# »Law and society« in imperial Russia

*Stefan B. Kirmse*

## Introduction

At first sight, combining the study of imperial Russia and the interdisciplinary field of law and society research, established in the mid-1960s to explore the social context of legal practice in the United States, may seem unusual. Indeed, there are considerable differences between some of the assumptions that informed the development of the two fields. For many years, students of law in Western society assumed that, somehow, law mattered. A wide range of academics shared this conviction, including legal scholars who focused on the integrative power of formal legal institutions, and critical sociologists, who paid more attention to these institutions' discrimination against women, the poor, and minorities. Historians of Russia, in contrast, tended to assume the opposite: namely, that the law mattered very little. Richard Pipes's classic study, for example, pointed out that many key laws had never been officially promulgated, that those in power did not need courts and laws to have their way, and that ordinary people »avoided legal proceedings like the Plague« (1974: 288–289). Whatever laws existed in the Empire could be manipulated by rulers, local administrators, and police to suit their personal interests. Such arbitrary rule seemed far removed from the ideal of a *Rechtsstaat*.

Since the mid-1990s, new critical scholarship has emerged in both law and society research (also known as socio-legal studies) and in the field of Russian history. As this scholarship has begun to question the underlying assumptions mentioned above, the gap between the two fields has narrowed. Scholars of law and legal practice in Europe and North America have turned towards cultural studies, inserting law into cultural analysis (for example, Sarat and Kearns 1998; Nelken and Feest 2001;

DOI:10.2390/indi-v3-i2-67  ISSN 2191-6721

Sarat and Simon 2003). Some of them now acknowledge that the law does not matter in the ordering of our world any more than other cultural and institutional influences (Munger 1998: 55). At the same time, historians of Russia are paying more and more attention to the wider study of law and legal practice. They have begun to deconstruct the cliché of a »lawless« Russia, documenting that the Empire was, in fact, full of legal forums and interactions. Yet, they have not fully exploited the potential that law and society research offers to imperial histories.

The aim of this article is threefold. First, by discussing the entangled historiographies of socio-legal research and Russian imperial history from the mid-1960s to the present, the article highlights both the shortcomings of previous research and the advantages of the increasing cross-fertilization between these and related academic fields. It first analyzes the emergence of a cross-cultural and multi-disciplinary field for the study of law and legal practice over the past few decades, before turning its attention to the field of Russian imperial history and explaining why historians of Russia have been slower at entering this field than scholars working on other imperial contexts. The article then explores the ways in which more recent studies on Russian history have started to address earlier flaws. Second, arguing that these achievements are only a modest beginning, the article demarcates a number of directions in which the analysis of legal interaction in the Russian Empire should be taken in the near future. Finally, it offers a short case study to illustrate the ways in which the interdisciplinary approach would help to improve our understanding of Russian imperial rule and society.

## Studying law and legal practice: Towards interdisciplinarity

For a long time the study of law was divided into rather autonomous subfields that tended to not pay much attention to one another. At least until the mid-twentieth century, many legal scholars based in Western law departments focused on the effects of legislation and formal legal institutions, usually without analyzing their social and cultural context. Influenced by functionalism, they treated the law as an autonomous force that somehow served as the glue of society and guarantor of social

equilibrium. The historians among them mainly explored the effects of changing laws and institutions, or discussed the ramifications of individual cases over time.

In the mid-1960s, a new form of interdisciplinary legal enquiry, which became known as law and society research, began to establish itself as an independent field in the United States (Levine 1990). While initially no more than a private initiative by a few like-minded legal scholars and social scientists, this approach soon became institutionalized as an association that produced regular conferences and publications (most importantly, the *Law and Society Review*). Calling for a new emphasis on the ways in which law and legal practice were socially and culturally embedded and produced, it exposed numerous liberal legal myths: it showed that the law was anything but cost-free, that people avoided and manipulated it, and that its influence on society was often indirect and ambiguous (Munger 1998: 39–52). Rejecting structuralist understandings of society, socio-legal scholars stressed agency and meaning. For them (as for many social scientists in the late 1960s and early 1970s), it was not fixed structures, but individual agency, interpreted differently by different people, that constituted the complex webs of social life. More political than traditional legal inquiry, socio-legal research also advocated a more critical stance on the role of law and lawyers in contemporary society (and the latter's role in maintaining the socio-economic *status quo*).

While much law and society scholarship followed the lead of mainstream legal studies insofar as it focused on disputes, formal institutions, and the role of officials, some of its proponents began to look at legal interactions from the perspective of ordinary people (for example, Galanter 1974; 1975; Sarat 1976; Law and Society Review 1976; Felstiner et al. 1980–81). This bottom-up approach, which has intensified since the early days of law and society research, was partly rooted in the desire to identify the inequality and asymmetry of power inherent in the legal system (Felstiner et al. 1980–81: 637). Other key developments have included a turn towards social constructivism, rooted in a growing skepticism about whether the law can be understood and examined as a formal set of rules.

