On the Quality of Economic Institutionalization in the Late Ottoman Period: 
The Introduction of Intellectual Property Rights

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Abstract
In the domain of intellectual property rights, Turkey’s historical path shows that its predecessor, i.e. the Ottoman Empire, relied on a traditional guild-monopoly system for the provision of goods and services to the subjects at an affordable price and in sufficient quantity until the late nineteenth century. In the period of modernization, the Ottomans introduced trademark and patent laws, in 1871 and 1879, respectively, following the major traders and industrialized countries of the age. However, examining the state of the Ottoman economy in the nineteenth century - an age of economic collapse vis-à-vis the industrialized countries - the intellectual property rights regulations were not a result of a well-planned policy designed by the Ottoman intellectuals and statesmen. Despite the radical change of polity, some patterns in modern Turkey, such as fewer patenting activity by the domestic innovators and lower R&D level at large, imply path dependencies with the patterns of the economic activities during the late Ottoman era. The fact that Turkey, as the main successor of the Ottoman Empire, suffers a large innovativeness gap between today’s main innovators (both early and late industrializers) raises important questions on the ability to manage the change and path dependencies in the economic institutionalization since the Ottoman era.

Introduction
The question of what is lacking in Turkish industry is as challenging today as it was in the nineteenth century. Contemporary studies demonstrate that Turkish industries, especially small and medium sized enterprises (SMEs) come behind not only their European counterparts but also those in countries in East Asia, mainly Korea and China, in terms of

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technological capabilities, including research and development (R&D) spending and the share of high-tech content in the export portfolio.¹

Intellectual property rights (IPR) policies are an important pillar of the national innovation systems in the configuration of modern economies. The IPR policies vary among countries because of the different targets of incentives and methods. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) also offers frameworks for gradual harmonizations among countries with differentiated development levels. Ceteris paribus, if a country intends to create the conditions of in-house R&D, it is more likely to put rules in place to protect the IPRs of the innovators in order to classify them as intellectual capital. If it has not a developed R&D base and therefore is reliant on foreign technologies, then it is more likely to seek conditions to allow the local industries to copy foreign technologies with reduced cost.² Developing countries rely on foreign direct investments and technology transfers to an extent, not only for upgrading their technologies but also to finance investments and create employment. Therefore, the protection of IPRs has been regarded as an indispensable part of their policy-set to strike a balance between incentivizing the suppliers of foreign direct investments (FDIs), which are the source of technology, and making the price of technology affordable for the local economic actors. According to the Global Competitiveness Index, Turkey’s current ‘Capacity for innovation’ stands at 83, quality of ‘Public institutions’ 73, and ‘Intellectual property rights protection’ 82 out of 140 countries.³

This paper aims to examine the legacy of the IPR protection in Turkey by looking into the institutional infrastructure in the Ottoman era in this field. The idea of regulating manufacturing can be traced back well into the fourteenth century, when craft guilds dominated manufacturing in urban spaces during the Ottoman period as was the case in contemporary societies in medieval Europe. In the following section, the Ottoman guild regulation is summarized from the secondary source literature. The third section recounts the state of the Ottoman economy in the nineteenth century. The fourth section analyzes the

intellectual property rights regulations adopted in the context of the nineteenth century, followed by a conclusion.

**Origins of the Exclusivity System in the Turkish Economic History**

This guild structure in the Ottoman era was developed upon the *Ahi* (Akhi) organizations, which are referred to as brotherhood and artisan organizations existing in the urban spaces during the Seljuk era. Ibn Battuta recorded his observations about these *Ahi* organizations in his travel notes, and he happily recounted his stay in the *Ahi* hospices during his travels in Anatolia in the 1330s. Three centuries later, Evliya Çelebi recorded the guild artisans’ parade in Istanbul in his *Seyahatname*. Evliya counted 735 guilds, including physicians, woodcutters, bakers, butchers, gravediggers, thieves, pimps, beggars, etc.

From the thirteenth century, craft guilds were granted exclusive rights to produce and sell their products and to purchase raw materials needed for their products. The guild system was a common institution of the medieval economy. In the Ottoman version of it, among the main pillars of this system were *kethuda*. He was elected by the members of the guild to implement the rules and to handle the relations with the state. His deputy was *yigitbas* (leader of bravemen), who conducted internal affairs of the guild such as the provision of raw materials and their distribution among members. Every guild also had a *sheikh*, the religious representative. Guild management was conducted according to *ihitساب*, i.e. general laws of the trade. The *qadi*, i.e. the local judge, had the mandate to register the rulebook and oversee its implementation on behalf of the state. Any behavior in breach of guild regulations could be referred to the Sultanate by the judge for a ruling from the central authority. The empire-wide rules on the guilds were mainly laws and sultan’s directives both emanating from the central government. The first known laws of the Ottoman Empire were proclaimed by Sultan Mehmet II (r. 1451-1481), who regarded himself as the successor of the Roman

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6 Black, *Guilds and Civil Society*, 3-11.

