The Logic of the Ottoman Capitulations

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Islam and Economic Underdevelopment
Legal Roots of Organizational Stagnation in the Middle East

Timur Kuran

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The Logic of the Capitulations

In 1665, Mehmet bin Mahmut, a Baghdad merchant, sued Heneage Finch, the English ambassador to the Ottoman Empire, in an Istanbul court. A group of English merchants, complained Mehmet, were refusing to repay a debt. The record is silent on why the ambassador was sued, rather than the merchants accused of default.[1] When the trial began, the ambassador showed the judge the text of an Ottoman-English treaty, which stipulates that in cases involving even one trader operating under the English flag, neither claims nor witnesses may be heard in the absence of documentary support (*hüccet*). Reminded of this agreement, the judge asked Mehmet to prove his claim through written evidence. Mehmet replied that he lacked documentation, prompting the judge to throw out the case.[2]

Three decades later, in 1696, a Jewish merchant named Ishak veled-i Abraham took the Englishman "Aved" (possibly Avery) to an Islamic court in Hasköy, at the time a largely Jewish neighborhood of Istanbul. Ishak wanted Aved to settle a debt of another Englishman, the merchant "Leng" (probably Lincoln). Aved, claimed Ishak, had agreed to serve as surety to Leng. When the kadi opened the trial, Aved referred to a decree by Sultan Mehmet IV (r. 1648-87) and the supportive opinions (*fetva*s) of two of his chief religious officers (ş*eyhülislam*s). According to the decree, said Aved, a surety claim involving a foreign merchant must be certified through a legally valid document. Ishak had no documentation whatsoever, so the kadi instructed him to drop his case.[3]

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[1] Finch had probably agreed to serve as surety for the debt. Under his tenure (1660-69) English representatives obtained the right to provide surety for the liabilities of English subjects [Kütükoğlu, *Osmanl*ı-İ*ngiliz* İ*ktisâdî Münâsebetleri*, p. 32].

[2] Istanbul court records, vol. 15, case 69/2 (9 May 1665).

[3] Istanbul court records, vol. 23, case 7/3 (29 December 1696).

Had the alleged defaulters been Ottoman subjects, neither Ishak nor Mehmed would have been required to furnish documentary support for a debt or surety contract. Under the prevailing interpretation of Islamic contract law, oral agreement was sufficient to validate the terms of a loan or suretyship. By contrast, in the courts of seventeenth-century Europe the trend was toward rejecting oral financial claims, unless backed by documentation. In England, a statute imposed in 1677, the "Statute of Frauds," made the leading categories of unwritten contracts unenforceable, following centuries of controversy over the relative merits of oral and written evidence.[4] Evidently business was becoming less personal, and the judicial system was making the requisite procedural adjustments. Our two cases from Istanbul thus show that Ottoman sultans of the late seventeenth century allowed trials involving English traders to take place according to ground rules selected partly to accommodate the ongoing transformation in English legal procedures. In response to foreign demands, they were beginning to recognize that "impersonal exchange," the hallmark of modern economic relations, requires a different institutional framework than "personal exchange."[5]

The stipulation that doomed the cases of Mehmet and Ishak belonged to bilateral treaties known as capitulations. Crafted by Muslim and Christian European rulers, the capitulations provided extraterritorial privileges to foreign merchants conducting business in lands under Islamic law. The term appears to connote "surrender," an outcome that the capitulations arguably produced over time. In fact, it derives from the Latin "*capitula*," which refers to the chapters that comprised the text of a treaty. The earliest commercial treaties were not perceived as inimical to Muslim sovereignty, and they date from a time of Arab and Turkish territorial expansion.

A large literature, focused primarily on the Ottoman Empire, highlights the political and economic motives underlying the granting of capitulations, and especially the long-run harm to the

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[4] Klerman, "Jurisdictional Competition," pp. 8-9, 12-13. By that time it had become customary for debtors to get a written receipt when a loan was repaid, to protect themselves against fraudulent allegations of default.

[5] The movement from personal to impersonal exchange is a critical ingredient of economic growth and modernization. See North, *Process of Economic Change*, pp. 84-85, 119; and Greif, *Institutions*, chap. 10.

Middle Eastern economy and Muslim merchants. This literature has serious limitations. First of all, some of the alleged motives imply that the grantors of capitulations were economically clueless, which conflicts with the shrewdness they displayed in other contexts. Second, this literature fails to illuminate the substance of foreign privileges. It leaves unexplained, for example, why documentary evidence was so important to Westerners, or why Ottomans agreed to grant foreign merchants protections denied to their own merchants. Finally, it is not self-evident that the harm to the Middle East outweighed the benefits. Although one can identify classes of losers across several centuries, the capitulations also brought lasting general benefits that have been overlooked.

A full understanding of the capitulations requires consideration of how they facilitated mutually beneficial commercial and financial contracts within an *evolving* global marketplace. The parties to a capitulary treaty had a mutual interest in minimizing the transaction costs of their exchanges. Westerners were in the process of discovering and refining institutions aimed at enhancing contract credibility, reducing arbitrary taxation, and aligning individual effort with individual rewards. Hence, the general objective of minimizing transaction costs called for allowing visiting Western merchants to operate under legal systems transplanted from their homelands. Local rulers would be among the beneficiaries, in that their customs revenues would grow and gain predictability. Indeed, the capitulations enabled the transplant of various institutional innovations to the Middle East. In enhancing the efficiency of foreign commercial ventures in the region, these innovations also benefitted local buyers and sellers. The capitulations stand out, then, as preliminary steps toward judicial and economic transformations that eventually, beginning in the nineteenth century, received formal endorsements through official reforms, first in Turkey and Egypt, then elsewhere in the region.

To observe that the capitulations ultimately benefitted the Ottoman Empire, or the wider Middle East, is not to deny that they turned into instruments of discrimination against the local

population, at least against the majority left without foreign legal protection. Just as a state that provides public goods may serve also to sustain social inequality, so the capitulations set the stage for *de facto*, if not also *de jure*, control of the region's economies by outsiders. Specifically, in extending the geographic domain of efficient institutions they also turned into instruments of pro-foreign protectionism. These claims may seem contradictory. However, once the commercial functions of the capitulations are understood, they will appear as two manifestations of a single process of institutional substitution, diffusion, and transformation.

Origins

Contrary to a common supposition, the practice of granting foreigners extraterritorial privileges did not originate with Islam. From 1082 onward Byzantium provided Venetian merchants preferential treatment in trade, freeing them from tariffs paid by natives.[6] The Byzantines allowed Venetians also to maintain courts of their own. Over time concessions of one sort or another were made to other nations and, predictably, foreigners came to play a key role in Byzantine commerce.[7] Around the same time various French and Italian cities exempted each other's merchants from customary commercial tolls. To one degree or another, they also allowed foreign merchants to base their internal affairs on laws of their own.[8]

As far as is known, Arab rulers of the first three Islamic centuries did not grant extraterritorial privileges to foreign merchants. After their successors made it a practice of giving foreign traders special rights, for a while non-Muslim foreigners were taxed more heavily than local subjects, as required by Islamic law. On passing a customs station in either direction, a non-Muslim foreigner typically paid 10 percent of the value of his merchandise. By contrast, a Christian or Jewish subject

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[6] Nicol, *Byzantium and Venice*, especially pp. 59-64, 248-49; Lane, *Venice*, pp. 68-69.

[7] Mango, *Byzantium*, pp. 83-87; Depping, *Histoire du Commerce*, vol. 2, chaps. 8-9.

[8] See Borel, *Origine et Fonctions des Consuls*, pp. 4-5, 13-14, 94-97; Puente, *Foreign Consulate*, especially pp. 11-13, 18-20; Verlinden, "Markets and Fairs," pp. 128-29.

paid 5 percent and a Muslim, irrespective of political status, only 2.5 percent. The nature of this discrimination speaks volumes. Evidently the ruling class of early Islam intended to favor Muslim traders, in whose activities they invested; and non-Muslims professing allegiance and paying tribute to a ruler outside the realm of Islam held "least favored" status.[9] The rate structure also suggests that Arab rulers, who derived revenue from trade, did not expect to lose from favoring Muslim traders over foreigners. Were Islamic commercial institutions somehow inadequate, this protectionism would have imposed observable costs on them. In particular, it might have blocked taxable potential exchanges, ultimately lowering total tariffs.

Later Muslim rulers adopted the Byzantine practice of granting foreign communities rights, privileges, and exemptions through treaties (Arab. *imtiyāzāt*, meaning privileges; Turk. *ahdname*s, meaning covenant letters). In the twelfth and thirteenth centuries the Fatimid and Ayyubid rulers of Arab lands, like the Seljuks of Turkey, were giving Venetian, Genoese, and Pisan merchants rights to trade at customs rates as low as 2 percent, along with judicial privileges to settle disputes with other foreign Christians in courts of their own.[10] At least one subsequent trade treaty, negotiated in 1337 between the emir of Aydın and the duke of Venetian Crete, exempted Venetians from all import duties on most commodities.[11] Significantly, these forerunners of the now-notorious capitulations include treaties that granted privileges also to Muslims, or secured reciprocal entitlements. In the thirteenth century, Arab merchants in Corsica and Sicily could face trial in kadi courts, according to their own laws. And for several centuries preceding the downfall of the Byzantine Empire in 1453, visiting Turkish and Arab traders lived in enclaves known in Italian as *fondaco*s and in Arabic as *funduq*s. Although information pertaining to daily life in these enclaves

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[9] Goitein, "Rise of Near-Eastern Bourgeoisie," p. 596.

[10] Fleet, *European and Islamic Trade*, especially pp. 71, 76, 94; Martin, "Venetian-Seljuk Treaty," pp. 326-30; Depping, *Histoire du Commerce*, vol. 2, chap. 9; Constable, *Housing the Stranger*, chap. 4, especially pp. 113-26; Sousa, *Capitulary Régime of Turkey*, pp. 47-48; Liebesny, "Western Judicial Privileges," pp. 312-15.

