

Was the Middle East's economic descent a legal or political failure? Debating the Islamic Law Matters Thesis

Adeel Malik
Globe Fellow in the Economies of Muslim Societies
Oxford Centre for Islamic Studies

Department of International Development and St. Peter's College
University of Oxford
(adeel.malik@qeh.ox.ac.uk)

ABSTRACT

An influential thesis [Kuran, 2011, *The Long Divergence*] locates the economic failure of the Middle East in specific legal injunctions that were rooted in Islamic law and laid the basis for organizational deficiencies. This article critically scrutinizes this thesis using the lens of political economy and argues that tracing the impact of Islamic law without a discussion of the enforcement environment is unconvincing. Specifically, as a legal explanation for development, it is important to probe the extent to which Islamic law was embedded in the material domain and influenced by preferences of political incumbents. A key contention of the article is that Islamic law can be described, at best, as a proximate rather than a deep determinant of development, and that there is limited evidence to establish it as a causal claim. Finally, I propose that, rather than exclusively concentrating on legal impediments to development, a more promising avenue for research is to focus on the co-evolution of economic and political exchange, and to probe why the relationship between rulers and merchants differed so markedly between the Ottoman Empire and Europe.

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“Law, like politics, is a meeting place for ethics and power”

E. H. Carr (1946)

1. Introduction

A staple question of economic history is why Europe was the first to achieve industrialization and surge ahead in economic prosperity while other regions lagged behind? Much ink has been spent on understanding the sources of this European divergence, but existing scholarship has tended to exclude the Middle East from these comparisons. A recent study, *The Long Divergence*, has filled this gap by asking why, about five centuries ago, the Middle East began to witness declining economic fortunes relative to Western Europe (Kuran 2011).¹ The study forms part of a growingly influential strand of literature that traces the roots of this divergence in Islamic legal arrangements governing commerce and private enterprise. A central claim of this literature is that Islamic legal arrangements obstructed capital accumulation, inhibited the development of corporations, and gave rise to organizational deficiencies that delayed modernization.

The idea that Islam is inimical to development is not new. Many eminent thinkers from Montesquieu to James Mill and Alexis Tocqueville to Max Weber have previously broached this subject.² Weber’s rationalist framework situated religion at the centre of material development. While drawing a connection between the Protestant Ethic and the spirit of capitalism, it castigates the traditionalism of Islam and its aversion to innovation and change. In Weberian thought and subsequent Orientalist discourse Islamic attitudes are deemed to cultivate fatalism, conformity, and conservatism. However, when these ideas are put to an empirical test, there is limited evidence of a statistically significant impact of Islam on observed development outcomes.³

It is easy to dismiss the claim that Islam is inherently hostile to prosperity, especially given the geographic and cultural diversity of Muslim societies and the multiple prisms through which Islam has been understood, interpreted and practiced across time and space. Rejecting the claim that Islam is a barrier to material progress, the growing literature on Islamic law and development offers a more

¹The emphasis here is on relative, rather than absolute, economic decline.

²Curtis (2009).

³Numerous studies have failed to find conclusive evidence on the links between Islam and growth. See, for example, Noland (2005), Pryor (2006) and Barro and McCleary (2003).

sophisticated institutional logic that ascribes a greater agency to Islamic law.⁴ This literature, referred to in this paper as the Islamic Law Matters (ILM) thesis, posits that aspects of Islamic law, especially its stipulations on inheritance, partnerships and trusts, undermined wealth accumulation and prevented the emergence of permanently lived organizations. Islamic legal rigidities, in this view, placed the Middle East at a relative disadvantage in developing a dynamic economy based on impersonal exchange. As an argument, the ILM thesis accords well with the growing academic consensus among development economists on the primacy of institutions.⁵

The ILM thesis is not simply an historical argument, but has serious intellectual and practical implications for our understanding of the political economy of Muslim societies. The ideas on Islamic law and development have ignited a vigorous public debate on the long-term drivers of development and divergence in the Middle East. For example: the constraining influence of Islamic law has been invoked to explain systematic weaknesses of private enterprise in the Middle East and the region's frustrated development record despite its oil riches. By stifling the development of autonomous private organizations, Islamic law is also claimed to have kept both merchants and civil society weak, thereby serving as a long term barrier to democratization in the Arab world.⁶

Typically the ILM thesis elicits two extreme reactions: it is either summarily dismissed for its "bias" towards Islamic law or uncritically embraced as an objective assessment of the region's legal arrangements. Critical reflections are in relatively short supply.⁷ This paper aims to fill this gap by furnishing one of the first systematic interrogations on the subject. There are at least two ways of critically engaging with this argument. One could disprove, for instance, that Islamic law was anti-corporate. Equally, the ILM thesis can be evaluated through the lens of its own analytical framework. This paper seeks to do the latter—that is, scrutinizing the thesis using the dominant paradigms of political economy, especially the growing field of new institutional economics. Highlighting the endogeneity of law to politics and the co-evolution of economic and political exchange, this paper underscores the missing elephant in the room: politics. Without an exposition of politics, Islamic law will remain a proximate, rather than deep, determinant of development.

The remainder of this article is organized as follows. Section 2 briefly summarizes the claims of Islamic Law Matters thesis. Section 3 places Islamic law and waqf within the wider political context of the

⁴This is also echoed in Timur Kuran's earlier work, *Islam and Mammon*, and is based on a simple, convincing logic: if there was something intrinsic in Islam that deterred development then how could one account for the rise of Islam and the associated economic prosperity in the pre medieval period? See Kuran (2004) for further details.

⁵See Acemoglu et al. (2006) for a detailed overview.

⁶See, for example, Timur Kuran, "The weak foundations of Arab democracy", *New York Times*, 28 May 2011.

⁷Important exceptions to this are a handful of serious book reviews and related articles.

Ottoman Empire. Section 4 scrutinizes the ILM thesis through the lens of political economy. Revisiting the European development experience, section 5 highlights the primacy of politics in explanations of Middle Eastern underdevelopment. Section 6 offers reflections for future research. Finally, section 7 concludes.

2. The Islamic Law Matters Thesis

Discussions of long-run economic change present a key historical puzzle: Why the Middle East, after making impressive progress in its earlier history, fell behind Western Europe in material prosperity after the medieval period? A growingly body of research, pioneered by Timur Kuran traces the historical roots of this divergence in Islamic law (Kuran 2001, 2011).⁸ Dismissing the facile claim that Islam had an anti-commercial impulse, this literature focuses on the “unintended consequences” of Islamic law in stifling capital accumulation and organizational change.⁹ Specifically, Islamic law became a source for at least three economic inefficiencies, rooted in the legal provisions for inheritance, partnerships and trusts.

First, Islamic law of inheritance affected both the scale and longevity of enterprises. Given its insistence on dividing wealth among all family members, the inheritance law led to widespread fragmentation of wealth, especially after the death of wealthy merchants who were more likely to have multiple wives and children. This meant that successful businesses often died with their founders. European societies, by contrast, were not encumbered by inheritance laws, especially after laws of primogeniture became more dominant. Primogeniture had clear advantages: it did not lead to a large-scale subdivision of assets and permitted experimentation and reform.¹⁰

Second, a related “unintended consequence” of inheritance laws played out in the domain of business partnerships, which remained “small and ephemeral”, as the death of a partner frequently led to the dissolution of partnership. Partnerships were also simple, “lasting for one voyage” and based on personalized exchange. They were neither conducive for mobilizing vast amounts of resources nor for encouraging division of labour. In fact, risk-averse investors were more likely to disperse and diversify capital among multiple trade partnerships. Europe presented a dramatic contrast where joint stock

⁸A separate monograph, Kuran (2011), integrates various elements of these research papers to offer a unified narrative on “How Islamic law held back the Middle East?”

⁹References to the encumbering influence of Islamic laws of inheritance, partnership and trusts can also be found in the works of earlier Middle Eastern scholars, noted among whom are Abraham L Udovitch and Charles Issawi. The main contribution of Timur Kuran is to develop these ideas more systematically in light of the European economic experience and the recent literature on institutional economics.

¹⁰In a related empirical piece focusing on British India, Kuran and Singh (2010) show that differences in the legal rights for inheritance explain why Hindus participated more successfully than Muslims in “large and long-lasting” enterprises.

ventures and corporations pooled resources across several individuals unknown to each other. In the Middle East, corporations, as non-juristic entities, were not recognized by Islamic law.

Third, although the growth of Islamic charitable endowments (waqfs) served as a key organizational innovation, legal rigidities turned them into economic and institutional handicap. Although waqfs had considerable promise as long-lived organizations and as instruments for the decentralized provision of social services, they suffered from legal rigidities that made deviations from deeds, originally set out by founders, impermissible. Effectively, this “locked up” capital, preventing reallocation to more productive uses. Another purported failing of the waqf system was the absence of self-governance that prevented them from emerging as a civil society.

There were two additional legal deficiencies. Islamic legal practice accorded preference to witnesses over written documents. The limited evidentiary value of written documents might have hampered the rise of paper economy based on financial instruments, banks and joint stock companies.¹¹ Furthermore, the threat of apostasy discouraged Muslims from discarding Islamic law in favour of western legal arrangements. Initially, the Islamic abhorrence of usury (*riba*) was also presented as a business constraint, since it deprived entrepreneurs from access to finance. But, recent literature has tempered down this emphasis given the prevalence of interest-based finance under Ottoman rule facilitated by various legal stratagems.¹²

The potency of these explanations was manifested not just in regional divergence, but also in the variable performance of merchants within Ottoman Empire. Non-Muslim merchants, who had the choice to opt out of Islamic law, outperformed their Muslim counterparts. The ILM thesis does not consider Islamic law to be a permanent disadvantage, however. In the medieval era Islamic laws were considerably advanced for their times. They only became a handicap in times of rapid economic change, when impersonal exchange placed new institutional demands, highlighting the “dynamic inefficiency” of Islamic law.¹³ Intrinsic to this argument is the idea of path dependence: initially small differences in the legal infrastructure can lead to enduring differences in outcomes.

¹¹The development of large scale enterprises such as joint stock companies with transferable shares and banking companies critically depended on a paper economy that documents and preserves written records.

¹²Arguably, the ban on usury was avoided through legal stratagems such devices imposed their own costs.

¹³Kuran brushes aside two obvious sources of criticisms. The first relates to the possible impact of colonization. As Kuran (2011) argues, systematic organizational deficiencies and the consequent economic weaknesses explain why the Middle East fell prey to western economic domination. A skeptic might also argue that if Islamic law was a barrier to development, why did the Middle East fail to develop even after Islamic law was replaced with Common and Civil Law? Legal transplantations are rarely effective in developing countries, however. In the Middle East incomplete reforms, closed political systems and economically counterproductive reactions to underdevelopment rendered the new legal systems ineffective.

3. Islamic law and politics

The idea that “Islamic law held back the Middle East” has direct parallels to the “Law Matters Thesis”, which explained cross-country differences in financial development through contrasting legal systems instituted during the colonial era (La Porta *et al.* 1998). A country’s legal origin matters, since some legal traditions are more conducive to development. For example, the British Common Law tradition ensures a better protection of minority shareholders and private property, and responds more flexibly to changing circumstances.¹⁴ As a result, countries inheriting a Common Law tradition are more likely to have developed financial institutions compared to, say, countries with French Civil Law tradition. Of late, the legal origins view has been vigorously contested, both theoretically and empirically, on the grounds that it understates the role of politics (Haber et al. 2008; Mark Roe, Zingales, Guiso 19??).¹⁵

According to this critique of “legal origins view”, financial development is a function of the nature and quality of a political system. A centralized and closed political system tends to limit financial access, since with fewer constraints on executive discretion governments are more likely to manipulate the financial system to create rents for their constituents. Weak polities are thus more likely to have concentrated banking systems that restrict entry in the banking sector and limit competition.¹⁶ There is also an inherent conflict of interest between the government’s need to raise financing from financial markets and its role as an enforcer of legal contracts. This leads to an opportunistic behavior of governments that compromises long-term development of financial markets (Haber et al. 2008).

