Introduction

In the summer of 1936 the Uzbek writer Abdulla Qahhor (1907–68) published a short story in the satirical journal *Mushtum* (“The Fist”).¹ Titled “The Thief,” the story recounts the behavior of the average Muslim population of Central Asia encapsulated in the pursuit of redress under tsarist rule. “The Thief” is a morality tale of an elderly little man who struggles against the colonial bureaucracy to recover his property, a stolen ox, and gets lost in the interstices of local power relations. The plot is simple. An old woman, “rising at dawn to knead dough,” inspects her household and finds that an ox has disappeared. Summoned by her cries, her husband, Qobil Bobo, soon realizes that the animal has been driven away through a hole in the barn. Inquisitive neighbors come in and crowd the scene. Among them is a striking figure, a neighbor whose deformed face lacks a nose; he holds the position of “fiftier” (*ellikboshi*), which is to say a local notable who had authority over fifty households. It is through this persona that we can begin to discern the contours of the colonial system of justice. A conversation with the *ellikboshi* is enough for us to sense that Qobil Bobo’s hopes of recovering his property rest on the support of a cohort of officials, both native and Russian, and their willingness to listen to his trivia. The following excerpts illustrate an ordinary experience of a colonial subject seeking redress in Russian Turkestan:²

Then the neighbor of Qobil Bobo came in, the noseless *ellikboshi*. Going into the barn, he examined the hole and the post to which the ox had been tied. For some reason, he shook the post all over. Then, he summoned Qobil Bobo and with a nasal voice said: “Your ox isn’t going anywhere: we’ll find it!” That the *ellikboshi* entered the barn to inspect the scene gave some hope to Qobil Bobo, who was delighted with his words. As the old man began to cry, “May God be magnanimous with you . . . my ox was piebald,” the people dispersed. They all debated how, when, and with which instrument the thief had broken in, which direction the ox had gone, and in which market it would be sold. The noise abated. The wife of Qobil Bobo stopped crying and left, praying for the *ellikboshi* as she went. . . . The *ellikboshi* again inspected the hole where the thief had entered. Arms folded, Qobil Bobo, weeping, followed him. “Don’t cry,

1 Abdulla Qahhor, *Asarlar* (6 *tomlik*) (Tashkent: Ghofur Ghulom Nashriyoti, 1967), 1: 59–62.

2 Throughout the book I use Russian Central Asia and Russian Turkestan as synonyms.

I say, don't cry! If your ox has not left the land of the White King,³ we can find it without fail." The *ellikboshi* spoke with confidence, as though it were a matter of simply going right out and finding the ox. "One must give something to this man, may God help him, for all his travails. Even a cat does not come out in the sun for free. Has he perhaps spent some money to become *ellikboshi*? To one county administrator [*mingboshi*, lit. "thousander"] alone he brought seven hundred bundles of clover and a one-year-old colt. And besides, he's not receiving a salary from the treasury!" Qobil Bobo shook his wallet and handed to the *ellikboshi* all that was in it. Having accepted the offering, he promised to report the incident immediately to the bailiff [*amin*]. In the evening, Qobil Bobo decided to go to the *amin*. A dry spoon can wound the mouth, they say. How much money to take to the *amin* now? For those who give, one is much, but for those who take, ten is little. After consulting with the old woman, Qobil Bobo decided that this would be his last expense, on which depended the return of the loss. Does it make sense to be skimpy here? When Qobil Bobo appeared before him, the *amin* belched loudly then guffawed so that his fat chin trembled. "So a cow disappeared, you say? No... not a cow... an ox, a piebald ox... An ox?! Ah, it was an ox! Um, a piebald ox? Ah, so... It is the only thing I have... the ox." The *amin* stuck half of his small finger into his nose and laughed.

"The Thief" was published on the cusp of the anti-colonial campaigns in early Soviet Central Asia⁴ and, as such, it is shaped as a fragment of a bygone age. In opening this satirical piece with the expression "from the past" (*o'tmishdan*), Abdulla Qahhor, who had spent his childhood in tsarist-ruled Kokand, attempted to render a cultural atmosphere that had begun to fade away after the October Revolution. Indeed, the story echoes many of the common assumptions about colonial justice that had circulated widely in Russian Central Asia and that, by the time "The Thief" was published, had become literary motifs. It offers a medley of greedy and careless administrators; it opens a window on a Kafkaesque bureaucratic system that obliged appellants to go back and forth from one official to another; it describes bailiffs, police chiefs, and translators as individuals with discretionary power to act however they wished. Reading the story, one would think that justice in Russian Central Asia was all about bribery:

3 *Oqposho* in the text. Central Asians used the term "White King" to refer to the tsar.

4 For an overview on such campaigns, see D. Northrop, *Veiled Empire: Gender and Power in Stalinist Central Asia* (Ithaca: Cornell University Press, 2003).

A week passed. During this week, to identify the suspect, the old woman went to a fortune teller [*azaiimxon*] whose prayer was powerful enough to take a castle. She laid out half a sack of *jiida* berries,⁵ three large cups of corn, and two skeins of thread. Nothing happened. On the eighth day Qobil Bobo went back to the *amin*, whose hair stood on end with rage. “You what? Should *I* drive your ox to your house, or what? After all, you should go and appeal [*axir, borilsin, arz qilinsin-da!*]: the subject who comes with a request confers honor upon the authorities [*fuqaron-ing arzga borishi arbobning izzati bo'ladi*].” Qobil Bobo consulted with friends: what to take to the police chief, if not money? Everyone knows that, before you reach him, your back will break from bowing. Even if Qobil Bobo can deliver [only] three chickens, one of them a mother hen, this is what he has. The neighbors, instead, collected one hundred eggs, but he [Qobil Bobo] was unable to get past even the translator with this offering. The translator took the entire gift and promised to explain the case immediately to the police chief. Qobil Bobo began to lose hope. Then he enraged, but, of course, that was in vain. Don't mess with the authorities: you'll lose no matter what! [*o'ynashmagil arbob bilan—seni urar har bob bilan*]. Now that he was well acquainted with the case, the police chief took his two best chickens and three rubles. Fortunately for Qobil Bobo, he did not say, “I will report immediately to the commandant” but told him instead to apply again to the *amin*. The *amin* said: “Go to the *ellikboshi*!” Seeing Qobil Bobo, the *ellikboshi* became angry: “Tell yourself who the suspect is! I don't make miracles [*avlio emasman*]!”⁶ How could I know who stole your ox? And I suppose that it was butchered long ago. Instead of complaining here, I would go to the best tanners and look at the pelts. However, if it went to a tanner, it is now just a skin. And from this very skin they must have made a pair of galoshes that are now in the market. “Oh, God, what grief! My poor little head,” whispered the wretched old man. “Are you a child, or what? Why do you cry? You are an adult. If this was the only ox in the whole world, it would be another matter. God willing, your loss will be reimbursed. So be it: I will tell my father-in-law, and he will lend you one of his oxen. Is one ox worth the blood of a man?” The next day the *ellikboshi* took Qobil Bobo to his father-in-law, a cotton trader named Egamberdi. The merchant sympathized with the old man and at the time of plowing gave him not one ox but two. But with a “minor” condition. Qobil Bobo will find out about that in autumn. . . .

5 *Jiida* denotes a plant belonging to the genus *Elaeagnus* (silverberry, oleaster).

6 Lit. “I am not a saint.”

There is, of course, much that these fictional fragments neglect: institutions, forms of behavior, notions, and cultural practices that we shall discover as we progress through the pages of this book. But there are two elements in “The Thief” that anticipate much of what the reader will find in the cases on which this study is based. There is, first of all, a strong sense of the ordinary in the way Muslims make use of the legal instruments that the Russian Empire put at their disposal. Indeed, turning to Russian authorities was for Central Asians an ordinary course of action, not only because Muslims often employed the appellate system introduced by Russians but also because Muslims experienced colonial justice as part of their own culture. It is not by coincidence that Abdulla Qahhor renders the bailiff’s invitation to turn to Russian authorities with the Uzbek *arz*: this is a term that has a long historical pedigree in Islamic Central Asia and was used to denote the procedure of appealing to Muslim rulers, that is, the khans (see Chapter 1).

Secondly, the story of “The Thief” revolves around the idea that justice resides with the individuals in power, not in the court. That is, redress depended less on an institutionalized system of adjudication than on a web of interpersonal power relations. The “rule of law” paradigm with which students of colonialism are all too familiar is conspicuous by its absence in “The Thief.” I am aware of the risk of collapsing law into power relations, and I am aware that it would be useful, instead, analytically to disaggregate law from power. I therefore pay great attention in this book to how Muslims followed, interiorized, and manipulated the *rules* of the colony. In Russian Central Asia, however, legal culture emanated from the relationship between the people and the men in power. As we shall see, it was in communicating with military officials, police chiefs, translators, and local headmen that Muslims learned about the law, its rules, and the moral world that it governed. Thus, the Russian administration was the main venue in which Muslims were initiated into colonial legality.

How did local subjects regard law in this colonial context? What was the legal consciousness of Muslims under Russian rule and how was it constituted? How did Russian colonialism change Muslims’ sense of justice and legal entitlements in Central Asia? It is these questions that *Visions of Justice* primarily attempts to answer. This book is thus part of a broader historiographical project that aims at rethinking the ways in which the history of law and colonialism in Central Asia has been written so far.

Over the last few decades, scholarship on the history of nineteenth- and early-twentieth-century Central Asia has generally been aligned more closely with Russian imperial and Soviet studies than with Islamic and Persian studies. This largely Russo-centric approach has given rise to many misleading assumptions and dominant narratives about the legal institutions, formal and

informal, that populated the Islamic juridical field of the Central Asian khanates before the Russian conquest, in 1865. The same interpretive disposition has led to a misreading of the regional manifestations of Islamic legality and Muslim morality. In this study, I therefore aim to revisit the field of Central Asian Islamic legal history.

More importantly, by studying legal materials produced in nineteenth-century Central Asia, we are able to tackle several important wider questions in the field of law, colonialism, and imperial history. The last thirty years have witnessed a flourishing of scholarship in this area. An entirely new set of interpretive paradigms has been established and is now readily available to those historians of law and colonialism who focus on the history of the Islamicate world. The interpretive paradigms that I have in mind arise from various fields, such as post-colonialism, global history, and legal pluralism, which I will discuss shortly. Their deployment does not, however, always lead to satisfactory interpretations. Their adoption is conducive to narratives that cannot accommodate most of the regional specifics that are reflected in material originating, in the case of this book, in Central Asia. This study is thus an invitation to discover law as experienced by Central Asian Muslims under tsarist rule and to reflect on the interpretive possibilities to study law in a situation of colonialism.

