Comparative Studies in Society and History 2014;56(2):419–447.
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doi:10.1017/S0010417514000097

Constructing Colonial Legality in Russian Central Asia: On Guardianship

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In April of 1896, a certain Bībī Jān Bībī made an appeal to Lieutenant Aleksei Pavlovich Tvertinov, the commandant (*nachal'nik*) of Tashkent. Bībī Jān Bībī was the widow of Mullā Muḥammad ʿAlī, otherwise known as "the Tatar" (*nūghāy*) who had passed away in 1891.[1] She was illiterate and, with the help of a local proxy, she resorted to the Russian authorities to gain powers of guardian over her minor children's property. She claimed that, after her husband's death, a Muslim judge (*qadi*) named Muḥyī al-Dīn Khwāja had inventoried all of her inheritance and confiscated various deeds, and had ever since administered her possessions in the capacity of guardian (Rus. *opekun*). She explained that her husband had left cash amounting to 4,800 rubles, which the *qadi* had put in the Russian state bank, together with six shops which Muḥyī al-Dīn Khwāja had in the meantime rented out. In making this request, Bībī Jān Bībī was effectively opposing herself to a long-standing cultural tradition of Central Asian *qadis* being endowed with authority over matters of guardianship.[2]

Acknowledgments: I am grateful to the Volkswagen Foundation for material support for the research and writing of this piece. For the critical engagement, fruitful discussions and for sharing their suggestions in the development of the paper I thank Sergei Abashin, Ulfatbek Abdurasulov, Beatrice Penati, Eirik Hovden, Alberto Masoero, Nasriddin Mirzaev, Alexander Morrison, Tom Welsford, and the anonymous *CSSH* reviewers. Their comments, offered in conversation or in writing, have done much to shape the ideas and arguments presented here. Audiences in Paris, Liverpool, and Leiden provided key critical feedback. Thanks also to *CSSH* editors Andrew Shryock and David Akin, whose judgment and guidance proved indispensable.

[1] The unpublished material upon which this paper is based comes from post-Soviet archives, and my citation of it follows the standard system in the field of Russian studies. The archival collection, the inventory, the file, and the folio are thus indicated respectively with the following Russian abbreviations: f. (*fond*), op. (*opis'*), d. (*delo*), and l. (*list*). All the translations from Russian, Persian, and Chaghatay are my own.

[2] When reading the royal warrants of appointment to the office of judge, one can discern formulaic expressions indicating that it was incumbent on the *qadi* to "manage the possessions of orphans and the demented as well as appoint guardians" (*ẓabṭ-i amwāl-i ītām wa majānīn wa naṣb-i awṣiyāʾ*). See A. Urunbaev, G. Dzhuraeva, and S. Gulomov, *Katalog sredneaziatskikh zhalovannykh gramot iz fonda Instituta vostokovedeniia im. Abu Raikhana Beruni Akademii Nauk Respubliki Uzbekistan* (Halle and Saale: Mitteilungen des Sonderforschungsbereich, 23 Oct. 2007), documents 18, 22, 23, 68, 69, 80, and 120. These texts attest to practices in Kokand and

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She thus requested that Tvertinov compel the *qadi* to show her documentation of his operations.[3]

Subsequently, an inquiry uncovered that this and other appeals instigated by Bībī Jān Bībī were in fact driven by her malice: the *qadi* had ready documentation attesting to his having handed over all the bank checks to the widow four years earlier.[4] The delivery was confirmed by Captain Lykoshin, who in 1892 had been asked to examine a few claims of malpractice regarding Muḥyī al-Dīn Khwāja's activities in the capacity of guardian. At that time, Lykoshin explained, he had found that Bībī Jān Bībī had received the checks and that she had no claims whatsoever.[5] Moreover, the individuals who had acted as witnesses of the transaction's notarization[6] between the *qadi* and the widow confirmed the delivery of the 4,800 rubles in bank checks.[7]

As we will see, in the 1890s other widows in Tashkent attempted to lever Russian authorities into allowing them to take over the guardianship of their minor children's property from the *qadis*. Scholars of law and colonialism have long recognized that "it was common in colonial situations for less powerful individuals to seek out the colonial courts as an opportunity to escape other forms of subordination."[8] While there are many studies that illustrate the degree to which the less powerful, especially women, shopped for colonial forums, there has been little analysis of how colonial subjects in general came to share new understandings of law and how such courses of action ultimately precipitated a new legal consciousness.[9] What I set out to do in this essay is to reconstruct the social dynamics that allowed for changes in the sense of rights and legal entitlements among Muslims in Central Asia under Russian rule.[10] As I argue throughout the paper, it becomes possible to appreciate the

Bukhara, but royal warrants issued in Khorezm display a similar formulaic phrasing: "[It is incumbent on the *qadi*] to safeguard the possessions of the orphans" (*ītām amwālī muḥāfiẓatīgha iqdām kīltūrūb*). See El'ior Karimov, *Regesty kaziiskikh dokumentov i khanskikh iarlikov Khivinskogo khanstva XVII—nachala XX v.* (Tashkent: Fan, 2007), document U-r 3, p. 201.

[3] Appeal to the Tashkent city commandant, 27 Apr. 1896, Central State Archive of Uzbekistan (henceforth TsGARUz), f. I-17, op. 1, d. 5775, ll. 9–9ob.

[4] Receipt (in Chaghatay), 21 Feb. 1892, TsGARUz, f. I-17, op. 1, d. 5775, l. 33.

[5] Report to the city commandant, 12 June 1896, TsGARUz, f. I-17, op. 1, d. 5775, ll. 1–2ob.

[6] The original in Chaghatay is in TsGARUz, f. I-17, op. 1, d. 5775, l. 22.

[7] Report to the city commandant, 20 Apr. 1897, TsGARUz, f. I-17, op. 1, d. 5775, ll. 51–52.

[8] Sally Engle Merry, "Colonial Law and Its Uncertainties (Forum: Comment)," *Law and History Review* 28, 4 (2010): 1067–71, here 1067. See also John J. Comaroff, "Colonialism, Culture, and the Law: A Foreword," *Law and Social Inquiry* 26, 2 (2001): 305–14, here 306–7.

[9] I take here a socio-legal approach to historical material, as illustrated, for example, by Sally Engle Merry, "Culture, Power, and the Discourse of Law," *New York Law School Review* 37 (1992): 209–25. On legal consciousness, see Patrick Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998), 46. See also Sally Engle Merry, *Colonizing Hawai'i: The Cultural Power of Law* (Princeton: Princeton University Press, 2000).

[10] I use "Muslims" throughout this essay as a term of self-identification. In no way do I intend to reduce the complexity of disciplinary affiliations and doctrinal genealogies of Central Asian

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salience of such changes only by focusing in on the social texture of the region, rather than by referring cases to Russian imperial narratives or looking for connections across the globe.

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In writing about colonialism and law, it is of course true that there existed a strong similarity between Russian Central Asia and other colonial enterprises that set in place a plural legal regime and ostensibly subsumed indigenous bodies of law. In dealing with legal diversity, Russians took a twofold course of action, blending the purported preservation of the status quo with a broader vision of institutional and social change. On one hand, they claimed to have maintained fairly intact the core of indigenous judicial institutions ruling according to *sharīʿa*,[11] which were presided over by *qadis* (Muslim judges). Yet they effectively reformed the procedure for appointing judges by instituting a system of popular election: where *qadis* had once been designated by the head of a Muslim principality, under Russian rule "native judges" (*narodnye sud'i*) were to be chosen instead by representatives of local communities who cast a ballot.[12] Furthermore, Russians severely limited the jurisdiction of Islamic law courts, thus expunging, for instance, murder cases and highway robbery from their purview.

In sum, in tsarist Central Asia *qadis* were still in place, but the wider Islamic institutional setting in which *sharīʿa* courts had hitherto been embedded no longer existed. Prior to the conquest, the *qadi* was in fact only one among various officials who inhabited the juridical field of Islamic law and oversaw adjudication. More often than not people brought their grievances to the royal court (*dargāh*/ *ark-i ʿālī*) rather than to the *qadis*, since it was among the ruler's prerogatives to appoint trustees to investigate claims and confer on judicial personnel the power to hear legal cases. In addition, institutions of arbitration and mediation, which were complementary or even alternatives to that of adjudication, had in the wake of the Russian conquest disappeared or substantively changed.[13]

colonial subjects that were at play both prior to and after the Russian conquest. Viewing colonial subjects through the prism of their communal organizations or their affiliation to the Ḥanafī school of law does not help us elicit meanings from the specific material that I discuss in this paper.

[11] Throughout the essay I purposefully use the term *sharīʿa* as an emic category. I thus view "Islamic law" as a domain that includes the jurists' modes of reasoning as well as the cultural perceptions of the uninitiated. For a similar approach, see Judith Scheele, "Councils without Customs, Qadis without State: Property and Community in the Algerian Touat," *Islamic Law and Society* 17 (2010): 350–74, here note 3.

[12] Paolo Sartori, "Judicial Elections as a Colonial Reform: The Qadis and Biys in Tashkent, 1868–1886," *Cahiers du monde russe* 49, 1 (2008): 79–100.

[13] I have explored this idea in "The Evolution of Third-Party Mediation in *Sharīʿa* Courts in 19th- and Early 20th-Century Central Asia," *Journal of the Economic and Social History of the Orient* 54, 3 (2011): 311–52. Changes in the very definition of the *qadi*'s office did not include

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But it is one thing to alert ourselves to the general constraints which the Russian statutory law put on the jurisdiction of Islamic law, and quite another to establish how colonial forms of governance changed Islamic judicial practices and juristic reasoning, and to what extent such changes affected Muslims' legal consciousness. This latter story has hitherto been left largely untold. In tackling this vast object of study, I hope to challenge the prevailing approach adopted by scholars of law and colonialism and legal pluralism, who are interested almost exclusively in detecting institutional and procedural changes in the domain of indigenous laws. The present paper is concerned primarily with the history of legal behavior among Muslims in Russian Central Asia rather than the policies on Islamic law developed in a colony of the Russian Empire. As such, it is integral to both the study of global legal regimes in the age of colonialism and Russian legal history of the post-Great Reforms period.

