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Law, State Power, and Taxation in Islamic History

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by

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ABSTRACT: This paper studies the unique nature, institutional roots, and economic consequences of the ruler's political power in Islamic History. An influential interest group in Islamic societies has been the legal community, whose power could range from being able to regulate the rulers to being entirely under their control. The struggle was over the provision of legal goods and services, the legal community gradually gaining control of the law in history and the rulers seeking to appropriate political power by controlling the legal community. The economic consequence of power was the ability to dictate the choice of tax bases and rates.

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

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Law, State Power, and Taxation in Islamic History

One of the widely held beliefs about the history of Islamic societies has been the enormity of the power of the rulers. Strong rulers are perceived to have been a typical fixture of the political landscape of the Islamic Civilization from its beginning in the seventh century to recent times, a vast majority of Islamic societies being governed by rulers with few institutional constraints on their coercive powers. Most scholars, from Machiavelli in the sixteenth century to modern analysts of present-day Middle Eastern monarchies, have variously described governance in these societies as being “despotic,” “dictatorial,” and “authoritarian,” giving them as examples of “extreme centralization,” “patrimonial domination,” or rule “by a prince and his servants.”¹

Although the strength of rulers in Islamic history appears to be an established fact, far less is known with certainty about the nature of this power, where it has come from, and how it has affected economic outcomes and performance. Previous studies have examined the several dimensions of the Muslim ruler’s power over the general public, such as the religious, military, and political nature of his power. They have also identified a variety of factors, ranging from internal conflicts to external threats, which have caused his power to rise and fall over time. They have not systematically studied, however, the deeper institutional roots of this power and the mechanisms through which it has been maintained. Recent developments in the political economy literature on long term development have not been fully employed to the study of

¹ See, for example, Cahen (1970), Findley (1980), Finer (1997), Machiavelli (1950: Chapter 4), and numerous other references cited in Powelson (1997: Appendix 19.1).

Islamic history. Similarly, studies of balance of power in Islamic societies have typically failed to examine the economic consequences of this power systematically.

The power relationship between the ruler and the general public is clearly a complex and multi-dimensional phenomenon, and our purpose is to study a crucial piece of this complicated puzzle, namely the role of the legal community in relation to the ruler's political power and his ability to tax. More specifically, we have three objectives. The first objective is to discuss the unique nature of the legal community's role in Islamic societies as a potential constraint on the political power of the ruler. Depending on its control over the provision of legal goods and services, the legal community could generate various degrees of power and influence various institutions and outcomes. Our second objective is to identify the institutional roots of the rulers' power in Islamic history. Studying long term trends in the legal community's relationship with the rulers and the general public in Islamic history, we trace how the legal community was able to establish direct control over the provision of legal goods and services and how the rulers were able to acquire political power indirectly by gaining control over the legal community. The third objective is to study the economic consequences of power for taxation. Having power also meant being able to exert influence on economic behavior and outcomes. We show how the rise and fall of the rulers' political power had direct implications in their ability to choose tax bases and rates.

STUDIES OF STATE POWER IN ISLAMIC HISTORY

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.

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. Although there were occasional periods of revolts and internal conflicts, the Ottomans did not lose the throne or face perilous internal threats during this period².

The seemingly insurmountable power of the Ottoman sultans has earned them a longstanding reputation as authoritarian rulers, variously observed by contemporaries and generally acknowledged by modern historians. Comparing the Ottoman system of government with that of France, Machiavelli (1950: Chapter 4) gave the Ottoman Empire as an example of government “by a prince and his servants,” unlike the French government, which was ruled “by a prince and by barons” with a more popular support. Echoes of this description can be found in today’s

² 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 a 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).

literature on political history. Finer (1997: 1173), for example, has described the Ottoman sultan as having “wielded in the most capricious way a literally despotic power over the life, liberty, and property of all his officials since they all were his *kul* – his slaves.” Generalizing this description to Ottoman authority as a whole, Findley (1980: 7) has argued that “the powers of the [Ottoman] sultan were immense; the governance of the empire was largely dependent on his personal discretion.”

