instrument if lenders could take advantage of exchange rates in different regions.[1] This gave European lenders an incentive to form organizations capable of transacting with unknown people in distant lands. This incentive was realized most famously by the Medici bank, which established branches throughout Europe to deal in exchange transactions (de Roover 1963; Rubin 2010). The Middle Eastern near-equivalent of bills of exchange – the *suftaja* – never evolved into such an instrument, and consequently institutions making impersonal, interregional finance never formed. The key difference between the *suftaja* and the bill of exchange was that the *suftaja* was only valid if it were written and remitted in the *same currency*. Muslim jurists worried about illicit, usurious use of the *suftaja*, and therefore forbade its use for anything beyond its original purpose (eliminating the need to carry specie when conducting long-distance trade). Muslim lenders therefore never had the possibility of using the *suftaja* as an instrument of interregional finance, and the type of supporting institutions the emerged indigenously in Western Europe never did so in the Middle East.

There were numerous other consequences of commercial law falling under the purview of the clerical class. For instance, Timur Kuran (2001,

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[1] Lenders were able to make profits by buying a bill in city A. Once the bill was remitted in city B, the lender could instruct his correspondent in city B to take the proceeds from that bill and buy a new bill, payable in the lender's home land, from another borrower. The key to making profit from the transaction was that the correspondent would purchase the second bill at a *different* exchange rate than the first one. The rate differential – which was part of the financial market equilibrium of the late medieval period (de Roover 1944) – permitted lenders a chance to profit on exchange transactions. For more, see Hunt and Murray (1999) and Rubin (2010, 2017).

2005, 2011) argues that the widespread approval and use of *waqf*s had numerous unintended consequences. A *waqf* was a pious trust with a mission fixed for perpetuity. From the first few Islamic centuries, *waqf*s were used to fund public goods such as fountains or schools. Founding a *waqf* was viewed as a pious act, and hence *waqf* founders generally gained a certain amount of social prestige. But Kuran notes that there was another reason one might endow a *waqf*: it permitted wealthy Muslims to evade inheritance laws. Under Islamic inheritance law – which the clerical class interpreted and enforced – numerous heirs had rights to the fortune of the deceased according to a pre-determined formula. If one wished to avoid this outcome and give the inheritance to a favored son (or, less frequently, daughter), one could found a *waqf* and pay a handsome sum to an heir to run it. This was perfectly legal within the context of *waqf* law, and it therefore permitted wealthy Muslims to avoid the splitting up of assets required by Islamic law. An unintended upshot was that capital was directed towards pursuits with fixed missions. If a *waqf* manager found a more productive investment for *waqf* funds, he was legally prohibited from investing those funds in such a manner. Consequently, a non-trivial portion of Middle Eastern wealth was held in organizations that were inflexible and therefore incapable of adjusting investments to meet the pressing needs of the day. For instance, if a *waqf* founder ordered that the *waqf* fund a *madrasa*, then funds emanating from that *waqf* could only support *madrasa* expenses, even if the educational needs of the population were met and other public goods were lacking.

Another consequence of Islamic inheritance law was that partnerships remained relatively small and simple throughout most of Middle Eastern history (Kuran 2005, 2011). Indeed, partnerships rarely included more than three or four participants and were often short-lived, ending after a merchant voyage or two. Larger partnerships never became common enough to encourage Islamic jurists to consider formulating a corpus of law akin to Western corporate law that would help address the needs of growing enterprises. Why did the corporation – or any similar form of large partnership with characteristics such as asset shielding and legal personhood – ever emerge indigenously in the Middle East? And what role did inheritance law – and the broader political economy equilibrium in which the religious elite played an important role in legitimating rule – play in this process?

The answer to these questions lies in the interaction of Islamic partnership and inheritance law. Partnerships were the primary way that most Muslims combined capital, effort, and expertise in order to grow their wealth (Udovitch 1970). This was also true in medieval Europe.

