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Criminal Justice in Early Modern Russia

Nancy Shields Kollmann

The current energetic research on criminal justice in Russia reflects broader trends in the field away from central autocratic power to the study of locality, empire and subject peoples and to microhistory and examination of lived experience. Case law (extant from the seventeenth century) reveals legal culture and is the best angle into the study of crime per se, since statistics are lacking (modern police forces developed only late in the nineteenth century)[1]. Russian historians are less engaged in a debate animating scholars of early modern Europe, namely the relative rise or fall of crime rates and impact of humanitarian thought, a paradigm raised by Michel Foucault, Pieter Spierenburg, Steven Pinker and others[2]. Rather, historians of Russia are focusing on how the law was practiced in conditions of autocracy across an empire of tremendous diversity, placing criminal law and practice in comparative context with European and Ottoman experiences where appropriate.

CRIMINAL LAW BEFORE 1700

Law was a key focus of Russia's rulers as they began to centralize the grand principality of Moscow. In addition to expanding the army, bureaucracy and treasury office, Ivan III (ruled 1462-1505) asserted control over the criminal law (prosecuting robbery, murder, treason) in the many principalities, towns and regions Moscow had been conquering since the fourteenth century. Expanding judicial authority captured revenues, displaced local elites and responded to a central claim of Muscovite political ideology, namely that the good tsar protected his people from injustice and provided mercy.

Elsewhere there was plenty of legal diversity. Ecclesiastical law and courts (episcopal and monastic) held jurisdiction over the dominant East Slavic Orthodox population in family, marriage, divorce and inheritance law and religious crime; they used canon law and some elements of Byzantine secular law (the *Ecloga*). Joint state-church courts heard cases of deviance that might result in execution (heresy, witchcraft). Furthermore, all landholders, religious and lay, as well as East Slavic villages and towns, enforced petty law and order for peasant communities, using customary law in the *Russian Law* (*Russkaia Pravda*). Compiled in the eleventh and twelfth centuries, it represented "dyadic", or face-to-face, justice[3]. With the exception of a few references in chronicles and documents to heresy trials, and a few judgement charters on land disputes, however, no case law survives from church and lesser courts through the Muscovite period (to 1700).

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1 Daly (1998, 2004).

2 Foucault (1979); Spierenburg (1984); Pinker (2011).

3 Kaiser (1980, 1992).

Ivan III's judicial centralization was anchored by the 1497 *Lawcode* (*Sudebnik*), a brief practical handbook of "triadic" justice (accommodating interests and officials of the state); since, unlike its European and Ottoman peers, Muscovy lacked universities, legal faculties, lawyers and notaries (until the nineteenth century), codified law was unlearned and practical. The 1497 *Lawcode* was intended primarily to discipline officialdom by defining fees for judicial services, sanctions for corrupt judges and litigants and criminal punishments. References to elements of inquisitorial procedure (inquisition, reputation as evidence and torture) suggest the influence of the contemporary European revival of Roman law (perhaps through Russia's widening diplomatic and trade encounters with the Grand Duchy of Lithuania, Kingdom of Poland and Habsburgs from the late 1400s); this would be a fruitful topic for future research[4]. An expanded *Lawcode* followed in 1550, while two later codes (1589 and 1606) were not widely disseminated or applied. These early sources of the criminal law, as well as predecessors such as the *Russian Law*, codes of the urban republics of Novgorod and Pskov and early Muscovite administrative charters, have benefited from extensive research and critical source publication[5].

From the 1530s, while governors handled most criminal cases, a parallel system of criminal courts in the countryside was created to address a rise in banditry; local gentry in broad geographical territories were charged with hunting down, arresting, prosecuting (with torture) and punishing (up to capital punishment) professional criminals[6]. Their governing charters are notable in greater detail of judicial procedure but a continued lack of limitations on torture such as are found in contemporary German and French codes. When Moscow conquered Kazan on the Volga River, it took the approach of a classic Eurasian "empire of difference" wherein subject peoples' religion, language, culture, elites and institutions are tolerated as long as they acquiesced to central demands[7]; for Russia, these were military control, taxation and criminal law. Thus, in non-Russian, non-Orthodox areas Russia allowed Islamic and customary courts to endure for lesser crime.