The global history approach to the study of European empires postulates that the assertion of greater legal hegemony in the colony was effectively dependent on the initiatives of the colonial subjects who maneuvered jurisdictions to achieve their own purposes. Global historians have repeatedly demonstrated that irony whereby, through playing across jurisdictions, subaltern subjects actually ended up reinforcing colonial regimes and thus unwittingly helped to accelerate a process of institutional change.[14] What is striking is that the matter of *how* new constructions of legality and cultural meanings of law[15] became dominant among colonial subjects has mostly escaped sustained attention. In other words, if studies of colonialism and world history have presented law as a discursive[16] as well as institutional[17] resource with which colonial subjects might interact with the state, they are at greater pains to explain how the colonized came to view themselves as legal subjects of the empire and thus personified colonial notions of law.[18] It is by looking at the techniques

the latter's powers of law enforcement, however. In precolonial Central Asia the enforcement of law was mostly a prerogative of the ruling principality.

[14] Mitra Sharafi, "The Marital Patchwork of Colonial South Asia: Forum Shopping from Britain to Baroda," *Law and History Review* 28, 4 (2010): 979–1009.

[15] I draw here on Susan S. Silbey, "After Legal Consciousness," *Annual Review of Law and Social Sciences* 1 (2005): 323–68, here 360.

[16] Eleanor Newbigi, Leigh Denault, and Rohit De, "Introduction: Personal Law, Identity Politics and Civil Society in Colonial South Asia," *Indian Economic and Social History Review* 46, 1 (2009): 1–4, here 2. See also the articles of "Forum: Maneuvering the Personal Law System in Colonial India," published in *Law and History Review* 28, 4 (2010).

[17] Jonathan Saha, "A Mockery of Justice? Colonial Law, the Everyday State and Village Politics in the Burma Delta, c. 1890–1910," *Past and Present* 217 (Nov. 2012): 187–212.

[18] Wolfgang Mommsen and Jaap de Moor, eds., *European Expansion and Law: The Encounter of European and Indigenous Law in 19th- and 20th-Century Africa and Asia* (Oxford and New York: Berg, 1992); Brian Z. Tamanaha, "Understanding Legal Pluralism: Past to Present, Local to Global," *Sidney Law Review* 29 (2007): 381–86.

https://doi.org/10.1017/S0010417514000097 Published online by Cambridge University Press

of reification that we can hope to disentangle instantiations of cultural change from the wider texture of colonialism, and thus illuminate the social dynamics that sustained colonial legal constructions.[19]

Historians of the Russian Empire, in particular, seem generally to concur that under tsarist rule Central Asian Muslims could easily access the services of the "native courts" that remained broadly untouched after the Russian conquest.[20] It is true that in specific domains of Islamic law such as, say, the notarization of property rights,[21] we cannot speak of substantial changes. However, these continuities should not lead us to assume that under Russian rule Muslims lived in a space of "differentiated jurisprudence,"[22] nor that their conceptions and practice of Islamic law remained unchanged from the time before the conquest.

What I will demonstrate is that the deeper one looks into the jurisdictional politics in colonial Central Asia, the less amenable they become to integration into the "grand narratives"[23] of the Russian Empire, let alone those of "global legal regimes."[24] Historians of the Russian Empire and global history may still want to telescope stories collected here and there and mold them into cohesive narratives about law and the empire, or patterns of structuring legal authorities across the world. However, this approach risks our crafting stories that are less revealing than prescriptive. It may lead us to misidentify, misinterpret, or simply miss altogether the social significance of the changes that the Russian colonization put in place within the sphere of legal consciousness among Muslim communities within specific regions.[25]

In resisting the temptation to confer greater historical salience to the cohesive forces behind Russian legal history and the global history of law and

[19] Bill Maurer, "The Cultural Power of Law? Conjunctive Readings," *Law and History Review* 38, 4 (2004): 843–49; Annalise Riles, "Law as Object," in Sally E. Merry and Donald Brenneis, eds., *Law and Empire in the Pacific: Fiji and Hawai`i* (Santa Fe: School of American Research Press, 2004), 187–212; Derek R. Peterson, "Morality Plays: Marriage, Church Courts, and Colonial Agency in Central Tanganyika, ca. 1876–1928," *American Historical Review* 111, 4 (2006): 983–1010; Nandini Chatterjee, "Muslim or Christian? Family Quarrels and Religious Diagnosis in a Colonial Court," *American Historical Review* (Oct. 2012): 1101–22.

[20] This view is epitomized by Sergei Abashin, "Review of Alexander Morrison, *Russian Rule in Samarkand, 1868–1910: A Comparison with British India*," *Ab Imperio* 2 (2009): 19–20.

[21] Paolo Sartori, "Colonial Legislation Meets Sharīʿa: Muslims' Land Rights in Russian Turkestan," *Central Asian Survey* 29, 1 (2010): 43–60.

[22] Jane Burbank, "An Imperial Rights Regime: Law and Citizenship in the Russian Empire," *Kritika: Explorations in Russian and Eurasian History* 7, 3 (2006): 397–431, here 412.

[23] From the Editors, "The Imperial Turn," *Kritika: Explorations in Russian and Eurasian History* 7, 4 (2006): 705–12, here 706.

[24] Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History: 1400–1900* (Cambridge: Cambridge University Press, 2002), 3.

[25] A move back from "the global" to the "regional" has been recently advocated by Gopalan Balachandran, "Claiming Histories beyond Nations: Situating Global History," *The Indian Economic and Social History Review* 49, 2 (2012): 242–72, here 267; and Judith Scheele, *Smugglers and Saints of the Sahara: Regional Connectivity in the Twentieth Century* (Cambridge: Cambridge University Press, 2012), 12.

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colonialism, I am not trying to "recover the 'decentered' narratives of people without power."[26] Nor do I aspire to discern among Central Asians the traits of cultural resistance and counter-hegemony. Readers are thus alerted that in this paper I do not advocate for a subaltern reading of Central Asian material. Instead, what I suggest is that by focusing on the social fragments of Central Asia we can chart new genealogies and correlations in the field of colonialism and law,[27] and thus *complement* the interpretations of today's Russianists and world historians in the field of Islamic law.

One might object at this point that in developing my argument as I do, in conversation with historians of both Russian and global history, I add further complexity to a picture that is already multifarious. I would argue in response that anyone who explores social and cultural change in the field of law in a Muslim colony under Russian rule must engage the domains of imperial and world history. While one may still want to keep world history and imperial history as separate disciplinary entities, it is becoming increasingly difficult to situate the chronology of modern empires outside of global historical connections.[28]

Disambiguating Russian imperial history from world history is still more difficult when our primary interest is in how Muslim communities responded to changing social circumstances and institutional arrangements under colonization. Seen from this perspective, both historians of the Russian Empire and world historians tend to view *qadi* courts as the unique site of application of the law, as the best place to find changes (or lack thereof) in a given legal culture. One must concede that in choosing the courts as a revealing site of colonial legal domination, students of global and Russian imperial history might have reasonably sought to create a reliable informational foundation. I am also aware that situations of legal diversity, more often than not, called for the imposition of state law on alternative systems deemed indigenous, for the creation (and repeated negotiation) of jurisdictional boundaries, and for the enactment of procedural links between competing jurisdictions. It is thus understandable that one may want to confer on court cases a particular exemplarity.[29]

I do not claim that is an entirely misleading approach; what I do argue is that in opting first for the *sharīʿa* courts one is implicitly assuming that prior to colonization Muslims brought their cases directly to the courts of the *qadis*, and

[26] C. A. Bayly, *The Birth of the Modern World, 1780–1914: Global Connections and Comparisons* (Malden, Mass.: Blackwell, 2004), 8.

[27] For an insightful illustration of this approach, see Eric Lewis Beverley, "Frontier as Resource: Law, Crime, and Sovereignty on the Margins of Empire," *Comparative Studies in Society and History* 55, 2 (2013): 241–72.

[28] Durba Ghosh, "Another Set of Imperial Turns?" *American Historical Review* 118, 3 (June 2012): 772–93.

[29] This approach is exemplified throughout the volume *Muslim Family Law in Sub-Saharan Africa: Colonial Legacies and Post-Colonial Challenges*, Shamil Jeppie, Ebrahim Moosa, and Richard Roberts, eds. (Amsterdam: Amsterdam University Press, 2010).

https://doi.org/10.1017/S0010417514000097 Published online by Cambridge University Press

only alternatively referred them to the local principalities. This is highly problematic since it assumes that *sharīʿa* constituted a grass-root system of legal and ethical norms that operated autonomously from the state (or whatever one may like to call the rule of local dynasties). This state of affairs is said to be contingent on a clear separation between, on one hand, the Islamic state and its rulers, and on the other, the "specialists [who] formed part of a powerful legal profession whose members … controlled the judiciary."[30] Regrettably, many recent studies of the practice of Islamic law continue to display an unconditioned preference for the so-called judiciary (the *qadis* or the muftis), whereas they depict the states and the principalities as sites for appeal *alone*. The hearing sessions of the royal courts are thus commonly referred to as *mazalim* tribunals, something close to what in Western modern history is understood as a court of second instance.

A recent work by Yossef Rapoport is unique in pointing out how sultanic justice and *sharīʿa* courts could also function as alternative venues to hear civil law cases.[31] His argument clearly applies also to the Muslim principalities (the khanates) that ruled over Central Asia before the Russian conquest. It is during that period that we do observe a distinct hierarchy of authority, wherein Muslim principalities concentrated all jurisdictions in their hands while *qadis* worked for them in the humbler capacity of legal advisors.[32] In nineteenth-century Bukhara and Khiva, *qadis* did not dispense justice autonomously in the fashion of an independent judiciary, but instead proceeded to hear a case after receiving instructions from the central chancellery to which they were expected to report. In such a system, sultanic justice was more authoritative than that of the *qadis*, whose activity was subject to contestations.

Consider the following case: A female victim of assault appealed to the district governor (*ḥakīm*) of Khwāja-Īlī (nowadays Qaraqalpaqstan). He instructed an attendant to bring the two parties before the *qadis* of the city. Since the defendant admitted the assault, the judges proceeded to appoint a woman trustee to examine the body of the claimant and assess the presence of injury. As the examination disclosed various instances of harm, the *qadis* consulted with a *muftī* who opined in favor of a corporal punishment for the defendant. When the judges were about to put in practice that opinion, the defendant challenged the authority of the jurors, and left the hearing.[33]

[30] Baber Johansen, "Signs as Evidence: The Doctrine of Ibn Taymiyya (1263–1328) and Ibn Qayyim al-Jawziyya (d. 1351) on Proof," *Islamic Law and Society* 9, 2 (2002): 168–93, here 168.