Any legal explanation for development is subject to the same criticism—that law is ultimately endogenous to politics. This is easy to understand. Laws and regulations usually emanate from the political sphere; even their enforcement hinges on the will of political incumbents. The question with regard to the ILM thesis is whether Islamic law, given its sacred origins and its hypothesized resistance to change, is impervious to this reasoning. The Islamic legal regime is exceptional to the extent that “the legal authority resided in the collective, juristic doctrinal enterprise of the school”, rather than the political domain (Hallaq 2011).¹⁷ But, even if one were to argue that Islamic law lacked political origins, the material domain affected the manner in which it was developed, interpreted and enforced. In this

¹⁴For details, see, La Porta *et al.* (1998, 1999, and 2008).

¹⁵In fact, neither historical nor contemporary evidence supports the legal origins view.

¹⁶A classic example cited in this regard is the evolution of financial markets in the United States and Mexico. Scholars have traced the origins of differential development of financial markets in United States and Mexico to differences in the underlying political structure. Specifically, the decentralized and competitive political system in the US made restrictions on banking competition unviable. By contrast, the centralized political control in Mexico resulted in a more concentrated banking system (Haber 2008).

¹⁷As Hallaq (2011) notes, “In Islam the ruling powers had virtually nothing to do with the production and promulgation of law”.

respect, it is not any more exceptional than secular laws.¹⁸The Islamic Law Matters (ILM) thesis has, therefore, direct parallels to the legal origins debate. It is, in fact, a cultural variant of the “Law Matters” thesis.

If Islamic law cannot be decoupled from politics, it is important to understand the interplay between law and power. The relationship between Islamic law and state power defies a simple, static and monolithic description. The degree to which rulers were insulated from Islamic law varied over time. Islamic law developed independent of the state by the personal endeavours of classical jurists between the 8th and 12th centuries. In early Islamic history, especially under the Umayyad and Abbasid Empires, the independent legal opinions of jurists did serve as a check on rulers’ powers. In theory, the ruler was never above the law as he was dependent upon jurists not only for religious legitimacy but also for the validity of his conduct. For a significant part of Islamic history, however, rulers practically enjoyed considerable leeway in moulding law in their favour.¹⁹

In order to explore the institutional underpinnings of religious authority it is important to throw light on the role and position of the key actors in this equation: the *Ulama*, religious leaders of the Muslim community. As a diverse and largely decentralized group, the position of *Ulama* in the power structure has changed through history. Although Islam lacks papacy and has resisted the need to create a “church”, religious clerics came to acquire a more prominent role with the entrenchment of monarchic rule. Throughout history, Muslim rulers have turned to the *Ulama* for religious legitimacy and acting as intermediaries between rulers and the people. This legitimating function was considered vital for regime security, paving the way to a “dialectic of mutual dependence” that resulted in a largely cooperative relationship between the “scholars and sultans” (Hallaq 2011). The *Ulama* were patronized through a system of rewards and privileges. Rulers benefited, in return, from the relatively unconstrained space to govern.

In the Ottoman era—the prime focus of the ILM thesis—Shari’a was used as a “homogenizing instrument” against diverse interpretations of heterodox groups. Efforts were made to prevent Islam from being deployed as a tool for political mobilization (Yavuz 2011). To ensure this, religious scholars were effectively subordinated to political executives in two main ways. *Firstly*, the upper segment of religious hierarchy was incorporated into an elaborate bureaucratic structure with substantial pays and privileges. *Secondly*, parallel legal jurisdictions were defined to insulate rulers from the application of Islamic law. Organized hierarchical structures placed *Sheikh ul Islam* at the top, with a network of

¹⁸Or, for that matter, laws derived from other religious traditions.

¹⁹Islamic legal regimes have been characterized by considerable flexibility in interpretation and legal pluralism.

religious judges (*qadis*) occupying a “central position” in the provincial administration. Crucially, Ottoman rulers controlled both the education and appointments of these scholars. The *Sheikh-ul-Islam*, chief *qadi* and other key position holders were selected from the legal community by the ruler himself.

This cozy relationship translated into significant economic and political privileges for religious classes. Various instruments of patronage were used to win the loyalty of religious office holders. The office of the *qadi* dispensed several “lucrative functions”, which included revenue generation and the administration of religious endowments that controlled vast tracts of land. Incomes of Islamic scholars were exempt from taxes. Religious appointments were coveted; the *Ulama* jockeyed for positions and privilege. Religious families possessing long standing honourable ancestries competed for religious offices, titles and tax farms. This converted official religious classes into a core member of the Ottoman nobility and a linchpin of provincial administration (Hourani 1993).

According to famous legal historian, Sami Zubeida, the *Ulama* “as figures of power and influence...acted like other politicians, participating in patronage, control of resources and factional struggles, but with the advantage of being able to invoke religious sanction” (Zubeida 2011: 15). It was therefore not unusual for the top religious clergy to accommodate powerful interests. In fact, “senior scholars, as muftis, were quite inventive in formulating legal justifications for whatever their patron rulers wished to institute” (Zubeida 2011: 15).²⁰ Given that the top religious hierarchy was financially dependent on rulers and lacked effective control over its appointments, its autonomy was compromised. In fact, the religious authorities were so firmly embedded in the power structure that it is difficult to disentangle the impact of Islamic law from politics. The interests of ruling elites were accommodated through a legal segmentation that delivered a politically expedient division of labour driving a wedge between laws that applied to the ruler and laws governing matters of peripheral importance. Under the Ottomans, there was a trilateral segmentation that consisted of: the ruler’s law (*kanun*), Islamic law (*shari’a*) and customary law (*urf*).

This legal segmentation effectively preserved the ruler’s discretion in daily matters of governance and public administration, which were governed by *kanun*.²¹ The ruler could make his own law independent of the *Shari’a*. The *Mazālim* courts (boards of grievances) operated in a legal jurisdiction that was superior to *qadi* courts.²² It was only matters of residual concern for the rulers—family, marriage,

²⁰An oft-quoted example is that of a controversial religious order that sanctioned cash *waqf* that used lending to generate interest income. There are even instances when *Shariah* courts enforced interest based contracts.

²¹The criminal law afforded “wide discretion” to the ruler, which was sometimes exercised in contravention of religious law.

²²The *Mazālim* courts were essentially courts of complaints against government employees; they also dealt with civil and criminal punishments and enforcement of rulings by *shari’a* courts. See Hallaq (2011).

inheritance and commerce—that were relegated to the jurisdiction of religious courts. This erected a judicial hierarchy that placed public law at a higher pedestal than private law, keeping it outside the purview of religious law. For all intents and purposes, therefore, the law of the ruler, *kanun*, reigned supreme. The *qadis* lacked even the powers to enforce *Shari'a* laws.²³ These multiple legal jurisdictions meant that, when it came to significant matters of public policy, the sacred and secular domains were effectively separated. To the extent that rulers had supremacy over religious authority, the “Ottoman state remained caesaropapist to the end”.²⁴

The primacy of politics is underscored by the existence of legal exemptions. An important exemption—with far-reaching consequences for the region’s political economy—applied to land tenures. Importantly, land ownership in the Ottoman Empire was not *strictly* governed by Islamic laws, but was administered under ruler’s *kanun*. Although the Quran did not contain precise injunctions on land tenures, private property rights are respected as long as they are subjected to productive and righteous use.²⁵ The Islamic land law remained relatively under-developed, permitting rulers wide discretion in organizing a land regime that suited their interests. The Ottoman state became the prime owner of nearly all cultivable land.²⁶ While state-owned land (*miri*) was the norm, private ownership was an exception permitted mainly to urban orchards and vineyards. Peasants had only usufruct rights and were obliged to pay rents in the form of taxes.²⁷ It was only in 1858 that the Ottoman land law permitted individual land registration. This meant that the sacred Islamic inheritance laws central to Kuran’s analysis did not apply on land. Although usufruct rights could be inherited, these were governed by the Ottoman Land Code rather than *shari'a* (Sait and Lim 2006).

The Ottoman land systems evolved in response to the demands of imperial administration. In devising land tenures, the supreme concern of rulers was not to enforce Islamic law but to ensure a stable rent stream for sustaining social order. Concretely, the land regime was dictated by imperatives of revenue generation, urban provisioning and military recruitment.²⁸ Political compulsions—winning loyalty through allocation of tax farms and land grants—also mattered.²⁹ The de-linking of land tenures from Islamic law raises a broader issue: if Islamic law was considered as anti-corporate, Ottoman rulers could have, if they wished, retained matters of trade and commerce under ruler’s law rather than *shari'a*.

²³Enforcement depended almost entirely on the “whim of the *de facto* ruler”. See Coulson (1964) for further details.

²⁴Fukuyama (2011: 283).

²⁵Islam scholars have described land ownership as a sacred trust, which should be used without waste and exploitation.

²⁶Islamic law accommodates various land tenurial arrangements, including state and communal ownership of land. See Sait and Lim (2006) for further discussion.

²⁷See Hopkins (year) for further details.

²⁸Land was often granted as fiefs in return for military service.

²⁹At the same time, refusing private land ownership prevented the emergence of landed nobility. This was, once again, politically expedient.

Significantly, was private merchandise a peripheral concern for the rulers and, therefore, relegated to Islamic law?

In short, historical evidence doubts the idea that Islamic law operated in an autonomous domain. In matters of law, politics triumphed religion. Islamic law was only one segment of a legal edifice that contained parallel legal systems. While Islamic law was often restricted to “conventional” matters in personal and religious spheres, systems of criminal and public administration remained outside the jurisdiction of Islamic law. This legal pluralism, where *shari’a* and *kanun* coexisted, speaks to the importance of *siyāsa shari’a*. *Siyāsa* created a legal and enforcement regime that accommodated political interests and preserved ruler’s discretion (Masud 2001).³⁰ It was partly due to the strength of this alliance between ruling and religious classes that obstructed the development of constitutional law. The issue of putting legal constraints on the coercive powers of the state was therefore never seriously considered (Cosgel *et al.* 2009). The question, then, is why was Islamic legal jurisdiction restricted mainly to private and religious affairs? The failure of Islamic law to extend its domain to public and constitutional matters may have been a more significant legal barrier to development than its provisions on inheritance and commerce.

III. A: Waqf and rent seeking

A distinct aspect of the political economy of land was the waqf system, the religious endowments that served as principal vehicles for social service delivery.³¹ Through these religious endowments a significant share of agricultural land and urban real estate with stable income streams was immobilized for charitable causes. As a rare example of a permanently lived organization specializing in the decentralized provision of public goods, the waqf was one of the most important institutions of Muslim civilization. The menu of public goods was diverse, ranging from architectural monuments, hospitals, and orphanages to mosques and public kitchens.³² Given their long-lasting character and financial independence, the waqfs were promising organizational vehicles for advancing development. Their failure to evolve as a dynamic institution is viewed by critics as a deficiency of Islamic law (Kuran 2011).

³⁰This was justified on grounds of public interest.

³¹“Waqf is an unincorporated trust established under Islamic law by a living man or woman for the provision of a designated social service in perpetuity. Its activities are financed by revenue-bearing assets that have been rendered forever inalienable” (Kuran 2001: 842).

³²Although waqfs were primarily oriented towards public welfare, private goods (such as tax relief) were not totally precluded from their ambit either.

The main deficiency of waqfs, according to the ILM thesis, emanated from their intrinsic legal rigidity that prevented departures from the benefactors' deeds. This "static perpetuity" prevented the allocation of capital to more productive uses and reduced their efficacy for impersonal exchange. Thus, even if waqfs may have usefully served the needs of a medieval, pre-industrial society, they lacked the dynamism needed for a modern economy. Besides locking up productive capital, waqfs are also berated for lacking self-governance, which may have adversely affected conditions for collective action and prevented the emergence of a robust civil society. All these adverse features of waqfs—their relative inflexibility, lack of self-governance and absence of separate legal personality—rendered them inferior to Western corporations and trusts.

