

Law and State Power:
The Institutional Roots of the Strong State in Islamic History

by

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ABSTRACT

The struggle for power has been a persistent phenomenon throughout history, involving the rulers, general public, and various other interest groups. As one of these groups, the legal community has been in a unique position to regulate the relationship between the ruler and the public because of its dual responsibilities to provide services to the public and to impose constraints on the rulers. Using a political economy model of state power and focusing on the power of the rulers to tax and spend, we study the role of the legal community in regulating the coercive powers of the rulers in Islamic history. We examine the power relationship between the rulers, the legal community, and the general public, explain long term trends in the development of the rulers' power, and identify the institutional roots of the strong state in the Ottoman Empire and other Islamic states.

Keywords: state power, taxation, political economy, Islamic Law, legal community

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A fundamental problem of public economics has been to maintain a balance between the public and private sectors. Whereas the government needs coercive power to be able to collect taxes and provide public goods and services, this power needs to be limited by appropriate institutional constraints. Institutions must exist not only to provide secure property rights and appropriate incentives for the private economic actors but also to restrict the power of the state or the sovereign (Greif, 2005). Economists have identified various political, financial, and legal institutions that have facilitated the functioning of the markets by preventing rulers from abusing the property rights of others and from taxing and spending without constraints. The nature and strength of these institutions have varied significantly over time and between societies, resulting in different trajectories of long-term development.

A key institution that can restrain the ruler is the legal system. The courts and judiciary can function at different degrees of public control and independence from the ruler. Possibilities include using private litigation to resolve disputes, relying on judges serving as public officials, and restricting justice to dictatorial command (Djankov, et al, 2003). The social origins and economic consequences of these possibilities have been the focus of a recent and rapidly growing literature in economics. For example, studying the origins of differences between English and French legal systems, Glaeser and Shleifer (2002) have argued that the divergence in the degrees of centralization and dictatorship

between the two systems originated from the differences between these countries in their enforcement environment going back to the twelfth and thirteenth centuries. Tridimas (2005) and LaPorta, Lopez-de-Silanes, and Andrei Shleifer (2004) have similarly studied judicial differences among a large number of countries to explain variations in economic freedom and the relative size of government. The legal system has been the focus of economic explanations of numerous other historical phenomena and episodes of institutional design¹.

Islamic Law has been conspicuously absent from the economic literature on the relationship between law and state power. In their influential classification of the legal systems of the World into four major families of law, LaPorta, et al (1998) have declined to recognize the Islamic (and other religious) Law as a separate category, arguing instead that “religious traditions ... appear to be less relevant in matters of investor protection.” (p. 1118n) Focusing on secular traditions and considering the Islamic past less important than the influence of western colonial and mandatory powers, they have placed countries that have had Islamic influence on their legal systems into one of the four western-centric families (English, French, German, and Scandinavian) that comprise the World’s systems. Although this may be justified to a degree in static classifications of the legal systems of today, no economic studies have emerged to expand on these categories by examining the evolution of the legal system in Islamic history. Despite Kuran’s (2004) pioneering analysis of the relationship between the rigidities of the Islamic legal system and the economic underdevelopment of the private sector, the economics of the

¹ For reviews of some of this literature, see Beck, Demirgüç-Kunt, and Levine (2001), Djankov, et al (2003) and Fergusson (2006).

relationship between the legal system and state power in the Islamic world has not been systematically studied².

For their part, scholars and historians of the Islamic Law have not entered the discussion in the economics literature either. Much has been written, of course, on law and state power in Islamic history³. But the focus has typically been on the cultural, ideological, religious, and political dimensions of these phenomena, rather than the economics of their relationship. Islamic Law is a sprawling, fast growing field. The legal system of the Ottoman Empire, for example, has recently received significant scholarly attention, due in large part to the increasing availability of rich archival materials. The strength of the Ottoman government has also been variously studied, traditionally recognized as one of its distinguishing characteristics. This strength has assumed such a key role in Ottoman historiography that various phenomena, such as religious morality, social disturbances, and even the rise and fall of the Empire as a whole has been considered as somehow related to the performance of the public sector alone. Despite the importance of state power and the legal system in Ottoman historiography, however, the institutional roots and economic consequences of their relationship have not been thoroughly investigated. In general, although historians have variously studied temporal and spatial changes in state power and legal systems in Islamic societies, they have not studied the economic relationship between these phenomena systematically.

The power relationship between the ruler and the general public is clearly a complex and multi-dimensional phenomenon, and our objective is to study a small piece of this

² Searching for the keywords “Islam,” “Law,” and “State” in EconLit (a database of economics literature produced by the American Economic Association) turned up only 12 publications, none directly related to the economic relationship between law and state power in Islam.

³ For recent examples, see Hallaq (2005), Vikør (2005) and Zubaida (2003).

complicated relationship from an economic perspective. To reduce the complexity of the problem, we focus on the power of the ruler to tax and the unique role of the legal community in regulating this power. Using a simple political economy model of state power and constraints, we examine the institutional roots of state power in the legal system. We also identify long term trends and path-dependencies in the relationship between the rulers and the legal system and offer an explanation for the strength of the Ottoman government.

State Power in Islamic History

Some of the most significant recent developments in the social sciences have been in the study of how institutions have influenced choices and outcomes. Varying greatly between economies and over time, institutions have greatly influenced the power relationship between the state and private actors. The basic tradeoff is between anarchy and dictatorship. In an anarchic environment, there may be no incentive to produce at all, making it desirable to increase the ruler's power to create a peaceful order suitable for economic development. In a dictatorial environment, on the other hand, the ruler may use his power to serve his own interests at the expense of the interests of the society. It may be desirable, therefore, to have constraints on his powers. A variety of constraints have been observed in history, ranging from the guilds and pressure groups to the judiciary and constitutional limits⁴. The relative importance of the problems of anarchy and dictatorship and the type of constraints observed in a society have depended on such

⁴ For examples of observed constraints, see Acemoğlu (2005), Acemoğlu and Robinson (2005), Djankov, et al. (2003), Greif (2005), McGuire and Olson (1996), Weingast (2005).

things as the nature and sources of the ruler's power, his objectives, and the objectives of other groups whose interests also influence the outcome.

