

The Long Divergence: How Islamic Law Held Back the Middle East.

By TIMUR KURAN. Princeton, N.J.: Princeton University Press, 2011. 405 pp. \$29.95 (cloth).

Even though Timur Kuran is overall convincing at laying out arguments on the backwardness of Islamic practices regarding partnerships, corporations, banks, loans with interest, *waqfs* (mortmain properties blocked from circulation), and contracts in general, he seems less convincing at explicating why Islamic societies were held back from competition with Europe from the Middle Ages up to modern times. Indeed, his main assumption that it was Islamic law that held back the economy escapes the problem rather than points at its cause in a convincing way. Legal systems in general are more an outcome of social conditions, rather than the major force that would bring social relations to a more developed level. In other words, history shows that whenever the law is “behind” social practices, whether cultural or economic, they tend to be addressed sooner rather than later. A case in point, which Kuran explains at length, is the ban on loans with interest that both Jews and Christians had to abide by in the early European Middle Ages, which in both instances were bypassed because of the socioeconomic conditions in Europe at the time. Even in modern times, legal systems tend to struggle in order to match cultural and economic developments. Witness how the American common law had to battle, since the nineteenth century, its formative period, with issues like private property, contracts, the corporation, slavery, rights of minorities and women, abortion, and gay and lesbian rights, in order to become congruent with the nascent capitalism and the mores of the times. It therefore seems quite obvious that for any society and civilization, at every historical juncture, it is the totality of social relations, or the mode of production, which in the last stance is what impacts politics and law. There are times when the law falls behind the evolution of social relations, which could be attributed to anything from the weakness of the state, or to the nature of legal reasoning itself, for instance, a need for complete overhaul that is constantly delayed, because of a lack of adequate resources or for political reasons. However, Kuran addresses Islamic law for over a millennium, and for that long a period it would be absurd, as he does, to blame economic backwardness solely on the law, as suggested in the book’s subtitle and its various chapters. It goes without saying, however, that there is a “divergence”—and a wide one for that matter—between Islamic economies and their Western counterparts; the Mediterranean economies of the last millennium, between East and West, point to such a divergence. Even though Islamic law

shares the blame, it is more of a symptom of a much broader and deeper problem, than the major culprit.

Kuran's demonstration often questions the reasons that did not push "communities" and subcommunities from tailoring Islamic law to their own needs and aspirations. In other words, if Islamic law proves to be, indeed, the main culprit, or the *prima causa*, in the history of economic backwardness of Middle Eastern societies, why hasn't there been any resistance to its rule? Or why, in the vast Islamic empires since the Umayyads and Abbasids up to the Ottomans, were no major challenges posed to the legal limitations on partnership, inheritance, loans with interest, and *waqfs*? Why is it that no corporations, loan institutions, public debt and banking services have emerged even in rebellious peripheries? Or why is it, as far as economic and legal practices are concerned, no significant changes are to be noted between the Shi'i and Sunni sects? Why is it that no group, subgroup, community, or subcommunity broke the general rules in order to establish more aggressive economic and legal practices?

Kuran's reasoning assumes that, first, Islamic law reached such a level of maturity and comprehensiveness so as to rule out any possible defections on the part of groups and communities, whether urban or regional: "On the face of it, the presumed comprehensiveness of Islamic law ruled out self-governance on the part of subcommunities; one could not replace divine law with human-made law even in limited domains" (p. 107). Such passages do suggest that, first, Islamic law reached such a level of comprehensiveness and a systematic character by the early Middle Ages to the point that it would undermine other sublaws from emerging, which would have been secular and more competitive. In other words, the divine character of Islamic law gave it such an aura that no community would have even dared to challenge it. But what if the reverse proves to be the truth, namely, that in the three to four centuries since its inception, Islamic law failed to develop a systematic character, and that at no point there was even an attempt to develop a system of codes à la Justinian? What in effect persevered since the tenth to the eleventh centuries was a *de facto* process of "accommodation" of the broad principles of the law, which were never comprehensive in the first place, to the needs and aspirations of the local regional communities, and even at this level it was custom that reigned supreme, rather than sharia law. Such a failure to create a corpus of Islamic law that would have served as a comprehensive code for the various regions and communities of "the lands of Islam" has been accommodated for in various forms from one epoch to another. In Ottoman times, for example, a clear division was instated between sharia law, on one hand,

and the regional bureaucratic “secular” laws, commonly known as the *qanunname*, on the other, which in itself was a bland admission of the inoperative character of Islamic law in such matters as rent, taxation, and crime. Moreover, even for the core of sharia law, the Ottomans adopted Hanafism out of the four Sunni schools, a flexible school that accepts “custom” as regionally operative, while assuming the status of “law” (“habit is tenacious,” states one of the “general rules” of Hanafism). What the Ottoman centuries therefore point to is precisely the level of “autonomy” that subcommunities have assumed on their own, a self-rule that was made possible not so much by sharia law itself, but rather thanks to the very nature of the societies on the eastern Mediterranean and north Africa.