Be that as it may, the growth and institutionalization of law and society research was largely a North American phenomenon. In Germany, an interdisciplinary field for the study of law is still in its infancy. The Berlin-based study group »legal reality« (*Rechtswirklichkeit*), which draws on the law and society tradition, was created only in 2005; the associated research program »legal cultures« launched in 2010. Prior to this, the analysis of law in society had largely been limited to *Rechtssoziologie* (»sociology of law«), which had its heyday in the early 1970s (Wrase 2006). As a critique of power structures, law-making, and the (conservative) legal profession, however, it was soon dismissed by legal scholars as an academic sanctuary for »Leftists.« By the 1990s, it had disappeared from many university curriculums; where it remained, it was no more than an auxiliary subject (ibid: 295–296). Unlike socio-legal studies in the United States, *Rechtssoziologie* failed to become an interdisciplinary forum widely respected and used by sociologists, historians, social anthropologists, and scholars of law.

As divergent as disciplinary developments in Germany and the United States were, legal scholars on either side of the Atlantic tended to focus on contemporary Western society, showing little interest in the study of law under conditions of empire. Yet, law and society research was influenced by some of the insights and research methods of legal anthropology, history, literary and cultural studies, and psychology. Two examples of interdisciplinary exchange are the aforementioned turn towards the perspective of ordinary litigants and the social-constructivist understanding of law, both of which legal scholars borrowed from sociology and cultural anthropology.

With their emphasis on the everyday operation of law in both Western and non-Western states, legal anthropologists in particular have left a mark on law and society research from the beginning. Moving away from descriptions of laws and rules, they focused on dispute processes and the interests of litigants (for example, Gibbs 1963; Nader 1969; Collier 1973; Starr 1978). By the 1980s, these scholars had extended their discussions into the context of colonial and post-colonial rule, thus building a bridge between legal research and the study of empire and

colonialism (Chanock 1985; Gordon and Meggitt 1985, among many others). Some of their findings found an audience far beyond their field. To give but two examples: the conclusion that »customary law« is not a relic of the past but a colonial construct—an »invented tradition« promoted by great powers to uphold colonial rule (Snyder 1981; Ranger 1983)—is now accepted by historians working on various parts of the world (for example, Mommsen and DeMoor 1992; Benton 2002; Jersild 2002). Second, following the anthropological realization that different forms of normative ordering coexist in virtually every society (Merry 1988: 869, 871), the study of »legal pluralism« has entered numerous academic fields. In particular, scholars of law now routinely invoke the concept of »forum shopping« (Benda-Beckmann 1981) to capture the ability of litigants to choose and move between different legal forums.

While continuing to concentrate on legal institutions such as trials, lawyers, juries, and courts, legal scholars also became interested in interpretive theory as formulated by cultural anthropologist Clifford Geertz. Geertz's approach stressed the importance of culture, meaning, and agency. He famously argued:

> The »law« side of things is not a bounded set of norms, rules, principles, values, or whatever from which jural responses to distilled events can be drawn, but part of a distinctive manner of imagining the real. (Geertz 1983: 173)

From the perspective of interpretive theory, then, the law is a series of interactions and the meanings attached to these by culturally situated actors. Litigants, lawyers, and lawmakers continually produce the law as they give meaning to it in everyday interaction. At the same time, legal action also produces culture. Cultural and legal norms and assumptions »interpenetrate,« as Barbara Yngvesson put it (1988: 410).

In the course of the 1980s, the findings of legal anthropology were also appropriated by sociologists and historians. A cross-disciplinary turn towards culture facilitated the realization that law and culture were mutually constitutive, inherently dynamic, and not deducible from structural factors. Historians started to explore the culturally productive role of

legal systems, as well as anthropological research methods in general (for a useful account, see Hunt 1989: 12–13). This was new insofar as earlier anthropological analyses of law and culture across Asia, Africa, and the Americas—for example, Laura Nader's work (1969)—had not been read widely among historians.

Historians of imperialism and colonialism, in fact, have been slow at turning to the interplay of law and culture. For decades, their analysis of legal interactions offered Eurocentric analyses of encounters between natives and European administrators, placing law in a developmental narrative in which imported Western law first coexisted with, but then gradually superseded ancient »customary law« (for critiques, see Mommsen 1992; Benton 2002). Using notions of subalternity or national culture, older works also discussed the legal administration of disenfranchised subject populations. Social history, on its part, did not fill the gaps: across Asia, Africa, and the Americas, it tended to focus on poverty and rebellions, neglecting the study of legal practice. Since the early 1990s, however, the analysis of imperial and colonial law has grown and diversified. Among the key reasons for this were the general expansion of the study of both empire and (post)colonialism and the »cultural turn« that formed part of this expansion. Historians and legal scholars have produced elaborate analyses of legal culture under colonial rule (for example, Chanock 2001; Elliott 2006: 117–183). A »new« imperial history, in fact, has helped to question the Eurocentric perspective of older scholarship on high politics, the economy, or military expansion and replace it with an examination of the ways in which cultural interaction, hegemony, race, and gender informed everyday interactions (Gerasimov et al. 2005; Wilson 2006; Howe 2010).

