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Abstract

The ruler's power varied greatly in Islamic history over time and space. We explain these variations with a political economy approach to public finance, identifying factors affecting economic power and its constraints. An influential interest group capable of affecting the ruler's power was the legal community (*'ulamā'*). This community could increase the ruler's ability to extract a surplus from the citizenry by conferring legitimacy, thereby lowering the cost of tax-collection. It could also limit power through legal constraints on taxation. We show how changes in legitimacy and legal constraints affected the economic power of rulers in representative episodes of Islamic history and identify general trends and dynamic processes underlying the relationship between the state and the legal community.

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Keywords: state power, legitimacy, taxation, political economy, Islamic Law, legal constraints

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LAW, STATE POWER, AND TAXATION IN ISLAMIC HISTORY

Metin Coşgel, Thomas Miceli, and Rasha Ahmed

1. Introduction

A widely held belief about Islamic history 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 “despotic,” “dictatorial,” and “authoritarian,” giving them as examples of “extreme centralization,” “patrimonial domination,” or rule “by a prince and his servants.”¹

One of the problems of such characterizations is that the associated image applies only to certain times and places in Islamic history. Although some rulers were certainly strong and despotic, others were not. Sometimes the ruler was weak because of inadequate legitimacy, or because he faced steady opposition. Another problem is that we know little about the nature and institutional sources of the economic power of rulers to be able to explain its variation over time and space. Previous studies have variously examined the religious, military, and political nature of the Muslim ruler’s power over the general public. They have also identified factors ranging from internal conflicts to external threats as sources of variation. However, they have not systematically studied the deeper institutional roots of political power and the mechanisms

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).

through which it has been maintained or constrained. Recent developments in the political economy literature on state power have not been fully employed to the study of Islamic history.

The power relationship between the ruler and the general public is clearly a complex and multi-dimensional phenomenon. Our purpose here is to study a crucial piece of this complicated puzzle, namely the role of the legal community (‘*ulamā*’) in relation to the ruler’s ability to extract a surplus. We have two general objectives. The first is to develop a simple model of economic power and constraints by combining insights from the recent political economy literatures on dictatorship, legal system, and public finance. To identify the sources and constraints of the ruler’s power, we focus on the legal community. As an influential interest group, this community could affect the ruler’s ability to extract a surplus from the citizenry by conferring legitimacy (thus lowering the cost of tax-collection) and interpreting the tax law (possibly imposing legal constraints on taxation). Our second objective is to use the model to explain the rise and fall of the rulers’ economic power in Islamic history. Studying rulers in three representative episodes, we show how variations in legitimacy and legal constraints affected their ability to extract a surplus. We end with an analytical synthesis that identifies general trends in the relationship between rulers and the legal community and the reasons for the stability of the processes driving these trends.

2. Studies of state power in Islamic history

The struggle for power has been a persistent and complicated problem in Islamic societies, as it was in other parts of the world. As the birthplace of several global civilizations, the Middle East has witnessed the emergence and disappearance of numerous states and the rise and fall of countless rulers. Since the rise of Islam in the seventh century, various dynasties 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, these relationships have been entangled with various tribal, ethnic, religious and other conflicts.

Despite variations of the ruler's power over time and space in Islamic history, his strength is often portrayed as the dominant feature. This impression may have been shaped by the legacy of the Ottomans, the last Muslim Empire, which dominated the region until World War I. 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. It is often cited as a characteristic that distinguishes the Ottoman state from coeval European states. Although there were occasional periods of revolts and internal conflicts, the Ottomans did not lose the throne or face perilous internal threats during their long rule that lasted six centuries.²

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

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).

prince and by barons” with a more popular support. Echoes of this description can be found in today’s literature on political history. Finer (1997, p. 1173) 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, p. 7) has argued that “the powers of the [Ottoman] sultan were immense; the governance of the empire was largely dependent on his personal discretion.”³

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, p. 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.” In the same vein, commenting on caliphal power during the Abbasid period, Finer (1997, p. 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 ever emerged to constrain the Muslim rulers. Comparing limits on rulers in Middle Eastern empires with those in Japan and northwestern Europe, Powelson (1994, p. 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.”

³ Remarks on the strength of Ottoman rulers are consistent with those made on the deteriorating relative strength of the private economy in Islamic history, such as Kuran’s (2004) arguments about the institutional rigidities that were responsible for generating evolutionary bottlenecks and for causing the strength of the private sector to deteriorate over time. See also Orbay (2006) for the role of imperial pious foundations in this process.

There are two problems with the characterization of Muslim rulers as generically powerful. The first is that it does not apply to all rulers observed in Islamic history. Although some Ottoman sultans (e.g., contemporaries of Machiavelli) were powerful rulers, others (e.g., those of the late nineteenth and early twentieth centuries) were much weaker. Numerous Islamic dynasties were occasionally weakened and even overthrown by popular revolts or by the strong opposition of rivals. In some cases, dynasties ended through a gradual process of disintegration into smaller states, some with weaker rulers and shorter reigns, as was the case with the Abbasids after the tenth century. Sometimes, as in Turkey and certain other Middle Eastern states of the twentieth century, bureaucrats or military leaders, rather than popular elections or rules of succession, have determined the leader. At other times, external threats, such as the Mongolian invasions in the thirteenth century or European colonialism of the nineteenth century, have weakened or displaced rulers. In brief, the ruler's power has varied greatly over time and space in Islamic history.

The second problem is that we know little about the nature and sources of power to be able to account for this variation coherently. A common explanation of the source of power is to attribute it to religious factors, in addition to pure military strength, which originated from the notion of the caliphate, the supreme headship of the Islamic state, serving the dual functions of political and religious leadership. Muslim rulers are said to have drawn massive power from their ability to concentrate religious and political functions in one office, rather than having to rely on alliance, negotiation, or popular support for legitimacy. 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 claim to all of Middle Eastern history, Powelson (1997, p. 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.”

