Introduction

With the background provided in the previous chapter, we now turn to discuss how the class of legists perpetuated itself and how its evolution intertwined with the interests of the ruler. During the first two or three centuries of Islam, education was largely and deliberately disconnected from politics, being limited to private scholarship which the rulers sought to influence without much success. The story of this chapter is that of the transformation of legal scholarship from a highly independent enterprise to a markedly subordinate system that came to serve the ruler and his administration. However, as we have already intimated, this eventual subordination did not mean that the content of the law and its application was compromised by any political accommodation. In fact, it was the ruler who – from the beginning of Islam until the middle of the nineteenth century – consistently had to bow to the dictates of the Shari’a and its representatives in governing the populace. As a moral force, and without the coercive tools of a state, the law stood supreme for over a millennium.

Sometime during the late tenth century, the law college, known in Islamic languages as the MADRASA, came into being, exhibiting a tendency to superimpose itself over the study circle, and in the long run changing some of its features. The circle differed from the madrasa in one crucial respect: it was largely a free scholarly gathering of a professor and his students, for the most part without political interference and unfettered by financial patronage. The madrasa, on the other hand, was as much, if not more, a financial and a political phenomenon as it was an educational one, and it subjected legal education to increasingly systematic control by rulers. It was established as a charitable trust through the law of WAQF, whereby a mosque would be dedicated to the teaching of law, and the professor and students provided with, among other things, stipends, food, a library and dormitories. While ordinary men and women founded many such madrasas, these remained limited educational projects usually having no effect or influence beyond the local neighborhood.
What gave rise to the complex relationship between law and politics was the important fact that those who founded the largest, most affluent and most prestigious madrasas were the rulers and their immediate entourage (viziers, commanders, mothers, wives, brothers and daughters). Legal education and the informal circle could not, in other words, escape the effects of political control. An account of the development of pre-modern Muslim education is therefore important not only for its own sake, but also, as we shall later see, for explaining the foundational and dramatic changes that befell Islamic law during the modern period.

To understand the historical evolution of Islamic legal education, a number of threads must be brought together. First, we must trace the dynamics of the early relationship between the legal scholars and the caliphate, for in these dynamics lie the seeds of the political elite’s interest in the jurists, judges and their law; second, a brief account of legal education within the circle is in order, for it was this forum of legal scholarship that remained, until the nineteenth century, the most enduring mechanism of transmitting knowledge in Islam; third, we need to describe the rise of the madrasa and its patronage, a line of enquiry that can hardly be separated from the law of waqf, which was in turn vital to the madrasa’s very establishment; and finally, we will return to the relationship that obtained in pre-modern times between the legal profession and the ruling elite.

Law and government in the formative period

During most of the first century of Islam, the main representatives of the law were the proto-qadis who, to all intents and purposes, were not only government employees and administrators of sorts but also laymen who – despite their experience in adjudication and knowledge of customary law – had no formal legal training of the sort that came to prevail later. Their appointments as qadis were most often combined with other functions, including posts as provincial secretaries and story-tellers who transmitted biblical stories, Quranic narratives and details from the biography of the Prophet. In these capacities, they functioned as the provincial governor’s assistants, if not – on rare occasions – as governors-cum-qadis. In the near absence of a class of private, legal specialists at this time, these proto-qadis constituted the bulk of what may roughly be termed a legal profession, and as such they were an integral part of the ruling class.

Despite the inseparability of the proto-qadi’s office from that of government administration, the government in this early period rarely, if ever, interfered in determining what law was applied. The caliphate was by no
means a distinct or a comprehensive source of law. No edicts regulating law are known to have come down from caliphs; there were no constitutions, and certainly no legal codes of any kind. Even when no class of legal specialists had yet appeared, neither the caliphs nor their viziers or provincial governors made any effort to control or appropriate the sphere of law, which was largely customary and Quranic.

The legal role of the caliph was one of occasional legislative intervention, coming into play when called for or when special needs arose. But this intervention must be understood to have been harmonious with those laws and rules propounded by the proto-qadis, for the caliphs drew on the same sources. The caliphal legislative function was thus minimal, falling well short of the role of exemplary religious and political leader. In this latter role, some – but by no means all – caliphs were seen by the proto- and later qadis as providing a good example to follow, but this was not because of royal edicts or intrusive policy. The occasional invocation of a caliph’s ruling was an entirely private act, the free choice of a qadi or a scholar. On the other hand, caliphal orders enjoining a judge to issue a particular ruling were a rare occurrence and ephemeral. Such orders did not represent “secular” or “royal” law as opposed to religious law, but rather a different interpretation of the same sources of authority. In such cases, caliphs were themselves pronouncing on law as jurist-qadis or acting on the advice of legal specialists or qadis sitting in assembly with them. Thus, the proto-qadi was principally a government administrator who acted largely according to his normative understanding of how disputes should be resolved – guided, as he was, by the force of social custom, Quranic values and the established ways of the forebears.