Power can be defined and measured in many different ways. For an economic analysis of the relationship between the rulers and the general public, we consider power simply as the ability of the sovereign or government to tax and spend. This type of an approach has been typical in recent political economy models of the state⁵. Given the conflict between the interests of the ruler and the general public, it is the relative power of the ruler that determines the tax rates on productive activities and the allocation of tax revenues between public expenditures and the ruler's own consumption. Anarchy and dictatorship emerge as problems of the ruler's power being too little or too much. Too little power would result in the ruler's inability to collect sufficient tax revenues required for the provision of public goods and services. Too much power, on the other hand, would result in the ruler's ability to tax heavily and keep most of the tax revenue to himself.

The struggle for power has been a persistent and complicated problem in the Islamic Middle East, as it was in other parts of the World. As the birthplace of many of the World's greatest civilizations, the region has witnessed the emergence and disappearance of numerous states and the rising and falling powers of numerous rulers. Since the rise of Islam in the seventh century, various rulers have come to power, including the Umayyads, Abbasids, Mamluks, Safavids, and the Ottomans. The struggle for power has involved a complex web of relationships between the rulers and the general public, drawing in various other parties and mixed up with various tribal, ethnic, religious and other conflicts.

⁵ See, for example, Acemoglu and Robinson (2005) and McGuire and Olson (1996)

The struggle for power in Islamic history has often emerged as a conflict over taxes and expenditures. The conflict over taxes has involved the determination of which assets and activities should be taxed and at what rate, and who should pay these taxes. The struggle started as early as during the time of Prophet Muhammad, who imposed on Arab tribes the payment of taxes as a necessary condition for belonging to the Muslim community (Shaban, 1976: 14). His successor and the first Caliph Abū Bakr had to fight some of these tribes because of their refusal to pay taxes. The conflict over taxation continued throughout Islamic history, becoming controversial even in the case of *zakāt*, one of the Five Pillars of Islam, because of ambiguities over the state's role in the collection and distribution of this obligatory payment designated towards the benefit of the poor and other enumerated groups. Some rulers have demanded that payments be made to the state, rather than directly to the designated beneficiaries, creating the type of conflicts that has continued to modern day⁶.

The conflict over expenditures has involved the division of revenues among recipients and the determination of the ruler's share for his own consumption. Although those entitled to receive *zakāt* were specified in detail in the Qur'ān, several circumstances could easily create a conflict between the ruler and others, such as when *zakāt* distribution was in the hands of the ruler and one of the designated recipient categories (e.g., slaves) ceased to exist altogether and thus their share needed to be redistributed, or when another category (e.g., those "in the path of God") left wide room for the ruler's judgment (Zysow, 1981). Early in Islamic history, in an attempt to resolve conflicts arising out of the distribution of state revenues, Caliph 'Umar initiated an elementary and controversial system of stipends paid to tribesmen (Shaban, 1976:

⁶ See, for example, Calder (1981), Dutton (2004), Scott (1997), and Zysow.(2002).

Chapter 3). Although more sophisticated allocation mechanisms were developed over time in more bureaucratic Muslim states, numerous circumstances naturally brought the rulers in conflict with others, such as in deciding whether to invest in a new military technology, how much to allocate to the legal community for the provision of public services, and what proportion of tax revenues the rulers could claim for their own expenditures.

Despite the enormous complexity of the ruler-public relationship in Islamic history, it is possible to identify a general trend toward increasingly more powerful rulers (until the nineteenth century) over time. Whereas early rulers faced numerous constraints to their power to tax and spend, these constraints progressively became less significant as each state and ruler was able to inherit and build upon its predecessor's institutions for governance. True, there were numerous peculiarities of rulers and states that influenced their power. There were also numerous external circumstances, such as the invasions by the Mongols or the Crusaders in the Middle Ages or the colonial influences of the Western powers in the Modern Period, which affected or even ended their individual power. Such deviations from the long term-trend notwithstanding, the rulers' power to tax and spend gradually increased as Islamic societies were able to develop increasingly more powerful public institutions facilitating effective and efficient taxation and expenditure, and as rulers were able to increase their control over these institutions. Whereas the only way Caliph Abū Bakr could enforce the payment of taxes was to fight disobedient tribes, centuries later the Ottomans could use various public institutions, including tax registers, the legal system, and military tax collectors, which were strong enough to deter people from refusing to pay taxes or to effectively identify and punish

those who did so⁷. As public institutions grew stronger and rulers' power became institutionalized, the peculiarities of rulers and circumstances mattered less in the state's ability to tax and spend. In this sense, each ruler was more powerful than his predecessors because of his ability to command over stronger institutions, all else being the same⁸.

By the time the Ottomans came to power at the beginning of the fourteenth century, various legal, political, financial, and other types of institutions had been established by previous Islamic states, on which the Ottomans could build the foundations of their authority. The strong government they were able to develop became one of the well-known characteristics of the Empire, often cited to distinguish it from contemporary European states during its long rule for six centuries until the First World War. The Ottomans did not face any significant institutional constraints in their taxation or expenditure decisions⁹.

Studying the evolution of state power in Islamic history has important implications for understanding long term growth, particularly during the time of the Ottomans, a time when rulers were increasingly facing institutional constraints to their coercive powers in the West. In a pioneering study of the importance of institutions constraining rulers, North and Weingast (1989) identified political institutions as being primarily responsible for British economic growth. More recent research has shown the variety of other,

⁷ For the power of the Ottomans government in taxation, see Coşgel (2005) and Coşgel and Miceli (2006).

⁸ For a history of Islamic states and institutions, see Esposito (1999).

⁹ For the power of the Ottoman government in taxation, see Coşgel (2005) and Coşgel and Miceli (2006). As a testimony of the strength of Ottoman government, economic historians have typically taken this strength as given, attributing to it such key role that the rise and fall of the Empire as a whole was once measured by the changes in the strength of this sector alone. Even the more recent revisionist history has given the public sector a central role in explanations. The longevity of the Ottoman Empire, for example, has recently been attributed primarily to the pragmatism of its rulers and the flexibility of its public sector (Pamuk, 2004).

deeper institutional factors constraining the coercive powers of rulers and contributing to the rise of northwestern Europe (Greif, 2005). Studying state power in Islamic history is important because it may be the absence of these constraints that prevented similar growth from taking place in the Islamic world during the same period.