Even if it is difficult to deny the gradual deterioration of the waqf system, it is debatable whether this is a failing of Islamic law or of the wider institutional framework in which these endowments operated. As an integral component of Ottoman political economy, their eventual deterioration cannot be analyzed in isolation from the broader configuration of economic and political power. With vast economic resources under their control, waqfs provided an important means through which religion was materialized. Understandably, the waqf literature situates them in the politics of property rights. In an environment where the state was the primary landowner and where arbitrary state confiscation of land was common, waqfs offered relative security of property rights.

Historically, the public and private functions of the waqf have been intertwined, which blurred the distinction between charitable and family interests. This ambiguity in the nature of waqfs converted them into attractive legal devices for protecting private property from a predatory state, circumventing Islamic laws of inheritance and for evading taxes.¹ Waqfs were increasingly created in favour of family members with only nominal income vested for charitable causes. Waqfs allowed wealthy individuals to name different people as beneficiaries, sometimes even naming family members and their descendents as custodians (*mutawallis*). Why did the state agree to a voluntary shrinkage of its tax base and the limitation of its powers to expropriate? As Kuran correctly argues, the waqf served as a "credible commitment" device: in return for an exemption from taxes and expropriation, the state outsourced its responsibility for providing core public goods.³³ Additionally, association of rulers with religious charities bolstered their public legitimacy.

By structuring elite relationships, waqfs also performed a vital political function. They generated rents to build a loyalist class of officials who found this erosion of fiscal space compatible with their pecuniary incentives. There is overwhelming evidence that military and civil officials in the Ottoman Empire used

³³For a more detailed discussion on this, see Kuran (2001).

these charities for sheltering wealth and enriching their kith and kin. This was a powerful incentive for senior officials whose properties were especially prone to arbitrary expropriation by the state. The Ottoman nobility used these endowments for asset laundering, which essentially entailed acquiring public properties and legitimizing them as family charities. In fact, “most waqf founders in the Ottoman empire were officials who had amassed fortunes through state granted privileges”:

“It appears that most of the individuals who sought to shelter property through the waqf system were members of the politically dominant class consisting of statesmen, bureaucrats, military officials, judges, educators, and clerics, and also that this class had the most property to shelter. In 17th- and 18-century Egypt, the economically most important waqfs were established by members of the military, doubtless because it is they who acquired the largest properties (Crecelius 1986:185). Likewise, in 18th-century Turkey 80% to 90% of all waqfs were founded by members of the ruling class (Yediyildiz 1990: ch.6, table 8, 132-22).” — (Kuran 2011: 857).

Waqfs also enriched the religious classes materially, which was useful in enlisting their support for rulers. As many waqfs degenerated into instruments for rent seeking, key players in the system—founders, *mutawallis*, employees, and judges—benefited from these rents. While for some founders the objective of preserving family wealth reigned supreme over meeting social obligations, many custodians (*mutawallis*) used waqfs to secure employment for their extended families and, in the case of cash waqfs, to exploit arbitrage opportunities (borrowing money from waqfs at lower rates, lending at higher rates in the informal capital market and pocketing the difference). There is thus pervasive evidence that waqfs were not simply institutional expressions of piety but also of rent seeking and patronage.

Given the perverse incentive structure in which they operated, it is hardly surprising that waqfs failed to: (a) enhance the productive capacity and (b) emerge as a constituency for social change. Divorcing the functioning of waqfs from the surrounding institutional framework is unconvincing. The performance of perpetually lived organizations needs to be evaluated with reference to the functions they serve and, under centralized dynastic rule, they are often not desired to improve the “functional characteristics” of economies (North *et al.* 2009). Organizational change responds to the prevailing incentive structure and the specific demands imposed by the productive sectors of the economy. As North (1990:5) observes: “Both what organizations come into existence and how they evolve are fundamentally influenced by the institutional framework. In turn they influence how the institutional framework evolves”. The ILM thesis understates this “emphasis on the interaction between institutions and organizations”.

The *Bonyads* of Iran offer a pertinent contemporary parallel. Originally founded to serve the poor, *Bonyads* now dominate the Iranian economy, derive enormous state privileges and have been associated

with low economic efficiency (Esfahani and Taheripour 2002). While it is tempting to attribute their dysfunction to their religious basis, any impartial evaluation will situate them in Iran's political economy of redistribution. By generating employment and contracts for supporters, these pious foundations serve an important political function (Karshenas and Malik 2011). What is true of waqfs and *Bonyads* applies more generally to other instruments for social service delivery. Even the most sensible instruments can fail in weak polities. For example: subsidies can be a help or hindrance, depending on the institutional context in which they are anchored. In several countries, subsidies were turned into rent seeking instruments for vested interests. In other cases, they laid the basis for enduring advantages in production. This heterogeneity in the performance of development interventions is partly a function of institutional quality.

Thus, while waqfs are central to narratives of institutional change in the Ottoman Empire, it is difficult to decouple them from overall institutional quality. Islamic charities operated within the parameters of state power; their growth did not represent any real "surrendering" of power to civic actors. In an institutional milieu where the returns to predation exceeded the returns to production, the permissibility of legal adaptation would have been of limited consequence. Even if we were to assume, for a moment, that legal adaptation was admissible under waqfs there is no guarantee that the resources thus freed would have been allocated to more productive uses. In fact, given pervasive evidence of abuse, waqfs would have remained susceptible to the same principal agent problems that ordinary trusts suffer from.

It is questionable to attribute the decline of the waqf system to legal rigidities alone. Such rigidities have not ruled out the possibility of institutional change in organizations elsewhere in the world. Modern approaches in comparative historical analysis emphasize the permissibility of change even in the presence of institutional rigidities that have been "locked-in" over time (Thelen 2003). Here, change happens through "institutional layering"—the idea that "partial renegotiations" can take place around institutional elements that can't be changed. The layering process "preserves the core" while making amendments to suit the changing needs. Another mode of institutional change is "institutional conversion", where institutions are redirected to new purposes in response to the changing institutional environment. When actors face new problems they use institutions to serve these new goals. This is a more dynamic view of institutions where the "form and function" of institutions is subjected to "continuous political contestation".

Historical evidence belies the claim that waqf was purely a static institution. Lacking a direct basis in the Quran and resting mainly on secondary sources of Islamic law³⁴, waqfs were more amenable to change

³⁴This distinguishes it from inheritance laws, which were based on Quranic injunctions.

than other Islamic institutions (such as commercial partnerships). The growing appeal of family waqfs, the introduction of waqfs of movables and other adaptations testify to the permissibility of change. Self-serving adaptations by *mutawallis*, which involved “creative interpretation of the founder’s directives” and changes in waqf deeds, were also common place. An oft-cited legal innovation relates to the introduction of cash waqfs that involved lending in cash (backed by assets) for a fixed charge commonly known as *istiqlal*. This was a significant departure from traditional waqfs that consisted of immobile assets. Controversially, this lending arrangement was dangerously close to usury (*riba*) and vigorously debated by religious scholars. Regardless of these differences, cash waqfs faced limited opposition in practice. They grew both in size and significance: by the sixteenth century they “accounted for more than half of all the new Ottoman waqfs”.

If the religiously contested nature of cash waqfs did not prevent their growth it was because they met a growing demand for financial intermediation by both the Ottoman state, which was fiscally burdened, and society (Cizakca 2008). Thus, even if waqfs did not usually permit departures from founders’ deeds, this inherent inflexibility practically co-existed with a high point of adaptability, where waqfs were pragmatically subjected to changes that served needs of several stakeholders. Institutional arrangements of the Ottoman era cannot be characterized as uniformly rigid (Pamuk 2004). It was not that institutional change was completely absent but that it was more selective.³⁵ Rulers were remarkably open, for example, to adopting latest military technology and experimenting with systems of public finance. Interestingly, unlike the private sector, the public sector exhibited enormous development and transformation. Despite the frequent lament about the absence of corporations in the Middle East, some large organizations were, indeed, set up in areas requiring large-scale pooling of resources (such as tax farming and export of food items).

Institutions of tax collection were systematically re-organized to meet fiscal needs. Within a short period the taxation system transformed from *timar* (fief-holding) to *iltizam* (tax-farming), and from *iltizam* to *milkalane* (life time tax farm holding) and *seham* (shares or bonds). Despite prohibitions on interest, sophisticated instruments of government borrowing were introduced, relying first on tax revenues as collateral and, subsequently, on issuance of government annuities and bonds. This had an ancillary impact on capital markets, where a secondary market for shares developed that strengthened financial intermediation and mobilized capital savings (Cizakca 2008). When faced with critical resource needs, Ottoman rulers were also eager to form alliances with financiers and other elites (Karaman and Pamuk 2010).

³⁵In fact, without institutional change, the longevity of Ottoman Empire would have been jeopardized.

Stagnation and change were, in effect, part of the same institutional landscape. The rigidity of waqfs coexisted with their fluidity in both form and function. This juxtaposition of rigidity and change is underpinned by a simple logic: change was politically acceptable when it facilitated regime survival. This explains why the bureaucratic and fiscal architecture—aspects of statecraft with a direct bearing on regime stability—witnessed greater adaptation and change. By contrast, legal and technological innovations that could have potentially undermined the prevailing power structure were opposed. For example, as the Ottoman state banned printing, it welcomed latest military technologies and adapted institutions of public finance (Cosgel 2007).

Ultimately, the cohabitation of inertia and change can simply be a manifestation of differences in the relative strength of underlying constituencies. Under Ottoman rule the state apparatus and the clientele for patronage were highly developed, whereas the constituency for private production was noticeably weak. As a result, even as the state continuously refurbished its power, productivity enhancing innovations were resisted. This provides another prism to analyze why waqfs failed to evolve as change agents, and why, even when change was permissible, waqfs were rarely oriented towards productive ends. Evidence suggests that while cash waqfs “responded quickly” to the state’s borrowing needs, they “rarely lent to the entrepreneurs”. Defying their enormous potential for extending credit to small merchants and enterprises, lending by cash waqfs was overwhelmingly tilted towards financing consumption rather than investment (Citzakca 1998, Mandaville 1979). Clearly, organizational change was an equilibrium strategy only when the impetus for change was driven a stronger constituency.³⁶

4. In search of a broader theoretical frame

A central tenet of the ILM thesis—and, arguably, its main strength—is that it studies Middle East’s economic failure through an institutional lens. By locating the roots of underdevelopment in the specific legal arrangements of Ottoman society, Kuran’s analysis is well-aligned with the tradition of modern institutional analysis that emphasizes the primacy of institutions in the development process (North 1990, Acemoglu and Robinson 2006). Situating the ILM thesis within the dominant paradigms on institutional analysis, especially New Institutional Economics (NIE), this section will evaluate its claims through the yardsticks of its own analytical framework. As will be argued, there is disconnect between the two literatures at several levels, which challenges the internal consistency of the ILM thesis. To start with, as a legal explanation for development, the thesis pays inadequate attention to the enforcement environment. But, the ability of law to shape development outcomes can be severely limited by the

³⁶The growth of Islamic banking and finance provides a contemporary illustration of how even a most binding constraint can be legally circumvented to meet the demands of financial intermediation.

quality of the enforcement environment. Superficially, the Islamic legal regime appears more rigid, autonomous and binding, but in practice it has exhibited greater flexibility in attending to the demands of higher structures of power.³⁷ Focusing on only one element of the institutional matrix, the ILM thesis downplays the interplay between politics and economics and between organizations and institutions.