Even though the theocratic nature of the Muslim ruler's power is important, this alone does not explain the mechanism through which it 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 of each other, or one could control or even suppress the other (Coşgel and Miceli, 2008). Extending the notion of the caliphate to all Islamic societies, therefore, is not appropriate. Not all Islamic societies have been ruled by caliphs with effective control in both religious and political domains. Although this notion applied to some of the early rulers who could derive tremendous political power from religious leadership, the significance of holding the title of caliph changed significantly over time, many of the later rulers having to derive legitimacy from other sources. Ottoman rulers, for example, were powerful at a time when the religious and political institutions had long been separated. To understand the sources of power, rather than presume it to originate automatically from religious offices or nominal titles, we need to identify the mechanisms through which legitimacy was created.

Although recent developments in the political economy literatures on dictatorship and legal origins have been useful in identifying the nature and sources of power in numerous historical episodes, these developments have not been fully incorporated into the study of power in Islamic societies. For example, in their influential classification of the legal systems of the world, LaPorta, et al. (1998) have considered the Islamic past less important than the influence of western colonial and mandatory powers in today's Islamic societies, placing the legal systems of these countries into one of the four western-centric families (English, French, German, and Scandinavian) that comprise the world's systems. Although this approach may be justified to a

degree in static classifications of present legal systems, no economic studies have emerged to extend this approach to the study of state power in Islamic history. For their part, scholars and historians of the Islamic Law have not entered the discussion originating from the economics literature.⁴

3. The political economy of public finance

To identify the sources of the ruler's economic power and determine how the legal community can affect this power, we develop a simple political economy model of public finance that incorporates insights from several literatures. The key relevant insights we adopt from the literature on dictatorship is that even dictators are constrained in their ability to tax and spend and that they can draw power from organized groups at lower ranks of the hierarchy.⁵ Focusing on the legal community, we study how it could constrain the ruler and affect his relationship with the citizenry. Also relevant for the study of legal community in Islamic societies is the fast growing economic literature on legal origins, from which we take the notion that legal traditions differ in terms of how they can constrain the ruler and specify the power of the government relative to the judiciary.⁶

⁴ 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. For an exception, see Johansen (1988). See also Hallaq (2005), Vikør (2005) and Zubaida (2003) for recent studies of the law and state power in Islamic history.

⁵ See, for example, McGuire and Olson (1996), Olson (1993), Weingast (2005), and Wintrobe (1998). Haber (2006) provides a survey of some of this literature. For examples of observed constraints, see also Acemoğlu (2005), Acemoğlu and Robinson (2005), Djankov, et al. (2003), Greif (2005, 2008), North and Weingast (1989), and Weingast (2005).

⁶ See, for example, Glaeser and Shleifer (2002), LaPorta, Lopez-de-Silanes, and Andrei Shleifer (2004), and Tridimas (2005). For reviews of this literature and its extensions to other fields, see Beck, Demirgüç-Kunt, and Levine (2001), Djankov, et al (2003) and Fergusson (2006).

Numerous considerations can go into the design of a system of public finance. In traditional analysis of government, 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 and spend.⁷ Recent political economy models, by contrast, have viewed rulers as being interested primarily in the maximization of their own welfare, with the system of public finance emerging as the outcome of the ruler's power relationship with the general public and influential groups.⁸

We abstract from the details of taxation and expenditure and focus instead on the motivation of the ruler and the various constraints on his power to tax. The model is a simple adaptation of the framework developed by Brennan and Buchanan (1980) and elaborated by Wintrobe (1998). Specifically, consider a ruler who seeks to maximize his surplus, S , which is equal to the total taxes he can collect, T , less the cost of providing a public good G .⁹

In conducting this maximization, the ruler is constrained in two ways. First, there is a collection cost that consumes a fraction α of gross taxes collected. Thus, the ruler's net taxes are $T(1-\alpha)$. The parameter α captures the transaction costs of collection plus the resistance of citizens to the forcible seizure of their wealth. The ruler's surplus is thus given by

$$S = T(1-\alpha) - c(G), \quad (1)$$

where $c(G)$ is the cost of the public good, with $c' > 0$ and $c'' > 0$.

⁷ 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).

⁸ See, for example, Brennan and Buchanan (1980), Wintrobe (1998), Acemoğlu and Robinson (2005) and McGuire and Olson (1996).

⁹ 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).

The second constraint on the ruler is that citizens must realize a minimum level of utility, U_0 , reflecting subsistence, or the point at which they would revolt and replace the ruler. The utility function of a representative citizen is given by $U=Y-T+u(G)$, where Y is his endowed wealth and $u(G)$ is his valuation of the public good, with $u'>0$ and $u''<0$.

Based on the foregoing specification, the ruler's problem may be written

$$\max_{T,G} T(1-\alpha) - c(G) \quad \text{subject to} \quad (2)$$

$$Y - T + u(G) \geq U_0. \quad (3)$$

The solution to this problem is shown graphically in Figure 1. In the graph, the citizen's indifference curves are positively sloped and concave in (T,G) space, with utility increasing toward the southeast. Conversely, the ruler's iso-surplus curves are positively sloped and convex, with the surplus increasing to the northwest. The solution to the above problem is thus given by the tangency of an iso-surplus curve with the indifference curve associated with the citizen's reservation utility, or $U=U_0$. The point is labeled R, which we will refer to as the Ruler's Optimum. The resulting surplus for the ruler is given by $S_R=T_R(1-\alpha) - c(G_R)$.¹⁰

[Figure 1 here]

The Ruler's Optimum can be contrasted with that which a benevolent dictator would choose, which would involve maximizing the citizen's utility subject to a balanced budget condition. This outcome, labeled B in Figure 1, is given by the tangency of an indifference curve with the iso-surplus curve associated with $S=0$. Clearly, this outcome involves a lower tax for the same level of spending on the public good (holding α fixed).¹¹

¹⁰ Formally, the Ruler's Optimum is jointly defined by the tangency condition $u'(G)(1-\alpha)=c'(G)$, which determines G_R , and the constraint $Y-T+u(G)=U_0$, which determines T_R .

¹¹ The fact that G is the same in the two solutions is a consequence of the separability of the citizen's utility function, in other words, of the absence of income effects in the demand for G .

