Lena Foljanty,
Head of Max Planck Research Group Translations & Transitions:
Do you know why it is interesting to compare the legal systems of the Ottoman Empire, Japan and China in the 19th century? Well, that is what we are going to talk about.
What do such different countries as Japan, China, and the Ottoman Empire have in common? All three were never colonized by Europeans. However, they faced significant pressure from the Western powers during the 19th and early 20th centuries. In order to get out of unequal trade treaties, they set out to rebuild their legal systems in a way that would meet Western standards. Combined with an internal need for reform, this led to massive legal reforms. All dimensions of law were affected by these reforms – not just the normative framework, but also the institutions, the professions, the teaching, the practice and even the epistemology of law.
Previously, the legal histories of these countries were discussed in isolation from each other. However, the challenges they faced had a common background: increasing globalization, expanding European standards and values, and imperialism.
Our research group “Translations and Transitions: Legal Practice in 19th Century Japan, China, and the Ottoman Empire” at the Max Planck Institute for Legal History and Legal Theory in Frankfurt brings together research on all three countries. The group consists of 7 members, who are conducting case studies on one of the countries, or on the interconnectedness between these countries. Our focus is on legal practice, where new ideas, prevailing practices, professional identities and epistemic understanding interact in a particularly complex manner.

Burak Aydin,
Research Group Member:
In order to give you an idea, let’s start by looking at the Ottoman Empire. The Ottomans of the 19th century reformed their legal system, including codes and institutions, throughout the century, and this had an impact on legal practice. This was to counter foreign claims that the Ottoman legal system was dysfunctional and unequal, among other things.
The new legal system included elements of Islamic law as well as some procedural elements from France. As a result, in the Ankara courts, the new legal practice was similar to Islamic law practice in several aspects. But it also introduced new elements, such as new evidence rules that bore a clear resemblance to French laws. This is an example of hybridity.

Zülâl Muslu,
Research Group Member:
But Burak, I think these reforms and this formalism were still not compelling enough for the Western powers. They continued to lack trust in local justice, which they perceived as not meeting their unilaterally asserted standards of civilization – a very problematic concept on which 19th century international law was based. Indeed, the reforms did not prevent extraterritorial justice from flourishing.

Sir Edmund Hornby, for instance, a leading British judge, had even established a Supreme Consular Court in Istanbul on the grounds of unequal treaties, to ensure that British subjects were tried under British law. A model he would then export, on the same legal basis, to China and Japan, where he was later appointed as Chief Judge. Apropos of Japan, Lena, can you tell us more?

Lena Foljanty:
Compared to the Ottoman Empire and China, the reforms initiated in Japan in order to get out of unequal treaties can be seen as straightforward, even as a success story. However, the situation was challenging in Japan, too. While the elites were traveling to Europe and the US in order to study legal doctrine and court practice, local judges were often left to their own devices, filling gaps that the reforms had left by improvising and autodidactic learning. They had to rely on translated books, on reports, and on their imagination in order to grasp the spirit of the new law. In my research, I observed in some points a certain continuity with the pre-reform era. A clear break took place only after three decades of reform, in the 1890s, when enough personnel was available that had been trained in the newly established, Western-style law schools.

Egas Bender de Moniz Bandeira,
Research Group Member:
This is utterly fascinating! Did you know that there were many connectivities between Japan and China? The Japanese experience served as the main model: Japanese scholars were hired to teach in Chinese law schools, and several thousands of Chinese students studied law abroad, mainly in Japan. I trace how these actors shaped the emerging legal professions through their personal experiences. When they returned to China, they applied their experiences to their legal practice, keeping their transnational socialization and networks. For example, Yao Zhen obtained a degree from Waseda University, and Dong Kang from the Imperial University in Tokyo, before rising through the ranks of the judiciary to become presidents of the Supreme Court of the Republic of China, the Daliyuan. They were just two of the many legal actors who shaped modern Chinese jurisprudence.

Joseph Wang,
Research Group Member:
Exactly, Egas. These actors, in fact, applied this changing mentality in their practice of law. Let me use contracts as an example here. From 1912 to 1928, some of these actors needed to sort out a difficult legal question: “If concubinage is not marriage, how can the law give women the freedom to divorce?” When trying divorce cases involving concubines, judges mobilized the concept of contract in Chinese history and the contracts translated from Western practice. For a long time, concubines in China entered their marital families with a human sales contract established between two families. In the new era, Beijing judges combined this woman-selling “contract” with a “contract” on the basis of two equal legal persons. In this new practice, the

“contract” gave Chinese women equal standing as men before the law. Evidently, the translation of a concept was further activated, with massive potential to lead to social change.

Li Zheng,
Research Group Member:
Yes, but for individuals in a society, the experience of change is complex. Law is not detached from emotions. My research is based around the Chinese concept of injustice and people’s practice of redressing injustice under Qing dynasty rule, and also in the early republican era. In traditional Chinese society during the Qing period, people sought justice for themselves or on behalf of family members in different ways [bringing a lawsuit to the county, requesting justice from superior officials or even the emperor, going to the capital city to protest injustice. Women, in particular, utilized emotional expressions and even sacrificed themselves to show their suffering from injustice. The larger question is to find out whether and how the practice of redressing injustice on the local level was shaped by the modern idea of justice during the republican era.

Zeynep Yazici Çağlar,
Research Group Member:
Well, it was very eye-opening to hear about Japan, China and the Ottoman Empire, right? I, on the other hand, analyze the model countries that were studied for the reforms we just heard about. Europe was in a transitional period as well at the time. The models were not as clear as Japan, China and the Ottoman Empire had imagined, but were also in a transition. Focusing on legal education, we see that several changes were discussed as part of a broader path to modernity. And the analysis of England and Germany showed me that the discussions on legal education had a similar goal, actually: a good mixture of “law as a science” and “learning by doing”. Looking at the legal professions more closely, we can see in the prosopography of the superior court judges that this part of the legal profession didn’t really change. And the judicial elite remained in place by “hiding” the pathway to becoming the legal actors at the top of the legal system.

Zülâl Muslu:
Now let’s conclude. All our case studies show that change and transitions were neither linear nor smooth.

Joseph Wang:
In all these countries, we can observe a gap between the traveling elites who internalized the Western standards, and the local judges, who had to find concrete solutions despite all instabilities.

Egas Bender de Moniz Bandeira:
The fact that the very basis of any legal order – the legal language – was heavily affected by the reforms did not make the task easier.

Zeynep Yazici Çağlar:
Nor did the fact that the European model countries were in transition as well.

Burak Aydin:
The results of these complex processes of translation were hybrid legal orders.

Li Zheng:
Legal practice was one of the main places where negotiations took place about what law is, and how old and new, pluralistic and hierarchical elements should be organized.

Lena Foljanty:
The transitions caused by cultural translations affected law and society in a multi-level and multi-directional process – that's why we speak of "Translations and Transitions". We could talk about this for hours, but that's enough for this video!