Inheritance law offers a pertinent legal domain to appreciate the role of the enforcement environment in driving a wedge between theory and practice. Even if Islamic inheritance laws sub-divide assets and discourage wealth accumulation,³⁸ there is no guarantee that these are uniformly enforced everywhere. In parts of the Muslim world the distribution of a deceased person's property was governed by customary practices rather than inheritance law (Nelson 2011).³⁹ Many turned to Islamic law for providing convenient mechanisms to circumvent inheritance laws—for example, through family waqfs and inter vivos gifts that transferred family wealth to a favourite child. There is limited empirical support for the inheritance argument. Recent archival research, focusing albeit on one Ottoman region, does not support the view that Islamic inheritance laws caused widespread fragmentation of family wealth (Cosgel and Ergene 2011). At any period of Islamic history, there has been no shortage of pragmatic devices to circumvent inheritance restrictions. Recent work on family businesses in the Gulf indicates reliance on various mechanisms to ensure business continuity, including reliance on traditional cultural norms that dictate respect for elders, employment of siblings in businesses, participation of family members and employment of non-family professionals in the running of these businesses (Jaidah 2008). The eldest son often succeeded in assuming a patriarchal role emphasizing kinship, mutual interdependence and family reputation. The problem of dispersion of ownership caused by inheritance laws was overcome by purchasing the share of exiting members or by consolidating one branch of family under a firm expressly created for this purpose.⁴⁰

Perhaps, a more important aspect of the enforcement environment relates to the interplay between law and politics. A fundamental insight of modern institutional analysis, beginning with North's classic contribution, *Institutions, Institutional Change and Economic Performance*, is that the structures for economic and political exchange are intertwined and that rules cannot be dissociated from the broader enforcement environment. The endogeneity of economic institutions to political structures is explicitly

³⁷ The choice of legal jurisdictions, instruments – their interpretation and enforcement – could be dictated by their distributional consequences and their implications for regime security.

This means that the choice of legal jurisdictions, instruments, their interpretation and enforcement could also have been dictated by their distributional consequences and their implications for regime security.

³⁸ One distinct benefit of Islamic inheritance laws that has been ignored by the ILM thesis is greater female empowerment resulting from their entitlement to inherited property.

³⁹ Nelson (2011) shows how, with regard to land inheritance, “complex legal strategies” were deployed in Pakistani Punjab that privileged customary practices over *shari'a* law.

⁴⁰ Ibid, 239.

recognized in subsequent work (Acemoglu *et al.* 2006). At the heart of this endogeneity is conflicting interest over the distribution of resources, which, in turn, determine the allocation of political power within a society. Political incumbents tend to choose institutions that maximize their rents.⁴¹ The mutually reinforcing nature of economic and political power is also central to understanding why societies can get stuck in an adverse political equilibrium and why inefficient institutions tend to persist. A powerful reason for institutional inertia, according to Acemoglu and Robinson, is that changes in *de jure* power are often unaccompanied with changes in the distribution of *de facto* power—the latter possessed by groups that control economic power, means of violence and have the ability to solve collective action problems. Any convincing framework for institutional change must therefore ask how *de facto* power is constituted within society, and how elite preferences are defined? With reference to the Islamic Law Matters thesis, it is imperative to explore if there was any disjunction between *de jure* and *de facto* power? This is an invitation, once again, to take politics seriously.

To the extent that the ILM thesis highlights the significance of the religious context in shaping the Middle East's legal and commercial arrangements, it accords well with Avner Grief's approach to institutional analysis, which is both contextually sensitive and emphasizes the importance of norms, beliefs and informal institutions. But, while the ILM thesis highlights the impact of religiously embedded legal injunctions, it downplays the wider socio-political context. This is a departure from Grief's approach that attempts to capture institutional dynamics through an integrated framework based on multiple "evolutionary forces". Such an "expansive conception" that admits multiplicity of factors is evident in Greif's seminal contributions on Maghribi traders' coalition, where institutional arrangements that facilitated more efficient economic exchange in medieval Europe were based on "intentional and coordinated efforts by many individuals—who were often economic as well as political agents with coercive capabilities" (Greif 2006:389).

"The institutional foundations of markets", according to Grief (2008), "are deeper than legal rules and apparatus articulating property rights and enforcing contracts". In a similar vein, the historical economic deficiencies of the Middle East cannot be solely explained through Islamic law, but are embedded in a broader institutional complex. The themes broached by the ILM thesis are tied to a more fundamental question in political economy: How do societies make a transition from a system of personalized to impersonalized exchange? Law is only one part of this transition. The move to a more open, contested and productive social order is underpinned by a variety of processes and outcomes: the emergence of property rights and rule of law, the evolution of checks and balances on ruler's power and the

⁴¹Even if this comes at the expense of the interests of wider society.

subordination of military to civilian authority. The development of permanently lived organizations is *only* one element of this continuum of institutional development.⁴²

Central to the study of institutional change is the political economy of rents and violence. All institutional formations, according to North et al. (2009), are concerned with minimizing violence, but the quality of a social order hinges on whether it controls violence by distributing unproductive rents to dominant elites or by expanding economic and political access through impersonal organizations. Admittedly, organizations are the central vehicles of institutional change and prosperity—“the lifeblood of both political and economic competition”. But, unlike the ILM thesis that takes politics as given, North and associates place politics at the heart of the problem of organizational development: “In a natural state”, they argue, “all big economic organizations are necessarily also political organizations because they cannot survive and protect their privileges without serving political ends”.⁴³

A fundamental insight of New Institutional Economics is that organizations as “players of the game” and institutions as the “rules of the game” have a mutually reinforcing character.⁴⁴ The interaction between institutions and organizations shapes the direction of institutional change.⁴⁵ This “double-balance” between economic and political interests is even more significant in institutionally weak societies, where rent situations predominate, impersonal laws and organizations are largely absent, and elite coalitions are sustained by accommodating their economic interests.⁴⁶ In this weak institutional setting, only organizations with “simple institutional structures” and “direct connections to the state” are likely to thrive. State institutions become incapable of supporting private organizations “outside the orbit of the state”. Thus, the virtuous attributes of organizations—flexibility, innovation and “adaptive efficiency”—are outcomes not just of the legal framework but of the prevailing social order. As North et al. (2009) argue: “The much greater degree to which economic arrangements can adjust independently of political arrangements gives open access societies much more flexibility in the face of dynamic change”. In short, the problem of organizational change cannot be divorced from the prevailing institutional framework.

⁴² While modern institutional analysis has advanced our understanding of the attributes associated with different social orders, our knowledge of why societies make a transition from one order to the other is still limited and evolving.

⁴³North, Wallis and Weingast (2009: 146).

⁴⁴ See North (1990) for further details.

⁴⁵“institutions...determine the opportunities in a society. Organizations are created to take advantage of these opportunities, and, as the organizations evolve, they alter the institutions. The resultant path of institutional change is shaped by (1) the lock-in that comes from the symbiotic relationship between institutions and the organizations that have evolved as a consequence of the incentive structure provided by these institutions and (2) the feedback process by which human beings perceive and react to changes in the opportunity set” (North 1990: 7).

⁴⁶In the parlance of North and Colleagues, the “limited access orders”.

If organizations are shaped by the institutional framework, they also help to shape, in turn, the process of institutional change. But, again, their ability to inspire change can be contingent on elite preferences. To the extent that organizations can change the balance of power among elites and redistribute privileges, their evolution needs to be understood together with elite interests. In fact, elite self-interest is an essential element of transitions from a weak to a strong institutional order. Institutional change often begins with an incentive compatible arrangement where elites widen access purely on the basis of self-interest. Specialization and division of labour is favoured by elites if they expand the surplus available to them, but this has the unintended consequence of eroding rents and dismantling entry barriers, “expanding the size of the coalition”.⁴⁷ When this intra-elite interaction is institutionalized by “extending impersonality” to organizations, it lays the basis not only for higher gains from exchange but for a legal domain that ultimately transforms privileges into rights.

The incentives of rulers and economic agents are more likely to be aligned if rulers face greater constraints on their power. Rulers are less likely to abuse rights when those whose rights are abused can credibly respond. For example, in a polity where rulers are dependent on merchants for taxes, merchants can impose credible and costly penalties. Long distance trade is an important means of empowering economic agents who could, in turn, challenge arbitrary rule. In this sense, trade provides opportunities not just for growth but also institutional development, creating a virtuous cycle that generates new economic opportunities, underpins organizational innovation, and proliferates competing social groups. This mutually reinforcing character of trade and institutional change is highlighted by recent accounts of European prosperity (Acemoglu et al. 2005). But this transformative impact of trade was conditioned by the initial institutional arrangements of European monarchies. Where monarchies initially faced fewer constraints on power—such as Portugal, Spain and France—trade strengthened the power of rulers, who granted trade monopolies and restricted broad-based expansion of economic opportunities. By contrast, in Britain and Netherlands, which had good coastal access and where monarchy faced greater constraints to start with, trade strengthened the power of merchant groups. This led to the emergence of a trading class “outside the royal circle” that could ultimately push for growth enhancing institutional reforms, diffusing power away from monarchies.² Significantly, this trade-based theory weighs against explanations of European dominance based on idiosyncratic factors such as culture, religion, and geography.⁴⁸

The expansion of market exchange thus depends not just on an enabling legal framework but the degree to which rulers are constrained. “The origin of legal systems”, as North *et al.* (2009) argue, “lies in the

⁴⁷Essentially, this lowers the “costs of expanding the size of the coalition”.

⁴⁸Or, features of the European state system. Prominently, religio-cultural explanations based, for instance, on the Weberian insistence on the role of “protestant ethics” are discarded in favour of trade-based explanations of institutional change.

definition of elite privileges”. In fact, “impersonal exchange and political representation historically co-emerged” (Grief 2008).⁴⁹ It is well to remember that the corporations that Grief credits with facilitating economic cooperation in medieval Europe were hybrid public and private institutions.⁵⁰ The growth of corporations and capital markets, at least in the initial development stages, was not merely a result of market’s invisible hand, but also of a very visible role of the state.⁵¹ Initially, coordination failures are rife and investors face a greater risk of sunk costs in large industrial projects. Lacking the capacity to mobilize capital for high risk, high return ventures, the private sector, in this stage, usually depends on the state to underwrite risks (Bardhan 2005).⁵²

That big businesses have initially thrived under the shadow of the state is not just European exceptionalism, but is borne out by broader historical and contemporary evidence. Germany was not the only country, for instance, to have secured initial advantage for its firms in 1870s. Japan followed suit in 1950s—and China continues to provide vital support to its national champions. Even today, the state and big corporations in emerging markets are working in tandem to produce a new model of state capitalism, whose rise has been recently termed by the *The Economist* magazine as “one of the biggest changes in the world economy in recent years”.⁵³ All of this places a greater premium on studying the co-evolution of the state and the private sector—of understanding how the interests of rulers and merchants get aligned. To substantiate this further, the next section revisits the European experience.

4. A *The rise of the West*

Any story of divergence has two sides: rise and fall. Given its primary focus on the Middle East, the ILM thesis contains limited discussion of the ingredients behind Europe’s success. This is both trivial and significant. Discussing the “European miracle” is admittedly a peripheral concern given that considerable intellectual effort has already gone into explaining Europe’s rise. It is a significant omission at another level. It prevents the reader from appreciating that Europe’s success had multiple origins. Despite the many disagreements of details, historians agree on at least one thing: the European economic advantage was the culmination of several cumulative processes and mutually reinforcing

⁴⁹ Even representative assemblies are “more likely to be established when the ruler and those who constrain him can gain from bargaining” Grief (2008: 17).

⁵⁰Boundaries between the state and the private sector were also blurred in earlier periods of institutional transition when contracts originating from internal merchant organizations became gradually more enforceable by the state (North 1990).

⁵¹In fact, Braudel would go as far as arguing that the size of a business organization is proportional to the support it receives from the state.

⁵²This is not to argue, however, that state support is a pre-requisite for corporate success everywhere.

⁵³*The Economist*, January 21 2012, London.

factors. It would be a dangerous over-simplification to reduce the divergence between Europe and other regions to a single cause (Jones 2003, Pomeranz 2000, Tilly 1990).