However, in the late medieval and early modern periods, European partnerships became progressively larger and more complex, evolving from basic partnerships (*commenda*) into family firms, joint-stock companies, and ultimately corporations. Each step in this evolution helped solve a problem associated with basic partnerships; family firms allowed for entities that lived beyond the life of the individual members by relying on social-familial trust between partners, while joint-stock companies introduced limited liability and tradeable shares, both of which greatly increased a company's capacity to attract investment. Such an evolution never occurred in the Middle East, and partnerships mostly remained simple into the nineteenth century. Kuran (2005, 2011) argues that Islamic inheritance law played an important role in this institutional stagnation. Islamic partnership law dictated that a partnership was to be immediately dissolved upon the death of any member, although it could be (and often was) immediately re-formed by the partner's heirs. Yet, since Islamic inheritance law split inheritances among numerous heirs according to pre-determined Qur'anic dictates, entering into a large partnership was risky. The cooperation of all (or nearly all) the heirs was needed in order to reconstitute the partnership. If enough of the heirs needed to spend their inheritance the partnership would be dissolved. This could strike a major financial blow to the partners. For most partnerships to succeed, some level of certainty about the future is necessary. An early dissolution could force the original partners to dishonor already agreed-upon contracts or force the cancellation of operations critical to the partnership's viability, such as shipments or large purchases.

The upshot, Kuran (2005, 2011) argues, is that there was little incentive for merchants or financiers to form partnerships with many members, or even to form long-lasting partnerships within a family. If any member of the partnership died, any number of heirs of the deceased partner could threaten the future viability of the partnership. The simplest way to avoid this fate was to form partnerships with few members and limited time horizons. The more members or the longer the time horizon, the more likely it was that one of the partners could die, especially in a period with relatively high mortality rates. The dynamic effects of the persistent simplicity of Islamic partnerships are apparent when compared to the evolution of European partnerships. As European merchants slowly grew their partnerships and came up with creative mechanisms for financing larger ventures, legal changes supporting such actions became more commonplace. This process ultimately led to a large and varied body of corporate law emerging in numerous parts of Europe. Such a process never happened in the Middle East. In the absence of any incentive to engage in larger or longer-lived partnerships, Muslim merchants never had any incentive to push for legal changes that could accommodate such partnerships. In turn, rulers and religious authorities therefore never had the incentive to change the law. This is precisely the 'conservative equilibrium' described above, in which conservative *outcomes* arose due to a lack of incentive on the part of any of the relevant players to push for change. As a result, the corporation never emerged indigenously in Islamic law.

Indeed, it is likely that Ottoman jurists could have addressed the retarding effects of partnership, inheritance, and usury law had they so desired. But the framework laid out in the previous section explains why they had little incentive to do so. Such changes would have required a *costly* reinterpretation of 'eternal' doctrine. Since the Sultan was willing to cede purview over commercial law to the clerics, there was little incentive for clerics to update the laws. In other words, the political-economy equilibrium of the medieval and early modern Middle East was one in which the Sultan gave the religious establishment purview over commercial law, clerics in turn legitimized the Sultan, and the economic elite remained relatively powerless.

3.2 Judicial Bias

Another consequence of the political-economy equilibrium described above is that the Ottoman Empire lacked an impartial judicial system. Part of this was due to certain features of Islamic law, which – like many other pre-modern legal systems – favored certain peoples over others. For instance, Islamic law famously favored men over women. Judges were trained to value the testimony of men over women; this is not to say that women's testimony was completely devalued, just that the benefit of the doubt was given to men. For this reason, men were much more likely to serve as witnesses in legal proceedings (Kuran and Rubin 2017). Similarly, judges were trained to value the testimony of Muslims over non-Muslims, although there is little evidence that strict equivalency rules were ever employed (e.g., one Muslim = two Christians). A final source of judicial bias in the Ottoman Empire was that the Sultan directly appointed judges, many of whom sought promotion within the judicial hierarchy. This meant that it was unwise for an ambitious judge to rule against an elite with links to the Sultan unless the weight of evidence against the elite was overwhelming (Imber 2002, ch. 6; Kuran and Rubin 2017).