The main problem in Kuran’s book is not only his desire to see in Islamic law the *prima causa* of economic backwardness but, more importantly, an inability to properly describe the sociological and historical nature of the societies and civilizations that were operating under Islamic law, which gives Kuran’s study the impression that things could have been otherwise were it not for Islamic law. But what if things could not have been that much otherwise, precisely because the societies that were subject for centuries to sharia law operated under their own ecological, tribal, urban, and social limitations? Indeed, a major weakness of the book is that it does not delve deeply enough into the political and economic organizations of such societies: Would a system more open than sharia law made them any different? Assuming that in the past millennium the bulk of Islamic societies were under prebendal and patrimonial absolutist dynasties, where prebends in the form of land grants were donated as signs of loyalty to urban elite groups, were the social conditions ripe enough to create a milieu that would have hosted more competitive economic practices from the ones already in place? Is it really a problem with sharia law itself, and the fact that it imposed all kinds of restrictive uncompetitive norms, or was it a limitation coming from social structure? Historians working within a sociological comparatist perspective (such as Barrington Moore and Reinhard Bendix) have often noted that “feudalism” in its European connotations was a privilege that failed to materialize in the Middle East and Asia (except perhaps in Tokugawa Japan), and that such a failure was what led to the general backwardness in the past millennium. The point here is that when speaking of economic performance over long periods, one cannot escape the totality of social structure—the “law” being one of the components of society rather than its determining agent. Had the economic practices covered by Kuran been indexed to social structure instead of being reduced to their legal underpinnings, economic back-

wardness would have *eo ipso* looked messier, with no prime cause in sight.

Even though a big advantage of Kuran's approach is his excellent description of economic practices over a millennium with their legal underpinnings, his ascription to "law" the *prima causa* of all economic backwardness does a disservice to his enterprise. As already pointed out, in various passages Kuran seems uncertain as to how much the "holding back" was an outcome of the "law" itself: was sharia law, as divine law, so powerful that no community could be set free from its creed? And why with all the "autonomy" that communities enjoyed in most Islamic empires, no alternative economic systems came to light? As in the passage above (p. 107), Kuran seems to suggest that the "divine" aspect of the law made it irreproachable. Such arguments, however, do not feed well for a complex undertaking on economic development, and end up too circular, if not solipsistic: Islamic societies have created a divine legal system, to which they're imprisoned, precisely because of the divine character of the law. For example, notice how Kuran is at a loss when he questions the reasons behind the failure of anything close to a "corporation" or a "corporatist structure" in Islam. Having first noted that "free incorporation" would have implied "the right to incorporate at will, without the consent of a monarch, president, or parliament" (p. 121)—which makes "corporation" even stronger than "partnership" (which in Islam was limited to the basics)—Kuran then notes that, under such conditions of "free incorporation," "of necessity subgroups of the community would enjoy a measure of self-governance" (p. 122), which in turn, would pose a challenge to the ideal of communal unity, and which in the case of Islam would have implied a challenge to the divine character of sharia law. As in other passages, and whenever we're faced with a crucial "shortcoming," in this instance the "corporate structure" (even the Roman Church behaved as a corporation), it was the "law" that halted the process: "In adhering to the ideal of a unified community and withholding legal rights from subcommunities, jurists, and political theorists doubtless thought to deny social divisions legitimacy" (pp. 122–123). So, if the "corporation" or "the fictitious person," which as legal notions stand as prerequisites to one another, have not been embraced in Islam, it is because, as radical innovations, they would have undoubtedly posed a threat to "the ideal of undifferentiation," namely the Islamic community of believers known as the *umma*. The problem with such views is that they give the false impression that it was Islamic law that prohibited communities, which for the most part were based on strong kinship and tribal ties, from embracing the corporation (and other prerequisites, such as the

fictitious person and competitive partnerships), hence in moving in the direction of openly liberal markets. But were such handicaps and constraints imposed by the monolithic nature of Islamic law, as Kuran seems to suggest, or by the social structure of Islamic societies, which in turn are an outcome of the ecologies and terrains in which they have evolved?

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Golden-Silk Smoke: A History of Tobacco in China, 1550–2010.

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In recent years there has been an undeniable turn toward the history of commodities. As an approach, it offers the opportunity to examine cross-cultural contacts, technology transfers, and the transmission of medical knowledge, among other attributes. At the same time, commodities history can uncomfortably straddle the intersections of economic and cultural history, as well as domestic and international history. It is a challenge at which few have excelled, but Carol Benedict is undoubtedly among those who have. Her study of the long history of China's experience with tobacco considers both national and international implications, the introduction and dissemination of foreign knowledge, and the remarkable progress by which tobacco became a "Chinese" product with its own cultural connotations.

The book relates its history through the various tobacco products China consumed. Beginning with a long section on the arrival and spread of pipe tobacco, the narrative then discusses the differentiation of tobacco consumption with the rising popularity of snuff and water-pipe tobacco, and ends with the mass consumption of the machine-rolled cigarette. Though unquestionably a history of tobacco, the shifts in consumption reveal the underlying stages of commoditization. Borrowing Sidney Mintz's terminology, the early era is one of "extensification," when a new product is accepted and its consumption spreads throughout the social ranks. Snuff and water-pipe tobacco became popular with Chinese elites in the eighteenth century, and this class differentiation was "intensification" in which the commodity became a marker of elite social status. The cigarette, by comparison, was first consumed as a hand-rolled tobacco product among the urban poor, but, with the rise of machine-rolled cigarettes in the late nineteenth