The Russians' penetration of the southern regions of Central Asia (Transoxiana) began in 1865, when they besieged Tashkent. They then progressed further south, into the Khanate of Kokand and by taking Samarqand and the Zarafshan Valley, which had belonged to the Emirate of Bukhara. The next step was Bukhara and Khiva, which fell in 1868 and 1873. Thus, in the second half of the nineteenth century, the Russian Empire ruled most of Central Asia. It did so directly through the Governorship-General of Turkestan, established in the 1867 on the basis of a civil-military administration, that is, a bureaucracy charged with operating indigenous institutions and staffed largely by the military and representatives of the "natives" (Russ. *tuzemtsy*). As we shall see, the Russians followed a strategic course of action to ensure a certain degree of continuity with the past and thus "preserved" such institutions as *shari'a* courts, local administrative units, police forces, and charitable endowments. The Russian Empire also governed the region indirectly through the protectorates of Khiva and Bukhara, where it devolved sovereignty to native rulers, members of the Qunghrat and Manghit dynasties, respectively.⁷

7 For an introduction to the study of Russian colonialism in Central Asia, see A. Morrison, *Russian Rule in Samarkand, 1868–1910: A Comparison with British India* (Oxford: Oxford University Press, 2008).

The main argument of this study is that Russian colonialism affected Muslims' legal consciousness and effected changes in the way Central Asians understood their entitlements and interpreted legal action. Such changes manifest themselves at the level of institutions as well as in the domains of imagination and morality. First of all, with Russian subjugation, Muslims learned to navigate a normative space that differed substantially from the juridical field typical of the Muslim polities ruling the region. As we shall see in Chapter 1, the dispensation of justice according to *sharī'a* was, before the Russian conquest, in the hands of Muslim royal courts and judges (*qāḍīs*) who acted mainly on their behalf. To be sure, *sharī'a* might not have been enforced in a consistent manner, the resolution of conflicts depended on various agents, and notions of "practice" might have differed from locale to locale. Nothing in our sources, however, suggests that, before colonization, the local population understood such variations as constituting different bodies of law. Under Russian rule, things changed significantly. Central Asians learned to profit from legal diversity and choose among legal institutions operating under different legal systems. In Russian Central Asia, there were "native courts," which applied *sharī'a* for the settled population and customary law (*ādat*) for the nomads. There were also courts presided over by Russian justices of the peace and Russian military officials. Colonial bureaucrats, too, especially the military, tried cases. This is a situation typical of legal pluralism based on institutional arrangements that favored the idea that a Muslim subject could pick the most suitable venue to which to bring his affairs. This situation affected the way in which the locals formulated their visions of justice and their convictions about entitlements, because, in dealings with these courts, they became exposed to different, even diametrically opposite, notions of morality. What was impermissible according to *sharī'a* could be licit, sanctioned, and ultimately favored by the laws of the Russian Empire. Behavior changed also. To call a Muslim judge corrupt, ignorant, and incompetent, for example, became the norm among Central Asians when filing a complaint with Russian authorities. But we observe important changes also in the field of land tenure, charity, and guardianship—legal domains that were important to the conduct and everyday life of the local population.

In this introduction I will discuss the advantages and pitfalls of several different approaches to the study of Muslim legal culture in a situation of colonialism. I thus review the literature relevant to the study of *sharī'a* and its encounter with Western empires. For this purpose, I discuss two interpretive paradigms, "legal pluralism" and "law and society." It is here that I elaborate my own approach that focuses on "legal consciousness." In the following sections of this introductory chapter I illustrate certain limitations to the study of

Muslim law and colonialism from a comparative perspective. I do so by examining the literature on global legal history and on Russian imperial history.

1 Law and Colonialism

Law is central to colonialism. Historical reflections on a wide array of themes, such as governmentality, forms of communal organization, behavior, and cultural production, have demonstrated this phenomenon. It is thus natural that many students of colonialism have been given pause concerning the cultural significance of law, but there is a problem in this historiographical output. Most of the studies on law and colonialism have been at pains to escape a narrative of binaries. Scholarship in this field tends to follow two, only apparently opposed, interpretive strands: either it describes the ideological and institutional forms in which colonial legal governance, the tension towards the rule of law, and coercion manifested themselves, or it dissects the agency of colonized subjects.⁸

When applied to Muslim-majority regions, the first approach focuses on *sharīʿa* and the transformative process that molded it into codes and statutes.⁹ Transformation in the Islamic juridical field under colonial rule is manifest.¹⁰ Western empires, for example, claimed exclusive right over violence, thereby restricting the jurisdiction of *qāḍīs* to the so-called personal-status law, itself a colonial legal category. There is also an institutional arrangement common to many colonial situations whereby Muslim legists were organized into a jural hierarchy and made subject to judicial review. Such an arrangement affected the moral standing of *qāḍīs*, whose rulings became more easily quashed on account of judicial malpractice, either purported or actual. Many have also argued that the codification of *sharīʿa* by means of the translation and massive publication of a narrow selection of juristic sources had lasting effects that rigidified the understanding of *sharīʿa* and overhauled

8 This is noted also in E. Kolsky, "Introduction." *LHR* 28/4 (2010): 973.

9 L. Buskens, "Sharia and the Colonial State." In *The Ashgate Research Companion to Islamic Law*, ed. R. Peters and P. Bearman (Farnham: Ashgate, 2014): 209–21; A. Layish, "The Transformation of the Sharīʿa from Jurists' Law to Statutory Law in the Contemporary Muslim World." *WDI* 44/1 (2004): 85–113.

10 For an overview, see P. Sartori and I. Shahar, "Legal Pluralism in Muslim-Majority Colonies: Mapping the Terrain." *JESHO* 55/4–5 (2012): 637–63.

its governing principles.¹¹ There were changes also at the semantic level. One such change is the transformation of agrarian systems from a regime of usufruct to one of ownership, that is, from status to contract; another is the possibility of freeing up property that once constituted a *waqf* asset;¹² yet another is the hybridization of certain legal practices, such as the Islamic procedure of oath-taking before Russian justices of the peace.¹³ Finally, notions of rupture and displacement are also borne out by the testimony of Muslim intellectuals who lived through and reflected upon the effects of colonialism and the impact that the latter had on Islamic legal culture. The spread of Salafism and the corresponding call for independent legal reasoning (*ijtihad*) and hermeneutic eclecticism (*takhayyur*) are eloquent manifestations of the reaction of Muslim thinkers to colonialism.¹⁴ The process of decolonization too, with its purported reenactment of *shari'a*, attests to the structural changes taking place in the colonial period, which had long-lasting effects on the way local jurists came to view *shari'a*. Sub-saharan Africa, especially, is a case in point. The reintroduction of Islamic law courts in Nigeria, for example, and the ensuing debates on their jurisdictional boundaries reflect an understanding of the difference between criminal and civil law that were introduced under British rule.¹⁵ Brinkley Messick has called the product of this process of transformation “colonial *shari'a*,” an expression capturing a point of no return in a narrative of subordination. According to such a narrative, Muslim legal actors are passive spectators against which the imperial institutional forces and the

- 11 Wael Hallaq has termed this process “entexting.” See *Shari'a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009): 547–8; J. Strawson, “Revisiting Islamic Law: Marginal Notes from Colonial History,” *GLR* 12/3 (2003): 362–83; E. Giunchi, “The Reinvention of *Shari'a* under the British Raj: In Search of Authenticity and Certainty,” *JAS* 69/4 (2010): 1119–42; and R.D. Crews, *For Prophet and Tsar: Islam and Empire in Russia and Central Asia* (Cambridge, MA: Harvard University Press, 2006): 25, 192.
- 12 C. Gazzini, “When Jurisprudence Becomes Law: How Italian Colonial Judges in Libya Turned Islamic Law and Customary Practice into Binding Legal Precedent,” *JESHO* 55/4–5 (2012): 746–70.
- 13 V. Martin, “Kazakh Oath-Taking in Colonial Courtrooms: Legal Culture and Russian Empire-Building,” *Kritika* 5/3 (2004): 483–514.
- 14 Layish, “The Transformation of the *Shari'a* from Jurists' Law to Statutory Law in the Contemporary Muslim World”; N.J. Brown, “*Shari'a* and State in the Modern Muslim Middle East,” *IJMES* 29/3 (1997): 359–76.
- 15 A. Christelow, “Islamic Law and Judicial Practice in Nigeria: An Historical Perspective,” *JMMA* 22/1 (2010): 185–204.

epistemic machinery of Orientalism are deployed.¹⁶ The work of Wael Hallaq is exemplary of this approach. Conceiving of *sharīʿa* as a bundle of institutions and doctrinal knowledge, his studies usually omit the ethical dimension of the law as it was lived by Muslims in general, not only by its most erudite practitioners.¹⁷ This is a *choix du domaine*, one would say, but also one that views the colonial encounter as a fist fight in which *sharīʿa* always loses.

The second approach, instead, is informed by the idea of legal pluralism, here broadly defined as a school of thought that assumes that “state law is not the only source of recognized social order.”¹⁸ By putting greater emphasis on the interlocking of law and society and concentrating on the fissures of empires, studies that adopt this approach have elaborated a vision of Muslims’ subaltern agency against a backdrop of colonial constraint. Agency has been, in this context, detected in several ways. Generally speaking, followers of this approach hold that colonial subjects operated within an autonomous cultural sphere. We have seen recently a more temperate evaluation of what the subalterns can and cannot do in the colonial legal field. Lauren Benton has made important observations on the uncertainties and incompleteness of imperial legal systems and invited us to reflect on the blank spots and loopholes in the imperial judicial system. Her work offers rich illustrations of how the gaps in imperial law offered to the subalterns enough space to accommodate their sense of justice and to pursue redress. This phenomenon has long been the subject of academic commentary. Significantly, however, Benton has provided compelling arguments on how the colonized unwillingly contributed to the development of the jurisdictional policies of empires. They did so by shopping for legal forums (“legal jockeying,” Benton would call it) and emphasizing the notions of legal difference on which such policies were premised. Others, of course, have noted the subalterns’ predisposition to forum shopping, but here Benton’s contribution to studies of law and the culture of colonialism

16 B. Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley: University of California Press, 1993): 58–66.

17 Hallaq, *Sharīʿa: Theory, Practice, Transformations*.

18 F. Pirie, *The Anthropology of Law* (Oxford: Oxford University Press, 2013): 11. Legal pluralism has been a topic of extensive research, especially in the field of legal anthropology. See two recent syntheses and reviews of the literature with regard to early modern and modern history: L. Benton and R.J. Ross, “Empires and Legal Pluralism: Jurisdiction, Sovereignty, and Political Imagination in the Early Modern World.” In *Legal Pluralism and Empires, 1500–1850*, ed. L. Benton and R.J. Ross (New York: New York University Press, 2013): 1–17; Sartori and Shahar, “Legal Pluralism in Muslim-Majority Colonies: Mapping the Terrain.”

