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Rethinking Corporate Personhood in Consultation with Islam

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Although its legal definition and properties are still debated today, the abstract and nominalist concept of corporate personhood is seen as a boon in the development of capitalism. Its role was pivotal in scaling Western economies because it attracted capital formations that could maximize profit-seeking whilst mitigating risk and personal liability. Critics maintain, however, that such structured vehicles facilitate cover for bad actors to exact crimes in a legally protected manner, and that while corporations themselves may ultimately be held accountable by the law, the individuals who make said conscious decisions via the corporate vehicle can escape retributive justice. The Islamic civilization also witnessed immense capital formation, but its checks and balances differed in emphasis, prioritizing different aspects of personhood, such as the preservation of lineage. Islamic law's definition of a person is realist, grounded, and consistent. While it differs in scope, consultation with Islam's conceptualization of personhood ground a rethinking of best practices in pluralistic societies in search of greater moral economic outcomes.

Introduction

It is widely acknowledged that the West emerged out of a medley of civilizational currents such as the Greco-Roman civilization, Christian and Judaic law and ethics, and a culture of incentivization that Max Weber dubbed the "Protestant work ethic."[1] What is less widely acknowledged is the influence that the Islamic civilization played in shaping the West, particularly in the realm of trade, despite many elements of contemporary trade having their antecedents in the zenith of

Islamic mercantilism.[2] In the 1940s, Toynbee anticipated that the West's modern domination over the Islamic civilization would lead to something he called "Zealotism," effectively the reactionary rise of what would later be termed political Islamism; his forecast portended that while many of the conquered peoples—specifically those in the Arabian Peninsula and Afghanistan—may reactionarily mimic the dominant overpowering culture, another subset of their populations would reject it and instead nostalgically galvanize support for a glorious return to an antiquated ideological superstructure.[3] Ibrahim Warde theorizes that this latter impulse largely determined why instead of spurring a globally dominant paradigm shift in business ethics the creation and development of Islamic banking and finance, in the late 1970s, evolved instead as a rather insular network focused on contract form over substance, and subsists currently with vulnerabilities easily commandeered for exogenous agendas.[4]

Although the West did not take heed of Toynbee's prescient warning for it to pay closer attention to Muslim societies, it is more acknowledged today that the globe would benefit from a reevaluation of its relationship with Islam. This is what Richard Bulliet has long-opined, that the West fundamentally misread the Muslim world in the mid-twentieth century, and instead inopportunely succumbed to an indolent subscription of totalizing ideological narratives like the "clash of civilizations" and "what went wrong" theses instead of (re)building the bridges necessary for a more peaceful and pluralistic coexistence.[5] Early modern European writers molded the West's perception of the Ottomans and Islam, through both distrust and hostility, but also genuine inquisitiveness and appreciation.[6] Yet while Islam is oftentimes defined as the antithesis of the West, and there is a history replete with sustained periods of military collision and uneasy stand-offs, there are also sustained periods of Convivencia throughout the Middle Ages.[7] Bulliet maintains that the Muslim civilization and Christendom are better analyzed as sibling societies that share developmental trajectories and that their similar internal challenges are pertinent subjects of analysis. Bulliet's forays into Islamic technological history identify nuanced similitudes between the economic aspects and governing moralities of medieval Islam and Christendom, such as the capital structures dealing with the trade of animals[8] and the varied economies of scale centering around similar trade commodities like cotton.[9]

Such modes of exploration set the stage for this brief foray examining how Islam can inform a rethinking of contemporary economic understanding by, primarily, revisiting the moral foundations underpinning the essential definition of what it means to be a person. It may be that Islam's realist, grounded, and consistent definition of personhood can serve as a catalyst for the locus of rethinking corporate personhood. Ibn Khaldun pointed out that civilizational rises and falls throughout history share patterned characteristics.[10] One of the telltale signs of civilizational distress and decline is when internal factions at loggerheads within societies become unable to see the shared humanity—or personhood—in each other. The West ultimately adopted the free market system for reasons that reflected its values.[11] Of course, that value system has never been static, and internal debates have always raged; however, when the law ceases to serve as a reliable arbiter and language is no longer a reliable referent, communication breaks down, institutions inevitably get weaponized, and conflict wreaks civilizational havoc. Presently, the shared assumptions underpinning Western society are being radically reevaluated at their most fundamental level. This can be evidenced by gauging the level of purile disagreement about basic, essential questions such as what defines a man or woman, a precondition for conceptualizing personhood.