Remarks on the strength of Ottoman rulers are consistent with those made on the deteriorating relative strength of the private economy in Islamic history. Kuran (2004) has argued that various institutional rigidities in the Islamic economic system were responsible for generating evolutionary bottlenecks and for causing the strength of the private sector to deteriorate over time. The Islamic law of inheritance, strict individualism of Islamic law and its lack of a concept of corporation, and rigid regulations of pious foundations imposed various constraints in the system, ultimately preventing the structural transformations required for the continuing strength of the private sector and steady long run economic growth. Although these institutions were key components of an economic system that had once achieved remarkable levels of prosperity, they had become severe constraints on economic behavior by the nineteenth century.³ At that point, the discretionary power enjoyed by Ottoman rulers stood in sharp contrasts with the rigidities faced by private actors.

The power held by Ottoman sultans is often generalized to be a permanent characteristic of all Islamic societies in history. In his discussion of Muslim jurists’ views on political authority, Gibb (1955: 17) has noted that “[t]he actual historical system...with which the jurists were confronted was a system in which all political authority was centered in the caliph-imām, and no authority was valid unless exercised by delegation from him, directly or indirectly.” Similarly

³ See also Orbay (2006) for the role of imperial pious foundations in this process.

commenting on caliphal power during the Abbasid period, Finer (1997: 693) has argued that “[i]nside his jurisdiction this caliphal power was so absolute and the position of the subject so precarious that it amounts to *despotism*, the utterly unbridled exercise of personal power.”

Underlying these views is the conception that no significant limits have emerged to constrain the rulers throughout Islamic history. Comparing limits on rulers in Middle Eastern empires with those in Japan and northwestern Europe, Powelson (1994: 282) has thus noted that in the former “[a]t no point have these limits become institutionalized, so that power might become more diffuse from generation to generation.”

A common explanation of the source of power is to attribute it to religious factors, in addition to pure military strength, originating from the notion of the caliphate, the supreme headship of the Islamic state, serving the dual functions of political and religious leadership. Because of their ability to concentrate religious and political functions in one office, Muslim rulers have been viewed as being able to draw massive power from these two spheres, rather than having to rely on alliance, negotiation, or popular support in constructing a power base. In a well-known study of the nature of authority in early Islamic history, Crone and Hinds (1986) have argued that such concentration of power in one office took place as early as the time of the early caliphs. Generalizing this to all of Middle Eastern history, Powelson (1997: 278) has argued that “[p]ower derives from military and religious sources instead of a broad base comprising individual capabilities and institutional positions other than military or religious.”

Although the theocratic nature of the Muslim ruler’s power is important, this alone does not explain the mechanism through which the power was acquired and maintained. There could be a number of different arrangements between the political and religious organizations in governance. For example, they could be independent from each other, one could control the

other, and there could be a vertical alliance between them (Coşgel, Langlois, Miceli, and Zimmermann, 2007). Moreover, they could also draw additional power from other influential groups that had popular support. Each of these arrangements would imply a different distribution of power and a different set of mechanisms available for the rulers to appropriate it for their own use. In Islamic history, not all societies have been ruled by caliphs, and not all caliphs have had effective control in both political and religious domains. Ottoman rulers, for example, were powerful at a time when the religious and political ruling institutions had long been separated. Rather than presume power to be simply originating automatically from religious offices or nominal titles, we need to explore its institutional roots in the society.

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) have identified political institutions as being primarily responsible for British economic growth. More recent research has shown the variety of other, deeper institutional factors constraining the coercive powers of rulers and contributing to the rise of northwestern Europe⁴. 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.

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).

STATE POWER AND THE LEGAL COMMUNITY

Power can be defined and measured in many different ways. Acemoğlu and Robinson (2005: 21) distinguish between two types of political power. The first is *de facto* power, referring to “what a group can do to other groups and the society at large by using force.” This is not the only source of power, however, because groups can also acquire power through political institutions such as the system of government and the types of institutional constraints imposed on the rulers in each system. This second type of power is called *de jure* (institutional) political power.