seems particularly significant. She explains jurisdictional regulation less as an imposition than as the outcome of a conversation between the colonizers and the colonized, a conversation to which the latter gave a meaningful stimulus. There are further refinements of Benton's approach. Mitra Sharafi, in particular, has considered the phenomenon of failed attempts to alternate between legal jurisdictions and illustrated the extent to which repeated legal action ("legal lottery," in her terms) was ephemeral.¹⁹ Others have highlighted instead the normative agency of the subalterns in their interaction with the European administrations. Some, in particular, have demonstrated how legal encounters in the colony led to instances of deep hybridization, which are usually considered unintended consequences of colonization and the extension of the rule of law to the areas under imperial control.²⁰

In one way or another, however, studies on colonialism, law, and culture have necessarily converged on the same conclusion: in manipulating legal jurisdictions and shopping for different forums, subaltern subjects reified the same cultural premises on which colonialism was built and thereby reinforced its predicaments. If one looks for the agency of colonial subjects, in both the jurisdictional and the normative spheres, one finds that their courses of action are yet another evidence of colonial hegemony, but there is a problem in this approach. To measure the conduct of the subalterns in colonial terms is to adopt a circular thinking: one examines the way in which the subaltern operates within a colonial system of signification only to discover that her courses of action are informed and, therefore, ultimately constrained by precisely that system. It seems plain that the interpretive choices offered by this approach are limited: subalterns as subalterns have an agency of sorts, which escapes the system of signification imposed by the colonizers, and subalterns as subalterns can only reinforce the system of signification of the colonizers. Either way, a narrative of cultural difference emerges from such studies,²¹ for difference is both a premise and a conclusion of their approach.²²

19 M. Sharafi, "The Marital Patchwork of Colonial South Asia: Forum Shopping from Britain to Baroda," *LHR* 28/4 (2010): 979–1009.

20 I. Hussin, "The Pursuit of the Perak Regalia: Law and the Making of the Colonial State," *LSI* 32/3 (2007): 759–88; P. Sartori, "Authorized Lies: Colonial Agency and Legal Hybrids in Tashkent, c. 1881–1893," *JESHO* 55/4–5 (2012): 688–717.

21 K.M. Parker, "The Historiography of Difference," *LHR* 23/3 (2005): 685–95.

22 On the limitations of the paradigm of resistance and domination, see S. Falk Moore, "Certainties Undone: Fifty Turbulent Years of Legal Anthropology, 1949–1999," *JRAI* 7/1 (2001): 103–106.

Sensitive to the risk arising from the “theoretical exhaustion”²³ that I have just outlined, John Comaroff observes widespread doubt among scholars as to whether there is “anything more to say on the topic” of law, colonialism, and culture.²⁴ Comaroff, however, rejects such defeatism, arguing that there remains a great deal more to say, if one reflects on four foundational coordinates of colonial legal regimes: first, “that ‘colonial law’ refers to an irreducibly diverse ensemble of practices and institutions”; second, “that cultures of legality were *constitutive* of colonial society”; third, “that colonies were prime sites of sociolegal experimentation”; and fourth, “that the tensions of empire were regularly mediated by means of law.”²⁵

Comaroff has, however, been criticized for outlining an agenda that consists of accumulating mere ethnographic illustration without pursuing further conceptual exploration. According to Bill Maurer, it would be more useful to consider what binds law *and* society (or law *and* culture). Many have noted that law and culture are mutually constitutive, suggests Maurer, but this observation, in itself, does not help us clarify the processes that govern their mutuality. Sally Engle Merry observes that, “once the interconnectedness of law and culture are acknowledged, the concept of mutual constitution does little analytic work in disentangling the important questions of power and change. These include the relative power of forms of law, law enforcement, legal consciousness, and legal regulation in forming cultural practices and the power of cultural practices to influence and channel legal regulations.”²⁶

But are such observations not, *mutatis mutandis*, an invitation to reflect on sociocultural change, itself an angle from which historians have often contemplated the past? Isn’t the very call for unpacking the interconnectedness of law and culture an encouragement to focus on the transformations taking place within a society, the push-and-pull prompting the reiteration of certain practices, and, ultimately, the way in which a set of notions, values, and postures gain currency and become traditions in a given era? To answer these questions, I propose to start from the simple observation that the colonial encounter, like any other, always brings about certain permutations. Its elusive, serendipitous, and fragmentary character notwithstanding, social and cultural changes thus lie at the heart of colonialism.

When tackling a topic as vast and indeterminate as “change” in a situation of colonialism, however, one cannot avoid dealing with the notion of

23 B. Maurer, “The Cultural Power of Law? Conjunctive Readings.” *LHR* 38/4 (2004): 843.

24 J.L. Comaroff, “Colonialism, Culture, and the Law: A Foreword.” *LSI* 26 (2011): 307.

25 *Ibid.*: 314.

26 S.E. Merry, “Comments on Comments.” *LSR* 38/4 (2004): 861–66.

acculturation that has been current since the 1970s and has recently evolved into more sophisticated, though not necessarily sharper, characterizations such as hybridity and (transcultural) transfer. Here, following the arguments of Sanjay Subrahmanyam, I would argue that the notion of acculturation (and its derivative vocabulary) is unhelpful in our discussions of change, assuming, as it does, the preexistence of reified cultures.²⁷ For our purposes, it is more useful to proceed instead from the premise that cultural encounters depend on the need for and the disposition of parties to mutual understanding. Sanjay Subrahmanyam's reflections are particularly instructive for our purposes:

Time and again we are forced to come to terms with situations that do not represent mutual indifference, a turning of backs, or deep-rooted incomprehension, but rather show shifting vocabularies and changes wrought over time by improvisation that eventually themselves become part of a received tradition.[...] State and empires were very rarely ships that passed in the night of incommensurability.[...] Rather, what usually happened was approximation, improvisation, and eventually a shift in the relative position of all concerned. The British, once they had conquered India, did not remain—even a single generation afterward—the same British who had conquered it.²⁸

Having thus established that sociocultural change cannot be imagined as one-way traffic—still less historicized and explained as the mere product of hegemonic colonial imposition—we need to consider how one might go about identifying *change* in the legal sphere. In other words, what has changed and how? Legal anthropologists and historians sympathizing with the social sciences would most probably refer to the law-and-society paradigm in search for a solution in that field.²⁹ They would, for example, take stock of the forms of reification of colonialism and consider how objects embody the mutuality

27 S. Subrahmanyam, *Courtly Encounters: Translating Courtliness and Violence in Early Modern Eurasia* (Cambridge, MA: Harvard University Press, 2012): 25.

28 Ibid.: 29–30.

29 The law-and-society paradigm is born from sociolegal studies in the 1970s as a reaction to earlier scholarship that treated law as a juristic topic with a predilection for functionalism. It argues that law and society are mutually constitutive and therefore that law should be studied as part of the complexity of social life. For a history and critical assessment of this paradigm, see C. Tomlins, "What is Left of the Law and Society Paradigm after Critique? Revisiting Gordon's 'Critical Legal Histories.'" *LSI* 31/1 (2012): 155–66.

of law and culture. It is here, Maurer claims, that the “and” in “law *and* culture” more clearly manifests itself.

2 Legal Consciousness

If studies of law and colonialism have struggled to eschew the binaries of “difference,” one wonders whether there is a third way to historicize change in the juridical field. One possible solution would be to adopt what anthropologists usually term “the emic perspective,” the attempt to see the world of a historical agent in his or her own terms, in the same way in which s/he saw it. Of course, an epistemological skeptic might suggest that any such attempt is absurd, in the absence of any sure way of knowing. Historians, after all, work with texts that are artifacts, not windows opened onto the past. Documents do not usually say what an historical actor thought or said at a given moment, and, if they do, we cannot know whether or not this actually happened. My advocating the adoption of the emic perspective, however, has less to do with the relationship between reality and written records than with the need to reflect on the epistemes that inform the way we approach the study of colonialism. In other words, if one wants to understand the historical actors and the cultural practices that populate the colonial archives, one should attempt to disentangle the stories of such actors and such practices from the colonial genres in which they have been accommodated. To oblige ourselves to think first in emic terms allows us to venture into new heuristic possibilities. The advantage is significant because one can, in principle, avoid superimposing assumptions about cultural difference on the historical material at hand.³⁰ As we shall see, Muslims pursued their own interests pragmatically, often by taking legal action against the integrity of Islamic institutions.

The purpose of this work is not, of course, to deny difference, either socially or culturally defined, especially when we refer to situations of colonialism, and still less to postulate that difference is irrelevant to the study of law and colonialism. Those familiar with Uzbek literature may remember the passage of Cho’lpon’s 1936 novel *The Night*, in which the young Zebi is brought before the Russian military court for having poisoned her husband. The Russian military official presiding over the tribunal asks her to lift the black veil that covers her face (*paranji*) so that he may ascertain her identity. As the translator explains

30 I am here following the method exemplified in the work of V. Narayana Rao, D. Shulman, and S. Subrahmanyam, *Textures of Time: Writing History in South India 1600–1800* (New York: Other Press, 2003).

the request, Zebi resolutely objects, explaining that she would prefer to die than to show her face to strangers (*voy, o'la qolay! Shuncha nomahramning oldida yuzimni ochamanmi? Undan ko'ra o'lganim yaxshi émasmi?*).³¹ Further explanations that the removal of the veil was among the requirements of the tribunal are of little avail, and, in the end, only a mullah is able to persuade her. He explains that there is no difference between Russians and dogs, for the former are unbelievers and it would thus be licit for her to unveil her face before the Russians as she would do before a dog (*kofir bilan itning farqi yo'q. Itdan qochmaysizmi? Shunday bo'lsa, kofirdan ham qochmasangiz bo'ladi. Bu joiz?*).³² Portraits such as this must have populated the imagery of many Central Asians who lived under Russian rule. If cultural difference amounts to this, however, it cannot overwrite efforts to glean larger cultural shifts in the legal sphere, which is precisely what this study sets out to uncover.

The emic approach affords us an even greater advantage. The adoption of an emic perspective obliges the historian to ponder a network of practices reflecting the worldview of the historical actors under observation. That is, the emic perspective offers an approximation to the conceptual schemas informing the behavior of the agents that inhabit the basis of our sources. Translated into the legal domain, this approach advocates the exploration of the common-sense meanings of law. The advantage is a shift of heuristic perspective: law is not simply acting upon society but is something emerging from social action. My emphasis on the emic perspective is close to what sociologists Patricia Ewick and Susan Silbey call “legality”:

As a constituent of social interaction, the law—or what we call legality—embodies the diversity of the situations out of which it emerges and that it helps structure. Because legality is embedded in and emerges out of daily activities, its meanings and uses echo and resonate with other common phenomena, specifically bureaucracies, games, or “just making do.” Legality is not sustained solely by the formal law of the Constitution, legislative statutes, court decisions, or explicit demonstrations of state power such as executions. Rather, legality is enduring because it relies on and invokes commonplace schemas of everyday life.³³

31 Ch'o'lon, *Kecha va kunduz* (Tashkent: Sharq, 2000): 264.

32 Ibid.: 265.

33 P. Ewick and S.S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998): 17.

The astute reader may note that I am setting out to reflect on the subjectivity of legal actors. To put it slightly differently, I want to explore the phenomenon of what we may term “legal consciousness,” what it was and how it may have changed over time. By “consciousness” I do not mean here a critical consciousness, the kind of interpretive disposition that we often find among intellectuals who operate self-reflexively.³⁴ Rather, by “legal consciousness” I mean instead people’s understanding of right or wrong when they took legal action, their sense of legal entitlements, the moral underpinnings that prompted their pursuit of redress, the way that they interpreted the moral world they lived in. “Legal consciousness” is thus understood here as “what people do as well as say about law.”³⁵ This work is based on a substantial number of cases that illustrate how people articulated their beliefs and sensitivities in the sphere of justice.