As a first step toward understanding the relationship between institutional constraints and economic growth in Islamic history, we focus on the legal system. Clearly, a variety of factors could have contributed to the evolution of state power in the Islamic world. One could study the institutional roots of state power by focusing on a variety of institutions and by adopting a variety of approaches, for example by examining the question of the determination of the rightful authority from a political perspective, the formulation of a distinct Islamic identity from a religious perspective, or the establishment of communal unity from a sociological perspective. We adopt an economic perspective and focus on the question of how the ruler's relationship with the legal community affected his coercive powers. Whereas the traditional literature has conventionally presumed rulers to be benevolent protectors of the general public, we view them as primarily interested in maximizing their own welfare and examine the political economy of the provision and financing of protection and other public goods¹⁰.

In Islamic societies the legal community consisted of individuals trained in the Islamic Law, serving primarily as teachers (*mudarris*) educating the Muslim community, as judges (*qādī*) resolving legal disputes, or as jurisconsults (*muftī*) offering legal opinions (Hallaq, 2005). Although members of this community performed numerous religious, social, and administrative functions, ranging from teaching the Qur'an to collecting taxes,

¹⁰ For examples of approaches viewing rulers as benevolent protectors, see İnalçık (1973), İnalçık and Quataert (1994), and Genç (2000).

we focus on two key functions: the provision of public services that could increase production (e.g., clarification of property rights) and the issuance of regulations that could affect the rulers (e.g., confirming the legality of a proposed course of action)¹¹. To simplify the analysis of these issues, we formulate the legal community's role in a simple model of state power that allows us to identify how rulers can use coercive power in taxation and expenditures and how the legal community can constrain this power.

A Political Economy Model of State Power and Constraints

Suppose a representative worker produces output according to the production function, $y=f(e,x)$, where e is the worker's effort, and x is spending by the government on a public good (provided by the legal community). Assume that output is increasing at a decreasing rate in both inputs; that is, $f_e > 0, f_{ee} < 0, f_x > 0, f_{xx} < 0$. Also, assume that increases in the public good increase the marginal product of labor, $f_{ex} > 0$. In this context, x can be interpreted as government enforcement of property rights, which has the effect of increasing the value of workers' investments in their land¹².

Spending on the public good is financed by taxes on the gross output of workers, which are levied by the government. Thus, total tax revenues are given by

$$T = tf(e,x), \tag{1}$$

where t is the tax rate. Workers take t and x as given and choose effort to maximize their net income. That is, they choose e to

$$\max (1-t)f(e,x) - e. \tag{2}$$

The resulting first-order condition is

¹¹ For a discussion of the major issues and a review of the relevant literature on constitutional jurisprudence in Islam, see Jackson (1996: xiii-xlii).

¹² For a similar formulation of the role of public goods, see Acemoğlu (2005: 1205).

$$(1-t)f_e - 1 = 0, \quad (3)$$

which defines the optimal level of effort, $\hat{e}(t, x)$. It is easy to verify that $\partial \hat{e} / \partial t < 0$, and $\partial \hat{e} / \partial x > 0$. That is, higher taxes discourage effort, while greater spending on the public good encourages it.

The Ruler's Best

Suppose initially that the government is controlled by a ruler who can set the tax rate and the level of public spending to maximize his own consumption, which is given by the excess of tax revenues over spending, or

$$C = T - x. \quad (4)$$

In making this choice, the ruler is constrained by the effort choice of the worker, $\hat{e}(t, x)$, and also by the requirement that workers achieve a minimum level of net wealth, \bar{U} ¹³.

Thus, after substituting from (1), the ruler's problem is to choose t and x to

$$\max t f(\hat{e}(t, x), x) - x \quad \text{subject to:} \quad (5)$$

$$(1-t)f(\hat{e}, x) - \hat{e} \geq \bar{U}.$$

This yields the first-order conditions

$$f + t f_e \left(\frac{\partial \hat{e}}{\partial t} \right) = \lambda f, \quad (6)$$

$$t \left[f_x + f_e \left(\frac{\partial \hat{e}}{\partial x} \right) \right] - 1 = -\lambda (1-t) f_x, \quad (7)$$

where λ is the multiplier on the worker's participation constraint.

¹³ In other contexts, \bar{U} can also be interpreted as some other constraint faced by the ruler.

Note that the participation constraint may or may not be binding in this problem, depending on the magnitude of \bar{U} . Consider first the case where it is not, so $\lambda=0$. We call this the Ruler's Best outcome. In this case, condition (6) says that the ruler should choose the tax rate to maximize tax revenues (reflecting a Laffer curve effect), while (7) says that he should choose the level of public spending to equate the marginal tax revenue to the marginal cost. Let t_R and x_R denote the resulting tax and spending levels. Figure 1 depicts this outcome for t (taking x as given), while Figure 2 depicts the outcome for x (taking t as given).

The Constrained Choice

The Ruler's Best case depicts the ruler's unconstrained choice of the tax and spending levels. If \bar{U} becomes sufficiently large, however, the worker's participation constraint will eventually become binding, in which case $\lambda>0$ in (6) and (7). As a result, the ruler lowers t and raises x , as shown by t_C and x_C in Figures 1 and 2. We refer to this as the Constrained Choice case. Intuitively, a higher value of \bar{U} reflects a kind of "exit" option for workers, which in the current context typically would involve the ability of workers to depose or replace the ruler if he behaves in a tyrannical way. In a dictatorial regime, this may only be possible by means of a popular revolt.

The Workers' Best

The preceding analysis has shown the outcome preferred by a ruler who can largely ignore the interests of workers in setting tax and spending policies. While this situation is clearly not in the best interests of workers, it is also true that a government

with no powers to tax and spend would be undesirable. The best scenario for workers therefore involves a ruler who has the power to tax and spend, but must choose these variables to maximize the welfare of workers, subject to a budget constraint and the worker's effort choice. These conditions may be thought of as being imposed by the legal community, or possibly a popular assembly of some sort, that serves the dual functions of legitimizing the ruler's ability to tax and spend, while simultaneously limiting his use of this power. (We expand on this below.)