[11] Zachariadou, *Trade and Crusade*, pp. 155-56 and doc. 1337A, clause 13, p. 191-92.

is scant, their residents almost certainly could settle commercial disputes internally.[12]

The early capitulations are aimed essentially at reducing tariff discrimination against foreign traders and allowing them to settle internal disputes through legal procedures of their own choice. In stimulating competition, the first provision enhanced economic efficiency. As for the second, it is equivalent to allowing one's own subjects to settle disputes through arbitration, without involvement of formal courts. Arbitration requires the consent of all parties, so at initiation it is efficient: each party must expect to do at least as well as in a formal court. A ruler who allows foreign traders legal autonomy can expect to benefit from the consequent reduction in transaction costs. For one thing, insofar as adjudication is left to individuals familiar with the histories, practices, and expectations of the litigants, the quality of settlements will rise, and their costs will fall. For another, communal enforcement mechanisms can be brought into play, providing a deterrent to dishonesty and opportunism without relatively expensive regulation through functionaries lacking local knowledge.[13] On each count, traders earn more, stimulating trade and increasing potential tariff revenue.

Initially, the capitulations had nothing to say on documentation, inheritance practices, or collective punishment. However, these themes figure prominently in commercial privileges that Mamluk sultans of the fifteenth century granted to Venice and Florence, and in capitulations that Ottomans granted to a growing set of European nations over a period spanning a half-millennium, down to World War I. Reviewing the Mamluk and Ottoman trade treaties will expose new dimensions of the institutional divergence that took place across the Mediterranean. It will also bring out additional challenges to policy makers.

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[12] Reinert, "Muslim Presence in Constantinople," especially pp. 144-48; Sousa, *Capitulary Régime of Turkey*, pp. 46, 156-57; Le Tourneau, "Funduk"; Constable, *Housing the Stranger*, pp. 147-50.

[13] On the operation of informal contract enforcement mechanisms, see Greif, *Institutions*, especially chaps. 3, 4, 9; and Platteau, *Institutions, Social Norms*, chap. 6.

The Era of Mounting Foreign Privileges

The Ottoman capitulations showered with attention are those that Süleyman the Magnificent gave in 1535 to France.[14] These spawned broader privileges that allowed traders operating under the French flag, not all of them French, to displace Venetians as the dominant "nation" in Mediterranean commerce.[15] It thus became clearer than ever before that trade privileges were critical to success in this trading zone. 1535 appears as a milestone also because it put the Ottoman Empire on a slippery slope entailing increasingly generous privileges to more and more nations. In 1580 the English secured essentially the same trading rights as the French. Other powers, beginning with Holland and, in a period of rapprochement, Venice, then obtained comparable privileges of their own.[16] In principle, no privilege extended beyond the reign of the grantor. It became routine, however, for rulers to reinstate capitulations given by their predecessors.

In the course of this development, the Ottoman Empire began a long process of territorial contraction. New capitulations were issued and old ones renewed from positions of diminishing military strength, sometimes following a defeat. It became increasingly unrealistic, therefore, to continue viewing them as unilaterally revocable. By the early nineteenth century, they had metamorphosed into an instrument for providing foreign nationals and their local protégés a panoply of privileges denied to most Ottoman subjects. They were also giving Western powers a say over key economic policies. Eventually the capitulations forced the Ottoman Empire to abolish various domestic monopolies. With the Anglo-Ottoman Commercial Convention of 1838, the Ottoman state also agreed to enforce substantially higher duties on exports than on imports, thus compounding the already crushing disadvantages of domestic producers intent on competing globally.[17]

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[14] For the Turkish text, see Kurdakul, *Ticaret Antlaşmaları ve Kapitülasyonlar* [hereafter *TAK*], pp. 41-48; and for an English translation, Hurewitz, *Middle East and North Africa* [hereafter *MENA*], doc. 1.

[15] Masson, *Commerce Français dans le Levant au XVII^e Siècle*, especially pp. xv-xvj.

[16] *TAK*, pp. 99-403; *MENA*, especially docs. 2-7, 9, 10, 14.

[17] For the text of the convention, see Great Britain, *Parliamentary Papers*, 50 (1839), pp. 291-95.

The historical significance of 1535 should not be exaggerated. The broader Middle East had already traveled further in important respects. Key economic provisions of the initial capitulations to France are found also in commercial privileges granted in 1442 and 1497 by Mamluk Egypt to Venice and Florence, respectively.[18] In fact, the Mamluks provided privileges that the Ottomans withheld from foreigners until the seventeenth century, possibly because their rule in Egypt was faltering, and they negotiated from a position of weakness.[19] By contrast, in 1535 the Ottomans appeared militarily invincible, which is why Süleyman considered the capitulations a unilateral and revokable grant.[20] This perception endured at least another century, as successive Ottoman sultans continued to treat the capitulations as acts of grace deniable to enemies.[21]

Of the 16 articles that comprise the initial French capitulations, five impose reciprocal obligations on France and the Ottoman Empire; these concern freedom of mobility, security, cooperation against piracy, and state protocol. Each of these has precedents in capitulations of earlier centuries, including ones granted by the Byzantines. Two other articles, though explicitly reciprocal, address special concerns of one side or the other: the return of runaway slaves (of greater importance to Ottomans) and consular authority over handling shipwrecks in waters of the other side (of significance only for France, the party that deployed consuls). As for the remaining nine articles, they provide French privileges without reciprocity. French merchants were entitled to consular representation, trials in French courts, wills enforceable by French authorities, and immunity from

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[18] For the texts, see Wansbrough, "Venice and Florence" [hereafter *VF*], pp. 509-23.

[19] Ashtor, *Levant Trade*, chap. 2. Egypt would continue to weaken economically and militarily, then fall to the Ottomans in 1517.

[20] Over the previous two decades, Ottoman armies had conquered Syria, Palestine, and Egypt in the south, and parts of Serbia and Hungary in the north, reaching the gates of Vienna.

[21] Lewis, *Political Language of Islam*, p. 84; Pakalın, *Osmanlı Tarih Deyimleri*, vol. 2, pp. 171-72. This perception of unilateralism had been validated by resistance to foreign demands for commercial privileges. In 1368, for instance, the Venetians asked Murat I for land to establish a commercial colony similar to the Genoese colony in Byzantium, but the request was turned down [Thiriet, *Déliberations du Senat de Venise*, vol. 1, p. 118, no. 461].

collective punishment for the offenses of individual Frenchmen.[22]

By the seventeenth century, the Ottomans were granting capitulations focused even more strikingly on the needs of foreigners. The English capitulations of 1675 consist of 55 articles appended to those of earlier Ottoman-English agreements. Every one addresses the concerns of English merchants. True, it was customary to include at least one article imposing reciprocal obligations, to match those assumed by the Ottomans.[23] However, as the economic institutions of the two sides diverged, these reciprocity clauses became increasingly symbolic.[24]

The fiscal provisions of the capitulations, including customs duties, underwent their own evolution. Both the French capitulations of 1673 and the English capitulations granted two years later stipulate a 3 percent ad valorem duty on merchandise exported or imported by their merchants, slightly more than the 2.5 percent due from Muslims.[25] And from the end of the seventeenth century to the abolition of the capitulations in 1914, all capitulary powers enjoyed essentially "most favored nation" status in regard to tariffs.

Definitely critical were provisions concerning the predictability of taxation. As we shall see, foreigners gained a progressively broader set of exemptions from other charges that Ottoman

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[22] *TAK*, pp. 41-48. The articles comprising the last category are 3-9, 12, and 16. The Mamluk concessions of the previous century harbor an even more extreme asymmetry. The Mamluk-Florentine treaty consists of 35 articles, all addressing concerns of Florentine merchants, without any mention of reciprocity. Nine of these address the predictability of customs duties and other fees. Seven aim to improve the enforcement of contracts with Mamluk subjects, and sometimes more specifically with Muslims. One article requires the notarization of contracts between Florentine and Muslim merchants. Finally, two articles enable Florentine merchants to keep Muslims from suing them in regular Islamic courts, by having Muslim-Florentine disputes resolved through special tribunals [*VF*, art. 1, 7-8, 14, 17, 22, 26-28 (duties), 3-4, 6, 18, 33 (contracts), 5, 32 (courts), 2 (notarization).]

[23] For example, the Austrian capitulations of 1718, art. 6 [Liebesny, "Judicial Privileges," pp. 322-23] and the Spanish capitulations of 1773, art. 7 [*TAK*, p. 162].

[24] The capitulations of the eighteenth century gave Ottoman representatives in Western Europe authority over judicial matters involving their own subjects. But the Ottomans had not yet started to appoint permanent representatives, let alone ones with judicial expertise. In any case, it is doubtful that the Ottomans could have operated Islamic courts in London or Paris, for other capitular provisions allowed Ottoman representatives to exercise only those rights accorded to the diplomatic corps in general. By this time, these excluded extraterritorial jurisdiction. See Liebesny, "Judicial Privileges," pp. 322-24.

[25] On 1773, *TAK*, p. 82. On 1675, *MENA*, doc. 14, art. 30-32, 54-75; *TAK*, pp. 112-20. The latter capitulations set a per unit duty for certain commodities, probably because of frequent disputes over the determination of value.

subjects continued to endure. If the Ottomans traveled down a "slippery slope," it is these other fiscal privileges, not the tariff concessions, that made a difference. This slippery slope is evident also, however, in the expansion of the judicial privileges provided to foreigners, and in the ensuing abuses. The early French and English capitulations had stipulated that cases between subjects and foreigners would be heard in an Islamic court, albeit under special rules.[26] Over time, Western traders gained immunity to Islamic prosecution, as the jurisdiction of Western, and after the mid-nineteenth century also local secular, courts expanded at the expense of traditional Islamic courts.