Empire. In the Kanunname (Law-Code) attributed to him, there are rules on the artisans monopolies. For example, the production and sale of wax as well as the purchasing of its raw materials was granted to the artisans of mumhane (waxhouse) guild in Istanbul.\(^8\) Thus, a system for managing guild production was in place. In order to differentiate one guild’s products from those of other guilds, producers differentiated their goods by colour, shape and size, so such differentiations functioned as trademark. No extra trademark labelling was applied onto the goods as every guild’s products were distinct in appearance. A product’s producer and the guild retain the right to produce it in this system. This was also a system of quality control, hence reducing transaction costs in an age of asymmetric information between the trading parties.\(^9\) Traditional artisan guild system functioned in alignment with the principles of the Ottoman economic system, dubbed by Mehmet Genç\(^10\) as ‘provisionalism’, ‘traditionalism’, and ‘fiscalism’, with which the state prioritized affordable provision of goods for citizens and stability in the society. Provisionalism refers to the adequate supply of goods and services at a reasonable price while traditionalism shows the general inclination to stability and fiscalism prioritizes the balance of the state budget.

The norms of the commercial life were communicated to the guild members in the social life. Safi Mustafa Efendi’s book Gülşen-i Pend, written in 1708, advised different groups of crafters including book dealers, calligraphers, physicians, oculists, surgeons, chemists, goldsmiths, traders, and herb and spice sellers. He advised that the traders should not be greedy, and that instead of being tempted by temporal world goods, they should be the customers of the goods of the eternal other world.\(^11\)

Over the centuries, the guild system underwent changes. Two important changes to the guild system in the eighteenth century are related to the change of the ownership of the shops and the introduction of the gedik, i.e. production patent introduced in 1727. Regarding the ownership, the shops, in which artisans worked in a bedesten, i.e. shopping market, were parts of the corpus\(^12\) of the vakif (waqf) system to generate income for the provision of social services such as public kitchens, hospitals, schools, municipal and religious services in the


\(^10\) Mehmet Genç, Osmanlı İmparatorluğu’nda Devlet ve Ekonomi (İstanbul: Ötüken, 2000), 47.


\(^12\) Corpus refers to capital in the form of real estate or cash endowed as waqf, see Murat Çizakça, “Incorporated cash waqfs and mudaraba, Islamic non-bank financial instruments from the past to the future,” 2004, accessed 10th March 2016, https://mpra.ub.uni-muenchen.de/25336/1/MPRA_paper_25336.pdf.
Ottoman era. Therefore, the shops were owned by the legal personality of a particular vakıf. As the vakıf deeds contained very strict rules against the change in or selling of the corpus, the shop ownerships were kept stable for long periods. However, due to the fiscal constraints of the state from the late seventeenth century as a result of the military campaigns, the state often opted for policies such as seizing the salary of vakıf staff. Hence, the stability of the guild system was not guaranteed forever. Another important change was the introduction of gedik patent for craftsmen of guilds. This patent granted the craftsmen the entitlement to conduct a particular craft business. An owner of the gedik became able to open a shop outside the rules of the guild, and even in competition with the guild artisans. Indeed, the very introduction of the gedik had arisen from the fact that there already appeared craftsmen in the market outside the rule of guilds. The gedik system was abolished in 1912 as it was viewed as against the liberal paradigm of the day.