4. The legal community and public finance

Now consider the role that the legal community might play in this setting. In general, various organized groups could affect the economic power of rulers, depending on their ability to impose restrictions and confer legitimacy. The origins and consequences of this type of influence by the church, parliament, guilds, and other organized groups have been variously studied by economists.¹² Focusing on the legal community, we show how its relationship with the state may explain variations in the economic power of the ruler over time and space.

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 (*mufī*) offering legal opinions.¹³ Members of this community performed numerous religious, social, and administrative functions, ranging from teaching the Qur'an to collecting taxes. Our principal focus is on the practice of this community in providing legal goods and services and issuing rulings that might regulate or influence the ruler's fiscal behavior. Two functions were essential in the legal community's relationship to the economic power of the rulers. It could issue regulations that constrained the ruler's ability to tax, which was possible if the legal community took on 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.¹⁴ The second function through which the legal community could affect the ruler's power was to confer

¹² See, for example, Coşgel and Miceli (2008), Greif (2008), and North and Weingast (1989).

¹³ For the functions and historical evolution of the legal community, see Ghazzal (2005), Gilliot (2000), Hallaq (2005), Humphreys (1991, Chapter 8), Lambton (1981), Lapidus (1984), Masud, Messick, and Powers (1996), Zaman (2002), and Zubaida (2003).

¹⁴ Although in principle the legal community could also constrain the ruler's ability to spend, we focus on the taxation side of public finance because very limited information existed on whether and how such constraints were introduced and enforced. For examples of legal limitations on the ruler, see Abū Yūsuf (1979), Al Mawardi (1996), Jackson (1996), Kamali (2005), and Lapidus (1984). See also Hallaq (1997) and Kamali (1991) for history of the relevant Islamic legal theories and principles of jurisprudence.

legitimacy on the ruler and reduce his cost of collecting taxes.¹⁵ Of course, as we will detail below, the extent and direction of these influences depended on the nature of the regime and the extent of the legal community's power within that regime, as well as on the objective function of the legal community.

For purposes of this discussion, we will treat the legal community as monolithic, that is, as having a single, well-defined objective function. Rather than explore divisions and coordination problems within the legal community, we focus on its role in the ruler's relationship with the rest of the society. This is both a reasonable simplification and a useful way to identify an important determinant of power that can offer important insights, especially as regards the unique role that the legal community has played in Islamic society vis-à-vis the public sector. The supposition of a monolithic legal community may be justified through reference to various mechanisms that existed to ensure coordination of interests against the ruler.

True, there were numerous divisions within the legal community owing to differences among schools (*madhhab*) in Islamic law, regional variations in social characteristics and legal precedents, and even among those performing different types of functions in the community. The interests of these groups could conflict, creating prisoners' dilemma type problems in their interaction with other organized groups. These groups could even disagree on the role and scope of government or on appropriate constraints on the ruler. The disagreements would result in coordination problems insofar as the ruler exploited these differences for a divide and conquer strategy.¹⁶

¹⁵ For the origination and evolution of legal community's ability to provide legitimacy in Islamic history, see Ghazzal (2005) and Hallaq (2005, Chapter 8). Coşgel and Miceli (2008) make a similar argument regarding the role of religion on the sovereign's ability to tax.

¹⁶ This is the same type of problem Weingast (2005) and Hardin (2006) have identified in the enforcement of constitutional provisions, where the government's ability to exploit disagreements among citizens can create a coordination problem and a dilemma in policing the government.

There are several good reasons to believe that the coordination problem of the legal community was not significant. The group was able to gradually establish a sense of corporate identity and develop mechanisms for commitment. As Islamic law developed, members of the judicial community were typically trained in colleges (*madrasah*) that restricted entry, and initiation took place through a personal relationship between student and teacher, a process that greatly fostered the sense of a corporate identity. Expectation of religiosity could also help ensure commitment. More important from an economic perspective, interactions among members involved mechanisms that could ensure cooperation and unified action. For example, members of the community interacted with each other repeatedly (rather than in one-shot situations), reputation was important, they were typically organized in a hierarchical manner, and self-selection weeded out those who were skeptical of interacting with the government. Although divisions within the community were not unknown, for the most part it was monolithic with respect to its relationship with the ruler.

Against the background of these observations, we can use the model developed above to illustrate the two avenues along which the legal community influenced the ruler's behavior. As stated, the first avenue involved imposing a constraint on the amount of taxes the ruler can extract from citizens, holding G fixed. This amounts to putting an upper bound on T , T_{max} , somewhere between T_R and T_B along the segment RB in Figure 1. In imposing this constraint, the legal community raised citizen welfare at the expense of the ruler's surplus, resulting in a pure redistribution of wealth.

The second way for the legal community to affect the solution to the ruler's problem is to confer "legitimacy" on the ruler, thereby lowering α , the cost of collecting taxes. Examples of this could include confirming succession to the throne, issuing opinions that authorize new

policies, and equating rebellion and opposition to taxes with heresy and lawlessness. Unlike a limit on T , this effect increases the aggregate surplus to be divided by reducing the deadweight loss from taxation. The case where the ruler captures all of this additional surplus is shown by point R' in Figure 2.¹⁷ The effect is an increase in both T and G , which leaves the citizen just as well off as before while increasing the surplus of the ruler.

Alternatively, if the legal community has some independent influence over the ruler's decisions owing to its de facto power or to its strategic interactions with other segments of the society, it may be able to shift the outcome in favor of the citizenry. For example, it could impose a limit on T at the same time that it confers legitimacy on the ruler. Such an outcome is shown by point R'' in Figure 2.

[Figure 2 here]

The source of the legal community's power to affect T and G in the above ways could be institutional, as when a constitution spells out its role in providing a check against the executive and/or legislative branches. It might also derive from more informal sources. Members of this community possessed highly specialized skills and knowledge which neither rulers nor other members of the society could obtain easily. The legal community's power grew gradually in Islamic societies, being derived primarily from their monopoly in interpreting the law, particularly as it pertained to the prophet's tradition (Ghazzal, 2005). The demand for their services could be high and very inelastic, allowing the community to acquire tremendous power simply by controlling the provision of these services. The power was sometimes concentrated in certain families who somehow gained hereditary membership into the higher ranks of the community, accumulating great wealth and prestige.

