

## Set and Forget? The Evolution of Business Law in the Ottoman Empire and Turkey

This study examines the transplantation and evolution of business law in the late Ottoman Empire and the early Turkish republic, drawing broader implications for the economic and political determinants of legal transplantation for late industrializers. We show that the underlying political economy context was influential in shaping the way commercial law was transplanted and evolved in Turkey. Extraterritorial rights in the nineteenth century eroded the incentives to demand legal change by providing alternative legal rules to the non-Muslim commercial elite; the nation-building efforts of the twentieth century cultivated a new Muslim business class that was reliant on the state's goodwill for success and could not effectively push for more open access to novel forms of business organization.

**Keywords:** business and government relations, government and politics, legal transplants, commercial law, Turkey, Ottoman Empire

Recent literature in economics views legal institutions as important determinants of long-run economic and financial development. According to this view, legal innovations such as the corporation and the private limited liability company (PLLC) fostered growth by allowing entrepreneurs to lock in capital, prevent untimely dissolution, take advantage of limited liability, and flexibly design control over the firm's assets. There is still considerable disagreement about why these legal innovations emerged in some countries but not in others. One branch of the literature claims that the legal origins of a country—whether common law or civil law—is a key determinant of the law's flexibility in adapting to changing economic conditions.<sup>1</sup> An important

<sup>1</sup> Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer, and Robert W. Vishny, "Law and Finance," *Journal of Political Economy* 106, no. 6 (1998): 1113–55; La Porta, Lopez-de-

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assumption behind this research is that legal regimes are largely exogenous, as most countries acquired them through colonization or conquest.

A growing literature challenges the legal origins thesis on several grounds. Country-specific studies reveal a significant gap between statutory law and legal practice, implying potential heterogeneity among countries within the same legal family.<sup>2</sup> To the extent that such differences are also correlated with economic outcomes and financial development, earlier cross-country studies that categorized legal families by legal texts might have found biased inferences. Furthermore, recent studies show that legal change in both origin countries and transplants was embedded in country-specific political economy.<sup>3</sup>

This article supports this view in regard to the late Ottoman period and the early Turkish republic.<sup>4</sup> Our analysis of the political elite's and entrepreneurs' actions shows that the Ottoman/Turkish political economy was an important factor in the transplantation of company law. The period we cover is a long one. We do not intend to find a singular explanation; rather, we show how changes in the political economy transformed the incentives and obstacles involved in the evolution of legal institutions. We stress two features in this context. First, the practice of extraterritoriality—foreign states' claim for jurisdiction over their citizens in the empire—gradually extended to Ottoman non-Muslims in addition to Europeans and so familiarized much of the Ottoman population with the law that the state eventually transplanted. But, paradoxically, it also provided an exit option that undermined demand for comprehensive legal change. Second, the nationalist modernization efforts of the late nineteenth and early twentieth centuries informed

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Silanes, and Shleifer, "Corporate Ownership around the World," *Journal of Finance* 54, no. 2 (1999): 471–517; Ross Levine, "Law, Finance, and Economic Growth," *Journal of Financial Intermediation* 8, no. 1–2 (1999): 8–35.

<sup>2</sup> Leslie Hannah and Makoto Kasuya, "Twentieth-Century Enterprise Forms: Japan in Comparative Perspective," *Enterprise and Society* 17, no. 1 (2016): 80–115; Susana Martínez-Rodríguez, "Creating the *Sociedad de Responsabilidad Limitada*: The Use of Legal Flexibility in Spanish Company Law, 1869–1953," *Business History Review* 90, no. 2 (2016): 227–49.

<sup>3</sup> Mariana Pargendler, "Politics in the Origins: The Making of Corporate Law in Nineteenth-Century Brazil," *American Journal of Comparative Law* 60, no. 3 (2012): 805–50; Aldo Musacchio and John D. Turner, "Does the Law and Finance Hypothesis Pass the Test of History?" *Business History* 55, no. 4 (2013): 524–42; Jean Rochat, "Change for Continuity: The Making of the *Société Anonyme* in Nineteenth Century France," in *Research Handbook on the History of Corporate and Company Law*, ed. Harwell Wells (Cheltenham, 2018), 244–68.

<sup>4</sup> The Ottoman Empire covered a vast and diverse territory in the Balkans and the Middle East. This article focuses on the territories under the central government's direct authority in the nineteenth century: Anatolia (modern Turkey) and the southeastern Balkans (Thrace, Bulgaria, and Macedonia). We exclude semiautonomous Ottoman territories, like Egypt, because of their different institutional setups.

the reformers' guarded attitude toward legal change and restricted business actors' ability to demand such change.

Our study is one of the first examinations of the transplantation and evolution of commercial law in the late Ottoman Empire and the early Turkish republic. While there are several studies on the impact of legal institutions concerning economic activity in the Middle East, most of them focus on earlier rules derived from Islamic law. Scholars have recently explored how Islamic law diverged from western European law and what these differences implied for long-term economic development.<sup>5</sup> At the same time, research on the modernization of commercial law focuses mostly on the Ottoman period.<sup>6</sup> Closest to this article is one by Nicholas Foster, whose study of the Ottoman legal transformation in the nineteenth century explores how political and legal conflict within the empire shaped the transplantation process.<sup>7</sup> His analysis is mostly restricted to legal actors in the early phases of the reform and presupposes an unfamiliarity with the origin law. Furthermore, the failure of legal modernization to bring about its intended consequences even after the republican reforms removed the presumed conflict of legal cultures remains an open question.<sup>8</sup> In this article, we explore legal modernization in the region from a longer perspective by demonstrating the continuities and ruptures in the transplantation of commercial law in the nineteenth and twentieth centuries. We also focus on a different set of actors: political incumbents, who could design the new legal rules; and business actors, who would have used and potentially benefited from these rules.<sup>9</sup>

<sup>5</sup>Timur Kuran, "Why the Middle East Is Economically Underdeveloped: Historical Mechanisms of Institutional Stagnation," *Journal of Economic Perspectives* 18, no. 3 (2004): 71–90; Kuran, *The Long Divergence: How Islamic Law Held Back the Middle East* (Princeton, 2011); Jared Rubin, "Institutions, the Rise of Commerce and the Persistence of Laws: Interest Restrictions in Islam and Christianity," *Economic Journal* 121, no. 557 (2011): 1310–39.

<sup>6</sup>Ron Harris and Michael Crystal's study on the transplantation of company law in twentieth-century British Palestine is an important exception; see Harris and Crystal, "Some Reflections on the Transplantation of British Company Law in Post-Ottoman Palestine," *Theoretical Inquiries in Law* 10, no. 2 (2009): 561–87.

<sup>7</sup>Nicholas H. Foster, "Commerce, Inter-polity Legal Conflict and the Transformation of Civil and Commercial Law in the Ottoman Empire," *Yearbook of Islamic and Middle Eastern Law Online* 17, no. 1 (2013): 1–49.

<sup>8</sup>Timur Kuran offers insight as to why institutional transplantation did not bring about economic development in the region. Our findings agree with some of these explanations (namely, the lack of legal competence and state-centered development efforts that reinforced each other). See Kuran, "Middle East," 86–87.

<sup>9</sup>Seven Ağır also demonstrates how the pursuit of "national interests" affected the selective borrowing of European institutions. Ağır, "Institutions and Business Organizations in the Late Ottoman Empire and Early Turkish Republic," in *Business, Ethics and Institutions: The Evolution of Turkish Capitalism in Global Perspectives*, ed. Ashi M. Çolpan and Geoffrey G. Jones (London, 2020), 23–50.

We take on three questions. How did legislators choose which legal model to transplant? How did the transplanted rules diverge from the law of the origin country, especially in the ease of access to more sophisticated forms of business organization? Why did these rules diverge in such areas? We address these questions by analyzing legislative discussions using the minutes of the parliament between 1908 and 1950 and legal manuscripts between 1923 and 1950, and by taking advantage of new firm-level data on Ottoman corporations assembled primarily from authorized charters deposited in the Prime Minister's Ottoman Archives, as well as a data set of Turkish enterprises that we developed from firm registers in Istanbul published by the Istanbul Chamber of Commerce between 1926 and 1950. We show that Ottoman reformers' choice to use the French legal code in 1850 was the culmination of a long process that evolved out of legal extraterritorial practices that favored French law in the Eastern Mediterranean. This familiarity with the French legal tradition, especially among merchants and legal intermediaries who were responsible for developing the law, contributed to the lawmakers' preference for the French code as the model for transplantation.

Nevertheless, our research shows that Ottoman commercial law—specifically, its components concerning legal forms of enterprise—stagnated for almost eighty years after the reform of 1850 even though innovation in other aspects of the law continued to be significant.<sup>10</sup> The sluggish development of legal rules on business organizations reflected two factors embedded in the late Ottoman political economy. The extraterritoriality enabled wealthy non-Muslims, who owned and managed the older and more experienced businesses in the region, to “exit” Ottoman law through their access to European consular courts. Thanks to this exit option, those who were more familiar with the transplanted law and more likely to use and adapt it to local conditions did not have strong motivations to demand comprehensive legal change (“voice”) during the early phase of legal modernization.<sup>11</sup> When the exit option was eliminated after 1909, a policy of “national economy” replaced the previous liberal stance and deprived non-Muslims of the necessary political power to affect legal change. Instead, new policies promoted the Muslim elite, who did not share the same level of

<sup>10</sup> Avi Rubin, “Ottoman Judicial Change in the Age of Modernity: A Reappraisal,” *History Compass* 7, no. 1 (2009): 119–40.

<sup>11</sup> We use Albert O. Hirschman's exit-voice dichotomy, which describes two actions that agents can take to express discontent with their organizations: either to *voice* complaints while remaining a member or to *exit* the organization (departure from the business or the state). The costs of these options shape individuals' choices as well as the organization's “quality.” Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Cambridge, MA, 1970).

entrepreneurial experience or participation and so had weaker incentives to use modern forms of business organization extensively. In the 1930s, a new state-led development agenda (etatism) further reinforced the political elite's guarded approach toward private businesses and added another layer to the government's political and legal arguments to restrict access to novel business forms.

There were significant changes in commercial law in the early republican period. However, these changes also showed signs of the "transplant effect."<sup>12</sup> The legal reforms concerning business organization were intentionally selective to impose a degree of control over large companies and incomplete because of problems in legal transfer, leading to partial and inconsistent translations of targeted legal texts. The Turkish legislature, unlike those in the origin countries, imposed rigid controls over who could establish corporations and private limited liability companies. Policymakers justified these controls by arguing that the Turkish economy was underdeveloped, that the domestic conditions and culture created a high risk of corporate misconduct, and so statist regulation was necessary. The political elite's distrust of business was not the only reason for these restrictions; the vested interest of a political-business coalition that benefited from high barriers to entry was also significant in the persistence of such legal limitations.

That the Ottoman and Turkish authorities resisted opening up access to the corporation reflected two common driving forces found in other polities: a broader suspicion of limited liability and the political threat that general incorporation posed to interest groups that were important to the state.<sup>13</sup> Britain first introduced general incorporation statutes without limited liability, and the law had to be revised several times before limited liability was finally added in 1855. Many continental countries followed—Italy enacted general incorporation in 1883, Portugal in 1888, Sweden in 1895, and Austria-Hungary in 1899—in many cases five or more decades after having adopted a commercial code.<sup>14</sup> Imperial Russia never introduced general incorporation; the regime

<sup>12</sup> The "legal transplant" thesis argues that the legal order in transplant countries might operate less effectively because of the law's incongruence with local conditions or people's lack of familiarity with the new law. See Daniel Berkowitz, Katherina Pistor, and Jean-Francois Richard, "Economic Development, Legality, and the Transplant Effect," *European Economic Review* 47, no. 1 (2003): 165–95.

<sup>13</sup> Timothy W. Guinnane, "German Company Law 1794–1897," in Wells, *Research Handbook*, 177.