Formally, the ruler's problem in this case is to choose t and x to

$$\begin{aligned} \max (1-t)f(e,x) - e \text{ subject to} \\ tf(e,x) \geq x. \end{aligned} \tag{8}$$

Forming the Lagrangian with μ as the multiplier on the budget constraint and taking the derivative with respect to t and x yields the first-order conditions

$$\mu \left[f + tf_e \left(\frac{\partial \hat{e}}{\partial t} \right) \right] = f \tag{9}$$

$$\mu \left[t \left(f_x + f_e \left(\frac{\partial \hat{e}}{\partial x} \right) - 1 \right) \right] = -(1-t)f_x. \tag{10}$$

Consider first condition (9). Note that because the right-hand side is strictly positive, it must be true that both μ and the term in square brackets are also positive (given that $\mu \geq 0$). Thus, the budget constraint is binding, and the optimal tax rate is on the upward sloping portion of the revenue curve at the point where it is intersected by x . The resulting tax rate in this case, denoted t_W , is strictly lower than in the Ruler's Best case (for a given x), and is at least as low as in the Constrained Choice case (depending on the stringency of the worker's participation constraint). The relationship among the three tax rates is shown in Figure 1 for a given value of x .

Consider next the choice of x as determined by (10). Since the right-hand side is negative, and given $\mu > 0$, the expression in square brackets must also be negative. Thus, the level of spending in this case, x_W , is strictly larger than in the Ruler's Best case (for a given t), and is at least as high as in the Constrained Choice case. (See Figure 2.)

Introducing Regulation by the Legal Community

We now examine in more detail the case where the legal community may play a role in restraining the ruler by regulating the choice of t . Although in principle the legal community can regulate both x and t , we focus on the latter for simplicity (it is easy to see how the argument extends to the regulation of x). For example, the legal community may be responsible for issuing and/or enforcing rulings that determine which tax rate should apply to a new economic activity or whether a proposal by the ruler to raise an existing tax rate should be implemented. Suppose initially that in the absence of any external influences from the ruler or other interest groups the legal community would decide on these cases based strictly on the applicable law and the precedent¹⁴. Let $Y(t)$ denote the utility the legal community receives from applying the law appropriately¹⁵.

But the legal community may also be influenced by the ruler and the public in deciding on these cases. Let α , β , and γ denote the exogenously determined relative powers of the ruler, the public, and the legal community, such that each measure ranges between 0 and 1 (higher values indicating greater power) and they add up to 1. These points indicate the following objective function used by the legal community in

¹⁴ For simplicity, we ignore the problems of whether the relevant law exists and how easily it can be applied.

¹⁵ For the difficulty of formulating a well-defined objective function for judges and a model of judicial decision making based on reputation, see Miceli and Coşgel (1994).

regulating the tax rate, the weighted sum of the maximands of the ruler, workers, and the legal community.

$$\alpha [t f (\hat{e}(t, x), x) - x] + \beta [(1-t)f(e,x) - e] + \gamma Y(t) \quad (11)$$

In this setting, we consider the following scenarios: (a) absolute dictatorship; (b) perfect democracy; (c) completely independent legal community; and (d) intermediate cases.

a. Absolute Dictatorship ($\alpha=1$)

When the ruler dominates the legal community in an absolute dictatorship, the legal community will choose t to maximize $T-x$, which effectively yields the same solution as (5). Thus, either the Ruler's Best or Constrained Ruler outcomes will result. In this case, the legal community exercises no additional constraint on the behavior of the ruler.

b. Perfect Democracy ($\beta=1$)

In a perfect democracy, the legal community is aligned with workers, such that t will now be chosen to solve (8), yielding the same solution as (9), the Workers' Best.

c. Completely Independent Legal System ($\gamma=1$)

When the legal community is completely independent of direct external influences and acts in its own self-interest, the outcome will depend on their objective function, which we have so far assumed to be maximized with appropriate application of the law. Presumably any tax rate between t_w and t_r (meeting the participation and budget constraints) is possible, as defined by the law.

As we will discuss in more detail below, however, the ruler or the public may still be able to influence the legal community's decisions indirectly by manipulating their objective function. Although the legal community presumably intends to ensure the correct application of the law as assumed, in reality their objectives could also depend on the structure of their selection and compensation schemes, even in the absence of direct dictatorial control of their decisions. For example, the ruler may be able to incorporate the legal community into the government bureaucracy or design a payment scheme (e.g., as a proportion of tax revenues) that aligns the interests of the legal community with the ruler, in which case the outcome may resemble the Ruler's Best case. Alternatively, the workers may somehow elect the members of the legal community or determine the structure of their incentives, for example, by means of a popular assembly, so as to align the interests of the legal community with workers. Thus, the outcome may move closer to absolute dictatorship or perfect democracy, depending on the structure of the incentives of the legal community.

d. Intermediate Cases ($0 < \alpha + \beta < 1$)

Against the backdrop of the previous extreme cases, let us now consider intermediate cases we would normally expect to observe. It is easy to see that in such cases the regulated tax rate will vary between the Ruler's Best and the Workers' Best, depending on the values of α and β . The higher the value of α , the closer the final tax rate to the Ruler's Best. Presumably, α would be close to zero in democracies, so that the legal community would consider heavily the interests of the workers and regulate the tax

rate to be close to the Workers' Best. The opposite would be the case when the ruler has high dictatorial powers and can influence the outcome toward the Ruler's Best.

When the legal community externally (e.g., through the support of the military or popular assembly) earns significant institutional powers, the ruler or the workers may attempt to capitalize on this power by aligning the interests of the legal community with their own. If the ruler is more successful than the workers, he can effectively raise his own power over the workers tremendously and manage to implement a tax rate closer to the Ruler's Best.

State Power in the Early Islamic States

The above model helps us to understand the political economy of why the rulers, legal community, and general public struggled for power in Islamic history and how the balance of powers affected the tax systems. By interpreting the legal basis for the ruler's decisions and adjudicating the cases involving their conflicts with the general public, the legal community could potentially play an important role in defining and limiting the power of the sovereign. It took some time for the legal system to be established and the legal community to gain independence and power. Throughout the development of the Islamic state, the relationship between the ruler and the legal system went through different stages, ranging from highly dictatorial rulers to mostly autonomous legal communities, depending on the power of the legal community and the ruler's ability to manipulate this power. Corresponding to each outcome was a tax system that reflected the balance of powers. The higher the degree of control the ruler enjoyed, the easier it was for him to manipulate the tax system to his advantage.