¹⁷ The effect of a reduction in α is to flatten the slope of the ruler's iso-surplus curves, thus causing the tangency to shift rightward along the citizen's indifference curve.

It is natural to wonder about the objective function of the legal community. It could have been the correct application of the law as it is interpreted by, or revealed to (if based on religious law), the members of the community. Alternatively, it could have been based on the personal beliefs and preferences of its leaders. However, we know little about the objective function of the legal community in Islamic history, just as we know little about that of the legal communities of today.¹⁸ What we do know is that they too were subject to constraints.

Although the legal community could be powerful, it did not operate in a vacuum. There were other interest groups, such as urban leaders and merchant associations, who also had significant stakes in public finance. The legal community could not just consider absolute legal principles or its own objectives in isolation in deciding how to affect public finance. As recent studies of constitutional constraints suggest, political economy considerations were also important (Weingast, 2005; Hardin, 2006). At times the legal community failed to constrain the ruler, not as a matter of law or objectives but because its interests conflicted with those of other groups, resulting in coordination failures. Even though the legal community may have had a duty to impose constraints, the more relevant economic question is to identify circumstances under which its members not only had the duty but also the incentive and ability to do so.

The ruler himself could manipulate the outcome strategically to impede coordination against him. Although the legal community and other groups could be better off coordinating their actions against the ruler, they might fail to do so if they faced a prisoners' dilemma type of situation and a high coordination cost. The ruler might be able to exploit differences between groups, securing an asymmetric equilibrium where one group would benefit at the expense of others, even under repeated interaction, thereby achieving an outcome that ultimately benefited

¹⁸ For related discussions of the difficulty of formulating a well-defined objective function for judges, see Miceli and Coşgel (1994) and McCubbins and Rodriguez (2006).

the ruler. The legal community could thus choose to ignore legal constraints on the ruler because it might be against its own interests to constrain him. This could be the case if the community's own interests were directly related to the economic power of the ruler, even though maximizing these aligned interests could have meant to exploit other interest groups or the citizenry in general.

Islamic Law did not prescribe a specific relationship between the rulers and the legal community. Hence, rulers could manipulate the structure of legal community's selection and compensation mechanisms as a means of influencing its decisions indirectly. For example, the ruler could finance the community's activities either directly through salaries and pensions or indirectly through tax exemptions granted to private charities (*waqf*) that supported them more directly. He could also incorporate the legal community into the government bureaucracy or design a payment scheme that aligned the interests of the legal community with the ruler. In this case the legal community would have little incentive to impose constraints on the ruler's ability to maximize his income.

As a final point, we suggest that the legal community's efforts to confer legitimacy on the ruler would tend to accumulate, acquiring greater force over time. In this sense, legitimacy becomes a capital stock that yields benefits to current and future rulers in terms of their ability to pursue their self-interests. The idea is analogous to judicial rulings that acquire the status of legal precedent in the Anglo-American legal system (Landes and Posner, 1976). The implication is that the legitimacy of the ruler will become increasingly difficult to counteract, lending an inherent stability to the power of the incumbent regime. Of course, an exogenous force such as a war or technological change could cause deviations from that trajectory, as we discuss in more detail below.

5. Legal community and state power in Islamic history: Representative episodes

The ability of the legal community to confer legitimacy and impose legal constraints on the ruler sheds light on a great deal of the variation in the economic power of the rulers in Islamic history. Numerous outcomes were possible, depending on the specific functions of the legal community in a society and its status relative to the ruler and the general public. At times the legal community was weak or deficient; at others it was strong and effective against the ruler, and still others it was powerful in relation to the general public yet functioning under the control of the ruler. Given the rich and complicated history of legitimizing and constraining relationships between rulers and legal communities in Islamic history, it is impossible to cover all of this history here. Rather than aim for a comprehensive coverage, we will illustrate in representative episodes how differences in legitimacy and constraints affected the economic power of the ruler. Three important episodes stand out with distinct characteristics, representing the observed variety—namely, the early Islamic history, which was characterized by a weak legal community prior to its full development; the period of the legal community's rising importance in legitimizing and constraining rulers between the eighth and tenth centuries; and the early modern period during which the legal community came under the control of the rulers in the Ottoman Empire. After discussing each case in detail, we will offer an analytical synthesis of the presented evidence.

5.1. Undeveloped legal community

In terms of the basis for legitimacy and constraints on rulers, the most important characteristic of the early decades of Islam is the absence of an organized legal community

consisting of specialized legal experts. Other essential components of a complete legal system were not yet fully developed either. A positive legal doctrine was not fully elaborated, and doctrinal legal schools or a science of legal methodology and interpretation had not yet fully emerged (Hallaq, 2005). The rulers made the law and set the precedent, leaving legal interpretation and dispute resolution primarily to laymen, who served as proto-*qādīs*, the earliest quasi-judges of the Islamic legal system (Hallaq, 2005, Chapter 2; Crone and Hinds, 1986, Chapter 4). Without an established legal system and formal training or authority, the legal community was not in a position to confer legitimacy or impose constraints on the ruler.

Legitimacy was therefore a significant problem for the rulers during this period. There were competing theories on who should have the right to rule, with claims ranging from the primacy of being righteous and chosen by the community to having kinship ties to the Prophet or being a member of his tribe. Once in power, rulers sought to legitimize their right by a variety of means, including minting new coins, developing court ceremonials, and adopting new titles, such as the controversial Umayyad title of “Deputy of God” (*khalīfat Allāh*). Legitimacy continued to be a major struggle during the first Muslim century, as disputes over succession turned into organized opposition against rulers, such as the well-known Khariji and Shi’a movements that challenged the Umayyads (Hawting, 2000). There were numerous revolts, permanent divisions, political conflicts, and civil wars centered around the problem of the ruler’s legitimacy.¹⁹

The problem of legitimacy had direct implications for taxation because it fueled disputes that made it costlier to collect taxes (high α). One of the ways groups in conflict with the ruler could put their opposition into action was to refuse to pay taxes. The conflict over taxes also involved the determination of which assets, activities, and people should be taxed and at what

¹⁹ For different perspectives on these events, see Berkey (2003, Chapters 7-10), Crone (2004, Chapters 2-3), Crone and Hinds (1986), Kennedy (1986, Chapters 3-4), Lapidus (2002, Chapters 3-4), and Shaban (1976).

rate. The struggle may have 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, p. 14). His successor and the first Caliph Abū Bakr fought some of these tribes because of their refusal to pay taxes. Decades later, problems with legitimacy and high cost of tax collection appeared to remain significant, as can be seen in Al Hajjāj Ibn Yūsuf's (694-713) attempts to collect taxes by resorting to such unusual measures as rounding up some groups and using stamps to mark those who paid (Hawting, 2000, p. 70).