Moscow's legal diversity expanded with empire. In the seventeenth century Moscow claimed Siberia to the Pacific coast, expanded from the Middle Volga into Bashkiria, and pushed fortified lines into the steppe. Across the realm it made negotiated "deals" in what Jane Burbank calls Russia's "imperial rights regime", namely, that subject communities enjoyed different packages of rights and connected vertically to the tsar, preventing the formation of horizontal social connections[8]. In the seventeenth century two regions joined the empire in vassal status, with little to no Russian interference in domestic administration: the Cossacks of Left Bank Ukraine (since 1654) and the Don Cossacks. Elsewhere criminal courts were imposed in a skeletal network of about 200 provincial governors. Governors were military men, charged with myriad duties – military defense, taxation, customs and trade, law

4 Langbein (1974, 1977); Weickhardt (1995, 2006a, 2007); Feldbrugge (2009).

5 *Pamiatniki russkogo prava* (1952-63); Dewey (1960, 1962, 1966a, 1966b, 1987); Kashtanov (1970); Kleimola (1975); Nersesiants (1986); Goldfrank (1988); Baranowski (2008).

6 Nosov (1957); Rogov (1992, 1995); Bogatyrev (2000); Weickhardt (2006c).

7 Barkey (2008); Burbank and Cooper (2010).

8 Burbank (2000).

and order – of which the criminal court was a low priority. Governors absorbed the sixteenth-century criminal boards, but policing in Muscovy's small provincial towns and villages remained in the hands of communes. Only in major towns (Moscow, Kazan, Novgorod, Astrakhan) did garrisons of musketeers and guilds of gate keepers police more formally. Even so, since Muscovite towns were not independent municipalities, arrested criminals ended up in the governors' courts for trial.

Provincial governors' legal work was overseen by the Felony Chancery (*Razboinyi Prikaz*), the empire's repository of criminal judicial expertise. The Chancery deployed to the provinces scribes trained in uniform judicial procedure, law and paperwork formulae and they in turn policed the work of governors as amateur judges. Given the empire's minimal resources and skeletal network, this bureaucracy achieved a striking degree of consistency. A single law was applied across the empire, using one language (documentary Russian was close to vernacular) and a standard format of documentation. Court cases originating in far eastern Siberia, Arkhangel in the north and Kozlov on the steppe border were identical in paleography, bureaucratic formulae and judicial procedure. Case law, particularly from local courts, survives sporadically from the beginning of the seventeenth century and becomes richer and more widely distributed by its end, supporting studies of local legal practice[9]. Provincial courts, often guided by correspondence with the center, faithfully followed procedure and administered the law in verdict and punishment. Corruption was always a threat, given that communities were required to provide officials with upkeep, but the center was responsive to complaints and bureaucrats were paid sufficient salary and fees to keep corruption in check.

The Felony Chancery presided over the expansion of the law[10]. Without jurisprudential synthesis, it assembled *Lawcodes*, decrees, charters and case law into practical handbooks that provided the texts for extensive chapters on judicial procedure and capital punishment in the 1649 *Conciliar Lawcode* (*Ulozhenie*). That massive code (967 articles in 25 chapters) heightened the application of corporal punishment (flogging and execution), influenced by the Lithuanian Statute and canon law; those sources were also responsible for new chapters defining crime against the state[11]. The *Ulozhenie* expanded the use of exile and introduced modes of identifying felons in exile by bodily mutilation (later branding). A criminal code of 1669, even more stringent in corporal punishment, was eclipsed by the *Ulozhenie*, which was published and widely disseminated, a rarity in this manuscript-based society. As subsequent efforts to update the law (under Peter I, Elizabeth I, Catherine II and Alexander I) came to naught, the *Ulozhenie* endured, supplemented by a constant stream of decrees from various chanceries, producing uneven knowledge of the law across the realm.

Legal pluralism continued; the state was ultimately unsuccessful in limiting ecclesiastical judicial authority, and expansion continued to add non-Russian, non-Orthodox lands where minor disputes were settled by native custom and courts. The tsar's criminal courts functioned effectively: men and women of all ethnicities and religions, and all social ranks including slaves, acted as witnesses, defendants

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9 Pokrovskii (1989); Aleksandrov and Pokrovskii (1991); Kollmann (1999, 2012); Glaz'ev (2001); Davies (2004); Kivelson (2013).