Some may well object that, to explore the consciousness of historical agents, is, for the historian, an undertaking doomed to fail: it is one thing to collect people’s stories about law that are recounted “in their own words”; it is an entirely different thing to read sources against (or with) the grain in search of the hidden voices of those who spoke about the law. While the sociologist may record a voice and replay it, the historian has to dissect voices that were, more often than not, merely ventriloquized and thus content herself with murmurs rather than statements fully articulated. But if we concede that hermeneutics can help us understand the intended meaning of *The Prince* or its “uptake,” as Quentin Skinner would have it,³⁶ there is a chance that one can also infer ideas from behavior (patterned or not) and surmise the sense of entitlements that prompted legal actions. I do not conceive of texts as a kind of fiction, nor do I imagine them as representative of oppressive epistemic forces alone. I see little advantage in such epistemologically defeatist approaches. Instead, I propose that a linguistically and contextually informed hermeneutic effort may help us intercept the intended meaning of both a text and an action. Interception is not always possible, but it is worth pursuing.

Taking the emic perspective, this study addresses two questions central to our understanding of legality in Russian Central Asia. The first is, why did

34 This was the intended meaning of the term “consciousness” in Jean and John Comaroff, *Of Revelation and Revolution: Christianity, Colonialism, and Consciousness in South Africa* (Chicago: University of Chicago Press, 1991): passim.

35 S. Silbey, “Legal Consciousness.” In *New Oxford Companion to Law*, ed. P. Cane and J. Conaghan (Oxford: Oxford University Press, 2008): 695–6.

36 Q. Skinner, *Vision of Politics*, vol. 1, *Regarding Method* (Cambridge: Cambridge University Press, 2002): passim.

Muslims come to certain understandings about law in one particular way or another? The second is, how did their sense of right and wrong change over time? Again, it is not useful to think in terms of imposition and still less of acculturation, because to do so necessarily posits Muslims' behavior in a teleological narrative of adherence to foreign values, a concession to external agents, and an ultimate submission to colonialism. Hegemony and its denial cannot be the only lessons that we derive from historicizing colonialism. It seems to me more useful to evaluate Muslims' behavior on its own terms, at least to the extent that linguistic conventions make that possible. I therefore want to start from the commonsense observation that, in the face of the presumed cultural fixity of Islam, many Muslim legal actors regarded ethical fluctuations in their behavior as a perfectly legitimate thing, and their conduct was not viewed by their coreligionists as a departure from—and still less a betrayal of—*sharī'a*. Ultimately, a Muslim was no less a Muslim when he was put in prison for drinking alcohol or fined for gambling. *Visions of Justice* is based on cases that illustrate how Muslims experienced the law in a colonial society and regarded the legal system of the colony as a source of opportunities on various levels. I do not want to downgrade the experience of colonialism as one governed only by pragmatism. Muslims certainly had ideas, values, and notions to which they referred when doing what they did. At any rate, Muslim contemporaries were not preoccupied with the cultural permutations that they themselves experienced. Therefore, this study is not governed by such a preoccupation.

3 Comparisons

In colonialism and law, there was a strong similarity between Russian Central Asia and other colonial enterprises that established a plural legal regime and ostensibly subsumed indigenous bodies of law. Russians took a twofold course of action to deal with legal diversity. Like their counterparts in other regions of the Muslim world, they blended the purported preservation of the status quo with a broader vision of institutional and social change. On the one hand, they claimed to have maintained nearly intact the core of indigenous judicial institutions ruling according to *sharī'a*,³⁷ which were presided over by *qāḍīs*

37 Throughout the book, I purposefully adopt the term *sharī'a* 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 J. Scheele, "Councils without Customs, Qadis without State: Property and Community in the Algerian Touat." *ILS* 17/3 (2010): 351 fn. 3.

(Muslim judges); on the other, they effectively reformed the procedure of appointment to the position of judge by establishing a system of popular elections: where *qāḍīs* had once been designated by the head of a Muslim principality, “native judges” (*narodnye sud'i*) were, under Russian rule, to be chosen by voting representatives of local communities.³⁸ Furthermore, Russians restricted severely the jurisdiction of Islamic law courts, thus removing, for instance, murder cases and highway robbery from their purview.

Changes in the very definition of the office of *qāḍī* did not, however, include the latter's powers of law enforcement. First, in precolonial Central Asia the enforcement of law was a prerogative of the ruling principality; there are countless cases illustrating how the subjects of a Central Asian khanate could simply dismiss the authority of a court (or a jurist, i.e., a mufti) and ask that their case be heard at the khan's chancellery (see Chapter 1). Second, under Russian rule Central Asian *qāḍīs* not only could still count on attendants and community elders (*āqsaqāl*) to provide police services, but they also had unprecedented latitude to punish any behavior they deemed contrary to *sharī'a*. While in precolonial Central Asia *qāḍīs* would have requested the intervention of the ruling principality (see Chapter 1), under Russian rule they could sentence people, for instance, to a month's detention for consumption of alcohol (*'arāq wa pīwū* < Russ. *pivo*, “beer”) and illicit behavior (*bītartıblık*).³⁹ In sum, *qāḍīs* were still in place in tsarist Central Asia, but that wider Islamic juridical field that we may term *sharī'a* and in which their courts had hitherto been embedded no longer existed, because institutions of arbitration and mediation, which were alternative or complementary to the *qāḍīs*, had, in the meantime, disappeared or changed substantially.⁴⁰

It is one thing to alert ourselves to the general constraints—and, as we have seen, the possibilities—that Russian statutory law imposed on the jurisdiction of *qāḍīs* but quite another to determine how colonial forms of governance changed Islamic judicial practices and juristic reasoning and to what extent such changes affected Muslims' legal consciousness in Central Asia: this is an entirely different story, and one which has hitherto been largely untold. In tackling this vast field of study, I hope to challenge the prevailing approach adopted by scholars of law and colonialism and legal pluralism, who are concerned almost exclusively with detecting institutional and procedural

38 P. Sartori, “Judicial Elections as a Colonial Reform: The Qadis and Biys in Tashkent, 1868–1886.” *CMR* 49/1 (2008): 79–100.

39 06.05.1909, TsGARUz, f. 1-365, op. 1, d. 85, l. 1170b, 12.01.1908, f. 1-366, op. 1, d. 95, l. 12.

40 I have explored this idea in “The Evolution of Third-Party Mediation in *Sharī'a* Courts in 19th- and Early 20th-Century Central Asia.” *JESHO* 54/3 (2011): 311–52.

changes in the domain of indigenous law. This book deals primarily with the history of legal behavior among Muslims in Russian Central Asia rather than with the policies on Islamic law developed in a colony of the Russian Empire. As such, it is integral to the study of global legal regimes in the age of colonialism as well as the Russian legal history of the post-Great Reforms period.

The global-history approach to the study of European empires postulates that the assertion of legal hegemony in the colony was effectively dependent on the initiatives of the colonial subjects who manipulated jurisdictions to achieve their own purposes. Global historians have repeatedly demonstrated the irony that, through playing across jurisdictions, subaltern subjects actually ended up reinforcing the colonial regimes and thus unwittingly helped accelerate institutional change.⁴¹ It is striking that the matter of how new constructions of legality and cultural meaning of law⁴² became dominant among the subjects of the colony tends to escape sustained attention. In other words, if studies of colonialism and world history have presented law as a discursive⁴³ as well as an institutional⁴⁴ 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.⁴⁵ It is by looking at the techniques of personification that one can hope to disentangle cases of cultural change from the wider texture of colonialism and thus shed light on the social dynamics which sustained colonial legal constructions.⁴⁶

41 Sharafi, "The Marital Patchwork of Colonial South Asia: Forum Shopping from Britain to Baroda."

42 I draw here on S.S. Silbey, "After Legal Consciousness." *Annual Review of Law and Social Sciences* 1 (2005): 360.

43 E. Newbigi, L. Denault, and R. De, "Introduction: Personal Law, Identity Politics and Civil Society in Colonial South Asia." *IESHR* 46/1 (2009): 2. See also the articles in the "Forum: Maneuvering the Personal Law System in Colonial India," in *LHR* 28/4 (2010).

44 J. Saha, "A Mockery of Justice? Colonial Law, the Everyday State and Village Politics in the Burma Delta, c. 1890–1910." *PP* 217 (November 2012): 187–212.

45 *European Expansion and Law: the Encounter of European and Indigenous Law in 19th and 20th Century Africa and Asia*, ed. W. Mommsen and J. de Moor (Oxford and New York: Berg, 1992); B.Z. Tamanaha, "Understanding Legal Pluralism: Past to Present, Local to Global." *SLR* 29 (2007): 381–6.

46 A. Riles, "Law as Object." In *Law and Empire in the Pacific: Fiji and Hawai'i*, ed. S.E. Merry and D. Brenneis (Santa Fe: School of American Research Press, 2004): 187–212; D.R. Peterson, "Morality Plays: Marriage, Church Courts, and Colonial Agency in Central Tanganyika, ca. 1876–1928." *AHR* 111/4 (2006): 983–1010; N. Chatterjee, "Muslim or Christian? Family Quarrels and Religious Diagnosis in a Colonial Court." *AHR* 117/4 (2012): 1101–22.

Historians of the Russian empire, in particular, seem generally to agree that, under tsarist rule, Central Asian Muslims could easily access the services of the “native courts,” which remained broadly untouched in the wake of the Russian conquest.⁴⁷ In specific domains of Islamic law such as the notarization of property rights,⁴⁸ there were no substantial changes, but these continuities should not lead us to assume that, under Russian rule, Muslims lived in an unchanging preserve of “differentiated jurisprudence”⁴⁹ nor that their conceptions and practice of Islamic law and constructed cases remained unchanged from the time before the conquest.

