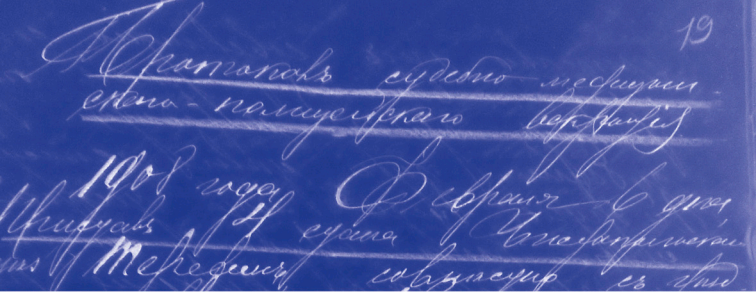

Stefan B. Kirmse (ed.)

One Law for All?

Western Models and Local Practices in (Post-) Imperial Contexts

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Contents

Introduction

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To avoid potential misunderstandings: "one law for all?" is not used as a political slogan in this book. Admittedly, along with related concepts in other languages, such as *idem ius omnibus* or *gleiches Recht für alle*, the phrase has been used to further a wide range of political agendas. Feminist, civil liberties and gay rights groups have utilized the slogan to call for greater equality; racist groups in North America have exploited it as a means to denounce the allegedly preferential treatment of minorities; and most recently, a secularist movement in the United Kingdom has adopted it as the title for its campaign against *shari'a* law, which it views as gaining influence among British Muslims.

In this book, the phrase is neither employed to advocate a political cause nor used to refer solely to legal equality (or the lack of it). Offering a point of entry into the study of legal debate and practice in imperial and post-imperial contexts, it served as a guiding research question for a conference hosted by the Department of East European History (which explains the strong representation of historians of Russia in this volume) at Humboldt University in the fall of 2010. It struck the organizers of the conference, on which this volume is based, as a useful tool to capture different aspects of legal reform in the nineteenth and early twentieth centuries: the drive for "modernization" and the importance of legal borrowing in various parts of the globe; claims to legal integration and greater equality; and the continuing specificity of legal practice and interpretation.

That said, to a degree "one law for all?" is a rhetorical question. Neither has legal homogenization ever materialized on a global scale, nor have most polities ever put "equal justice for all" into practice. Some forms of inequality persist even in today's liberal democracies. What is more, if the question is used to investigate the worldwide diffusion of "Western" law,

as in the sociological "world polity" approach (see, in particular, Boyle and Meyer 2002), it faces a twofold problem: analyses of diffusion tend to claim either the obvious or the impossible. If diffusion is taken to refer "only" to the imitation of Western law in different parts of the world, it is a commonplace. Mimesis is part of most legal reform processes. On the other hand, the spread and use of European legal norms and institutions is best not discussed in terms of a transfer of laws from one country to another. As critics of Watson's concept of "legal transplants" (1974) have argued, such transfer is impossible since the law consists not only of words but also of the culturally specific meanings attached to these words (Legrand 2001). As a result, any analysis of legal borrowing must not only take local adaptations and reinterpretations into account but also acknowledge the complete novelty of the resulting laws.

Regardless of these caveats, "one law for all" remains valid not only as an ideal for lawmakers. Thanks to its multi-dimensionality, it can also be a useful guide for inquiry. It directs our attention to the dynamic relationship between two competing, but often overlapping, trends that characterize most imperial and post-imperial spaces: legal integration, on the one hand, and the recognition and promotion of difference, on the other. The latter, at times, even included forms of legal segregation. Framing the inquiry in such terms allows an analysis of different steps towards, or away from, legal equality while revealing an array of local interactions with Western law(s).