Political power can affect economic institutions and outcomes in various ways (Acemoğlu and Robinson (2005, 2006). Since the interests of the rulers, general public, and influential groups generally conflict, it is unlikely that they will prefer the same set of economic institutions. Given this conflict, although some abstract economic principle such as efficiency or fairness may also influence the outcome, the final choice would most likely be arbitrated by the political powers of the parties involved. The distribution of political power has influenced numerous economic institutions in history, including monetary policy, welfare programs, and the definition of property rights. Taxation is typically at the center of these conflicts, because in choosing tax bases and rates the ruler may use his political power to serve his own interests at the expense of the rest of the society (Brennan and Buchanan, 1980). The relative powers of the ruler, general public, and other interest groups would ultimately arbitrate the conflict over taxes.

What can make democracies and constitutional monarchies more conducive to economic growth than absolute monarchies is the existence of groups with *de jure* power given by political institutions, which can constrain the ruler’s power and facilitate the establishment of appropriate economic institutions. One of the well-known examples of how political institutions and power

have influenced economic institutions and performance is the role of the British parliament during the Glorious Revolution (North and Weingast, 1989). It is also well-known that identical political institutions like the parliament did not exist in Islamic societies during the same period as the rise of the West to play the same role. There were, however, other organized groups that wielded de facto or at times even institutional power, which could have served a similar function in constraining the rulers.

One of these key groups was the legal community. 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, two functions were essential in their relationship to the rulers: 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)⁵.

The legal community has thus 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 through the interpretation and adjudication of the law. Members of this community possessed skills and knowledge which the rulers could obtain only with great difficulty.⁶ Moreover, the demand for their services was typically high and very inelastic. By controlling the provision of legal goods and services, the legal community could

⁵ For a discussion of the major issues and a review of the relevant literature on constitutional jurisprudence in Islam, see Jackson (1996: xiii-xlii).

⁶ For the strength of legal community in Islamic history, see Humphreys (1991: Chapter 8), Ghazzal (2005), and Zaman (2002).

acquire tremendous power and exercise it in influencing various religious, political, and economic institutions and outcomes.

The legal community could function at different degrees of independence from the ruler. A society could use private litigation to resolve disputes, rely on judges serving as public officials, or restrict 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 design⁷.

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

⁷ For reviews of some of this literature, see Beck, Demirgüç-Kunt, and Levine (2001), Djankov, et al (2003) and Fergusson (2006).

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 relationship between the legal system and state power in the Islamic world has not been systematically studied.⁸

The Islamic Law did not specifically prescribe or rule out any of the possible relationships between the rulers and the legal community. 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*)⁹. The implication for state power and actions was for the ruler to make decisions by following the Qur'an and the Prophet's tradition, and seeking consensus from the legal community as necessary¹⁰. There was thus the necessary basis for establishing an institutional structure with a powerful legal community. Even if such a structure was not established, there was sufficient room for the legal community to use its

⁸ For an exception, see Johansen (1988). For their part, scholars and historians of the Islamic Law have not entered the discussion in the economics literature either. For recent studies of the law and state power in Islamic history, see Hallaq (2005), Vikør (2005) and Zubaida (2003).

⁹ For other sources of law and principles of Islamic jurisprudence, see Kamali (1991).

¹⁰ For examples of legal limitations on the ruler, see Abū Yūsuf (1979), Al Mawardi (1996), Jackson (1996), Kamali (2005), and Lapidus (1984).

capabilities and accomplishments to build de facto power. 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 the legal community to influence political power and economic institutions and outcomes in Islamic societies.

LEGAL COMMUNITY AND STATE POWER IN ISLAMIC HISTORY

Of the numerous possible forms of power relationship between the rulers, legal community, and the general public, three specific cases stood out in Islamic history as being the most typical, dominating at different times and places. One of these (chronologically the first) was the case of an insufficiently developed and weak legal community. In this case, the ruler had free rein to be directly involved in the provision of legal goods and services and had the ability to raise his own power against the general public. Another possibility (next in chronological order) was the case of a highly developed and strong legal community, acting somewhat independently from the ruler. The legal community was able to assert its power to protect the law and regulate economic outcomes, against the wishes of the ruler if necessary. The last (more recent) possibility was the case of a strong (relative to general public) legal community but one that was under the institutional control of the ruler. By somehow gaining direct control over the legal community, the rulers were able to appropriate whatever power this community could gather from the provision of legal goods and services. Although there were other cases of power equilibrium observed in Islamic history, these three cases dominated.