What I hope to demonstrate is that the deeper one looks into jurisdictional politics in colonial Central Asia, the less amenable are such stories to integration into the “grand narratives”⁵⁰ of the Russian empire, let alone of “global legal regimes.”⁵¹ Historians of the Russian empire and global history may still want to telescope stories collected here and there and mold them into a few cohesive narratives on the law and the empire or patterns of structuring legal authorities across the world. I suspect, however, that this method risks crafting stories which are less revealing than prescriptive and that misidentify, misinterpret, or simply miss altogether the social significance of the changes that Russian colonization established in the sphere of legal consciousness among Muslim communities in a particular region.⁵²

In resisting the temptation to confer greater historical salience on the cohesive forces behind Russian legal history and the global history of law and colonialism, I do not attempt to “recover the ‘decentered’ narratives of people without power,”⁵³ nor do I aim to discern among Central Asians the traits of cultural resistance and counter-hegemony. In what follows, I do not advocate a Marxist reading of Central Asian material. Instead, I want to suggest that, by

47 For a review of the relevant literature see the next section.

48 P. Sartori, “Colonial Legislation Meets *Shariʿa*: Muslims’ Land Rights in Russian Turkestan.” *CAS* 29/1 (2010): 43–60.

49 J. Burbank, “An Imperial Rights Regime: Law and Citizenship in the Russian Empire.” *Kritika* 7/3 (2006): 412.

50 See the manifesto-like piece by the editors of *Kritika*, “The Imperial Turn.” *Kritika* 7/4 (2006): 706.

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

52 A move back from “the global” to the “regional” has recently been advocated by G. Balachandran, “Claiming Histories beyond Nations: Situating Global History.” *IESHR* 49/2 (2012): 267, and J. Scheele, *Smugglers and Saints of the Sahara: Regional Connectivity in the Twentieth Century* (Cambridge: Cambridge University Press, 2012): 12.

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

focusing on the social fragments of Central Asia, we can hope to chart new genealogies and correlations in the field of colonialism and law⁵⁴ and thus complement the interpretations that present-day Russianists and world historians adopt in the field of Islamic law.

The reader may object that, in developing my argument as I do in conversation with historians of both Russian and global history, I am needlessly adding further complexity to a picture which is already somewhat multifarious. Anyone who explores social and cultural change in law in a Muslim colony under Russian rule must necessarily 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.⁵⁵

3.1 *Global Legal Regimes: The View from Central Asia*

The historiography of law and empire in the age of colonialism is increasingly a historiography of global legal regimes. This analytical move consists of viewing jurisdictional conflicts as constitutive of a transimperial legal order; it also connects detailed histories of legal encounters in the colonies with an enhanced vision of world history and international law, one that is necessarily more fluid and fractured than structured around institutional patterns.⁵⁶ One of the recurring ideas implied by this approach is that empires established layers and hierarchies of jurisdiction in response to increasing tension in the 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 an area of conquest. Rather, the tendency is now to view empires asserting “greater legal hegemony”⁵⁷ as the result of the intensification of jurisdictional politics involving both the imperial governments and their subjects in the colonies: on the one hand, the jockeying for jurisdiction over colonial disputes pushed the hierarchies of power to compete against each other; on the other, the institutional arrangements of the state offered a forum within which the colonial subjects might pursue their own claims and achieve their petty purposes.⁵⁸ Lauren Benton claims, correctly, that jurisdictional politics is constitutive

54 For an insightful illustration of this approach, see E.B. Lewis, “Frontier as Resource: Law, Crime, and Sovereignty on the Margins of Empire.” *CSSH* 55/2 (2013): 241–72.

55 D. Ghosh, “Another Set of Imperial Turns?” *AHR* 118/3 (June 2012): 772–93.

56 Benton, *Law and Colonial Cultures*: 3.

57 L. Benton, “Law and Empire in Global Perspective: Introduction.” *AHR* 117/4 (October 2012): 1094.

58 Benton, *Law and Colonial Cultures*: 3.

of colonial cultures⁵⁹ because, in adopting specific strategies and profiting from the legal services provided by the state, colonial subjects reinforced precisely the cultural predicaments of imperial governments.⁶⁰ This argument is pushed to the extreme when one observes, as Benton does, that the creation of specific institutional arrangements such as 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.”⁶¹ In just this way, the Dutch, for example, established native courts in Cape Colony in the wake of the adjudication of a homicide case in which a settler murdered a native woman. It appears that, by pursuing redress, the locals contributed, albeit involuntarily, to the imposition of colonial hegemony.⁶²

This approach reminds historians of the ostensibly cohesive character of imperial legal cultures, one that is expressed in political theories and a juristic literature often detached from the dispensation of justice on the ground. Pamphlets, feuilletons, and statutory laws may well fail to reflect the institutional fractures of empires, which often become visible only in the day-to-day *practice* of law. Favoring the extension of property rights might be a rewarding thing to do in the metropolises, but it could be difficult to reconcile with the oppressive character of economic exploitation in the colonies (see Chapter 3). This approach thus calls for greater care in handling stories coming from the colonies, suggesting that the latter might not represent what philosophers, lawmakers, and politicians advocated as best for their empires. There might be some echoing between colony and metropole, but imperial regimes might also be characterized often by a complete absence of communication between the various layers of imperial administrations. This approach may lead us to cast a critical gaze on the project of “governmentality” that supposedly underlay the actions taken by colonial officials.

It is only when looking at the practice of law across several imperial polities that we can single out similar patterns of institutional arrangements that we might otherwise regard as specimens of some kind of cultural exceptionalism. In this respect, Benton’s work is particularly instructive, as it urges students of colonialism not only to look for similar policies enacted by imperial governments in the colonies but also to remember that “patterns of political reordering inside polities correspond to efforts by emergent states [...] to achieve

59 Ibid.: 13.

60 Ibid.: 148–9.

61 Ibid.: 168.

62 Ibid.: 180–2.

recognition as legitimate international actors.”⁶³ Benton thus emphasizes the international context in which imperial polities not only competed for power but also cited the legal practices of one another as precedents for their own course of actions. The microhistories of jurisdictional politics in the colonies may become more comprehensible if we do not keep empires as fixed points of reference and attempt instead to follow the variable geometries of global history. Joining the dots among the legal cases retrieved from colonial archives does not necessarily lead us to reproduce the cultural geography of empires; the resulting picture may become exemplary only if projected upon a study of cases in international law.

One is left to wonder whether this global-history approach is more suggestive than conclusive and whether it may create more misconceptions than it claims to debunk. It is one thing to observe that, in the colonies “the rule of law” is followed out of necessity and through trial and error rather than according to a grand plan designed in the metropole;⁶⁴ it is an entirely different thing, however, to assign agency only to those indigenous elites who would appear to be those who favored (and had vested interests in) the jurisdictional arrangements of the colonies. One is reminded of cases such as that of Lagos under British rule, when the colonial authorities rejected calls for the formal recognition of Islamic courts.⁶⁵ 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* (natives) in the Malian cities of Kayes and Medine were faced with a decree that made Africans subject to courts of customary law, thereby depriving them of the right to take their civil matters to *qāḍīs*.⁶⁶ In both Lagos and Mali, the formal denial of recognition to a body of law was equally a statement of institutional hegemony, suggesting that colonial polities could react to procedural ambiguities by eliminating rather than securing the rights of subordinate jurisdictions.⁶⁷

There are other stories of tension that produced no substantive change in the way justice was dispensed in the colonies. Laura Stoler recounts a case of homicide in East Sumatra, a region where laborers (mostly ethnic Gayos and

63 Benton, “Law and Empire in Global Perspective: Introduction”: 1098.

64 Benton, *Law and Colonial Cultures*: 168. Comaroff, “Colonialism, Culture and the Law.”

65 A.K. Makinde and P. Ostien, “Legal Pluralism in Colonial Lagos: The 1894 Petition of the Lagos Muslims to Their British Colonial Masters.” *WDI* 52 (2012): 51–68.

66 R. 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.

67 The fate of *qāḍīs* in Punjab under British rule is another example; see R. Ivermee, “*Shari‘at* and Muslim Community in Colonial Punjab, 1865–1885.” *MAS* 47/5 (2013): 1–28.

Malays) were subject to systematic maltreatment. One of the civil servants involved in investigating the murder in question, Assistant Resident Frans Carl Valck, noted in a report that the laborers “not knowing where to demand justice, probably took the law into their own hands and took revenge by killing.”⁶⁸ In reconstructing the case of a personal feud, Valck inadvertently exposed the culture of brutality of the Dutch planters. The quest for truth cost him his career; his reports were then scattered and forgotten in the archives in The Hague, and the assassination was portrayed as the action of a political mob prompted by Muslims from Aceh. Presumably, if the Gayos and Malays took up arms against their colonial masters instead of bringing their grievances before the district officer, it was because they were deterred by the planters’ power and their own lack of trust in “the rudimentary judicial system.”⁶⁹ In fact, as Valck reported, when the Malays complained that a planter had kicked them, they were advised to look to the district officer for redress.⁷⁰ When the laborers attacked the planters, they must thus have been wary of the legal alternative to violence as well as the consequences that a murder of a settler might later have had them.

If the colonial subjects were compelled to choose between appealing to foreign authorities and taking up arms against their masters, as was the case with the Malays, wasn’t the assertion of colonial hegemony in the end inevitable, if not clearly predetermined by the institutional script of colonial rule? Could Europeans rely on anything more penetrating and pervasive than a free-standing claim to authority and jurisdiction over their colonial subjects? Western powers did so by retaining the prerogatives of judicial review in all the Muslim-majority regions, where they had the power to assess the conduct of Muslim judges. Politics had instruments to strengthen their power by running the courts of second instance rather than by granting to the colonial subjects a space of differentiated jurisprudence. The establishment of native courts in a colony may thus be a bureaucratic expedient for processing the paperwork that would otherwise pile up in poorly-staffed colonial offices and a tool conferring jurisdictional authority to adjudicate cases involving the natives, who otherwise would not be tried because of blind spots and loopholes in the legal apparatus of the colony. It is important to consider histories that account for the contribution of the colonized to the colonial legal regimes

68 A.L. Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Commonsense* (Princeton: Princeton University Press, 2009): 215–6.

69 Ibid.: 209.

70 Ibid.

and to bear in mind the institutional asymmetry on which such regimes were organized and the forms of domination sustained by them.

