



## Law, state power, and taxation in Islamic history

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### ABSTRACT

The ruler's power varied greatly in Islamic history over time and space. We explain these variations through 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 collecting taxes. 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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### 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."<sup>1</sup>

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 too 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

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<sup>1</sup> See, for example, Cahen (1970), Findley (1980), Finer (1997), Machiavelli (1950, Chapter 4), and numerous other references cited in Powelson (1994, Appendix 19.1).

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 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 complex and multi-dimensional. 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.<sup>2</sup>

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 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."<sup>3</sup>

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."

<sup>2</sup> 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).

<sup>3</sup> 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.

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