The early caliphs saw themselves as equally subject to the law, and acted within the consensual framework of a distinct and largely binding social and legal fabric. Like their predecessors – the Arab tribal leaders and even Muhammad himself – they viewed themselves as part not only of their communities but also, and primarily, of the social and political customs that had come down to them across the generations and from which they could not have dissociated themselves. The proto-qadis’ relative judicial independence was therefore due to the fact that social, customary and evolving religious values governed all, but were no more known to, or incumbent upon, the caliph than his judges. If the judges queried the caliphs with regard to difficult cases, it was also true that the caliphs queried the judges. That knowledge of the law – or legal authority – was a two-way street in the first century or two is abundantly clear; the caliph of Islam was far from an exclusive source of law, and not even a distinct one.

The emergence, around 700 AD, of a class of private legal specialists signaled a new phase in Islamic history, one characterized by the
spreading in Muslim societies of a new religious impulse accompanied by an ascetic piety that became the hallmark of the learned religious elite in general and of the jurists and later mystics in particular. The importance of this piety in Muslim culture cannot be over-emphasized, either at this early time or in the centuries that followed. If anything, its increasing force was to contribute significantly to later developments. Yet, even in this early period, ascetic piety took many forms, from dietary abstinence to abhorrence of indulgent lifestyles (with which the later caliphs were, with some exceptions, partly associated). Above all, this piety called for justice and equality before God – the very emblem of Islam itself.

By the end of the first century and the beginning of the second, it had become clear that a wedge existed between the ruling elite and the emerging legal class. This wedge made itself evident with two concurrent developments, the first of which was the spread of a new religious ethic among the ranks of the legal specialists, who increasingly insisted upon ideal human conduct driven by piety. In fact, it is nearly impossible to distinguish this ethic from the social category of legal scholars, since the scholars’ constitution was, as we have said, entirely defined by this ethic of piety, mild asceticism and knowledge of the law and religion. The second wedge was the increasing power and institutionalization of the ruling elite, who began to depart from the egalitarian forms of tribal leadership known to the early caliphs and according to which they had conducted themselves. The later caliphs began to live in palaces, wield coercive powers, and gradually but increasingly distance themselves from the people they ruled. This gap was further increased by the growth in size of Muslim populations, especially in the larger cities throughout the Muslim lands. Thus, while earlier, smaller communities were easily accessed by the ruler, the later communities were large enough to prevent him from forging personal alliances and ties at a local level.

These religious feelings, enriched by ethical and idealistic values and inspired by the extensive religious narratives of the story-tellers and TRADITIONISTS (those who recorded and transmitted exemplary Prophetic biography), began to equate government and political power with vice and corruption. This attitude originated sometime around the end of the seventh century, and was reflected in the many accounts and biographical details speaking of appointments to the office of judgeship. As of this time, and continuing for nearly a millennium thereafter, the theme of judicial appointment as an adversity, even a calamity, for those so designated became a recurring detail of biographical narrative (amply recorded in the countless biographical works the jurists have written about themselves). Jurists are reported to have wept – sometimes together with family members – upon hearing the news of their appointment;
others went into hiding, or preferred to be whipped rather than accept office.

Suspicion of political power and of those associated with it was so pervasive that the traditionists – and probably the story-tellers amongst them – managed to find a number of Prophetic traditions that condemned judges and rulers alike, placing both ranks in diametrical moral and eschatological opposition to the learned, pious jurists. On the Day of Judgment, one tradition pronounces typically, the judges will be lumped together with the sultans in Hellfire, while the pious jurists will join the Prophets in Paradise. Yet, this profound suspicion of association with the political did not mean that the legists predominantly refused judgeships, nor even that they did not desire them. In fact, by and large, they accepted appointment and many junior legists must even have viewed it as a high point in their careers. At the same time, the ruling elite could not dispense with the jurists. Religion and, by definition, legal knowledge had now become the exclusive domain of the jurist, the private scholar. It is precisely because of this quality of learning and knowledge that the ruling elite needed the legists to fulfill the Empire’s legal needs, despite its profound apprehension that the legists’ loyalties were not to the government but to the civil populations and to their own law and its requirements, which frequently conflicted with the views of the ruling class. However, the fact remained that each side needed the other, and thus both learned to cooperate with each other.

Many legists were often paid handsome salaries when appointed to a judgeship, but they also often received generous grants as private scholars. Throughout the eighth century, the remuneration for judicial appointments was steadily on the increase, reaching by the end of the period levels of income that made judgeships in large cities highly coveted. The qadîs, however, were not alone in benefiting from government subsidies. The leading private scholars were no less dependent on the government’s financial favors, and this, as we shall see, was for a good reason.

The rulers, on the other hand, were in dire need of legitimization, which they found in the circles of the legal profession. The latter served as an effective tool for reaching the masses from whose ranks they had emerged and whose interests they represented and protected. As we noted, the jurists and judges emerged as the civic leaders who, though themselves a product of the masses, found themselves, by the nature of their profession, involved in the day-to-day running of civic affairs. Jurists and judges felt responsibility toward the common man and woman, and on their own frequently initiated action on behalf of the oppressed without any formal petition being made. As a product of their own social environment, the
legists’ fate and worldview were inextricably intertwined with the interests of their societies.