The Islamic Law did not specifically prescribe or rule out any of the scenarios discussed in the model. The duties of obeying rulers and reaching consensus were both supported by the law, allowing various scenarios to be realized as necessary. The importance of both obedience and consensus is evident in recognized sources of law in Islam. In a passage frequently quoted to identify principal sources of Islamic Law, the Qur'an states: "O you believers! Obey God and obey the Messenger and those of you who are in charge of affairs." (Qur'an 4:59). The sources of Law indicated here are the Qur'an, the tradition of Prophet Muhammad (*Sunnah*), and consensus (*ijmā*)¹⁶. The implication for state power and taxation was for the ruler to make decisions by following the Qur'an and the Prophet's tradition, and seeking consensus as necessary¹⁷. Depending on the distribution of power between the ruler, legal community, and the general public, various configurations of obedience and consensus were possible between them, resulting in numerous possibilities for influencing the determination of taxes.

The distribution of political power before the development of Islamic Law was very different from that in the period following its formation. While the Islamic Law was still developing, the rulers enjoyed considerable freedom in decision making as their rights and obligations were not fully defined. Before the legal community was established, the ruler's monopoly in violence and political leadership extended to the interpretation and application of the law. This was evident during most of the rule of the Umayyad and the early Abbasids, a period generally considered as being highly autocratic¹⁸. In terms of

¹⁶ For other sources of law and principles of Islamic jurisprudence, see Kamali (1991).

¹⁷ For examples of legal limitations on the ruler, see Abū Yūsuf (1979), Al Mawardi (1996), Jackson (1996), Kamali (2005), and Lapidus (1984).

¹⁸ For a history of the law, politics, and society during the formative period, see Berkey (2003).

the model presented above, the value of α in equation 11 was high relative to β and γ during this period, giving rise to a dictatorial regime.

The rulers used a variety of measures during this period to secure their monopoly power over leadership. They restricted others' entry into the power struggle by defining the right to rule in divine and hereditary (based on kinship or tribal relationship to Prophet Muhammad) terms. They similarly boosted their power by claiming titles, such as "the Deputy of God," chosen to legitimize their rule in absolute religious terms. They also defined tradition as one of the sources of law not strictly in terms of the prophetic tradition (*Sunnah*) but in terms of all kinds of acknowledged customs and precedents (*sunan*) including their own, thus eliminating the need for independent scholars specialized in interpretation and consequently gaining the freedom to interpret the law on their own (Crone and Hinds, 1986). The rulers had the ultimate political and legal authority, and the legal community was not sufficiently developed to have the power to regulate their behavior significantly.

The rulers' power gave them great freedom in choosing the tax bases and setting the tax rates during this period. The legal community did not significantly constrain the rulers, and the only concerns to prevent rulers from taxing as they pleased were the powers (e.g., strength of their tribe) or participation constraints (e.g., the possibility of peasant flight to towns) of the producers. Within those parameters, they could take advantage of their monopoly power by engaging in price discrimination in taxation, for example by implementing different types and rates of taxes that depended on the religion (e.g., *dzjizya* taxes on non-Muslim), regional customs (e.g., new taxes inherited from previous rulers), and economic ability (e.g., access to irrigation) of the producers. The

significant changes made by Al Hajjāj Ibn Yūsuf (694-713) show the power of the state. He changed the laws on land tax (*kharāj*), which in principle was equivalent to rent payment in return for using land, to make it mandatory on all former users who no longer cultivated the land (Katibi, 1994: 96). In implementing the tax system, the rulers did not have to worry about abiding by the legal status of land or taxpayers, about ensuring the conformity of taxes and rates with canonical categories, or about maintaining interregional or interpersonal equity in tax burden. The result was a set of taxes that varied significantly among regions, persons, and economic activities, as the rulers saw fit to maximize their tax revenues¹⁹.

The legal community increasingly gained power and independence during the first century of the Abbasid rule. With the expansion of the Islamic state came the beginning of specialization in legal knowledge and the development of legal institutions. A division of labor took place between the ruler and the legal community, the rulers' monopoly becoming restricted to military and political leadership while the legal community overtook the provision of legal and religious services. The gathering, interpretation, and application of the law increasingly shifted out of the ruler's domain and fell into the monopoly of the legal community. A key component of the transformation was the increasing importance of the tradition of Prophet Muhammad, guarded and monopolized by the legal community (Ghazzal, 2005; Hallaq, 2005). The legal knowledge and procedures became more institutionalized, judicial organization became more hierarchical, and a further division of labor took place within the legal community, particularly between the functions of adjudication and interpretation. Even though the

¹⁹ For a description of the taxes observed in early Islamic societies, see Aghnides (1916), Cahen ("Bayt al-Māl," "Darība," "Kharāj"); Løkkegaard (1950); and Oran and Rashid (1989).

rulers could attempt to influence adjudication by controlling the hierarchy of the judges, the jurisconsults principally maintained independence in the generation and interpretation of legal knowledge, providing the legal community a degree of autonomy²⁰. The result was a more powerful and independent legal community. The division of labor occasionally caused a rift between the rulers and the legal community, even the rulers now potentially becoming subject to adjudication, regulation, and consultation by the legal community, depending on their relative powers²¹.

Expressed in terms of the model, the development of the legal system implied a fall in α and a rise in γ , giving the legal community greater authority in regulating the tax system. Various events that took place during the Abbasid era support these implications. The rulers began routinely consulting the legal community in matters related to taxation, soliciting books from prominent members of the legal community to codify or reform the tax system. Over 20 manuscripts on taxation, with such titles as “Book on Taxation” (*Kitāb al-Kharāj*), were written during this period, some of which surviving to this day and giving us a glimpse of the tax system and the legal community’s involvement in it. Of those that have survived, the book by Abū Yūsuf is known for its judicial approach²². Advising the ruler Hārūn Al Rashīd, Abū Yūsuf laid down a plan to reform the land tax and pointed out the violations of the law that needed to be addressed

²⁰ Although the judges were initially needed to fulfill administrative tasks and later to justify the power of the caliphs to the people, their power grew to challenge caliphal law. It is not a coincidence that Umayyad Caliph, Yazīd b. ‘Abd Al-Malik (101/718-105/723) was cited as the last caliph whose practices and laws constituted authority statement. (Hallaq, 2005:68).