<sup>14</sup> Dan Bogart, Mauricio Drelichman, Oscar Gelderblom, and Jean-Laurent Rosenthal, "State and Private Institutions," in *The Cambridge Economic History of Modern Europe*, vol. 1, 1700–1870, ed. Stephen Broadberry and Kevin H. O'Rourke (Cambridge, U.K., 2010), 85.

viewed limited liability as a potential instrument for corporate mismanagement, which could cause substantial public harm.<sup>15</sup> Even in the United States, which introduced these laws early, some states acted later than others. In states that relied on Atlantic trade, the commercial elite feared they would lose their access to credit if new corporations started competing for the same sources of financing. In more rural states, agrarian interests viewed limited liability as financially disruptive. Similar to the Ottoman case of legal pluralism, jurisdictional competition between states meant that some entrepreneurs could always relocate and incorporate in a neighboring state, thus circumventing the authorization system altogether.<sup>16</sup>

### Road to Legal Transplantation in 1850

In the early nineteenth century, amid mounting fiscal and military challenges as well as declining living standards relative to western Europe, the Ottoman state became more willing to emulate and adopt foreign policies and institutions. Yet, legal transplantation was not merely an attempt at emulation. Ottoman rulers were interested in legal reform for a multitude of reasons. First, legal modernization was seen as a way to homogenize legal practice and expand the central bureaucracy's influence. Ottoman rulers had already introduced various administrative regulations and statutes that were independent of Islamic jurisprudence in the early nineteenth century. This process culminated in the Tanzimat Edict (1839), which stressed the primacy of secular statutes over religious law. In this context, legal reform, whether codifying Islamic law in the Western style or outright borrowing, was seen as an instrument for further administrative centralization.<sup>17</sup>

Second, the reformers thought legal change was necessary for rebutting European involvement in the Ottoman administration and judiciary brought on by the lopsided agreements—the capitulations—signed with European powers.<sup>18</sup> Much like other states with centralized governments, such as the Chinese Empire or Japan, the Ottoman Empire

<sup>15</sup> Amanda Gregg, "Factory Productivity and the Concession System of Incorporation in Late Imperial Russia, 1894–1908," *American Economic Review* 110, no. 2 (2020): 425, citing Thomas C. Owen, *The Corporation under Russian Law, 1800–1917* (Cambridge, U. K., 1991), esp. chaps. 3 and 6.

<sup>16</sup> Eric Hilt, "Corporation Law and the Shift toward Open Access in the Antebellum United States," in *Organizations, Civil Society, and the Roots of Development*, ed. Naomi R. Lamoreaux and John J. Wallis (Chicago, 2017), 147–77.

<sup>17</sup> Şerif A. Mardin, "Some Explanatory Notes on the Origins of the 'Mecelle' (Mejelle)," *Muslim World* 51, no. 3 (1961): 194–96.

<sup>18</sup> Selim III made the first serious attempt to curb extraterritorial "abuses" that arose from the capitulations. See Ali İhsan Bağış, *Osmanlı Ticaretinde Gayri Müslimler: Kapitülasyonlar, Avrupa Tüccarları, Berath Tüccarlar, Hayriye Tüccarları (1750–1839)* (Ankara, 1983),

was not directly colonized; instead, through unequal treaties that removed restrictions on foreign trade and expanded extraterritorial privileges of Europeans, it had become a semicolonial country by the mid-nineteenth century.<sup>19</sup> European powers justified these extraterritorial exemptions by claiming that local legal institutions were “backward.”<sup>20</sup> The ensuing consular interference in Ottoman legal affairs and the circumvention of local courts, even in cases involving Ottoman subjects, led to serious political concern. In this context, as in other semicolonial cases, legal reform was seen as the key for ending extraterritoriality and achieving full legal sovereignty.<sup>21</sup>

Third, the reformers viewed legal modernization, especially in commercial law, as a key strategy to foster economic development.<sup>22</sup> Initial attempts at promoting industrialization had mostly failed. The lack of transportation infrastructure and the shortage of capital were considered primary factors hindering economic development. Consequently, the reformers embraced the idea that financial modernization, via banks and corporations, would be critical in attracting foreign capital and undertaking massive projects in the empire.

While there were plenty of reasons for legal modernization, the existing legal-political context made outright borrowing difficult. Some members of the religious establishment (*ulama*) protested previous reform attempts because they believed the reforms contradicted Islamic law.<sup>23</sup> Shortly after the Tanzimat Edict, the reformers brought a new commercial code to the Council of Ministers. However, the conservative elements in the *ulama* denounced the law as “blasphemy” and sunk the proposal.<sup>24</sup> Unlike in other fields of private law, the reformers’ attempts to transplant

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16; and Cihan Artunç, “The Price of Legal Institutions: The *Berath* Merchants in the Eighteenth-Century Ottoman Empire,” *Journal of Economic History* 75, no. 3 (2015): 725.

<sup>19</sup> Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, U.K., 2005), 52–65.

<sup>20</sup> Anthony Carty, *Philosophy of International Law* (Edinburgh, 2007), 86; Turan Kayaoğlu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge, U.K., 2010), 18.

<sup>21</sup> Feroz Ahmad, “Ottoman Perceptions of the Capitulations 1800–1914,” *Journal of Islamic Studies* 11, no. 1 (2000): 1–20; Kayaoğlu, *Legal Imperialism*; İza R. Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago, 2016). Internal legal reform became the basis for the revision of unequal treaties in Siam. See Prabhakar Singh, “Of International Law, Semi-colonial Thailand, and Imperial Ghosts,” *Asian Journal of International Law* 9, no. 1 (2019): 46–74.

<sup>22</sup> Ömer Karaoğlu, “İktisadi Düşünce Tarihimizde Bir Sayfa: Mecmua-i Fünun,” *Akademik İncelemeler Dergisi* 8, no. 1 (2013): 290–91.

<sup>23</sup> While traditional historiography depicts the *ulama* as a religious group that collectively opposed the reforms, recent studies show that they were divided on key issues including the necessity of reforms. Amit Bein, *Ottoman Ulema, Turkish Republic: Agents of Change and Guardians of Tradition* (Stanford, 2011), 10.

<sup>24</sup> Harold Temperley, *England and the Near East: The Crimea* (London, 1936), 163, citing the National Archives, U.K., Foreign Office records (FO) 78/432: From Ponsonby [British

a foreign commercial code were eventually successful, partly because it was less controversial. Family law, for instance, had to deal with marriage, divorce, and inheritance, on which Islamic law had clear provisions that diverged significantly from European law. Muslim legal scholars resisted introducing foreign rules in family law but were open to claims that Islamic law could accommodate European legal concepts, like legal personhood, and innovations in commercial law.<sup>25</sup> Also, by this time the religious establishment's economic base, which relied on traditional financial instruments rooted in Islamic law, had declined significantly and so they had little to lose from restructuring commercial law.<sup>26</sup> As a result, in 1850 the Ottoman government was able to promulgate its first European-style legal code by translating and reproducing Part I and Part III of the 1807 French commercial code (Code de Commerce).<sup>27</sup>

The choice of French law was deliberate. At the outset, British law was the natural alternative. But the English Statute Book lacked important features in 1850, like the Companies Acts, and thus could not be a model for transplantation.<sup>28</sup> More importantly, the business community had extensive experience with French law. The expansion of European trade in the Eastern Mediterranean during the eighteenth century had widened the scope of Europeans' extraterritorial privileges, helping establish French law as the customary law of the Levant and the foundation of a legal framework for commerce and finance in the region.

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ambassador to the Ottoman Empire], no. 117, 29 Mar. 1841, and FO 78/433: From Ponsoyby, no. 128, 7 Apr. 1841.

<sup>25</sup> Savvas Pasha, *Étude sur la Théorie du Droit Musulman: La Méthode Législative de l'Islam, Deuxième Partie* (Paris, 1898), 550. For the intellectual and political context of Sava Pasha's writings, see Bedri Gencer, "Osmanlı Kozmopolitizmini İçin Tabii Hukuk Teorisi: Sava Paşa," *Bilimname* 13, no. 2 (2007): 7–36; Leonard Wood, *Islamic Legal Revival: Reception of European Law and Transformations in Islamic Legal Thought in Egypt, 1875–1952* (Oxford, 2016), 104–6. A striking example of Islamic law accommodating novel financial institutions is the emergence of *gedik* markets (assetization of guild-related privileges) in the late eighteenth century; see Seven Ağır, "The Rise and Demise of *Gedik* Markets in Istanbul, 1750–1860," *Economic History Review* 71, no. 1 (2018): 133–56.

<sup>26</sup> Asli Cansunar and Timur Kuran, "Economic Harbingers of Political Modernization: Peaceful Explosion of Rights in Ottoman Istanbul" (Economic Research Initiatives at Duke [ERID] Working Paper No. 288, Duke University, August 2019).

<sup>27</sup> For the Ottoman Turkish text, see *Düstur, Tertib-i Sani* (Compilation of Ottoman laws, 1908–1922), vol. 1 (Istanbul, 1911): 377–445. For an English translation, see Gaspard G. Amirayan, *Ottoman Commercial Code* (Nicosia, 1906).

<sup>28</sup> Anton Bertram, "The Legal System of Turkey," *Law Quarterly Review* 25 (1909): 28. In the early nineteenth century, both France and Britain imposed restrictions on companies. British law, however, was more fragmentary and had a "high degree of confusion and uncertainty." Alceste Santuari, "The Joint Stock Company in Nineteenth Century England and France: King v. Dodd and the Code de Commerce," *Journal of Legal History* 14, no. 1 (1993): 49. Avi Rubin argues that French law was appealing because it was consistent, divided into clear, ordered articles, and so could be transplanted smoothly; see Rubin, "British Perceptions of Ottoman Judicial Reform in the Late Nineteenth Century: Some Preliminary Insights," *Law and Social Inquiry* 37, no. 4 (2012): 997.

Foreign merchants in the Ottoman Empire had long enjoyed extraterritorial privileges thanks to the capitulations. These privileges allowed foreigners to use consular jurisdiction in commercial and civil disputes. European ambassadors could also extend these privileges to local non-Muslims by selling them letters of protection called *berats*.<sup>29</sup> The *berats* placed their holders out of the reach of Islamic courts and granted access to European jurisdictions. Cases were usually decided through arbitration, in which prominent merchants in the area acted as arbitrators and the defendant's consul or ambassador acted as judge.

By the late eighteenth century non-Muslim Ottomans, especially Greeks, who, with the aid of European extraterritorial protection, set up firms with partners in London, France, Italy, and the Black Sea emerged as the central group in the Ottoman-European trade.<sup>30</sup> Their increasing connections to European trade networks and access to European courts familiarized them with European law; some even set up joint-stock companies for carrying out textile trade.<sup>31</sup> By the early 1800s, the French law had become the customary law of non-Muslim Ottoman merchants, who used the Napoleonic commercial code both at home and abroad.<sup>32</sup>

At the same time, the Ottoman administration yielded to the pressure of these non-Muslim merchants and designed its privileged merchant corps to replace the protégé system.<sup>33</sup> Enrollment involved entry fees that were competitive with the *berats* sold by European embassies. The new merchant corps, *Avrupa Tüccarı* (European merchants) for non-Muslims and *Hayriye Tüccarı* (merchants of goodwill) for Muslims, had the same fiscal benefits and exemptions as the European *berats*. Most importantly, it provided an alternative to Islamic courts by formalizing an arbitration procedure to settle disputes. New chanceries were created to oversee these proceedings, with members drawn from among prominent Muslims and non-Muslim merchants in that region.<sup>34</sup> This way, the Ottoman privileged merchants and

<sup>29</sup> French and British *berats* cost approximately 55 times the Ottoman GDP per capita; see Artunc, "Price," 723.

<sup>30</sup> Louis-Auguste-Félix de Beaujour, *Tableau du commerce de la Grèce: Formé d'après une année moyenne, depuis 1787 jusqu'en 1797* (France, 1800), 288; Abdolonyme Ubicini, *Letters on Turkey: Turkey and the Turks* (United Kingdom, 1856), 350–1; Artunc, "Price."

<sup>31</sup> Traian Stoianovich, "The Conquering Balkan Orthodox Merchant," *Journal of Economic History* 20, no. 2 (1960): 257.

<sup>32</sup> A. A. Pepelasis, "The Legal System and Economic Development of Greece," *Journal of Economic History* 19, no. 2 (1959): 178. This partly reflects the strong French influence in the Mediterranean trade; see Edhem Eldem, *French Trade in Istanbul in the Eighteenth Century* (Boston, 1999).

<sup>33</sup> Stoianovich, "Conquering Balkan Orthodox Merchant," 272.