What Is Corporate Personhood?

As remnants of a shared memory of the past are contested, people become unable to communicate and humanize one another. In a zeitgeist where objective reality is highly contested, there can be no consensus on the limits of speech, or what deems one utterance protected by some, yet considered literal violence by others.[12] Corporate personhood—otherwise known as juridical personality—is one small slippery piece of this disintegrating puzzle. It has long been understood as the notion that a juridical person can possess some of the legal rights and/or responsibilities that a natural person enjoys.[13] It gets less attention than other components of capitalism but is an essential component of its historical evolution, nonetheless. The most common form a juridical person takes on is that of a corporation. As a vehicle it can operate as an independent entity separate from its associated human owners, shareholders, and managers. Thus, it is a nominalist attribution of words towards what is in practice an abstract entity because of its function: the vehicle creates a buffer that shields personal liability. It is lauded as a historical innovation that has fostered an attractive investment landscape in the West by encouraging and incentivizing the preservation of capital structures whilst securing people's anonymity and maximally mitigating personal liability.

There are debates about what affords a corporation the attribute of moral personhood, which all boil down to whether corporations have intentions, rights, and consciousness. Alasdair MacIntyre's approach to a just wage conceptualizes the corporation not as a nexus of contracts, but as a community of persons acting towards shared ends.[14] Common people, however, hold corporations morally responsible for their actions. When there is an oil spill, people blame the petroleum company, when a defect is detected in a mass-produced automobile, people blame the auto-manufacturer. Some argue forcefully that corporations are morally responsible persons that take deliberate and intentional actions. However, Smyth notes that "philosophers of business and law have almost universally held the notion of corporate personhood—the most direct and obvious basis for ascriptions of moral responsibility—to be in some sense fictional, reducible, or analogical, if not blatantly inconsistent."[15] What underpins these differences is worth exploring. There is one view among such theorists that organizational behavior cannot be detached from the wider rules of the game or organizational procedures; thus, using the game analogy, one must ask what the game itself intends before isolating the actions of any of the players. If a minority of players continuously dominate the game—imagine a young Lew Alcindor dominating college basketball because of his prowess as a dunker—there may be a predominating negative sentiment that urges a compromise of the rules to make things less unequitable—e.g., by banning dunking. This compromise, attributed to collective intent, demonstrates how corporate rules can contain second-order rules that allow players to augment first-order rules. Consequently, we may deduce intentions of first-order rules by analyzing these second-order operations. However, it may be a mistake to assume that any entity with the ability to behave intentionally is a moral agent. As blockchain technology and artificial intelligence play an increasingly prominent role in the economy, would a hypothetical corporation of the future that is run exclusively by soulless robots be deemed a moral agent?

Drilling Down into Definitions

Moral questions make it pertinent to drill down into what gives definitions their import. The definition of corporate personhood hinges on which definition one accepts for the word *corporation*, a term which stems from French in the sixteenth century via the Latin word for body: *corpus*. A corporeal existence only denotes tangibility, and it does not necessarily preclude the possibility of a metaphysical component such as consciousness or a soul that is culpable for decisions made of free will. The definition of corporate personhood further hinges on the addition of the compound "personhood," which ultimately centers around what definition of "person" is posited. As gender ideology and transhumanism challenge traditional understandings, it becomes difficult to pin down administrative definitions, hence, there is increasing value in consulting established and reliable definitions substantiated by a confluence of epistemic perspectives such as theology, natural law, reason, logic, and biology as an entire macroeconomic edifice is built on the established, sound understandings of stable and essential definitions. Despite it being a time when entire controversies are erupting over irrational questions, it is imperative to pin down the essential question herein: What is a person? Evidently, the answer ultimately goes back to first principles and epistemology. This, too, is a contested battleground, as evidenced by contemporary debates on abortion or the parameters of which entities can make political donations. Therefore, the next questions to investigate in logical sequence would be the genesis of the definition itself, and how it evolved to function as a vehicle for specific operations.