[31] Yossef Rapoport, "Royal Justice and Religious Law: *Siyāsah* and Sharīʿah under the Mamluks," *Mamlūk Studies Review* 16 (2012): 71–102, here 75. One should consider that in post-Mongol Central and South Asia the relationship between the jurists and the state were different from the Mamluk context.

[32] See a circular regulating the office of the *qadis* in Astana (Khorezm), Jan. 1910, TsGARUz, f. I-125, op. 1, d. 579, ll. 1–2 (in Chaghatay).

[33] TsGARUz, f. I-125, op. 1, d. 498, l. 29, three early twentieth-century *qadis*' seals.

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The dispensation of justice in precolonial Central Asia was squarely centered around a petitioning system that brought the populace together with the royal court and its representatives on the ground. This suggests that, at least in Muslim-majority colonies, local people were well equipped to address their grievances to the colonial masters, and this is why the archives of the colonial polities are replete with their appeals.[34] With this in mind, it becomes clearer that substantive changes in Muslims' legal consciousness become more visible, and thus less negligible, when one looks for them in the mundane activity of the colonial bureaucracy and of mid-level institutions instead of in the registers of *sharīʿa* courts.

What follows is structured around three parts. In the first, I demonstrate that, though it might represent a welcome methodological challenge to make sense of a myriad of discrete cases, application of a global perspective to the history of law and empire leads us unavoidably to invoke meta-narratives even when they are not directly applicable to the cases at hand. The second part attempts to show that the tsarist administration of law in Central Asia was not coterminous with any instance of what is sometimes termed an "imperial rights regime." The final section shows that Russians achieved effective hegemony in the domain of law precisely at that point when their notions of legality became common currency in how Central Asians understood law.

I illustrate my approach by reconstructing three cases concerning the law of guardianship, which show how Russians pursued the imposition of specific forms of legality by ignoring the jurisdictional separation they themselves had put in place. Examining three cases within the purview of guardianship will help clarify just how pervasive was the attention colonial officials accorded to Islamic procedural law. The cases I describe are particularly instructive because they vividly illustrate how both Russian military bureaucrats and Central Asians attended to the process of constructing a colonial legality, thereby shaping the field of *sharīʿa* according to notions of justice that were alien to the tradition of Islamic law.

RUSSIAN CENTRAL ASIA AND GLOBAL LEGAL REGIMES

The historiography of law and empire in the age of colonialism is increasingly becoming a historiography of global legal regimes. This analytical shift consists of viewing jurisdictional conflicts as constitutive of a trans-imperial legal order; it also connects detailed histories of legal encounters in the colonies to an enhanced vision of world history and international law, one that is necessarily more fluid and fractured than structured around institutional patterns.[35]

[34] This goes against the presumption that locals filed their grievances in colonial courts rather than in the bureaucratic apparatus of the colony. See Merry, "Colonial Law and Its Uncertainties," 1068.

[35] Benton, *Law and Colonial Cultures*, 3.

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One of the recurring ideas within this approach is that empires established layers and hierarchies of jurisdiction in response to increasing situations of tension in their colonies. It thus appears that the colonial legal systems did not simply reflect an assertive imperial project to impose a new set of institutions in areas of conquest. The tendency now is to instead view empires asserting "greater legal hegemony"[36] as the result of the intensification of jurisdictional politics involving both the imperial governments and their colonial subjects: the jockeying for jurisdiction over colonial disputes pushed the hierarchies of power to compete, while the institutional arrangements of the state offered a forum within which colonial subjects could pursue claims and achieve purposes of their own.[37]

Lauren Benton claims, and rightly so, that jurisdictional politics is constitutive of colonial cultures[38] since, in adopting specific strategies and profiting from the legal services provided by the state, colonial subjects reinforced the cultural predicaments of imperial governments.[39] This argument is pushed to extreme consequences when one observes, as Benton does, that the creation of specific institutional arrangements like the constitution of native courts or the application of the *terra nullius* doctrine "responded to the conditions and peculiar conflicts surrounding legal administration in the colonies."[40]

This approach reminds historians of the ostensibly cohesive character of imperial legal cultures, which is expressed in political theories and a juristic literature often detached from the dispensation of justice on the ground. Pamphlets, feuilletons, and statutory laws can fail to reveal the institutional fractures of empires, which more often become visible in day-to-day legal *practice*. Favoring the extension of property rights might be a rewarding thing to do in the metropoles, but it could be difficult to reconcile with the oppressive character of economic exploitation in the colonies. This approach calls for greater care in interpreting stories from the colonies, since they may not harmonize with what philosophers, lawmakers, and politicians advocated as the best for their empires. Certainly there can be a degree of "echoing" between the colony and the metropole, but imperial regimes are just as often characterized by an absence of communication between their different layers of administration. This approach should lead us to consider more critically the project of "governmentality" that supposedly guided the actions of colonial officials.

Only when looking at the practice of law across multiple imperial polities can we single out patterns of institutional arrangements that we might otherwise misunderstand as culturally exceptional. Here Benton's work is particularly

[36] Lauren Benton, "Law and Empire in Global Perspective: Introduction," *American Historical Review* (Oct. 2012): 1092–100, here 1094.
[37] Benton, *Law and Colonial Cultures*, 3.
[38] Ibid., 13.
[39] Ibid., 148–49.
[40] Ibid., 168.

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instructive because she urges students of colonialism to not only look for similar policies enacted by imperial governments, but also to remember that, "Patterns of political reordering inside polities correspond to efforts by emergent states … to achieve recognition as legitimate international actors."[41] Benton thus points to an international context in which imperial polities not only competed for power but also cited each other's legal practices to justify their own actions. The microhistories of jurisdictional politics in the colonies become more understandable if instead of keeping empires as fixed points of reference we try instead to follow the variable geometries of global history.

But is this interpretation more suggestive than conclusive? Does it potentially create more misconceptions than it claims to debunk? It is one thing to say that in the colonies "the rule of law" was performed out of necessity and through trial-and-error rather than according to a grand plan designed in the metropole;[42] it is quite another to assign agency solely to those indigenous elites who appear to have been the only people who favored (and had vested interests in) the jurisdictional arrangements of the colonies. One is reminded of cases such as Lagos under British rule, when the colonial authorities rejected calls for the formal recognition of Islamic courts.[43] In 1894, the British in Nigeria adopted the pragmatic expedient of avoiding any engagement with Islamic law courts. A few years later, in 1912, Muslim *originaires* in Kayes and Medine had to face a decree that made Africans subject to customary law courts, and thereby deprived them of the right to take their civil matters to *qadis*.[44] In both Lagos and Mali, formal denials of recognition to bodies of law were statements of institutional hegemony, suggesting that colonial polities could react to procedural ambiguities by eliminating subordinate jurisdictions instead of securing their rights.[45]

I am equally hesitant to view patterned sets of behavior in the colonies in light of the transfer of administrative knowledge from one empire to another. It is true that in almost every Muslim region under colonial rule Western officials referred to specific manuals of Islamic law available in translation. A case in point is provided by the *Mukhtasar* of Khalil ibn Ishaq, a juristic compendium of the Maliki legal doctrine followed by the majority of Muslim communities in the Maghreb (Libya and Tunisia) and in Sub-Saharan Africa (Mali and

[41] Benton, "Law and Empire," 1098.

[42] Benton, *Law and Colonial Cultures*, 168; Comaroff, "Colonialism, Culture, and the Law," 305–14.

[43] Abdul-Fatah 'Kola Makinde and Philip Ostien, "Legal Pluralism in Colonial Lagos: The 1894 Petition of the Lagos Muslims to Their British Colonial Masters," *Die Welt des Islams* 52 (2012): 51–68.

[44] Rebecca Shereikis, "From Law to Custom: The Shifting Legal Status of Muslim *Originaires* in Kayes and Medine, 1903–13," *Journal of African Studies* 42 (2001): 261–83.

[45] The fate of *qadis* in Punjab under British rule is another case in point; see Robert Ivermee, "*Shari'at* and Muslim Community in Colonial Punjab, 1865–1885," *Modern Asian Studies* 47, 5 (2013): 1–28.

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Mauritania). From the 1850s onward, the French produced various annotated translations of the *Mukhtasar*, which were employed several decades later by the Italian Court of Appeals in Libya when ruling on cases of Muslim personal status law; the French translation of the *Mukhtasar* later became an official legal source also in Tripolitania under Italian rule.[46] That French justices shared the translations of this legal manual with their Italian fellows does not imply that on matters of jurisprudence the two colonial polities proceeded along similar patterns.

By contrast, for empires and colonial polities the project of gathering information within their own administrative borders amounted to more than simply following the footsteps of other international actors.[47] In addition, bureaucrats and the like often referred to authoritative precedents in order to acquire preposterously some legitimacy in the eyes of their superiors or in public opinion. That Russians, for instance, translated the Islamic legal manual which British officials had chosen as a juristic reference for hearing cases involving Muslims in India—the *al-Hidāya*[48]—does not prove that Russians ever used this primer, or its translation,[49] for judicial review. In such a fragmented picture of colonial legal politics, where causal relations are difficult to establish, it remains unclear whether the promotion of one manual affected the output of Islamic law courts[50] or simply opened up new possibilities to colonial officials.[51] To think in terms of global regimes may simply add confusion to a picture where local juristic practices are still far from having been clarified.[52]

[46] Florence Renucci, "Le juge et la connaissance du droit indigène. Eléments de comparaison entre l'Algérie et la Libye aux premiers temps de la colonisation," in B. Durand and E. Gasparini, eds., *Le juge et l'Outremer, tome III: Médée ou les impératifs du choix* (Lille: CHJ éditeur, 2007), 211–26.

[47] Claudia Gazzini, "When Jurisprudence Becomes Law: How Italian Colonial Judges in Libya Turned Islamic Law and Customary Practice into Binding Legal Precedent," *Journal of the Economic and Social History of the Orient* 55, 4–5 (2012): 746–70, here 749.

[48] On the promotion of this particular text for the codification of Anglo-Muhammadan Law, see Robert Travers, *Ideology and Empire in Eighteenth-Century India: The British Bengal* (Cambridge: Cambridge University Press, 2007), 123; Elisa Giunchi, "The Reinvention of *Sharīʿa* under the British Raj: In Search of Authenticity and Certainty," *Journal of Asian Studies* 69, 4 (2010): 1119–42.