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 in early history, 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 autocratic¹¹.

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). Complete centralization of authority can be observed during the rule of Abdul Malik who built a model for the coming Muslim rulers. Consolidation of power was manifest in the standardized Arab coinage, Arabization of the administration and the dependence on the power of the army (Kennedy, 1986; Hawting, 2000). 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 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

¹¹ For a history of the law, politics, and society during the formative period, see Berkey (2003).

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 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 autonomy¹². The result was a more powerful and independent legal community, as authority shifted from the rulers to the legal community (Zubaida, 2003: 76). The division of labor occasionally caused a rift between the rulers and the legal community, with the rulers now potentially becoming subject to adjudication, regulation, and consultation by the legal community, depending on their relative powers.

The "inquisition" (*al mihna*, 833-47) institutionalized by the Caliph Al Ma'mun marks a turning point in the balance of powers between the ruler and the legal community. In a well-known confrontation between them, the Caliph attempted to assert the belief of the createdness of the Qur'an among leading religious scholars. The belief that the Qur'an is created would have implied that it is not without error and thus the Caliph could at any time use his discretion to change any of the commands or the laws given in the Qur'an. The evidence indicates that the

¹² 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, Yazid b. 'Abd Al-Malik (101/718-105/723) was cited as the last caliph whose practices and laws constituted authority statement. (Hallaq, 2005:68).

motivation behind the inquisition was not for the doctrine to prevail over all beliefs per se, but rather to secure for the Caliphate an unquestioned authority on all matters in response to the growing authority of the legal community (Nawas, 1996; Hurvitz, 2001; Berkey, 2003). The ruler's effort to dominate religious matters eventually failed. Al Mamun is cited as the last Caliph who tried to dominate religious and secular affairs (Van Ess, 2006). The new Caliph Al Mutawakkil was forced to abandon the attempt in 847 and accept the autonomy of the legal community. The failure of the inquisition definitively marked the establishment of the independence of the legal community and the monopoly power they had earned in the provision of legal goods and services.

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 was to come under the Ottomans, who ruled under a very different set of circumstances than the Abbasids. Comparing the two polities, Finer (1997: 1163-4) has identified various striking differences. A significant difference was the greater demographic heterogeneity observed in the Ottoman Empire, as seen in the variety of languages, religions, and ethnicities found within its domain. A significant proportion of the Ottoman population was non-Muslims, living in communities whose autonomy was preserved under the *millet* system.

Although a similar heterogeneity existed in the early Abbasid Empire, the population soon became more homogenous through conversion and assimilation. The implication for political power was that it was harder for the more heterogeneous Ottoman population to establish a power base and unite against the rulers in revolt. In a similar comparison of the Ottoman Empire with France, Berkey (1991) has attributed the relative infrequency of peasant revolts in the Ottoman Empire during the seventeenth century to its provincial structure that promoted disunity, a difference that also applied to the comparison with the Abbasids. Another factor was the difference in the nature and consequences of military conflicts. Between the eleventh and thirteenth centuries, Muslim rulers suffered a series of military invasions by the Crusaders and the Mongolians with not only devastating social and economic consequences for the people but political consequences for the rulers as well. Nothing comparable happened during the Ottoman rule until the nineteenth century. The differences in the demographic makeup, institutional structure, and external threats of the Ottoman and Abbasids empires gave the Ottoman rulers an advantage in acquiring greater political power against the general public.

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 *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 power¹³.

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 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 accountants¹⁴. 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

¹³ For recent descriptions of Ottoman methods of legitimization, see Imber (2002: Ch. 2), Karateke (2005), and Quataert (2000: Ch. 6).

¹⁴ Coşgel (2004), Darling (1996).

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 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.