On the other hand, the deficiencies of the guild system in Europe were mentioned by philosophers including Adam Smith, who saw guilds as rent-seeking mechanisms favoring the vested interests of masters over the new entrants i.e. apprentices. Fifteen years after Adam Smith’s idea, France abolished guilds in 1791 following the French Revolution. The same abolition occurred throughout much of Europe thereafter. Recently, however, Miguel Laborda-Peman mentions that in the conditions of imperfect markets with ‘information asymmetries, externalities, non-excludable goods and agency dilemmas’, craft guilds functioned as a coordination mechanism for essential public goods including skill provision and quality assurance. Eunjeong Yi emphasizes the egalitarian aspect of guilds. In other words, the set of values of guilds did encourage egalitarian practices in pricing and the trade both among its members as well as in the society. Indeed, the provisioning of an adequate

supply of goods and services was among the objectives of state along with other considerations such as the stability of tax revenues as Genç asserted.\textsuperscript{20}

Aside from these merits of the guild system, the problem in the Ottoman practice seems to be de-synchronization of economic institutionalization from the, then, industrializing world. As the case of gedik patent shows, the Ottoman ‘economic mind’ insisted on maintaining the guild, at least officially, until the beginning of the twentieth century while it was abolished in much of Europe in a mood of revolution. The First and the Second Industrial Revolutions had left traditionalism behind, while the guild rules continued to be upheld until 1912 in the Ottoman lands. Hence, by continuing to limit the number of workshops and masters and allowing the succession of the craftsmanship from father to son, the system favored tradition over novelty in the age of revolution. These conditions, in turn, caused some among them to exit the guild system when opportunities were available.

More importantly, the protection of the rights, including property rights, of individuals in the Middle East towards the nineteenth century diverged from the West considerably. While the West was in the making by its institutions such as the rule of law, a modern banking system, and the civil society restricting the vagaries of the state and the ruler, in the nineteenth-century Ottoman case, confiscations and tax increases were commonplace. Moreover, the state left no place for the civil society to challenge for the rights, including those for intellectual properties.\textsuperscript{21}

\textbf{Ottoman Economy towards the Twentieth Century}

This traditional economic structure was more or less intact during the nineteenth century, when it met with the challenges of the industrialization of the West and introduced the IPR laws into the domestic economy. Context is crucial to assess what role the state would play and whether or not it did so. The divide between an industrialized Europe and more traditional Ottoman state was perfectly represented within a single city: Istanbul. Passages from Kemal Karpat’s \textit{Ottoman population 1830-1914 (demographic and social characteristics)} show this divide by often referring to the observations of then prominent European travellers. He depicts a conspicuous contrast between the traditional Ottoman vicinities of the city and its more modern and Westernized parts:

\textsuperscript{20} Genç, \textit{Osmanlı Imparatorluğu Devlet ve Ekonomi}, 47.

The commercial life of the old city was still centered in the bazaar *based on artisan production system*, and was conducted in the same spirit as in years past……. The shops had no display windows or any other features designed to attract customers. Goods were not attractively presented, and the merchants, especially the Muslims, made no effort to promote their merchandise. The bazaars had begun to specialize in the selling of cheaper goods at low prices to the poor of Istanbul.22

The penetration of European firms into the Ottoman economy over the course of the century constituted a dual structure. Henry Otis Dwight describes Istanbul as follows:

Greater contrast can hardly be imagined than is found between the European business houses of Galata, on the one hand, with their desks, chairs, writing machines, file-cases and other paraphernalia of a prompt and accurate business system, and on the other hand, the cramped quarters of native merchants. For the latter have the only roomy thing about the place, the arm chair for the head of the firm.23

Dwight relates the general situation of the traditional economic life of Istanbul with administrative and social culture and notes that,

In the Western lands public opinion limits the satisfaction which a man may find in ill-gotten gains. In the East, success in life is the attainment of ease. Ease is ease, whether gained through luck, or through dishonorable ‘cornering’ of things that others must have, or (best of all) through power that can force others to become one’s instruments for the amassing of poverty. In Turkey, Government service promises wide opportunity in these directions, and therefore a stream of candidates wide and wending, flows from all over the land towards Constantinople… we may note the fact that a favourite door of

entrance to lucrative place in civil service is offered by the position of lackey to a Minister, or of Shoe-keeper at the foot of the stairway of a palace.\textsuperscript{24}

Dwight further describes the Ottoman society as ‘arrested development, absence of initiative, and general uselessness by reason of narrow selfishness’. He concludes that “The bane of Constantinople is not solely poverty of resources. It is poverty of ideals.”\textsuperscript{25}