²¹ The period of the “inquisition” (*al mihna*, 833-47) is a clear demonstration of the autonomy of the legal community. In a well-known confrontation between the Caliph Al Ma’mun and the legal community, the ruler’s attempt to dominate religious matters eventually failed, and the new Caliph Al Mutawakkil was forced to abandon the attempt in 847 and accept the autonomy of the legal community. For details, see Berkey (2003).

²² Three of these books have been translated into English and published by Ben Shemesh under the title *Taxation in Islam* (three volumes). The book by Yahyā b. Ādam, a contemporary of Abū Yūsuf, is based primarily on the tradition of Prophet Muhammad.

(Abū Yūsuf, 1979:65). Although Al Rashīd adopted some changes and ignored others, it is still clear that the ruler's discretion over the tax system had become more limited.

Another well-known event supporting the growing influence of the workers and the legal community on taxation during this period was the choice among tax bases. Based on complaints by the public and advice by legal scholars, the Caliph Al Mansūr is said to have changed from input taxes (*misāha*) to output taxes (*muqāsamah*) on the basis that the switch would improve the taxpayers' welfare by providing them better ability to deal with natural risks (Al Rayyis, 1961:408; Løkkegaard, 1950: Ch. V).

Although the power of the legal community increased during this period, the triumph was short lived under the Abbasids. At some point the decline in the power of the ruler coincided with the rise in external threats, eventually bringing the Abbasid rule to an end. The significant changes that followed in the political landscape of the Islamic World, however, did not mean an end to the power of the legal community, which had by now acquired a momentum of its own. The Islamic legal system had been institutionalized, judicial procedures were well-established, and the monopoly of the legal community in adjudication and interpretation was recognized. The next set of significant changes that altered the power relationship between the rulers and the legal community and the ability of the rulers to tax was to come under the Ottomans.

The Ruler's Power in the Ottoman Empire

Entering the political scene around the turn of the fourteenth century, the Ottomans employed many of the same methods used by their predecessors to establish their own power (increase α) and to deter competitors' entry into the power struggle, often

adding a distinctive Ottoman dimension to these methods. They monopolized a patrimonial right to rule for six centuries, supporting their right with a distinctive genealogy. Although they could not justifiably claim (though some contemporary historians tried) lineage from the Prophet Muhammad or his tribe, the official genealogy asserted descent from the Qayı clan, ultimately leading to the legendary Oguz Khan who is said to have conquered the world and given rise to Turkish tribes. To promote their reputation and maintain their monopoly over the right to rule, they laid claim to several honorary titles (such as ghazi, caliph, and protector of the holy cities) that had spiritual significance among the subjects and signaled superiority over the rulers of other Muslim states. They also invested heavily in conspicuous public goods (such as mosques, fountains, and religious schools), ostentatious ceremonies, and other public symbols of power²³.

In addition to promoting the reputations of sultans or the sultanate in general, the Ottomans developed various distinctive governance institutions to maintain their power to rule. The organization of the military ensured that the rulers possessed a huge comparative advantage over competing groups in employing violence. Central to this advantage was the well-known and distinctive Janissary organization, consisting of the sons of the non-Muslim subjects brought to Istanbul, trained with sole allegiance to the Sultan to serve in his army. In the organization of the cavalrymen (*sipāhi*), the Ottomans similarly implemented various mechanisms, such as giving the cavalrymen the right to collect taxes and subjecting their appointment to periodic rotation, which helped to align

²³ For recent descriptions of Ottoman methods of legitimization, see Imber (2002: Ch. 2), Karateke (2005), and Quataert (2000: Ch. 6).

their incentives with those of the ruler and limited their ability to develop separate interests and organize independently against the ruler.

The Ottomans also designed various wealth-revealing institutions to gather and monopolize information about private wealth. In the fifteenth and sixteenth centuries, they recorded information about taxable activities in tax registers called *tahrir defterleri*, involving various administrative personnel including assessors, scribes, and accountants²⁴. As conducting the tax registers became less feasible after the sixteenth century, they relied on public auctions to gather the relevant information (Coşgel and Miceli, 2006). The information recorded in registers was not for the use of the general public but for the government to know about taxable productive activities. By gathering and monopolizing this information, the rulers could use it to their advantage in deciding how much of the output to capture as tax.

The relative importance of these methods changed over time, depending on the relative strength of governance institutions in supporting the ruler's control of the Empire. Early in Empire's history, before its governance institutions were well-developed, greater emphasis was put on promoting the characteristics of the ruler or sultanate in general. Over time, as these institutions grew stronger in their ability to support the ruler and as the rulers established control over them, the emphasis shifted. Studying this transition, Yılmaz (2005) has recently argued that the source of state power shifted from the piety and moral integrity of the ruler to the strength of institutions and procedural practices during the time of Süleyman the Lawgiver. At some point, governance institutions were strong enough that personal characteristics of the ruler or his title made little difference for his power among subjects or against other rulers. Some rulers even came to power as

²⁴ Coşgel (2004), Darling (1996).

children; others continued to rule despite well-known mental or moral deficiencies. Institutionalized power of the Ottoman family's right to rule was never seriously challenged during its long reign for six centuries.

Rulers, Legal Community, and Taxes

By the time the Ottoman state was established in the fourteenth century, the basic ingredients of a strong legal community had already been completed. The Islamic legal system had been growing for over six centuries, developing numerous institutions that could easily be transplanted to the Ottoman state. The schools of interpretation (*madhab*) were highly developed, and the procedures for judges and jurisconsults were laid out. Conventional systems of education, interpretation, and adjudication were sufficiently standardized to ensure the transmission of skills and knowledge between generations and across regions and states. Rather than start from scratch, the Ottomans could simply build upon this institutional inertia and strength.

The Ottomans once again added a distinctive Ottoman dimension to this process by implementing procedures and designing an organizational structure that raised the power of the legal community to a new level²⁵. Entry was restricted, because appointment as a teacher or judge required advanced formal education in a college (*madrassa*) and the sponsorship of a senior member of the community. The legal community controlled the educational system, which was organized in a hierarchical structure. The highest position was held initially by the chief judge (*kazasker*) and after the sixteenth century by the chief jurisconsult (*şeyhülislam*), who had the ultimate

²⁵ For recent studies of the Ottoman legal system, see Gerber (1994), Imber (2002: Ch. 6), Vikør (2005), and Zilfi (1988).

authority in legal matters. The Ottoman state gave official status to the Hanafi school, thus fostering the monopoly this school achieved in legal interpretation in the lands occupied by the Empire. They also initiated a systematic codification and standardization of the secular law (*kānūn*) that applied to such administrative matters as taxation and criminal justice²⁶. The legal community thus derived enormous power from its monopoly in knowledge, education, and administration of the law²⁷. The community was powerful enough for the rulers to be concerned about making sure to keep it under control.