10 *Moskovskaia delovaia* (1968); *Pamiatniki delovoi pis'mennosti* (1984); *Zakonodatel'nye akty* (1987); Man'kov (1987, 1998, 2003); Hellie (1988a, 1988b, 1990, 1991); Rumiantseva (1990).

11 Hellie (1988, 1990, 1991).

and plaintiffs[12]. Judges exercised a continuum of violence in punishment from ample provision of the "tsar's mercy" for local crimes to severe torture and brutal executions for political crime. Valerie Kivelson's study of witchcraft prosecutions demonstrates the extremes of judicial violence, enabled by the law's lack of legal limitations on torture[13]. In other ways Muscovy's practice of the criminal law was less violent than its European peers. Russia did not, for example, employ "spectacles of suffering", namely theatrical and brutal public executions. Russia's executions were simple affairs, in which the mandated speed of punishment after sentencing probably constituted a terrifying caution to the populace[14]. At the same time law and practice systematically decreased the use of capital punishment in favor of exile.

EIGHTEENTH AND EARLY NINETEENTH CENTURY

The eighteenth century was a century of geographical and demographic growth, trade and mobility even in conditions of enserfment, and increasing imperial diversity. Crime undoubtedly rose but statistics are unavailable, and efforts at judicial reform by Peter I (ruled 1682-1725) and Catherine I (ruled 1762-1796) were driven primarily by a need for revenue and a commitment to a more rational ordering of society. Guided by the model of the "well-ordered police state" (*Polizeistaat, Rechtstaat*), Russia's eighteenth-century rulers considered law not a limitation to their power, but rather an instrument that they devised and used to regulate society in an enlightened manner[15].

Peter I centralized Muscovy's many chanceries into approximately twelve central Colleges, including a Justice College and Senate (founded in 1711), which eventually became a legislative organ and appeals court. Peter I issued naval and military laws, based on Swedish models, with harsh corporal and capital punishment, but they were not applied in non-military courts. He introduced regulations for more orderly bureaucratic organization and rationalized record-keeping by shifting from scrolls to notebooks. He urged literacy and educational standards on his nobility, but failed to lure them into civil service; ultimately he weakened the bureaucracy by eliminating salary for most officials, including judicial, inviting corruption. His approach to judicial punishment was pragmatic: after he witnessed a day of executions in Amsterdam in 1697, he brought "spectacles of execution" to Russia, staging several (for treason and great official corruption)[16]. But the simpler format of speedy executions endured in local courts. At the same time, Peter I instituted mandatory review of capital sentences and continued a move away from execution to exile and hard labor (for his many new building projects).

Peter attempted three times to reform local government, including a brief, salutary period (c. 1718-1722) when the judicial was separated from the administrative[17]. But his successors gutted his judicial institutions, reverting to the cheaper seventeenth-

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12 Skripilev (1992); Weickhardt (1992, 1993, 2006b); Hellie (2006); Kivelson (2006); Kollmann (2006).

13 Kivelson (2013); Kollmann (1999, 2012).

14 Kollmann (2012, chap. 13 and 18).

15 Raeff (1983); Rustemeyer (2006).

16 Kollmann (2012).

17 Peterson (1979); Kosheleva (2004); Serov (2009).

century model of local governors managing administrative, fiscal, military and judicial authority simultaneously, with no training in the law. Peter I's several efforts at legal codification also failed.

Case law is rich and greatly untapped for the eighteenth century. Records of the Senate as appeals court provide new insights, as do records of the Synod, the collegial institution that Peter I imposed on the Orthodox Church, in the process depriving it of much of its secular judicial authority. The Synod oversaw episcopal courts for marriage, divorce and religious crime; monastic courts shrank similarly in jurisdiction and in number, as Peter I and particularly Catherine II secularized the majority of Russian monasteries. Within the "empire of difference" model Moscow negotiated a variety of different judicial deals: lesser crime and disputes continued to be handled by local communities (Islamic, Baltic German, Cossack, Siberian and steppe natives); by the end of the century Moscow integrated most Cossack communities into central administrative and judicial systems; in the western borderlands established German, Swedish and Polish courts apparently melded with tsarist courts, a topic that merits attention.