The Evolution of Investment Vehicles

Today, in the United States, the right of "contract" is a federally and constitutionally granted right established in the Fourteenth Amendment, instituted in 1868. Granting such equal protection made sure states did not unequally treat corporations in terms of their tax liabilities. In seventeenth-century Holland the stock market was born by traders grouping together their capital to mitigate risks of losing everything if the ships carrying their goods capsized. In England, after the Glorious Revolution (1688) Isaac Newton presided over the world's first central bank, the Bank of England, established in 1696; a new set of financial products emerged from these two locales, and at some unidentified juncture between then and now, corporations putatively became people.[16] According to R. C. Manning, the abstract concept of a person, hence, has benefited from ambiguity because the term person "flags three different but related notions: 'metaphysical person,' 'moral agent,' [and] 'moral person,'" and although the law grants the rights to corporations that encompass all three divisions, it is easier to make a case that a corporation is a moral agent than it is to make the claim it is a moral person.[17] Peter French originated the theory that corporations are moral persons, but he also contends that mobs of protesters are not, a conclusion based on a bifurcated distinction between human collectivities as either aggregates or conglomerates.[18] Moreover, this definition hinges on his concept of the human being.[19] French's contention was not accepted widely by his contemporaries, and theorists have continued to disagree on definitions. For instance, Pfeiffer notes,

> There is, however, no proof either that all disorganized collectivities lack moral personhood and thus moral responsibility of the kind possessed by corporations nor that all corporations are moral persons. This raises the troublesome question of how to determine which corporations have the three significant characteristics to a sufficient degree to warrant treatment as moral persons. And this might well lead one to ponder the possibility that that line is best drawn on the basis of one's purposes in blaming or punishing, not on a supposed sharp metaphysical boundary between two categories of collectivities.[20]

Through the passage of time, amendments and augmentations were made, but generally the status of corporations being deemed limited liability in nature has facilitated ease in the administration of daily operations like the transferability of shares. Nevertheless, the rights and liabilities of corporations have ebbs and flows in their legal understandings; for instance, *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010) reversed a century old legal definition of the corporation and its limits on political participation, fundraising, and donation spending. But the actual genesis of the corporate entity goes back to medieval times. It was introduced to represent a vehicle that allows investors to risk nothing beyond their capital as they are hence protected and shielded from being held liable for any of the corporation's behavior. In ancient times guild-like entities operated in public interest across civilizations. India had *śreṇī* which were associations of traders, merchants, and artisans. Ancient Rome had *collegium*—Latin for societies—which were associations and public municipalities that acted as stand-alone legal entities. Moreover, the Catholic Church was perhaps the first entity that could buy, possess, and sell assets in its own name.[21] Having an artificial legal persona allotted numerous benefits. For instance, it allowed people to hold assets that transcended the lifespan of asset holders and allowed them to bequeath their assets in a protective vehicle. In recent decades the definition of corporation has widened in the United States to become "A number of persons united in one body for a purpose."[22]

Now, on one hand, government-backed support for fictitious personas operating as juridical persons in the economy is cognized as playing a major role in ultimately catapulting the West into temporal dominance. On the other hand, the often tacit and or unconscious acknowledgement that such dominance happened is in large part because the well-oiled machinery of capitalism fosters a culture that places money at the top of a hierarchy of adulation.[23] Consequently, there is no shortage of detractors and dissidents pointing out that the net sum of such entities operating within a macro regulatory regime allows for people to commit crimes and avoid prosecution with impunity; and further, that it allows a small minority to monopolize much of the world's resources. When Oxfam International publishes its yearly reports claiming less than one percent of people on earth control most of its resources, corporate personhood is the structure held indirectly in contempt for its facilitation of such perceived structural inequity.[24] Criticisms are further bolstered by revelations that come to light such as the Panama Papers, which identify known entities as holding mammoth amounts of assets through offshore structured vehicles and shell corporations which they continue to use for illegal purposes such as fraud, tax evasion, and the evasion of sanctions.[25]