This jurisdictional transformation had a massive impact on incentives to engage in cross-communal interactions. In the sixteenth century, we saw in chap. _, foreigners and indigenous non-Muslims exercised caution in dealing with Muslims, to avoid entanglement in lawsuits against Muslims, which were always adjudicated in an Islamic court. Driven by real or imagined handicaps endured in kadi trials, non-Muslims of all nationalities strove to minimize contacts with Muslims.[27] For the same reason, European consuls picked their dragomans almost exclusively from among the region's religious minorities. In the long run, this hiring discrimination harmed Muslims who, absent the mistrust in question, would have received jobs involving direct contacts with the West. As the judicial rights of foreigners expanded, the tables turned. Now, at least in the leading commercial centers, it was Muslims who had reason to avoid cross-communal ventures. "No wise Egyptian will ever enter into a partnership with a foreigner, or accept his surety," wrote *The Times* of London in 1870.[28] For their part, foreign merchants and their protégés had progressively less need to avoid interactions with Muslims, because their consuls could keep them out of Islamic court and, in the event a kadi found them guilty, appeal directly to high government officials. Alas, Muslims were

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[26] MENA, doc. 1, art. 3-5, and doc. 4, art. 7.

[27] This is a common theme in economic histories of the region. For a sampling of the pertinent evidence, see Frangakis-Syrett, *Commerce of Smyrna*, pp. 91-92; Masters, *Origins of Western Economic Dominance*, especially pp. 65-68, 78-79; Faroqhi, "Venetian Presence in the Ottoman Empire," p. 335.

[28] *The Times*, 12 February 1870, p. 4.

falling behind economically and ceding political control, so foreigners, like their protégés, had progressively less interest in engaging in joint business ventures with them.

To the end, the kadi courts retained jurisdiction over cases involving Muslims, at least in principle. In practice, foreigners were increasingly able to defy the Islamic courts with impunity, often with the connivance of local governments. Western ambassadors, consuls, and other officials could reach effectively unchallengeable decisions, implying that Muslims could no longer count on the protection of Islamic courts. The consequent Muslim handicaps became increasingly serious, of course, with the expansion of Western participation in the Middle Eastern economy. No longer could the handicaps be dismissed on the ground that economic relations with India and the Far East were relatively more significant. In these other emporia, too, the British, the Dutch, and other Western powers were extending their commercial interests. In time, therefore, the costs of exclusion from deals with Westerners grew ever larger.

Limits of Received Explanations

No satisfactory explanation exists either for the granting of the Middle Eastern capitulations or for their metamorphosis into binding one-sided privileges inimical to political sovereignty and, ultimately, the economic interests of the religious majority. The factors invoked, alone or in combination, include two political and three economic objectives.

The most common explanation is that the capitulations served as instruments to split Western Europe, fount of the dreadfully destructive Crusades, by forming alliances with friendly Christians. In this view, the Ottoman capitulations of the sixteenth and seventeenth centuries were shrewd acts to weaken Christendom politically and militarily. The initial capitulations to the French were expanded in 1569, just as the Ottomans were preparing to conquer Cyprus, then held by Venice, a commercial rival of France. Likewise, the English capitulations were meant to assist a rival of three

Turkish enemies—Spain, the Habsburgs, and the Pope.[29] There is indeed evidence that Ottoman rulers, like their Mamluk and Safavid counterparts, used trade policy to build and strengthen alliances.[30] In and of itself, however, this observation elucidates neither the substance of the capitulations nor their trajectory over time. Geopolitical objectives do not explain why a documentation requirement was imposed for cases involving foreigners, or why foreign extraterritorial legal rights expanded over time.[31]

The other frequently invoked political factor is the desire to limit the power of domestic merchants, lest they sow instability. According to Mehmet Genç, who considers the Ottoman dynasty's pursuit of self-survival critical to understanding the capitulations, the Ottomans, like other pre-modern Muslim rulers, restricted private capital accumulation. Accordingly, they confiscated the estates of high officials and capped commercial profits through price controls. From this perspective, welcoming foreign merchants was less a response to military threats than a handmaiden of domestic power politics.[32] This second political explanation admits the same objection as the first. To discriminate against domestic merchants it is not necessary to grant foreigners mounting judicial rights. In any case, it is unclear why local merchants stood by as foreign merchants accumulated privileges. What explains their political impotence? One factor, already developed, is the stagnation of the contractual forms domestic traders used in pursuing business. Their political power was limited, because the available legal system inhibited the pooling of resources within large and long-

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[29] For several variants of the geopolitical explanation, see İnalcık, "Ottoman Economic Mind," pp. 214-15; İnalcık, "Ottoman State," especially pp. 189, 366-67, 373; Shaw, *History of the Ottoman Empire*, vol. 1, pp. 97-98; De Groot, "Organization of Western European Trade," especially pp. 232, 236; Karpat, "Ottoman Views," pp. 138-39. A complementary explanation invokes the geopolitical motivations of beneficiaries. For example, Horniker, "William Harborne," especially pp. 299, 304-6, stresses that England gave priority to securing Ottoman capitulations as its relations with Spain worsened.

[30] Brummett, *Ottoman Seapower*, offers much evidence from the fifteenth and sixteenth centuries.

[31] Alliance building does explain why the Mamluks provided broader privileges than the Ottomans did a century later. As mentioned earlier, the former negotiated from a weaker position, which would have made them more accommodating.

[32] Genç, *Devlet ve Ekonomi*, especially pp. 84-85. See also Gilbar, "Muslim Big Merchant-Entrepreneurs," p. 16.

lasting enterprises. If this is granted, the growing handicaps of domestic merchants appear as an independent cause of the capitulations, as opposed to a consequence. A ruler might have granted capitulations because his own subjects were becoming commercially uncompetitive, rather than to weaken them politically.

The most common economic explanation is that revenue could be raised more easily from foreign merchants than from domestic ones. Under Islamic law foreigners pay higher duties in comparison to subjects, so foreign traders were welcomed, it is said, in order to stimulate customs receipts. Further, the cultural particularities of foreign merchants and their concentration in major ports made them particularly visible and, hence, relatively easy targets for tax collectors.[33] But if fiscal needs were the driving force, why did the state not raise the rates of domestic merchants, who used the same ports? All domestic merchants, irrespective of religion, paid various taxes without a basis in Islamic law; and there were abundant precedents for rate adjustments as well as new forms of taxation.[34]

Another economic explanation invokes a geocommercial objective: maintaining the viability of the Middle East as a transit stop. Mamluk Egypt and the Ottoman Empire are said to have granted commercial privileges to maintain the attractiveness of Mediterranean trade routes between Europe and the East after the circumnavigation of Africa.[35] Rival trade routes doubtless influenced the strategic thinking of Middle Eastern rulers. But they cannot have been central to the capitulations, for trade privileges were being provided well before 1498, the year Vasco Da Gama reached the

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[33] Fleet, *European and Islamic Trade*, especially p. 94; İnalcık, "Ottoman State," pp. 189-90.

[34] On early Islam, Abu-Yusuf, *Kitāb al-Kharāj*, especially pp. 100-01; Løkkegaard, *Islamic Taxation*; Björkman, "Maks,"; Kuran, "Islamic Redistribution," pp. 276-80. On the Ottoman Empire, Coşgel and Miceli, "Risk, Transaction Costs"; Çağatay, "Vergi ve Resimler"; Darling, *Revenue-Raising*, especially pp. 26-27, 87-89. The fiscal explanation for the capitulations admits another objection, too. Insofar as the goal was revenue generation, concessions to foreign traders could have been self-defeating. In lowering the incomes of domestic traders, over the long run they might have depressed state revenues.

[35] Genç, *Devlet ve Ekonomi*, pp.199-200; De Groot, "Organization of Western European Trade," p. 237; Bulut, "Commercial Integration between the Levant and the Atlantic," especially pp. 213-16; Özbaran, "Osmanlı İmparatorluğu ve Hindistan Yolu," especially pts. 1, 7.

Indian Ocean. More critically, the objective of supporting old trade routes did not require special treatment of foreigners. Transit trade could have been stimulated through incentives available to all merchants, irrespective of faith or nationality.

Finally, there is a provisionist explanation centered on goods reaching the Middle East from the West. Merchants from Christian Europe were particularly welcome, it has been argued, because they supplied strategic goods such as tin, silver, and gunpowder.[36] Yet again, the underlying logic is problematic. There is no necessary connection between stimulating trade and singling out foreigners for special treatment. The desired inflow of European commodities could have been induced through non-discriminatory subsidies to all merchants, including locals, Muslim and non-Muslim alike.

The existing literature thus attributes the capitulations to five distinct motives: coalition formation, limiting the political capabilities of potential domestic rivals, revenue generation, protection of trade routes, and securing strategic goods. Even collectively, they leave much unexplained. In particular, they yield few insights into the institutions that the capitulations allowed foreigners to transplant to commercial centers of the Middle East.

Institutional Substitution

During the centuries when the capitulations gained importance and became increasingly one-sided, the major trading nations of the West were improving their commercial capabilities. As previous chapters showed, they were devising means to pool increasing amounts of capital for progressively larger and effectively permanent commercial enterprises. They were also developing modern systems of accounting, insurance, and banking. Such advances enabled them to exploit the economies of scale and scope afforded by evolving technologies, and also to extend the terms over

[36] Pamuk, *Monetary History of the Ottoman Empire*, p. 11; De Groot, "Organization of Western European Trade," p. 237.

which they could plan and make credible commitments. For these reasons alone, Mamluk, Ottoman, and other rulers stood to gain from keeping Western merchants interested in trading. The region, and thus the rulers themselves, would benefit from external productivity gains even without domestic institutional reforms. Most critically, capitulary privileges would relieve local rulers from the burden of supplying a legal framework to support complex markets and organizational forms. These privileges would substitute for institutional developments missing at home.