The role of "Western" law must indeed be given careful consideration. A focus on East-West or North-South interaction admittedly runs the danger of being charged with "Eurocentrism"; and past inquiries into the role of Western legal blueprints and institutions in the South, such as the Yale Law and Modernization project in the early 1970s, have been rightly criticized for their developmental assumptions, that is, the idea that the adoption of "one type of law—that found in the West—[was] essential for economic, political and social development in the Third World" (Trubek 1972, 2; see also Trubek and Galanter 1974). This volume, by contrast, has no interest in extolling or denouncing any particular normative order. Yet, it suggests that a close consideration of interactions with Western laws is helpful—in fact, it is necessary—for a cross-cultural discussion of legal debate and practice in the nineteenth and early twentieth centuries.

In many parts of the globe, European legal reforms and institutions were among the most common points of reference at this time, as efforts to rationalize local judicial systems and make them more efficient gained momentum. Policies of centralization and the standardization of legal practice were meant to create both stability and a minimum of legal certainty. This frequently involved an overhaul of laws and legal institutions in accordance with European models, or at least a partial appropriation of such models. Legal reforms were usually designed and presented as part of the wider project of "modernization" and linked to related efforts in the political, economic and cultural spheres. Subscribing to the idea of universal, mono-linear progress and Europe's advanced position on this developmental path, many elites were convinced that non-European regions could learn from the experience of European nations—usually by following their lead, but sometimes also by avoiding previous mistakes.

To be fair, there was no such thing as a singular "Western model". The legal reality in Europe was a multitude of different and differently interpreted models. Thus, it is worth exploring which of these (and why!) Russian, Latin American, Afghan and other reformers decided to draw upon. What is more: how did local actors re-interpret and adapt these models to local circumstances? For reform movements throughout the South and East, "modernization" often consisted of a selective re-combination of European and local ideas and practices (in which the former were discussed less in terms of their "superiority" than in terms of their compatibility with the latter). The resulting, new legal systems could then be promoted as regional models. The new Turkish legal system of the mid-1920s, for example, though based on a mixture of Swiss, Italian, German and French influences (Örücü 1992), soon became a reference point in neighboring Muslim majority states. The question of borrowings and references in legal debate and practice, then, forms one key set of questions addressed in the chapters that follow.

This volume is also designed to examine the discrepancy between the claims of reformers, on the one hand, and the implementation and reception of legal change, on the other. It highlights the simultaneous development of growing uniformity in some areas of law, both within and between countries, and diversity in others. The promotion of universal legal norms in reform debates and the resulting legal institutions often bore

striking similarities whereas legal practice often remained idiosyncratic, not least because local actors behaved pragmatically. All cases discussed in this volume were legally "plural" in one way or another. Local administrators, judges and litigants could pursue their own agendas by drawing on different legal traditions at different times.

In short, this volume examines law as both debate and practice in the imperial and post-imperial world. Case studies from Latin America, Russia, Africa and East Asia explore the ways in which rulers, parliamentarians, jurists, mid-level bureaucrats and ordinary people talk about and actively use the law. Before introducing the individual chapters by identifying a number of common themes, I briefly discuss the role and meaning of law in (post-)imperial contexts and offer a short summary of the disciplinary background and premises on which this volume is based.

Exploring Law during and after Empire

For the regions and time period under scrutiny in this book, law was of utmost importance. Rulers and policy-makers took pains to refine their legal systems and individual laws in order to make their rule more secure and efficient. At times, they employed laws and law-enforcement agencies to keep opponents at bay and neutralize troublemakers. On a day-to-day basis, however, they put enormous resources, financial and social, into the administration of their polities and the maintenance of law and order. While many empires—and some post-imperial spaces—are portrayed as realms in which the law mattered very little or could be bent by rulers and bureaucrats at any time, many of them were, in fact, full of legal forums. Ordinary people interacted with the law in numerous ways. Instead of being confined to legislative chambers and courts, law was an everyday experience.

In order to capture this experience in its specific cultural and historical contexts, this volume views the law both from "above", as a set of individual laws or legal systems designed and debated by lawmakers, and from "below", as an array of manners in which the system was implemented, used, and experienced. The former perspective concentrates on