With some delay, imperial and colonial historians have thus joined other disciplines in treating law as a malleable and multi-dimensional concept. Along with law and society scholars, they now commonly explore the legal sphere as an arena of struggle or contestation in which law-makers and ordinary litigants tried to shape and use legal forums to their advantage (Starr and Collier 1989; Merry 1991: 891; Lazarus-Black and Hirsch 1994; Aguirre and Salvatore 2001: 13; Benton 2002). This focus not only

builds on earlier works in legal anthropology (see above) but also on British social history (Thompson 1975, 1978; Hay et al. 1976) and subaltern studies which, in the 1970s and 1980s, introduced a focus on the voices and tactics of the powerless.[1] Yet, while various academic fields have joined forces to restore agency to the masses, scholars across disciplines concede that the legal contest is nevertheless unequal. Indeed, the law can facilitate the resistance of the poor, but all too often sustains the hegemony of the powerful. That said, several recent studies have also pointed out that the most common form of interaction between the haves and have-nots, the dominant and the subordinate, has usually been accommodation, rather than collaboration or resistance (Benton 2002: 27; Burbank and Cooper 2010: 14).

The expanded study of empire and colonial rule has opened up new opportunities for legal analysis. It has shed light on the ambiguous and complex ways in which European powers understood and institutionalized their interpretation of the »rule of law,« both at home and abroad. In the course of the nineteenth century, these powers increasingly yielded to demands for greater equality in their (traditionally hierarchical) home societies, while continuing to rely on inequality as a guarantee for domination over non-Europeans. They simultaneously pursued policies of legal integration and discrimination, even segregation (Kirmse 2012), justifying this contradiction with the alleged civilizational differences between culturally superior Europeans and inferior Others (Fisch 1992: 29–30). While at first sight the principles of the French Revolution may seem like the natural enemy of hierarchical imperial orders, liberalism was actually complicit in the maintenance of legal inequalities (Fitzpatrick 2012; Fitzmaurice 2012: 122).

In sum, over the past few decades a truly interdisciplinary forum for the study of legal practice in historical perspective has emerged. In what follows, I turn to the specific case of the Russian Empire, discussing the degree to which the study of law and legal practice under the tsars has

1 See for example the series of volumes edited by Ranajit Guha between 1982 and 1989 under the title *Subaltern Studies*.

been influenced by the developments in history, legal anthropology, and law and society research outlined above. I argue that for a long time, the analysis of the Russian case was oddly cut off from mainstream academic debates, and has only joined these in the last fifteen years. Challenges, however, remain.

## Studying law in the Russian Empire: Omissions and achievements

As I noted at the outset of this article, the Russian Empire and its legal institutions have often been associated with arbitrariness, corruption, and the lack of a »rule of law« (however defined). For a long time, the growing interest in everyday legal interaction described in the previous section found little resonance in Russian Studies. Research on the Empire was conducted almost exclusively by historians, most of whom did not take developments in socio-legal studies or legal anthropology into account. Few discussed the imperial legal system, and those who did tended to focus on institutions, institutional reform, and their effects on autocratic rule (Kucherov 1953; Kaiser 1972; Wortman 1976; Baberowski 1996). As they mainly relied on the memoirs and publications of legal professionals as sources, these studies reflected the views of elites based in the Empire's urban centers, especially St. Petersburg and Moscow. They were also russocentric insofar as they granted little attention to non-Russian subjects of the Empire.[2]

There are various reasons why everyday legal interaction did not feature prominently in analyses of imperial Russia, at least until recently. First, imperial society came to be seen in terms of a binary model, a society divided into masses of traditionally-minded peasants and educated urban elites, each with their own norms and agendas (Raeff 1983: 219, 230; Daly 1998: 9–10; Mironov 2000a: 514–515; Baberowski 2006: 368; Pipes 2010: 5). Many members of the upper strata viewed the countryside, home to 80–90 percent of the population, as violent and lawless. This

2 Baberowski admittedly includes a discussion of state law among non-Russian populations (1996: 339–427), yet he limits this discussion to borderland regions such as the South Caucasus, the Steppe region, and Central Asia.

cliché, which reflected elite fears more than lived reality, drew strength and legitimacy from the writings of Russian imperial elites who repeated it endlessly, not least to defend their own privileges. After the Great Reforms of the 1860s, liberals used the cliché to justify their struggle for further reform, whereas conservatives stressed it in their calls for more police and administrative control (Frank 1999: 27). Village communes, moreover, were not only seen as a world apart, but also as a relatively homogenous world. As Boris Mironov contended, »The socialization process and the strong social control exercised by the commune did not allow a distinction between the individual and the group: the peasant's ›I‹ merged with the communal ›we‹« (1985: 450).

Second, it was assumed that »pre-modern« village worlds had no use for state institutions, including legal ones. By this rationale, peasants tried to avoid the state as much as possible (Pipes 1974: 288; Worobec 1987: 285–286; Baberowski 2008: 21). Where they needed support in local disputes, peasants mobilized their networks and patrons rather than state officials. Defenders of the autocratic system also insisted that neither the peasantry nor the authorities had any need for greater legal order. In 1883, the bishop of the province Ufa, for example, dismissed the »English-American juridical truth« of the new courts introduced in the 1860s. In a letter to the Holy Synod in St. Petersburg, he insisted that only rule with an iron fist would be able to address the general lawlessness (*obshchee bezsudie*) in the countryside (Russkii Arkhiv 1915: 88, 94).