While the legal community was still developing, the rulers did not have to worry about legal constraints, enjoying considerable freedom in public finance. Other than the possibility of facing opposition from the general public and the fear of causing revolts and dethronement (a subsistence point reflected by U_0 in the model), there were no constraints on their ability to tax and spend as they pleased. Within those parameters, the rulers could set the tax rates close to the Ruler's Optimum and engage in price discrimination in taxation, for example by implementing different types and rates of taxes that depended on religion (e.g., *dzjizya* taxes on non-Muslims), regional customs (e.g., new taxes inherited from previous rulers), and economic capacity (e.g., access to irrigation). The significant changes made by Al Hajjāj show the ability of the state to manipulate the tax law as necessary. 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, p. 96). In implementing the tax system, the rulers did not have to be concerned about abiding by the legal status of land or taxpayers, about ensuring the conformity of taxes and rates with canonical categories, or about maintaining legal standards on interregional or interpersonal equity in tax burden.²⁰

²⁰ For descriptions of taxes observed in early Islamic societies, see Aghnides (1916), Cahen (1960, 1990, 1991), Lapidus (2002, p. 37), Løkkegaard (1950), and Oran and Rashid (1989).

5.2. *Strong and independent legal community*

The second episode that illustrates a different set of outcomes from the legitimacy and constraining relationship between the ruler and the legal community was the period of the latter's gradual establishment and independence during the eighth and ninth centuries. This was a period of higher specialization in legal knowledge and greater institutionalization of the legal system. A division of labor took place between the ruler and the legal community: the rulers' monopoly became 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 became 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 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 autonomy.

An event that clearly illustrates the establishment of the legal community and the rise of its power in providing legitimacy and constraints during this period was the "Inquisition" (*al mihna*, 833-47). Initiated by the Abbasid Caliph Al Ma'mun, this event marked a turning point in the division of labor between legal and political functions and in the balance of powers between the ruler and the legal community. In a well-known confrontation, the ruler attempted

to assert the belief of the createdness of the Qur'an among the leading scholars. If implemented, this belief would have allowed the ruler to use his discretion to change the laws or commands of the Qur'an.²¹ The ruler's effort to dominate religious matters eventually failed. In 847 the new Caliph Al Mutawakkil was forced to abandon the attempt and accept the autonomy of the legal community. The failure of the Inquisition definitively marked the full establishment of the legal community and the power it had earned in constraining the ruler.

Because of the power and expertise of the legal community, and owing to the fact that its members emerged from and represented the general public, it was in a good position during this period to confer legitimacy on the rulers and reduce the cost of collecting taxes (low α). As Hallaq (2005, p. 152) has observed, "the government was in dire need of legitimization, which it found in the circles of the legal profession." Members of the legal community resolved disputes, clarified property rights, and conferred legitimacy on the ruler while providing a variety of other public goods and services. In doing so, they lowered the cost of tax collection. They could do this sometimes directly by serving as trustworthy and authoritative tax collectors and at other times indirectly by justifying the public benefits of the state and promoting the virtues of obedience to the ruler. Even Ahmad ibn Hanbal, a scholar who was persecuted by the rulers during the inquisition, declared it unlawful to rebel against the ruler (Berkey, 2003, p. 125). Although various political conflicts erupted during this period, relatively few of them centered on the basic question of legitimacy. Through its influence over the beliefs and actions of the citizens, the legal community could help legitimize the ruler and reduce the likelihood of revolts that would have made it costly to collect taxes.

As the legal community grew stronger and gained more independence, it also acquired the ability to constrain the ruler's finances. The rulers began routinely consulting the legal

²¹ For different arguments on the motivation behind the inquisition, see Hurvitz (2001) and Nawas (1996).

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 them have survived to this day, giving us glimpses of the tax system and of the legal community’s involvement in its administration. While codifying and standardizing the tax system, these books specified and constrained the choices available to the ruler. Of those that have survived, the book by Abū Yūsuf is known for its judicial approach.²² Advising the ruler Hārūn Al Rashīd, Abū Yūsuf laid down a plan to reform the land tax, also pointing out the violations of the law that needed to be addressed (Abū Yūsuf, 1979, p. 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 improved the taxpayers’ welfare by providing them better ability to deal with natural risks (Al Rayyis, 1961, p. 408; Løkkegaard, 1950, Chapter 5).²³

5.3. Ruler-controlled legal community

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

²³ Mutazillite sources indicate that Caliph Al Wathiq also involved the legal scholars in deliberations and proposed consulting them in matters of tax collection (Van Ess, 2006, p. 148). Evidence suggests that even centuries later the ruler was expected to consult with the legal community when additional taxes were needed. When Qutuz wanted to raise taxes to finance the fight against the Mongols, he saw it fit to consult with Ibn Abdel Salam, the retired chief justice of Fustat (Jackson, 1996, p. 10).

The third illustrative episode, from centuries later under the Ottoman Empire, highlights yet another distinct outcome of the ruler's relationship with the legal community, namely his control of it. By the time the Ottoman state was established in the fourteenth century, the basic ingredients of a full fledged Islamic legal system had already been completed, and the status of the legal community was already fully established. The Islamic law had been developing for over six centuries, generating numerous institutions that could easily be transplanted to the Ottoman state. A positive legal doctrine was developed, doctrinal schools and a science of legal methodology and interpretation emerged, procedures for judges and jurisconsults were laid out, and the monopoly of the legal community in adjudication and interpretation was recognized. Conventional systems of education, interpretation, and adjudication became 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. While fully benefiting from this inherited basis for legitimacy, the Ottomans added distinct elements to their relationship with the legal community by raising its status in the eyes of the populace and bringing it under their control.