Russia made a remarkable contribution to European criminal justice by abolishing the death penalty at mid-eighteenth century, long before its European counterparts. In this Empress Elizabeth was variously motivated: personal piety, the nobility's fear at her predecessor's shocking executions of political rivals, and decades of decrease of capital punishment. The achievement is under-appreciated, however, because of its complex enactment. A clear legislative process was lacking: decrees with the force of law were issued by the ruler, the Colleges or the Senate, producing judicial confusion from poor coordination, uneven dissemination and chaotic record-keeping (despite Petrine reforms of bureaucratic paperwork). After Empress Elizabeth I's abolition decrees in the 1740s, the Senate took a decade to respond and never officially declared abolition; rather it kept capital punishment on the books and sent anyone awaiting review of sentence into exile[18]. Catherine II and her successors maintained this situation, and de facto capital punishment disappeared for common felonies. Executions, however, continued – for high political crime and in the use of martial law in restive borderlands and moments of rebellion; much more research on the range of capital punishment in this era is needed. The Criminal Code of 1845 clarified this legal ambiguity, allowing capital punishment only for threats to the ruler, underscoring both the ruler's patrimonial solicitude to his subjects and his personal, privileged relationship to the law[19].

Historians have generally affirmed contemporary complaints that local government and courts before 1775 were corrupt and ineffective[20], but current work – studies of witchcraft[21], peasant communal justice[22] and local courts, particularly in non-Russian borderlands[23] – somewhat mitigates this picture. Much more systematic local study of the judiciary before 1775 across the empire is needed.

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18 Omel'chenko (1993); Tomsinov (2009); Marasinova (2014, 2016).

19 LeDonne (1973, 1974, 1984, 1991); de Madariaga (1998).

20 Efremova (1993); Migunova (2001); *Pratiques du Droit* (2012).

21 Smilianskaia (2003); Lavrov (2000).

22 Mironov (1999); Hoch (1986); Dennison (2011).

23 Schmidt (1996); V. Martin (2001); Komandzhaev (2003); Kamenskii (2006); Golovanova and Trofimova (2008); L. Martin (2015).

Catherine II's judicial attitudes and reforms combined Enlightenment humanitarianism (she advocated abolition of torture), *Rechtsstaat* rational ordering and "empire of difference" tolerance. All these motivations are evident in her reforms of local government and the judiciary: to curb malfeasance in 1764 she instituted salaries for most officials; to improve public services in 1782 she proposed police organizations in major cities; to improve local governance and revenue collection, in 1775 she imposed reform that doubled the number of provinces (*gubernii*) and instituted uniform administrative, judicial and fiscal agencies across the empire. In the law, the reform separated judicial from administrative and created a hierarchy of venues for appeal; it introduced a "conscience court" for small property and family issues. Uniformity balanced with diversity; Russian criminal law was to replace local law even in the established courts of the western borderlands, but lower courts accommodated the local peasants and native peoples and customary and native law. Below the criminal law the empire's legal pluralism persisted, with religious and ethnic groups, peasant and rural communes continuing to handle petty crime.

The 1775 judicial reform did not professionalize the judiciary. Although Moscow University (founded 1755) introduced legal studies, and efforts had been made across the century to provide bureaucratic and judicial education within the bureaucracy itself, few nobles or educated commoners embraced civil service. The 1775 reform prioritized local noblemen for the new judgeships and other offices, without educational prerequisites, but at least one study shows that noble judges, reflecting the estate's improved educational level, performed well[24].

The legacy of the reformed courts was mixed, and has barely been studied. In some places there were hardly instituted: Catherine's successor Paul I (1796-1801), however, judged her reforms too sweeping for the already well-organized western borderlands and abrogated them (as well as 1785 Charters to the Nobility and Townsmen that similarly replaced local custom with imperial law) in the Ukrainian, Belarus'an, Lithuanian, Baltic and Polish lands. Elsewhere it took decades to extend them across the empire, where they then lasted through most of the nineteenth century as the 1864 judicial reform itself took decades to spread across empire. Everywhere the reform's huge expansion of local offices exhausted the supply of trained bureaucratic personnel. Thus, these courts are commonly dismissed now and in their day, like those before 1775, as corrupt and ineffective, but this impression needs to be grounded in widespread examination across the empire.