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 helped to raise the power of the legal community to a new level¹⁵. Entry was restricted, because appointment as a teacher or judge required advanced formal education in a college (*madrasa*) 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 authority in legal matters. The Ottoman state gave official status to the Hanafi School, thus fostering the monopoly that 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 justice¹⁶. The legal community thus derived enormous power from its monopoly in knowledge, education, and administration of the law¹⁷. The community was powerful enough for the rulers to be concerned about making sure to keep it under control.

The rulers introduced various institutional changes and implemented new 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

¹⁵ For recent studies of the Ottoman legal system, see Gerber (1994), Imber (2002: Ch. 6), Vikør (2005), and Zilfi (1988).

¹⁶ For the development of the Ottoman criminal law, see Heyd (1973).

¹⁷ 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).

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 century¹⁸. 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 enormous power the legal community may have possessed actually came to belong to the ruler¹⁹.

RULERS, LEGAL COMMUNITY, AND TAXES

Numerous considerations can go into the design of a tax system. In traditional analysis of government and taxation, rulers were considered as benevolent protectors of the general public applying some general criteria, such as efficiency, simplicity, or fairness, in deciding how to tax each source of revenue.²⁰ Recent political economy models, by contrast, have viewed rulers as being interested primarily in the maximization of their own welfare, the tax system emerging as the outcome of the ruler's power relationship with the general public and influential groups²¹.

¹⁸ 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.

¹⁹ 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.

²⁰ For examples of approaches viewing rulers as benevolent protectors, see İnalçık (1973), İnalçık and Quataert (1994), and Genç (2000). For recent examples and reviews of the pertinent literature on how changing balance of power have resulted in significant shifts in political institutions and religious and legal interpretation in Islamic history, see Esposito (1999), Vikør (2005) and Zubaida (2003)

²¹ See, for example, Acemoğlu and Robinson (2005) and McGuire and Olson (1996). See also Weingast and Wittman (2006) for the political economy approach to various other topics.

There are two essential components of a tax system, namely the tax base and the rate structure. At a basic level, the first problem is to determine an appropriate base for taxing productive activities and other sources of revenue. In modern economies, the problem emerges as the question of, for example, whether to tax income, consumption, or property as the appropriate base. Historically, there has always been the problem of determining whether to base the tax on the inputs, outputs, or some other component of a productive activity²². For example, if a group of taxpayers are powerful and they prefer the government to choose the output (e.g., because this would allow the production risk to be shared with the government), rather than one of the inputs, as the tax base, then the government might have to cater to this preference (even though this might lower the expected tax revenue or have undesirable consequences for efficiency or fairness). Similarly, if another group of producers is not very powerful and they have lower tax-elasticity in one type of base than the other, then the government might choose the former type as the base in taxing their productive activity. The comprehensive outcome of these deliberations forms the base component of the tax system, enforced by the bureaucracy and overseen and regulated by the legal community.

The other essential component of a tax system is the rate structure. To see the conflict of interests over the tax rates, consider the simple problem of taxing the production of a single good as presented in Figure 1²³. The inverted-U shaped curve, generally known as the Laffer curve, shows the relationship between the tax rate and tax revenue. As the tax rate rises, the revenue may at some point start to fall because raising the tax rate beyond a critical level may reduce the

²² For the effect of risks and transaction costs on the choice between tax bases and the allocation of revenue, see Coşgel (2005) and Coşgel and Miceli (2005)

²³ A more formal model with mathematical details of this illustration is available upon request.

work incentives so much that output and tax revenue also fall. Suppose for simplicity that the level of government expenditures is given, as illustrated in the figure²⁴.