The growth and spread of scientific expeditions and societies, which produced a wealth of ethnographic studies of village life, helped to foster the image of exotic peasant communes full of their own legal traditions. As part of this process, numerous studies offered collections of what they saw as customary or popular law in the countryside (among many others: Orshanskii 1875; Iakushkin 1875–1910; Pakhman 1877–1879; Zapiski 1878, 1900; Dril' 1883; Leont'ev 1908). Both Soviet and Western scholars then adopted the assumption that villages were governed by their own legal norms and consciousness (Mironov 1985; Lewin 1985; Worobec 1987: 285–286; Frierson 1987: 58; Baberowski 2006: 348). The image of a dual legal order in the Russian Empire did not contain much

room for interaction between villages and the central state. Nor did it allow for much interaction between state institutions and the Empire's ethnic and religious minorities, who had allegedly also retained separate legal orders. If the Russian village was a world apart from civilized Russia, the non-Russian village was a different universe.

Soviet authors had vested interests in recognizing as little state-society interaction as possible in tsarist Russia. They argued that, as a socially isolated class, the peasantry tried to minimize interaction with feudal lords and state representatives as much as possible. By this rationale, only »bourgeois elements« in the village would challenge the unwritten laws of communal life (Mironov 1985: 459). While some Soviet scholars acknowledged changes in »customary law« over time (partly to reconcile the idea of ancient customs with the Marxist belief in a set succession of economic stages of development), they construed this law as the organically grown rules governing all legal interactions among the peasantry (Minenko 1980; Aleksandrov 1984; Mironov 1985). Some identified these rules on the basis of the collections of customary practices by nineteenth-century scientific societies (for example: Gromyko 1977: 83–91). The »bourgeois« Judicial Reform of 1864, by this rationale, yielded little benefit: »The new courts, like the court of the pre-Reform period, were tools of domination used by the exploitative classes« (Vorob'ev 1955: 311). In addition, from the perspective of the USSR's numerous nationally defined republics or autonomous regions, the courts formed »part of the apparatus of national oppression« (ibid.; see also Chernychev 1927: 182).

For much of the Cold War period, then, the study of law and legal practice in imperial Russia did not move beyond structuralist and functionalist accounts in which separate legal norms served to maintain the cohesiveness of different social strata. Individual agency was granted, at best, to elites; in the case of the rural masses, what mattered was not what peasants did, but what was done to them. Only since the mid-1980s have Russia's rural inhabitants been treated as individuals and rational historical actors (Bradley 1985; Brooks 1985; Eklof 1986; Worobec 1995). Yet, this new generation of studies usually focused on the subversive charac-

ter of local communities which sought to protect their own little worlds from outside influence. While these works thus began to consider the voices and tactics of the powerless and exploited to which subaltern studies and social history had alerted the academic community, they nevertheless continued to draw romantic and essentialist pictures of what they viewed as a »traditional society of an earlier day« (Worobec 1995: 14–15), a society that acted collectively and bravely resisted the authorities. The new stress on peasant agency, in other words, did little to undermine the idea of the two Russias. The ways in which ordinary people used and helped to shape state legal institutions continued to be neglected. For a long time, the methods and findings of legal anthropology and law and society research thus failed to make inroads into Russian imperial history.

Since the 1990s, the idea of the isolated peasant commune operating by its own unwritten laws has come under sustained attack. There is a growing awareness among historians that disputes and conflicts were more characteristic of village life than feelings of community and solidarity (Wagner 1994; Frank 1999; Burbank 2004; Gaudin 2007; Engel 2009). Drawing on local archives rather than elite publications, these newer studies have been able to show that peasants in the Russian Empire routinely interacted with state institutions to manage their daily affairs; cooperation and accommodation—rather than resistance—were also common in the state's interaction with ethnic and religious minorities (Sunderland 1998; Crews 2006; Burbank 2012; Kirmse 2012).

Historians, admittedly, have a harder time than anthropologists at examining legal behavior at the village level, especially if they adopt the Geertzian perspective, trying to see and understand each step through the eyes of the litigant. Archival sources were written by local elites (jurists, administrators, and other representatives of the state) who necessarily gave their own versions of reality. As David Sabean put it in a different context: »Whatever sources there are for studying peasant culture implicate in one way or another those people who to some extent exercised domination over the peasant« (1984: 2). And yet, these sources paint a more nuanced picture than press articles and memoirs written at

the imperial center. They suggest that townspeople and peasants alike often acted pragmatically and by no means avoided representatives of the state *per se*. Moreover, there is a considerable variety of documentary sources. In addition to exploring court records, for example, scholars have begun to analyze petitions sent by ordinary people to state institutions (Crews 2006; Farkhshatov 2008).