<sup>34</sup> Bağış, *Osmanlı*, 66–67; Savvas-Pacha, *Le Tribunal Musulman* (Paris, 1902), 54–56; George Young, *Corps de Droit Ottoman* (Oxford, 1905), 224.

chanceries closely followed the European consular practice, as well as the organization of commercial courts and chambers of commerce in France at the time.<sup>35</sup>

The chanceries applied Ottoman merchants' customary law: the French code.<sup>36</sup> The Ottoman Commercial Code and courts subsequently evolved out of these chanceries. In 1840, the government complemented these chanceries with proper commercial courts, extending the jurisdiction of French law to a broader population.<sup>37</sup> The commercial courts still employed privileged merchants as judges in addition to a mix of local Muslims and non-Muslims.<sup>38</sup> The courts also included European judges to preside over cases involving Europeans, but the mixed character of the new commercial courts did not exclude recourse to consular courts.<sup>39</sup>

When the lawmakers reformed the judicial system, they could take advantage of this existing legal structure. Most merchants engaged in foreign trade already had access to French law through extraterritorial practices and their extensions via domestic reforms. There were legal practitioners, tribunals, and merchants familiar with French legal norms. The reform, therefore, accomplished two tasks. First, it naturalized foreign institutions and legal instruments that non-Muslim merchants used, such as the corporation and the bill of exchange, into Ottoman law. In doing so, the reforms affirmed the legality of these customs. Second, the new code made what used to be a separate legal jurisdiction—and one to which access was previously rationed out—available to the public. In other words, the Ottoman legal transplantation was more about transforming a particularized institution into a generalized institution rather than introducing truly new legal rules to the region. Yet, the initial will to generalize access to Western legal institutions did not lead to further innovations in the commercial code.

<sup>35</sup> In France, commercial courts were likewise distinct from other civil courts. Judges of commercial courts were elected by local merchants, who were often members of local chambers of commerce. Chambers of commerce also played a significant role in arbitration. See France, Code de Commerce (1807), Art. 615–30; and Archibald John Wolfe, *Commercial Organizations in France with a Summary of Governmental Activities in Promoting Commerce* (Washington, DC, 1915), 73. Other continental countries, whose legal regimes were derived from French laws, took up similar organizational structures; see United States, Bureau of Foreign and Domestic Commerce, *Commercial Courts in Europe*, vol. 10 (Washington, DC, 1909), 16–19, 21–22.

<sup>36</sup> Theodor Weber, "Das Gemischte Handelsgericht in der Türkei: Unter besonderer Berücksichtigung des Gemischten Handelsgerichts in Konstantinopel," *Mitteilungen des Seminars für Orientalische Sprachen* 10, no. 2 (1907): 103–4; Bertram, "Legal System," 28.

<sup>37</sup> The chanceries continued to exist as a distinct forum until the Law of 1860, which formally subsumed them into the new commercial courts. Young, *Corps*, 225.

<sup>38</sup> Savvas-Pacha, *Tribunal Musulman*, 59–60, Young, *Corps*, 224–25.

<sup>39</sup> Legal pluralism existed effectively until World War I, providing an "exit" option to non-Muslims. Cihan Artunç, "Barrators, Berats, and Bandits: Economic Implications of Legal Rules in the Ottoman Empire and Egypt, 1600–1921" (PhD diss., Yale University, 2014).

1850–1908: Foreign Concessions and Extraterritoriality

While the Ottoman Commercial Code was a pragmatic attempt to generalize access to Western law, the use and evolution of certain new features—especially the new enterprise forms—remained limited. Our data, as summarized in [Tables 1](#) and [2](#), show that the vast majority of corporations established before 1907 were foreign companies, most of which were designated with special concessions, such as monopoly rights and profit guarantees. Ottoman subjects, mostly Muslim high-ranking bureaucrats and non-Muslim financiers, participated as board members in foreign corporations but rarely established enterprises on their own.<sup>40</sup> There is little evidence that Muslim merchant families, who set up large-scale businesses, used the new legal institutions.<sup>41</sup>

As a result, one might think that the reform did not succeed in expanding the use of the new European enterprise forms. In explaining the “ineffectiveness” of transplantation, legal scholars mostly stress the shortcomings of the Ottoman legal infrastructure. The French commercial code had to be transplanted without civil law, which contained key elements for implementation.<sup>42</sup> The French commercial code was heavily dependent on the civil code. The most fundamental provisions on contracts, sales, obligations, loans, and even companies (*sociétés*) were all defined and specified in civil law.<sup>43</sup> Without it, Ottoman commercial law did not have a definition of *société* and many other types of contracts.

Legal experts did not set up domestic substitutes for such deficiencies. According to Foster, it was because the Ottoman political elite

<sup>40</sup> Evidence of the directors of corporations established between 1850 and 1908 is fragmentary. But available charters indicate that there were some Ottoman bureaucrats—such as Hasan Fehmi Paşa, Osman Hamdi Bey, and Tevfik Bey, Ottoman Jewish bankers such as the Allatinis, and Greek diaspora bankers such as Leonidas Zarifi—on the boards of several foreign corporations. See Edgar Pech, *Manuel des sociétés anonymes fonctionnant en Turquie*, 2 vols. (Istanbul, 1906, 1911).

<sup>41</sup> Studies on Ottoman/Turkish trade networks and family businesses that rely on private archives are few and generally depend on the researcher’s personal connections to the family. For instance, Mataracıdaze Brothers, a prominent family business with overseas operations, were reluctant to rely on the new commercial courts to resolve disputes or incorporate under the Ottoman code; see Aliye Mataracı, *Trade in Wartime: The Business Correspondence of an Ottoman Muslim Merchant Family* (Istanbul, 2016). Nemlizades, another elite family of mercantile background, did not try to form corporations until after 1914. Yaşar Tolga Cora, “A Muslim Great Merchant [Tüccar] Family in the Late Ottoman Empire: A Case Study of the Nemlizades, 1860–1930,” *International Journal of Turkish Studies* 19, no. 1–2 (2013): 1–29.

<sup>42</sup> Foster, “Commerce,” 36.

<sup>43</sup> For example, Articles 1832 to 1873 of the civil code provided the basic stipulations regarding partnerships, including the very definition of a company and the scope of partners’ liabilities. These provisions are not introduced again in the commercial code. See Young, *Corps*.

*Table 1*  
Sectoral Distribution of New Corporations, 1851–1918

	<i>1851–1907</i>		<i>1908–1914</i>		<i>1915–1918</i>	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
Public utilities	44	50	19	15	4	3
Trade	5	6	48	38	61	53
Banking & insurance	20	23	19	15	16	14
Manufacturing	6	7	27	21	27	23
Mining	6	7	6	5	2	2
Other	7	8	9	7	6	5
Total	88	100	128	100	116	100

Source: Ottoman State Archives (BOA) Dosya Usulü İradeler Tasnifi (İ.DUİT) 34, 74, 88, 119, 120, 121, 122, 123, 124; Semih Gökatalay, “The Political Economy of Corporations in the Late Ottoman Empire and Early Turkish Republic, 1908–1929” (master’s thesis, Middle East Technical University, 2015), 115–38. Note: Data on the corporations established between 1908 and 1918 come from a special collection (İ.DUİT) in the Ottoman State Archives. İ.DUİT was designed solely for keeping records of corporate charters and is more comprehensive for the period between 1914 and 1918 than before 1914. There was no such source or registry for the previous period. Therefore, we had to build our estimate for the number of corporations established before 1914 from a variety of sources that were created for different purposes, and so the numbers may not add up to a definitive account of the corporate sector. Our survey indicates that 221 “Ottoman” corporations (corporations established according to the Ottoman jurisdiction) were established in the core Ottoman lands (Balkans and Anatolia) before 1914. While this number may be flawed, it is the most reliable estimate at the moment, given available sources. If we make an unrealistic assumption and suppose all these corporations had survived until 1914, the number would still indicate a very small corporate sector in the empire. More than half of these 221 corporations were public utility corporations (providing services such as electricity, gas, water, and railroads) and banks established mostly by foreign capital.

*Table 2*  
Corporations by the Composition of Founders, 1851–1918

	<i>1851–1907</i>		<i>1908–1914</i>		<i>1915–1918</i>	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
Foreign and/or non-Muslim	70	80	66	52	14	11
All Muslim	13	15	52	41	99	79
Mixed <sup>a</sup>	5	6	10	8	13	10
Total	88	100	128	100	126	100

Source: BOA İ.DUİT 34, 74, 88, 119, 120, 121, 122, 123, 124; Gökatalay, "Political Economy of Corporations," 115–38.

<sup>a</sup>Category includes corporations with non-Muslim (whether Ottoman or foreign) and Muslim founders.

lacked the expertise to identify these problems. For instance, Foster claims, they made no reference to the debates in France about the quality of French commercial law; requiring an executive decree to form a *société anonyme*—a corporation—was already controversial in France in 1850, and yet the Ottoman authorities were seemingly unaware of it.<sup>44</sup> Foster argues that the absence of a debate about general incorporation law demonstrated the failure of Ottoman reformers to recognize that the new imported law was “ill-suited for economic development.”<sup>45</sup> But this interpretation assumes that legal borrowing was independent of political processes—that the reformers would simply adopt the latest law if they just had sufficient legal knowledge. Yes, the section on corporations itself was brief and incomplete, as it lacked provisions on corporate governance beyond the most basic.<sup>46</sup> But further provisions were likely unnecessary since every corporation charter had to be scrutinized and approved by the government as part of the authorization process. Ottoman regulators provided model statutes, which included the provisions that the law did not specify, for incorporators to use as a template.<sup>47</sup> So, the reformers might have decided not to import certain components of the donor law even when they knew that these statutes were the most “advanced,” as was the case with delayed adoption of general incorporation in other continental countries. Therefore, we need to explore the factors shaping the selectivity of the transplantation process rather than assuming that legal expertise would imply a complete or up-to-date importation.

While the shortcomings of Ottoman legal infrastructure—such as the lack of practitioners proficient in the new law or the deficiencies in procedures or texts—might have impeded the implementation of the commercial code in its early years, the reformers took various steps to set up the needed complementary institutions. First, the government

<sup>44</sup> Foster, “Commerce,” 31, 37. See also Henri Lévy-Bruhl, *Histoire juridique des sociétés de commerce en France aux XVIIe et XVIIIe siècles* (Domat-Montchrestien, 1938). However, other scholars argue that French law was not necessarily outmoded relative to alternatives, especially British law, because no other European law had general incorporation at the time, the French authorization system was less costly than elsewhere, and French law offered a richer and more flexible menu of choices for business organization. Charles E. Freedeman, *Joint-Stock Enterprise in France, 1807–1867: From Privileged Company to Modern Corporation* (Chapel Hill, 1979); Timothy Guinnane, Ron Harris, Naomi R. Lamoreaux, and Jean-Laurent Rosenthal, “Putting the Corporation in Its Place,” *Enterprise and Society* 8, no. 3 (2007): 687–729.

<sup>45</sup> Foster, “Commerce,” 37.

<sup>46</sup> For example, the definition of registered shares (though implied in the text) and formalities of share transfers were absent. See Chibli Mallat, “Commercial Law in the Middle East: Between Classical Transactions and Modern Business,” *American Journal of Comparative Law* 48 (2000): 102–4.

<sup>47</sup> Seda Örsten Esirgen, *Osmanlı Devleti’nde Yabancılar Verilen Kamu Hizmeti İmtiyazları* (Ankara, 2012), 135.

introduced new commercial courts in 1860 by supplementing the Ottoman Commercial Code with an appendix that incorporated articles from Part IV of the French commercial code. These courts had “exclusive jurisdiction” over commercial cases in major centers throughout the empire.<sup>48</sup> In 1861, once more borrowing from the 1807 French code (Part IV), the Ottoman Commercial Procedure Law was enacted. Two years later, the French regulations concerning maritime commerce (Book II) were imported as the Ottoman Code of Maritime Commerce.<sup>49</sup> At the same time, the government established schools designed to educate prospective bureaucrats in the Ministry of Justice about the new laws and regulations. In the 1870s and 1880s, it created many higher education institutions to teach both secular and Islamic law.<sup>50</sup> The establishment of these new schools contributed to a training-based professionalization among legal practitioners. In addition to all these changes in the legal system, the leading reformers initiated a project through which Islamic law, in particular the Hanafi jurisprudence, was codified and presented in a new form: the Mecelle was introduced in the Ottoman Empire, part by part, between 1868 and 1876. While the Mecelle depended on Islamic jurisprudence, it helped justify the customary commercial practices and accommodate new institutions and practices introduced by the Ottoman Commercial Code.<sup>51</sup>

The Mecelle was a combination of rules borrowed from European laws and modernization of Shari‘a. According to some scholars, the two categories were potentially incompatible, and the incongruence was challenging for the law’s implementation.<sup>52</sup> This literature argues that the inconsistencies in the Mecelle, the Ottoman Commercial Code,

<sup>48</sup> Amirayan, *Ottoman Commercial Code*, v. According to the Addendum to the Commercial Law (Ticaret Kanunname-i Hümayununun Zeyli) promulgated in 1860 any commercial dispute—involving any person—will be brought before the commercial courts. See *Düstur, Tertib-i Sani*, vol. 1 (Istanbul, 1911), 163.