I also hesitate to see patterned behaviors in the colonies in light of the transfer of administrative knowledge from one empire to another. In almost every Muslim region under colonial rule, Western officials referred to specific manuals of Islamic law available in translation, for example, the *Mukhtaṣar* of Khalil ibn Ishāq, a juristic compendium of the Maliki legal doctrine adhered to by most Muslim communities in the Maghreb (Libya and Tunisia) and in sub-Saharan Africa (Mali and Mauritania). From the 1850s on, the French produced various annotated translations of the *Mukhtaṣar*, 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 *Mukhtaṣar* later became an official legal source also in Tripolitania under Italian rule.⁷¹ That French justices shared the translations of this legal manual with their Italian neighbors does not imply that, on matters of jurisprudence, the two colonial polities followed similar patterns: “unlike the French,” argues Claudia Gazzini, “the Italians in Libya never embarked on a codification project, because their previous attempts to do so in earlier enterprises in Eritrea had failed and possibly also because they lacked the local expertise to do so.”⁷² This would suggest that, for empires and their colonial polities, the gathering of information within their own administrative borders amounted to more than simply following the lead of other international actors. In addition, bureaucrats often referred to authoritative precedents in order to acquire legitimacy in the eyes of their superiors or the public opinion. The fact that Russians, for instance, translated the Islamic legal manual that British officials had chosen as a juristic reference for hearing cases involving Muslims in India—*al-Hidāya*⁷³—does not mean that the activities of Central Asian jurists were bound to this text alone,⁷⁴ nor does it prove that Russians ever used this primer (or its

71 F. Renucci, “Le juge et la connaissance du droit indigène. Éléments de comparaison entre l’Algérie et la Libye aux premiers temps de la colonization.” In *Le juge et l’Outremer*, vol. 3, *Médée ou les impératifs du choix*, ed. B. Durand and E. Gasparini (Lille: Centre d’Histoire Judiciaire, 2007): 211–26.

72 Gazzini, “When Jurisprudence Becomes Law: How Italian Colonial Judges in Libya Turned Islamic Law and Customary Practice into Binding Legal Precedent”: 749.

73 On the promotion of this particular text for the codification of Anglo-Muhammadan law, see R. Travers, *Ideology and Empire in Eighteenth-Century India: The British Bengal* (Cambridge: Cambridge University Press, 2007): 123; Giunchi, “The Reinvention of *Shari’a* under the British Raj: In Search of Authenticity and Certainty.”

74 While *al-Hidāya* was no doubt part of the “traditional” curriculum of Islamic learning in Central Asian madrasas, there were dozens of Islamic references which, for the local

translation) for judicial review. In such a fragmented picture of colonial legal politics, where cause-and-effect relationships are difficult to establish, it is unclear whether the promotion of one manual affected the output of Islamic law courts⁷⁵ or simply allowed a stricter interpretation of *sharī'a* by colonial judges and lawyers.⁷⁶ To think in terms of global regimes may simply confuse a picture in which projects of transformation are still far from being clarified.

The history of nineteenth-century Central Asia, one of the most populous colonies of the Russian empire, is resistant to any such attempt to integrate it into a history of global legal regimes. When they conquered the Kazakh steppe, the Russians championed a doctrine of land tenure that was similar to the *terra nullius* regime; like the British in Australia, tsarist authorities claimed that the pastoral groups inhabiting the steppe did not own the land on which they lived. Though this doctrine was known to have a flimsy basis, it proved crucial in helping to reform the patterns of land tenure among the Kazakhs and undermine a class of landowners. In designing a doctrine that conferred upon Kazakhs and pastoral groups in general only usufruct rights,⁷⁷

jurists, bore equal weight and relevance. *Al-Nuqāya*, otherwise known as the *Mukhtaṣar al-wiqāya fī masā'il al-Hidāya* written by 'Ubaydallāh b. Ma'sūd Ṣadr al-Sharī'a al-Thānī (d. 1346) became so popular that its commentary (*sharḥ*) was translated into Persian in early-modern Central Asia; see A. Idrisov, A. Muminov, and M. Szuppe, *Manuscripts en écriture arabe du Musée régional de Nukus (République autonome du Karakalpakstan, Ouzbékistan). Fonds arabe, persan, turkī et karakalpak* (Rome: Istituto per l'Oriente C.A. Nallino, 2007): 108–9.

75 According to Ghislaine Lydon, for example, the *Mukhtaṣar* of Khalīl ibn Ishāq was the legal manual most often cited in the Muslim tribunals of Senegal under French rule. See her “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): 298.

76 In Niger, “the preference for codified law among French administrators tended to shift the legal discourse of the region towards the Mālikī law already available as a resource,” B.M. Cooper, *Marriage in Maradi: Gender and Culture in a Hausa Society in Niger, 1900–1989* (Portsmouth, NH: Heinemann, 1997): 38. According to Benjamin Soares, such processes also occurred under colonial rule in present-day Mali: “The Attempt to Reform Family Law in Mali.” *DWI* 49/3–4 (2009): 403.

77 *Polozhenie ob upravlenii v stepnykh oblastiakh*. In I.I. Kraft, *Sbornik uzakoneniĭ o kirgizakh stepnykh oblastei* (Orenburg: Tip. P.N. Zharinova, 1898): 103, 108 (arts. 119–20, 125); *Materialy po kirgizskomu zemlepol'zovaniiu. Syr-Dar'inskaia oblast'. Aulieatinskii uezd* (Tashkent: Tip. 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: Tip. V.M. Il'ina, 1915): 100. See also I.W. Campbell, “Settlement Promoted, Settlement Contested: the Shcherbina Expedition of 1896–1903.” *CAS* 30/3–4 (2011): 425.

tsarist officials acted independently by creating their own ethnographic and administrative knowledge rather than by emulating 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 in the networks of the colonial legal regimes. Contrary to the opinion of Ekaterina Pravilova,⁷⁸ the statutory laws that nominally secured peasants' usufruct rights alone were the product of home-grown Russian Orientalism. Rather than the translation of the Ottoman Code (*Mejelle*) and the handbooks by German Orientalists, such laws reflect a selective reading of Islamic juristic literature and information gathered in situ from individuals acquainted with the administrative practices of the khanates that constituted the informational basis of the officials in power in Turkestan (see Chapter 3).⁷⁹

The jurisdictional layering that Russians introduced among settled communities in Muslim Central Asia by confirming the office of *qāḍī* and retitling it as "native judge" was not imported from French Algeria. The Russians did not follow the French in this case, even if the former claimed to be closely monitoring the latter and occasionally exchanged intelligence.⁸⁰ It was instead an institutional arrangement deep-seated in Russian administrative practices, which was first tested in Crimea and later adopted in the Caucasus.⁸¹ None of the requests addressed by Central Asians to the tsarist authorities on matters regarding indigenous legal institutions were ever satisfied. On the contrary, as we shall see in Chapter 2, Russian officials sought the juristic support of muftis nearly every time they sought to introduce an institutional innovation, and such support was generally forthcoming.

78 E. Pravilova, "The Property of Empire. Islamic Law and Russian Agrarian Policy in Transcaucasia and Turkestan." *Kritika* 12/2 (2011): 361–6.

79 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 used to denote "state land" (see Chapter 3). 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.

80 P. Werth, "Changing Conceptions of Difference, Assimilation, and Faith in the Volga-Kama Region, 1740–1870." In *Russian Empire: Space, People, Power, 1700–1930*, ed. J. Burbank, M. von Hagen, and A. Remnev (Bloomington: Indiana University Press, 2007): 178; S. Haule, "... us et coutumes adoptées dans nos guerres d'Orient. L'expérience coloniale russe et l'expédition d'Alger." *Cahiers du Monde russe* 45/1–2 (2004): 292–320.

81 N. Dingel'shtedt, "Zametki. Sudebnoe preobrazovanie v Turkestane." *ZGUP* 9 (1892): 5.

3.2 *The Imperial Rights Regime*

If the global history of law complicates our understanding of nineteenth-century Central Asia, the imperial background in which the history of the region is usually accommodated is probably no less complicated. Although the question of legal diversity has long preoccupied legal historians and students of colonial history, it is only recently that people have begun to study the legal history of the peripheries of the Russian empire and, most notably, its colonies.⁸² Only a few studies on Central Asia are available, and their accounts of the Russian imperial project in indigenous law connect stories of erratic and cautious accommodation with instances of gradual impact. Robert Crews sees, in the Russian administration of Islamic law, a way for the colonial authorities to seek out “continuities with earlier practice”⁸³ and avoid “introducing institutional innovations that might provoke Muslim resistance.”⁸⁴ He argues that Russians emulated their Muslim predecessors (the *khāns* and *amīrs*)—as the arbiter of religious disputes.⁸⁵ Though correct in its outlines, this interpretation obscures important discontinuities with pre-colonial legal practices in a narrative of static and benevolent inclusion. In particular, Crews perilously overlooks the fact that Russians did not think in quite the same way as the khans and that the interactions between Russian colonial authorities and their subjects were based on the assumption that the legal system that existed before 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 among Central Asians and Russians could not necessarily replicate the same discursive patterns in which communications between Muslim principalities and local communities used to take place. 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 “scribes” (*munshīs*)

82 V. Martin, *Law and Custom in the Steppe: The Kazakhs of the Middle Horde and Russian Colonialism* (Richmond, UK: Curzon, 2001); V.O. Bobrovnikov, *Musul'mane Severnogo Kavkaza: Obychai, pravo, nasilie* (Moscow: Vostochnaia Literatura, 2002); A. Jersild, *Orientalism and Empire: North Caucasus Mountain Peoples and the Georgian Frontier* (Montreal: McGill-Queen's Press, 2002); M. Kemper, *Herrschaft, Recht und Islam in Daghestan: Von den Khanaten und Gemeindebünden zum jīhād-Staat* (Wiesbaden: Harrassowitz, 2005); R.D. Crews, *For Prophet and Tsar: Islam and Empire in Russia and Central Asia* (Cambridge, MA: Harvard University Press, 2006).

83 Crews, *For Prophet and Tsar*: 273.

84 Ibid.: 258.

85 Ibid.: 259.

with formulae and stock-phrases that kept communication between the khan and his subjects terse and highly formalized. Such conventionalized literary practices were less appropriate under the tsarist administration, whose information gatherers were eager for detail and color.⁸⁶ New scripts and tropes⁸⁷ were thus provided, which made it easier for locals to cater to Russians' distaste for indigenous forms of legalism.

Central Asians were aided by a new class of go-betweens, people who, like most of the native representatives of the colonial administration (the so-called "living wall"),⁸⁸ inhabited a liminal cultural space—not yet like the colonizers but above the average Muslim population in respect to administrative knowledge and bureaucratic resourcefulness. Indeed, locals could now hire for themselves Russian lawyers who were conversant in imperial law. Individuals such as Anton Glaz were famous in the region for their shrewd maneuvering between jurisdictions and playing with the legal status of those he assisted. Representing the interests of one Fayzibai Batibaev for an unpaid debt, Glaz was about to lose the case when he appealed the ruling issued by a native court, claiming that his client was a Christian Kazakh and that he was, as a non-Muslim, subject to the jurisdiction of the imperial courts. When summoned to the provincial chancellery, Fayzibai acknowledged the truth, that he was a Muslim-born Uzbek (*sart*) who followed *sharī'a*.⁸⁹ The military officials who had occasion to observe Glaz's artful practices concluded that "as he [the lawyer] was unable to win the case legally[...], he opted for an illegal way to draw it out to a great length." Little surprise that, being wary of the challenges posed by such individuals, military officials discussed whether to allow them to represent locals in cases to be heard in native courts.⁹⁰

There was also a cohort of translators, as depicted vividly in the short story of Abdulla Qahhor, who played the crucial role of mediator between various Central Asian appellants and Russian officials. The colonizers' defective knowledge of Central Asian languages and their heavy reliance on the *perevodchiki* (Russ., "translators") placed a heavy burden on the affairs of the imperial

86 It does not follow, however, that local rulers did not have an equally good reason to want accurate information about the world they ruled. See P. Sartori, "Seeing like a Khanate: On Archives, Cultures of Documentation, and 19th-Century Khorezm." *JPS* 8/2 (2016): 228–57.