Hence the religious scholars in general and the legists in particular were often called upon to express the will and aspirations of those belonging to the non-elite classes. They not only interceded on their behalf at the higher reaches of power, but also represented for the masses the ideal of piety, rectitude and fine education. Their very profession as Guardians of Religion, experts in religious law and exemplars of the virtuous Muslim lifestyle made them not only the most genuine representatives of the masses but also the true “heirs of the Prophet,” as one Prophetic report came to attest. They were the locus of legitimacy and of religious and moral authority. The later caliphs realized that brute power could not yield legitimacy, which they were striving to attain. Legitimacy lay in the preserve of religion, erudition, ascetic piety and moral rectitude; in short, in the persons of those men who had profound knowledge of, and fashioned their lives after, the example of the Prophet and the exemplary forefathers. Thus, these caliphs understood that, inasmuch as the pious scholars needed their financial resources, they in turn needed the scholars’ cooperation, for the latter were the ruler’s only source of political legitimacy.

Increasing Islamization among the masses throughout the first two centuries of Islam left the caliphs no option but to endorse the religious law as interpreted by the legal scholars. Those who had mastered this science (of jurisprudence) were the jurists, and it was they and their ability to determine the law that set restrictions on the absolute powers of the rulers, be they caliphs or provincial governors. The caliph and the entire political hierarchy that he commanded were subject to the law of God, like anyone else. No exceptions could be made. The very reason for the caliphate itself was to enforce the religious law, not to make it. If the caliph occasionally involved himself in resolving legal problems, he did so on a par with the legists, and not as one superior to them in their roles as judges and jurists. His engagement was an integral part of, and no more than a supplement to, the legists’ interpretive activities. The result then was not a struggle over religious authority, where the caliphs competed with the legal scholars, for the caliphs did not challenge the legal scholars in their own domain of competence. Rather, caliphal engagement in the law represented an effort to gain political legitimacy through a demonstration of juristic competence that the jurists and the early caliphs (who were set up as models to be emulated) possessed.

As caliphs increasingly grew detached from what had become a specialized field of legal knowledge, they were expected to surround themselves with competent jurists who would assist them in addressing difficult legal
matters. This, being conducive to their legitimacy, they duly observed in practice. So, whereas the earliest caliphs could acquire legitimacy by virtue of their own knowledge of the law, it later became necessary to supplement the caliphal office with jurists who routinely sat in royal courts and who, in effect, constituted the legitimacy that the caliphs (and later all sultans and emirs) needed. In these royal–juristic assemblies, not only were matters of religion, law and literature discussed, but scholarly disputations were held between major jurists. Almost every caliph of the eighth, ninth and tenth centuries was known to have befriended the legists, and later emirs and sultans did much the same.

The privileges and favors the jurists acquired not only brought them easy access to the royal court and to the circles of the political elite, but also rendered them highly influential in government policy as it affected legal matters, and perhaps in other matters of state. Beginning in the middle of the eighth century, almost all major judicial appointments were made on the recommendation of the CHIEF JUSTICE at the royal court or the assembly of jurists gathered by the caliph, or both. And when the provincial governor wished to find a qualified judge, he too sought the advice of jurists. Some jurists, throughout Islamic history, were immeasurably influential in legal as well as political matters.

However, there remained points of friction between political power and religious law. The relationship between the two was constantly negotiated, and it was never devoid of sporadic challenges mounted by the ruling elite, not against the law, but against its application by its representatives. And while such challenges seem to have occurred mostly in the provinces and on the periphery, the caliphs themselves also appear, on rare occasions, to have interfered in the judiciary and the judicial process. Yet, it remains true that the caliphal office was thought to uphold the highest standards of justice according to the holy law, and the caliphs themselves felt such responsibility, generally conducting themselves in accordance with these expectations. Inasmuch as the law in and of itself possessed authority, the caliph and his office were seen not only as another locus of the holy law, but also as its guarantor and enforcer. As a rule, the caliphs and their provincial representatives upheld court decisions and normally did not intervene in the judicial process.

From the first centuries of Islam until the later Ottomans (who ruled vast areas from the sixteenth to the twentieth century), Islamic political culture displayed a particular, if not unique, pattern of governance. As a rule, monarchs and their lieutenants acted with remarkable fairness and justice when arbitrating disputes and conflicts to which they were not parties. Their occasional infringements were usually associated with, and limited to, cases in which their own interests were involved. Although this
in no way means that encroachment occurred whenever such interests were present, it does suggest that whenever rulers staked their interest in the judicial process, they had to weigh their overall gains and losses. To have accomplished their ends through coercion would have meant that their legitimacy had failed the test. On the other hand, total compliance with the law at times meant that their quest for material gain or will to power would be frustrated. It was this equation that they attempted to work out and balance carefully, at times succeeding but at others not. The POST-FORMATIVE centuries of Islamic history suggest that rulers generally preferred to maintain an equation in favor of compliance with the religious law, since compliance was the means by which the ruling elite could garner the sympathies, or at least tacit approval, of the populace.

