

Re-conceptualizing the Russian Legal Tradition: Imperial Roots and Modern Reality

By F. Joseph Dresen

On 13 April 2017 the Kennan Institute presented the James H. Billington Seminar on Russian History and Culture, a panel discussion on the historic roots of Russian law and modern reality. In her opening presentation, **Jane Burbank**, professor, New York University, observed that if a country possesses different legal customs, many in the West interpret that country as lacking a rule of law tradition. Russia is just such country, she said: There is a conceit that Russia has a weak legal tradition, and that a true “Rule of Law” tradition is found only in the West. The proper approach to understanding Russian legal traditions is to study how Russian law worked and evolved throughout its history, and not argue “how Russian law should have been.”

By examining Russian law dating back to its “deep past,” as far back as the 9th century, Burbank contended that Russia’s historical position caught in between powerful imperial neighbors left an indelible stamp on Russia’s development as a society. Over centuries, Russia acquired a culture based on Orthodoxy, charismatic autocratic leadership, and management practices adopted from the Mongol reign. In this context, law emerged in Russia as more of a system of state security and territorial control than a mechanism for limiting state power over individuals. As the Mongol domination receded and the Russian state began to grow as an empire, Russia’s legal system emerged as an increasingly important tool to control non-Russian populations within its empire. The legal

system was quick to adopt foreign practices, in that the center permitted regional populations to continue to administer local concerns according to their cultural traditions. In return, the Russian state would adapt useful foreign practices to the Russian system. Over time, a patchwork of different legal traditions governing local matters were scattered across the growing Russian empire.

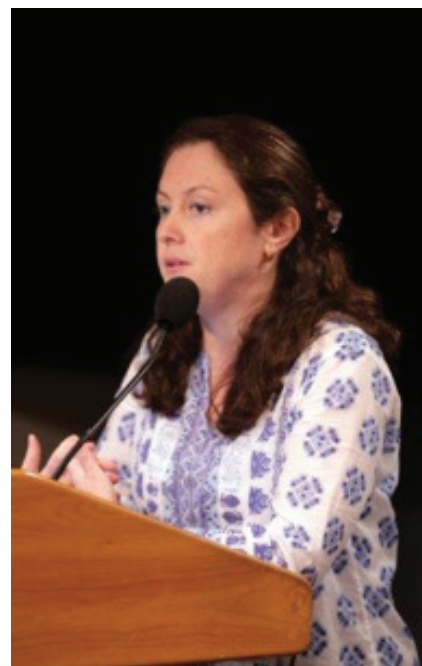
According to Burbank, this patchwork approach made it easier for the Russian state to assimilate new lands and people into the empire. The prac-



tice also provided incentives for local elites to collaborate with the central government to maintain control over the individual regions, further easing the center's rule over the regions. However, as a result the Russian state was in constant negotiation and contention with all its regions, and the legal system provided the battleground. Ultimate authority in this emerging tradition remained with the tsar, but the tsar's authority depended on transmitting decrees through local elites jockeying for position across a far-flung empire with differing legal codes and traditions. And while local elites enjoyed tremendous authority, they were always subject to discipline and even removal resulting from appeals to the center emanating from the region itself.

A prime example of this center-region tension was how the Russian state first tolerated, then worked to control, the prevalence of Sharia law among its Muslim populations. **Rozaliya Garipova**, James Billington Fellow, Kennan Institute and Scholar, Institute for Advanced Study, explained how local populations in the Russian empire came to believe strongly in their right to live under their own law. This was particularly true in the case of Sharia law, which especially governed local matters such as family law and inheritance. The Russian state, for its part, valued religion, even non-Orthodox religion, as an instrument of maintaining social order. In Sharia regions, the local Imams provided the elite local authority that the Russian state needed to exert authority.

Between 1870 and the early 1900s, the Russian state increasingly insisted that Russian civil law receive precedence over Sharia law. As an Orthodox state, Garipova contended, there were limits to the religious tolerance the Russia was prepared to offer. In a gradual process, the Russian state began pushing its legal code into the regions. Eventually, the state began to succeed. One example Garipova cited concerned age of consent to marriage. When Russia set the age of consent at 16, Muslim communities fought back. They appealed to authorities to reinstate the right for local control. When that didn't work, individuals would bypass civil registrations for marriage and turn to the Imams. Eventually the Imams, who could be dismissed if found violating Russian law, issued a religious edict raising the age of consent to 16. According to Garipova, the Russian system did not represent the "rule of law" so much as "rule through law." The state succeeded in forcing the Imams to bend to state rules, and thus narrowed the scope of regional autonomy.







If the Russian state gradually succeeded in instilling a more unified legal code across the empire, the passage of legal reforms in 1864 led to the establishment of new legal procedures and institutions that served as a modest check on the state, according to **William Pomeranz**, deputy director of the Kennan Institute. The reforms led to lifetime tenure for judges, and providing them with the right to interpret the law. The reforms also transformed the procuracy, entrusted with supervising the Russian state on behalf of the tsar, to prosecutors charged with representing the state in the courtroom only. Finally, the reforms let to the establishment of an *advokatura* (a professional legal bar), establishing a legal profession responsible for defending individuals against plaintiffs in civil trials and the state in criminal trials. Pomeranz noted that each of these reforms, in their own way, shaped Russian law in ways felt to this day. They introduced the notion of individual property rights and the rights of individuals before the state.




The Bolshevik revolution in 1917 soon put an end to the independent judiciary and *advokatura*, and restored the role of the procuracy as an implement of state control. The Soviet legal system borrowing heavily from Russia's tsarist past, would be in place for 80 more years. With the fall of the Soviet Union and the emergence of Russia as an independent state, the relatively liberal institutions from the 1864 legal reforms returned. Yet even with the return of these institutions of law, Pomeranz cautioned, the harsh legacy of Russian legal tradition remains intact—the conviction rate for individuals charged with a crime in Russian court exceeds 99 percent, unchanged since the Soviet period.



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