The enhanced capabilities of foreign merchants and, hence, their value to local rulers, depended on institutions different from those prevalent in the Middle East. These included inheritance laws conducive to maintaining successful enterprises across generations, courts accustomed increasingly to written contracts and double-entry bookkeeping. The spread of such institutions across the West are among the reasons why the capitulations provided foreigners growing immunities against Islamic lawsuits. While extraterritorial judicial rights had always served to reduce the transaction costs of interregional trade, this advantage rose as the commercial institutions of the two regions became increasingly dissimilar. In an expanding set of contexts, it became costlier over time to use Islamic courts as a forum for dispute resolution.

In correspondence from foreign merchants doing business in the Middle East under the capitulations, a frequent theme is that Islamic courts, which litigated many of their disputes with natives, were biased against foreigners.[37] Signs of bias would not point to a legal feature unique to Islam or the Middle East. In other places, too, courts of the time usually favored local interests, and foreign litigants suffered also from linguistic handicaps, inadequate local knowledge, and limited connections.[38] But whatever the nature or extent of local favoritism, there is no evidence that it grew over time, or that it is in response to deterioration in adjudication quality that the capitulations provided foreigners immunity against Islamic lawsuits. What changed measurably is not the

[37] Masters, *Origins of Western Economic Dominance*, pp. 65-68; ___.
[38] See chap. 11 ahead.

impartiality of the Islamic courts. Rather, it is the relative advantage of adjudicating disputes in courts familiar with new business methods, along with the bargaining power of foreign negotiators. As the economic institutions of the West diverged from those of the Middle East, calls for immunity from Islamic justice were bound to grow louder, whatever the prevailing biases. Successive capitulations responded to the growing demand by broadening the range of cases exempted from the jurisdiction of Islamic courts. The broadening was facilitated by the rising military and economic might of the West.

It is relevant again that in Muslim-governed territories anyone, including foreigners, had a right to be tried under Islamic law. Accordingly, even a share of the disputes strictly among foreigners came before a kadi.[39] As with minorities, this right undermined another right: legal autonomy in intra-communal affairs. The problem, discussed earlier in interpreting the economic performance of indigenous minorities, was twofold. First, the rulings of an Islamic court trumped those of other courts, allowing losers of cases adjudicated by a foreign consul to reopen the case before a kadi. Second, and the right to Islamic adjudication remained even in respect to contracts based on another legal system, rendering a provision legally unenforceable unless a kadi considered it legitimate and understood its function. Commercial contracts of foreigners, regardless of the identity of other parties, were subject, therefore, to opportunistic behavior. In stages, the capitulations sought to enhance the credibility of foreign contracts.

The Pursuit of Contractual Credibility

The first significant measure was a ban on having kadis try disputes among co-nationals. The French Capitulations of 1535 state:

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[39] Goffman, *Izmir*, p. 125; Ekinci, *Osmanlı Mahkemeleri*, pp. 97-98, 328. The fees charged by Islamic and consular courts influenced the choices made. See Steensgaard, "Consuls and Nations," pp. 23-24. Our data set includes 4 such cases, three of which involve notarization: Galata, vol. 138, case 31/3; vol. 151, case 9/2; and vol. 151, case 9/3. The last case was a trial: Istanbul, vol. 15, case 72/4.

> The kadi or other officers of the Grand Signior [Süleyman the Magnificent] may not try any difference between the merchants and subjects of the King [of France], even if the said merchants should request it, and if perchance the said kadis should hear a case their judgment shall be null and void.[40]

This was not the first provision of its kind; capitulations obtained from Mamluk Egypt had given French consuls the right to settle all cases among Frenchmen.[41] Yet the 1535 variant was particularly explicit; and from then on the requirement that consuls handle cases internal to their nations became a fixture of the capitulary system.[42] The restriction would have benefitted the French consuls who tried cases among their constituents, because they charged for these services. But the main advantage, enjoyed by all merchants trading under the French flag, is that contracts drawn among French-protected individuals and according to French legal norms could no longer be undermined by a local judge.

The challenges that this requirement posed to the supremacy of Islamic law are self-evident. It curtailed the jurisdiction of Islamic courts within the abode of Islam. True, it made no concession regarding lawsuits involving Muslims. But in the previous century the Mamluks had not gone that far. According to their capitulations, any case could be tried by a kadi, except that privileged foreigners could ask that a case be transferred to the ruler's own court.[43] Under Islamic law, the duty to deliver justice fell, in any case, on the ruler, who could, and ordinarily did, delegate responsibilities to kadis. There was nothing necessarily "un-Islamic," therefore, to having a Venetian or Florentine case handled by a high-level tribunal.

Blocking kadis from hearing cases limited to foreign co-nationals enhanced the credibility of contracts among foreigners doing business under the same flag. It was a step forward, in that it encouraged the pooling of resources in larger amounts and for larger periods. Yet foreign merchants

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[40] *MENA*, doc. 1, article 3; *TAK*, p. 42.
[41] *TAK*, pp. 34-35.
[42] See, for instance, *MENA*, doc. 4, art. 17; and *TAK*, p. 162, art. 5.
[43] *VF*, art. 5, 32.

went to Ottoman lands to trade with Ottoman subjects, not to form enterprises that would do business among themselves. So their business activities continued to expose them to Islamic lawsuits. Any Ottoman subject, irrespective of faith, retained the right to take a foreigner to a kadi. Moreover, the Islamic courts continued to claim sole jurisdiction over cases involving Muslims.

Foreign negotiators in Istanbul sought to address the matter through a variant of the forum transfer rule deployed by the Mamluks. Thus, by the late seventeenth century, the Ottoman-granted capitulations were stipulating that cases "exceeding the value of four thousand aspers" be tried in the capital, before a tribunal consisting of high administrators and possibly headed by the sultan himself, with a foreign representative present.[44] In 1675, when the English won this right, the threshold amounted to 152 times the average daily wage of a skilled construction worker. Due to inflation, the range of cases that met this threshold requirement expanded steadily. A century later, it equaled 56 times the average skilled wage, and in 1838, the year of the Anglo-Ottoman Convention, only 4 times.[45] Certain late capitulations required cases in commercial centers situated far away from Istanbul to be tried by the highest regional or provincial authority—in Tunis, for example, "the Council of the Bey, the Dey, and the Divan," as opposed to "ordinary judges."[46] Local merchants, Muslim or not, had always been free to petition for a hearing before a tribunal of dignitaries. But rulers were selective in hearing appeals, and most subjects lacked the clout to prevail. So the forum transfer option of the capitulations turned foreigners into a legally privileged class.

One benefit to foreigners was that it made their major lawsuits sensitive to international pressures. Another is that adjudication before a slow-changing administration made legal enforcement more predictable, partly because its members could be reminded of their own

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[44] *MENA*, doc. 14, art. 24.
[45] Wage comparisons based on data in Özmucur and Pamuk, "Ottoman Living Standards," Table 1.
[46] *MENA*, doc. 25, art. 16.

precedents. The tenure of a kadi lasted at most two years, and appointees differed in style, temperament, skills, and biases.[47] The resulting judicial uncertainty fostered uncertainty regarding contract enforcement, which foreign merchants managed to escape, at least on financially important disputes. As foreigners gained ever greater access to high-level tribunals, they gained further legal advantages against local buyers, suppliers, debtors, and creditors.[48]

These advantages grew as the balance of military power shifted in favor of Westerners. Local merchants lacking consular protection found that in disputes with foreigners the judicial playing field tilted progressively against themselves. This is evident in the eagerness with which foreigners, and increasingly also their local protégés, demanded the transfer of lawsuits. It is evident, too, in bitter complaints from Muslims who felt victimized by mounting restrictions on suing foreigners in local courts.[49] This is not to say that all cases that met the monetary threshold landed before high-level tribunals. For one thing, it was not costless to exercise the transfer right. Apart from incurring possible transportation costs, a merchant initiating a transfer could damage his reputation in the eyes of clients and suppliers favoring speedy kadi justice to lengthy trials conducted by intimidating high officials. For another, foreigners preferred the Islamic courts when, for one reason or another, they felt confident of winning. This is perhaps why the alleged anti-foreign bias fails to show up in court records from the seventeenth or later centuries.[50] My own small sample of foreigner-subject cases supports the scholarly consensus of an absence of foreign disadvantage in this period (Table 10.1—under expansion). What is clear is that foreigners used the forum transfer option frequently enough to make it an issue.

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[47] Ortaylı, *Osmanlı Devletinde Kadı*, pp. 16-17; Uzunçarşılı, *İlmiye Teşkilâtı*, p. 94.

[48] Goffman, *Izmir*, p. 127; Hanna, *Making Big Money*, chap. 8, especially pp. 172-73.

[49] Masters, *Christians and Jews*, pp. 125-26, relates one such complaint from a Muslim merchant in Aleppo in 1764. For other such cases, see Goffman, *Izmir*, pp. 128-30.

[50] Ekinci, *Osmanlı Mahkemeleri*, especially p. 43.

Table 10.1 Outcomes of civil trials that pitted a foreigner against a subject: 1579-1698			
Opposing party	**Number of cases**	**Won by foreigner**	
		Number	**%**
Muslim subject	3	3	100
Christian subject	3	3	100
Jewish subject	1	1	100
Note. 23 *defter*s reviewed: Galata 124, 130, 131, 137, 138, 145, 151; Istanbul 1, 2, 8, 9, 15, 16, 22, 23; Rumeli 21, 22, 26, 27, 33, 34, 40, 41. These contain a single civil case between two foreigners.			