In any case, historians of Russia have begun to examine the meanings attached to legal action by individual agents. Some have joined their colleagues working on other imperial contexts in deconstructing the notion of »customary law,« especially those scholars specializing in the Caucasus and Central Asia (for example, Bobrovnikov 1999; Martin 2001; Jersild 2002: 89–109; Kemper 2005; but also see Frank 1999). These studies have documented that in Russia, as in other empires, nineteenth-century governments, aided by scientists, imperial officials, and local intermediaries, attempted to codify a set of dynamic local legal norms, thus freezing them into existence. Only in some regions were these codifications abandoned before they were complete (Martin 2001: 45–46). Locals admittedly claimed to follow »communal norms« in many forms of legal interaction, but more often than not, they used these claims as rhetorical devices to gain an advantage or justify their behavior.

For some, the idea of two different legal universes—one for Russian elites, and one for the masses (which could vary by region, ethnicity, or religion)—still has some leverage. Mironov's *Social History of Imperial Russia* repeatedly notes that the peasantry held on to »traditional« and »archaic« forms of law and justice, and thus remained untouched by the legal transformations affecting the rest of society (2000b: 223–365). Baberowski (2006; 2008) similarly asserts that the Empire never managed to bridge the gap between its educated, urban and traditional, rural (and partly non-Russian) worlds. He concludes:

> The system of laws of the late tsarist empire met the demands of the elites and the urban public [...]. It did not know how to communicate with the »other Russia,« the lower classes of the centre and the periphery. (Baberowski 2006: 368)

Along with their new interest in »customary law,« historians of law and culture in imperial Russia have followed the lead of legal anthropology and wider law and society research in focusing on the practice of going to court. As the most numerous courts in the Empire, late nineteenth-century township courts have received particular academic attention (Frierson 1997; Popkins 1999, 2000; Zemtsov 2002; Burbank 2004; Gaudin 2007: 85–131). This field of enquiry has documented that far from avoiding formal institutions, peasants routinely used courts to settle their disputes and combat crime. However, it has yet to widen its geographical and cultural focus and look beyond predominantly Russian communities in order to trace the effects of legal pluralism on legal interactions among a highly diverse population.

In borderland regions, the legal practices of non-Russians have become a focal area of research (the works on Central Asia and the Caucasus cited above, along with Kemper and Reinkowski 2005, are only the beginning of a much longer list of publications). These studies have contributed to our understanding of legal pluralisms in the Empire, not least by showing how these pluralisms differed from region to region, and were experienced and used in different forms. Peripheral regions, however, represent rather specific cases of legal orders. They were only annexed in the course of the nineteenth century and not fully integrated into the civil-administrative structure of the Empire. Non-Russians had few of the legal rights and opportunities in these areas that they enjoyed in most of European Russia. The full extent and implications of the use of state courts by non-Russians must therefore be examined in more central, culturally heterogeneous regions. Useful case studies would include the Empire's »interior peripheries,« as Leonid Gorizontov (2007: 79–80) called them: former frontier zones with histories of independent social, economic and political organization that, by the early to mid-nineteenth century, were increasingly treated as part of the imperial core. Kazan and other provinces in the Volga-Kama region count among them, as do the steppes of southern Russia and Crimea. In these regions, everyday court usage and links between different legal forums remain largely unexplored.

The recent surge in studies on legal practice—even if these are still confined to borderlands, on the one hand, and township courts in central regions, on the other—has documented the quotidian nature of legal experience in the Russian Empire. On a day-to-day basis, Russian rulers put enormous resources, financial and social, into the administration of their polity and the maintenance of law and order. While undoubtedly short on skilled personnel (as most empires were), late imperial Russia was full of legal forums and legal activity. In which directions, then, should existing research be taken to investigate the interactions between these forums?

## Some reflections on promising avenues of research

Historians of Russia have entered the interdisciplinary forum of legal studies. Drawing on anthropological research findings and methods, they have begun to fill the gaps left by earlier works on Russian legal history. However, challenges remain (and many of these can also be found in research on legal culture in other parts of the globe).

First, law has widely been examined from »above« as a set of individual laws or legal systems designed and debated by lawmakers, and from »below« as an array of manners in which the system was implemented, used, and experienced at the local level; yet, there is still much work to be done on the links between the two perspectives. Scholars concentrating on different imperial and post-imperial contexts have called for a greater focus on cultural and legal intermediaries who facilitated and ultimately shaped state-society interaction (Macauley 1998; Aguirre and Salvatore 2001; Benton 2002; Sharafi 2007; Aguirre 2012). The study of petitions, for example, is hardly imaginable without an analysis of the people who wrote these petitions for the mostly illiterate peasants. In order to understand the ways in which legal practitioners, and others capable of writing complaints (*zhaloby*) and petitions (*prosheniia*), affected the masses' access to justice and thus helped to shape legal culture in the towns and villages of the Russian Empire, we need to know more about the origins and motivations of these legal intermediaries, and about their relationships with their clients and state institutions. The absence of

these crucial figures from existing literature is partly due to the previous focus on township and borderland courts, which did not insist on receiving complaints in writing and operated without lawyers.