Usury and Intent: Historical Narratives

One of the immoral practices that corporate personhood legally exploits is the practice of usury. Usury is a practice that starts in the East and immediately creates a mechanism that allows for the rapid and massive accumulation of wealth and power at the expense of others, in a zero-sum sense. Stephen Zarlenga philologically traces usury's inception back to approximately 2500 BCE in Ancient Lagash, Sumeria in agrarian societies that made loans on seeds that could generate plants with multiples of grain seeds allowing harvest farmers to easily repay borrowed grain with interest in grain.[26] The word for interest in Babylonian, *mas*, translated into birth, and the rates were set arbitrarily.[27] However, the mathematical impossibility of all loans being repaid led to a powerful ruling class emerging thereafter that challenged the state, necessitating a prohibition and recurring jubilee of debt forgiveness. This strand of thought can be traced throughout the Indian subcontinent, Roman law, and Old Testament law.[28] Thus, the intent behind the prohibition is to protect people from exploitation. While many claim that economies ostensibly emerge out of trade and barter, history and anthropology reveal that they emerge and scale by agreeing upon conditions of recordkeeping for money and debt. One of the seminal forays into this macro-anthropological analysis is David Graeber's 2012 book *Debt*, which covers the history of debt and its function across space and time.[29] Graeber produces indubitable evidence that all traditional societies established capital management by instituting bookkeeping and communal credit-clearing houses, from as far back as the Agrarian Age (3500 BCE–800 BCE), through the Axial Age (800 BCE–200 CE), and enduring throughout the Middle Ages leading into the capitalist era; one can, therefore, make an inference that what really sets the capitalist age apart from its anteceding eras is the ability for corporations to scale by using interest and leverage with bureaucratic efficiency.

Drawing civilizational comparisons, Janet Abu-Lughod contends that just like the Quran shares the Bible's prohibition of usury, it is a category error to assume—as many do—that its civilization was any more inimical to capitalism. She reveals that partnerships for mercantile credit were formed as they served as essential legal instruments necessary for long-distance trade, noting that "both partnerships and commenda agreements were in common use in the medieval Muslim world."[30] She further argues, "Not only could selling on credit yield higher profits but Islam's injunction against usury could be circumvented by skilled use of credit. Such credits could be transferred over and over again and there were even partnerships for buying and selling credit."[31] These less-debated historical facts collectively make the case that there is an antecedent for most components of capitalism in the medieval economies of the Islamic civilization. The Jewish historian Shelomo Goitein's analysis of Jewish economic transactions in medieval Muslim societies confirms this and reveals numerous precursors such as the French *aval*, which is an endorsement on a bill of exchange and a derivation of the Arabic term *hawala*—an "order to pay"—not unlike a modern check instrument.[32] However, Timur Kuran, who played a pivotal role in shaping the thought and practice of Islamic finance and economics in the American academy argues that tenets of Islamic law, such as its strict rules for inheritance, ultimately held the Middle East back from allowing capitalism to scale and that the West capitalized on the stagnation of Muslim societies to make capitalism flourish and achieve temporal dominance.[33]

Personhood in Islam

While this development has had its praises and criticism leveled against it, the question posed herein is if consultation with Islamic law can offer any prospects for moral improvements to corporate personhood as a concept within this increasingly pluralistic world. Islamic law is preoccupied with the preservation of lineage (*nasb*). It is an article of faith that all prophets and messengers descend from successive generations of traceably sound lineages and legally recognized unions; this serves to negate the possibility of any claims of illegitimacy as the product of impropriety is not the most suitable bearer of divine guidance. Furthermore, corporeality alone is not what makes a person a culpable actor. Rather, there are preconditions for the moral responsibility for one's actions (*takleef*) such as the combination of corporeality with a sane mind that has reached puberty. Thomas Eich, a contemporary reader of Islamic texts, traces strands of concepts like personhood throughout the history of Islamic discourse to arrive at a definition that is deduced from opinions in legal matters relating to the unborn.[34] He particularly emphasizes the issues of marriage, pregnancy, the moment of ensoulment, and the unborn. There is a jurisprudential difference of opinion in defining when ensoulment occurs, and when an embryo is considered to have the same status as a human that is born. One majority opinion opines that this occurs at 120 days. There is another strong opinion that it occurs at 40 days.[35] Legal opinions delve into linguistic and philological analyses, such as defining a person (*shakhs*), which generally signifies a silhouette or body of a person. Eich opines, "I would argue for a stronger consideration of the issue of form in the definition of personhood in Islamic normative texts. Such consideration would add significantly to a differentiated understanding of the anthropology expressed in these texts and the ways that such views on this question have developed throughout the course of history."[36]