[49] The Russian rendering of the *al-Hidāya* was based on Charles Hamilton's 1791 English translation; see *Khidaia: Kommentarii musul'manskogo prava*, t. I–IV. Perevod s angliiskogo pod redaktsi I.I. Grodekova (Tashkent: Tipo-lit. S.I. Lakhtina, 1893).

[50] Ghislaine Lydon, "Droit islamique et droits de la femme d'après les registres du Tribunal Musulman de Ndar (Saint-Louis du Sénégal)," *Canadian Journal of African Studies* 41, 2 (2007): 289–307, here 298.

[51] For the Orientalist Orest Shkapskii, who was illiterate in Central Asian languages, the Russian translation of al-*Hidāya* no doubt proved helpful to compile a treatise on forms of land tenure in Khorezm and to address legal issues as complex as "lease" and "rent." See his *Amu-dar'inskie ocherki: K agrarnomu voprosu na nizhnei amu-Dar'e* (Tashkent: Tipo-Litografiia V. M. Il'ina, 1900), 122, 238, 241–42, 245, 253–54.

[52] Nineteenth-century Central Asian jurists did not utilize *al-Hidāya* to deliver legal opinions on every point of law. It would be thus helpful to clarify in which cases muftis referred to *al-Hidāya* in order to situate this text within the broader Ḥanafī literature.

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The history of nineteenth-century Central Asia, one of the most populous colonies of the Russian Empire, seems to me particularly resistant to any such attempt to project it into a history of global legal regimes. When the Russians conquered the Qazaq steppe, they championed a doctrine of land tenure that was similar to the *terra nullius* regime; like the British did in Australia, tsarist authorities claimed that the pastoral groups inhabiting the steppe did not own the land in which they lived. Though this doctrine was known to rely on a flimsy basis, it proved crucial in helping to reform the patterns of land tenure among the Qazaqs and undermine a class of landowners. In designing a doctrine that conferred upon Qazaqs and pastoral groups in general only usufruct rights,[53] tsarist officials acted independently by creating their own ethnographic and administrative knowledge rather than by tapping into other colonial polities.

Neither did the land law that tsarist officials introduced in the settled regions of Russian Central Asia refer to juristic literature circulating within the networks of the colonial legal regimes. The statutory laws that nominally secured peasants' usufruct rights alone were the product of homegrown Russian Orientalism. What constituted the informational basis of the officials in power in Turkestan was not the translation of the Ottoman Code (*Mejelle*), or the handbooks penned by German Orientalists,[54] but rather a selective reading of Islamic juristic literature and information gathered *in situ* from individuals acquainted with the administrative practices of the khanates.[55]

The jurisdictional layering that the Russians introduced among settled communities in Muslim Central Asia by confirming the office of *qadi* and re-titling it as "native judge" was not imported from French Algeria, which

[53] *Polozhenie ob upravlenii v stepnykh oblastiakh*, in I. I. Kraft, *Sbornik uzakonenii o kirgizakh stepnykh oblastei* (Orenburg: Tipo-litografiia P. N. Zharipova, 1898), 103, 108 (articles 119–20, 125); *Materialy po kirgizskomu zemlepol'zovaniiu: Syr-Dar'inskaia oblast': Aulieatinskii uezd* (Tashkent: Tipo-Litografiia V. M. Il'ina, 1915), 54–55; *Materialy po kirgizskomu zemlepol'zovaniiu raiona reki Chu i nizov'ev reki Talasa Cherniaevskogo i Aulieatinskogo uezdov Syr-Dar'inskoi oblasti* (Tashkent: Tipo-Litografiia V.M. Il'ina, 1915), 100. See also Ian W. Campbell, "Settlement Promoted, Settlement Contested: The Shcherbina Expedition of 1896–1903," *Central Asian Survey* 30, 3–4 (2011): 423–36, here 425.

[54] Ekaterina Pravilova, "The Property of Empire: Islamic Law and Russian Agrarian Policy in Transcaucasia and Turkestan," *Kritika: Explorations in Russian and Eurasian History* 12, 2 (2011): 353–86, here 361–66.

[55] Russian statutory laws refer to the land that belonged to the former Muslim principalities of Central Asia as *amliak*-land, where *amliak* is a calque from *amlāk*, a term borrowed from the administrative jargon of the Bukharan Emirate and used to denote "state land." See Florian Schwarz, "Contested Grounds: Ambiguities and Disputes over the Legal and Fiscal Status of Land in the Manghit Emirate of Bukhara," *Central Asian Survey* 29 (2010): 33–42, here 38. Had the officials who drafted the statute had in mind the Ottoman *Mejelle*, they would have employed other terms such as *miri* or *arazi-i memleket*. See Martha Mundy and Richard Saumarez Smith, *Governing Property, Making the Modern State: Law, Administration and Production in Ottoman Syria* (London: I. B. Tauris, 2007), passim.

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they claimed to be closely monitoring.[56] It was instead an institutional arrangement deep-seated in Russian administrative tradition, which was first tested in Crimea and later adopted in the Caucasus.[57] Nor did tsarist authorities comply with any of the requests that Central Asians addressed to them on matters of indigenous legal institutions. On the contrary, Russian officials sought the juristic support of the muftis nearly every time they sought to introduce an institutional innovation, and they usually received it.[58]

If the global history of law leads nineteenth-century Central Asia off on a tangent, we may find the imperial background in which the history of the region is usually accommodated no more reliable.

THE COLONY AND THE IMPERIAL RIGHTS REGIME

Though the question of legal diversity has long preoccupied legal historians and students of colonial history, it is only fairly recently that people have begun to direct their attention to the legal history of the peripheries of the Russian Empire and, most notably, its colonies.[59] Insofar as the scholarship on Central Asia is concerned, only a very few studies are available, and their accounts of the Russian imperial project in the field of indigenous laws yoke together stories of erratic and cautious accommodation with instances of gradual impact. Robert Crews sees in the Russian administration of Islamic law a seeking out of "continuities with earlier practice"[60] and ways to avoid "introducing institutional innovations that might provoke Muslim resistance."[61] He argues that Russians emulated their Muslim predecessors, the khans, in their function as "arbiter of religious disputes."[62]

Though correct in its outlines, this interpretation obscures a number of important discontinuities with precolonial legal practices within a narrative of static and benevolent inclusion. In particular, Crews overlooks the fact

[56] Paul Werth, "Changing Conceptions of Difference, Assimilation, and Faith in the Volga-Kama Region, 1740–1870," in J. Burbank, M. von Hagen, and A. Remnev, eds., *Russian Empire: Space, People, Power, 1700–1930*, (Bloomington: Indiana University Press, 2007), 178.

[57] N. Dingel'shtedt, "Zametki. Sudebnoe preobrazovanie v Turkestane," *Zhurnal grazhdanskogo i ugolovnogo prava* 9 (1892): 1–75, here 5.

[58] See, for example, the *fatwā* issued by the Tashkent muftis in 1868, which backed the Russian statutory laws changing the procedures for appointing *qadis*. The text has been discussed in Sartori, "Judicial Elections," 85.

[59] Virginia Martin, *Law and Custom in the Steppe: The Kazakhs of the Middle Horde and Russian Colonialism* (Richmond, UK: Curzon, 2001); V. O. Bobrovnikov, *Musuĺmane Severnogo Kavkaza: Obychai, pravo, nasilie* (Moscow: Vostochnaia literatura, 2002); Austin Jersild, *Orientalism and Empire: North Caucasus Mountain Peoples and the Georgian Frontier* (Montreal: McGill-Queen's Press, 2002); Michael Kemper, *Herrschaft, Recht und Islam in Daghestan: Von den Khanaten und Gemeindebünden zum ǧihād-Staat* (Wiesbaden: Reichert, 2005); Robert D. Crews, *For Prophet and Tsar: Islam and Empire in Russia and Central Asia* (Cambridge: Harvard University Press, 2006).

[60] Crews, *For Prophet and Tsar*, 273.

[61] Ibid., 258.

[62] Ibid., 259.

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that Russians did not quite think like the khans, and that the interactions between Russian colonial authorities and their subjects were premised on the assumption that the legal system that existed prior to the conquest was irremediably corrupt. This premise clearly influenced the idiom in which locals expressed their ideas of justice, as becomes evident especially if one considers that exchanges between Central Asians and Russians could not replicate the same discursive patterns in which communications between Muslim principalities and local communities had taken place. Besides a cohort of translators, who were presumably more familiar with Russian than Islamic chancellery practices, Central Asians could now directly address the authorities without following that heavily codified notarial etiquette employed by the scribes in the old days of the khans. Copying templates for warrants, deeds, and letters—an activity integral to the preservation and transmission of knowledge in the madrasa—engraved the language of *munshī*s (scribes) with formulae and stock-phrases that kept communication between the khan and his subjects highly formalized and laconic. Such conventionalized literary practices were less appropriate under the tsarist administration, whose information-gatherers were eager for detail and color.[63] New scripts and tropes were thus provided, which made it easier for locals to cater to Russians' distaste for indigenous forms of legalism. In addition, locals could now hire Russian lawyers, who were conversant in imperial laws.

Indigenous calls for the application of imperial laws thus became detrimental to the traditional institution of Islam, the annulment of charitable endowments together with the circumvention of the Islamic law of inheritance pursued by the natives being glaring cases in point. Despite what Crews says, Muslims seem to have seen the Russian administration less as a "House of Islam" than as a sorry set of individuals to manipulate as best they could. As I hope to show, furthermore, Russians did not replace the khans and assume the responsibilities of justice simply to preserve the institutional setting they found; they did so because it allowed them to predicate their views on Muslim justice and thus shape the way that Muslims understood legality in general.

Alexander Morrison, by contrast, has put greater emphasis on the reform of the Muslim judiciary and how this intervention sparked litigiousness among local communities. Morrison situates his account of this reform within a broader institutional picture of the colony populated by state representatives voicing discontent with *sharīʿa* courts and recommending that their system be dismantled altogether. By so doing, he seeks to show that in Central Asia

[63] This opens up interesting parallels with British India, where "we do not have a simple recurrence of older forms of address; instead, we have a palimpsest of experiments"; Laura Bear, *Lines of the Nation: Indian Railway Workers, Bureaucracy, and the Intimate Historical Self* (New York: Columbia University Press, 2007), 116.

