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978-1-107-05035-8 - European Legal Cultures in Transition

Åse B. Grødeland and William L. Miller

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EUROPEAN LEGAL CULTURES IN TRANSITION

Are national legal cultures in Europe converging or diverging as a result of the pressures of European legal integration? Åse B. Grødeland and William L. Miller address this question by exploring the attitudes and perceptions of the general public and law professionals in five European countries: England, Norway, Bulgaria, Poland and Ukraine. Presenting new findings, they challenge the established view that ordinary citizens and people working professionally with the law have different legal cultures. Their research in fact reveals that the attitudes of citizens in Eastern and Western Europe towards 'law in principle' are remarkably similar, whereas perceptions of 'law in practice' differ by country and often correlate with GDP per capita and country ranking in rule of law indices. Grødeland and Miller's innovative methodological approach will appeal to both experts and non-experts with an interest in legal culture, European integration, or European elite and public opinion.

ÅSE B. GRØDELAND is Senior Researcher at Fafo Institute for Applied International Studies (Oslo). Her recent publications on legal culture include *The End of National Legal Culture? The Case of Norway* (with Janne H. Matlary and Morten Kinander, 2016).

WILLIAM L. MILLER is Professor Emeritus and former Edward Caird Professor of Politics at University of Glasgow. His most recent books include *Multicultural Nationalism: Islamophobia, Anglophobia and Devolution* (with Asifa Hussain, 2006) and *The Open Economy and Its Enemies: Public Attitudes in East Asia and Eastern Europe* (with Jane Duckett, Cambridge University Press, 2006).

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University Printing House, Cambridge CB2 8BS, United Kingdom

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107050358

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First published 2015

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication Data

Grødeland, Åse B., author.

European legal cultures in transition / Åse B. Grødeland and William L. Miller
 pages cm

Includes bibliographical references and index.

ISBN 978-1-107-05035-8 (Hardback)

1. Law--Europe. I. Miller, William Lockley, 1943-- author. II. Title.

KJC147.G725 2015

340'.115094--dc23 2015008243

ISBN 978-1-107-05035-8 Hardback

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PREFACE

This book is about European legal cultures in transition. Our main objective is to establish whether national legal cultures in Europe are converging or diverging – or whether they are converging on some dimensions, whilst diverging on others. We seek to answer this question by exploring attitudes of ‘law in principle’ and perceptions of ‘law in practice’ amongst ‘legal outsiders’ (majority populations, Muslims, Euro-migrants) and ‘legal insiders’ (elected representatives, government officials, lawyers, prosecutors, judges, police) in five European countries that are very different from each other, yet are all exposed to the pressures of European legal integration.

In this book we challenge the established view that legal culture in Western and Eastern Europe is inherently different. In terms of attitudes towards law in principle, East and West Europeans are remarkably similar. As for perceptions of law in action, on the other hand, they are fairly different. Further, there appears to be a correlation between perceptions, GDP (PPP) per capita, and the rule of law: people living in poorer countries with less rule of law, for example, are more negative about legal insiders and the institutions they represent than people living in wealthier countries with more rule of law.

We also challenge the view that popular legal culture and professional legal culture are inherently different. Our starting point is that legal professionals are not only legal professionals, but they are also members of the general public. As such they have been socialized into the same legal culture as the non-professionals. The legal culture of the two groups is likely to differ on more technical aspects of law. However, they are remarkably similar in terms of attitudes to law in principle and perceptions of law in practice.

Although our work is essentially a book about legal culture, at a broader level the themes addressed are relevant to the quality of democracy and rule of law across Europe more generally, and to European integration in particular. We explore attitudes towards, and perceptions

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of, legal transfers more generally with a view to establishing whether there is scope for further legal harmonization and integration in Europe. The tension between ‘liberal’ and ‘illiberal’ legal transfers is addressed in a chapter exploring perceptions of the relationship between civil rights and the ‘war on terror’.

Finally, in this book we explore the impact of religion on legal cultures across Europe. Data presented in the book suggest that the European majority populations favour a secular society and secular law. The established view that religiosity correlates strongly with authoritarianism is questioned: our data show that religiosity correlates only moderately with aspects of purely ‘secular authoritarianism’, and correlates much more strongly with specifically religious aspects of law, even when these conflict with ‘secular authoritarianism’.

Our research was funded by the Research Council of Norway’s Europe in Transition (EUROTRANS) programme (2007–17). The programme was launched in response to Parliamentary Report No. 20 (2004–5), with a view to researching changes taking place in Europe at a more general level, and Norway’s role in Europe, in particular. The programme covers four main themes: law and democracy in Europe, economic development and integration, cultural change, and European foreign and security policies.

Phase 1 of the programme, (2007–12/13) provided funding for three large-scale projects. One of them – ‘Legal Cultures in Transition: The Impact of European Integration’ (2007–13, Award 182628/F10, NOK 16.3 million) – generated the data for this book.

The project covers five European countries: Norway, the United Kingdom (data were collected in England only), Poland, Bulgaria and Ukraine. Data were collected in four stages: we first conducted a series of focus groups with members of the public to allow for a general discussion of key issues within the seven dimensions of legal culture. Data from the focus groups then ‘informed’ the questionnaire we used in nationally representative surveys and for booster samples amongst Muslims in all five countries. Further, data from the focus groups and surveys ‘informed’ the interview guide used in our structured, open-ended, elite in-depth interviews. Finally, to gain a proper understanding of how the general public and the legal professionals interact with each other, observation of small-scale civil court cases was carried out in all countries.