87 On British scripts followed by colonial subjects, see Peterson, "Morality Plays."

88 Morrison, *Russian Rule in Samarkand, 1868–1910: A Comparison with British India*: 149.

89 Commandant of the Kurama district to the Syr-Daria provincial chancellery, August 1885, TsGARUz, f. 1-17, op. 1, d. 4082, ll. 31–31ob.

90 *Ibid.*, l. 30.

administration.⁹¹ Both European observers and locals often seized the occasion to expatiate on translators' misconduct to complain about the failings of the colonial bureaucracy, but this might also have functioned as a commonplace motif deployed to cater to the tastes of specific audiences that disliked the idea of imperial rule sitting on the shoulders of indigenes and would have preferred a more robust bureaucracy intruding into the mundane affairs of local institutions.⁹² In fact, in the everyday regimen of a scriptural polity such as the Governorship-General of Turkestan, it is common to find military officials' appreciating the aid of their translators. As we shall see in Chapter 4, their notes in the margins of their translations were often essential for the military officials to understand the context, often extremely legalistic, of the correspondence that they reviewed. This makes it easy to explain the careers of many such cultural brokers.⁹³ For example, Aleksander Kuhn,⁹⁴ the discoverer of the "Archive of the Khans of Khiva," owed his knowledge about the courtly culture of the Qunghrat Khanate—and many other things Khorezmian—to his native assistant and translator, Mīrzā 'Abd al-Raḥmān. Sifting through hundreds of petitions, one has the impression that many Russian officials survived the avalanche of paperwork,⁹⁵ eloquently termed *kantseliarizm* by Arendarenko,⁹⁶ thanks to many others like Mīrzā 'Abd al-Raḥmān who took good care of most of the routine translations from Chaghatay and Persian to Russian.⁹⁷

91 Morrison, *Russian Rule in Samarkand, 1868–1910: A Comparison with British India*: 148–50.

92 N.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): 95–6.

93 One such case was Mirza Radzhab Abduzhabbarov, who spent his whole working life as translator for the chancellery of the commandant in Jizzakh. He was decorated several times, including with the order of St. Anne. See his service records (*posluzhnoi spisok*) in TsGARUz, f. 1-17, op. 1, d. 2850, ll. 31–32.

94 Aleksander Ludvigovich Kuhn, is the Orientalist to whom we owe the "discovery" of the Archive of the Khans of Khiva during the Russian siege of Khiva in 1873 as well as fine studies on property relations and fiscal practices in the oasis of Khorezm under the rule of the Qunghrats. See further A. Azad and O. Yastrebova, "Reflections on an Orientalist: Aleksandr Kuhn (1840–88), the Man and His Legacy." *IS* 48/5 (2015): 675–94.

95 In his *Pol zhizni v Turkestane. Ocherki byta tuzemnogo naseleniia* (Petrograd, 1916): 33–4, 38, Nil Lykoshin suggests that the police chiefs (*pristavy*), for example, were simply overwhelmed by petitions (6,000–12,000 papers to process per year).

96 G.A. Arendarenko, *Dosugi v Turkestane, 1874–1889* (St. Petersburg: Tipografiia M.M. Stasiulevich, 1889): 174.

97 Some local translators were recruited from among those who attended Russian schools. See, for example, the file of one Sait Akbergenov, which includes his grades from the

In addition, indigenous calls for the application of imperial law became detrimental to the traditional institution of Islam in first place; the annulment of charitable endowments and the circumvention of the Islamic law of inheritance pursued by the natives are glaring examples. Despite what Crews says, Muslims in Central Asia seem to have seen the Russian administration less as a “House of Islam” than as a sorry set of individuals to manipulate as they saw fit. As I hope to show, Russians did not replace the khans and assume the responsibility for justice in order simply to preserve the institutional setting they found. They did so because it allowed them to base their view on Muslim justice and thus shape the way that Muslims understood legality in general.

Alexander Morrison has, in contrast, put greater emphasis on the reform of the Muslim judiciary and the way this intervention sparked litigiousness among local communities. Morrison situates his account of this reform in 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 doing so, he seeks to show that, in Central Asia, the military ruled with a healthy dose of pragmatism and that the Russians ended up retaining even those legal systems that they profoundly disliked. Characterizing the policy adopted by Russians in Central Asia, including in matters of Islamic law, Morrison speaks of “inadvertently benevolent neglect.”⁹⁸ This interpretation too calls for a corrective. 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 *qāḍīs*, trustees, and bailiffs with “native courts” in which Muslim judges operated either alone or deprived of the crucial contribution of other mediatory agents. If, before the conquest, *sharīʿa* courts were embedded in an institutional setting—the chancellery (*dīwān*) and the offices of the trustees (*yasāwuls*, *amīns*, *maḥrams*)—that protected *sharīʿa*, this did not remain the case under Russian rule, where *qāḍīs* and other legal experts found themselves spending much of their time dodging malicious—and often unfounded—accusations of bribery and malpractice.⁹⁹

Pedagogical Institute in Perovsk, 1912, TsGARUz, f. 1-17, op. 1, d. 2059; see also the service record of Isym Askarov, who completed his studies at the Tashkent *gorodskoe uchilishche* (municipal school) in 1912, TsGARUz, f. 1-36, op. 1, d. 6083, l. 2.

98 Morrison, *Russian Rule in Samarkand, 1868–1910: A Comparison with British India*: 291.

99 See Chapter 2.

A strikingly different picture emerges from the work of Virginia Martin on customary law among the nomads of the steppe. Martin's main contention 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'*)¹⁰⁰ among the indigenous peoples of the empire rested on the rapprochement (*sblizhenie*)¹⁰¹ of an inferior body of law in local use—"custom" (*obychai*)—with the empire's superior legal system—"the law" (*zakon*). Martin accords particular attention to the civilizing goal of Russians and the transformation of local legal practices, which 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. She argues that setting customary laws down in writing implied changing much of their social significance. However, in emphasizing the much trumpeted doctrine of rule by example and according attention solely to the process of legal codification, she overlooks the fact that Russians interfered directly in the arbitration of 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.¹⁰²

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 applying pressure for legal change. Jane Burbank, by contrast, blends the antinomies of conciliatory compromise and profound transformation in a narrative of inclusive state legal pluralism. Her synthesis presents the image of a polity—the

100 Martin, *Law and Custom in the Steppe*: 4, 43; see also Werth, "Changing Conceptions of Difference, Assimilation, and Faith in the Volga-Kama Region, 1740–1870": 170, 184–5.

101 On the concept of *sblizhenie*, see Morrison, *Russian Rule in Samarkand, 1868–1910: A Comparison with British India*: 35, 98, 284.

102 Kazakhs, following a request by the Russians, produced summaries of their rulings to serve as legal precedents, but such legal compendia were apparently drafted to be read, understood, and, perhaps, employed by outsiders alone, that is, the Russians. At any event, there is to date no evidence that Kazakhs resorted to these codes when applying customary law. I briefly consider this question in my "Murder in Manghishlaq: Notes on an Instance of Application of Qazaq Customary Law in Khiva." *DI* 88/2 (2012): 217–57.

Muscovite autocracy—that 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.”¹⁰³

The notion on which Jane Burbank’s thesis of differentiated jurisprudence is centered is the concept of “custom,” a residual category comprising any body of laws outside of imperial law and a term that is ubiquitous in the vocabulary of statutory laws of Russia.¹⁰⁴ The assumption is that the official recognition of customary laws—that is, indigenous bodies of law—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 as they were guarded by the all-encompassing reach of the autocracy. This seems to have been 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 entered into one category of citizenship and thereby attached to one jurisprudence collective: Russian peasants were expected to bring their grievances before the township courts, as were the indigenous Siberians who enjoyed rights of landholding according to their customs, and as Muslims in the Caucasus and Central Asia were left to refer to the *qādis*.

The history of the Russian empire shows that its formation as a multiple legal regime is owed in large part to the Realpolitik that guided the expansion of the polity to the south and the east. Inclusion was a *sine qua non* for officers and governors who aimed to establish their rule over non-Orthodox peoples. To allow the local peoples to manage their own governance and thereby affirm established legal practices was instrumental in asserting power, extracting revenues, and keeping the hinterland relatively peaceful.

In Chapter 2, I shall target certain aspects of Burbank’s argument. I contend that this imperial policy was applied only temporarily in Russian Central

103 Burbank, “An Imperial Rights Regime: Law and Citizenship in the Russian Empire”: 400.

104 A revealing parallel is the French treatment of customary law in North Africa; see J. Scheele, “A Taste for Law: Rule Making in Kabylia (Algeria),” *CSSH* 50/4 (2008): 895–919.

Asia. This becomes clear when we examine how the state waded 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 *sharī'a* courts, and the nomads were to follow the rulings of the courts of customary law.

Russians did not, however, simply endow Muslims with “self-justice” (*samo-upravlenie*). The entire history of the colonization of Central Asia is, in fact, punctuated by official calls for intervention and reforms. The apex of this trend was reached in 1913, when a project for the dissolution of the native courts proposed that *sharī'a* courts be replaced by justices of the peace.¹⁰⁵ At that time, assimilation (*assimilatsiia*) was the buzzword for those Russians officials who were unhappy with a pluralistic legal regime.¹⁰⁶

I shall not use the paper trail left by the commissions proposing that *sharī'a* be dissolved to challenge the argumentation of the imperial legal-rights regime; after all, the Russians never succeeded in doing away with *sharī'a* in the empire. Instead, I want to draw attention to some of those practices of legalism that show how the Russian bureaucracy dealt with Islamic law and tried to change its policies. There were two levels of colonial intervention in Islamic law in Russian Central Asia. One such level was imposed ex officio, and it introduced the first set of changes at the institutional and jurisdictional level. Russian policy established an asymmetry between the laws of the empire and Islamic law, first by defining the boundaries of application of *sharī'a*. 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, consisting principally of crimes against state authorities, Russians, and the Christian faith. But the imperial law courts were also expected to hear cases against individuals—murder, abduction, and rape—and to deal with crimes against the property of individuals, cases of usurpation, arson, raids, robbery, damage to state property, and forgery of legal documents. These regulations reduced dramatically the range of authority of *sharī'a* courts, as they were to hear only matters of personal-status law and only a few cases of penal law, such as theft, assault, and cursing. The issue of jurisdiction became more important as Muslims learned to operate within different legal arenas

105 Anonymous [Maḥmūd Khwāja Bihbūdī], “Qāḍī wa bilār ḥaqqında lāyiḥa.” *Āyina* 5 (1913): 106–8.

106 *Proekt uprazhneniia narodnykh sudov v Turkestanskom krae*, 1913, TsGARUz, f. 1-36, op. 1, d. 6009, l. 166ob.

and to insist that their cases be heard according to imperial law. This also happened in cases of personal-status law, as in matters of inheritance and disputes concerning charitable endowments.