Second, the study of legal culture in imperial Russia still pays too little attention to law as an »arena of struggle.« The challenge in this discussion is to recognize the agency of people across all social, regional, and gender divides, while not falling into the trap of suggesting equality (which often remained an illusion). Women, underprivileged estates, and ethnic and religious minorities experienced—and did not always accommodate—multiple inequalities. These asymmetries, which are central in the study of law and colonialism thanks to the influence of subaltern studies and legal anthropology, continue to be neglected in the analysis of legal culture in the Russian Empire. In order to offer a more accurate picture of everyday legal experiences, we would need a closer analysis of the mechanisms and consequences of legal inclusion and exclusion.

The study of everyday legal practice must also include the multiplicity of links between different legal institutions and normative orders since these did not exist in isolation from each other. Jane Burbank stressed that rural township courts were linked with higher judicial instances in different ways, and thus part of a plural legal system (1997: 90–92; 2006: 414; see also Kriukova 2008). She also explained that Russian state law consciously legalized, and thus appropriated, local courts, establishing a legal system for the Empire that deliberately included different procedural and normative orders (Burbank 2006). However, Burbank discussed the integration of non-Russians in the imperial court system mainly in the context of borderland regions (ibid.: 412–416), where separate local courts were the rule. She thus highlighted the judicial distinctiveness of ethnic and religious minorities, neglecting the fact that minorities were much more closely integrated in the state court system in more central parts of the Empire. The fledgling study of legal practice in Russia's plural legal order must therefore be extended to other regions, periods, and multiethnic contexts.

It is time to identify the array and nature of legal pluralisms across the Empire. It is a commonplace in legal anthropology that any society is

home to a multiplicity of normative orders. In the context of empire, this multiplicity becomes particularly pronounced since all empires faced a similar dilemma when dealing with legal pluralism: the desire to improve administrative efficiency and reinforce unity, paired with the continued need to promote hierarchy, difference, and domination over disenfranchised subject populations. Thus, we need to explore how this dilemma was solved for each region, period, and social group. Which forms of pluralism emerged, for example, in the South Caucasus, the Volga region, or along the Baltic Sea shore? How did they differ by estate, nationality, religion, or gender? Were legal orders parallel, inclusive, or did they take the form of aggressive competition? How did pluralism evolve in the course of the imperial period, and how did its constituent elements shape one another? Franz von Benda-Beckmann's analysis of the relationship between the triangular constellation of Islamic law, *adat* law, and state law in Indonesia (2008) has highlighted the importance of studying the links between legal orders over time, since the relative weight of these elements, and their hybrid forms, are subject to ongoing change. Cursory remarks by scholars have pointed to similarly dynamic relationships between legal orders in Russia: Babich (2005: 261), for example, observed that *adat* law in the North Caucasus was first Islamicized by local elites fighting against the Empire, and later Russified by imperial administrators. These observations underline the necessity of carrying out longitudinal studies of the Empire's interacting legal cultures while also reminding us that the law is best analyzed as part of local power struggles.

Another important question concerns the freedom of litigants to move and choose between legal forums. In the end, the legal institutions created for different parts of the population were deeply entangled and developed multiple forms of cooperation. Formal segregation of different groups in society did little to stop these groups from developing legal relations with each other. Normative designs were thus rather different from the legal reality, which could not be fully scripted. These questions, which have been explored extensively by legal anthropologists working

on Africa and South East Asia in particular, have yet to make a real impact on the study of the Russian Empire.

Finally, while it is important to point out that law was an everyday experience from St. Petersburg to the plains of central Eurasia, socio-legal research has also reminded us that court cases, in particular, are unusual situations. Scholars working on areas as diverse as American civil law and African »customary« law agree that most injurious experiences are not taken to court (Holleman 1973: 592; Felstiner et al. 1980–81: 651). A more rounded picture would require us to focus, for example, on the antecedents of disputes and the question of how and when solutions were reached out-of-court. While such cases are more difficult to investigate since there are fewer sources, they form essential pieces in the mosaic of »legal cultures.«

In the final section, I offer a brief example of what a combined analysis of some of the five areas summarized above might look like.

## Property claims in late imperial circuit courts: Some evidence from Crimea

On 2 May 1878, the Tatar woman Aishe Sherife, married to a peasant by the name of Seit Memet Mulla Osman oglu, filed a lawsuit against the civil servant Ivan Dimitrievich Godzi with the Simferopol Circuit Court on the Crimean peninsula.[3] Circuit courts had been introduced by the Judicial Reform of 1864 to address major crimes and civil disputes. They were based on a mixture of French, Prussian, and Anglo-Saxon models and designed to promote the »rule of law« in the Russian Empire, that is, to enhance legal transparency, accountability, and efficiency (Kirmse 2013). Over the following years, these new courts spread across the European part of Russia and, eventually, into Siberia and Central Asia. Some of these regions had a culturally very diverse population. The establishment of a circuit court in Simferopol, the Crimean capital, in 1869 brought large numbers of non-Russians under the jurisdiction of the new

3 GAARK (State Archive of the Autonomous Republic of Crimea, Simferopol), file 376-5-2808 (1878): 18.

court system. Muslim Tatars, in particular, formed over 40 percent of the population on the peninsula.[4]

Aishe Sherife's case was as follows: The previous year, the civil servant Godzi had taken her husband to court because the peasant had failed to pay off debt amounting to 4,000 rubles. In order to allow Godzi to recover the debt, the court had identified a plot of land near Alushta on the South Crimean shore for seizure and sale. On 26 March 1878, the Court announced the public auction of the plot, which prompted Aishe Sherife to act. In her lawsuit, she claimed through her lawyer that the land was hers rather than her husband's and could therefore not be seized.