Karpat argues that, in the second half of the nineteenth century, Istanbul became a ‘semi-colonial’ post for the exchange of goods, with no heavy industry. Most important production consisted of tiles and cement bricks, fezzes, leather goods, cigarette cases, pottery, suitcases, rosaries, clothing, nails made from scrap iron, and the likes. Most of these enterprises belonged to international companies; only a few were owned by the (Ottoman) government or by native inhabitants. For example, all the chief manufacturers of sewing machines, such as Singer (USA), Gretzner, Clemens, Mueller, Kochler, Pfaff, Knoch (all German), and Orosdi Bach (French) had representatives in Istanbul.\textsuperscript{26} Other products were also imported in substantial quantities: the city imported 1,300,000 bags of flour and 600,000 pairs of rubber shoes (mostly from France) and 11,000 tons of cotton goods (from England and Italy).\textsuperscript{27} Thus, not only in the innovations of the era, but also in traditional sectors like textile, the Ottoman industry had lost competitive advantage.\textsuperscript{28}

Furthermore, foreign firms chose not to produce their products in Istanbul, as the city lacked qualified workers. Paul Fresh wrote:

Constantinople is actually a large market place, a bazaar…… and…… a port of transit. From Constantinople departs for the West a very large part of the silks, wines, dry fruits…… oils, mineral ore, grains, flour, hides of all kinds produced by European and Asiatic Turkey and the islands of the Archipelago. It is also in Constantinople that arrive a substantial part of goods supplied by Europe to Turkey such as ready made clothing, flours, alcoholic beverages, candles, soap, petroleum, medicine, wood and steel products, machines and tools.\textsuperscript{29}

\textsuperscript{24} Dwight, \textit{Constantinople and its problems}, 162-163.
\textsuperscript{25} Dwight, \textit{Constantinople and its problems}, 165.
\textsuperscript{26} Karpat, \textit{Ottoman population 1830-1914}, 100.
\textsuperscript{27} Karpat, \textit{Ottoman population 1830-1914}, 100.
\textsuperscript{28} See Halil İnalcık, \textit{Türkiye Tekstil Tarihi Üzerine Ara\c{S}tırmalar} ( İstanbul: Türkiye İş Bankası, 2008), 144-145.
Dealing with a heavy debt burden after the 1856 Crimean War and the losses incurred in the successive wars, on the one hand, and the lack of ideas and resources for an industrial policy and a less-sophisticated local economy on the other hand, the Ottoman state was left to find capital through foreign investments for basic infrastructures like electricity, railways, telegraph, hospitals and schools, and borrowing. Sixty percent of the state revenues was being used to service foreign debt in the 1870s. The Ottoman empire had to follow the mainstream paradigm of, in Erkan Tural’s words, ‘an unconscious laissez-faire policy’ in the global political economy, unlike, then, late-comers such as Germany and the USA. This was the context in which the Ottoman Empire adopted its first modern intellectual property rights regulations.

**IPR Regulations Adopted by the Ottoman State in the Nineteenth Century**

In relation to the developments in the world economy and the state of the Turkish economy as shown above, the Ottoman empire’s position towards institutionalization in the IPR field was to follow the implementations of the industrializing world. In this, the Ottoman Empire adopted trademark and patent regulations earlier than countries such as Japan, Russia, and Switzerland. In relation to trademarks, the first modern regulation ‘The Code on Factory Productions and Trade Articles’, in 1871, marked the subscription to the modern IPR system. The code was amended in 1888 and stayed in force until 1965 in the Republican era when it was repealed in 1995 by the ‘Degree Law on the Protection of Trade Marks’.

Regarding the implementation, a study by the Turkish Patent Institute on the first trademarks granted during the Ottoman era shows that between the years 1896 and 1901, a total of 444 trademarks were granted. Among the trademarks, international trademarks

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represented a great majority, while the number of Turkish artisans’ trademarks granted were few and concentrated in comparatively lower value-added products such as socks and gaiters, soap moulds, tobacco, walnut, hazelnut, etc. Some of the international companies which were granted trademarks are Singer, Nivea, Ariel, Mercedes, Nestle, Vichy, Ford, Johnnie Walker, and General Motors Corporation.

Regarding the patents, the first step was the adoption of Patent Law in 1879 during the Ottoman era. The Patent Law was adopted by translating from the French Patent Law which was legislated in 1844. The 1879 law was in effect until the legislation of the Law on the Protection of Patent Rights in 1995.\(^{35}\)

Considering the agrarian nature of the economy, the Ottomans were net importers of industrial products. Without a proper industrialization policy, the policy was to follow whatever practice by which the domestic producers were less likely to benefit from the IPR regime. Hence, the IPR regulations adopted by the Ottoman Empire did not necessarily contribute to the institutionalization of a healthy economic structure. At least, the policy was not consistent with an economy, which exported primary goods, rather than goods with substantial ‘intellectual’ content.