Yet, compliance with the law was a relatively passive act, insufficient on its own to promote and augment the much coveted goal of political legitimacy. As it happened, the sphere of legal education proved to be fertile ground, allowing the ruling dynasties not only to garner legitimacy but also to implement, during the nineteenth century, fundamental and ever-lasting changes in the legal system. It is to legal education then that we now turn.

The informal financial patronage offered to the legists during the early period was in due course to be systematized and institutionalized. It so happened that the law college, the madrasa, became the chief means by which the legists were coopted by the ruling elites. The fairly sudden appearance of the madrasa on the scene and its rapid diffusion make it impossible to imagine the legal and educational history of Islam without the presence of this institution. Similarly, it is impossible to make sense of the demise of Islamic law during the modern period without taking into account this educational institution. Yet, as a legal and educational institution, the madrasa continued to operate in ways thoroughly rooted in the pedagogical tradition that had existed prior to its appearance. This tradition was represented in the study circle we earlier discussed, at once an educational, legal and sociological phenomenon. The circle was in effect the engine that ran legal education; indeed, the madrasa would not have been viable had it not been for the existence of the circle.

The circle manifested a certain hierarchy, where the professor would be flanked by his senior students who themselves would soon become teachers or legal specialists of some sort. At times, they were accomplished scholars in other fields, attending the circle in order to gain knowledge or mastery in law. These advanced students also functioned as teaching assistants. A remarkable feature of this circular hierarchy was the perfect continuity between teacher and students. The teacher was the most
learned, the advanced students his immediate subordinates, and the less advanced students the subordinates of the latter.

Until about the fourteenth century, the circle exhibited an intimate relationship between professor and students, especially advanced ones. The professor was not merely a teacher of a technical science, as modern university professors are. He was an educator, a companion, a supporter and a moral mentor. Instilling a deep sense of morality based on the concept of rectitude was as much part of the curriculum as any “formal” subject (if there was ever a curriculum in our sense of the word). As we shall see later, the application of law presupposed a system of social morality, a system upon which the efficacy of law depended and from which it could not be separated. The professor, among others, cultivated in the student the elements of this moral system. The professor–student relationship was often akin to that of father and son, and many students not only resided in, and dined at, the homes of their professors but married their daughters as well. And it was precisely this institution of marriage that fostered close ties between the legal class in one city or region and between and among them in distant locales.

Each professor was free to teach the treatises of his choice, a freedom later mildly restricted by the appearance of authorized texts of law. Although any type of treatise could be taught, abridgments were generally preferred after the eleventh century when they became abundant. Some of these abridgments were specifically produced by professors for teaching purposes, their intent being to sum up legal doctrine by invoking legal principles and alluding to “cases” that supported these principles. The professor explained the terse statements of the abridgment by appealing to the large compendia and fatwa collections on which these abridgments were based. The students had to memorize the abridgment, not for its own sake but as an outline of the law embedded in the comprehensive and extensive works. The professor’s function in the circle was to make the abridgment intelligible and comprehensible. Repetition and further explanation of the day’s lesson were performed by the teaching assistant after the professor had left the circle. The teaching assistant also listened to the students recite what they had learned, his task being to ensure that the lesson was understood before the next session was held.

The teaching was manifestly oral. The student did not read the work for himself in silence but listened to the professor, who would recite the work for all to hear. This reading was inevitably accompanied by commentary, the true contribution of the teacher. Learning was also conducted on the initiative of the student: he read the work out loud before the professor, who queried him on difficult points. The two processes of instruction were at times combined. A professor might teach his students a text he had
authored himself, and the students would write down the lectures, thereby producing a copy of the book. Reading the copied text back to the professor constituted a process of certification that ensured that the work conformed in every detail to the demands of the professor. While this process constituted an integral part of the activity of publishing (namely, making hand-written copies of an author’s work accessible to the public), it was often an important ingredient in advanced legal education. The last stage of this education was the writing of the dissertation or “commentary” that showed the mastery of the student in a specialized field of law. Some of these dissertations were, and continue to be, considered impressive treatises on legal scholarship.

For centuries, therefore, the circle – serving as the locus of the educational, social and moral relationships between professors and students – defined Muslim education. It was and remained until the nineteenth century the only Islamic form of imparting and receiving knowledge, despite the introduction of the madrasa. The latter, it must be emphasized, did not constitute a new form of education but rather bestowed on the study circle an external legal framework that allowed educational activity to be conducted under the auspices of endowments. The madrasa, in other words, affected neither the curriculum of the circle nor its method of transmitting knowledge. It was the professor, not the madrasa, who decided the curriculum, and it was he who continued to enjoy an exclusive monopoly over the granting of licenses. The pre-modern madrasas, as “institutions” that possessed no juristic personality, bestowed not a single diploma or license.

The role of endowments

The basic features of the madrasa appear to have developed toward the end of the eighth century, when provisions and salaries began to be made in favor of the staff of certain mosques, including the professors who taught law there. Soon thereafter, some mosques were enlarged to include dormitories for transient students and even for the professors themselves. Eventually, the salaries and food and shelter for students and professors were paid by endowments (waqf). The madrasa, the last stage of this development, came to meet all the other essential needs of professors and students, and this included an endowed, fully furnished building for the meeting of study circles, sleeping quarters for staff and students, food, a library, paper, ink, and much else.