Russian intervention in Islamic law was not limited to a contraction of the jurisdiction of the Islamic judge. Colonial authorities also attempted to change *sharī'a* at the level of procedural laws by stepping directly into the adjudication of disputes. One crucial such innovation saw the colonizers introduce a system of judicial review. Under the provisions of this new system, Muslims were entitled to appeal the judgments of *sharī'a* courts by addressing their grievances to the district chancellery (*uezdnoe upravlenie*). The judgments would be reviewed by an assembly of Muslim jurists, but the process of revision would be overseen strictly by Russian bureaucrats. It is in the practice of legal commentary, paper-pushing between chancelleries, and the exercise of forensic skepticism that Russians sought to change the meanings of right or wrong according to Islamic law.

To bring about substantial changes in the administration of justice among the Muslims of Central Asia meant also to influence Muslims' view of Islamic law. This was an enterprise in which the Russians distinguished themselves: if they accomplished anything, it was to convince Muslims that they could express their ideas about justice and injustice. The Russians pushed Muslims hard to do so by letting the local populace know that their stories of *qāḍīs'* malpractices and court misconduct did matter to the colonial government. The Russians took seriously any claim of injustice coming from Muslims, in the hope that an appeal would provide evidence to undermine Islamic law.

Reviewing the activity of Islamic law courts was a matter more of day-to-day 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 *sharī'a*. Divergences and frictions are therefore visible within the colonial administration of Turkestan, especially with regard to the future of Islamic law in the region. However, the practice of reviewing *qāḍīs'* judgments inevitably led people to consider the possibility of revoking them and of questioning the native judiciary's competence to adjudicate. It was precisely while reviewing *qāḍīs'* activity that the two main bureaucratic apparatuses of the administration of the colony went head to head with one another: the district chancellery sought to affect directly the activity of the *sharī'a* courts, while the provincial chancellery (*oblastnoe upravlenie*) usually defended the autonomy of the *sharī'a* courts. It was usually the provincial chancellery and its head, the military governor, that succeeded in this battle. Substantial hesitation among officials prevented the final dissolution of the *sharī'a* courts, which a few military governors (of Syr-Darya and Ferghana) considered premature

(*prezhdevremenno*), while others (those of Semireche and Samarqand) advocated aloud. Even those officials who avoided the final closure of *sharīʿa* courts were in favor of radical reforms: indeed, they proposed that military district (*okrug*) courts become a judicial level of second instance for appeals involving Muslim parties.¹⁰⁷ The governors were probably aware that, when military justices had, in the past, reviewed Muslims' appeals, they had overturned 95% of the *qāḍīs*' judgments.¹⁰⁸ This proposal signals that the two governors had great respect for the experience that Russian officials had accumulated while reviewing the activity of Islamic law courts up to 1913. In their view, the knowledge that the colonial bureaucrats had accumulated on *sharīʿa* should not have been allowed to dissipate.

4 Sources

Students of law, colonialism, and the Islamicate world tend to view *qāḍī* courts as the unique site of application of the law, the place where one should look to find changes (or the lack thereof) in a given legal culture. In choosing the courts as a revealing site of colonial legal domination, however, historians might reasonably have sought to create a reliable basis of information. Situations of legal diversity often called for the imposition of state law on alternative systems deemed indigenous, the creation (and repeated negotiation) of jurisdictional boundaries, and the enactment of procedural links between competing jurisdictions; it is thus perfectly conceivable that one might want to confer on court cases a particular exemplarity.¹⁰⁹ I do not claim that this is an entirely misleading approach but that, in focusing so closely on *qāḍī* courts, one risks assuming that *qāḍīs* exercised a similar monopolistic function in the exercise of justice in the years before colonization.

As I will show in Chapter 1, the situation in Central Asia during the Russian conquest was substantially different. It is during that period that we observe a distinct hierarchy of authority, whereby Muslim principalities concentrated all jurisdiction in their hands, while *qāḍīs* worked for them in the humbler capacity of legal advisors. In the first half of the nineteenth century, in the Uzbek khanates, *qāḍīs* did not dispense justice autonomously as an independent

107 TsGARUz f. 1-36, op. 1, d. 6009, ll. 1630b-164; 1690b.

108 Morrison, *Russian Rule in Samarkand, 1868-1910: A Comparison with British India*: 269.

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

judiciary but heard a case only after receiving instructions from the central chancellery to which they were expected to report. In such a system, the justice dispensed by the ruler was more authoritative than that of the *qāḍīs*, whose activity might be contested. In the following case, a female victim of assault appealed first to the district governor (*ḥakīm*) of Khwāja-Īlī (in present-day Qaraqalpaqstan). The governor instructed an attendant to bring the two parties before the *qāḍīs* of the city. As the defendant admitted the assault, the judges proceeded to appoint a woman trustee to examine the body of the claimant and assess the degree of injury. As the examination disclosed various instances of harm, the *qāḍīs* consulted with a mufti, who ruled in favor of a corporal punishment for the defendant. When the *qāḍīs* were about to execute the ruling of the jurist, the defendant questioned the authority of the jurors and left the hearing. Following is the text of the judicial report [Fig. 1], in translation:

Let it be known to the pivot of glory, Yasāwul-Bāshī Aqā, may his power increase, that a certain woman called Ḥanīfa Bika, from the Shīrīn mosque community in [the district of] Khwāja-Īlī appealed to the governor and claimed that her husband, a certain Ṣādiq, unlawfully assaulted her, causing injury. [The governor thus instructed] a *yasāwul* to go to [the locality], find the husband and deliver the two parties to us [the *qāḍīs* of Khwāja-Īlī]. Later, when we questioned the man, he acknowledged the assault; then we appointed a faithful and pious woman as trustee to examine [the body of] the aforementioned [claimant], and this trustee informed us that indeed [Ḥanīfa Bika] showed signs of bodily harm in various parts. Then, we decided that the [issue] of this woman should be treated as a judicial case. As we were executing the ruling of the mufti and thus intended to punish [the defendant] according to *sharīʿa*, he stood up and said, “No!” and then left [the hearing]. This alone is what occurred before us; no financial issues [were discussed]. The event was recorded.¹¹⁰

The dispensation of justice in precolonial Central Asia was thus centered on 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, the people would be perfectly equipped to address their grievances to the colonial masters, and this is the reason that

110 The report can be dated inductively to the beginning of the twentieth century. TsGARUz, f. 1-125, op. 1, d. 498, l. 29.

FIGURE 1 *Khawāja-Īlī qādis'* report to the office of the *Yasāwulbāshī*, TsGARUz, n.d., f. 1-125, op. 1, d. 498, l. 29.

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the archives of the colonial polities are filled with appeals filed by locals.¹¹¹ It thus becomes clearer that substantive changes in Muslims' legal consciousness become more visible and less readily neglected when one looks for them in the mundane activity of the colonial bureaucracy and of mid-level institutions

111 This disputes the presumption that colonial courts, rather than the bureaucratic apparatus of the colony, was where locals filed their grievances; see Merry, "Colonial Law and Its Uncertainties": 1068.

rather than in the registers of *sharī'a* courts. It is here that experience is more freely articulated and less constrained by the *qāḍīs'* legalese. It is therefore to such a source basis that I turned to write this study. The sources I use in this book, however, amount to the output of the colonial administration in its broadest sense, because the administration included "native" institutions such as law courts, charitable endowments, schools, and neighborhoods, which left ample documentation (mostly of a legal nature) in Chaghatay and Persian. In addition, I draw on sources crafted from the sixteenth to the early nineteenth century for comparative purposes. This material is mainly in Arabic and Persian. I discuss these sources in greater detail in the following chapters.

In this book I have made extensive use of Islamic legal texts such as deeds, fatwas, judgments, and reports. In doing so, I make no assumption that texts written in Arabic-script languages are intrinsically more "useful" than those written in Russian by virtue of their reflecting local writing practices. They are no doubt crucial to understanding a local system of knowledge, but "indigenous" sources are not endowed with greater authenticity than any other texts, including those written by non-Central Asians. One script hardly makes a text more or less authentic than do others. Nor, in principle, are there sources that can speak more authoritatively of the past and those who lived it. In addition, legal documents, regardless of their language, do not open windows on the past. Therefore, whenever and wherever possible, I *combined* sources in Russian alongside texts in Arabic, Persian, and Chaghatay in an effort to consider together different visions of justice that, in my view, represent the world of colonial Central Asia.

5 Outline of the Book

This book is both an experiment and a methodological compromise, for it attends to two tasks at once: by reconstructing the institutional setting, the legal procedures, and the patterns of consumption of law in the region before colonization, it attempts to trace changes in Muslim legal consciousness in Russian Central Asia.

Chapter 1 sets the stage and, in drawing from Pierre Bourdieu, presents *sharī'a* as a juridical field, that is, a space in which operated various institutions and officials, at the center of which stood the royal court of the local khans. Chapter 2 shows how Russian intervention in the *sharī'a* juridical field led to an institutional and discursive overhaul. It is here that I illustrate how Central Asians interiorized the colonial visions of Islamic law as a despotic system of justice, acquiesced to the view of *qāḍīs* as irremediably corrupt, and, by doing

so, contributed to delegitimizing *sharī'a* as the sole source of Muslims' legality. In this chapter, I also show how Muslims adapted rapidly to the moral reorientations suggested by the Russians. Locals repeatedly became legal players and thus conversant with the practice of filing lawsuits driven by malice. Chapter 3 offers a thorough reevaluation of the law of property under Russian rule. It portrays the transition from a regime of usufruct to one of landed property in which the Islamic vocabulary of property acquired new meanings. As a segue to a discussion on property relations, Chapter 4 demonstrates that changes in legal consciousness consisted also of taking legal action against the integrity of Islamic institutions as important for communal forms of organization as charitable endowments (*waqfs*). In Chapter 5 I deal with the legal genre of fatwas. I illustrate that the colonization of the Islamic juridical field was a fragmented experience for Muslims and one in which different legal sensibilities overlapped. By examining the issuance of fatwas in its various bureaucratic contexts, I will show the coexistence of former and new juristic practices that led to competing and sometimes contrasting definitions of *sharī'a* as a moral world.