The court responded quickly. On 12 May, it put the sale on hold until the issue of ownership was resolved. In July, Godzi submitted his version of the story to the court, arguing that Seit Memet had always been in command of the land and gained profit from it.[5] The case was delayed for financial and logistical reasons. Alushta was an arduous trip from Simferopol across the coastal mountains. The questioning of witnesses was therefore expensive, and it was only on 24 November 1879 that the court received the money from the two parties for the travel expenses of a member of the court and a land surveyor.[6]

Five days later, the enquiry in Alushta began. Nearly all of the witnesses were Muslim peasants, who gave testimony in Tatar.[7] Linguistic diversity was part of imperial court practice. Thus, in addition to the land surveyor and various lawyers, the court representative was accompanied by

4 Statistics gathered by the Crimean administration in the 1880s suggest a Muslim share of 42.7% (Werner 1889: section II, 32–33). These formed no more than 18% of the urban population, but they were still a clear majority in rural areas (64%) (ibid.).

5 To speed things up and receive at least part the money owed to him, Godzi also filed an ultimately unsuccessful complaint against a court clerk. See GAARK, 376-1-43 (1878).

6 GAARK, 376-5-2808 (1878): 7–7v.

7 For the testimony, see ibid.: 10–17v.

a mullah and the Muslim nobleman Mustafa Davidevich who acted as a Russian-Tatar interpreter.[8] All witnesses confirmed that Aishe Sherife received the revenues, but had authorized her husband to manage the land. Six of them explained that under Muslim law, a woman could have no private property; therefore, she had to authorize her husband to be in control of the land. The court accepted these explanations, concluding that Seit Memet used the revenues »to operate the business in his wife's name, upon her authorization and on the basis of Muhammadan law according to which the wife has no right to be in charge of her property.«[9]

Among other things, the case highlights the penetration of imperial legal principles and practices in Muslim communities. While Tatars publicly stressed the importance of Islamic norms, they seemed aware of the fact that some of them had adapted to Russian property arrangements which allowed wives to own land: in this court case nearly all neighbors knew that the disputed land was the wife's rather than the husband's. In fact, the woman had been active on the property market for some time. As one witness explained, Aishe Sherife had bought the land near Alushta from the revenues of another land sale several years earlier.[10] It is hardly surprising that she filed a lawsuit that guaranteed her ownership and future revenues.

The Tatar woman could not have engaged in »forum shopping.« The Circuit Court presented the only legal option for her. She could not have turned to the Islamic judges of the Spiritual Muslim Administration of Crimea—a state institution founded in 1794 to oversee matters of religion, and some areas of civil law—because in land disputes, this administration only had jurisdiction over Muslim land endowments known as *waqf*. Thus, the case also illustrates that legal pluralism was clearly demarcated in the Russian Empire.

8 Ibid.: 12.

9 Ibid.: 19v–20.

10 Ibid.: 12v.

That said, another case, taken from the records of the Simferopol-based lawyer M.A. Freshkop, highlights that »forum shopping« was possible in some areas of civil law. In October 1894, Freshkop filed a lawsuit with the Simferopol Circuit Court on behalf of the peasant woman Zeynep.[11] The woman had recently been divorced by her husband, the mullah Umer Chelebi oglu. According to the lawsuit, she had brought goods amounting to 400 rubles into the marriage, which her husband refused to return to her upon divorce. Referring to the Russian Civil Code, her lawyer explained that the act of marriage did not establish joint ownership of property. Thus, he asked the court to oblige Umer Chelebi oglu to return the goods.

Zeynep's choice of a Russian court is striking. Article 1399 of the *Statutes of Spiritual Matters of Foreign Faiths*[12] allowed Muslims in Crimea to turn to Islamic judges in cases of property claims resulting from divorce. This was only possible, however, if both parties agreed. In Zeynep's case, it is understandable that she preferred to take her claim to a circuit court. Islamic judges were entitled to rule in accordance with »customs,« which tended to enforce patriarchy. Circuit courts, by contrast, relied on the Civil Code which contained a confusing array of rules with respect to family law and could therefore be interpreted in different ways. Umer Chelebi oglu's lawyer insisted on the religious peculiarity of the case, asking the court »to summon one person of Muhammadan faith as an expert who can offer a correct interpretation of [marriage] law.«[13] The Circuit Court, however, ignored this request, accepted Freshkop's line of argument, and had goods worth 400 rubles taken away from Zeynep's ex-husband.[14]