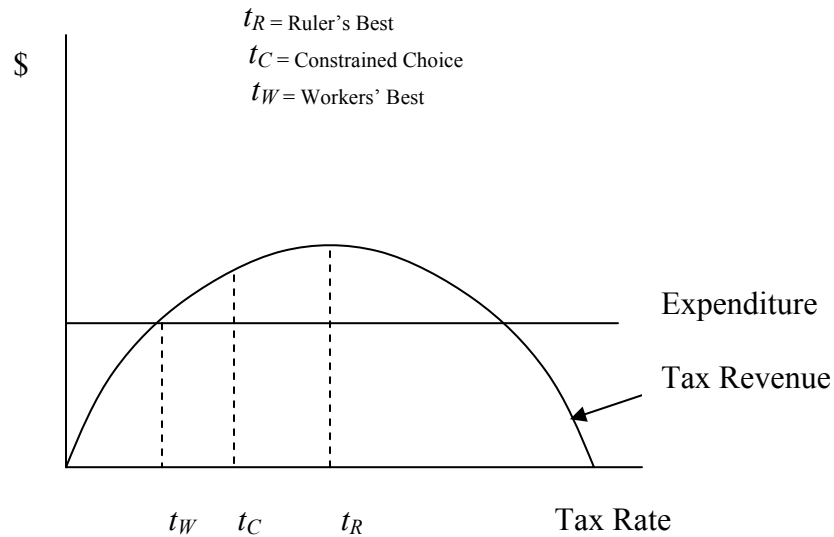


Figure 1: Comparison of tax rates for a given level of spending.

It is easy to see that if the government is controlled by a ruler who can set the tax rate to maximize his own consumption (excess of tax revenues over spending), he would choose t_R . This can be called the Ruler's Best outcome, preferred by a ruler who can ignore the interests of workers in setting tax policy. If, on the other hand, the workers have the power to dictate the tax rate, they would choose t_W , the Workers' Best, where the tax revenue is just enough to cover the expenditures. A third possibility is when there is a binding participation constraint by the workers, a kind of "exit" option or a requirement that they achieve a minimum level of net

²⁴ Numerous public goods were provided privately by charitable foundations (*waqfs*) in Islamic societies, particularly by those serving redistributive and poor-relief functions. For the functions and financing of private and imperial charitable foundations in Islamic history, see Kuran (2001) and Orbay (2006).

wealth to take part in this economy voluntarily. This is shown by the tax rate t_C , called the Constrained Choice, the level of which would depend on such things as the alternatives (e.g., migration) available to workers and their ability to depose or replace the ruler if he behaves in a tyrannical way. Note that the participation constraint may or may not be binding, and correspondingly t_C may or may not be higher than t_W .

Political institutions matter greatly in determining the final outcome. Whereas in an absolute dictatorship a ruler may be able to raise taxes to achieve the Ruler's Best, the rate may fall as low as the Workers' Best in a perfect democracy. The legal community's role too may be defined by the institutional structure. In general, given the unique role of the legal community in providing legal goods and services and issuing rulings, they would be expected to have some responsibility to regulate or influence the choice of tax rate. This may happen, for example, if the legal community is charged with the task of 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. In a democracy, for example, the legal community's role may be defined as the protection of the interests of the general public. In an absolute dictatorship, on the other hand, the ruler may be able to reduce the role of the legal community so much that it no longer exercises an effective constraint on the ruler's behavior.

If the legal community has complete independence, the outcome would depend on their objective function, presumably any tax rate between t_W and t_R being possible²⁵. One would expect the legal community's objective to be the correct application of the law. But the ruler or the public may still be able to influence the legal community's decisions indirectly by manipulating their objective function. In reality, even in the absence of direct dictatorial control

²⁵ 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) and McCubbins and Rodriguez (2006).

of its decisions, the legal community's objectives could also depend on the structure of its members' selection and compensation schemes. For example, as was the case under the Ottomans, the ruler may be able to incorporate the legal community into the government bureaucracy or design a payment scheme that would align the interests of the legal community with the ruler, in which case the outcome may resemble dictatorship. Alternatively, the general public 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 the general public. Thus, the outcome may move closer to absolute dictatorship or perfect democracy, depending on the structure of the incentives and appointment of the legal community.

Even when the political structure may not allot much institutional power to the legal community, the latter may still be able to influence outcomes based on their de facto power, if any. As discussed earlier, the legal community was able to acquire significant power during the Abbasid period as a result of the unique capabilities and accomplishments they managed to accumulate over time. Once again, in such cases they may use their power in various ways, including the protection or institutionalization of their own interests, strict application of the law and the precedent, or some other objective. The legal community's influence on the tax rate would depend on their objective function.