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the military ruled with a healthy dose of pragmatism, and that the Russians thus ended up retaining even those legal systems that they profoundly disliked. Characterizing the policy adopted by Russians in Central Asia, including matters of Islamic law, Morrison speaks of "inadvertently benevolent neglect."[64] This interpretation, too, calls for a corrective. It is true that in various realms of Islamic legal practice, from specious casuistry to routine notary practices, little change may be immediately visible. But a colonial project to transform Islamic law can surely be seen to have been in place when, for instance, Russians substituted legal institutions populated by *qadis*, trustees, and bailiffs with "native courts" in which Muslim judges operated either alone or deprived of the crucial contribution of other figures of mediation. If prior to the conquest *sharīʿa* courts were embedded in an institutional setting—the chancellery (*dīwān*) and the offices of the trustees (*yasawulbāshīs*, *amīns*, etc.)—that protected *sharīʿa*, this was no longer the case under Russian rule, where *qadis* and other legal experts found themselves spending a considerable amount of their time in dodging malicious and often unfounded accusations of bribery and malpractice.[65]

A strikingly different picture emerges from the magisterial work of Virginia Martin on customary law among the nomads of the steppe. Martin's main assumption is that Russian lawmakers and administrators were enthusiastic supporters of the colonial tenet of the "rule of law," who believed that the creation of "civic-mindedness" (*grazhdanstvennost'*)[66] among the indigenous peoples of the empire rested on the *rapprochement* (*sblizhenie*)[67] of an inferior body of law locally in use—"custom"—with the empire's superior legal system—"*the* law." Martin accords particular attention to the civilizing goal of Russians and the transformation of local legal practices, which they thought should be achieved without using force to introduce imperial law. Russian lawmakers imagined that once they came into contact with the tsarist legal system, the people in their colonies would one day abandon their primitive ways and embrace the imperial law. Besides stressing the imperial idealistic call to rule "by example," Martin also argues that Russians actually promoted a change in the application of customary law as they involved Central Asians in codifying their mores. To set customary law down in writing implied changing much of their social significance, she argues. But there is a problem with Martin's argument, too. In emphasizing the much-trumpeted doctrine of "rule by example" and according attention solely to the process of legal codification, she overlooks how Russians actually interfered directly in the arbitration of

[64] Alexander S. Morrison, *Russian Rule in Samarkand 1868–1910: A Comparison with British India* (Oxford: Oxford University Press, 2008), 291.

[65] Paolo Sartori, "Authorized Lies: Colonial Agency and Legal Hybrids in Tashkent, c. 1881–1893," *Journal of the Economic and Social History of the Orient* 55, 4–5 (2012): 688–717.

[66] Martin, *Law and Custom*, 4, 43; see also Werth, "Changing Conceptions," 170, 184–85.

[67] On the concept of *sblizhenie*, see Morrison, *Russian Rule*, 35, 98, 284.

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disputes among the locals, thereby affirming their own views on justice. To date there is no clear attestation of how such codes were employed in judicial proceedings and how they may have actually changed the daily practices of the courtroom.[68]

Contradictions begin to emerge when one couples narratives of continuities and benevolent neglect with Martin's claim that changes, though slow, were to be expected in the field of procedural laws as the empire was putting pressure for legal change. Jane Burbank, by contrast, blends the antinomies of conciliatory compromises and profound transformation in a narrative of inclusive state legal pluralism. Her synthesis advocates the image of a polity—the Muscovite autocracy—which spread its wings over Eurasia and provided ethnic groups and religious communities with spaces of differentiated jurisprudence. In her words,

> The Russian imperial rights' regime, founded on the state's assignment of rights and duties to differentiated collectivities, created conditions for including even lowly subjects in basic practices of governance. […] Russia's system of ascribed collective rights provided imperial subjects with a legal framework of connection to the polity, empowered them to engage in basic social functions under the protection of the law, and enabled them to decide some matters of local but significant importance with the sanction of the state.[69]

The notion around which Burbank's thesis of differentiated jurisprudence is squarely centered is the concept of "custom" (*obychai*)—a residual category for anything legal other than *the law* (*zakon*) and a term that is ubiquitous in the vocabulary of statutory laws of Russia.[70] The assumption is that the official recognition of customary laws (in the Caucasus, Siberia and Central Asia) secured the existence of a separate collective legal field. In the Russian imperial vision of a house for all the people who had their own customs, collectives of differentiated jurisprudence could administer their lives since they were guarded by the all-encompassing reach of the autocracy. As it seems, this was the great advantage in becoming a citizen of the Russian Empire after all: as soon as the state associated a subject with labels of identification such as estate (*soslovie*) and confession, this person would be enshrined into one category of the citizenship-grid and thereby attached to one jurisprudence collective. Russian peasants were expected to bring their grievances before the township courts, so the Siberian old-residents enjoyed rights of landholding

[68] While it is true that Qazaqs, following a request of the Russians, produced summaries of their rulings so that these could serve as legal precedents, there is no evidence to date that they resorted to these codes when applying customary law; Paolo Sartori, "Murder in Manghishlaq: Notes on an Instance of Application of Qazaq Customary Law in Khiva," *Der Islam* 88, 2 (2012): 217–57.

[69] Burbank, "An Imperial Rights Regime," 400.

[70] A revealing parallel can be drawn here by considering the French treatment of customary law in North Africa. See Judith Scheele, "A Taste for Law: Rule Making in Kabylia (Algeria)," *Comparative Studies in Society and History* 50, 4 (2008): 895–919.

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according to their customs, and Muslims in the Caucasus and Central Asia were left to refer to the *qadis*.

The history of the Russian Empire shows that its formation as a multiple legal regime owes to a good dose of *Realpolitik* that guided the expansion of the polity to the south and to the east. Inclusion was a *condicio sine qua non* for officers and governors who aimed to establish their rule over non-Orthodox peoples. To allow the local peoples to care for their own governance and thereby affirm established legal practices was certainly instrumental in asserting power, extracting revenues, and keeping the distant outback relatively peaceful.

In what remains of this paper I target certain aspects of Burbank's argument. I contend that this imperial policy was only temporarily applied in Russian Central Asia. This appears to be so if we examine how the state waddled progressively into the realm of Islamic law. There too, it was obliged to sponsor a regime of legal pluralism. The judicial system was regulated by statutory laws that reflected confessional distinctions: Russians were to follow the general laws of the empire, the indigenous settled population was expected to access the legal services provided by *sharīʿa* courts, and customary law courts were deemed competent to hear cases among the nomads.

However, Russians did not just endow Muslims with "self-justice" (*samoupravlenie*). The entire history of the colonization of Central Asia is in fact punctuated by official voices calling for intervention and reforms. The apex of this trend was reached in 1914 when the State Counselor Nenarokomov submitted a project for the disbandment of the native courts, proposing that *sharīʿa* courts be replaced by justices of the peace. Back then assimilation (*assimiliatsiia*) was the buzzword for those Russians officials who were unhappy with a pluralistic legal regime.[71]

I want now to draw attention to some of those expressive practices of legalism that show how Russian bureaucracy dealt with Islamic law and tried to change its course of action. What I will emphasize here is that there were two levels of colonial intervention in the realm of Islamic law in Russian Central Asia. One was imposed *ex officio*, you might say: and it introduced the first set of changes at the institutional and jurisdictional levels. Indeed, Russian policy established an asymmetry between the laws of the empire and Islamic law, first by defining the boundaries of application of *sharīʿa*. In this fashion, statutory laws enacted in Turkestan proclaimed that the imperial law courts had exclusive jurisdiction over a wide array of penal and civil cases involving the Muslim population. This principally consisted of crimes against state authorities, Russians, or the Christian faith. But the imperial law courts were also expected to hear cases against the individual—namely

[71] *Proekt uprazdneniia narodnykh sudov v Turkestanskom krae*, 1914, TsGARUz, f. I-36, op. 1, d. 6009, l. 166ob.

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murder, abduction, and rape—and to deal with crimes against the property of individuals—that is, cases of usurpation, arson, raids and robbery—and damaging state property and forgery of legal documents. To sum up, these regulations reduced dramatically the range of authority of *sharīʿa* courts, since the latter were to hear only matters of personal status law and a few cases of penal law such as theft, assault, and cursing. However, it should be emphasized that the issue of jurisdiction became the more important as Muslims learned to operate within different legal arenas and to insist that their cases be heard according to the imperial law. This also happened with cases of personal status law, such as with matters of inheritance, and with disputes concerning charitable endowment.

Russian intervention in the realm of Islamic law did not limit itself to truncating the jurisdiction of Muslim judges; colonial authorities also tried to change *sharīʿa* at the level of procedural laws by stepping directly into the adjudication of disputes. One crucial such innovation saw the colonizers introduce what we might term a system of judicial review. By the provision of this new system, Muslims were entitled to appeal judgments of *sharīʿa* courts by addressing their grievances to the district chancellery (*uezdnoe upravlenie*). An assembly of Muslim jurists would review the judgments, but the process of revision would be strictly overseen by Russian bureaucrats. It is in the practice of legal commentary, paper-pushing between chancelleries, and exercising forensic skepticism that Russians sought to change the meanings of right or wrong according to Islamic law.

To try to bring about substantial changes in the administration of justice meant also to influence the views that Muslims had of Islamic law. This was an enterprise in which Russian authorities certainly distinguished themselves: if ever they accomplished anything it was to convince Muslims that they could spell out their ideas about justice and injustice. Russians substantially pushed Muslims to do so by letting the local populace know that their stories of *qadis*' malpractices and courtrooms' misconduct did matter to the colonial government. Russians took seriously any claim of injustice coming from the Muslims in hope that an appeal would provide evidence to undermine the integrity of Islamic law.

Reviewing and weighing the activities of Islamic law courts was a matter more of close bureaucratic practice than of theorizing from afar. Nor did such practices always reflect a consistent or clear vision as to what constituted good and bad *sharīʿa*. Divergences and frictions are therefore visible within the layers of Turkestan's colonial administration, especially with regard to the future of Islamic law in the region. However, the practice of reviewing *qadis*' judgments inevitably led people to consider the possibility of revoking them, and of questioning the native judiciary's competence to adjudicate. It was while reviewing *qadis*' activity that the two main bureaucratic apparatuses of colonial administration went head to head: the district chancellery sought to

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affect directly the activity of the *sharīʿa* courts, while the provincial chancellery (*oblastnoe upravlenie*) usually defended the courts' autonomy. The winner was usually the latter, and its head the military governor.