It is clear that the Middle East and Europe differed on several dimensions, not just their legal arrangements. The range of plausible explanations for this divergence is potentially large. This section will only review a handful of competing explanations, simply to underscore, in the words of Eric Jones, that “any broad historical evolution has a configuration of causes”.⁵⁴ To begin with, geographic influences—from climate, location, and resource endowments to the broader geography of trade—can critically shape economic advantage. Although far from being a singular cause for its success, Europe’s environment and physical geography was more suitable for regional specialization, long-distance trade, diffusion of technology and political decentralization (Jones 2003). The scale and intensity of natural disasters was also considerably lower in Europe. Consequently, Europe suffered less destruction of its capital in the wake of natural disasters than other comparator regions.

Europe’s geography, especially its low temperatures, low population density and limited agricultural productivity was relatively inauspicious to centralized authoritarian rule. Its location is believed to have ensured relative safety from some of the most rapacious attacks by Eurasian invaders—the Mongols, for example. Perhaps more importantly, it was the favourable geography of trade that proved most beneficial for exploiting its commercial potential. Europe’s long coastlines, the navigability of its rivers and its “dispersed portfolio of resources” played an important part in shaping the region’s outward trade orientation. Through its growing trade engagements, Europe was successful in moving beyond the trade of luxury goods to the bulk trade of every day necessities that conferred the region significant advantages in terms of backward and forward linkages with related business activities.

It is in trade, then, that the contrast between Europe and the Ottoman Empire became more striking over time. For a long time the Middle East profited from its geographic location that placed it at the center of the world’s trading routes. Its land-based trade routes were much travelled upon, bringing prosperity to the region and resulting in growth of population and urban centres. But the Middle East gradually lost its trading advantage with the development of alternative and cheaper trading routes that bypassed the region “by going south of the African continent”. With the discovery of the Cape of Good Hope, the land-based trade routes that privileged the Middle East were gradually replaced with sea-based routes.

⁵⁴Jones (2003: xviii).

The shift of trade from the Mediterranean to the Atlantic generated a new trade pattern that resulted in a loss of economic advantage for the Middle East.⁵⁵ The move from land to sea-based trade routes and the rise of Atlantic trade shifted the balance of economic power against the region, which weakened both merchants and the private sector. In the modern development discourse, Jeffrey Sachs is credited with establishing the links between geography and development. But, even in Sachs's account, geography is simply one of the many drivers of cross-country income differences besides trade and institutions (Sachs 2003). Although no one factor exclusively determines development, factors such as the availability of natural resources, global trading routes, ecology, and geography might have played a bigger role in shaping development in the Islamic world than the cultural interpretations offered by Weber and Lewis (Sachs 2004). In relation to trade, it is relevant to ask if the shift to sea-based routes following the discovery of the Cape of Good Hope be described as a critical juncture that subsequently drove a wedge between the subsequent development trajectories of the Ottoman Empire and Europe. The role of critical junctures, quite apart from this shifting geography of trade, has not been systematically entertained by the ILM thesis. Latest advances in institutional analysis pioneered by Kathleen Thelen and Paul Pierson highlight the importance of temporal dimensions in explaining long-run institutional change. Guarding against taking a "snapshot view" of social processes, Pierson (2004) draws attention to the timing and sequencing of events and their "interactions with various processes unfolding at different speeds".

These omissions notwithstanding, trade forms a crucial part of the European success story. But despite the prominence accorded to it in historical accounts, trade is only one of the several factors that collectively shape the development experience. Trade has historically been intertwined with politics—both domestic and geo-politics. Although, long-distance trade thrives with facilitation from rulers, it can also alter the way economic, and therefore political, power is distributed within societies. I broach this theme later in the paper, but it is pertinent to emphasize here the importance of "external influences" in shaping the "European advantage". Europe's success in trade was not achieved through "internal processes" alone, but was aided by a combination of commerce, coercion and colonization. While tracing the evolution of world economy, historians have forcefully argued that a frictionless market mechanism and an efficient organization of economic activity were not the sole determinants of prosperity. Historical trade patterns were also crucially influenced, beyond the realm of "consensual trade", by a geo-political context that was characterized by "plunder, enslavement and conquest"⁵⁶. In their magnum opus, *Power and Plenty*, Robert Findlay and Kevin O'Rourke emphasize the inseparability of trade and empire in the early phases of globalization. The zero-sum character of

⁵⁵The Islamic world also faced a significantly more difficult time defending itself, as it lacked the advantage of Western and Eastern regions protected by mountains or bodies of water.

⁵⁶Findlay and O'Rourke (2007).

mercantilist trade in that era led to a struggle between European powers for controlling trade routes and precious resources. Europe's overseas ventures involving colonization, slave trade, and discovery of the New World afforded it a "privileged access to overseas resources".

Aided by the extra-ordinary scale of these resources, Europe created a system of production that boosted consumer demand at home, created an expanded market for its exports overseas and relaxed the region's key resource constraints in land and energy (Pomeranz 2000). This is not to suggest that the windfalls from Europe's overseas conquests were the sole driver of its prosperity. Nor is the objective to "externalize" the causes of European advance to a world system that established a bleak division of labour between the European core and the global periphery, as the works of Immanuel Wallerstein and Andre Gunder Frank might suggest.⁵⁷ It is simply to underscore how the growth of private commerce and long-distance Atlantic trade were part of a broader process where the "state, colonial ventures and nonmarket extraction"⁵⁸ lent a crucial helping hand.⁵⁹ It is in this backdrop that European firms invented new organizational forms and financing mechanisms that ultimately manifested in such Western corporate inventions as impersonal and permanently lived organizations, the separation of ownership and control, and the mobilization of long term capital through joint stock companies. Many of these legal and corporate innovations were partly a response to the needs of war-making states and overseas commercial ventures. In fact, until the nineteenth century "family firms dominated most economic activities"⁶⁰ in Britain, and:

"It is significant that where eighteenth-century Europeans' supposedly superior commercial organizations had to compete with merchants from other Old World regions without using force, their record was mediocre. Only in overseas colonization and *armed* trading did Europe's financial institutions—nurtured by a system of competing, debt-financed states—give it a crucial edge" (Pomeranz 2000: 19).

The rise of East India Company offers a pertinent example. Summarizing Niels Steensgaard's argument, Pomeranz (2000) elaborates how the fixed costs of East India Company's military-industrial empire in Asia:

"made it impossible to follow earlier practices in which trading partnerships were completely liquidated after a preset period of time, with all assets distributed back to the partners. Instead it

⁵⁷Wallerston (1984).

⁵⁸Pomeranz (2000): 19.

⁵⁹This was aided in no small measure by other global conjunctures, such as the rising demand for Asian silver.

⁶⁰Pomeranz (2000): 198-9.

became necessary to treat much of the company's capital stock as permanent and to retain as much of the profit as possible for circulating capital; this alone made it possible to spread large fixed costs over a sufficiently large volume of trade and adequately compensate investors whose original capital could never be liquidated for return to them. And finally, because not all investors were willing to be patient enough for this sort of enterprise, ownership and control of the firm had to be firmly separated, with a market in shares that allowed dissatisfied owners to exit a permanent arrangement in which they were increasingly denied a voice on policy" (Pomeranz 2000: 193).

These excerpts highlight the extent to which trade and merchandise were mutually embedded in Europe's inter-state competition, overseas expansion, and long-distance trade. Driven by these imperatives, European states granted special privileges, charters and monopoly rights to capitalists and entrepreneurs in return for their support in settlement and extraction in new colonies. Back in Europe, many of these companies also profited from the growing market for imports. While large corporations benefited from these privileges, the forces spearheading this process strengthened both merchants and markets in the long-run. The external context strengthened not just the state but also its military and economy. Importantly, the overseas ventures engendered a cooperative framework for merchants—a framework where merchants were favoured rather than feared.

Going beyond trade and conquests, the coercive competition between European states had some far-reaching effects on the nature of politics and the very process of state formation. As Charles Tilly argues, warfare and internal competition generated new revenue imperatives that set Europe on the path of state formation. It strengthened, at the same time, the state's fiscal capacity and permitted a healthy transformation from feudalism to fiscalism. Again, merchants emerged as important beneficiaries since, in the absence of an extensive base for land taxation, they became a coveted constituency for fulfilling the state's revenue needs. In return for these taxes, merchants won key concessions in the form of greater security of property and relatively free market conditions. These processes solidified not only the cooperative arrangement between rulers and merchants, but also laid the basis for the emergence of property rights and representative government. Western Europe was thus able to realize a virtuous circle that generated two critical ingredients for sustained economic prosperity: constraints on the power of ruling elites and the provision of public goods (Jones 2003). The crucial question, however, is what led to a diffusion of power away from centralized authoritarian rule in key European states. Clearly, limits to the discretionary powers of rulers emerged endogenously due to an array of forces. Even if it is difficult to pin down a single cause, there is broad agreement that greater political decentralization, inter-state competition, dependence of the state on merchants and the rise of trans-Atlantic trade all played a helpful part.

The voluminous literature that seeks to explain the European advantage is riven with disagreements. But despite these differences in detail and substance, scholars would tend to unite on at least two observations. *First*, the rise of Europe, like any process of socio-economic change, is “politically embedded”. It is therefore pertinent to ask whether “Europe’s political economy was more conducive to capitalist accumulation”⁶¹ and, if so, why? The question, then, ultimately boils down to politics; it is difficult to disentangle power from prosperity. *Second*, given the “varied and cumulative” processes that fed into the “European miracle”, it is difficult to reduce the region’s development experience to a single identifiable cause. There is a need, instead, to give due attention to relevant contexts, interactive relationships and mutually reinforcing processes. The following extracts from two leading economic historians best encapsulate the latter message:

“The Industrial Revolution, in turn, can only be understood as the outcome of a historical process with multiple causes stretching well back into the medieval period, and in which international movements of commodities, warriors, microbes and technologies all played a leading role. Purely domestic accounts of the Rise of the West, emphasizing western institutions, cultural attributes or endowments are hopelessly inadequate, since they ignore the vast web of inter-relationships between Western Europe and the rest of the world that had been spun over the course of many centuries, and were crucially important for the breakthrough to modern economic growth” (Findlay and O’Rourke 2007: 6-7).

Another quote from Jones (2003: 238) underscores the same point:

“In the present state of knowledge we must resist the notion that any simple model will account for the whole developmental process. We cannot model it, say, as a production function which makes modernization, eighteenth century industrialization, or the sustained rise of real incomes, the output of a handful of stylized inputs, while hoping to retain any sense of the historical complexity involved. Too many parameters shift and dissolve; very long-term economic change was much more than the usual conception of an economic process”.

This raises two serious challenges for the Islamic Law Matters thesis. First, if Europe’s rise is the result of multiple processes, is it defensible to explain the Middle East’s economic decline under the single rubric of Islamic law? Furthermore, does a unidirectional and deterministic relationship between Islamic law and development provide a satisfactory explanation? Second, how important is the political economy of development in the Middle East? The next section highlights the primacy of politics.

⁶¹Pomeranz (2000: 173).

Section 5: The primacy of politics

If politics is an essential ingredient of institutional analysis and of Europe's rise, it plays only a peripheral role in the ILM thesis. To start with, organizational deficiencies, which Kuran emphasizes as a key development failure in the Middle East, were not simply a product of the underlying legal rigidities but also reflection of an adverse political equilibrium.⁶² If organizations are “purposive entities” designed to explore the “opportunities afforded by the institutional structure of the society”⁶³, it is imperative to ask if the Ottoman political economy was conducive to productive enterprise. Historians would broadly agree that there were limited institutional payoffs to productive activity in the Ottoman Empire. Rulers lacked the sort of “wealth-maximizing motivations” that accommodate dynamic entrepreneurship.⁶⁴ Economic policy was largely “conservative”. Exports faced heavier duties than imports, with the result that trade was largely about importing consumer items; manufacturing and crafts were relatively disadvantaged (Inalcik 1969). Even waqfs were primarily orientated towards consumption rather than production.