Although corporeality is central to defining a person, there can be no personhood without ensoulment. The juridical opinions that ensoulment occurs after 40 or 120 days, respectively, deem that thereafter an embryo is considered to share the same status as a born human being. Moreover, scholars debating what sets humans apart from other entities have emphasized the importance of verses in the Qur'an that seem to address this distinction, such as 17:70: "We have honoured the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours, above a great part of our creation."[37] Furthermore, a great number of commentators emphasize the entrance, presence, and departure of the soul (*rūḥ*). For instance, Abu Bakr Ahmad Al-Jassas, a tenth-century commentator notes on miscarriage and pregnancy that an early-stage fetus does not have a human shape (*surah insaaniyah*). There are, of course, other opinions about what sets a human apart from other creations such as the fact that it is a rational animal (*ḥaiawan an-naatiq*), walks on two legs (*rijaal*), and eats with two hands. However, despite all these nuanced sidebar discussions, the stable definition of personhood in Islamic normative texts pays a large homage to the central idea of form, but grounds it with metaphysics that cannot operate purely in the abstract.

Conclusion

Considering the subject's import, this topic and the moral reasoning underpinning it is grossly under-researched as evidenced by the extensive gaps in its treatment in academic literature, and the general lack of analyses of its genesis and pivotal role in the trajectory of capitalist societies. Clearly, an acknowledgement that the abuse of corporate structures has contributed to injustice beckons a reevaluation of the concept within its operational context because it is both an economic and moral issue. At this historical juncture, as ideological clashes occur in the West about fundamental definitions and foundational values, it is important to carefully select which critical reevaluations and narratives to consult. While the postcolonial and decolonial schools of historical revision can overshoot in the levels of activism and/or zealotry embedded in their critiques, there are nuggets to be found in the works of numerous Western scholars of the Islamic civilization and its texts who combine critically descriptive analyses to examinations of the normative tradition. What investigation confirms is that contemporary corporate structures, particularly in credit markets, have antecedents in Islamic civilizations that dealt with similar moral issues. Thus, to conclude, if it has been observed that the human condition has remained the same over millennia, it may benefit contemporary thinkers to reconsider tinkering with stable and consistent definitions of humanity that have existed for time periods spanning back to time immemorial. Despite the financial instruments developing in qualitatively different ways in places like Holland and England at the cusp of the Enlightenment, the moral predicaments in capital markets have remained constant.

Notes

1. See Michael Novak, "How Christianity Created Capitalism," *Religion & Liberty* 10, no. 3 (May/June 2000): 8–9.
2. See Janet Abu-Lughod, *Before European Hegemony: The World System A.D. 1250–1350* (New York: Oxford University Press, 1989).
3. See Arnold Toynbee, *A Study of History: Abridgement of Vol. I–VI*, ed. D. C. Somervell (Oxford: Oxford University Press, 1946), 172.
4. See Ibrahim Warde, *Islamic Finance in the Global Economy* (Edinburgh: Edinburgh University Press, 2010).
5. See Richard Bulliet, *The Case for Islamo-Christian Civilization* (New York: Columbia University Press, 2006).
6. See Noel Malcolm, *Useful Enemies: Islam and The Ottoman Empire in Western Political Thought, 1450–1750* (Oxford: Oxford University Press, 2019).
7. See Rowan Williams, "How Islam Shaped the West," *The New Statesman*, May 15, 2019, https://www.newstatesman.com/culture/2019/05/how-islam-shaped-the-West.
8. See Richard Bulliet, *The Camel and the Wheel* (New York: Columbia Press, 1990).
9. See Richard Bulliet, *Cotton, Climate, and Camels in Early Islamic Iran: A Moment in History* (New York: Columbia Press, 2009).
10. See Salman Sayyid, *Recalling the Caliphate: Decolonization and World Order* (London: Hurst, 2014).
11. See Novak, "How Christianity Created Capitalism."
12. See Lisa F. Barrett, "When is Speech Violence?" *New York Times*, July 14, 2017, https://www.nytimes.com/2017/07/14/opinion/sunday/when-is-speech-violence.html.
13. See Chris MacDonald and Alexei Marcoux, s. v. "Corporate Personhood," in *Concise Encyclopedia of Business Ethics*, https://conciseencyclopedia.org/entries/corporate-personhood/.