11 GAARK, file 849-1-17 (1894).

12 This is vol. XI, part 1 of the *Collection of Laws of the Russian Empire*, 1900 edition.

13 GAARK, file 849-1-17 (1894): 28.

14 Ibid., 34–34v.

The two cases taken together illustrate a number of points made in the previous section. First, they underline the usefulness of approaching legal practice in the Russian Empire in terms of interpenetrating, rather than simply coexisting, legal orders. In everyday legal business, such as property claims, the state legal sphere (represented here by the circuit courts) interacted with multiple local laws and judges. In Zeynep's case, these were religiously-based; in many cases involving Russian peasants, they were local justices of the peace or peasant courts. Yet while this multiplicity of legal forums provided litigants with an element of choice, the choice was limited to certain areas, such as family and inheritance law. This limitation was a common feature of expanding imperial and colonial powers: whereas the unification of family and inheritance law was rarely a priority, the homogenization of criminal law, followed by commercial and contract law, tended to be high on their agenda (Mommsen 1992: 10; Fisch 1992: 32). In areas of law where litigants could choose between forums, they acted pragmatically. As rational historical actors, they rarely sought solutions only within the local community, but turned to state courts whenever it was in their interests to do so.

In addition to raising questions about legal pluralism and »forum-shopping,« the cases discussed above also point to two other fields of enquiry mentioned earlier: legal inequalities and intermediaries. As regards the first of these, the case Aishe Sherife vs. Ivan Godzi, in particular, shows that filing a lawsuit entailed substantial costs—for lawyers, surveyors, translators, travel expenses, and litigation fees. These costs limited the access of the poor to circuit courts. As a landowner who had been active on the property market for years, Aishe Sherife could pay these fees; others were less fortunate. Yet inequality was not just a question of financial resources. Social status based on land ownership and the development of local patronage networks also made a difference: all of Aishe Sherife's witnesses, for example, confirmed her ownership of the land, which ensured her victory in this legal battle. Godzi had no such con-

nections in Alushta—in fact, four of the five witnesses he had named could not confirm his version of the case with certainty.[15]

Ethnicity or religion could also be a source of legal inequality, though not necessarily with negative consequences. Being a member of a minority group opened additional legal avenues in some areas of law. Yet, Muslims and others also faced more detrimental forms of discrimination: they were underrepresented, for example, as judges, lawyers, and jurors in the late imperial legal order (Kirmse 2013).

Finally, legal intermediaries were crucial in the cases outlined above. The court records suggest that Aishe Sherife, Godzi, Zeynep, and Umer Chelebi oglu never appeared in court in person; they were represented at all times by lawyers whose skills proved decisive. The lawyer Freshkop's line of argument that relied on an article in the Civil Code convinced the judges of the circuit court whereas his opponent's strategy of consulting an Islamic scholar turned out to be fruitless. Moreover, the choice and, ultimately, the power and influence of intermediaries reflected the social and economic resources of the litigants. In Aishe Sherife's case, even the translator was a nobleman (which provides a contrast to many other cases involving Tatars at the Simferopol Circuit Court in which Tatar peasants worked as interpreters).

## Conclusion

In this largely historiographical article I have attempted to show the existing and missing links between the study of late imperial Russia and the wider analysis of law and legal practice. The discussion has underlined that over the last fifteen years, historians of the Russian Empire have turned to the examination of law and culture in substantial numbers. Long-established approaches and methods from law and society research—the »bottom-up« perspective, the emphasis on agency and meaning, the deconstruction of »customary law,« and the analysis of litigant behavior in plural legal orders—have, albeit slowly, entered the field of Russian history.

15 GAARK, 376-5-2808 (1878): 20.

Given the spatial, temporal, and cultural diversity of the Russian Empire, these recent gains are only a beginning. Emerging fields such as the self-designated »new imperial history« of Russia (Gerasimov et al. 2005) have yet to perform a »legal turn« and demonstrate the multitude of legal links between the center and the regions, as well as between and within intermediate and peripheral territories of the Empire. The five areas of promising research I have identified in this article—pluralism, persisting inequalities, intermediaries, »forum-shopping,« and out-of-court dispute resolutions—would help historians of imperial Russia gain a better understanding of the daily experience of law. The study of legal practice in borderlands and the analysis of central township courts have become cottage industries, yet these fields are very specific. Whereas the former covers rather unusual legal regimes (partly still under military command) with limited access to courts, the latter is often russocentric, neglecting the Empire's cultural heterogeneity.

As I have tried to show in the case studies at the end, a closer discussion of legal activity that takes most (if not all) of the five areas into consideration, reveals the participation of all social groups and strata in the legal system as well as the interpenetration of legal orders. At the same time, it highlights the persistence of hierarchies and privileges, be they social, religious, or linguistic. Legal anthropologists have argued that the law is never neutral and impartial, but always constructed by human agency in a way that is advantageous to some at the expense of others (Starr and Collier 1989: 3, 7). In the case of the Russian Empire, the study of legal inclusion and exclusion—their forms, differences, and mechanisms—is still in its infancy.

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Stefan B. Kirmse, PhD, Rechtskulturen/Legal Cultures, Research Fellow, Faculty of Law, Humboldt-Universität zu Berlin,
stefan.kirmse@rewi.hu-berlin.de.