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Review of Timur Kuran, *The Long Divergence: How Islamic Law Held Back the Middle East*

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To cite this article: Ibrahim, Ahmed Fekry, review of Timur Kuran, *The Long Divergence: How Islamic Law Held Back the Middle East* (Princeton: Princeton University Press, 2010), *New Middle Eastern Studies*, 1 (2011), <http://www.brismes.ac.uk/nmes/archives/698>.

To link to this article: http://www.brismes.ac.uk/nmes/archives/698

Online Publication Date: 7 December 2011

NEW MIDDLE EASTERN REVIEWS

The Long Divergence: How Islamic Law Held Back the Middle East
Timur Kuran
Princeton, Princeton University Press, 2010, 424 pp., $29.95, Hardback
ISBN: 9780691147567

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This book is a starting point for an important discussion that very few people are willing to engage in, not only because it has the potential to stir controversy, but also because it lends itself to generalizations that open the door for criticism. It is praiseworthy that the economist Timur Kuran decided to embark on this risky task, despite his own recognition that historians might find the generalizations in this book unsettling. Going beyond essentialist approaches that explain the decline of the Middle East vis-à-vis Europe in terms of flaws inherent within Islam itself, or of supposed Muslim characteristics such as fatalism, Kuran's explanation is grounded in institutions. The negative effects of these institutions do not necessarily reflect poorly on the Islamic faith, as some of them developed after the formative period, while others are commendable for their egalitarianism. Kuran also challenges the Islamist discourse that the failure of Muslims was brought about when the Ottomans abandoned Islam, countering that Ottoman secularization happened long after the region's standing in the world had deteriorated. To him, the institutional matrix that blocked evolutionary paths towards more complex institutions consists of the Islamic law of commercial partnerships, the Islamic inheritance system, the religious endowment system, and the individualism of Islamic law.

Kuran shows that in the first millennium, the Middle East did not have an institutional disadvantage vis-à-vis Europe. The Islamic law of partnership, which was based on business ventures predating Islam, offered enough flexibility to investors and merchants, and represented a significant step on the road from kinship-based exchange to impersonal exchange. However, it failed to produce the transformations necessary to keep the Middle East globally competitive in the second millennium, which is when the long divergence started. Supporting his argument with figures from 17th-century Ottoman cities, Kuran contends that part of the problem is the short life of Middle Eastern partnerships, which were typically intended for short-term business ventures. They could not outlive their founders, since Islamic law did not recognize corporate legal personhood. On the death of one of the partners, the business was dissolved and assets were divided among heirs. While the Islamic inheritance system was more egalitarian than that of many European countries, it was not conducive to the longevity of partnerships. The death of a businessman in Britain or the Low Countries would most likely lead to the eldest son taking over the business through primogeniture. But in Islamic law, other sons would receive equal shares and women would also inherit, contributing to the fragmentation of partnerships. The practice of polygyny complicated the situation by adding more heirs, thus increasing the fragmentation.

Kuran wonders, "Might some other problem be the fundamental cause of underdevelopment, and organizational stagnation merely its byproduct?" (p. 14). He considers multiple factors such as the state's role as an enforcer of property rights and the production of knowledge, which he contends must have all affected one another. To consider one factor the root cause of all problems would be to commit the "fallacy of absolute

priority," he recognizes (p. 15). It is the problem of the chicken and the egg, in which each entity serves as both source and product. Thus, he argues for a bidirectional causal relationship between multiple variables, while admitting what he describes as legitimate concerns about endogeneity; hence the starting point is inevitably arbitrary.

The attractiveness of accepting institutional rigidity as a byproduct of economic stagnation rather than a cause of it is that under this scenario, there would be no need to explain why there was no noticeable divergence of fortunes between the Middle East and Europe as early as the institutional divergence started in the 10th century. There would also be no need to explain why Islamic law, with its internal flexibility mechanisms, did not accommodate institutional transformation. Kuran rightly recognizes the ability of Islamic law to overcome its own rigidities. He holds, for instance, that if some major constituency had pressured the state to recognize legal personhood in commercial organizations, religious obstacles could have been overcome. Why then did the Middle East's legal-commercial structure remain unreformed until the 19th century?