<sup>49</sup> For the Ottoman Turkish text, see *Düstur, Tertib-i Sani*, vol. 1, 445–65, 780–810.

<sup>50</sup> Mustafa Serdar Palabyık, “International Law for Survival: Teaching International Law in the Late Ottoman Empire (1859–1922),” *Bulletin of the School of Oriental and African Studies* 78, no. 2 (2015): 271–92.

<sup>51</sup> The drafters of the Mecelle “saw it as a rejection of Western legal hegemony over commercial litigation within the Ottoman Empire.” Samy Ayoub, “The Mecelle, Sharia, and the Ottoman State: Fashioning and Refashioning of Islamic Law in the Nineteenth and Twentieth Centuries,” *Journal of the Ottoman and Turkish Studies Association* 2, no. 1 (2015): 132. For instance, some legal scholars attributed judges’ reluctance to accept bills of exchange to those judges’ misunderstanding of Islamic law and asserted that bills of exchange were consistent with Islamic law by referring to the legal maxims in the Mecelle. See Said Salih Kaymakçı, “The Sultan’s Entrepreneurs, the Entrepreneurs’ Sultan: Beratlı Avrupa Tüccari and Institutional Change in the Nineteenth Century Ottoman Empire (1835–1868),” (master’s thesis, Boğaziçi University, 2013), 3.

<sup>52</sup> June Starr, *Law as a Metaphor: From Islamic Courts to the Palace of Justice* (Albany, 1992); Foster, “Commerce”; Hıfzı Veldet Velidedeoğlu, *Kanunlaştırma Hareketleri ve Tanzimat* (Istanbul, 1940), 196.

or conflicts between the different court systems likely complicated their use.<sup>53</sup> However, other scholars pointed to the problems of using concepts such as duality and secularization in understanding Ottoman legal change in the nineteenth century.<sup>54</sup> We argue that this presumed incompatibility between the different parts of the legal system was not the culprit that delayed further improvements in commercial law. In fact, the Mecelle could have eased the Ottoman Commercial Code's implementation by formally introducing the basic provisions on partnerships and contracts that the commercial code needed. The reformers were also keen on removing incompatibilities that European powers could use as a pretext for demanding exemptions and further legal involvement.<sup>55</sup>

Regardless, legal barriers to the corporate form remained substantial. Incorporation still required government authorization, a long process with considerable risk of rejection.<sup>56</sup> Removing the barriers to incorporation required many actors who wanted to incorporate and could lobby for legal change. In the Ottoman context, there were few actors with the right incentives to demand this kind of reform. Indigenous businesses that could operate at a scale large enough to make the corporation advantageous were scarce. Most industrial establishments in Ottoman urban centers were small-sized workshops that used traditional technologies.<sup>57</sup> But the small size of these establishments was

<sup>53</sup> Mafalda Ade argues that the new commercial courts were regarded as works in progress by most economic actors, Muslim and non-Muslim. Ade, "The Ottoman Commercial Tribunal in Damascus and the Use of Testimony and Evidence in Mixed Cases in the 19th Century," *Quaderni storici* 51, no. 3 (2016): 649–72. Rubin, in "Ottoman Judicial Change," shows that the availability of different court systems led to an effective and beneficial division of labor in the judiciary. Artunç, in *Barrators*, argues that legal pluralism led to uncertainty about which law would apply in disputes.

<sup>54</sup> Ruth Miller, "The Legal History of the Ottoman Empire," *History Compass* 6, no. 1, (2008): 286–96; Rubin "Ottoman Judicial Change."

<sup>55</sup> For instance, the Mecelle departed from Hanafi legal thought in certain areas (such as using religious identity of a witness to dismiss testimony) in response to European complaints about legal bias against their citizens. Ayoub, "Mecelle," 139.

<sup>56</sup> The requirements remained nebulous until the Law of 1882 clarified the procedure; *Düstur, Tertib-i Sani*, vol. 3 (Istanbul, 1914/15), appendix to 160. First, founders had to purchase the model statute from the Ministry of Trade. This was a standard charter, but modifications were possible. After modifications, the founders had to present it to the ministry. Upon approval, the ministry sent the draft to the Council of State. After approvals by the Department of Finance and then the General Council of the State, it was presented to the Grand Vizier (*Sadrızam*). Upon approval, the Vizier sent the charter to the Council of Ministers to determine whether it was consistent with the Ottoman Law of Commerce. After the council's approval, the charter was sent again to the Grand Vizier, who delivered it to the Sultan. The Sultan's edict authorized the corporation.

<sup>57</sup> The Ottoman Empire's integration into international markets led to deindustrialization in the late nineteenth century; see Şevket Pamuk and Jeffrey G. Williamson, "Ottoman Deindustrialization, 1800–1913: Assessing the Magnitude, Impact, and Response," *Economic History Review* 64 (2011): 159–84. In some regions, such as provincial Macedonia, industrialization attempts were more successful, primarily in the textile sector. See Costas Lapavitsas

partly a consequence of not having access to the corporate form.<sup>58</sup> More importantly, both Muslims and non-Muslims had better alternatives. Instead of facing the risks and hurdles of setting up new corporations, the leading Muslim elite could hold public office and engage in economic activities like tax-farming that were deemed more prestigious than trade and finance. Prominent Muslim businesspeople mostly acted as intermediaries between foreign companies and the government by, for instance, acquiring special concessions for these firms rather than creating their own.<sup>59</sup> Their ability to participate in local politics and combine functions of an Ottoman official with that of an established businessperson provided them a distinct advantage in such endeavors.<sup>60</sup> As such, there were not many Muslim entrepreneurs who would use novel forms of business organization and thus benefit from improvements in company law.

In contrast, those who could potentially set up large-scale enterprises had little need to do it under Ottoman law. The emergent capitalist-industrialist class of the Ottoman Empire, such as the family firms of Macedonia, was distinctly non-Muslim. But they continued to exercise their “exit” option extensively.<sup>61</sup> The number of protégés probably increased during the nineteenth century despite restrictions on *berats*.<sup>62</sup> By this time, France and Great Britain had introduced general incorporation statutes, so European residents and wealthy non-Muslim Ottomans could simply incorporate in Europe and operate in the Ottoman Empire.<sup>63</sup> Greek merchants also acquired

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and Pinar Çakıroğlu, *Capitalism in Ottoman Macedonia: Industrialisation and Modernity in the Hinterlands* (London, 2019).

<sup>58</sup> Gregg, in “Factory Productivity,” shows that incorporation had a significant effect on establishment size and capital stock even when one accounts for the fact that firms that incorporated later were bigger than firms that never incorporated even before changing enterprise forms.

<sup>59</sup> The Nemlizade family, based in Trabzon, were striking examples of this type of involvement. See Cora, “Nemlizades.”

<sup>60</sup> Sotirios Dimitriadis, “The Making of an Ottoman Port-City: The State, Local Elites and Urban Space in Salonika, 1870–1912,” (PhD diss., SOAS University of London, 2013).

<sup>61</sup> Dimitriadis, 38–39; Lapavitsas and Çakıroğlu, *Capitalism*, 132–34.

<sup>62</sup> Many non-Muslims born in Ottoman territories to Ottoman parents claimed foreign nationality from the 1850s onwards. The state tried to remove foreign protection and dubious claims to foreign nationality but was never successful. See Ahmad, “Ottoman Perceptions,” 7. Sibel Zandi-Sayek refers to Izmir’s 1944 census, which led to a formal investigation of over 1,500 Maltese and Ionians under British protection. Zandi-Sayek, *Ottoman Izmir: The Rise of a Cosmopolitan Port, 1840–1880* (Minneapolis, 2012), 62.

<sup>63</sup> For instance, prominent non-Muslim Ottoman industrialists in nineteenth-century Macedonia registered their firms under European laws. See Nurdan İpek Nurdan, “Selanik ve İstanbul’da Seçkin Yahudi Bankerler” (PhD diss., Istanbul University, 2011), 62; Dimitriadis, “Ottoman Port-City,” 38–39; Lapavitsas and Çakıroğlu, *Capitalism*, 132–34. Edgar Pech’s survey of corporations shows many other examples of foreign companies that were registered in Europe but primarily operating in the Ottoman Empire; see Pech, *Manuel des sociétés*.

experience with European enterprise forms, thanks to extensive business relations in the West and reliance on French law.<sup>64</sup> The demands of this new non-Muslim *haute bourgeoisie* helped ease some bureaucratic restrictions on setting up factories by the early 1900s, but the easy access to European law obviated similar demands for legal change.<sup>65</sup> So, the problem in transplantation was the availability of consular courts as an alternative option to European residents and non-Muslim Ottoman protégés, who were more likely to use the imported law, thus weakening their incentives to demand legal change.<sup>66</sup> Extraterritoriality impeded legal change not for problems of interpretation and application but because it provided an asymmetric outside option that undermined the generalized use of the law.

Given the absence of local businesspeople interested in incorporating under Ottoman law, the corporate form was used almost exclusively by the Ottoman government and foreign actors to undertake massive public projects (see Table 2). Right after the Ottoman Commercial

<sup>64</sup> Pepelasis, “Legal System”; Despina Vlami and Ikaros Mandouvalos, “Entrepreneurial Forms and Processes inside a Multiethnic Pre-capitalist Environment: Greek and British Enterprises in the Levant (1740s–1820s),” *Business History* 55, no. 1 (2013): 98–118. These advantages led to the early emergence of corporate start-ups in Greece after independence. Konstantinos Aivalis and Ioanna Pepelasis Minoglou, “A Preliminary Analysis of Early Corporate Governance in Greece: 1850–1909” (paper presented at the annual congress of the European Business History Association, Bergen, Norway, 2008), [https://ebha.org/ebha2008/papers/aivalis-minoglou\\_ebha\\_2008.pdf](https://ebha.org/ebha2008/papers/aivalis-minoglou_ebha_2008.pdf). Seven Ağır and Cihan Artunç show that Greek-owned firms in Istanbul, between 1923 and 1950, were more likely to be older, bigger, and more robust than Muslim-owned firms. Ağır and Artunç, “The Wealth Tax of 1942 and the Disappearance of Non-Muslim Enterprises in Turkey,” *Journal of Economic History* 79, no. 1 (2019): 201–43.

<sup>65</sup> Lapavitsas and Çakıroğlu, *Capitalism*, 137, 205. Contemporaries viewed red tape as a grave problem and stressed political relations in doing business. Establishing a factory in, say, Thessaloniki required visiting Istanbul for several months to get a license, pay bribes, resolve issues with importing machinery, and so forth. See Costas Lapavitsas, “Social and Economic Underpinnings of Industrial Development: Evidence from Ottoman Macedonia,” *Journal of European Economic History* 35, no. 3 (2006): 661–710.

<sup>66</sup> British expansion in the Mediterranean led to significant growth in “colonial subjects” with recourse to British consular law, such that Britain established the “Supreme Consular Court of Constantinople” in 1857 to formalize the ad hoc judgments of consuls. Sakis Gekas, “Colonial Migrants and the Making of a British Mediterranean,” *European Review of History/Revue européenne d’histoire* 19, no. 1 (2012): 76; John P. Spagnolo, “Portents of Empire in Britain’s Ottoman Extraterritorial Jurisdiction,” *Middle Eastern Studies* 27, no. 2 (1991): 267. Other Middle Eastern states also provided different legal regimes to non-Muslim subjects and Europeans, or a bifurcated regime that applied Islamic law in local affairs and customs but European law for commerce. However, the exit option was less extensive. In Egypt, for example, the Mixed Court system of 1875 took jurisdiction over commercial affairs between natives and protégés or foreigners, thereby removing the consular option, and brought them under one jurisdiction. Hussin, *Politics of Islamic Law*, 101, 100; Cihan Artunç and Timothy W. Guinnane, “Partnership as Experimentation,” *Journal of Law, Economics, and Organization* 35, no. 3 (2019): 461. Similarly, extraterritoriality in other semicolonial states, like Japan, did not lead to a widespread extension of these privileges to the native population. Kayaoğlu, *Legal Imperialism*.