Substantial hesitation among officials prevented the final disbandment of *sharīʿa* courts, which a few military governors (Syr-Darya and Ferghana) considered it too soon to attempt (*prezhdevremenno*), and still others (Semireche and Samarkand) loudly advocated it. Even officials who avoided supporting a final closure of *sharīʿa* courts favored radical reforms: they proposed that military (*okrug*) courts be made a judicial level of second instance for appeals involving Muslim disputants.[72] The governors were probably aware that when past military justices had reviewed Muslims' appeals they had overturned 95 percent of *qadis*' judgments.[73] This proposal signaled that the two governors held in great respect the experience that colonial officials had acquired while reviewing activities of Islamic law courts until 1913. In their view, the knowledge that the colonial bureaucrats had accumulated about *sharīʿa* should not have been dispersed.

To substantiate my argument, I will examine a few cases in which Russian officials had to weigh cases regarding the guardianship of minors (*opekunstvo*). It might be objected that the question of guardianship was of so little consequence to the administration of colonial Turkestan as to be irrelevant to our larger subject. But that it is not the case. First, guardianship became a matter of interest for Russian legislators in Turkestan as early as 1886[74] since it related to the law of inheritance that represented the bulk of *qadis*' activity.[75] Secondly, the issue of guardianship occupied a prominent position in the hierarchy of judicial reforms to be introduced in the region. Senator Count K. K. Pahlen, who produced a renowned report on the state of affairs of Turkestan in 1908, proposed that the matters of guardianship should be either expunged from the jurisdiction of the *qadis* or transferred *in toto* to the Russian justices of the peace.[76]

ON GUARDIANSHIP

In November of 1891, the Tashkent city commandant, Colonel of Artillery Stepan Romanovich Putintsev, received an appeal from a widow named

[72] TsGARUz f. I-36, op. 1, d. 6009, ll. 163ob–164; 169ob.

[73] Morrison, *Russian Rule*, 269.

[74] See articles 252, 253, and 254 in the 1886 statutory laws: *Polozhenie ob upravlenii Turkestanskogo kraia*, repr. in M. G. Masevich, ed., *Materialy po istorii politicheskogo stroia Kazakhstana* (Alma-Ata: Izdatel'stvo Akademii Naukh Kazakhskoi SSR, 1976), 372. The articles were left unchanged in the revised version of the statutory laws that was published in 1901.

[75] Nil S. Lykoshin, "Kazii (Narodnye sud'i): Bytovoi ocherk osedlogo naseleniia Turkestana," in *Russkii Turkestan: Sbornik* 1. Prilozhenie k gazete "Russkii Turkestan" (Tashkent: Tipografiia "Russkii Turkestan," 1899), 51–52.

[76] *Otchet po revizii Turkestanskogo kraia po Vysochaishemu poveleniyu Senatorom Gofmeisterom Grafom K. K. Palenom: Narodnye Sudy Turkestanskogo Kraia* (St. Petersburg: Senatskaia Tipografiia, 1909), 31–32.

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Fāṭima Bībī asking for legal assistance. She wanted to recover the property of her underage children from a Muslim judge who had apparently seized their inherited wealth. The widow said that her various attempts to pursue her claim before a native courtroom had been fruitless, and that even the intervention of a proxy had not persuaded the *qadi* to give her the money. Acquiescing to her request for help, Putintsev instructed his assistant to deal with the case and to investigate whether there existed other analogous cases. We are here clearly at the beginning, at least in Tashkent, of the Russian bureaucratic experience when dealing with cases of guardianship of minors' property, in which money was kept in custody by Muslim judges. What I mean is that, in considering the appeal of Fāṭima Bībī, Putintsev might have sensed that the issue at stake had the makings of a Pandora's Box. For the previous almost twenty-five years, *qadis* had exercised full autonomy when overseeing cases of guardianship, and it was thus reasonable to expect that major instances of malpractices had occurred. This is why Putinstev turned to his assistant, Nil Sergeevich Lykoshin, who, significantly, was perhaps the best Orientalist at the service of the Russian Empire in Turkestan, and who the district chancellery held accountable for the Asian part of the city of Tashkent.[77]

Lykoshin discovered there had been four such cases and that all had involved a controversial figure of the colonial society named Muḥyī al-Dīn Khwāja, who was well known to Russian authorities. What Lykoshin found was that the *qadi* was keeping thousands of rubles for himself,[78] which he was neither handing out to guardians nor lending at a rate of interest. Attempting to clarify his position, the *qadi* explained that Islamic law seeks to safeguard the property of the minors and makes it obligatory for an Islamic judge to keep them in custody; to ensure that the property of the minors is not squandered, it should be either transferred to a reliable guardian or, if the guardian proves unreliable, confiscated by the *qadi*. Since it is not incumbent on the Islamic judge to lend the money of minors at interest, the *qadi* explained that, in keeping the money in his courtroom, he was acting according to Islamic law.[79] The judge also clarified that nowhere does the *sharīʿa* condemn the *qadi* who keeps the money in custody instead of lending it out at profit. The *qadi* argued he was safeguarding the minor's money, since their guardians had proved unreliable. He furthermore stated that he was doing so upon the request of the minors themselves, who had stood before him when he received the money.[80]

[77] See A. Morrison, "Sufism, Pan-Islamism and Information Panic: Nil Sergeevich Lykoshin and the Aftermath of the Andijan Uprising," *Past and Present* 214 (2012): 255–304, here 262–64.

[78] *Raport*, 19 May 1892, TsGARUz, f. I-36, op. 1, d. 3367, l. 8ob.

[79] Here the *qadi* showed compliance with the prescriptive rules of the khans. See the royal warrants for the appointment of *qadi*, which made it incumbent upon the judges to act as guardians of the wealth of minors (see note 2).

[80] This is clearly reflected in the deeds that sanctioned the position of the *qadi* vis-à-vis the minors. Such records clarify, for instance, that in acting in the capacity of guardian the *qadi* was

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Up to this point, the *qadi* had sought to explain his behavior as in accordance with the Islamic law of guardianship. He now changed tack, and referred to an unprecedented case of conflict between the *qadis*' jurisdiction and Russian statutory law. He reminded Putintsev that the 1886 statute signed by the Tsar said that the cases under the jurisdiction of the native courts should be heard according to Islamic law, and that no new regulation sanctioned that the property of the minors should be safeguarded according to the law of the empire (*zakūn*, Chaghatay for the Russian *zakon*).[81] The *qadi* seems to have been warning the Russians that they undertook a course of action that was purely bureaucratic in nature, and that they had no such competence as to interfere with *sharīʿa* matters.

There is another revealing detail in Muḥyī al-Dīn Khwāja's report to Putinstev. In an attempt to win the colonial official's approval, the *qadi* explained that in all four cases he had deposited the money in the bank (*ḥāżirda bānkagha qūyūlgāndūr*). This conduct no doubt marked a substantial deviation from established Islamic legal practices, but it was not done at Muḥyī al-Dīn Khwāja's initiative; instead, the *qadi* was following recommendations of Lykoshin, who repeatedly urged him to deposit minors' money in the state bank.[82] Most probably, the city commandant's assistant was helping the *qadi* avoid accusations of embezzlement: when a few months later Muḥyī al-Dīn Khwāja was made the subject of an official investigation, such deposits[83] proved crucial to showing that he was not culpable.[84]

After a few weeks, most probably spent considering the case, the Tashkent city commandant finally decided to find out what Islamic law said the native judges could and could not do in matters of guardianship. His idea was to check whether *qadis* could be made liable for embezzlement of minors' money according to *sharīʿa*, thereby avoiding the application of Russian law

allowed to seize the minors' money (*ba-wilāyat-i ʿāmma-yi khwud qābiż-i mablagh*). See TsGARUz, f. I-164, op. 1, d. 6, l. 60. Other records emphasize that the custody (Ar. *muḥāfaẓa*) of such money is among the prerogatives of the guardianship performed by the *qadi* (*mablagh-i madhkūr dar taṣarruf wa muḥāfiẓat-i qāżī-i madkūr barāy-i muḥāfiẓat ba-wilāyat al-qażā būd*). See TsGARUz, f. I-164, op. 1, d. 7, l. 10; see also TsGARUz, f. I-164, op. 1, d. 7, l. 17: this deed clarifies that the monies were kept at the disposal of the *qadi* in order to safeguard them (*ba-wilāyat-i qaẓā īstāda barāy-i jihat-i muḥāfiẓat*).

[81] Muḥyī al-Dīn Khwāja to Putintsev (in Chaghatay), 20 Jan. 1892, TsGARUz, f. I-36, op. 1, d. 3367, ll. 3–6.

[82] *4800 rub: Mukhitdin sdal v bank po prikazaniiu Kapitana Lykoshina*, General Office, Syr-Daria Provincial Government, *Zhurnal*, no. 482, 8 Oct. 1897, TsGARUz, f. I-17, op. 1, d. 5775, l. 53ob.

[83] On 26 January and 24 April of 1892, Muḥyī al-Dīn Khwāja entrusted, among other things, bank checks to Fāṭima Bībī and Fażīlat Bībī, respectively. On those occasions the women also discharged the *qadi* from any obligations regarding the minors' wealth: TsGARUz, f. I-164, op. 1, d. 7, ll. 48, 46.

[84] Ruling of the Tashkent *qadis*' assembly, 5 Oct. 1893, TsGARUz, f. I-164, op. 1, d. 23, l. 28.

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for cases which fell under the jurisdiction of the native courts. Putintsev thus solicited a legal opinion (*fatwā*) from a group of jurists:

I instruct the assembly in full to provide me with a list of *sharīʿa*-based rulings regarding the [desirability] of the courses of actions of native courts and guardians in dealing with the properties of minors. The legal opinion should include precise answers together with references to Islamic legal sources (*tochnye otvety s ukazaniiami na knigi Shariata*) to the following questions:

1. When a native judge appoints a guardian, can he require a guarantor from the guardian prior to the delivery of the inherited wealth? Or could not [the native judge] appoint a different person to whom to deliver the wealth without [the medium of] a guarantor, should the guardian fail to be a trustful person?
2. Can the native judge keep the custody of the inherited wealth even though he does not make it profitable for the minors? Or is [the native judge] obliged to increase the wealth by lending the money at interest?
3. Is it not proper to transfer the inherited wealth to the state bank, should it prove impossible to find a more profitable form of custody?
4. When a guardian is nominated, he or she disposes of the inherited wealth whereas the native judge is merely a supervisor of the guardian. Is that indeed so? Or, notwithstanding the appointment of the guardian, is the native judge the one and lone individual responsible for disposing of the [minor's] inheritance? Is the guardian who keeps for years the money belonging to the minors and who, at request of the native judge, returns it to the minors without any profit, liable to monetary sanction or punishment according to *sharīʿa*?