The founding in Baghdad of eleven imposing madrasas during the second half of the eleventh century by the Saljuq vizier Nizam al-Mulk (1063–92) was a significant event that brought the madrasa onto the
center stage of Islamic history. By the end of the century, the madrasa had spread to lands west of Baghdad, including Cairo, Damascus and, later, Istanbul, the capital of the Ottoman Empire. By the time the Mamluks came to power in the middle of the thirteenth century, Cairo had thirty-two madrasas, and Alexandria could claim several more. According to one count, Cairo would increase its madrasas to seventy-three by the early fifteenth century, and by 1869 the active madrasas of Istanbul alone had reached, by the lowest estimate, 166, with no fewer than 5,370 students.

The significance of this astounding proliferation of madrasas will be addressed later. But in order to appreciate fully the meaning and ramifications of this increase, especially in light of modern reforms, it would be better to dwell further on the nature and constitution of the madrasa. Physically, the madrasa was constituted of a building that at times was the mosque itself, but at others was a special structure built as an annex to a mosque. Inns were also built in the vicinity of the mosque, separate from the madrasa, but at times they constituted a part of the annex that was the madrasa. Yet all this, even the wealth that was needed to sustain it, was not enough for “raising up” a madrasa. There was something else needed to bring all these ingredients to operate in a particular way, and this was the monumental law and practice of waqf, defining and enormously important aspect of the culture and material civilization of Islam.

The law of waqf, therefore, represented the glue that could bind the human, physical and monetary elements together. Essentially, waqf was a thoroughly religious and pious concept, and as a material institution it was meant to be a charitable act of the first order. One gave up one’s property “for the sake of God,” a philanthropic act which meant offering aid and support to the needy (this latter defined in a broad sense). The promotion of education, especially of religious legal education, represented one of the best forms of promoting religion itself. A considerable proportion of charitable trusts were thus directed at madrasas, although waqf provided significant contributions toward building mosques, Sufi orders, hospitals, public fountains, soup kitchens, travelers’ lodges, and a variety of public works, notably bridges. A substantial part of the budget intended for such philanthropic enterprises was dedicated to the maintenance, daily operational costs and renovation of waqf properties. A typical waqf consisted of a mosque and rental property (e.g., shops), the rent from which supported the operation and maintenance of the mosque.

Once the founder alienated his or her property as a waqf, the act was legally deemed irrevocable, entailing as it did the complete transfer of the right to ownership from the hands of the founder to those of God. Once alienated, the property could not be bought, sold, inherited, gifted, mortgaged or transferred in any other manner. The only exception was when
the property ceased to serve its intended purposes. Only then was it permissible to sell it in order to purchase another, usually equivalent, property that would serve the same purpose. The property was usually immovable, but some moveables, such as books, were at times the object of waqfs. Thus libraries constituted an essential part of endowed madrasas.

The founder appointed trustees to manage the property, designated beneficiaries, and determined the ratio of benefit for each beneficiary. He could appoint himself or a member of his family as the trustee of the waqf and could stipulate that he and/or one or more of his descendants could alter, in the face of changing circumstances, the terms of the waqf deed. However, once the deed was certified and witnessed (usually before a judge), the founder could no longer effect any substantive changes to its stipulations. The judge had the ultimate power to supervise and oversee the waqf’s administration, budget and operation, and he intervened whenever a situation not covered by the deed arose or whenever he felt his intervention was necessary or called for.

The trustee administered the waqf in accordance with duties, responsibilities and powers specified in the deed. He could appoint assistants or deputies to help him in the dispensation of these responsibilities, the most important of which were: maintenance of the waqf properties; appointing and dismissing staff whose duties included cleaning and repairing; leasing property and collecting rent for the sake of the beneficiaries and for payment of salaries; farming land and selling its produce to generate supporting income; and resolving disputes and representing the endowment’s interests in any litigation.

The charitable nature of the waqf dictated that the rich could not benefit from charitable endowments, and this was the understanding of the majority of jurists. A minority of later jurists, however, came to approve of establishing endowments for the benefit of the well-to-do, a modification of doctrine that appears to have reflected the practice on the ground.

The average Muslim individual founded mainly the smaller, local and less significant endowments. On the other hand, it was almost a universal pattern that the founders of those major endowments that supported, among other things, madrasas and Sufi orders were the rich and powerful, in particular the ruling elite and their retinue. Their endowments dwarfed not only all other endowments, but even the large public buildings in Muslim cities. A case in point is the madrasa of the Mamluk sultan Hasan, built in Cairo at the end of the fourteenth century. Of colossal dimensions, it features a spacious inner courtyard, flanked by four large halls that hosted the study circles of four professors, each representing one of the legal schools of Sunni Islam. Multistoried edifices lying between these halls supported other madrasas, with each madrasa offering its students...
separate accommodation and a mosque. The endowment’s student population exceeded five hundred, and all but about a hundred of these studied law. Those who did not specialize in law studied, among other things, Quranic exegesis, Prophetic reports, language, logic, mathematics and medicine. Several imams led prayers in the various mosques of the college, and over a hundred Quran readers maintained an uninterrupted recitation of the Quran. All building and personnel expenses were paid by endowed revenues, as were the costs of construction itself. Typically, all major madrasas included such facilities, not to mention other features such as primary schools and a tomb chamber for the founder and his family.