Ottoman policy was principally guided by the demands of provision rather than production. The state's overriding concern was to meet its revenue needs and to keep towns well-supplied. Military, administrative and political elites occupied greater prominence in urban areas. Institutional incentives worked mainly to the advantage of bureaucratic and military elites. Merchants were frequently subjected to excessive taxation, arbitrary confiscations and unproductive demands by the rulers. Part of this indifference towards private merchandise stemmed from the state's limited fiscal dependence on merchants, since land remained the primary source of revenue generation.⁶⁵ While Europe “sailed on its commercial revolution”—supported by overseas ventures and discovery of the New World and its precious resources—the Ottomans “were confined to the land”.⁶⁶ Skeptics might argue that the failure of Ottomans to explore the Atlantic and establish colonies was itself a manifestation of commercial and institutional weaknesses. But, as Casale (2010) posits, this cannot be construed as a failure given that Western explorations in overseas territories were driven by a search for India and the Ottomans already

⁶²It is questionable, however, if the organizational failure of the Ottoman Empire can be studied in isolation from the broader institutional arrangements. Consider the arguments on waqfs, for instance. While it is difficult to dispute that the waqf system degenerated over time and that this may have contributed to the Middle East's “economic descent”. But the reason why waqfs became instruments of patronage and rent seeking, rather than production, may have less to do with their “rigid” institutional design, more with the genesis of political power.

⁶³North (1990: 73).

⁶⁴As Pamuk (2011) argues: “The main objectives of government policy in economic matters was not to promote local production but to ensure that the government's revenue needs would be met and the towns, especially the capital city would avoid famines and be adequately supplied”.

⁶⁵Commercial revenues paled in significance relative to Western Europe.

⁶⁶Jones (2003).

enjoyed a good access to the Orient.⁶⁷ “As a result, once they had successfully conquered Egypt (a prize for which the Spanish and Portuguese would have gladly traded all their claims in the Americas), the Ottomans quite reasonably took advantage of the Red Sea and Persian Gulf to gain access to the treasures of the East, rather than vainly searching the Atlantic for a shorter route that simply did not exist” (Casale 2010: 11).

Whatever the case, merchants were disadvantaged in long-distance trade, suffering first with the loss of the region’s trading pre-eminence and, subsequently, with the extension of trading advantages to foreign merchants. Unlike their European counterparts, merchants rarely received any overseas protection from Ottomans. Such alignment between the interests of state elites and merchants was noticeably absent in the Ottoman Empire, especially after the Ottoman age of exploration ended in the late sixteenth century as a result of multiple defeats on various fronts. The state fell upon its internal resources instead of ‘engaging with the dynamic political economy of the world beyond its borders’ (Casale 2010). Neither the external nor the domestic context was conducive to commerce. The Ottoman Empire lacked the economic and political benefits that Europe’s decentralized and “competitive state system” offered. Political decentralization, the rise of self-governing cities and the growing dependence on merchants led to a dispersion of power in Europe that checked the “worst arbitrariness” of the state.⁶⁸ By contrast, Ottoman cities lacked political autonomy; provincial governors were centrally appointed and beholden to sultans. And, unlike Europe, there were no multiple competing jurisdictions that could have empowered merchants. Even when the Ottomans were challenged to reform, they did so by centralizing their control and bureaucratizing the state (example: the *Tanzimat* reforms).

In the face of declining participation in long-distance trade and the conservatism of its centralized authoritarian rule, Muslim merchants were presented with neither the opportunities nor incentives for innovation and entrepreneurship. All of this prevented merchants from emerging as a political constituency, significantly impairing their ability to shape the direction of institutional change. Effectively, the Ottomans ruled without the “consent of the economic elite”. Critics would argue that Islamic legal impediments were the main reason why merchants remained weak and failed to emerge as a political constituency. Even if one were to accept this argument, there is an un-tackled issue here of the ruler-merchant relationship. If rulers were more dependent on merchants for revenue generation and for

⁶⁷Casale (2010) observes: “As every schoolchild knows, Columbus himself set sail for the west not to discover a new continent (whose very existence he repeatedly tried to disprove) but in search of an alternate route to the Indies. In much the same way, the Portuguese explorers who discovered Brazil did so accidentally while on their way to India, since only by sailing far into the Atlantic could they find winds that would carry them past the southern tip of Africa. Even as late as the seventeenth century, numerous Dutch, English, and French expeditions to North America were similarly undertaken in search of an elusive Northwest Passage to the Orient.”

⁶⁸These benefits did not come, however, at the expense of the economies of scale associated with an Empire.

regime stability, they might have been more willing to remove any legal barriers. If land tenorial arrangements could have been governed outside the framework of Islamic law, there was no reason why the core commercial concerns of the Empire could not have benefited from a similar legal immunity, especially if they were deemed a binding constraint. The fact that this did not happen testifies to the importance of political imperatives: the Ottoman rulers were clearly more fiscally dependent on land than on trade.

Ottoman rulers jealously guarded their autonomy from society, preventing the emergence of any group with the capacity to “initiate political action”. Administrative structures were designed to prevent the circulation of elites and the proliferation of new social groups. Such was the premium on loyalty and control that Ottoman sultans, like their predecessors, insulated military classes from society by recruiting foreigners into the military, who were neither initially allowed to have descendants nor permitted to acquire property.⁶⁹ This system of military slavery effectively severed their ties with family and society. The state moved swiftly to cut potential challengers to size. Public officials were frequently rotated around and their properties faced a constant risk of expropriation at the hands of the state. The state was often the heir of the wealth accumulated by public officials through state privileges. Official elites were thus prohibited from accumulating wealth.⁷⁰

Unlike European feudalism, “the Ottomans never permitted the emergence of locally rooted blood nobility that would fragment political power”. Private ownership of agricultural land was not commonly recognized, preventing local notables (*ayan*) to become landed nobility; their power was derived mainly from rights to tax collection. Even the land granted to *sipahis* as compensation for military recruitment frequently reverted back to the state and reassigned to new soldiers.⁷¹ “The Ottoman state thus created”, in the words of Fukuyama, “a one-generation aristocracy, preventing the emergence of a powerful landed aristocracy with its own resource base and inherited privileges” (Fukuyama 2011). Confiscation of property was not just a dominant state policy against public officials—private traders and merchants were equally susceptible to arbitrary state expropriation. Even when confiscation was deemed politically sensitive and contrary to the ruler’s interest, merchants and money lenders were tied to the risky business of supplying meat at fixed prices for Istanbul and the army (Inalcik 1969).⁷² This was enough

⁶⁹The common practice, dating back to the Mamluk era, was to recruit young Christian boys from the Balkans.

⁷⁰Waqfs provided a convenient mechanism to circumvent this, however.

⁷¹The Ottomans did not face elaborate tax requirements to sustain its army; instead, it relied on the allocation of tax farms as compensation for military recruitment.

⁷²The state had its limitations in exercising its policy of confiscation as it could ill afford outright elimination of wealthy classes of the society (especially money lenders) who were instrumental in providing vital services such as providing credit to the state in times of financial distress. See Inalcik (1969).

to cap their growth potential. All of this goes to suggest that barriers to wealth accumulation were not just legal, rooted in Islamic inheritance laws, but also political.

In asking why partnerships in the Middle East failed to develop into corporations, the ILM thesis downplays the role of guilds and focuses exclusively on the role of Islamic law. In Europe guilds and partnerships co-developed under state patronage, with the result that it is impossible to decouple the history of European corporations from that of merchant guilds. However, in drawing parallels with the Middle East, the ILM thesis ignores the crucial role guilds have played in the development of modern corporations.⁷³ Although the issue of Ottoman guilds is briefly touched upon in *The Long Divergence*, Kuran correctly notes that, unlike Europe, guilds in the Ottoman Empire lacked self-governance, mainly for the reason that the state kept guilds under its authority and denied them independent growth. There is a more candid acknowledgement here that the reason why guilds lacked autonomy lies in “political conditions” rather than legal impediments *per se* (Kuran 2011).⁷⁴ But, to what extent, one might ask, these “political conditions” shaped the wider business climate and restricted the growth of partnerships?

Politics can also explain why, even when business thrived, it remained effectively in the hands of foreign merchants and local religious minorities. The superior performance of non-Muslim merchants, relative to their Muslim counterparts, is treated by the ILM thesis as evidence that, whenever commerce was governed outside Islamic law—as was the case with foreign merchants—it thrived. Superficially, the success of non-Muslim merchants lends credence to the inhibitive role of Islamic law. But, this still leaves open the question: To what extent were these differences rooted in politics? To the extent that European merchants and their local protégés benefited from official privileges but seldom challenged royal authority, their economic ascent was politically expedient. It is possible that rulers felt less threatened by foreign merchants, since their economic power was unlikely to have translated into political power. Indeed, subsequently in the capitulations era, Ottoman rulers seemed more comfortable with their fiscal dependence on Europeans than on local merchants. This competing claim, revolving around expected political payoffs rather than legal arrangements, remains un-entertained by the ILM thesis.

The primacy of the political was manifested not just in the economic domain, but also shaped rulers’ reaction to new technologies. While the Ottomans were quick to adopt new military technologies, they remained averse to printing—despite its economic advantages that could have resulted in a greater

⁷³ This is partly attributable to the greater reliance of Kuran’s arguments on related research by Murat Cizakca who compared the evolution of partnerships in the Ottoman Empire and the West. Murat excluded Ottoman guilds in his comparative study, since they do not fall under the definition of partnerships. See, Cizakca (1966) for further details.

⁷⁴ T Kuran, *The Long Divergence: How Islamic Law Held Back the Middle East* (Princeton University Press 2011), 132-33.

taxable surplus for the ruler. A convincing explanation for this differential reaction to military and printing technologies is provided by Cosgel et al. (2012) who locate the choice of technology adoption in underlying political preferences. New military technology was encouraged by the Ottomans since it strengthened the coercive capacity of the state.⁷⁵ By contrast, mass printing was feared because it could have reduced the legitimating power of religious authority and increased the probability of revolt.⁷⁶ This can help to explain why, even as Ottomans were eager to adopt new military technology, they banned through a 1485 edict printing in Arabic characters.⁷⁷ Importantly, these stringent restrictions did not apply on religious minorities as long as they printed in non-Arabic characters.

For a state that actively prevented the emergence of autonomous social groups, there was sound political logic to rely on white slaves for military recruitment, permit printing rights only to non-Muslims and grant trading advantages to foreign merchants. There was no reason why, in the presence of absolute power, the Ottomans would have conceded power to domestic bourgeoisie. However, by attributing weak private enterprise to legal impediments alone, the ILM thesis neglects the politics of private sector development. Crucially, it ignores that sophisticated economic exchange was unlikely to have evolved in a political milieu where power was centralized, rulers faced few “constraining influences”, and conditions for collective action were weak. Organizational autonomy, self-governance and “dense horizontal relationships were unlikely to have been tolerated, let alone encouraged, in this adverse political equilibrium. Unsurprisingly, merchants and craftsmen had limited autonomy to form associations (Pamuk 2011).

Perhaps, the Ottoman political economy was not calibrated to deal with modernization. Placing a greater premium on preserving harmony than on inducing change, absolutist political systems view deviance from established norms with suspicion, denying a most basic ingredient for innovation: freedom to experiment. Status quo is preferred over a flexible economic framework that can generate prosperity but also create uncertain political outcomes. Creative destruction—the essential motor of economic prosperity—is thus opposed, because it can re-allocate economic and political power away from established groups.⁷⁸ Was it, then, the millennia of legal stagnation or that of absolute monarchic rule that held back the Middle East? As the next section argues, it is difficult to make a causal claim unless the effect of politics is properly disentangled from that of law.

⁷⁵As Cosgel et al. (2012) observe: “The Ottomans were eager to accept new military technologies during this period because they expected these advancements to raise the net revenue available to them and reduce the value of a revolt against their rule”.

⁷⁶A powerful statement of how the introduction of mass printing led to a decline in the power of religious authorities in later periods is contained in Robinson (1993).