We base this book on findings from the focus groups, quantitative surveys and elite in-depth interviews. Each chapter addresses one key

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dimension of legal culture – first by exploring the views of the legal outsiders, and then the views of the legal insiders.

We received a great deal of helpful advice, comment and encouragement from colleagues at NIBR, Fafo, Glasgow University and elsewhere. Some of their ideas have been taken on board, whereas others we have contested. Our colleagues bear no responsibility for what we have written here, but we are deeply grateful for their generosity. We would like to thank all those who have been involved in providing access to the judiciary, organizing and collecting data presented in this book – and in particular (and in alphabetical order) the following:

Sjur Egstad, Anita Lynne and Ole F. Ugland, TNS Gallup Norway
Elizabeth Bailey, Rachel Skevington Britton, Johnny Heald, Richard Hooper, Alan Hyde, Sarah Murphy and Sarah Oliver, ORB
Genoveva Petrova, Alpha Research
Barbara Badora, Jolanta Kalka, Magdalena Gwiadzdza and Małgorzata Omyla, CBOS
Tetiana Diyeva and Alexander Shulga, SOCIS-Gallup

We would also like to thank Kjersti Asland and Lillian Børresen at the Research Council of Norway for their assistance.

Further, we should thank the anonymous readers who provided feedback on our book proposal and two draft chapters.

Our heartfelt thanks are due to the Commissioning Editor at Cambridge University Press, Finola O’Sullivan. We would also like to thank our editors, Richard Woodham and Helen Francis for their patience and kindness. Thanks are also due to Senior Production Editor Jonathan Ratcliffe and Assistant Editor Fleur Jones for their professionalism and assistance. We would also like to express our thanks to Bindu Vinod and Sundararajan Rengarajan at SPI Global who have been overseeing the production of our book. Our gratitude is also due to Robert and Cynthia Swanson for indexing it: we are very pleased with the result! Last but not least, we would like to express our heartfelt thanks to Alyson Platt, who has copyedited this book. We are very grateful to her for her thoroughness, helpfulness, and patience! Working with her has been a pleasure!

But most of all, we would like to thank all the anonymous respondents who took the time to contribute during all stages of data collection: without their participation and willingness to answer our questions this book could never have been written.

ABBREVIATIONS

ABA-CEELI	American Bar Association's Central and Eurasian Law Initiative
ADR	Alternative Dispute Resolution
ASA	Agency for Social Analysis
CBOS	Centrum Badania Opinii Społecznej
CEE	Central and Eastern Europe
CIA	Central Intelligence Agency
CIS	Commonwealth of Independent States
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CPI	Corruption Perception Index
CPS	Crown Prosecution Service
CSD	Centre for the Study of Democracy
DIFI	Direktoratet for forvaltning og IKT [Agency for Public Management and eGovernment]
EC	European Community
ECHR	European Convention on Human Rights
ECRI	European Commission against Racism and Intolerance
ECSR	European Charter of Social Rights
ECtHR	European Court of Human Rights
EEA	European Economic Area
EFTA	European Free Trade Association
E-I Standards	European and International Standards
E-I-U Standards	European, International and Universal Standards
ENP	European Neighbourhood Policy
ESA	EFTA Surveillance Agency
EU	European Union
FG	Focus Group
FSU	Former Soviet Union
GMOs	Gene-Modified Organisms
GDP	Gross Domestic Product
HCNM	High Commissioner on National Minorities (OSCE)
HMCS	Her Majesty's Court Service

Cambridge University Press
 978-1-107-05035-8 - European Legal Cultures in Transition
 Åse B. Grødeland and William L. Miller
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LIST OF ABBREVIATIONS

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IDI	In-Depth Interview
ILO	International Labour Organisation
IMF	International Monetary Fund
IRA	Irish Republican Army
KIIS	Kyiv International Institute of Sociology
MCC	Millennium Change Corporation
MEP	Member of the European Parliament
MP	Member of Parliament
MSI	Management Systems International
NATO	North Atlantic Treaty Organisation
NHS	National Health Service
NOK	Norwegian Crowns (currency)
NOU	Norsk Offentlig Utredning [Official Norwegian Report]
OSAC	Overseas Security Advisory Council
OSCE	Organisation for Security and Cooperation in Europe
OSI	Open Society Institute
PMA	Professional Mediators' Association
PPP	Purchasing Power Parity
PR	Public Relations
RSFSR	Russian Soviet Federative Socialist Republic
UAOC	Ukrainian Autocephalous Orthodox Church
UCL	University College London
UGCC	Ukrainian Greek Catholic Church
UK	United Kingdom
UN	United Nations
UOC-KP	Ukrainian Orthodox Church under the Kiev Patriarchate
UOC-MP	Ukrainian Orthodox Church under the Moscow Patriarchate
US	United States
USAID	United States Agency for International Development
USD	US Dollars
USSR	Union of Soviet Socialist Republics
VAT	Value-Added Tax
WTO	World Trade Organisation