Kuran offers religious, social, and political explanations for the lack of a concept of corporation, despite its presence in both the Persian and Roman empires. According to him, the notion of self-governance of sub-communities was not adopted in the Middle East due to the presumed comprehensiveness of Islamic law, regulating all aspects of life without ceding ground to secular legislation. In addition to the nature of Islamic law, jurists would have opposed relinquishing their power to self-governing organizations because they derived rents from legal interpretation. By contrast, Canon law coexisted with Roman law, each with its own jurisdiction.

Kuran acknowledges the flexibility of Islamic law and the ability of practice to surge ahead of doctrine, with judges accommodating alien organizational forms. The lack of organizational accommodation, he rightly concedes, means that the reason lies in a lack of demand. I believe this is the key challenge to his argument. One can argue that *madhhab* pluralism already provides solutions for some of the problems with Islamic law that Kuran discusses. For instance, Hanbali contract law could have been used in placing conditions in *waqf* deeds enabling the endower to accumulate capital and giving the supervisor free rein in managing the *waqf* property, thus functioning more like a corporation. This utilitarian selection of different school doctrines to avoid legal rigidities such as the inalienability of *waqf* assets or the fragmentation of property was widespread in the Ottoman period.[1] Similarly, if there were demand for longer partnerships, Muslim merchants could have used the Maliki school to avoid the dissolution of the Islamic partnership, known as *muḍāraba*, upon the death of a partner.[2] Even changes that were not possible through *madhhab* pluralism could have been introduced in practice followed by a theoretical adjustment.[3]

While Kuran and I are in agreement on the flexibility of Islamic law and hence on the lack of demand for institutional transformation, I view the lack of demand as posing a challenge to the causal relationship that Kuran posits. He sees it as a reflection of missing institutional preconditions. Granted, the interconnectedness of the institutional matrix must have posed greater resistance to change. Nevertheless, conceding that Islamic law was capable of accommodating organizational transformation, and that there was no demand for it, undermines Kuran's argument for causality, as the preconditions themselves are not exempt from the transformative mechanisms of Islamic law.

[1] Ahmed Fekry Ibrahim, "School Boundaries and Social Utility in Islamic Law: The Theory and Practice of *Talfīq* and *Tattabuʿ al-Rukhaṣ* in Egypt", PhD dissertation, Georgetown University, 2011, pp. 120-164.

[2] *Muḍāraba* is a type of partnership in which an investor entrusts capital to an agent, who trades with it for a proportion of the profits.

[3] See for instance, Ibrahim, "School Boundaries and Social Utility in Islamic Law", pp. 90-93.

The discussion of the causes of decline leads to the issue of recovery: Why were Middle Eastern Christians and Jews at the forefront of economic development in the 18th and 19th centuries, before Muslims became involved? On this issue, Kuran explores the legal and business structures adopted by minorities in the Middle East. He argues that Islamic legal pluralism, which enabled them to use the laws of their own religious traditions rather than those of Islam, was not exercised prior to the 18th century. Rather, there was a convergence between the legal and business structures of Muslims and minorities caused partly by the lure of the Islamic courts' superior power of enforcement. This, he adds, explains why minorities did as badly as Muslim merchants prior to the 18th century, and suggests that their fast-improving fortunes can be attributed to their ability in the 18th and 19th centuries to draw upon European commercial and legal institutions. He skillfully delineates their ascent through discussions of the capitulations, Islamic legal pluralism, and the incorporation of minorities into European commercial networks.

Kuran's groundbreaking study is a must read, as it opens new and important doors of inquiry. It deserves to become a standard in courses on Middle East economic history, as it sheds light on the inner workings of Islamic legal institutions, their impact on the economic performance of the Middle East, and their mutually reinforcing interactions. The ensuing discussion should continue examining institutions without presupposing the inherent superiority of Western culture. It is my hope that historians will closely examine some of the hypotheses in this book through micro-histories in order to expand our understanding of the institutional interactions that influenced the economic trajectory of the region.