These towering and awe-inspiring royal buildings outlived the more modest waqfs and, more importantly, projected the ruler’s munificence and political power. This projection is a nearly universal characteristic of rulers, and as such it must have been partly on the mind of the sultans, emirs and their political dependants when they embarked on establishing these endowments. Yet, this consideration was not the prime motive behind their seemingly auspicious acts. Uppermost in their minds was their crucial (even desperate) need to find a group or an entity that could represent their rule to the masses and represent the masses before their rule. If the latter part of the equation was important, it was so because it served the imperatives of the former, which at the end of the day amounted to little more than an anxious search for legitimacy.

The question that inevitably arises here is: why this search? The answer lies partly in the universal nature of pre-modern government, and partly in the specific circumstances of the Muslim context – in contradistinction, for instance, to those of China and Europe. Pre-modern governments typically exercised their power through small ruling elites, with a limited sphere of direct influence. As we noted earlier, they could not penetrate the societies they ruled, nor could they regulate the internal affairs of their subject populations.

More importantly, rulers failed to have systemic control over the societies they governed because they lacked the mechanisms necessary to administer the smallest units of which these societies were made. This is another way of saying that the pre-modern state lacked the bureaucratic organization that provided the tools for establishing particular relations of power, relations that are the cornerstone of all modern political regimes. Once firmly rooted in a society, impersonal bureaucracy tends to replace personal rule. Unlike bureaucratic rule, therefore, pre-modern forms of governance depended upon personal loyalty rather than upon obedience to abstract, impersonal regulations.

The absence of pervasive bureaucracies from such pre-modern forms of governance meant that the ruler was navigating at the surface of the
societies he ruled. Even if he had a staff that could be hierarchically deployed to reach the lowest social strata, loyalty to him progressively dissipated as it moved away from the center. In other words, in the absence of the modern rule of bureaucracy (with all its attendant props, including nationalism and surveillance), the farther the pre-modern official found himself from the center of power, the less loyalty he had to the ruler, and, in turn, the more loyalty he had to the social group from which he hailed. Thus, the ruler could neither penetrate nor control or integrate these societies. He merely sat atop a pyramid of “self-reliant” groups consisting of linguistic and religious communities, guilds, clans, village assemblies, city councils and literate elites whose internal ties of loyalty were unsurpassable, and whose daily lives were barely touched by whatever administrative machinery the ruler could muster.

In the specifically Islamic context, there were at least three features in the exercise of political power that further intensified the gap between the ruling elite and the populace. First, the rulers and dynasties of the Islamic world, at least from Transoxiana and India to Egypt (but to a certain extent also in South East Asia), were not native to the territories they ruled. In general, they and their armies neither shared the cultures of the populations they governed nor spoke their languages. Arguably, this alone was a formidable obstacle. Second, until the thirteenth century, Islamic dynasties did not last long enough to establish genuine roots among the subject populations, in terms either of creating a “rule of bureaucracy” (as had been achieved in Europe) or of building institutionalized mechanisms that tied them in a particular relationship of power to these populations. Owing to the fluid nature of political loyalty, no policy that may have aimed at creating such mechanisms could have outlasted a ruler’s death, for loyalty was to the person, not to a policy enshrined in “corporate” governance. Third, and despite the ancient secretarial traditions of the Near East, Islamic rulers could never command powerful and intrusive bureaucracies such as those developed in Europe or Sung China. With the partial exception of the Ottomans (a semi-European empire), the Muslim ruling elites saw no need to develop the surveillance–bureaucratic mechanisms which Europe later excelled at producing.

Thus, the dynastic rulers who governed Muslim lands after the ninth century (and who eclipsed the caliphate) could not administer their domains directly, having constantly to appeal to the legal profession that served as representatives of the “self-reliant” groups referred to above. This appeal, as we saw earlier, was also characteristic of the caliphate, although the latter differed from the warlords in one important respect: it possessed the politico-religious authority to speak and act in the name of Islam, whereas the later foreign rulers did not, for they were mostly
foreigners and, as if this were not enough to alienate them from the populace, they were in want of authority as well as legitimacy. Accordingly, they stood in dire need of local, indigenous support. It was the legal profession that provided this support, but not readily and not without much reluctance, for a substantial investment had first to be made on the part of these rulers in order to successfully coopt this profession.

Among the first major dynastic warlords to sweep through Iran and the Middle East were the Saljuqs (r. 1055–1157), committed Sunnis who defeated the Buyids (r. 934–1055), but otherwise lacked both religious authority and political legitimacy. Toward solving this problem, the Saljuqs set in motion a pattern of governance that was to be emulated and reinforced until the nineteenth century. Their first experiment was in the province of Khurasan, where they turned to a policy of establishing *madrasas*.