Recent studies confirm that Ottoman courts were indeed partial to these favored classes. Kuran and Lustig (2012) analyzed numerous court registers from seventeenth-century Istanbul and found that Islamic courts regularly showed favor for Muslims and government officials. Coşgel and Ergene (2014) find similar biases in their analysis of court outcomes in eighteenth-century Kastamonu, an Ottoman town in north-central Turkey. They show that, conditional on the characteristics of the plaintiffs and the defendants, elites were much more likely to win their case than those from poorer families.

How did these judicial biases affect economic outcomes in the Ottoman Empire? Kuran and Rubin (2017) suggest that an unintended consequence of judicial bias was that it raised the cost of credit for those who benefitted the most from it: elites, Muslims, and men. They find that these three groups paid between 2 to 4 percentage points higher interest rates on loans, all else equal. Basic economic logic explains why. A lender is unlikely to enter into a loan contract with a borrower unless he or she can be fairly certain that the borrower will repay the loan. In a world where borrowers of a certain socio-economic class can renege on repaying loans with relative impunity, the cost of their privilege is that lenders will charge them higher interest rates to make up for their greater default risk. This relationship between socio-economic status and interest rate found in the Ottoman Empire is therefore the opposite of what one expects to find in the modern context. In the twenty-first-century developed world, the wealthy and middle class have resort to mortgages and credit cards at relatively low interest rates while the poor are relegated to pay-day lenders and pawnshops to smooth consumption. But this is precisely the point: it was the biased nature of Ottoman courts – unlike modern courts, which are relatively unbiased with regard to financial transactions – that flipped this correlation.

The fact that Ottoman elites paid more for credit almost certainly had a dampening effect on economic activity. After all, those in the best position to invest in capital were precisely those who paid the highest borrowing costs. One may be motivated to ask, 'why didn't male, Muslim elites – who dominated the Ottoman government – seek to reduce these biases that hurt them so much in financial markets?' The answer to this question follows from the logic laid out above. Such a change would have required a fundamental altering of Islamic law – something which was very much not in the interest of the clerical class. Since clerics were the primary legitimizers of the state, the Sultan had little incentive to restrict their purview over commercial law. It was only in the mid-nineteenth century, by which time the Ottomans had very clearly and painfully fallen behind the leading powers of Western Europe, that efforts at major institutional reform were proposed (under a series of reforms known as the Tanzimat). Not surprisingly, the levelling of the judicial playing field was one of the first reforms undertaken, as it directly benefitted those in charge of implementing the reforms. But by this point it was already too late. The Ottoman Empire had fallen far behind its European rivals with whom it was previously on an equal footing, and the weight of this failure led to its ultimate collapse after World War I.

4. CONCLUDING THOUGHTS

The point of this chapter is to make a connection between Islamic law and economic stagnation in the Middle East. It argues that stagnation in Islamic law did indeed have a dampening effect on Middle Eastern economic growth. But it in no way claims that Islam is incapable of change or it is some inherent Islamic conservatism that is at fault. Instead, it attempts to explain stagnation as an *equilibrium outcome*. Change only occurs when it is an incentive of all the relevant players for change to occur. When some of the players have the incentive to block change – even change that may be beneficial for society as a whole – change may not occur.

It is important to distinguish between conservatism as a preference and conservatism as an outcome. If conservatism is a preference of Muslims in general and Islamic scholars in particular, then change in the present or in the future will be next to impossible. To the extent that preferences are immutable – and they are certainly much more immutable than outside economic conditions – a society with conservative preferences will never adapt to a changing world. But this chapter suggests that this is a bad way of thinking about conservatism. Conservatism is an outcome, not a cause. It is the result of an absence of incentive to change, not a disinclination to change in itself. In any case, it is hardly true that Muslims have always been conservative on economic or other issues.

Stagnation in Islamic law was therefore an outcome associated with a political economy equilibrium. Rather than blame Islam or Islamic law for the underperformance of Middle Eastern economies, this insight suggests that Islamic law is culpable only to the extent that it played a role in sustaining this equilibrium.

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