Code's promulgation, the first Ottoman joint-stock company, Şirket-i Hayriye, was established to provide water transportation in Istanbul. The founders included members of the ruling elite; the Sultan himself, the *Valide* Sultan (queen mother), the Grand Vizier, the Minister of War, mayors of several cities, and several bankers connected to the Sultan. Any Ottoman citizen could hold company stock, but the political elite encouraged bureaucrats and state officials to buy shares, "on credit from local moneylenders if needed."<sup>67</sup> This type of capital pooling through active government involvement became a persistent theme in the late Ottoman Empire and the early Turkish republic.

In the following decades, many other Ottoman corporations were established. Most of these companies were European corporations that secured special concessions like monopoly power or profit guarantees from the Ottoman government to undertake public projects.<sup>68</sup> The state viewed these public projects, especially transportation, as priorities to help national markets emerge and facilitate industrialization. Given the perceived lack of financial and entrepreneurial capital in the empire, foreign investment was seen as a key ingredient in achieving this objective.<sup>69</sup> Many foreign companies were backed by European governments that were interested in these projects for both economic and strategic reasons given the background of British colonial expansion. The Ottoman government, on the other hand, was willing to offer special concessions to attract foreign direct investment. There were also many intermediaries involved in bribing or lobbying Ottoman officials in return for bonuses for securing concessions. Given the fact that these companies operated in public projects that depended on both government authorization and support, these foreign investors or their

<sup>67</sup> Fatma Şensoy, "Şirket-i Hayriye: Osmanlı Boğaziçi Taşımacılık Şirketi," *Muhasebe ve Finans Tarihi Araştırmaları Dergisi* 7 (2018): 239–79; Ali Akyıldız, "Şirket-i Hayriye," in *İslam Ansiklopedisi*, vol. 39 (Istanbul, 2010), 202.

<sup>68</sup> This was not unique to the Ottoman Empire. Income and loan guarantees were staple features of concessions to attract foreign capital for financing railroads (and other public projects) in many other developing economies, where domestic private wealth was insufficient to undertake such large investments. Barry Eichengreen, "Financing Infrastructure in Developing Countries: Lessons from the Railway Age," *World Bank Research Observer* 10, no. 1 (1995): 75–91; Dan Bogart and Latika Chaudhary, "Regulation, Ownership, and Costs: A Historical Perspective from Indian Railways," *American Economic Journal: Economic Policy* 4, no. 1 (2012): 28–57.

<sup>69</sup> Hasan Fehmi Pasha—professor of law, minister, and the head of the Ottoman Court of Justice—asserted the necessity of foreign investment, through the establishment of Ottoman corporations, to secure capital for these infrastructure investments. Necla Geyikdağı and M. Yasar Geyikdağı, "Foreign Direct Investment in the Ottoman Empire: Attitudes and Political Risk," *Business History* 53, no. 3 (2011): 379; Cevdet Küçük, "Hasan Fehmi Paşa," in *İslam Ansiklopedisi*, vol. 16 (Istanbul, 1997), 322–23. For a comprehensive study on foreign direct investment in the Ottoman Empire, see Necla Geyikdağı, *Foreign Investment in the Ottoman Empire: International Trade and Relations, 1854–1914* (London, 2011).

agents had no reason to push for general incorporation and in turn lowering barriers to entry in their market segments.

Concession contracts made with foreign corporations and extraterritorial privileges caused serious political concern, but their persistence and further expansion were inextricably linked to the empire's integration into the world economy in an unequal manner. In the 1850s and the 1860s, the Ottoman government was able to play the competing European interests against each other in negotiations and achieve relatively more favorable terms in concessions to foreign corporations. However, financial dependence restricted what the Ottoman government could feasibly achieve in its dealings with European powers. Ottoman external debt had become so insurmountable that it led to bankruptcy, paving the way for European management of the state's major revenue sources in the 1880s. The Ottoman Public Debt Administration (OPDA), which was mainly controlled by private European creditors, acted as the primary supporter of concessions.<sup>70</sup> Having lost its fiscal and economic discretion, the Ottoman state had little bargaining power.

Similarly, the Ottoman state challenged the normative basis of extraterritoriality as early as the Congress of Paris (1856), which admitted the empire into the Concert of Europe. The Ottoman statesmen used this as the legal basis to make a case for repealing the capitulations.<sup>71</sup> Yet, European powers were reluctant to acquiesce.<sup>72</sup> In 1869, the Ottoman government communicated a memorandum to the foreign powers' diplomatic representatives in Istanbul, "referring to the capitulations as an impediment," while simultaneously passing a citizenship law that made it illegal for Ottomans to seek the citizenship (or protection) of another state.<sup>73</sup> Foreign embassies refused to respect the law and continued to provide protection and citizenship.<sup>74</sup> During Abdulhamid II's reign (1876–1909), the negative perception of the capitulations became stronger.<sup>75</sup> In 1887 the state started requiring a permit from all foreign

<sup>70</sup> Murat Birdal, *The Political Economy of Ottoman Public Debt: Insolvency and European Financial Control in the Late Nineteenth Century* (London, 2010).

<sup>71</sup> Ahmad, "Ottoman Perceptions," 6; Halil İnalcık, "İmtiyazat," in *Encyclopedia of Islam*, 2nd ed., vol. 3 (Leiden, 1971): 1187–88.

<sup>72</sup> Feroz Ahmad claims that the European argument of Turkish-Islamic law's inapplicability to Europeans also reflected "an attitude of racial and moral superiority," which was typical of the age of imperialism. Ahmad, "Ottoman Perceptions," 7.

<sup>73</sup> Ahmad, "Ottoman Perceptions," 7.

<sup>74</sup> While the Foreign Ministry had a subdivision for enforcing this law, it was not successful. Carter Findley, *Bureaucratic Reform in the Ottoman Empire: The Sublime Porte, 1789–1922* (Princeton, 1980), 188, 317–19.

<sup>75</sup> This also reflected the move of Ottoman statesmen away from liberal ideas to protectionism. The capitulations also restricted the government's discretion over tariffs. Ahmad, "Ottoman Perceptions," 9.

corporations before they operated in Ottoman domains. European powers considered this “a violation of the capitulations guaranteeing freedom of commerce.”<sup>76</sup>

Despite the Ottomans’ attempts to balance European intervention by appealing to new players like German investors, the foreign economic stranglehold tightened.<sup>77</sup> European powers successfully defended the interests of foreign monopolies; extraterritorial rights became even more expansive at a time when Ottoman political sovereignty was highly curtailed.<sup>78</sup> As a result, the corporation continued to be primarily a vehicle for foreign investment. Ottoman subjects did not need to make use of it within the boundaries of the Ottoman legal system and voiced little demand for change in the transplanted provisions on companies.

### 1908–1923: The Rise of National Corporations

By 1908, the Ottoman code was well behind contemporary French law, which had introduced significant changes since 1850. Legal asymmetries became more pronounced. Discontent over concessions granted to foreign companies involved in massive projects grew more severe.<sup>79</sup> But there was little room for political action on either issue. The period between 1908 and 1923 was pivotal in reasserting sovereignty and marked major efforts in legal modernization.

The capitulations faced serious critique by Ottoman intellectuals and policymakers. But the government failed to curtail or abrogate the capitulations. The Ottoman political elite’s resentment of privileges resulting from the capitulations was further fueled by rising nationalism and anti-imperialist struggles against European powers.<sup>80</sup> At the beginning of the twentieth century, Ottoman intellectuals, who had come to

<sup>76</sup> Lucius E. Thayer, “The Capitulations of the Ottoman Empire and the Question of Their Abrogation as It Affects the United States,” *American Journal of International Law* 17, no. 2 (1923): 207–33.

<sup>77</sup> Kate Fleet describes the period from 1876 to 1908 as the “golden age of foreign concessions.” Fleet, “Geç Osmanlı Erken Türkiye Cumhuriyeti Döneminde Yabancılar Verilen Ekonomik İmtiyazları,” *Kebikec: İnsan Bilimleri için Kaynak Araştırmaları Dergisi* 39 (2015): 343–62.

<sup>78</sup> Ahmad, “Ottoman Perceptions,” 8.

<sup>79</sup> The parliamentary debates in the early years of the second constitutional period (1908–1914) refer to many instances of abuse and corruption involving foreign corporations with concessions. Türkiye Büyük Millet Meclisi (TBMM) Zabıtı [Minutes of the Grand Assembly of Turkey], Sess. 62, vol. 2 (1910); TBMM Zabıtı, Sess. 39, vol. 2 (1909), 224; TBMM Zabıtı, Sess. 35, vol. 1 (1909), 50. The minutes can be found online at the following URL: [https://www.tbmm.gov.tr/develop/owa/td\\_v2.sorgu\\_ekrani](https://www.tbmm.gov.tr/develop/owa/td_v2.sorgu_ekrani).

<sup>80</sup> Newly independent countries like Bulgaria were not subject to the capitulations and were recognized as equals by Europe. Japan was also successful in acquiring a status equal to the West. These examples encouraged the Ottoman Turks to abolish the capitulations. Ahmad, “Ottoman Perceptions,” 10–11.

see the capitulations as European attempts to impede the empire's economic development, were determined to get rid of what they viewed as a humiliating regime.

The rising anti-foreign sentiment was coupled with an even stronger hostility against non-Muslims, who accounted for much of the economic elite under European legal protection. Non-Muslims' political participation had also increased thanks to constitutional reforms. These developments, however, could not counteract the rise of separatist nationalism among the non-Muslim communities of the Empire. The widening commercial gap between Muslims and non-Muslims, along with the spread of nationalist ideologies, ignited a Muslim backlash, especially after the defeat in the Balkan Wars (1911–1912), in which the empire lost most of its European territories. The Young Turks, who had started as a liberal reform movement claiming to represent all ethnic groups, transformed into ethnic nationalists determined to create a Turkish homeland. The Committee of Union and Progress (CUP), the political organ of the Young Turk movement, monopolized political power in 1913 and pursued an ethnic reconfiguration of Anatolia. The attacks against Armenians and confiscation of their property led to ethnic homogenization in Eastern Anatolia.<sup>81</sup> In western Anatolia, many Greeks, pressured by deportations and forced conscriptions, started fleeing to Greece. The CUP also initiated a “national” economic policy, discriminating against all non-Muslims through harassment, boycotts, and exclusion from employment.

The CUP's economic program also targeted legal extraterritoriality, which it viewed as the primary barrier to economic development. Previously, attempts to bring foreign corporations under the empire's restricted system of incorporation had failed owing to the European ambassadors' objection.<sup>82</sup> Nevertheless, the government obtained the consent of Austria (in 1909), Italy (1912), and France (1914) to amend the capitulations.<sup>83</sup> With the outbreak of World War I, the CUP could finally abolish the capitulations (and did so in October 1914) and exercise unrestricted discretion over economic and fiscal policy. The CUP immediately passed a new law that required foreign corporations to prove they were genuinely foreign by submitting evidence of activities abroad.<sup>84</sup> While foreign companies still enjoyed lower legal costs, the new

<sup>81</sup> For an assessment of the effect of the Young Turk economic policies on the Ottoman Armenian communities, see Uğur Üngör and Mehmet Polatel, *Confiscation and Destruction: The Young Turk Seizure of Armenian Property* (London, 2011).

<sup>82</sup> Zafer Toprak, *Türkiye'de Milli İktisat (1908–1918)* (Istanbul, 1982), 76.

<sup>83</sup> Thayer, “Capitulations,” 214.