Deriving their moral authority and social standing from the religious law, the legists were the only civilian elite that could represent the foreign ruler and the indigenous subjects to each other. By the eleventh century, the social backgrounds of the legists had become varied, representing all segments of society. They hailed as much from the lowest strata of tradesmen and farmers as from affluent merchant families and the politically influential secretarial classes. Their socio-economic connections – deeply embedded in their own societies but also in relative proximity to the ruling classes – thus allowed them to fulfill a variety of functions in mediating the relationship between the government and the subject population.

These *madrasas* were effectively used to recruit the loyalties of the major jurists in the larger cities. Probably the first to exploit so skillfully the minutiae of the law of *waqf* for political gains, the Saljuq vizier Nizam al-Mulk personally took charge of appointing, with handsome pay, well-known jurists and law professors. He retained exclusive powers over appointment and dismissal, for this guaranteed his leverage to bestow personal favors and thus acquire the loyalty of the legal profession. As political loyalty was not institutional, Nizam al-Mulk’s personal involvement was indispensable. With the partial exception of the later Ottomans, this personal involvement was invariably the rule. It was the sultan, emir, vizier or (often) influential female members of the ruling elite who founded *madrasas*, named them after themselves, and took a personal interest in how they were run and who taught in them. It was in this way that the foreign rulers and military commanders, who characterized the political scene in the Muslim world for centuries, could insert themselves into social networks, thereby fitting their political strategies into the populations they ruled.
By the end of the eleventh century, a substantial segment of the legal elite was in the pay of government. With the incorporation of the professors into the madrasa system, the political domain encroached further into the terrain of the law, subordinating a considerable segment — even the elite — of the professorial profession and contributing to the increasing diminution of the “moral community” of the legists. Some of the best professors were now in the company of viziers and sultans. This was why many jurists refused to accept teaching posts, just as many others had refused judgeships. The money that paid the judges’ salaries came from the same coffer as that which built the towering madrasas and which hired the most accomplished professor-jurists. But the coffer was generally regarded as suspect, having been filled through dubious means. No wonder then that, like the honorable jurists who refused judgeships, professors who did likewise were lauded and praised.

Yet, the legal elite ultimately succumbed to moral compromise, and increasingly so. By the seventeenth century, most legists were in the employ of the government, and the professors and author-jurists who held out had to function within a diminishing “moral community” created by the financial and material dependence of their less independent peers on the ruling powers. The madrasa, now widespread, quickly became a means of recruiting the Shariʿa specialists into government service.

On the whole, an equilibrium did exist between the men of the sword and those of the law: the ruling elite received the cooperation of the scholars and their promotion of its legitimacy, while the scholars received a salary, protection, and the full right to apply the law as they saw fit. The office of the judge was, and continued to be, the prototype of what was becoming an increasingly complex and interdependent relationship: the government appointed, dismissed and paid the judge, but the judge applied the religious law as the author-jurists and muftis required. If there was one constant in this relationship between rulers and legists, it was that the religious law and its application to the population were not compromised.

The madrasas, we have said, created for the legists abundant career opportunities. Enterprising students from modest economic and social backgrounds found in the endowed and subsidized colleges auspicious opportunities to pursue their education that in turn opened the door to professional and social mobility. The advanced student soon became an assistant to his professor, then perhaps moved on to work as a court scribe or a court witness. These steps could be immediately followed by an appointment to a judgeship that could in turn culminate in a chief magistracy if the candidate had sufficiently extensive credentials and, at times, connections. Yet, such a career path did not necessarily preclude the
student’s concomitant engagement in the more complex and sophisticated fields of legal scholarship that would lead him, usually somewhat later in life, to the two highest ranks in the profession, namely, those of mufti and/or author-jurist. While both areas of expertise were the most prestigious in the legal profession, they did not guarantee economic or material privileges. By the eleventh century, only the qadi and his court subordinates – the scribe and witness – had routinized incomes. Studying and teaching in the madrasa was to become part of this routinization.

Yet, the madrasa had no monopoly over legal education, and many legists who served as judges did not acquire their education in a madrasa. Furthermore, a minority of madrasa graduates ended in government service, mainly as administrative secretaries or viziers, which leads us to the conclusion that the madrasa was neither intended nor perceived as a tool for training government administrators and bureaucrats, but rather instituted in order to generate and augment political legitimacy. The madrasa’s function of training bureaucrats was only to be introduced in later centuries, as we will see in due course.

Professionalization of the legists

The madrasa’s proliferation after the eleventh century created another venue of income. Now, not only could students benefit from free and subsidized education, but so could jurists gain paid employment as professors. The more madrasas that were founded, the more teaching jobs became available and, in turn, the larger the number of legists who benefited from them. The growth in these numbers also meant a dramatic increase in competition among the legists. The competition intensified particularly where the major madrasas (founded by sultans and grand viziers) were involved, as professorial salaries offered there were usually higher than anywhere else.