From Personal to Impersonal Exchange

From the rise of Islam, Islamic adjudication had always relied on oral testimony. Though documents could be presented as evidence, they were viewed with suspicion, partly because of the possibility of forgery, but also because written texts could be misread to illiterate litigants. The uncommonness of literacy doubtless fed this suspicion, and it became the norm to consider a document valid only if attested by morally upright witnesses.[51] This norm meant, of course, that a litigant or witness could invalidate a document merely by casting doubt on the authenticity of a seal or signature. Under the circumstances, written contracts always furnished the names and attestations of multiple witnesses, to ensure the availability of corroborating oral testimony in case of litigation. This produced a huge demand for professional witnesses (*shuhūd*), who could be found at every court, where they exercised the function of a modern notary.[52] The witnesses accredited to a court observed not only the drawing of private contracts but also the recording of the kadi's judgments. No written instrument, not even the archives of a kadi court, carried legal value without the

[51] Wakin, *Documents in Islamic Law*, p. 6; Cook, "Opponents of Writing"; Messick, *Calligraphic State*, pp. 25-28.

[52] On early Islam, Tyan, *Organisation Judiciaire*, pp. 236-52; Wakin, *Documents in Islamic Law*, pp. 9-10; on the thirteenth century, Ibn Khaldun, *Muqaddimah*, vol. 1, p. 462; on the high-Ottoman period, Ortaylı, *Osmanlı Devletinde Kadı*, pp. 51-61.

corroboration of at least two witnesses of good character.[53]

Although documents lacked independent value under Islamic law, they were used in the pre-Islamic Middle East, and the pattern continued uninterrupted during and after the emergence of Islam. The Qur'an itself contains evidence to this effect. One of its verses requires the drawing of a document in loan contacts:

> When you contract a debt for a fixed term, record it in writing. Let a scribe record it in writing between you. ... Be not averse to writing down [the contract], whether [the amount] be small or great, with its term. (2:282).

The same verse goes on to say, however, that two men must witness the documentation process, so that "if one errs the other will remember." It also says that when an asset is transferred from "hand to hand" for cash, "it is no sin not to write it down," though it is advisable to have the transaction witnessed. Taken in its entirety, the verse was taken to mean that (1) ordinarily documentation is optional, and (2) even when a document is drawn, its validity depends on authentication by witnesseses.

In certain places and times kadis took to treating written records as valid even without supportive oral testimony. In parts of eleventh-century Spain and North Africa, for instance, authentication through a kadi's handwriting was sometimes considered sufficient validation.[54] This practice was rationalized on the basis of the necessity principle (*darūra*), whereby a normally illegitimate practice gains acceptance to avoid hardship.[55] Where the practice was tolerated, then, it was treated as abnormal. Writing around 1200, the jurist Ibn al-Munasif explained that a merchant might have trouble finding two witnesses able to travel to the site of a trial, delaying resolution of a conflict.[56] He did not argue that a witnessing requirement was undesirable; where feasible, he

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[53] Tyan, *Organisation Judiciaire*, pp. 236-52; Wakin, *Documents in Islamic Law*, pp. 6-8. For records of an Islamic court, the witnesses had to be Muslim.

[54] Hallaq, *Authority, Continuity and Change,* p. 211.

[55] The principle finds justification in Qur'an 2:185: "God wants things to be easy for you."

[56] Hallaq, *Authority, Continuity and Change,* pp. 211-13. Expeditious adjudication was considered a supreme virtue of Islamic litigation.

supported it.

Table 10.2 Use of documents in civil trials among subjects: 1579-1698				
Source of dispute	**Total**	**Resulted in notarization**	**Trial performed**	
			Documents used	**Only oral evidence used**
Partnership	70	34	5	31
Debt	185	76	12	97
Inheritance	244	134	17	93
Sale	97	69	7	21
*Defter*s reviewed: 23 *defter*s listed in Table10.1.				

Table 10.3 Use of oaths in civil trials: 1579-1698			
Litigants	**Sample size**	**Kadi requests an oath**	
		Number	**%**
Only subjects	494	39	8
At least one foreigner	22	1	5
*Defter*s reviewed: 23 *defter*s listed in Table10.1.			

Nevertheless, oral contracts concluded through a handshake continued to carry validity everywhere, even where written documents enjoyed legal force on their own. In the seventeenth century, when new judicial provisions were being added to the capitulations, only a minority of all kadi trials turned on documentation (Table 10.2). Ordinarily, cases were decided on the basis of oral testimony alone. An outcome could even turn on an oath. Faced, for example, with a credit dispute that he could not resolve on the basis of verbal testimony, the kadi would ask the defendant to swear on his "book" (Qur'an, Bible, or Torah) that he had made restitution. But the oath was not used

indiscriminately. In the seventeenth century, fewer than 10 percent of civil cases were resolved through an oath (Table 10.3). Modern conceptions of the individual might suggest that every defendant accused of default would choose, if the outcome of the trial hinged on it, to swear that he had paid. Yet litigants must have included genuinely God-fearing individuals, and in conflicts rooted in contractual ambiguity defendants eager to maintain a good reputation might have been reluctant to win on the basis of an oath, rather than the judgment of a legally trained kadi.[57] Indeed, in court records one encounters refusals to take an oath even when compliance would almost certainly have resulted in exoneration.[58] The informational value of an oath was not negligible.

Litigation based primarily on oral procedures was subject, of course, to serious abuse. Just as paid experts testify in today's secular courts, so litigants in premodern Islamic courts could hire, for a fee, professional witnesses prepared to testify on their behalf. Even where the judge was honest and unbiased, then, the possibility of false oral testimony threatened contractual enforcement. Foreigners complained about this danger tirelessly, as they believed that the burden of abuses fell disproportionately on them.[59] In a letter written in 1567, a Venetian official in Istanbul complains that the local legal system is unused to written evidence. "All cases," he suggests, "even the most important, are here ... summarily dispatched by verbal evidence."[60] For foreigners an added concern was that under traditional legal procedures, the testimony of a Muslim of good character, as determined by the court, carried double the weight of testimony from a non-Muslim of equally fine reputation; and, further, the testimony of a non-Muslim subject trumped that of a foreigner. Not all kadis applied these rules of evidence consistently, if at all.[61] Up to modern times, however, the

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[57] These two possibilities are not mutually exclusive.

[58] Galata court records, vol. 131, case 12/5 (11 August, 1683); Istanbul court records, vol. 23, case 30/1 (26 January 1697).

[59] Cevdet Paşa, *Tezâkir*, vol. 1, pp. 62-63; Ubicini, *Letters on Turkey*, vol. 1, p. 184; Masters, "Aleppo," pp. 43-44; Ekinci, *Osmanlı Mahkemeleri*, pp. 28-41.

[60] As recorded by Arbel, *Trading Nations*, p. 122.

[61] Al-Qattan, "*Dhimmis* in the Muslim Court," pp. 437-38.

formal rules remained an irritant in the relations of foreign merchants with Muslims. They even complicated relations with local Jews and Christians, who were considered more trustworthy than foreigners, and who were relatively more likely to have Muslim partners and supporters. The mere presence of the rules threatened the enforcement of commercial agreements. The frequent rotation of kadis added another problem: if one kadi ignored the rules, his successor might apply them rigidly.

Analogous problems existed in premodern Western Europe.[62] In fact, the use of oral testimony and the discounting of written evidence became increasingly controversial as commerce expanded and a growing portion of exchanges became "impersonal," in the sense of being conducted between individuals lacking reliable knowledge about each other's character.[63] During the transition to mostly impersonal exchange, there was resistance to imposing a documentation requirement, partly because the literate would benefit disproportionately.[64] Still, reliance on documents grew, and financial claims based solely on oral testimony became increasingly suspect and eventually legally invalid. Given this background, it is hardly surprising that the capitulations aimed to institute, in the Eastern Mediterranean, the conditions for secure impersonal exchange. However, the Islamic rules of evidence constituted a more basic motive for making documentation mandatory. If only because of these rules, foreign merchants had more reason to insist on documentation in the Middle East than at home.

Even before 1535, therefore, restrictions had been imposed on the procedures that the kadis were to apply to commercial dealings between local merchants and foreigners. In 1486 the Ottomans

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[62] Klerman, "Jurisdictional Competition," especially pp. 8-9; Baker, *English Legal History*, especially pp. 67-68, 324-25.

[63] When a company share is traded through the stock market, the buyer and seller need not be aware of each other's identity, to say nothing about information concerning character.

[64] Medieval European finance showed a preference for oral transfer orders over written assignment, which was later called a check. In Barcelona, checks were forbidden up to the sixteenth century, and in Venice right up to the eighteenth century bookkeepers were not allowed to enter a transfer unless the order was dictated by the depositor of his attorney [De Roover, *Medici Bank*, p. 18].

imposed a documentation requirement for cases arising from the commercial dealings of merchants from Dubrovnik. These cases were to be heard only if the transactions had been recorded in a court register (*sicil*) and a kadi had issued a document stating the facts of the case (*hüccet*).[65] The Mamluk-Florentine treaty of 1497 required Florentine contracts with Mamluk subjects to be recorded in writing in the presence of notaries (*ʿudūl*, in practice professional witnesses of kadi courts).[66] A documentation clause is found also in the first French capitulations:

> In a civil case against Turks, tributaries, or other subjects of the Grand Signior, the merchants and subjects of the King can not be summoned, molested, or tried unless the said Turks, tributaries, and subjects of the Grand Signior produce a writing from the hand of the opponent, or a "heudjet" from the cadi.[67]

The main purpose of these requirements was to lessen the kadi's reliance on Muslim witnesses and focus his attention less on matters of probity, religious observance, faith, and national origin than on the written agreement. With a document, witnesses could still be heard if its validity was questioned.[68] But the burden of proof would fall on the challenger of the document, so the possibility of escaping a contractual obligation, or of fabricating a liability, would diminish. In our sample of cases, of the 22 with at least one foreign litigant, 14 resulted in the drawing or recording of a written contract, 5 involved the use of a document in a trial, and only three involved trials decided solely on the basis of oral evidence (Table 10.4). Partly to protect French merchants against the invalidation of documents by paid witnesses, the capitulations of 1535 stipulated also that a kadi "may not hear or try ... subjects of the King without the presence of their dragoman."[69] As an Ottoman subject in command of local vernaculars, a dragoman was better equipped than the typical French merchant to discredit fraudulent testimony. The requirement concerning the dragoman's

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[65] Biegman, *Turco-Ragusan Relationship*, pp. 70-71 and docs. 22-24. The guarantee was renewed in 1575.