The Ottomans implemented procedures and designed an organizational structure that helped to raise the power of the legal community to a new level.²⁴ Entry was restricted, because appointment as a teacher or judge required advanced formal education in a college 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 community's leadership was held initially by the chief judge and after the sixteenth century by the chief jurisconsult, who had the ultimate authority in legal matters. The Ottoman state gave official

²⁴ For recent studies of the Ottoman legal system, see Gerber (1994), Imber (2002, Chapter 6), Vikør (2005), and Zilfi (1988).

status to the Hanafī 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 justice.²⁵ The legal community thus derived enormous power from its monopoly in knowledge, education, and legal administration.²⁶ It was powerful enough for the rulers to seek to keep it under control.

As a result, 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 legal community into the state bureaucracy, giving the ruler ultimate authority in decision making and subordinated the legal community to himself. By the sixteenth century, the Ottomans also standardized the system of colleges, appropriating the rights to appoint college professors and to dictate their syllabus.²⁷ Judges and teachers primarily became state employees on government payroll, rather than autonomous scholars appointed independently and supported privately. Their tenure at a certain assignment was short and subject to periodic rotation. After the fifteenth century even jurisconsults increasingly came under government control, becoming government appointees.²⁸

The Ottomans used a variety of means to legitimize their rule (Karateke, 2005). They employed many of the same methods used by their predecessors to deter competitors' entry into the power struggle, often adding a distinctive Ottoman dimension to these methods. They

²⁵ For the development of the Ottoman criminal law, see Heyd (1973).

²⁶ 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).

²⁷ 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.

²⁸ The question of why rulers were able to control the legal community, rather than the other way around, is beyond the scope of this paper.

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 Kayı clan, ultimately leading to the legendary Oğuz Han, 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 financed conspicuous public goods such as mosques and fountains, ostentatious ceremonies, and other public symbols of power.²⁹

More important, the legal community granted legitimacy to the ruler quite effectively, owing to its established status in the society. This was particularly important for a vast empire in which the ruler's title, genealogy, or other personal characteristics mattered little for his legitimacy in remote provinces. The population was heterogeneous, consisting of diverse groups with different ethnic, linguistic, and religious sensitivities. In the predominantly Christian provinces, for example, the titles of caliph, ghazi, and protector would have had a delegitimizing influence. The legal system, on the other hand, was available to Jews, Christians, and Muslims alike. Although religious minorities could choose to adjudicate their disputes in their own courts under Islam's legal pluralism, they also had full access to state courts available in every town throughout the empire, and they frequently exercised their choice in favor of Islamic law (Imber, 2002, pp. 216-7). Regardless of religious differences, therefore, the legal community conferred legitimacy throughout the empire by making and interpreting the law, arbitrating disputes, and educating the public at the local level. They did this very effectively simply by administering

²⁹ For descriptions of Ottoman methods of legitimization, see Imber (2002, Chapter 2), Karateke (2005), and Quataert (2000, Chapter 6).

justice in the courtroom, delivering sermons in mosques, and providing knowledge in schools, all as representatives of a legitimate ruler.

The relative importance of these methods changed over time, depending on the strength of legal institutions in the Empire and the level of control the rulers exercised over them. Early in the Empire's history, while these institutions were still developing, greater emphasis was put on promoting the characteristics of the ruler or the sultanate in general. Over time, as these institutions grew stronger in their ability to legitimize the ruler and as the rulers established control over them, the emphasis shifted.³⁰ At some point, these institutions were strong enough that personal characteristics of the ruler or his title made little difference for his legitimacy among subjects or power against other rulers. Some rulers even came to power as children; others continued to rule despite well-known mental or moral deficiencies. Other than a brief interregnum in the early fifteenth century and Celali rebellions at the end of the sixteenth century, the institutionalized legitimacy of the Ottoman family's right to rule was not seriously challenged during its long reign for six centuries.

Greater legitimacy meant lower cost of collecting taxes. In addition to the usual mechanisms that related legitimacy to taxation, there were other avenues through which the Ottoman legal community facilitated the efficient collection of taxes. They drafted the law code (*kanunnāme*) for newly conquered lands, which was essentially the tax code for the region. They also took part in the establishment of institutions designed to gather information about private wealth. Information about taxpayers and taxable activities were recorded in tax registers, a process that involved not just assessors and scribes but judges as well (Coşgel, 2004; Darling,

³⁰ Studying a parallel development in political theory, Yılmaz (2005, p. iv) has shown how a similar shift took place in political analysis “from the personality of the ruler to the existing government, its institutions, and procedural practices.”

1996). A local judge often accompanied the team, making sure that all proper procedures were followed and that all taxpayers and taxable resources were appropriately recorded.

The Ottoman rulers' control of the legal community meant an alignment of their interests and lack of significant executive constraints. To secure an appointment or rise up in the administrative hierarchy, 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, the legal community was unlikely to decide against the ruler or to issue opinions in conflict with his objectives. As Imber (2002, p. 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 judges occasionally issued rulings against state employees that tested the limits of the ruler’s control, the legal community for the most part sided with the ruler. 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 law.³¹ In the eighteenth century the alignment between the interests of rulers and the legal community was so forceful 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.