The accrual of income from judgeships and professorships – not to mention scribal and witnessing functions – allowed a class of legists to make service in the law a full-time, life-long career. By the sixteenth or seventeenth century, especially in the Ottoman Empire, a majority of legists secured most or all their incomes from a judgeship or a madrasa-professorship. And they did what everyone else did at the time, be he professor, carpenter, janitor or jeweler: he passed on the profession to his male children.

Whereas the pursuit of knowledge in the earliest centuries was, generally speaking, done for its own sake, or, more accurately, for the sake of epistemic and social prestige (and no doubt propelled by a deep sense of religiosity), it had now come to pass that knowledge was being acquired
for the sake of a competitive edge, which in part led back to the acquisition of social prestige. This is to say that the increasing professionalization of the legal profession rendered it— in unprecedented fashion—a venue for garnering political, economic and social capital. Furthermore, once knowledge itself became (as a source of income) commodified, its standards were manipulated as the need arose. And the more posts became available, the more commodified the entire profession appeared to be. In every corner of the Islamic world, the rise and spread of the madrasa was causally accompanied by this process of “familial professionalization.”

Between the thirteenth and seventeenth centuries, this process of professionalization grew steadily, but the legist families could not achieve a complete monopoly over the social background of the legal profession. Conversely, while these families were able to increase their numbers in the legal profession, merchant and other families continued to have access to it, albeit gradually less so. A complete monopoly by the legist families over the profession had to await the early eighteenth century, when in the Ottoman Empire not a single legist from a merchant background occupied high office.

The legists’ family-centered monopoly over the legal profession, and especially over prominent governmental posts, was the result of a deliberate and systematic centralization policy that the Ottomans had begun to pursue as early as the sixteenth century. Whereas Nizam al-Mulk founded two or three dozen madrasas throughout the Saljuq Empire, the Ottomans built a madrasa in every city and town they conquered; indeed, the larger the population conquered, the bigger the madrasa. But the largest and most prestigious colleges were reserved for Istanbul, where a succession of sultans—as well as other influential men and women—poured much of their wealth into these colossal foundations. More important is the crucial fact that, whereas provincial and smaller madrasas within and without Istanbul continued to train students and produce legists and scholars of all sorts, the men of law who ran the Empire were consistently graduates of the Istanbul sultanic madrasas. In other words, entry into government service was predicated upon completing the required course of study in these imperial madrasas, which were increasingly staffed by the children of the legist families. Smaller, non-imperial and provincial madrasas continued to train students, but their graduates never came to be part of the professional hierarchy that regulated society and, in certain respects, government.

The absorption of legal education into the political and bureaucratic structure of government was nowhere more manifest than in the legal hierarchy that the Ottomans constructed as part of their general policy of governance. One of the striking facts about this hierarchy is that, from the
end of the fifteenth century, the SHAYKH AL-ISLAM (Chief Mufti) became the supreme religious figure in the Empire; he alone was responsible for appointing and dismissing provincial judges, and for a long time possessed the de facto power to depose sultans. Until the seventeenth century, he enjoyed life appointment, and could not be dismissed even by the sultan himself. He at times adjudicated disputes upon appeal from litigants before provincial Shariʿa courts, but more often ordered judges to conform to the religious law, which he usually stated for them.

The functions of the Ottoman Shaykh al-Islam were not entirely consistent with the earlier judicial history of Islam, where the chief justice, a qadihimself, was the official who would appoint and dismiss provincial qadis and who would hear judicial appeals. Nor were they consistent with the earliest phases of Ottoman legal history itself, as the two highest judicial positions in the Empire were the two QADI-ʿASKARS who controlled, respectively, the European and Asian jurisdictions of the Empire. The explanation for the Shaykh al-Islam’s enhanced role appears, however, to have been closely connected with an evolving policy that had vague beginnings during the Saljuq period in Transoxiana and that eventually culminated with the Ottomans—a policy developed specifically to increase the ruling elite’s control over legal education. From the initial stages of the Saljuq state of Rum (r. 1077–1307), the forerunner of the Ottoman Empire, a Shaykh al-Islam was appointed as head of the scholarly group involved in legal education in each city. Professors and colleges fell under his supervision. He was a mufti, but he had neither monopoly nor pre-eminence in this field, for his real powers lay in his office as supervisor of the colleges and their professors. While he would be the only Shaykh al-Islam in the city, he might be only one among several muftis and legal scholars. Thus, in their bid to make of Istanbul a centralizing and centralized capital, the Ottomans did with the Shaykh al-Islam what they had done with regard to creating a monopoly of sultanic madrasas: they made the Shaykh al-Islam of Istanbul the supreme head directly responsible for the provinces. This step in the policy of centralization was not only as decisive as that which led to the creation of sultanic madrasas, but was also in fact an integral part of the overall policy to appropriate into the political realm the legal profession, utilizing it in the administration of the Empire. And that is precisely what the Ottomans managed to accomplish. Yet, in doing so, they also resolved once and for all the problem of legitimacy. In the nineteenth century, as we will see, the Ottomans were to multiply their gains, since the absorption of the legal profession into an Istanbul-centered hierarchy allowed them to decapitate it, and decapitate it they did.