⁷⁷Even when this was relaxed in 1726 printing remained tightly regulated.

⁷⁸For further details, see Acemoglu and Robinson (2012).

6. Directions for future research

In this section I offer some reflections on methodology and possible avenues for future research. The ILM thesis, like other long-range stories of divergence, faces a key methodological challenge: the fundamental endogeneity of the development process. Institutional change is recognized to be a multifaceted problem characterized by multiple feedback loops, where several variables shift at the same time and core relationships run in both directions (Przeworski 2004). Parsing these feedback loops and identifying “primary causes” is both analytically and empirically challenging, not the least because it is tempting to conflate effects with causes—and “to mistake forms of development (legal innovation and emergence of business friendly corporate forms) for their causes”. The bulk of social science research is marred by these problems of identification, which complicates the task of establishing causal relationships.

Kuran’s mono-causal explanation understates this analytical and methodological complexity. Firstly, the ILM thesis downplays the role of feedback effects. For example: the two-way relationship between law and politics, organizations and institutions, and between power and prosperity. Secondly, the role of confounding factors is not systematically probed. Clearly, Islamic law was only one factor among the broader constellation of forces at play. A particular limitation of the analysis is its disregard of the endogeneity of law to deeper processes, including politics. Although the significance of politics is recognized at the outset, it is not systematically developed. Relegating it to a secondary position in the purported direction of causation, the ILM thesis argues that if merchants failed to acquire political influence it was because Islamic law kept them economically weak. And, if waqfs failed to evolve as corporations and flex their muscles politically as a civil society, this was largely a result of Islamic legal rigidities.⁷⁹ This sequence of the development process seems to be arbitrarily enforced, as it is neither supported by theory nor empirics.⁸⁰

To pursue the methodological issue further, a central issue in this debate is whether Islamic law is a “proximate” or “deep” determinant of development. With our present state of knowledge, it is difficult to make strong claims. The literature on Islamic law and development consists mainly of a set of

⁷⁹ As Kuran (2011: 882) observes: “Waqf lacking corporate powers kept civil society weak. And this weakness diminished the likelihood of an indigenous movement to amend Islamic provisions inimical to self-governing organizational forms”.

⁸⁰ Regarding alternate explanations for the Middle Eastern underdevelopment such as geography, the state and scientific knowledge, Kuran argues that a bidirectional causal relationship exists between any two variables. This makes any starting point of inquiry ‘ultimately arbitrary’.

hypothesized claims that are subject to empirical falsification.⁸¹ In the absence of rigorous empirical evaluations that control for confounding factors and disentangle the impact of Islamic law from politics, the ILM thesis will remain purely an *associational*, rather than a *causal*, claim. At best, the ILM thesis can be viewed as establishing strong patterns of association (or correlation) between certain aspects of Islamic law and development. These empirical challenges are not exclusive to Islamic law. Most historical narratives on development face similar challenges. Establishing causal relationships is not easy, especially when the time period involved runs into centuries and potential explanations are large. A promising mode of enquiry that can circumvent problems of identification is to search for natural experiments of history, which compare systems that share similarities in many dimensions but differ on aspects under enquiry (Diamond and Robinson 2010). Such comparative historical methods may provide a better methodological domain to identify *cause and effect* relationships involving Islamic law and development. Focused case studies based on Ottoman archives can also shed further light on these questions.

A broader issue that merits attention with regard to the ILM thesis pertains to the units of comparison. It is important to ask if the development path taken by Western Europe—and the organizational forms associated with it—offer the only viable route to prosperity, or are there other competing visions of development? Relatedly: Is it analytically advantageous to compare the Ottoman experience with that of Europe, given that the institutional arrangements of land-based empires differ markedly from sea-based regions? (Howe 2002). In fact, a strong case can be made for contrasting Middle East with other centralized, land-based empires in Asia. With its centralized administrative structure, patrimonial rule, military-feudal complex, and absence of hereditary bureaucracy, China under Ming Dynasty offers an interesting parallel to Ottoman Empire. On that basis, an Ottoman-China comparison, one might argue, may be analytically more desirable than a comparison with Europe.

None of this is to understate the significance of the ILM thesis. By highlighting the significance of the religious context in which laws, organizations and institutions can shape prosperity, and by adding Islamic law to existing explanations for underdevelopment, the literature on Islamic law and development has enriched our understanding of Middle Eastern political economy. This brings the ILM thesis one step closer to the view that “every society evolves in unique ways, so that a deep understanding of change must go beyond broad generalizations to a specific understanding of the cultural heritage of that particular society” (North *et al.* 2009: 271). The nexus between Islamic law and development, both in historical and contemporary contexts, constitutes a fertile area for research. But

⁸¹The arguments are only selectively supported by empirical evidence based principally on Ottoman archives. There are few, if any, detailed contextual case studies.

given the primacy of interactive and mutually dependent processes linking power and prosperity, there is need for a more careful scrutiny of the feedback mechanisms between law and politics and between organizations and institutions.

Three lines of enquiry deserve greater analytical priority. *First*, any view that ascribes a greater agency to Islamic law must build into the analysis an exposition of the role of politics. Future research needs to probe the broader implications of Ottoman political structures for economic prosperity and the extent to which Islamic law accommodated political interests. A related question that can be posed in this context is whether the failure of Islamic law was rooted not just in its provisions for inheritance and partnerships, but in its inability to evolve into public law that could have constrained the ruler. *Second*, when it comes to legal and economic arrangements, the question of stagnation and change should be studied as part of one problematic. This is likely to reinforce the importance of political compulsions. *Third*, there is a strong case for studying the co-evolution of the state and private sector. A singular focus of the ILM thesis on the private sector to the exclusion of the state—its institutional arrangements, the strength of the constraining influences it faces and the preferences of elites who control it—is unconvincing.⁸²

It is true that historians have devoted more attention to the role of the state than that of private organizations.⁸³ But, given the interplay between economic and political exchange and the centrality of the state in early development stages, the state needs to be modeled together with the private sector. If elite self-interest is an initial driver of institutional change, it is important to ask what aligns the incentives of elites with the kind of institutional reform that widens access and enhances an economy's productive capacity. Importantly, why were the interests of merchants and political elites better aligned in Europe than Ottoman Empire? Looking at the joint evolution of the state and the private sector can unveil a variety of contexts, nuances and explanations. It can also map different constituencies, the rent streams they controlled and the mechanisms used to preserve these rents—all essential inputs to understanding why underdevelopment persists in societies (Rajan 2009).

A focus on the ruler-merchant relationship can enhance our understanding not just of why the Middle East diverged from Europe, but to explain differences within in the region. There is a long and distinguished tradition of Middle Eastern scholarship in this area. For example, studies on the Gulf states have argued that contemporary differences in institutional arrangements are explained, in large measure, by the nature and evolution of ruler-merchant relationship (Crystal 1990, Chaudhry 1997). It would be

⁸²Kuran (2011) offers a possible defense for this: given that the state has already received more than its fair share of scholarly attention, a focus on the private sector is long over-due.

⁸³Ibid, 16-9.

naïve to attribute Dubai's economic success to laissez faire policies alone, without tracing their roots in a historically accommodative relationship between Dubai's rulers and merchants. Dubai's geographic advantage as an entrepôt and the growing dependence of its rulers on overseas merchants also explain why they have played host for centuries to merchants from Persia and India. Thanks to the absence of oil riches, this economic inter-dependence between rulers and merchants continues to this day.

The same is not true for other Gulf States, where the discovery of oil fundamentally transformed the balance of power between rulers and merchants, tilting it firmly in favour of the state. But even institutional differences between oil-rich states can sometimes be traced back to the differential power of merchants in the pre-oil era. Although Kuwait and Qatar share the pathologies of oil dependence, there are fine differences between institutional arrangements of the two countries. In Kuwait, for instance, merchants have historically been a more powerful constituency. This explains the differential political economy of oil (Crystal 1990).

7. Conclusion

This article has critically engaged with a growingly influential thesis that advances Islamic law as a leading explanation for the divergent development trajectories of the Middle East and Europe. This literature argues that Islamic law, especially its provisions on inheritance, partnerships and trusts, exerted a first order impact on development and placed the Middle East at a relative disadvantage in the world of impersonal exchange. An unintended consequence of Islamic law was that it discouraged capital accumulation, institutional innovation and the development of dynamic and permanently lived organizations. In this paper, I have taken issue with this singular and deterministic focus on Islamic law to the exclusion of a wide variety of contexts, causes and confounding factors.

Historical evidence suggests that long-run economic change in Europe was fed through multiple factors: success in trade, political competition, geography, overseas conquests and a greater accommodation of merchants' interests by rulers, among others. And, many of these factors were bound together in interactive, mutually reinforcing relationships, which are difficult to disentangle in the absence of a defensible empirical strategy. The ILM thesis pays insufficient attention to these contexts and tends to "deemphasize politics". Any legal explanation—and Islamic law is no exception—cannot be divorced from the enforcement environment and the wider power configuration. Islamic legal injunctions, regardless of their sacred basis, filtered through the material domain and often accommodated pragmatic political considerations of their time.

In the Ottoman Empire, “religious authority was not constituted independent of political authority”. Formally part of the state bureaucracy, religious classes were largely subordinated to the political system. Their appointments, privileges, jurisdictions, and enforcement of decisions all depended on the will of the sovereign. The existence of multiple legal jurisdictions effectively preserved the ruler’s discretion in governance and public administration, relegating matters of peripheral importance to religious courts.⁸⁴ All of this challenges the notion that Islamic law was autonomous from the political domain, and poses a follow-up question: to what extent were Islam’s legal stipulations on inheritance were a more important barrier to development than the failure of Islamic law to evolve into public law, which could have constrained the ruler’s power.

The key question with regard to the ILM thesis, then, is whether these divergent development outcomes had legal or political foundations? An important insight of the NIE literature is that economic and political exchange co-emerges in the process of development. This accords primacy to political incentives. Merchants faced an adverse political equilibrium where rulers had absolute power and controlled, directly or indirectly, both means of coercion and production. Compared to the *Ulama*, who were part of the Ottoman nobility, merchants did not occupy a position of prominence in the power structure. The preferences of state elites and productive sectors of the economy were not aligned. In fact, the entire incentive structure was tipped against private production. Private land ownership was discouraged, prices were often regulated, exports faced heavy duties and artisan guilds were carefully supervised. Declining significance of foreign trade dealt a further blow to commerce.

To what extent, then, the divergent development experiences of Europe and the Middle East were a result of contrasting political structures? While in Europe monarchs faced greater fragmentation of power, Ottoman Sultans enjoyed absolute power. *Ulama* were subservient to rulers, provincial autonomy was denied, military remained insulated from society, hereditary nobility was virtually absent, and the state was not fiscally dependent on merchants. There is no reason why merchants would have been favoured in a milieu where emergent forces with the capacity to launch collective action were distrusted. In fact, when it came to considerations of power, Ottoman administration practically shared more resemblance with Roman and other imperial conventions than Islamic law.⁸⁵

If existing institutional arrangements were not conducive to innovation and change, one needs to ask whether the failure of waqfs to emerge as change agents was a reflection of legal rigidities or perverse institutions. A weak institutional setting, where waqfs increasingly served as instruments of rent seeking,

⁸⁴ Political incumbents had an upper hand in most jurisdictions.

⁸⁵ In fact, there are more similarities between Romans and the Ottomans than meets the eye (Chaney 2012).

was unlikely to have provided the impetus for change. More generally, the question of status-quo and change should be part of a common frame of analysis. The Ottoman political economy was not uniformly characterized by stagnation: even if the private sector was faced with some institutional rigidities, systems of public administration exhibited considerable dynamism. Change was not conspicuous for its absence, but for being palatable only when aligned with political interests. Did the simultaneous existence of flexibility and inertia, then, simply points to the relative strength of the underlying constituencies?