I instruct the assembly to find precise answers to these questions in the books of *sharīʿa* (*v knigakh shariata*) and provide them within a short time. If one of the native judges of the assembly cannot agree with the others, in that case he should provide through the representative of the assembly his own opinion together with the quotations from the books of *sharīʿa*.[85]

Putintsev was trying to do more here than simply increase his knowledge of Islamic law. The questions he posed were all formulated in such a way as to undermine the autonomy of the *qadis* regarding the guardianship of property. His queries to the jurists were malicious, tacitly suggesting to his addressees the opinion which they had to endorse—that is, after the appointment of a guardian, the *qadis* should not be entitled to oversee the property of the minors; if a reliable person cannot be appointed, then the money of minors should be put in the state bank. This is what Putinstev wanted, but he achieved his purposes only in part. The native jurists provided for an opinion clearly sympathetic to the question posed by the Russian officer, though they purposefully avoided addressing the specific issue regarding the permissibility of transferring the property of the minors to a bank. Reading the *fatwā* is instructive if we want to infer the general rules of conduct for *qadis* in their daily interactions with the guardians, but it is equally important for giving us a sense of how the local jurists positioned themselves in the dialogue with the colonial officer:

If a wealthy man dies and leaves minor as well as mature children among his heirs together with inheritance of various kinds such as money, goods, and immovable

[85] 18 Mar. 1892, TsGARUz, f. I-36, op. 1, d. 3373, ll. 20–21ob.

https://doi.org/10.1017/S0010417514000097 Published online by Cambridge University Press

properties, it is incumbent upon the *qadi* having jurisdiction on matters of guardianship to estimate the inheritance and draw a list of the available items. He should also appoint a guardian to the minor heirs before a number of people; [the guardian] should be a free, sane, and adult Muslim and a prosperous relative [of the heirs]. If the father prior to his death has not named a guardian, then [the *qadi*] should proceed to choose one. The *qadi* should then appoint a *mushrīf*, who is [a sort of] inspector (*nāẓir*) who oversees the activities of the guardian. The inheritance is further divided among the heirs and the guardian receives the share of the minor children; receipts [of delivery of property] are preventively notarized; the *mushrīf* should oversee the transactions involving the wealth of the minors and safeguard it. Everything pertaining to the activities of the guardian and the inspector should be notarized. Every six months or once a year the guardian is held accountable to the *qadi* who should question the inspector accordingly. Should the guardian be found to have committed a fraud, he should be removed and replaced. If the guardian squanders the property of the minor, [the *qadi*] should appoint a guarantor (*żāmin*). Whoever is appointed to the position of guardian—be he somebody named by the father prior to this death or by the *qadi* and thus called trustee (*amīn*), a man or a woman—he or she should take the share of the minor children in their hands after the division of the inheritance and make use of it to satisfy their needs of nutrition and clothing as well as to do the upkeep of [their] buildings. Every expense should be reported to the *qadi* and duly recorded. On the occasion of the division of the inheritance, the *qadi* should equally provide each heir with a register to record his/her share and how the guardian spends the money for the needs of the minors. […] According to *sharīʿa* the guardians enjoy the full disposal of the property of the minors [while they act to] the latter's advantage; the *qadis* should watch over said properties, but they should not keep them. The *qadis* can dispose of the wealth of a deceased person only if the latter's heirs are unknown until the appearance of an heir and if there is no guardian; however the preference is that the properties should be administered by a guardian.[86]

Though the jurists were not explicitly endorsing the idea of using the state bank for the money of minors, they clearly provided Putintsev with a statement explaining that *qadis* have no rights to keep in custody the money of minors. Putintsev could then proceed to ask that Muḥyī al-Dīn Khwāja be made subject to an official investigation so as to serve an example for the city's other Muslim judges (*dlia primera prochim narodnym sud'iam*). He needed the support of the military governor to have the *qadi* prosecuted. But Putintsev wanted to do more than just crack down on Muḥyī al-Dīn Khwāja; he sought to deprive *qadis* of their jurisdiction over cases of guardianship, and thereby allow the colonial administration to take over. He thus seized the occasion of reporting to the military governor to introduce his idea before the chancellery of the province. Obviously, he did so discreetly, by posing a question rather than stating an unsolicited opinion to his superiors: should the administration give native judges a free hand in operating according to Islamic law as sanctioned by statutory law (art. 212), or should they intervene (*vmeshavshich' v eto delo*) and sanction that the custody of the money be held

[86] This translation is based on the Chaghatay original of the *fatwā* (unstamped), TsGARUz, f. I-36, op. 1, d. 3367, l. 2, 7.

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according to the general rules of the empire, and thus be transferred to colonial officials?[87]

A few years later, in 1897, Āja Bībī Inogambaeva wrote to the Tashkent city commandant. Her letter did not find Putintsev, but a new official, Colonel Tvertinov. After her husband's death three years before, Āja Bībī and her three children inherited 200 rubles. The Muslim judge at that time appointed her to the office of guardian, and she lent out the money to two individuals at the yearly rate of 7.5 percent. For two years, the woman and her children found the agreement satisfactory. At the beginning of 1896 everything changed: a new man took over the position of *qadi* and the first thing he did was to take the money away from Āja Bībī's creditors. Over the following ten months the *qadi* gave her 75 rubles, equivalent to what she had gained in three months by lending her money to the two men. Āja Bībī wrote to the city commandant: "Because I found myself in dire straits I went and visited the *qadi* nearly every day: not only have I received nothing, but I do not even know where all my money is. I am concerned for the integrity of our sole and only source of income. Therefore, I dare to ask you to order the *qadi* to return my money with all due interest or else to place it in escrow at the state bank and to provide me with the due account book. I do not agree to leave my money at his disposal, since it is my last revenue."[88]

This appeal was followed by another three missives in which Āja Bībī laid out the same request: that the inherited wealth of her children be put in the state bank.[89] This argument shows convincingly that she was concerned exclusively with the integrity of her children's possessions, which the *qadi*'s behavior was endangering. Had she wanted to dispose of the money freely, she would not have suggested the inheritance be placed out of her reach. Her ultimate goal was to preserve the family's patrimony: "There are too many examples of inheritors," she wrote, "among the indigenous population who go around even without a shirt [to wear]."[90] Stories circulating in the city may have prompted her to suggest the money be put in a bank. Indeed, Āja Bībī was suggesting nothing new here: since 1892, the notion that the property of minors should be transferred to the banks had circulated in Tashkent,[91] and she knew that Russians were perfectly at ease with the idea.

Tvertinov could have hoped for nothing better: he forwarded her request to higher echelons of the colonial administration, and on 5 June 1897 the legislative board of the governorship-general (*obschee prisutstvie*) ruled that the

[87] Putintsev to the military governor, 19 May 1892, TsGARUz, f. I-36, op. 1, d. 3367, ll. 8–9.
[88] Āja Bībī to Tvertinov, 24 Dec. 1896, TsGARUz, f. I-17, op. 1, d. 6468, ll. 99–99ob.
[89] Āja Bībī to Tvertinov, TsGARUz, f. I-17, op. 1, d. 6468, l. 101–1ob (4 Jan. 1897), 103–103ob (24 Mar. 1897); 112 (17 Apr. 1897).
[90] TsGARUz, f. I-17, op. 1, d. 6468, l. 101–101ob.
[91] See three receipts for bank checks notarized before Tashkent *qadis* in 1892 and entrusted to three widows, in TsGARUz, f. I-164, op. 1, d. 7, ll. 46, 47, 48.

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native judges should transfer to the banks the property of the minors, should they be unable to appoint a suitable guardian of the property or lend the money at a profitable rate.[92] The board regarded as malevolent the established practice allowing *qadis* to retain the money due to guardians: "The native judges," the assembly held, "may slow the process of appointing a suitable guardian for their own greedy interests."[93] The colony's Russian bureaucrats were wading directly into matters of Islamic procedural law.[94]

In 1898, Nāẓira Bībī Sarimsakbaeva must have been one of the most prolific appellants to the chancellery of the Tashkent city commandant and the military governor of the Sir-Darya province. Six times she denounced the supposed malpractices of the *qadi* Muḥyī al-Dīn Khwāja regarding matters of guardianship. Her story was a common one: after the death of her husband Nāẓira Bībī was appointed guardian of her underage children, her daughter Anẓirat Bībī and the mentally disabled (*maʿtūh*) Hāshīm Jān. She was supposed to oversee the wealth they inherited from their deceased father, a considerable sum of more than 28,000 rubles. This sum was deposited in the Tashkent branch of the state bank in 1896. That same year Nāẓira Bībī's daughter Anẓirat Bībī married a certain Mullā ʿAbd al-Wahhāb Iunusbaev. But Anẓirat Bībī soon died and her estate had to be divided between her mother and her husband.

The two parties met half way and agreed that Iunusbaev was entitled to a share valued at 3,063 rubles. But transferring this money became a problem because the bank required the *qadi* issue a simple certificate to prove that Iunusbaev was entitled to a share from the estate guarded by Nāẓira Bībī. The judge, Muḥyī al-Dīn Khwāja, refused to issue the certificate. He was adamant that Nāẓira Bībī had failed to submit a report about her activity as guardian for the year 1897, and that he would issue no document until he received one. This was the event that triggered all of Nāẓira Bībī's complaints.

A Muslim judicial assembly assessed the conflict and decided that Muḥyī al-Dīn Khwāja must provide the certificate required, and Nāẓira Bībī the missing report. Though he gave the woman the documents she needed, the bank would not give her the money since the certificate she presented did not state from which share the sum should be given. Nāẓira Bībī's proxy, Karacharov, pleaded to the Tashkent city commandant to order Muḥyī al-Dīn Khwāja to amend the certificate. The *qadi* did craft a new document for Iunusbaev, but the commandant found it inappropriate. The Russian officer returned the paper to the Muslim judge with the request that he explains his ill-judged

[92] General Office, Syr-Daria Provincial Government, *Zhurnal*, no. 291, 14 June 1897, TsGARUz, f. I-17, op. 1, d. 6468, ll. 39–39ob.