The rulers implemented various mechanisms to control the legal community. The most important was their prerogative to appoint the chief judges and the chief jurisconsult, which gave them the ability to manage the entire hierarchy. This effectively brought the entire legal community into state bureaucracy, giving the ruler the ultimate authority in decision-making and incorporating the legal community's power under his own. The Ottomans also standardized the entire system of colleges, appropriating the rights to appoint college professors and to dictate their syllabus by the sixteenth century²⁸. Judges and teachers effectively became state employees on government payroll, rather than autonomous scholars appointed independently and supported entirely by private fees and charitable foundations. Their tenure at a certain assignment was short and subject to periodic rotation. Even jurisconsults increasingly came under government control, becoming government appointees after the fifteenth century. Whatever

²⁶ For the development of the Ottoman criminal law, see Heyd (1973).

²⁷ Although the Ottoman scholars faced significant challenges from the Sufi orders in the provision of religious services, we ignore these controversies to be able to focus on the legal system. For an analysis of the controversies of the seventeenth century, see Zilfi (1988).

²⁸ Implementing a dual legal system with religious and secular components and basing the secular component on the ruler's authority also added to his power.

enormous power the legal community may have possessed actually came to belong to the ruler²⁹.

The Ottoman rulers' control of the legal community meant an alignment of interests and a modification of the legal community's objective. To secure an appointment or to rise up in the hierarchy, the members of the legal community had an incentive to cater to interests of the ruler as necessary, rather than interpret the law independently, particularly in areas that directly affected the ruler's welfare. True, the rulers typically did not interfere in cases involving private parties, such as divorce, inheritance, and theft, giving the jurisconsults the freedom to issue opinions and the judges the ultimate authority to decide on these cases. But in cases involving a direct conflict between the ruler and others, it was unlikely for the legal community to decide against the ruler or to issue opinions that conflicted with his objectives. As Imber (2002: 243) has argued, whenever the jurisconsults were consulted on the legality of an intended action involving the rulers, they “knew exactly the reality of the situation on which they were delivering an opinion, and in almost all cases were prepared to give the sultan, or other authority, the answer he was seeking.” This was perhaps most evident in the case of Ebu's-su'ud, the famous chief jurisconsult of Süleyman the Lawgiver in the sixteenth century, whose harmonization of secular administration with religious law amounted to nullifying constraints on rulers originating from the religious law³⁰. So forceful was the alignment between the interests of rulers and the legal community that constitutional law was never developed and the question of how best to impose legal constraints on the coercive powers of the ruler was never seriously considered.

²⁹ The question of why rulers (political leaders) were able to control the legal community, rather than the other way around, is also important, but beyond the scope of this paper.

³⁰ See Imber (1997) for the accomplishments of Ebu's-su'ud.

The result was a system of public finance that catered primarily to the interests of the ruler. In terms of the model presented earlier, this effectively meant that the objective of legal community became the maximization of the ruler's welfare, rather than appropriate application of the law. More formally, $Y(t) = T-x$. Consequently the ruler's power became combined with that of the legal community, equaling $\alpha + \gamma$, and he could attempt to choose the best tax rate possible, possibly as high as t_R or t_C , subject only to the power and participation constraints of the workers, without interference from the legal system. The ruler's discretion to raise the tax rates as much as possible was clearly sanctioned by some of Ebu's-su'ud famous interpretations. When asked for an interpretation on the question of whether the tithes (*öşür*) were to be collected literally at the canonical rate, he argued that it was “not necessary that it be levied [at a rate of] one tenth. It is imposed according to what the land can support and is licit up to a half” (Imber, 1997: 127). The rates could thus vary significantly between the different regions of the Empire, some being significantly higher than one tenth, such as the remarkably high rate of forty percent observed in parts of the Fertile Crescent (Coşgel, 2006).

In general the Ottomans were able to implement a tax system that maximized tax revenues as much as possible, subject only to the responses of the general public³¹. To avoid resistance in newly conquered areas, they often preserved the prevailing taxes and rate structures, rather than impose wholesale changes that could have harmonized them with other parts of the empire, making significant changes if they could raise the revenue without significant opposition. They did not impose the *çift* tax system to the Balkans or the Fertile Crescent, because doing so could have provoked significant opposition to their

³¹ A significant exception to the high powers of Ottoman rulers could be seen in the *malikâne-divanî* system, where the Ottomans granted concessions to local lords to be able to secure their allegiance at the time of conquest by allowing them to receive a share of the tax revenue.

rule, invoking the participation constraint and ultimately reducing their revenue (Coşgel, 2005). For the same reason they did not change the output tax rates that varied between villages in the Fertile Crescent to a uniform rate structure prevailing in the rest of the Empire (Coşgel, 2006). But they did introduce significant changes in some areas if those changes were likely to raise the revenue without significant resistance. They abolished the feudal labor services that existed in the Balkans before conquest, converting them to cash payments that meant higher revenues going to the central treasury. The decision on whether to preserve or change the previous system did not involve any constraints or interference from the legal community. The rulers could choose the tax bases and tax rates based on whether they raised tax revenues, not whether they met some legal criteria. Efficiency was also the guiding principle in their allocation of tax revenues among recipients and in their choice among methods of tax collection (Coşgel and Miceli, 2006).

Conclusion

Although the Ottoman rulers enjoyed a great deal of latitude in choosing tax rates and taxable activities, the lack of significant constraints in taxation was not necessarily a given, static, or common characteristic of all Islamic states. Centuries earlier, the Abbasid rulers faced more significant constraints in taxation, their coercive powers being limited by the different set of circumstances surrounding their reign. Preceding the Abbasids in one of the earliest stages of the development of tax systems in Islamic states, the Umayyads also faced a different set of circumstances, which for them meant greater powers in taxation, though in a different way than the Ottomans. Throughout Islamic history, the rulers' power in taxation varied significantly over time and across

contemporary states, some rulers finding it easier than others to engage in monopolistic practices in taxation.