<sup>84</sup> “Ecnebi Anonim ve Sermayesi Eshama Münkasım Şirketler ile Ecnebi Sigorta Şirketleri Hakkında Kanun-ı Muvakkat” in *Düstur, Tertib-i sani*, vol. 7 (Istanbul, 1914), 142–48.

regulation helped reduce the gap between foreigners' and Ottomans' access to the corporate form.<sup>85</sup>

Muslim-owned corporations flourished as a result. Table 2 shows that during the war, the share of corporations with Muslim founders increased significantly.<sup>86</sup> Ethnic restructuring must have been partially responsible. The war also created speculative opportunities for political cadres to use corporations for capital accumulation in cooperation with local elites.<sup>87</sup> The Artisans' League (Esnaf Cemiyeti), created with state support, is an example. This association helped finance the three largest "national"—by which the CUP meant Muslim-Turkish—corporations established for wartime food provisioning. The Artisans' League consisted of Muslim tradesmen, most of them previously guild members, and mobilized these members to purchase shares. The association played a crucial role in establishing connections between political authorities and Muslim investors and pooled capital despite the absence of capital markets. Other associations emerged to similarly support Muslim-owned corporations.<sup>88</sup> Purchasing shares in "national" companies was not only an economic act but also "taking part in the national struggle."<sup>89</sup>

Most of these corporations restricted share transfers, through either banning transfers to non-Muslims or assigning significant shares to specific people (*titres nominatifs*).<sup>90</sup> As such, they did not rely on impersonal capital markets to raise equity. Our data on the identity of founders support the importance of political networks in the nascent Muslim-Turkish corporations. Among the 151 Muslim firms established, at least 40 percent had at least one politically affiliated founder. This is a

<sup>85</sup> According to the 1914 statute, the ministry had to respond to the foreigners' application in three months. There was no such time limit on the granting of Ottoman corporate charters.

<sup>86</sup> Semih Gökatalay, "Corporations," 31. The empire's ethnic restructuring also contributed to the lower number of incorporations by non-Muslims. By 1914, 150,000 Greeks had already been expelled from the empire.

<sup>87</sup> When World War I began, France and Britain, the sources of most foreign investment until then, withdrew from the empire; Germany and Austria continued to invest. Geyikdağı, *Foreign Investment*, 526.

<sup>88</sup> The Navy Association (Donanma Cemiyeti) also played an important role in the establishment of "national" corporations. Gökatalay, "Corporations," 46–73.

<sup>89</sup> Neslişah L. Başaran, "The Muslim-Turkish Merchant and Industrial Bourgeoisie in Turkey in the 1920s and Their Relation with the Political Power" (PhD diss., Strasbourg University, 2014), 81.

<sup>90</sup> For instance, Şirket-i Hayriye outright banned non-Muslims from owning shares. Ramazan Balcı and İbrahim Sırma, *Ticaret ve Ziraat Nezareti Memâlik-i Osmaniye'de Osmanlı Anonim Şirketleri* (Istanbul, 2012), 340. Another company, Selanik Cedit İplik Fabrikası SA, required half of the board and all directors to be Ottoman subjects. Ali Akyıldız, *Osmanlı Dönemi Tahvil ve Hisse Senetleri* (Istanbul, 2001), 176. For similar restrictions in other corporate charters, see Akyıldız, *Osmanlı*, 178, 182, 188, 204; Balcı and Sırma, *Ticaret*, 56, 90, 126, 196, 206, 212; and primary sources at Şura-yı Devlet (ŞD) in the Ottoman State Archives (BOA), ŞD 1231/26, 1237/31.

conservative lower bound; political affiliation was likely more common than the data suggest.<sup>91</sup>

Merging political and business activity is not unusual in the history of chartered companies. In Europe, prominent joint-stock companies took on state functions such as collecting taxes, providing protection, and administering the law.<sup>92</sup> In the Ottoman case, corporations of this period also assumed similar administrative roles because they would benefit the “public interest.” For instance, some “national” corporations, with government support and consent, compelled local communities to purchase shares and imposed *corvée*.<sup>93</sup> These practices, however, were never legalized in corporate charters.

But this government support was contingent on political loyalty. After the Independence War, the Turkish republic nationalized many corporations with connections to the anti-republican local elite.<sup>94</sup> Among those that withstood the political turbulence, few survived for more than another couple of years and could do so only with the government’s aid.<sup>95</sup> In other words, political party affiliation was not only beneficial but also vital for businesses in the late Ottoman and early republican periods.<sup>96</sup>

Given the political-economic background, the emerging Muslim business class was rather weak.<sup>97</sup> The associations that could have represented Muslim businesses were young and had little power.<sup>98</sup> Few Muslim/Turkish corporate founders or directors had experience in trade or industry. The ones who had a business background were usually co-opted into politics, assigned managerial positions in state-sponsored enterprises, and embraced a statist view. Furthermore, the

<sup>91</sup> We were not able to determine everybody’s party membership from their titles. Our analysis identifies CUP members, bureaucrats, Pashas, and the military.

<sup>92</sup> P. J. Stern, *The Company-State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (Oxford, 2011), viii.

<sup>93</sup> The most striking example is perhaps the Adapazarı Ahşap ve Demir Malzeme İmalathanesi Osmanlı Anonim Şirketi, which imposed forced labor (*angarya*) on the locals. The company’s founders were also accused of preventing shareholders from lawfully participating in its management. See TBMM Zabıtı, Sess. 183, vol. 44 (1923), 59–61.

<sup>94</sup> Ahmet Atalay, “Meşrutiyet’ten Cumhuriyet’e Konya’da şirketleşme ve milli bankacılık faaliyetleri” (PhD. diss., Selçuk University, 2011), 126–28.

<sup>95</sup> For several examples of such corporations in Konya, see Göktalay, “Corporations.”

<sup>96</sup> The biography of Hacı Bekir is a case in point. He was a member of the CUP and cultivated close relations with the Kemalist cadres. He received a farm estate from Mustafa Kemal as a gift for his services in the Independence War and became one of the founders of the key state enterprise Sümerbank. Yıldız Yaşar, “Milli yerel bir banka örneği: Akşehir Bankası TAŞ” (PhD diss, Selçuk University, 2010). Parliamentary debates show many other cases made by deputies to save several corporations; see TBMM Zabıtı, Sess. 26, vol. 1 (1914), 197.

<sup>97</sup> See parliamentary debates for an example of tensions between local business groups and the central government: TBMM Zabıtı, Sess. 112, vol. 2 (1920), 324–25; and Sess. 89, vol. 1 (1921), 278.

<sup>98</sup> TBMM Zabıtı, Sess. 112, vol. 1 (1920).

nascent Turkish businesses benefited from, and relied on, the state's nationalist program and had no reason to demand legal change that would potentially help level the field, a trend that continued in the republican period. During this transitional period, while the exit option was successfully restricted, no group was strong enough or had strong incentives to demand legal change.

### 1923–1950: The Era of Legal “Revolution”

After the Republic of Turkey was established, radical reforms were introduced in all areas of law. The Minister of Justice, Mahmut Esat (Bozkurt), was a Turkish ethnonationalist trained in Switzerland and wrote his doctoral dissertation on the capitulations. Mahmut Esat shared his Ottoman predecessors' belief that comprehensive legal modernization was needed to effectively counter the Western powers' insistence on retaining the capitulations. Like other contemporary leading political figures, he viewed legal transplantation not as patching the gaps in the law but rather as a vehicle of radical modernization.<sup>99</sup> The old legal system's Islamic elements were perceived as obstacles. Mahmut Esat viewed this “legal revolution” as indispensable in doing away with a “backward” legal system, which consisted of three overlapping religious laws with their separate courts and thus could not be consistent with a “modern understanding of the state and its unity.”<sup>100</sup> This was the very same “backwardness,” he argued, that gave the Europeans an excuse to refuse the capitulations' repeal.

The republican cadres thus took the Ottoman reformers' efforts one step further: complete secularization of the law. Islamic courts were abolished in April 1924.<sup>101</sup> Shortly after, the commissions under Mahmud Esat's supervision prepared proposals for the Turkish civil code, commercial code, and penal code; the civil code was based entirely on the Swiss civil code and code of obligations, the commercial code on German and French codes, and the penal code on Italian law. Upon seeing the proposals, Mustafa Kemal (Atatürk), the founding father

<sup>99</sup> Bozkurt wanted not just reform but “a revolution of law,” consistent with what Mustafa Kemal expressed in 1925: “It is our purpose to create completely new laws and thus to tear up the very foundations of the old legal system.” Gülnihal Bozkurt, “The Reception of Western European Law in Turkey (from the Tanzimat to the Turkish Republic, 1839–1939),” *Der Islam* 75, no. 2 (1998): 283–95; Bernard Lewis, *The Emergence of Modern Turkey*, 3rd ed. (Oxford, 2002), 274.

<sup>100</sup> Davidson Andrew, *Secularism and Revivalism in Turkey: A Hermeneutic Reconsideration* (New Haven, 1998), 171.

<sup>101</sup> The law (“Mehakim-i Şer’iyyenin İlgasına ve Mehakim Teşkilatına Ait Kanun”), which was enacted on April 8, 1924, became effective in May 1924. See TBMM Zabıtı, Sess. 29, vol. 8 (1924), 431.

and the first president of the republic, questioned whether there were enough capable people to put these “translated” laws into practice, despite his ambition to establish a modern nation-state. The minister’s answer reflected his strong belief in the urgency of legal change: “If you were told that better weapons were invented in Europe, would you wait until you had people who knew how to use them or would you get these weapons now and then train people in using them?”<sup>102</sup> This radical outlook diverged significantly from the Ottoman transplantation attempt. The Ottoman Commercial Code was more about generalizing a particularized institution. The Turkish code was top-down with an overt objective of removing the last vestiges of Ottoman legal multiplicity.

The reformers were explicitly keen on adapting the “most advanced” laws, as they viewed legal reform as critical in catching up to Europe. According to Mahmut Esat, the new Turkish commercial code depended primarily on the German code because it “was the most up-to-date and the most comprehensive commercial law in Europe.” The need to adopt a commercial law was urgent, because “the current law failed to meet the needs of commercial courts and dealing with all matters continued to rely on custom.”<sup>103</sup>

Despite their belief in the necessity of radical transplantation and confidence in the superiority of the origin code, the reformers introduced significant alterations. General incorporation was not imported. The law codified the general rules necessary for incorporation, which likely made authorization more predictable.<sup>104</sup> This intermediate step notwithstanding, incorporation continued to require state authorization in Turkey when these restrictions had long faded in the origin countries as well as other transplants, including previous Ottoman territories like Greece.<sup>105</sup> Our examination of parliamentary discussions, using the minutes of the parliament between 1923 and 1926, reveals that legislators did not explicitly clarify the reasons underlying the omission of general

<sup>102</sup> Şevket Memedali Bilgişin, “İnkılâpçı (Mahmut Esat Bozkurt) ve Türk Hukukunda İnkılâp,” *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 1, no. 3 (1944): 317.

<sup>103</sup> TBMM Zabıtı, Sess. 25, vol. 109 (1926), 590–91.

<sup>104</sup> While Britain switched from an authorization system to general incorporation in a single step, other countries went through similar intermediate stages before enacting general incorporation. For example, Prussia legislated standardized rules necessary for securing state authorization to incorporate, first for railroads in 1838, then for all sectors in 1843, before finally passing general incorporation in 1870. Guinnane, “German Company Law,” 180–85.