According to Douglass C. North, economic history is full of states failing to institute the rules of game to ensure economic development.\(^{36}\) Looking back over more than a century comparatively with other groups of late-comers of the industrialization such as Germany and the USA in the nineteenth century, and Japan, South Korean, Taiwan, and China in the twentieth century, the merits of institutionalization to foster technological advancement is unquestionable.

Considering the past five decades of industry policies, Fikret Şenses and Erol Taymaz\(^ {37}\) state that, lacking ‘an effective proactive state’, Turkey followed a ‘passive’ integration into the world economy. For example, on the input side of innovation, R&D investment was at 0.32% in 1990 and increased to 0.53% in 2002 and 0.86% in 2011. Comparatively, South Korea’s R&D investment was 4% of its GDP in 2011, and China’s was 1.84% while its investment in R&D was similar to that of Turkey in the 1990s. Similarly, on the output side, patent applications by domestic applicants in Turkey is very low comparing

\(^{35}\) Kala, Türkün mülkiyet hakları tarihi, 108.


to Korea and China.\textsuperscript{38} In 2014, out of 12,375 patent applications, 4,861 applications were filed by domestic applicants and 7,514 by foreign ones.\textsuperscript{39} Indeed, Turkey is the main successor of the Ottoman Empire albeit representing a radical change of the polity and the country has so far only two Nobel laureates, of whom, one is Orhan Pamuk (2006) in literature, and the other is Aziz Sancar (2015) in chemistry, who was affiliated with North Carolina University at the time of the award. Comparatively, Germany has 61 (born within the current borders), and Japan 23 Nobel laureates.\textsuperscript{40}

\textbf{Concluding remarks}

Turkey’s historical experience of production monopolies granted to the artisan guilds goes back to the thirteenth century. The traditional artisan guild system functioned in alignment with the principles of the Ottoman economic system, dubbed by Mehmet Genç\textsuperscript{41} as ‘provisionalism’, ‘traditionalism’ and ‘fiscalism’ by which the state prioritized affordable provision of goods for citizens and stability in the society. However, while the guilds constituted a central institutional infrastructure in the Ottoman economy in the pre-modern era towards and after the First Industrial Revolution, the knowledge content of innovations was not competitive compared to those of the products of the European countries sold in the Ottoman market.

In the nineteenth century, the organization of the Ottoman manufacturing was mainly represented by traditional shops and workshops specializing in lower value-added production and marketing capacities compared with their European counterparts. Conforming to the general principle of traditionalism, a similar attitude was at play in the guild system. Primarily two features of guilds should have proved to be restrictive and monopolistic: First, the limitation of the number of workshops operating in a guild, and second, the limitation of mastership grants (\textit{gedik}) in order to prevent newcomers from competing with the incumbent crafters. It is fair to claim that both limitations had ‘crowded out’ entrepreneurship capital, which is crucial for competition.

\textsuperscript{41} Genç, \textit{Osmanlı İmparatorluğunda Devlet ve Ekonomi}, 47.
On the other hand, what were the causes and the dynamics that kept the Ottoman economy at an imperfect equilibrium is an important issue. Moreover, the extent of the possibility of government intervention was unpredictable, which should have disincentivized the economy and pushed the economic actors backwardness vis-à-vis the Western economic institutionalization with considerable checks and balances between the state and the society. Although the institutionalization of the rule of law was being rehearsed with the proclamation of the Tanzimat Edict (Tanzimat Fermanı, Gülhane-i Hattı Hümayun) in 1839, Islahat Edict (İslahat Fermanı) in 1856, and the First Constitutional Monarchy (Birinci Meşrutiyet) in 1876, they were also a result of external pressure, rather than a truly domestic political process.\(^{42}\) Therefore, compared to the nature of the state-society relations in Europe, the Ottoman political economy lacked predictability and refrained from credibly committing to the rights of the property owners and possible innovators due to a weaker set-up of the rule of law.

Within this context, in the institutionalization of the protection of the IPR, the Ottoman Empire followed more or less the path of industrialized countries and adopted IPR regulations in trademark and patent in the 1870s. However, a mere adoption of the regulations without essential institutional complements was half-reform at best, and does not demonstrate that the Ottoman domestic economy benefited from the IPR system in transferring technology to upgrade itself and gaining competitive advantage beyond a newly flourishing import business in the capital city of Istanbul. To better explain what is lacking in Turkey regarding technological competitiveness and development, inquiries on the path of the economic institutionalization from the Ottoman era to the modern Turkey can deliver useful results.

Bibliography