[66] *VF*, art. 2. The treaty is unclear about whether a lawsuit could proceed without presentation of a notarized contract.

[67] *MENA*, doc. 1, art. 4; *TAK*, p. 42.

[68] Faroqhi, "Venetian Presence," pp. 340-41.

[69] *MENA*, doc. 1, art. 4; *TAK*, pp. 42-43.

presence, like the documentation provision, became a standard feature of subsequent capitulations.[70]

For disputes involving foreigners operating under different flags, the default rule was that they would be settled in Islamic court. Through the sixteenth century foreigners accepted this arrangement. Given their intense mistrust of Islamic justice, this may seem odd. Yet the nations competing for commercial influence in the region mistrusted each other as well, sometimes more so; and for all its defects, a kadi court offered a neutral forum for adjudication.[71] In any case, foreign communities interacted much less with each other than with the local population, which limited the number of "mixed" foreign cases. With growth in the volume and complexity of interregional trade, interactions among foreigners would have increased. Predictably, rival foreign communities eventually negotiated ground rules for trying mixed cases without reliance on the kadi courts.[72] Sometimes a mixed tribunal was formed; at other times the case was heard by a mutually agreed foreign judge or consul.[73]

Table 10.4 Use of documents in civil trials involving a foreigner: 1579-1698

Total cases	Resulted in notarization	Trial performed	
		Documents used	Only oral evidence used
22	14	5	3

*Defter*s reviewed: 23 *defter*s listed in Table 10.1.

[70] For example, *MENA*, doc. 4, art. 10, 16.

[71] The word of one foreigner was weighted equally as that of another. Moreover, each side had an equal ability to call in local witnesses.

[72] Cevdet Paşa, *Tezâkir*, vol. 1, pp. 62-63; Ekinci, *Osmanlı Mahkemeleri*, pp. 49-50, 97-100; Steensgaard, "Consuls and Nations," pp. 22-23; Anderson, *English Consul*, p. 207.

[73] Akyıldız, *Osmanlı Merkez Teşkilâtı*, p. 130. Up to the eighteenth century, Ottoman rulers, and later semi-autonomous Egyptian governors as well, refused to recognize this extension of the judicial rights specified in the capitulations. [Brown, *Foreigners in Turkey*, pp. 67-68; Watson, *American Mission in Egypt*, pp. 463-64]. But some of the late capitulations, for example, those given by the Ottomans to the Russians in 1782 and by the Moroccans to the British in 1856, formalized the consular right to try cases among different nationalities [*TAK*, p. 182; *MENA*, doc. 107, art. 9]. On judicial applications of the latter capitulations, see Ryan, *Last of the Dragomans*, pp. 240-44.

The Quest for Predictable Returns from Trade

We have seen that the capitulations of the seventeenth century lowered the tariff on foreigners to a rate slightly above the 2.5 percent collected from Muslim merchants. Even in the seventeenth century, when the capitulations turned into a source of discrimination against local merchants operating under Islamic law, foreigners enjoyed no privileges on this count. The Anglo-Ottoman Commercial Convention of 1838 stipulated that British merchants would pay the same duties as "the most favored class of Turkish subjects"; that commercial regulations shall be "general throughout the Empire" and "applicable to all subjects, whatever their description," implying the inclusion of local Jews and Christians; further, that equal duties would be extended to "other foreign Powers."[74]

If foreigners came to enjoy tax privileges, these stemmed not from tariff differences but from immunities against other taxes. From the early Arab empires onward, subjects of Muslim-governed states paid diverse personal taxes, including unanticipated levies imposed to transfer perceived rents to the state. In the Ottoman Empire, opportunistic taxation was common especially during fiscal emergencies associated with military campaigns. Whether collected by state officials or tax farmers, these non-customary taxes were known as *avârız*, understood to mean "whatever can be extorted."[75] In Western sources, fees or taxes imposed on foreigners, if considered extortionate, are denoted by a similar sounding word: avanias. The term avanias thus encompassed diverse charges levied over and above what custom, the law, or a treaty appeared to allow.[76] To allay ambiguity about the prohibition of avanias, the capitulations of 1673 state repeatedly that the French are exempt from all obligations other than charges explicitly listed. Likewise, those of 1675 state ad nauseam that no

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[74] *MENA*, doc. 80, art. 3, 6.

[75] İnalcık, "Ottoman State," p. 191; Darling, *Revenue-Raising*, especially chaps. 1 and 3; Bowen, "ʿAwārid."

[76] Masson, *Commerce Français dans le Levant au XVIII^e Siècle*, chap. 1; Bent, "English in the Levant," pp. 660-61.

other fees are due from the English.[77]

Resistance to taxation is as old as human civilization. There is nothing unusual, then, about incessant foreign complaints about fees, tolls, and other charges. However, over and beyond resisting taxation per se, foreigners objected to the unpredictability of their obligations to various authorities. They objected, for instance, to arbitrary exactions at ports, such as duties demanded whimsically for goods kept on board.[78] Arbitrary taxation discourages commerce by making investors demand a risk premium and, hence, raising the cost of capital. Capitulary restrictions on the fiscal powers of the Ottoman government thus constitute markers of success in a long struggle to enhance the predictability of returns from interregional commerce.

That a fundamental function of the capitulations was to enhance the predictability of their commercial investment is evident also in clauses that bar the imposition of a collective punishment for the faults of an individual foreigner. The French capitulations of 1535 state:

> When one or more subjects of the King, having made a contract with a subject of the Grand Signior, taken merchandise, or incurred debts, afterwards depart from the State of the Grand Signior without giving satisfaction, [neither] the bailiff, consul, relatives, factor, nor any other subject of the King shall for this reason be in any way coerced or molested, nor shall the King be held responsible.[79]

The text then commits the French king to prosecuting fugitive merchants and ensuring full justice. This arrangement most certainly diminished the risks endured by traders operating under French protection. It prevented dishonest French merchants or travelers from heaping liabilities on honest ones. Provided Frenchmen stayed within the law and maintained good relations with local officials, their profits would be safe.

There were other capitulary privileges that reduced the commercial risks of foreigners. One involved inheritance. Each treaty of the fifteenth or sixteenth century includes an article giving

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[77] For 1673, see *TAK*, pp. 77-83. For 1675, see *MENA*, doc. 14, art. 30-32, 54-75; and *TAK*, pp. 112-20.
[78] Kütükoğlu, *Osmanlı-İngiliz İktisâdî Münâsebetleri*, p. 27.
[79] *MENA*, doc. 1, art. 7.

consuls sole jurisdiction over the disposition of estates belonging to their countrymen.[80] This right ensured the enforceability of foreign wills at odds with the Islamic inheritance system. If a foreigner died intestate, his consul would follow the inheritance customs of his nation of origin.[81] In addition, the right diminished the likelihood of confiscation under the pretext that the estate contained illegally acquired property or that the decedent had unpaid debts.[82] Although these dangers remained, consular authority over estates limited interference by local officials.

Remember that the Islamic inheritance system created incentives to keep commercial enterprises small and caused the fragmentation of successful businesses. The privilege to avoid these problems gave foreign merchants a palpable advantage in building and preserving mercantile enterprises. Equally important, it facilitated partnerships between Westerners and their compatriots working in the Middle East. Absent the disincentives rooted in Islamic inheritance practices—or, for that matter, similar practices of the region's native non-Muslims—threats to the continuity of foreign partnerships were substantially reduced. Western merchants also benefited, of course, from the evolving financial institutions of Europe. Eventually the emergence of banks enabled them to raise funds from banks more cheaply and for longer terms than their local rivals could in the atomistic financial markets of the Middle East.

Yet another source of uncertainty had been the danger of eviction from premises used to carry out a business. Like local traders, foreigners would often rent space in a covered commercial center (Turk., *han*). Throughout Ottoman lands, the typical center was owned by a waqf, which rented space to the highest bidder, usually for renewable three-year periods; at the end of a rental term the incumbent could be evicted if another person offered more. Frustrated by the consequent disruptions,

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[80] See *VF*, art. 9; *TAK*, p. 35; *MENA*, doc. 1, art. 9; *MENA*, doc. 4, art. 9.

[81] West European countries had a wide variety of inheritance systems, which would have complicated the consul's task.

[82] Where such dangers existed, a consul might take measures to keep assets of the deceased out of the hands of officials. The goal could be accomplished by distributing the property among other expatriates. Goffman, *Britons in the Ottoman Empire*, pp. 134-35, offers an example from Izmir in 1649.

the Venetians managed to have sultan Mehmet III (r. 1595-1603) declare such evictions illegal when the existing renters were Venetian.[83] Mehmet's successor, Ahmet I (r. 1603-17) met another Venetian demand: special protection against the common practice of making merchants sell to state officials at controlled prices. He barred provincial governors from pressuring Venetians to trade against their will.[84] So it is that Venetian merchants, like other foreigners, amassed rights ordinarily denied to Ottoman subjects. As local merchants continued to endure numerous uncertainties that made their commercial returns unpredictable, foreigners made steady progress on numerous fronts toward increasingly predictable commercial returns over lengthening horizons.