None of this is to argue that Islamic law doesn't matter; it is simply to question whether it constitutes the principal "binding constraint" to development. The burgeoning literature on Islamic law and development offers a powerful narrative that has vastly improved our understanding of ways in which religious context shaped the Middle East's political economy. The argument has broader academic and practical relevance for the economies of Muslim societies. However, it is neither theoretically consistent with dominant analytical frameworks, such as NIE, nor fully consistent with factual evidence. Importantly, in its current formulation, it is difficult to accept it as a causal claim. Returning to E. H. Carr's pithy observation, if the legal domain is a meeting place between ethics and power, then a narrative on Islamic law and development will remain incomplete if it invokes ethics without a discussion of the configuration of power in Ottoman society. Thus, the question still remains: Was the relative economic decline of the Middle East a legal or political failure? The jury is probably still out on this.

References

- Acemoglu, Daron, Simon Johnson and James Robinson. (2005). "The rise of Europe: Atlantic trade, institutional change and economic growth", *American Economic Review*, 95(3), 546-579.
- Acemoglu, Daron and James Robinson. (2012). *Why Nations Fail?*. New York: Profile Publishers.
- Acemoglu, Daron, Simon Johnson and James Robinson. (2006). "Institutions as a fundamental cause of long-run growth", In Philippe Aghion and Steven Durlauf (eds.), *Handbook of Economic Growth*, Amsterdam: North Holland.
- Bardhan, Pranab. (2005). *Scarcity, Conflicts and Cooperation: Essays in Political and Institutional Economics of Development*. Cambridge: MIT Press.
- Barro, Robert and R. M. McCleary. (2003). "Religion and economic growth across countries", *American Sociological Review*, 68 (1), 760-781.
- Casale, Giancarlo. (2010). *The Ottoman Age of Exploration*. Oxford: Oxford University Press.
- Çizakça, M. (1996). *A Comparative Evolution of Business Partnerships: The Islamic World and Europe, with Specific Reference to the Ottoman Archives*. Leiden: Brill Publishers.
- Çizakça, M, 'Evolution of Domestic Borrowing in the Ottoman Empire' in P.L. Cottrell (ed) *East Meets West: Banking, Commerce and Investment in the Ottoman Empire* Ashgate Publishing Limited 2008)
- Coulson, N. J. (1964). *A History of Islamic Law*. Edinburgh: Edinburgh University Press.
- Cosgel, Metin. (2007). "Stagnation and change in Islamic history", Mimeo, University of Connecticut.
- Cosgel, M and Ergene, BA, 'Intergenerational wealth accumulation and dispersion in the Ottoman Empire: observations from eighteenth-century Kastamonu' (2011) 15 *European Review of Economic History* 1
- Cosgel, M, T. Miceli, and R. Ahmed (2009). "Law, State Power, and Taxation in Islamic History", 71, *Journal of Economic Behavior and Organization*, 704,
- Cosgel, Metin M., Thomas J. Miceli and Jared Rubin. (2012). "The Political Economy of Mass Printing". *Journal of Comparative Economics*,...?
- Curtis, Michael. (2009). *Orientalism and Islam: European Thinkers on Oriental Despotism in the Middle East and India*. Cambridge: Cambridge University Press.
- De Long, Bradford J. and Andrei Shleifer. (1993). "Princes and merchants: European city growth before the Industrial Revolution", *Journal of Law and Economics*, 36 (2): 671-702.
- Diamond, Jared and James Robinson. (2009). *Natural Experiments of History*. Cambridge: Harvard University Press.
- Esfahani, H. S. and F. Taheripour, 2002, "Hidden public expenditures and the economy in Iran", *International Journal of Middle East Studies*, 34, 691-718.
- Frank, Andre Gunder. (1988). *Reorient: Global economy in the Asian Age*. California: University of California Press.
- Fukuyama, Francis. (2011). *The Origins of Political Order*. New York: Profile Books.
- Glaeser, Edward and Andrei Shleifer. (2002). "Legal Origins", *Quarterly Journal of Economics*, 117, 1193-1230.
- Grief, Avner. (2008). "Coercion and exchange: How did markets evolve", Mimeo, Stanford University.

- Grief, Avner. (2006). *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade*. Cambridge: Cambridge University Press.
- Guiso, L, Sapienza, P and Zingales, L, 'Does Culture Affect Economic Outcomes?' (2006) 20 *The Journal of Economic Perspectives* 23
- Hallaq, Wael B. (2011). "Islamic law: History and transformation", In Robert Irwin (ed.), *The New Cambridge History of Islam* (Vol 4). Cambridge: Cambridge University Press.
- Hopkins, Nicholas S. "Land Tenure", In John Esposito (ed.), *Oxford Encyclopedia of the Modern Islamic World*. (<http://www.oxfordislamicstudies.com>).
- Howe, Stephen. (2002). *Empire: A Very Short Introduction*. Oxford: Oxford University Press.
- Hourani, Albert. (1993). "Ottoman reform and the politics of notables", In A. Hourani, Khoury and M. Wilson (eds.), *The Modern Middle East: A Reader*. Berkeley: University of California Press.
- Inalcik, Halil. "Capital Formation in the Ottoman Empire". (1969). *Journal of Economic History*, 97.
- Jaidah, M. J., 'Explaining Multi-generation Family Business Success in the Gulf States' (Harvard University 2008) 231-34.
- Jones, Eric. (2003). *The European Miracle: Environments, Economies and Geopolitics in the History of Europe and Asia*. Cambridge: Cambridge University Press.
- Karshenas, Masood and Adeel Malik, 2012, "Oil in Iran: Dependence, distortions and distribution", In Paul Collier and Anthony Venables (eds.), *Plundered Nations? Successes and Failures in Natural Resource Extraction*. New York: Pelgrave Macmillan
- Kuran, Timur. (2011). *The Long Divergence: How Islamic Law Held Back the Middle East*. Princeton: Princeton University Press.
- Kuran, Timur. (2001). "The provision of public goods under Islamic Law: Origins, impact and limitations of the Waqf system", *Law and Society Review*, 35 (4), pp. 841-898.
- Kuran, Timur. (2004). *Islam and Mammon: The Economic Predicaments of Islamism*. Princeton: Princeton University Press.
- Kuran, Timur and Anantdeep Singh. (2010). "Economic modernization in late British India: Hindu-Muslim differences", ERID Working Paper 53, 1-49.
- Kuran, Timur. (2011). *The Long Divergence: How Islamic Law Held Back the Middle East*. Princeton: Princeton University Press.
- Landes, David.???
- La Porta, R., F. Lopez-de-Silanes, A. Shleifer and R. Vishny. (1998). "Law and finance", *Journal of Political Economy*, 106, 1131-1150.
- Ma, Devin and Jan Luiten van Zanden. (2011). *Law and Long-Term Economic Change: A Eurasian Perspective*. Stanford: Stanford University Press.
- Masud, Muhammad Khalid. (2001). "The doctrine of *Siyasa* in Islamic Law", *Recht van de Islam*, 18 (2001), 1-29.
- Nelson, Matthew. (2011). *In the Shadow of Shari'ah: Islam, Islamic Law and Democracy in Pakistan*. New York: Columbia University Press.
- Noland, Marcus. (2005). "Religion and economic performance", *World Development*, 33(8), 1215-1232.

- North, Douglass. (1990). *Institutions, Institutional Change and Economic Performance*. Cambridge: Cambridge University Press.
- North, Douglass, John Wallis and Barry Weingast. (2009). *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*. Cambridge: Cambridge University Press.
- Pamuk, Sevkett. (2004). "Institutional change and the longevity of the Ottoman Empire, 1500-1800", *Journal of Interdisciplinary History*, 35(2), 225-247.
- Pamuk, Sevkett. (2011). "Political economy and institutions in the Near East since the rise of Islam", Mimeo, London School of Economics and Political Science.
- Pierson, Paul. (2004). *Politics in Time: History, Institutions and Social Analysis*. Princeton: Princeton University Press.
- Pomeranz, Kenneth. (2000). *The Great Divergence: China, Europe, and the Making of the Modern World Economy*. Princeton: Princeton University Press.
- Platteau, Jean-Philippe. (2011). "Political instrumentalization of Islam and the risk of obscurantist deadlock", *World Development*, 39(2), 243-260.
- Pryor, Frederic. (2006). "The economic impact of Islam on developing nations", Working Paper, Swathmore College, USA.
- Przeworski, Adam. (2004).
- Rajan, RG and Zingales, L. (2003). "The Great Reversals: the Politics of Financial Development in the twentieth century", *Journal of Financial Economics*, 69(5).
- Rajan, Raghuram G. 2009. "Rent Preservation and the Persistence of Underdevelopment." *American Economic Journal: Macroeconomics*, 1(1): 178–218.
- Robinson, Francis. (1993). "Technology and Religious Change: Islam and the Impact of Print", *Modern Asian Studies*, 27(1): 229-51.
- Roe, M. J. (2003). 'Political Determinants of Corporate Governance: Political Context, Corporate Impact'. *Harvard Law School John M. Olin Center for Law, Economics and Business Discussion Paper Series*. Paper 451
- Sachs, Jeffrey. (2003). "Institutions Don't Rule: Direct Effects of Geography on Per Capita Income," NBER Working Paper 9490. Cambridge, Massachusetts: National Bureau of Economic Research.
- Sachs, Jeffrey. (2004). "Long-term perspectives on economic development in the Muslim World", Mimeograph, CID, Harvard University (available at: http://ifp.law.harvard.edu/login/view_pdf/?file=Jeffrey_Sachs.pdf&type=workshops)
- Sait, Siraj and Hilary Lim. (2006). *Land, Law and Islam: Property and Human Rights in the Muslim World*. London: Zed Books.
- The Economist. (2012). "Special Report on State Capitalism", January 21 2012. London.
- Thelen, Kathleen, 2003, "How institutions evolve? Insights from Comparative Historical Analysis", In James Mahoney and Dietrich Rueschemayer (eds.), *Comparative Historical Analysis in the Social Sciences*. New York: Cambridge University Press.
- Thornton, T, *The present state of Turkey: or A description of the political, civil, and religious constitution, government, and laws, of the Ottoman Empire*. (Joseph Mawman 1807)
- Tilly, Charles. (1992). *Coercion, Capital and European States AD 990-1992*. Oxford: Blackwell Publishers.

- Crystal, J. (1990). *Oil and Politics in the Gulf: Rulers and Merchants in Kuwait and Qatar*. Cambridge: Cambridge University Press
- Chaudhry, Kiren Aziz. (1997). *The Price of Wealth: Economies and Institutions in the Middle East*. London: Cornell University Press.
- Yamuz, M. Hakan. (2011). "Turkey: Islam without Shari'a?", In Robert W. Hefner (ed), *Sharia Politics: Islamic Law and Society in the Modern World*. Bloomington: Indiana University Press.
- Udovitch, Abraham L. (1970). *Partnership and Profit in Medieval Islam*. Princeton: Princeton University Press.
- Wallerstein, Immanuel . (1984). *The Politics of the World-Economy: The States, the Movements and the Civilizations*. Cambridge: Cambridge University Press.
- Zubeida, Sami. (2003). *Law and Power in the Islamic World*. London: I. B. Tauris.
- Zubeida, Sami. (2011). *Beyond Islam: A New Understanding of the Middle East*. London: I. B. Tauris.

¹Rulers often confiscated property using a religiously inspired logic that all property belongs to God. As Kuran (2001: 860) observes: "Driven to achieve lasting control over their assets, early generations of Muslims established an institution to enhance the security of property. This institution was then given religious legitimacy as a means of reigning officials tempted to confiscate immobilized properties. In effect, the waqf's sacredness enabled the state to commit itself to upholding private property rights. Although examples of confiscation are plentiful, waqf-owned properties were substantially less likely than privately owned assets to be taken over by the state".

²Merchants were able to win important concessions through the dismantling of royal trading monopolies and charters. This expanded the protective shield of property rights to broad swathes of population.