³¹ 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 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 the ruler 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 sanctioned by some of Ebu's-su'ud famous interpretations. When asked for an interpretation on the question of whether the tithes 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, p. 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, subject only to the responses of the general public (i.e., the outcome corresponds to R or R').³² To avoid resistance in newly conquered areas, they often preserved the prevailing taxes and rate structures, rather than imposing 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, thereby invoking the participation constraint and ultimately reducing their revenue. For the same reason they did not change the output tax rates that varied between villages in the Fertile Crescent to the

³² A significant exception to the high powers of Ottoman rulers could be seen in the *malikāne-divanī* system, where the Ottomans secured the allegiance of local lords by sharing the tax revenue.

more typical system observed in other parts of the Empire that included uniform rates within each region. But they did introduce significant changes whenever they sensed that they could raise revenues without significant resistance. They abolished the feudal labor services that existed in the Balkans before the Ottoman conquest, converting them to cash payments, which 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 on whether they met some legal criteria. Efficiency was also the guiding principle in their allocation of tax revenues among recipients and also in their choice among methods of tax collection.³³

6. General observations and extensions

The survey of three episodes in Islamic history illustrates the diversity of the ways in which the legal community could affect the ruler's power. Going beyond detailed examinations of specific episodes, we now offer an analytical synthesis with the objective of identifying general trends and generating a hypothesis that extends the argument to other times and places. The ruler's relationship with the legal community depended on how legitimation and constraints changed over time and space, what type of processes determined their evolution, and whether these processes were stable. Although executive constraints fluctuated randomly, legitimacy followed a steady pattern. When the ability of the legal community to confer legitimacy was sufficiently high, the rulers sought to control its activities by supporting it financially. Once the support raised the community's power to a certain level, however, the return became too low and

³³ On the Ottoman system of taxation, see Coşgel (2005, 2006) and Coşgel and Miceli (2005, 2006).

risky to justify the support, and the rulers turned to other sources of legitimacy. By identifying these trends, we can shed light on the bases of state power in other contexts.

The ability of the legal community to constrain the ruler could vary significantly over time and space. This ability depended on a variety of contemporary factors, such as the characteristics of the ruler and legal community, prevailing economic and demographic conditions, and powers and alliances of other groups. If, for example, the ruler lacked leadership skills or the legal community formed a strong alliance with the military, the ability of the legal community to constrain the ruler would rise. But if the ruler was a charismatic leader or was able to exploit differences among groups to prevent their alliance and coordination, then he could avoid being constrained by the legal community. Since these conditions could change significantly over short time spans and between contemporaneous rulers, legal constraints on rulers did not necessarily have cumulative effects.

Legitimacy, on the other hand, was more like a stock variable that could take a long time to accumulate or deplete. As already discussed, the establishment of the legal community took centuries, as did the emergence of the legitimacy that it conferred. Once in place, however, the ruler's legitimacy acquired a strength that was difficult to counteract, like the concept of legal precedent in the Anglo-American legal system (Landes and Posner, 1976). Just as precedents gain authority through decisions by previous judges and represent their accumulated experience, so too the force and longevity of legitimization relationships become solidified through actions by previous legal communities. Hence the legitimacy of Muslim rulers turned into a capital stock representing the collective actions of generations of previous legal communities, yielding high dividends to subsequent rulers. Although any given ruler could seek legitimacy from numerous

other sources, he would have valued the legitimacy conferred by the legal community because of its effectiveness and reliability.

When the return from legitimacy was sufficiently high, the rulers had an incentive to support the legal community financially. The support amounted to an investment in legitimacy. It also served to ensure the continuation of activities that conferred legitimacy. A steady flow of investment was needed to support the activities of the legal community because the value of legitimacy they provided could depreciate over time and under changing circumstances.

Changes in production technologies or other economic conditions could make previous legal regulations obsolete, raising the cost of collecting taxes and requiring the legal community to enact new regulations to accommodate the requisite changes. Control of the legal community could be accomplished indirectly by manipulating the appointment or compensation schemes of its hierarchy or directly by incorporating it into the government bureaucracy. For example, as was the case under the Ottomans, the rulers could exert control indirectly by paying the salaries of the legal community and granting tax exemptions to preferred activities, or directly by taking charge of their appointment and promotion decisions. These mechanisms could ensure an alignment between the interests of the ruler and the legal community and allow the ruler to tailor legal goods and services to his own objectives. Expenditures on these mechanisms constituted investment contributions in legitimacy toward ensuring the continuity of their returns.

Until about the eighteenth century the legal community's ability to provide legitimacy and the ruler's capacity to control the legal community were both on the rise. Generally safe from threatening each other, the legal community legitimized the ruler and the ruler continued financial support and control, which helps to explain the unidirectional evolution of state's relationship with the legal community in history. This relationship was supported by an

endogenous process where the higher ability of the legal community to confer legitimacy meant greater state support and control, which then generated greater legitimacy.

The cooperation between the state and the legal community was generally stable during this period. The expected net benefits from cooperation were positive for both sides, and repeated interactions between them generally prevented prisoner's dilemma type problems that might have broken down the cooperation. True, numerous factors, including wars, technological changes, and political conflicts, kept testing the relationship. But it generally managed to absorb their impact because their magnitude was tolerably small and the power of the legal community comfortably below the level that could have threatened the state. Although there were leaders of the legal community who occasionally sought to constrain rulers, managing even to dethrone them, this was typically directed against specific actions of rulers, rather than the state in general. Again, the basic cooperation survived. These instances did not necessarily lead to long term behavioral change because the expectation of cooperation was self-reinforcing.

Starting in the eighteenth century, however, a reversal took place in the direction of the process, eventually causing a significant shift in the nature and scope of the cooperation between the state and the legal community. Two parallel developments helped to undermine cooperation. The first was the rise of the power of the legal community to levels that threatened the long term interests of the rulers (Chambers, 1972; Heyd, 1961). It had developed vested interests in institutions that supported the relationship, reducing the range of outcomes it could tolerate under cooperation and the set of payoffs expected from it. The second factor was the significant rise in the magnitude of exogenous influences beyond levels that cooperation could absorb. Most important were the well-known legal, social, political, and economic developments that took place in western Europe, which radically altered the set of investments available for developing

and maintaining legitimacy. For example, democratic rights and stronger property rights had emerged, new forms of business organization such as the corporation and joint-stock company were introduced, and economies developing under these structures were gaining dominance in the Islamic World (Kuran, 2004). Similarly, new ways of defining identity in ethnic and secular terms and new methods of producing and transmitting knowledge had emerged, which reduced the relative effectiveness of the legal community's capacity to confer legitimacy through traditional methods. These parallel developments set off a self-undermining process that destabilized the cooperation between the state and the legal community.