Another mechanism for a ruler to use his power to increase his revenue is rate discrimination among activities or taxpayers. For example if tax-elasticities were different between the sectors of the economy or between groups of taxpayers, the ruler could raise revenue by rate-discriminating among them, just as a producer with a monopoly power in a market can raise revenue by price-discriminating among groups of customers with different price-elasticities

of demand. Rate discrimination could also be observed if the participation constraint varied significantly among easily identifiable groups of taxpayers.

RULERS, LEGAL COMMUNITY, AND TAXES IN ISLAMIC HISTORY

While the relationship between the ruler, the legal system, and the general public went through different stages in Islamic history, the struggle for power has reflected in a conflict over taxes and resulted in outcomes corresponding to the changing balance of powers discussed above. The conflict over taxes 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 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 for 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 day²⁶.

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

²⁶ See, for example, Calder (1981), Dutton (2004), Scott (1997), and Zysow (2002).

producers. Within those parameters, rulers could take advantage of their monopoly power by setting the tax rates close to the Ruler's Best and 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). Surplus taxation was successfully forwarded to the central treasury in Damascus, a practice that had been opposed by several provinces especially by the Iraqis who wanted to control the Sawad revenues (Kennedy, 1986). In implementing the tax system, the rulers did not have to worry too much 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 revenues²⁷.

Constraints on the ruler's ability to manipulate the tax system and the legal community's ability to regulate his behavior gradually emerged during the Abbasid period, corresponding to the rising authority of the legal community 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

²⁷ 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).

which survive to this day, 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 approach²⁸. 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 (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 general public 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). Mutazillite sources indicate that Caliph Al Wathiq showed recognition to the religious scholars and proposed involving them in matters of tax collection (Van Ess, 2006). Evidence suggests that when additional taxes were needed, the ruler had to consult with the legal community and that religious scholars retained significant power even when they were out of office. When Qutuz wanted to raise taxes to finance the fight against the Mongols, it was pertinent to consult with Ibn Abdel Salam, the retired Chief justice of Fustat before he could do so (Jackson, 1996).

The Ottoman rulers' control of the legal community meant an alignment of their interests and a modification of the legal community's objective. To secure an appointment or to rise up in the hierarchy of the Empire, 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

²⁸ 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. For a list of known books based on taxation published during the Abbasid period, see Shemesh (1967: 3-6).

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.” Although there were, of course, occasional rulings in qadi courts issued against state employees that tested the limits of the ruler’s control, the legal community for the most part sided with the ruling institution. 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 law²⁹. 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.

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 the legal community became the maximization of the ruler's welfare, rather than appropriate application of the law. Consequently the ruler's power became combined with that of the legal community, and he could attempt to choose the best tax rate possible, without interference from the legal system. The ruler's discretion to raise the tax rates as much as possible was clearly

²⁹ See Imber (1997) for the accomplishments of Ebu's-su'ud.

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 thus varied 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 public³⁰. 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 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

³⁰ A significant exception to the high powers of Ottoman rulers could be seen in the *malikāne-divanī* 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.

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

The legal community played a central role in developing the institutional roots and regulating the economic consequences of the rulers' power in Islamic history. Although the Ottoman rulers enjoyed a great deal of power, such strength was not necessarily a given, static, or common characteristic of all Islamic states. Centuries earlier, the Abbasid rulers faced more significant constraints to their coercive powers as limited by the different set of circumstances surrounding their reign. Preceding the Abbasids in one of the earliest stages of the development of the Islamic state, the Umayyads also faced a different set of circumstances, which for them meant great powers, though in a different way than the Ottomans. Throughout Islamic history, the rulers' power varied significantly over time and across contemporary states, some rulers having more power than others over their subjects and organized groups.

Using a political economy approach to state power and taxation, we have studied the changing relationship between the rulers, legal community, and general public in Islamic history and the corresponding ability of the legal community in constraining 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 high monopoly powers in taxation was their ability to incorporate the legal community into the government bureaucracy and to appropriate their power by controlling the top of their hierarchy.

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