<sup>105</sup> Like the Ottomans, the new Greek state’s commercial law (1835) was based on the first three books of the Napoleonic Code. But Greek civil law depended on Byzantine Law, whose anachronistic elements caused internal inconsistencies and uncertainty. Akin to the issues we discuss in the Ottoman context, see Pepelasis, “Legal System,” 186–87. Similarly, Greek commercial law hardly changed between 1835 and 1910. Nevertheless, by 1926, incorporation in Greece required approval only by the Minister of National Economy, not a royal/executive decree. Pepelasis, 195–96.

incorporation. Some deputies suggested even harsher restrictions, such as approval from the specific ministries related to the company's business activity. Mahmut Esat opposed this suggestion, stating that the requirement of legislative authorization was indeed an "exception." He explained that in the original draft prepared by the commission, there was no requirement of authorization. It was nevertheless introduced later on grounds that Turkey had "different" conditions (*memleketin vaziyet-i hususiyesi*) and that corporations were "more directly linked to public law" and "more prone to harming public good." Mahmut Esat stressed that "this requirement would be removed in the near future." Therefore, he suggested, more "exceptions" (such as pre-approval of charters by each ministry) should not be required. Regardless, the requirement of legislative authorization remained in place until the late 1950s.<sup>106</sup>

Mahmut Esat's explanations were vague. He did not elaborate on what made corporations more likely to harm the public good and which "peculiar conditions" in Turkey exacerbated this risk. When general incorporation laws spread in the nineteenth century, corporations' impact on the public was also a crucial theme among European legal scholars and politicians.<sup>107</sup> Concerns about the possible abuse of limited liability emerged as a response to financial bubbles and the spread of corporate fraud. Even then, while some states introduced corporate regulations, there was no reversal to the authorization system.<sup>108</sup>

In the Turkish context, the political elite's unwillingness to adopt general incorporation reflected different concerns born out of the political economy context going back to the late Ottoman period. The legacy of European extraterritoriality made authorities suspicious of any corporate activity. In 1918, Mehmet Asım, editor in chief of the newspaper *Vakit* and later a representative in the Turkish parliament, extolled corporations' exceptional benefits to economic prosperity, all the while warning that without strict barriers to incorporation, corporations could create wanton corruption, especially in a country like Turkey where people lacked "economic training" and foreigners could "mingle among these crooked men."<sup>109</sup>

<sup>106</sup> Turkish firms had to acquire the Council of Ministers' approval and there was no indication as to how long this could take. In contrast, the process was clearer for foreigners. Bie Ravndal, the American Consul in Istanbul, described registration of a foreign corporation as taking only about six weeks. G. B. Ravndal, *Turkey: A Commercial and Industrial Handbook* (Washington, DC, 1926), 203–4.

<sup>107</sup> Guinnane et al., "Corporation," 13, 21.

<sup>108</sup> Some deputies in the Turkish parliament viewed the lack of such regulations as the reason for abuses of investors and shareholders in the early Turkish corporations; TBMM Zabıtı, Sess. 79, vol. 15 (1925), 512.

<sup>109</sup> The original text is transcribed in Celali Yılmaz, *Osmanlı Anonim Şirketleri* (Istanbul, 2011), 437–41.

Some of this suspicion about foreign investment was based on what policymakers perceived as “illicit activities” that were exacerbated by consular interference in the past. The concessions granted to foreign companies, deemed detrimental to “national interests,” continued to raise concern.<sup>110</sup> The government took a hard line on economic independence and rejected capital from major European powers.<sup>111</sup> Yet there were probably other motives, embedded within the nationalist program to replace the non-Muslim economic elite with Muslims. Territorial losses in the Balkans and the subsequent Muslim migration from the Balkans to Anatolia during the late nineteenth and early twentieth century, the mass expulsions of Armenians during World War I, and the Greek-Turkish population exchange after the Greco-Turkish War of 1919–1922 led to a permanent change in Anatolia’s ethnoreligious makeup. By 1923, the share of non-Muslims in Anatolia had fallen to only about 2.5 percent of the region’s population.<sup>112</sup> However, Istanbul, still the hub of commercial, industrial, and financial activity, preserved most of its non-Muslim population, which continued to have a large presence in trade and finance.<sup>113</sup>

The non-Muslim dominance in the economic sphere was at odds with the government’s nationalist outlook. The early cadres of the republic made resentful references in parliamentary debates to the “economic ascendancy” of non-Muslims.<sup>114</sup> But non-Muslims lacked a meaningful political or legal voice despite accounting for significant business activity.<sup>115</sup> Within this context, restricting access to the corporate form—the

<sup>110</sup> TBMM Zabıtı, Sess. 26, vol. 1 (1914), 196–97; TBMM Zabıtı, Sess. 165, vol. 1 (1922), 108. For debates concerning potential risks of foreign investment, see TBMM Zabıtı, Sess. 37, vol. 1 (1924), 680–84.

<sup>111</sup> Fleet, “Geç Osmanlı,” 35.

<sup>112</sup> Ayhan Aktar, “Homogenizing the Nation, Turkifying the Economy: Turkish Experience of Populations Exchange Reconsidered,” in *Crossing the Aegean: An Appraisal of the 1923 Compulsory Exchange between Greece and Turkey*, ed. R. Hirschon (Oxford, 2003), 87. On the impact of the Young Turks’ policies on Ottoman Armenians, see Üngör and Polatel, *Confiscation*.

<sup>113</sup> According to the 1935 population census, Christians and Jews made up 24.6 percent of the population in Istanbul. Also, 49.6 percent of Istanbul’s Christian population and 48.5 percent of Jews were involved in industry or trade, whereas only 25.2 percent of Muslims were involved in these sectors. Muslims predominantly (28.2 percent) held occupations in agriculture and administration.

<sup>114</sup> For instance, a Muslim deputy of Konya, Hacı Bekir, argued against requiring businesses to keep account books for tax purposes because it would hurt establishments owned by Muslims, who had significantly lower literacy rates than non-Muslims. See TBMM Zabıtı, Sess. 112, vol. 2 (1920), 318. Other deputies also brought up the issue of significant human capital gaps between the two groups. TBMM Zabıtı Ceridesi, Sess. 127, vol. 1, (1921), 106. The Minister of Trade, Besim (Atalay), argued that Muslim merchants continued to depend on non-Muslim intermediaries despite controlling most of the domestic trade in 1925. TBMM Zabıtı, Sess. 79, vol. 15 (1925), 512–14.

<sup>115</sup> Between 1924 and 1935, there were no non-Muslim deputies in the parliament (and only a handful after 1935). In the republican period, non-Muslims were not considered equal citizens and had no representation in politics or semipublic associations such as chambers of com-

most effective means of raising capital for large-scale ventures—was an important tool for the state to undermine non-Muslims and channel funds to Turkish businesses. During the early years of the republic, many emerging entrepreneurs built their businesses on the displacement and even dispossession of non-Muslim businessmen. In return, to be successful, these businessmen needed to demonstrate their desire and ability to serve the state.<sup>116</sup> The new Turkish enterprises, which benefited from these transfers and the imposition of barriers to entry on others, did not oppose the restrictions of the 1926 code.

The 1926 code also introduced the private limited liability company (*limited şirket*). This enterprise form, with relatively lower capitalization requirements and fewer constraints on governance, made limited liability more accessible for all members in small and medium-sized enterprises.<sup>117</sup> Two issues restricted the use of PLLCs in the Turkish republic, however. First, many provisions, especially on firm governance and share transfers, were completely left out.<sup>118</sup> The reasons are not clear, but in 1933 Mehmed Ali, the undersecretary of trade, wrote a two-hundred-page book on the legal features of limited companies to clarify ambiguous elements in the commercial code and help demonstrate this form's benefits to entrepreneurs.<sup>119</sup> Second, establishing PLLCs required authorization from the Ministry of Trade. While this was easier than the Council of Ministers' approval needed for incorporation, it still made Turkish law significantly more cumbersome than French law, where a simple registration was sufficient for a PLLC, or any company, to exist. In his book promoting the PLLC, Mehmet Ali stressed the easy registration process as one of the advantages of

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merce. Through a decree in 1924, non-Muslims lawyers were disbarred and many were prevented from practicing law.

<sup>116</sup> Ayşe Buğra, *State and Business in Modern Turkey: A Comparative Study* (New York, 1994), 50; Başaran, "Muslim-Turkish Merchant," 100.

<sup>117</sup> Cevat Hakkı Özbey, "Küçük Sermayeli Teşebbüsleri Teşvik, Mahdud Mesuliyetli Limited Şirketleri Tezyit için Kanuni Hükümlerin Tadili Gerekir," *Hukuk Gazetesi* 42–43 (1940): 10–11.

<sup>118</sup> The 1926 code contained fourteen articles on PLLCs; the French law of 1925 on PLLCs had forty-two. Several transplanted articles were also condensed. For example, Article 510 of the Turkish code, which allowed a PLLC to be administered by shareholders as well as salaried or unsalaried managers, was a translation of the first sentence of Article 24 of the French Law of 1925. By leaving out the rest of that article, the Turkish code omitted provisions concerning how these managers could be appointed or removed, how long they could serve, and the scope of their powers (France, *Loi du 7 Mars 1925 tendant à instituer des sociétés à responsabilité limitée*). How founders could actually contract on these issues was not clear until publication of Mehmet Ali's book.

<sup>119</sup> Mehmet Ali states that the law on PLLCs was taken from Germany (the rest from France) but somehow the rules on contractual requirements for PLLCs were "forgotten" ("*her nasılsa unutulmuş*"). He also claims that the lack of provisions on PLLCs was the result of an "absence of mind" ("*zuhul eseridir*"). See Ali, *Limitet Şirketler* (Istanbul, 1933), 68, 79.

PLLCs in France and Germany. Yet he also justified the requirement on two grounds. First, incorporation in Turkey also required government authorization and so the reasons that made authorization for corporations necessary—without explaining what they were—also justified a similar but less demanding process for PLLCs. Free organization of PLLCs was viewed as inconsistent with the spirit of the law when incorporation still required authorization. Second, the legal provisions concerning the PLLC in the Turkish commercial code were incomplete and most rules concerning the company had to be explicitly written in the articles of association. This, according to Mehmet Ali, implied too much freedom that might lead to the creation of companies that would not fit the “limited” form and could harm outside investors.<sup>120</sup>

The problems in the transplantation process and the reluctance to adopt easier registration reveal policymakers’ concerns about the PLLC. It took Turkish legal scholars fourteen years after the introduction of the PLLC to raise serious critiques of the authorization requirement. In 1940 the chief editor of *Hukuk Gazetesi* (The Law Journal), Cevat Hakkı Özbey, published an article that argued for the abolition of authorization for PLLCs.<sup>121</sup> Yet he also stressed his disagreement with scholars who recommended the removal of the statutory audit for PLLCs in addition to repealing the authorization requirement.<sup>122</sup> He considered the official audit requirement as a legal provision in line with the two main principles of the Turkish state: statism (*devletçilik*) and populism (*halkçılık*). Even in the 1940s, the number of private limited liability companies established in Istanbul seems to have been relatively small compared with partnership forms. After its introduction in France in 1925, the PLLC became popular rapidly; by 1929 it accounted for about 60 percent of new multi-owner firms established in Paris.<sup>123</sup> In contrast, despite introduction of the PLLC only a year later in 1926, our data show that in Istanbul PLLCs made up only 7 percent of new multi-owner firms established by 1929 (see Figure 1). The form became only slightly more popular over time. In Istanbul, out of all multi-owner enterprises established between 1926 and 1950, just 13.6 percent were organized as PLLCs.<sup>124</sup>

In the 1930s, legal scholars used the ideological underpinnings of the Turkish state to justify strict control over incorporation and the

<sup>120</sup> Ali, 64.

<sup>121</sup> Özbey, “Küçük Sermayeli Teşebbüsleri Teşvik.”

<sup>122</sup> The Law of 1926 required all PLLCs with more than twenty partners to appoint at least one auditor to audit the company’s financial statements, much like the requirement for corporations (Clause 516).

<sup>123</sup> Guinnane et al., “Corporation,” 710–13.

<sup>124</sup> Even as late as the 1970s, PLLCs and corporations accounted for fewer than 20 percent of firms established in Turkey (IT Manager, The Union of Chambers and Commodity Exchanges of Turkey, personal communication, 6 May 2017).