The Onset of Reverse Discrimination

By no means, of course, were Western negotiators interested only in predictability. As their bargaining power rose, they also pursued outright privileges, thereby displaying another propensity that extends to time immemorial. In time the capitulations provided Western merchants immunity from all new taxes. It became the norm, in fact, to bar the imposition of charges on foreigners unless allowed specifically by an international treaty. Of the 75 articles that comprise the English capitulations of 1675 no fewer than 28 limit a charge, and in subsequent years Western negotiators made it a practice to seek exemptions from sharing the cost of services made possible by emerging technologies.[85]

Ultimately they were so successful that capitulary tax restrictions were interpreted as providing foreigners and their protégés free access to services for which others had to pay. In the late nineteenth century, for example, Western governments invoked the capitulations to exempt their

[83] Faroqhi, "Venetian Presence," p. 340.
[84] Faroqhi, "Venetian Presence," pp. 336-37.
[85] *MENA*, doc. 14. Several of these articles stipulate a specific, rather than ad valorem, duty for certain commodities, probably because the English found this relatively advantageous.

nationals from a fee to cover the expenses of maintaining flammable liquids in municipal depots.[86] They thereby obtained an exemption from a charge that municipalities in the West imposed freely on their own residents. Western fiscal privileges reached the point, in fact, where an Ottoman subject could avoid a tax, fee, or fine simply by transferring an asset's ownership to a foreigner. Another method of evasion rested on the capitulary principle that premises occupied by a foreigner could not be searched unless a representative of his consulate was present. If a consulate was slow to act, the resulting delay enabled the transfer of goods, or evidence of liability, to another foreigner of different nationality, which then complicated and delayed matters further, by requiring the involvement of another consulate.[87] In contexts where foreign communities accepted to pay for services, they did not always pay equally. The Ottoman commercial courts established in the 1850s to serve all communities, irrespective of religion or nationality, adopted two fee schedules, one for natives and the other for foreigners. When decrees were issued involving fines, foreigners paid half as much as natives guilty of the same offense.[88]

These extreme examples come from the nineteenth century, which is when the capitulations turned clearly into instruments of economic subjugation. Even earlier, however, Western representatives sought outright privileges, though cloaked in demands for fair and predictable taxation. Upon close consideration, certain charges that contemporaneous negotiators or observers characterized as avanias hardly appear arbitrary. As a case in point, in the late seventeenth century the victims of unjust taxation were said to include merchants who married an Ottoman subject. According to longstanding Islamic law, such merchants became liable for taxes due from local Christians and Jews. Likewise, they lost eligibility for privileges accorded to temporary residents of

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[86] Bullard, "Large and Loving Privileges," p. 18. Bullard offers many additional examples, mostly from Egypt. See also Shaw, "Ottoman Tax Reforms," especially pp. 428-38.

[87] Bullard, "Large and Loving Privileges," pp. 22-23.

[88] Shaw, "Ottoman Tax Reforms," p. 439.

foreign nationality.[89] In that period such reclassification was common to diverse legal systems, as it is today. It is clear, however, why Westerners settled in the Middle East felt an increasing aversion to reclassification. As the capitulations became ever more generous, it became progressively more beneficial to retain the status of foreigner. In addition, as visiting European merchants turned effectively into permanent residents, their likelihood of marrying a local woman increased, raising the demand for annulling the status reclassification rule.

In contrast to contemporaneous Western observers who sputtered outrage at real or imagined inequities borne by their co-nationals, Middle Eastern commentators of the capitulary era often, and with mounting frustration up to 1914, lambasted the inequities imposed on indigenous populations.[90] Neither side made baseless allegations. By the same token, each side overlooked important dimensions of the processes unfolding before their eyes. Local commentators failed to see that the very growth of commerce with the West depended on limiting, at least for Western merchants and financiers, opportunism and arbitrariness in taxation. In the absence of essentially predictable commercial returns, which required binding the hands of rulers through capitulations, they would have had to charge more for their services. For their part, Western commentators failed to see or acknowledge that in an expanding array of contexts the pursuit of commercial predictability and equal taxation had spawned reverse discrimination. The need to impose the rule of law on sectors featuring external participation was being abused in order to give foreigners, along with their protégés, entitlements unavailable anywhere else.

No systematic research exists on the magnitude of the average tax advantage enjoyed by foreign merchants. We do not even know for the early twentieth century whether foreigners generally carried a lower tax burden. Foreigners paid taxes also to their own states, so in theory their tax

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[89] Olnon, "Towards Classifying Avanias," analyses two famous cases of allegedly extortionate taxation by Ottoman officials, showing that the charges in question fell within a reasonable interpretation of the prevailing law.

[90] Toprak, *Türkiye'de "Milli İktisat"*, chaps. 1-2; [Hourani + Karpat]

burdens could have been heavier. What is certain is that the sweeping fiscal immunities of foreigners boosted the attractiveness of acquiring Western legal protection, thereby stimulating the prices local non-Muslims were willing to pay for protégé status.[91] The fiscal advantages of foreign and foreign-protected merchants came on top of the administrative support they received from ambassadors, consuls, dragomans, and clerks who were ready to interfere on their behalf at the slightest dispute with authorities. Not only did Muslim merchants and unprotected non-Muslims lack such support, as a consequence they became the target of choice whenever fiscally strapped authorities sought to raise funds. In the century preceeding World War I, the burden of various new taxes imposed, in one place or another, but often very widely—stamp duties, profit taxes, trade licenses, house taxes, and road labor dues, to name a few—fell largely on unprotected natives.[92] No less significant was the unpredictability of these charges. With authorities introducing new taxes and revising rates in a steady drive to extract revenue, unprotected natives lived with uncertainty as to the taxes that they would owe for any given business venture. Especially in sectors where profitability was hard to conceal, this uncertainty must have discouraged investment and entrepreneurship.

Variations in Enforcement

Longstanding disagreements over the effects of the capitulations stem partly from geographic limitations imposed on foreign privileges. Although each commercial treaty imposed a single set of duties for the grantor's entire realm, as a matter of practice it was meant to apply without modification only in the main commercial center—in the Ottoman Empire, Istanbul. Side-agreements proclaimed through sultanic decrees fine-tuned the main treaty. For example, they adjusted certain fees according to the port visited.[93] The variations may have reflected differences

[91] See chap. __.

[92] Ubicini, *Letters on Turkey*, vol. 1, pp. 266-83; Shaw, "Ottoman Tax Reforms," p. 428 ; Marlowe, *Anglo-Egyptian Relations*, p. 185.

[93] Kütükoğlu, *Osmanlı-İngiliz İktisâdî Münâsebetleri*, pp. 30-32.

in the costs of servicing foreign ships or in the relative strengths of local players, including customs officials, kadis, and governors.

A much more significant source of variability lay in imperfect control over political agents. Away from the capital, some officials interpreted capitulary agreements in self-serving ways or simply refused to implement them to the letter. As a case in point, in the early 1600s officials in Izmir charged Venetians export dues on the local market value of cotton, rather than on the purchase price inland, as was customary. In addition, they required export duties almost double those specified in prevailing capitulations.[94] Around the same time, the tax farmers who owned the right to collect tariffs in Cyprus refused to accept the reduction —5 to 3 percent—that the Dutch obtained in 1612. Only after lengthy negotiations, which may have involved unrecorded side-payments, did Cypriot customs farmers agree to implement the reduction.[95] It even happened, on occasion, that duties above capitulary limits were imposed retroactively. Several months after two English merchants paid the requested tariff on a particular shipment, a tax farmer demanded a surcharge. The consul protested that the surcharge violated the capitulations. In the end, however, rather than filing a lawsuit, the English merchants opted for a negotiated settlement with the customs official.[96]

An Ottoman decree of 1618 prohibited customs officials in Aleppo from overestimating the value of goods belonging to foreigners. Another decree underscored the validity of contracts that shifted the tariff burden from Venetian sellers to their local clients.[97] Such decrees were issued at the request of Venetians, evidently because of inconsistent implementation. A century and a half later an Aleppine dragoman for the British, exercising a capitulary privilege, asked that a dispute between him and a local dignitary be transferred to Istanbul. The local kadi rejected the request, holding that

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[94] Goffman, *Izmir*, p. 107. For additional cases, see İnalcık, "Ottoman State," pp. 195-204; and Hanna, *Making Big Money*, p. 112.

[95] Steensgaard, "Consuls and Nations," pp. 18-19. For the text of the Dutch Capitulations of 1612, see De Groot, *Ottoman Empire and Dutch Republic*, app. 1; the rate reduction appears in art. 17, 46, and 64.

[96] Steensgaard, "Consuls and Nations," p. 44.

[97] Faroqhi, "Venetian Presence," p. 339.

under Islamic law the matter fell within his own jurisdiction, rather than a distant administrative body. Notwithstanding the capitulations, the kadi's understanding of his authority was faulty; as we know, a kadi functions as his ruler's agent, and the ruler is free to reclaim or redirect any particular judicial responsibility. Nevertheless, when the British consul complained to the governor, the latter sustained the decision and fined the dragoman for evasion of justice.[98]

Even in the mid-nineteenth century, by which time foreigners had enormous leverage over officials in Istanbul, certain provisions of the capitulations went unrecognized in places where the Ottoman government's authority had weakened. In Mosul, Iraq, the ferry tax was 20 paras for local merchants of all faiths but 80 paras for foreigners—precisely the opposite of the fee patterns prevalent in Istanbul. Taxes and tolls imposed on foreigners in violation of the prevailing capitulations tripled the five percent import duty stipulated by the Anglo-Ottoman Commercial Convention. Meanwhile, any merchant taking designated commodities out of the city paid a duty of 20 percent—well above the rate established by treaty.[99]

Foreign officials understood that power was in practice decentralized and that the regulatory landscape could differ across localities and sectors. They also grasped the advantages of dealing directly with local notables. Indeed, foreign representatives posted in commercial centers as important as Aleppo, Alexandria, and Izmir made it a point of dealing independently with local governors, pashas, kadis, tax farmers, and even thugs.[100] In view of the costliness and unreliability of centralized enforcement, they chose, in effect, to negotiate "local capitulations" in contexts where interstate capitulations lacked credibility.[101] To ensure favorable terms they also played competing

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[98] Masters, *Christians and Jews*, p. 126.