REFORMS OF THE NINETEENTH CENTURY

Alexander I (1801-1825) and Nicholas I (1825-1855) continued to apply a *Rechtsstaat* concept of enlightened autocratic "rule of law", patronizing vast projects of codification of Russian law. Initiated by the skilled jurist M. M. Speranskii, the first half of the nineteenth century saw the compilation of a more than 40-volume compendium of codes, decrees and case law from 1649 to 1825 (1830), as well as of digests (*svody*) of law, new criminal (1845), civil (1832) and corporate (1836) codes and codes for various subject groups[25]. Judicial torture and branding of exiles were

[24] Voropanov (2002, 2008); Afonasenko and Lomako (2010).

[25] Polnoe sobranie zakonov (1830); Raeff (1957); Whisenhunt (2001); Borisova (2008, 2012); Bachilo (2015).

gradually abolished and corporal punishments reduced[26]. These tsars, beginning with Paul I, worked to raise the status and educational level of the civil service, including the cultivation of juridical experts in central institutions[27]. The tension implicit in such an approach emerged by the 1840s, as a new cohort of jurists, exposed to natural law theory as well as *Rechstaat* thinking, came to regard the law as an instrument to promote civil and individual rights in Russia. Many have analyzed their service careers and enlightened attitudes[28]; others have documented quantitatively the expansion of a more professional bureaucracy. Meanwhile Catherine Evtuhov has profiled the energy of educated specialists – noble and non-noble, statisticians, scientists, geographers, archivists – in provincial life in the first half of the nineteenth century[29].

These social cohorts were in place when Russia's acknowledged backwardness in military technology and state infrastructure enabled the "Great Reforms" of the 1860s. With such steps as emancipation of serfs (1861), reorganization of local government (1866), liberalization of printing and public discussion and judicial reform (1864), the autocracy hoped to promote enlightened change in a contained way. The reforms have garnered extensive attention since the pioneering work of P. A. Zaionchkovskii in the 1960s[30]; emphasis has now shifted to the reforms in practice across empire. They launched Russia into an economic boom of industrialization, urbanization, foreign investment and social mobility, which in turn raised urban crime rates; wider education, mobility, literacy and publication fueled revolutionary agitation against the regime from the 1870s[31].

Tsar Alexander II (ruled 1855-1881) acquiesced to judicial reform under pressure from nobles, industry and finance to improve Russia's protections of property; the 1864 judicial reform took its remarkably modern form (modeled on the French system) because jurists believed its participatory and open framework would educate the Russian public in rational judicial culture[32]. The reform created a judicial hierarchy for major civil and criminal cases, ranging from "circuit courts" at the district (*uezd*) level to three stages of appeal up to the Senate. Judicial independence was ensured by judges being appointed for life and by decrees prohibiting administrative interference. Trials were to be transparent, using the "accusatory" format with prosecutor and defense attorneys (pre-reform criminal courts used a closed inquisitorial process); juries were to be elected from the local populace. Educational standards were set for judges, prosecutors and lawyers, launching Russia's legal profession with a bar association that upheld professional standards. The system was to be installed across the empire, as were Justice of the Peace courts for misdemeanors and minor civil offenses below the district level, with appeal to a JP Assembly in the district. The Emancipation Decree of 1861 meanwhile had created a separate township court system for peasants, below the district level, using customary law. Demand for these new venues grew quickly, often beyond their capacity to serve, particularly in the civil law.

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26 Schrader (2002).

27 Skripilev (1994); Potapova (2011).

28 Wortman (1976, 2005); Pintner (1980); Lincoln (1982, 1990); Ruzhitskaia (2009); Fedyashin (2012).

29 Evtuhov (2011).

30 Zaionchkovskii (1964, 1978).

31 Baberowski (1996).

32 Kazantsev (1992, 1993, 1997); Bhat (1997); Troitskii (2000); Masalimov (2004).

At the same time Russia's multiplicity of "legalities" proliferated. Church, military and commercial courts continued, as did those of the empire's various ethnic and religious groups; security and urban police levied administrative punishments. Most significantly, official malfeasance was handled in administrative courts where accused officials were judged by fellow officials and individuals could not sue the state. The breadth of administrative law in Russia illustrates the state's fundamental distrust of the law and obstructed the development of individual and civil rights[33].