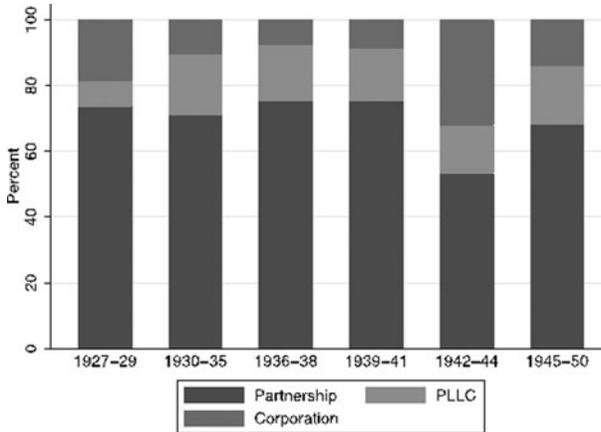


Figure 1. Legal form distribution of new multi-owner firms  
 Source: Seven Ağır and Cihan Artunç, “Database of Firms in Istanbul, 1926–50,” *Ann Arbor, MI: Inter-university Consortium for Political and Social Research* [distributor], 5 Nov. 2018. Note: Each bar represents the enterprise-form distribution of new companies established in each period and in operation in the end year (e.g., the bar for 1926–29 represents multi-owner firms established between 1927 and 1929 that were alive in 1929). The data set is assembled from official directories published by the Istanbul Chamber of Commerce in 1926, 1929, 1935, 1938, 1941, 1944, and 1950. Under the 1926 law, all Turkish firms had to register their enterprises, upon which they received a registry number. The Istanbul Chamber of Commerce kept a directory of these firms and published them periodically. The publications for 1932 and 1947 are either missing or were never published (there is no official list of these publications), to the best of our knowledge. See also Ağır and Artunç, “The Wealth Tax of 1942 and the Disappearance of Non-Muslim Enterprises in Turkey,” *Journal of Economic History* 79, no. 1 (2019): 213–16.

establishment of PLLCs. Ernst Hirsch, a legal scholar specializing in commercial law and responsible for training an entire generation of law students in the Istanbul Faculty of Law in the 1930s and 1940s, defended the authorization requirement by arguing that the unrestricted formation of any legal entity would have been inconsistent with the country’s statist agenda.<sup>125</sup> His student and collaborator Halil Arslanlı, one of the most influential legal scholars in Turkey, supported regulations on all legal persons with the same statist justification.<sup>126</sup> In 1939 a proposal to extend limited liability to single-person PLLCs was also held back because of “national economic considerations.”<sup>127</sup>

<sup>125</sup> Ernst Hirsch, *Ticaret Hukuku Dersleri* (Istanbul, 1938).

<sup>126</sup> Halil Arslanlı, “Türk hukukunda devletçiliğin anonim şirketlerin ehliyeti üzerine tesiri” (PhD diss., Istanbul Üniversitesi, 1938).

<sup>127</sup> Lorenz Fastrich, “Tek Ortaklı Anonim Şirketler ve Alman Hisse Hukukunda Yeni Gelişmeler,” in *Türkiye ve Avrupa Birliği’nde Sermaya Şirketleri Reformu, Seminer* (Istanbul Chamber of Commerce, Istanbul, 7 Jun. 2007), 22.

This statist discourse reflected the new state-led industrialization program that came about as a consequence of global trends and disappointment with the private sector's performance in the 1920s. Early on, the regime viewed the creation of a Muslim-Turkish private sector as the key ingredient of national economic development and industrialization.<sup>128</sup> The government supported "private" enterprises directly by acting as their major shareholder and creditor. Deputies frequently appeared as corporation founders and served on the boards.<sup>129</sup> Existing or newly formed state monopolies were transferred to people or companies close to the government.<sup>130</sup> While these policies contributed to the creation of a Muslim-Turkish private sector, they did not produce the industrialization objective.<sup>131</sup> Indeed, total factor productivity growth in the 1920s remained quite low.<sup>132</sup> Instead, this public-private partnership raised concerns about the extensive use of political clout in favoring certain business groups for personal interests.<sup>133</sup> Some deputies were especially worried about the state's conflict of interest resulting from its dual role as a shareholder and the regulator of corporations with partial state ownership.<sup>134</sup> These debates, however, did not lead to robust statutory laws that oversaw such mixed enterprises. While the authorization system was justified with reference to potential public

<sup>128</sup> Şevket Pamuk, *Uneven Centuries: Economic Development of Turkey since 1820* (Princeton, 2018), 171.

<sup>129</sup> Yahya Sezai Tezel, *Cumhuriyet Döneminin İktisadi Tarihi (1923–1950)* (Istanbul, 1994), 231–36.

<sup>130</sup> Uygur Kocabaşoğlu, *Türkiye İş Bankası Tarihi* (Istanbul, 2001), 1–298.

<sup>131</sup> Many of the prominent Muslim merchant families became prosperous through participating in economic initiatives of the new republic. Başaran, "Muslim-Turkish Merchant," 91–95.

<sup>132</sup> Sumru Altug, Alpay Filiztekin, and Şevket Pamuk, "Sources of Long-Term Economic Growth for Turkey, 1880–2005," *European Review of Economic History* 12, no. 3 (2008): 409. This low growth performance could be a result of the negative effects of the war period, the fact that the "national" entrepreneurs were behind the learning curve, possible resource misallocation created by the political-private alliance, or restrictions on incorporation and establishing PLLCs; such barriers to entry can significantly depress output per capita by reducing total factor productivity. See Altug, Filiztekin, and Pamuk, "Sources"; Ağır and Artunç, "Wealth Tax"; Chang-Tai Hsieh and Peter J. Klenow, "Misallocation and Manufacturing TFP in China and India," *Quarterly Journal of Economics* 124, no. 4 (2009): 1403–48; and Leon Barseghyan, "Entry Costs and Cross-Country Differences in Productivity and Output," *Journal of Economic Growth* 13, no. 2 (2008): 145–67.

<sup>133</sup> Several debates in the parliament concerned how the deputies' involvement in corporate boards and the mismanagement of state-sponsored corporations harmed these companies' shareholders and the government budget. TBMM Zabıtı, Sess. 74, vol. 20 (1930). See also Doğan Avcıoğlu, *Türkiye'nin Düzeni* (Ankara, 1968), 252–65.

<sup>134</sup> For example, Türkiye Milli İthalat ve İhracat Şirketi, with support from the Kemalist government, was established to place Muslim-Turks as intermediaries in foreign commerce. The government also stepped in to save the company when the firm went bankrupt in 1925. The supervision of state corporations became an important topic in the parliament; see TBMM Zabıtı, Sess. 104, vol. 25 (1926), 339–42.

harm that could ensue from general incorporation laws, it ensured that politically well-connected elites would have advantages over others.

With the onset of the Great Depression in 1929, the government came to view the trade protection of manufacturing as an opportunity for rapid industrialization and embraced a policy of state-led import-substituting industrialization.<sup>135</sup> It nationalized foreign railways and coal mines as well as establishing several state-owned enterprises in key sectors as part of the first five-year economic plan of 1934. While most of the state economic enterprises were formed as corporations, they were considered a distinct legal form and regulated under a specific law. The official discourse helped propagate the idea that the private sector had to function in accordance with national interests, justified restrictions on private enterprises, and rationalized expropriation. Despite adopting a more guarded stance against the private sector and taking precautions against corruption, the government continued to favor certain private enterprises directly and indirectly.<sup>136</sup> It also continued to ease the transfer of wealth (and businesses) from non-Muslims to Muslims.<sup>137</sup>

Our examination of the minutes of the parliament between 1920 and 1950 revealed no objections to the restrictions on corporations and PLLCs until the late 1940s. In a debate on the introduction of corporate taxes, Salamon Adato, a Jewish deputy who had been elected from the opposition party in the first multiparty elections in 1946, stated that the law concerning businesses was outdated (“from 140 years ago”), imposed suffocating bureaucratic procedure on corporations and PLLCs, and made it very unlikely to expect businesses to flourish under such conditions.<sup>138</sup> The Minister of Commerce, Cemil Barlas, stated that these regulations were necessary because of the lack of economic development and the inadequacy of auditing institutions (banks had little capacity to audit corporations).<sup>139</sup> He referred to Germany in

<sup>135</sup> Pamuk, *Uneven Centuries*, 176.

<sup>136</sup> Avcıoğlu, *Türkiye'nin Düzeni*, 281; Pamuk, *Uneven Centuries*, 177; Tezel, *Cumhuriyet*, 252. For instance, the state extended credit to firms and empowered certain businesses with the distribution and retail of goods that the state-owned enterprises produced (Tezel, 298–99). Relations between the state and these Turkish businesses were not antagonistic but in fact complementary; see Bilsay Kuruç, *Belgelerle Türk İktisat Politikası II. Cilt (1933–1935)* (Ankara, 1993), 225; and Korkut Boratav, *Türkiye İktisat Tarihi (1908–1985)* (Istanbul, 1988), 57.

<sup>137</sup> It was within this context that the government imposed an extraordinary tax called the Wealth Tax (*Varlık Vergisi*), justified by the exigencies of the war economy in 1942. The tax was arbitrarily assessed and fell disproportionately on non-Muslim minorities. It led to the liquidation of non-Muslim-owned firms, which were older and more productive; reduced the formation of new businesses with non-Muslim owners; and replaced them with frailer Muslim-owned startups. Ağır and Artunç, “Wealth Tax.”

<sup>138</sup> TBMM Zabıtı, Sess. 73, vol. 18 (1949), 500–16.

<sup>139</sup> TBMM Zabıtı, Sess. 73, vol. 18 (1949), 510.

the 1890s, noting that general incorporation during this early period of its economic development had led to the abuse of small investors. This example, however, misrepresented the historical experience. While new and restrictive rules concerning corporations had been introduced following the deflation of the bubble, Germany did not go back to the authorization system. Furthermore, the German PLLC, which was well suited to small and medium-sized enterprises, became widely popular after its introduction in 1892. Cemil Alevli, an established businessperson and a deputy from the ruling party, supported Adato and also cited an example from German history. He stated that family businesses such as Bayer had become successful because they could incorporate and avoid untimely dissolution.

This discussion in the parliament marked the onset of demands for legal change that would eventually lead to the general incorporation law in 1957. Furthermore, 1950, the year of the second multiparty elections and establishment of the Democrat Party government, marks the transition from statism to a greater private-sector initiative.<sup>140</sup> During this period, nascent private enterprises became stronger and family business groups, which would later become key actors in Turkey, emerged.<sup>141</sup> It was probably the slow and gradual buildup of Turkish businesses during the late 1940s and 1950s, along with a transition to a multiparty regime in which private businesses had a stronger voice, that led to the emergence of demands for legal change.

## Conclusion

Ottoman and Turkish reformers transplanted foreign commercial law for a variety of reasons. One was to enable novel forms of business organization such as the corporation or the PLLC, to foster economic development. Yet the legal reforms were not entirely successful. Over time, the transplanted commercial law diverged significantly from the original laws in terms of access to forms with corporate personhood and limited liability. More importantly, the restrictive aspects of the law barely changed for a century (1850–1957), although there were fundamental transformations in the political regime that justified radical legal reforms as a means of economic and political modernization. This long period of legal stagnation in certain aspects of commercial and company law cannot be explained solely by the perceived incompatibility of legal cultures, the lack of legal experience, or the bureaucratic

<sup>140</sup> Sibel Yamak, "Changing Institutional Environment and Business Elites in Turkey," *Society and Business Review* 1, no. 3 (2006): 206–19.

<sup>141</sup> Buğra, *State and Business*, 56; Gencay Şaylan, *Türkiye'de Kapitalizm, Bürokrasi, ve Siyasal İdeoloji* (Istanbul, 1974).

learning gap. The stagnation of Ottoman and Turkish business law was the result of the political-economic environment that shaped the willingness and ability of both domestic and foreign business actors to use law and demand legal change.

In the Ottoman context, legal reforms were initiated by Ottoman statesmen under no direct colonial rule. Both the choice of transplanted law and the nature of transplantation—that is, selection of transplanted rules and resistance to changing those rules later—were determined by domestic actors. Given the multiethnic structure of the empire, the increasing involvement of Western powers in domestic reforms concerning administrative and legal institutions led to the extension of the extraterritorial rights to non-Muslims. By providing an exit option for the empire's non-Muslim population, who were predominant in industrial, commercial, and financial sectors, extraterritoriality undermined the potential demand for legal change. The Muslim business class, on the other hand, was relatively weak and came to depend on state support and patronage. There were no social actors strong or influential enough to pressure for legal reform, nor was there any interest in pushing for legal change that would enable relatively easy access to novel forms of business organization.

During the transition to the republican period, the option to exercise extraterritoriality was repealed completely. Non-Muslim business elites who were more likely to demand legal change, however, had already become a minority in the population and been stripped of their political voice. The state pursued a policy of supporting Muslim businesses while actively undermining older and more experienced non-Muslim ones. The emerging “Turkish” corporations utilized capital-pooling mechanisms that depended mostly on traditional political and social networks that involved heavy support of the ruling party and the state-sponsored banks. Muslim entrepreneurs with sufficient means benefited from political support, as long as they also agreed with the priorities of the regime. Yet, given the preferential treatment they received from the government, they neither had the incentive to demand further reductions in barriers to entry nor were interested in legal innovations or governance structures improving investor rights.

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