[93] Ibid.

[94] In the year 1900, the *qadi* of the Kukcha district in Tashkent transferred minors' money to the state bank in twelve cases: TsGARUz, f. I-364, op. 1, d. 50, entries 22–31, 59, 79.

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behavior. Muḥyī al-Dīn Khwāja replied to the commandant that the document was sound since Iunusbaev alone was entitled to receive the money from the bank, whereas the wealth Nāẓira Bībī and her son had inherited had to remain in the bank account, at least so long as Nāẓira Bībī failed to provide an account of her activities as guardian for 1897.

Things were getting very complicated now, since the appeals of Nāẓira Bībī were producing their effects. She approached Russian authorities depicting the *qadi* as displaying personal hostility and inequitable conduct (*nepravil'nye deistviia*).[95] She hammered into the bureaucrats that her relations with the *qadi* were inimical (*vrazhdebnye otnosheniia*)[96] and that he was abusing his authority (*prevyshaet svoiu vlast'*).[97] Her appeals paid off when she was finally able to convince Lieutenant Aleksei Fok, assistant to the Tashkent city commandant. On two occasions Fok wrote to the state bank. The first time he argued the sum in question should be paid to Nāẓira Bībī simply because she was guardian of the minors' property held in the account. The second time Fok took a more legalistic tone, and referred to the 1897 regulation that said native judges should transfer the property of minors to the banks if they were unable to appoint a suitable guardian of the property or lend the money at a profitable rate. Wrote Fok, "This means that the guardian [Nāẓira Bībī] has all the right to take from the bank the minors' money; [this also means] that the refusal of the bank [to pay her] […] should be ignored."[98] Fok was urging the bank to pay out to Nāẓira Bībī and warning that a new refusal would lead him to complain directly to the governor-general.

The bank replied that Fok's behavior raised a conflict of jurisdiction:[99] the bank had ignored the new 1897 provision and simply relied on the statutory law, under which native judges oversaw all civil cases among the indigenous population. Were the *qadis* alone to deal with issues of guardianship, or not? And, the bank asked, did Fok's notifications have any legal bearing? Fok appeared to be siding with Nāẓira Bībī, and indeed he dared to write a note directly to the governor-general charging Muḥyī al-Dīn Khwāja with dismissing his orders to issue the required certification.

Fok also tried to draw the head of the colonial government's attention to the fact that Muḥyī al-Dīn Khwāja had already been investigated several times for malpractice, and that on one occasion the Tashkent city commandant had

[95] Nāẓira Bībī to the governor-general, 10 July 1898, TsGARUz, f. I-17, op. 1, d. 6366, l. 36ob.

[96] Nāẓira Bībī to the city commandant, 10 Apr. 1898, TsGARUz, f. I-17, op. 1, d. 6366, ll. 1, 5ob (15 May 1898), and 24ob (25 June 1898); Nāẓira Bībī to the military governor, 19 June 1898, TsGARUz, f. I-17, op. 1, d. 6366, l. 23; Nāẓira Bībī to the governor-general, 10 July 1898, TsGARUz, f. I-17, op. 1, d. 6366, l. 36.

[97] TsGARUz, f. I-17, op. 1, d. 6366, l. 5ob.

[98] City commandant to the state bank, 17 July 1898, TsGARUz, f. I-17, op. 1, d. 6366, ll. 30–30ob.

[99] State bank (Tashkent Section) to the military govenor, 24 July 1898, TsGARUz, f. I-17, op. 1, d. 6366, l. 28.

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requested that he be removed from his post. Fok also emphasized that witnesses had substantiated several accusations against the *qadi*, but that the provincial chancellery had dropped all the charges against him. In other words, Fok was claiming that, like him, the city chancellery was seeing things that the provincial chancellery had overlooked. Asked to report on the personal initiative he had taken, he explained that he was relying on the judgment of other native judges who agreed that Nāẓira Bībī was entitled the payment of the money. He was also expressing his personal view on the *qadi*, which he felt deserved the governor-general's attention, though it diverged substantially from the view of the provincial chancellery.

Though Fok was actively supported by his superior, the city commandant,[100] the pressure exerted by the provincial chancellery proved overwhelming. The bureaucrats of the Syr-Darya province felt Fok accused them of covering the misconduct of the *qadi* (*kak by ukryvaet bezzakonnie deistviia kaziia*) and dropping charges against the native judge in the face of clear evidence.[101] Fok was made liable for insubordination due to a turf war between two bureaucratic levels, one trying to bolster its authority by casting a shadow over the activities of the other.

However, there is a different story here, of continuity in the opinions expressed, and of measures the Tashkent city commandants and their assistants subsequently undertook to restrict the authority of the *qadis* in matters pertaining to the guardianship of minors' property. Indeed, it was Lykoshin, Putintsev's assistant, who suggested that minors' money be taken away from *qadis* and put in banks. This had happened in 1892 when Putintsev first instructed Lykoshin to inquire into the claims of embezzlement of minors' money, which involved Muḥyī al-Dīn Khwāja. Seven years later, it was Fok, the assistant of Tvertinov, who infringed on the activities of the *qadi* in matters of guardianship. He sided with Nāẓira Bībī in what he perceived as a case of *qadi* malpractice.

CONCLUSIONS

My concern here has been to show that neither the global nor the imperial approaches to the history of law and colonialism can do justice to the way both Islamic procedural law and Muslims' legal consciousness changed under tsarist rule in Russian Central Asia. To fully understand how the colonial subjects were brought into Russian legal hegemony we must instead focus on their narratives.

The first thing to emerge from the narratives I have presented here is the existence of an appellate system, the creativity of its bureaucratic apparatus,

[100] City commandant to the Syr-Darya Provincial Chancellery, 23 July 1898, TsGARUz, f. I-17, op. 1, d. 6366, l. 33–34ob.
[101] Ibid., 40ob.

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and the *Archivalien* it produced. The system was designed to draw the locals nearer to the Russians, and to tempt them to voice their worries to officers and clerks who did not reason according to Islamic law and were sometimes critical of local customs. This institutional arrangement was not designed to back an "Islamic orthodoxy,"[102] or to safeguard the boundaries between different collectivities of jurisprudence. The bureaucracy of the appellate system was arranged so as to produce a trail of precedents, instructive cases that would set benchmarks for future legalism. The system was premised on an asymmetry of power and rights between the colonial masters and their subjects, which differentiated the institutional landscape of Central Asia from other regions of the Russian Empire.[103]

The stories I have told here began and ended in Central Asia. They may well have resonated in the metropolis, but they were neither discussed at the center of the empire nor patterned on legal behavior from elsewhere around the globe. Certainly colonial administrators sometimes carried specific legal notions and cultural perceptions from place to place, and following them might reveal how specific notions about law crossed political boundaries within empires.[104] But one must be careful not to apply this interpretative framework ad hoc, ignoring the specificities of the material at hand. Though both can be dubbed "Russian Orientalists," Nil Seergevich Lykoshin does not mirror Mirza Alexander Kazem-Bek, for they had quite different pedigrees and fulfilled diametrically opposed functions. While Kazem-Bek was an academic deeply involved in the codification of Islamic law,[105] we have seen that Lykoshin was concerned with mundane bureaucratic activities and never tried to determine the boundaries of Islamic legal doctrines.

One might observe that the appellate system was an institutional feature of all the regimes that administered justice in Muslim-majority colonies, and that the picture presented here is typical of colonial forms of dominance. In other words, that the Russian Empire's institutional architecture created a "social contract" that allowed for peaceful coexistence in a multiethnic setting was hardly exceptional for colonial governments ruling Muslim communities. Conversely, that the Russians had to lie in wait for the juicy appeal or thrilling story in which to intervene betrays the nature of the bureaucratic regime's approach: it was organized so as to exercise leverage on appeals in order to enter the social

[102] Crews, *For Prophet and Tsar*, 308, 317.

[103] This argument has been made forcefully by Alexander S. Morrison, in "Metropole, Colony, and Imperial Citizenship in the Russian Empire," *Kritika: Explorations in Russian and Eurasian History* 13, 2 (2012): 327–64.

[104] Lauren Benton, "Colonizing Hawai`i and Colonizing Elsewhere: Toward a History of U.S. Imperial Law," *Law and Society Review* 38, 4 (2004): 835–41.

[105] Crews, *For Prophet and Tsar*, 178–86; David Schimmelpennick van der Oye, "Mirza Kazem-Bek and the Kazan School of Russian Orientology," *Comparative Studies of South Asia, Africa and the Middle East* 28, 3 (2008): 443–58.

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fabric of the region, to influence the mechanics of dispute resolutions, and ultimately to have the last word as to what was right or wrong.

But the important point is that such a system could function only if colonial subjects were ready to play along, internalize the discursive framework of their masters, and speak in a new legal idiom that the Russian officials would understand. In other words, Russians effectively achieved "greater legal hegemony" when Muslims inhabited the idiom of law in just the way Russians wanted them to.

Abstract: The history of Islamic law in Russian Central Asia defies many of the categorizations offered by both global and Russian imperial history. Recent studies of law in the age of colonialism have concluded that the attainment of legal hegemony in the colonies was consequent upon the initiative of indigenes that strategically manipulated jurisdictions; as colonial subjects increasingly involved the state in their private conflicts, they effectively pushed their masters to consolidate the institutional arrangements through which the state dispensed justice. Historians of the Russian Empire have reached a diametrically different conclusion: under tsarist rule, they argue, Muslims continued to access the services of the "native courts," which remained mostly untouched following Russia's southeastward expansion. As the empire promoted a policy of differentiated jurisprudence, Russians effectively safeguarded the integrity of Islamic law. I argue that both of the aforementioned approaches are confined to the level of institutional history, and thus fail to consider that the creation of colonial hegemony rested on ways in which colonial subjects understood law and viewed themselves as legal subjects. I show that Russians, from the outset of their rule in Central Asia, initiated Muslims into colonial forms of legality by overcoming the jurisdictional separation they had themselves put in place. In allowing the local population to file their grievances with the military bureaucracy, the Russians effectively pushed Central Asians to reify colonial notions of justice, and thereby distance themselves from the tradition of Islamic legal practices.

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