14. See Brian Boyd, "A Corporation Is Not a Nexus: A MacIntyrean Approach to the Just Wage," *Journal of Markets & Morality* 25, no. 2 (2022): 115–27.
15. Thomas Smyth, "Problems about Corporate Moral Personhood," *The Journal of Value Inquiry* 19, no. 4 (1985): 327.
16. See Renee Montagne, "When Did Companies Become People? Excavating The Legal Evolution," *NPR*, July 24, 2014, https://www.npr.org/transcripts/335288388.
17. R. C. Manning, "Corporate Responsibility and Corporate Personhood," *Journal of Business Ethics* 3, no. 1 (1984): 77.
18. See Peter French, "The Corporation as A Moral Person," *American Philosophical Quarterly* 16, no. 3 (1979): 207–15.
19. See Peter French, "Principles of Responsibility, Shame and the Corporation," in H. Curtler, ed., *Shame, Responsibility and the Corporation* (New York: Haven, 1986), 19–55.
20. R. S. Pfeiffer, "The Central Distinction in The Theory of Corporate Moral Personhood," *Journal of Business Ethics* 9, no. 6 (1990): 480.
21. See Stephen Zarlenga, *The Lost Science of Money: The Mythology of Money—the Story of Power* (Evanston, IL: The American Monetary Institute, 2002).
22. Thomas Eich, "Definitions of Personhood in Islamic Normative Texts," *Contending Modernities*, February 22, 2013, https://contendingmodernities.nd.edu/field-notes/definitions-of-personhood-in-islamic-normative-texts/.
23. Philip Goodchild, *Theology of Money* (Durham: Duke University Press, 2009).
24. See Nabil Ahmed et al., "Inequality Kills," *Oxfam Briefing Paper* (Oxford: Oxfam International, January 2022), https://www.oxfam.org/en/research/inequality-kills.
25. See ICIJ, "Giant Leak of Offshore Financial Records Exposes Global Array of Crime and Corruption," *International Consortium of Investigative Journalists*, April 3, 2016, https://www.icij.org/investigations/panama-papers/20160403 -panama -papers-global-overview/.
26. See Zarlenga, *The Lost Science of Money*.
27. See Michael Hudson, "How Interest Rates Were Set, 2500 BC–1000 AD: Máš, Tokos and Fœnus as Metaphors for Interest Accruals," *Journal of Economic and Social History of the Orient* 43, no. 2 (2000): 132–61.
28. See Michael Hudson, *The Lost Tradition of Biblical Debt Cancellations* (New York: Henry George School of Social Science, 1993).
29. See David Graeber, *Debt: The First 5000 Years* (New York: Melville House, 2012).

30. Abu-Lughod, *Before European Hegemony*, 218.

31. Abu-Lughod, *Before European Hegemony*, 219.

32. See Shelomo Dov Goitein, ed., *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza*, vol. 1: Economic Foundations (Berkeley: University of California Press, 1967).

33. See Timur Kuran, *The Long Divergence* (Princeton, Princeton University Press, 2012).

34. See Eich, "Definitions of Personhood in Islamic Normative Texts."

35. Hamza Yusuf, "When Does a Human Fetus Become a Human?" *Renovatio*, June 22, 2018, https://renovatio.zaytuna.edu/article/when-does-a-human-fetus-become-human.

36. Eich, "Definitions of Personhood in Islamic Normative Texts," 1.

37. Abdulla Yusuf Ali, trans., *The Holy Qurān: English Translation & Commentary*, 1st ed. (Durban, South Africa: Islamic Propagation Centre International, 1934).