As a result of the severe external shocks and the reduced ability to retain cooperation after shocks, the state's support of the legal community started to decline after the eighteenth century. In a series of similar developments throughout the Islamic World, a new process started toward dismantling or changing the institutions that had been supporting the relationship between rulers and the legal community. For example during the Ottoman reforms known as the Tanzimat (1839-76), legal codification and judicial reforms were initiated, the state bureaucracy was reorganized, the duties of the legal community were redefined, and their sources of financial support and political privileges were curtailed. Similar changes took place in countries that had fallen under direct Western control, where colonial powers gradually replaced existing legal systems with their own. In both cases, under the new parameters of the relationship between rulers and legal communities, rulers generally reduced support for the traditional forms of cooperation between state and legal community and invested in new sources of legitimacy.

7. Conclusion

Although the Ottoman rulers enjoyed a great deal of power, such strength was not necessarily a predetermined, static, or common characteristic of all Islamic states. Centuries earlier, the Abbasid rulers had faced significant constraints to their coercive powers. 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.

The legal community played a central role in developing the institutional roots and regulating the economic consequences of the rulers' power in Islamic history. Using a political economy approach to public finance, we have identified two mechanisms affecting the economic power of the rulers. The legal community could legitimize the ruler, thereby lowering the cost of collecting taxes. But it could also constrain his power over the general public, imposing legal constraints on his ability to tax and spend.

Evidence from three different episodes of Islamic history supports the argument about the role of the legal community in legitimizing and constraining the rulers. Early in Islamic history, while the legal community was not yet sufficiently developed, it could play only a very limited role in legitimizing rulers, making legitimacy a significant problem during this period. The absence of an established legal community also meant the lack of legal constraints on the economic powers of the rulers. As the Islamic legal system became established and the legal community gained greater recognition during the eighth and ninth centuries, it was able to confer legitimacy on the rulers, but it could also impose legal constraints on their economic powers. Centuries later, the key to the Ottoman rulers' success in securing high economic powers was their ability to incorporate the legal community into the government bureaucracy and control its

hierarchy. While receiving legitimacy from the legal community, the rulers faced no significant legal constraints in their ability to extract a surplus from the subjects.

Whereas the ability of the legal community to constrain the ruler could fluctuate significantly over time and space, its ability to confer legitimacy followed a steady trend. Until the eighteenth century, the trend was generally upwards. While the ability of the legal community to confer legitimacy was rising, the rulers had greater incentives to support its activities financially to ensure that they matched the interests of the state. The cooperation between the rulers and the legal community, supported by a self-reinforcing endogenous process, continued as long as the power of the legal community did not threaten the long term interests of the state and the magnitude of exogenous shocks that could harm the cooperation were not too high. From the eighteenth century onwards, however, as the power of the legal community and the impact of exogenous influences from western Europe reached levels that were too high for cooperation to be sustained, the trend was reversed and the nature and scope of the relationship between the state and the legal community changed. In parallel developments observed throughout the Islamic World, the rulers scaled back their investments in institutions supporting traditional forms of cooperation with the legal community and shifted resources towards new sources of legitimacy.

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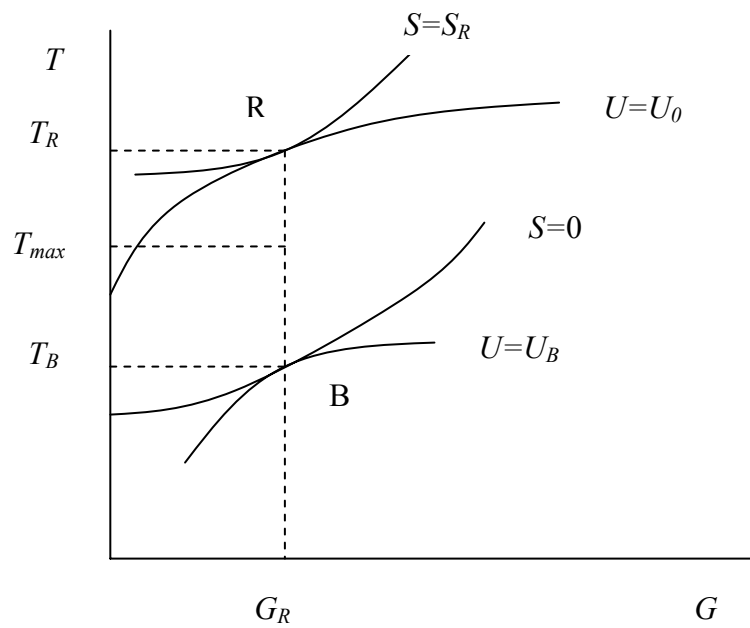


Figure 1.
Tax and public good levels under the Ruler's Optimum (R) and under a benevolent ruler (B).

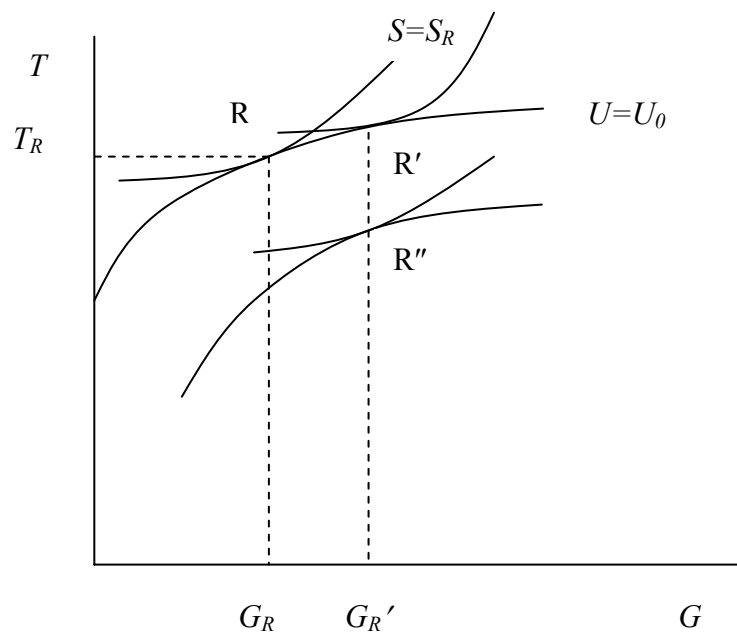


Figure 2.
The legal community's ability to lower tax collection costs (R') and constrain the ruler (R'').