Historians have judged the new judicial institutions variously. Case studies of township courts have overturned clichés about the Russian peasantry living in an unchanging, ignorant world of custom[34]. They show peasants "going to court" as knowledgeable actors, shrewdly navigating the law to their advantage. The reformed circuit courts, however, have been deemed less successful. Established in European Russia by 1866, they moved slowly across the realm (reaching the Urals and Siberia in 1897), compounding judicial confusion. They were plagued by problems: the nobility and educated classes were reluctant to serve on juries and peasants as the primary jurors enforced the law impressionistically. Qualified personnel were lacking: in 1889 better educated judges (land captains) replaced locally elected Justices of the Peace, but restrictions on entrance to the bar (particularly against Jews) created a dearth of lawyers for civil and criminal circuit courts and an "underground" network of pre-reform solicitors and their corrupt practices endured.

The state also constrained the new system: it limited superior courts to applying the letter of the law and denied their rulings status as legal precedent, thus making the law an inflexible tool for a changing society. Civil and commercial law did not keep up with changing society and economy, despite codification commissions in 1882 and engaged juridical scholarship[35]. The state prohibited the creation of professional associations beyond three major cities (Moscow, St. Petersburg, Kharkhov). Most significantly, in the wake of lenient jury verdicts in political cases, by the late 1870s procurators took on a more coercive role in criminal and the state moved cases of political crime to military and administrative courts, supported by emergency legislation that endured until the end of the regime.

Scholars find causes of the failure of the new courts in overly idealistic jurists who designed the reform or in the general failure to transform provincial officials' patrimonial governing styles or popular political attitudes[36]. Others see not failure but diversity and adaptation: William Pomeranz shows civil trial lawyers as advocates of individual rights and rule of law; Jonathan Daly notes that urban populations were ready for and utilized the new courts; Robert Crews and Stefan Kirmse chronicle how the empire's Muslim communities "venue shopped" among Russian and Islamic courts. Kirmse finds a rich new area of research the dynamic "interpenetration" of local and central legal systems in non-Russian borderlands and the "inner peripheries" (non-Russian peoples residing within the central provincial administration, as in the Middle Volga)[37].

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33 Pravilova (2000, 2014).

34 Worobec (1995); Frank (1999); Zemtsov (2002); Frierson (2003); Burbank (2004); Gaudin (2007); Engel (2011); Dennison (2011).

35 Wagner (1994); Bhat (2013); Tissier (2010, 2012).

36 Baberowski (1996); Mironov (1999); Gorizontov (2007); Baberowski *et al.* (2008); Tuchtenhagen (2008); Krest'iannikov (2009); Liubchankovskii (2010, 2012); Schattenberg (2008, 2012); Trofimov (2016).

37 Pomeranz (2015); Daly (2004); Crews (2006); Kirmse (2012).

Crime per se has been studied through police records in the absence of statistics and regular and security police forces have received attention. Daly considers Russia under-policed in comparison to its European peers. As the exile system continued to expand, a prison system was initiated late in the century. Regarding punishment, Daly has shown that Russian punishment, from capital and corporal punishment to prison, was less coercive per capita than contemporary European and American domestic and colonial practice[38].

Scholarship on Russia's criminal justice system up to the nineteenth century has established important paths for further research. It has abandoned traditional idealization of the 1864 judicial reform as starting a progressive new era, and rather places it critically in a long-term continuity of legal practice. It is highlighting the empire's regional legal diversity and suggesting that autocracy tolerated such pluralism as an instrument of control. It is moving beyond condemnations of "failure" to assess how people used judicial institutions. Its bewildering multiplicity of findings demands deeper research: jurists as a progressive intelligentsia and the persistence of corrupt underground solicitors; energized local communities and a "corrupt province"; litigants as knowledgeable actors and a countryside mired in a debilitating panoply of overlapping and ineffective offices and legal venues. Eventual synthesis and clarity will come from the continuation of current work on legal practice at different judicial levels, in different courts, across the empire.

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[38] Neuberger (1993); McReynolds (2012); Bernstein (1995); Il'iukhov (2008); Gentes (2008, 2010); Adams (1996); Daly (2000, 2005).

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