[99] Shields, *Mosul Before Iraq*, pp. 106, 110-11. For similar examples of violations, see British Foreign Office, "Tariff of 1839," p. 3.

[100] Goffman, *Britons in the Ottoman Empire*, especially pp. 17, 30-31, 38.

[101] Like disputes between foreigners and tax collectors, certain disputes between foreign nations were settled by local authorities able to defy capitulary provisions and government directives. In 1619, reports Goffman, *Izmir*, pp. 100-01, the Venetian consul appealed to Istanbul when the English consul sought to collect consulage from Venetian merchants shipping goods from Venice to Izmir on English vessels. Customs officials in Izmir disregarded the

notables against each other. To this end they would threaten to relocate their operations if their demands were rejected.[102]

Islamic Rationales

The foregoing interpretation of the capitulations has already touched on Islamic law. It is time to address whether broader Islamic principles or Islamic authorities affected the interpreted historical evolution.

Remarkably, the capitulations received the blessing of religious authorities, whose understandings of Islam adapted to evolving social realities. The early capitulations, including the initial Ottoman ones, were easily justified on religious grounds. Under classical Islamic law non-Muslims can be treated differently depending on whether they live in the "abode of Islam" (*dār al-Islām*) or the "abode of war" (*dār al-harb*).[103] Specifically, various protections afforded to the residents of Muslim-governed territories may be denied to non-Muslim foreigners. By the same token, Islamic law allows the extension of security guarantees (*amān*) to potentially useful foreigners who pledge "friendship and sincere good will."[104] It was legitimate, therefore, to grant privileges to selected Christian nations expected to contribute to Muslim prosperity and strength. Thus, as early as 651 the Muslim administrators of Egypt were incorporating into treaties with Christian rulers "safe conduct guarantees" for foreign individuals and groups.[105]

As for allowing foreign merchants to live according to their own laws and traditions, it was a short step for a Muslim ruler, having granted certain foreigners security, to endow them with legal

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government's order and kept awarding the right to the English consul, probably as a result of a deal that has left no historical traces.

[102] Frangakis-Syrett, *Commerce of Smyrna*, especially p. 117; Fleet, *European and Islamic Trade*, especially chap. 10.

[103] This distinction is customarily based on Qur'an 47:4.

[104] Typically the justification is Qur'an 9:6. See Khadduri, *War and Peace*, chap. 15.

[105] Schacht, "Amān," pp. 429-30.

options similar to those of local Jews and Christians. Allowing a Venetian merchant to exercise choice of law could be defended by viewing him as a potential subject. Under Islamic law, a non-Muslim foreigner who resided in an Islamic territory for more than a lunar year became a dhimmi, a protected non-Muslim.[106] Revealingly, the term used to designate a "pact" with local minorities (*'ahd*) also designated the initial trade treaties made with foreigners.[107] For Islam's early interpreters, it seems, these treaties did not involve a radical break with the past.

Eventually, of course, the capitulations granted foreigners rights well beyond those found in early Islamic treaties. Those of 1535 explicitly overruled the principle that a foreign non-Muslim became a dhimmi after one year of residence:

> No subject of the King who shall not have resided for ten full continuous years in the dominions of the Grand Signior shall or can be forced to pay tribute, Kharadj, Avari, Khassabiye [various taxes].[108]

Over the following century other nations, too, obtained the right to retain foreigner status beyond the one-year limit.[109] By the nineteenth century even the ten-year rule had become unenforceable. A foreigner was able to remain a foreigner indefinitely.

Yet high Islamic authorities backed each successive extension, often tacitly, though sometimes explicitly. In the 1696 lawsuit that pitted Ishak against Aved, the English defendant invokes not just a sultanic decree but also the authority of two clerics. Religious leaders also permitted the lowering of tariffs for Westerners essentially to the level applied to Muslims. Ultimately they even allowed local minorities to move into foreign legal jurisdictions. There is no reason to believe that clerics were of one mind on such privileges. However, no evidence has emerged of organized or sustained religious opposition to the capitulations. As a group, then,

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[106] Khadduri, *War and Peace*, pp. 163-64.

[107] Goffman, *Ottoman Empire and Early Modern Europe*, pp. 187, 196.

[108] *TAK*, p. 47; *MENA*, doc. 1, article 15.

[109] In 1621 the Venetians formally won the right to live in Ottoman territories for many years without losing the advantages accorded to foreigners [Faroqhi "Venetian Presence," p. 329].

religious authorities contributed to the long process that eventually placed the Middle East in a tutelary relationship to Western powers.

Neither religious leaders nor statesmen could have failed to grasp the symbolism and significance of the capitulations. Scores of decrees aimed at protecting urban craft guilds betray a keen appreciation of how commercial privileges can make or break fortunes.[110] Authorities could observe, as could diverse market participants, that European merchants dominated certain commercial emporia. Broadening their privileges would surely leave domestic merchants at an even greater disadvantage in those markets. It would also create incentives for shrinking the jurisdiction of Islamic courts. If the capitulations were granted in spite of these observable costs, and then expanded repeatedly, the reason is that ruling classes of the Middle East benefitted from the activities of foreign merchants; also, domestic merchants offered no credible alternative to their services. Islamic history and traditions, it turned out, furnished ample religious ammunition to influential groups supportive of the capitulations. Through creative extensions and reinterpetations of hallowed traditions, they were able to reconcile foreign privileges with Islamic principles.

Appraising the Capitulations

It is clear, then, that Islam did not interfere with the long process through which the capitulations facilitated the marginalization of large segments of the local business community. In the nineteenth century one manifestation of this marginalization was that Muslims could not participate as equals, or in any significant capacity, in the most dynamic and newest economic sectors—banking, mass transportation, mass production, and large-scale trade.

Earlier we saw that Islam's distinct form of legal pluralism accounted for the decline in the economic standing of Muslims vis-à-vis the local protégés of foreign powers. The capitulations were

[110] Genç, *Devlet ve Ekonomi*, pp. 54-59; Kuran, "Ottoman Guilds," pp. 46-48.

essential, we now see, to the dynamic generated by the choice of law that allowed minorities to leap ahead economically. In enabling foreigners to expand their roles in the local economy, the capitulations gave them a growing ability to carve out sectors in which their own institutions would replace those prevalent in the region. By virtue of their choice of law, minorities were then able to invest in these sectors. They started doing business using foreign techniques and largely under a Western legal system. Dropping economic practices identified with Islam—Islamic partnerships, informal credit practices, speedy adjudication in kadi courts, personal exchange—they became progressively estranged from the region's dominant economic culture, which they had previously helped to develop and sustain. The capitulations supported this process by demonstrating the usefulness of Western institutions but also, in effect, by allowing foreign powers to welcome non-Muslims into the institutionally distinct and expanding local sectors that they created. Meanwhile, almost all Muslims remained in relatively static and old economic sectors, which still operated mainly under Islamic law.

These long-term consequences were unintended and unanticipated. Süleyman the Magnificent, who granted the initial French capitulations for immediate gain, could not foresee the subsequent institutional evolution of the West. Had the economic institutions of England, France, and the Netherlands stagnated after the sixteenth century, foreign privileges would not have turned into a source of major disadvantage for local mercantile communities. Their economic losses would have remained marginal, if only because foreign trade with the West would have remained limited, producing a far lower share of regional income than it actually would by the early twentieth century.

Another unintended consequence, of permanent rather than temporary significance, has been the de-Islamization of economic life in the Middle East. The capitulations triggered a dynamic through which Islam's role in the economic life of the Middle East diminished far beyond anything imaginable. In encouraging Western merchants to establish lasting commercial enterprises in the

region, the capitulations familiarized the region's peoples with a range of business practices, organizational forms, and legal procedures without a basis in Islam. Judicial defeats such as those of Mehmet bin Mahmut and Ishak veled-i Abraham taught local merchants of all faiths the advantages of documenting contracts in a world of expanding commerce and increasingly impersonal exchange. The growing powers of foreign representatives eventually enabled minorities to reduce their dependence on Islamic courts. Most significant for the present, foreign economic successes made Muslims recognize the benefits of institutions developed outside the realm of Islamic law. They demonstrated, for example, the efficiency gains obtainable through binding the tax-collecting hand of the state.

The capitulations set the stage, therefore, for momentous economic reforms of the nineteenth and twentieth centuries—momentous because they essentially severed the connection between daily economic life and Islamic law. Specialized commercial courts, corporate law, and stock markets—all of which presume largely impersonal exchange—were adopted and disseminated, for the most part, without even lip service to Islamic principles. They thus became part of the institutional fabric even in countries, like Saudi Arabia, whose economy is nominally under a God-given and time-invariant law. Institutions and practices that did not emerge indigenously became a visible part of the domestic economic system, partly through emulation of prototypes already present in the region's most dynamic sectors, through the capitulations.

This chapter has taken it for granted that commerce between Western Europe and the Middle East was conducted at the initiative and under the leadership of Westerners. Indeed, as Western merchants came to the Middle East, few of their Middle Eastern counterparts went to the West. The institution that best symbolizes this asymmetry is the consulate, used by foreigners in the Middle East. Until quite late, Middle Eastern merchants did not benefit from analogous institutions in Western cities. From this new angle, we now return to an earlier theme, the origins of the asymmetry

and the causes of its persistence.