The institutional roots of these differences can be seen in the legal system. Using a political economy model of state power and taxation, we have studied the relationship between the rulers, legal community, and general public in Islamic history, examining the ability of the legal community in constraining the coercive powers of the rulers.

Evidence from different episodes of Islamic history supports the argument about the role of the legal community in taxation. Early in Islamic history, the Umayyad rulers faced no significant constraints to their powers in taxation because the legal community was not yet sufficiently and independently developed to be a factor in decisions. As the Islamic legal system became more established and the legal community gathered greater influence during the time of the Abbasids, the rulers' coercive powers in taxation became more constrained. Centuries later, the key to the Ottoman rulers' success in securing monopoly powers in taxation was their ability to incorporate the legal community into government bureaucracy and to appropriate their power by controlling the top of their hierarchy.

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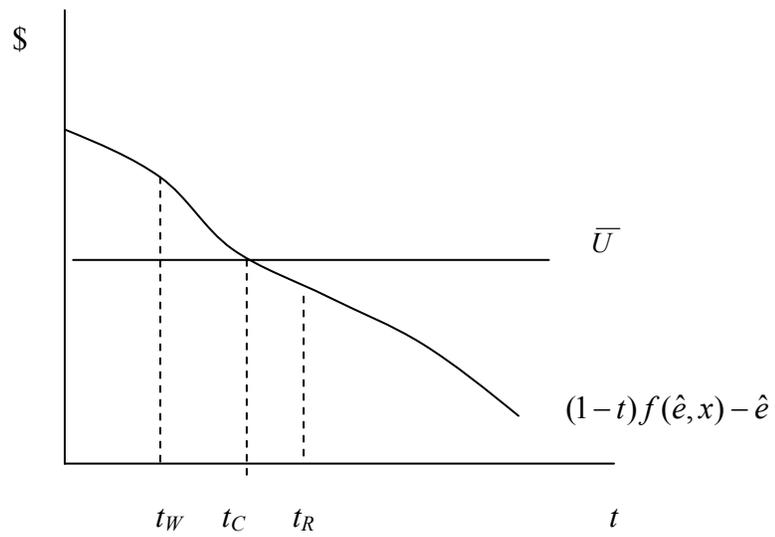
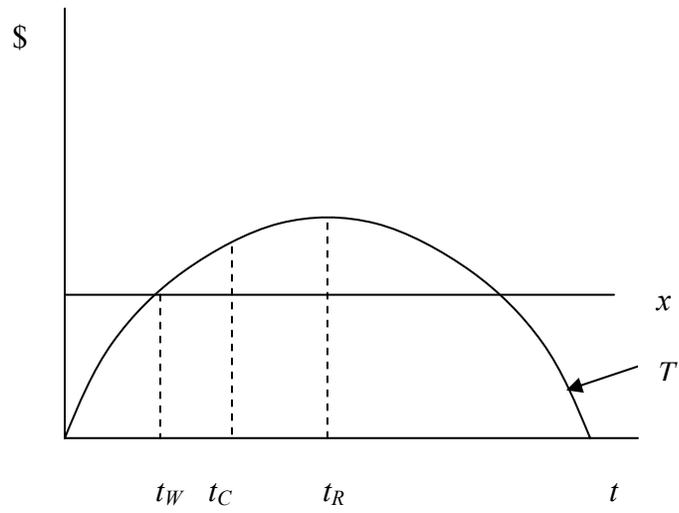


Figure 1: Comparison of tax rates for a given level of spending.

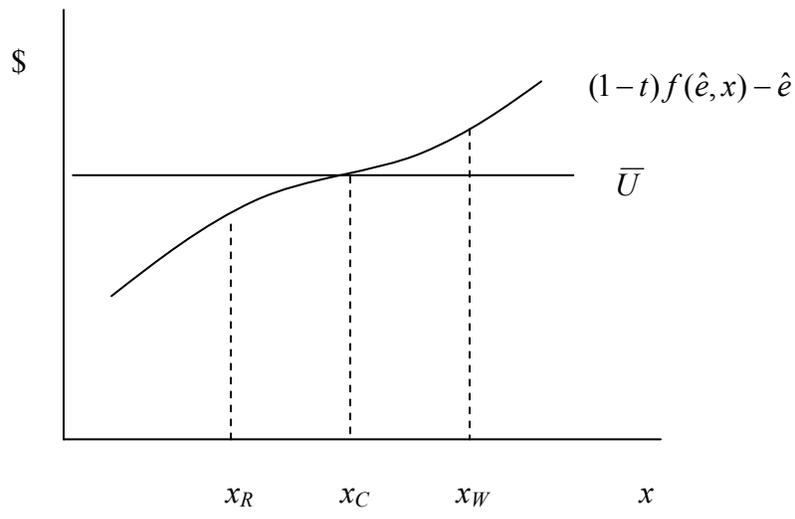
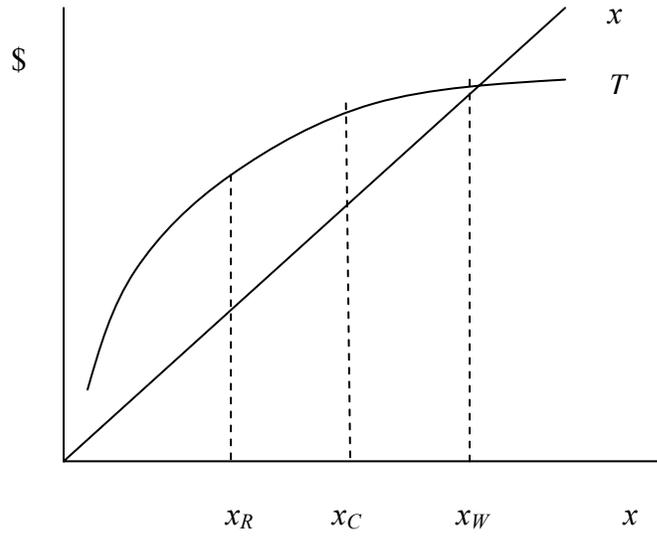


Figure 2: Comparison of spending levels of a given tax rate.