

Legal systems and political regimes in post-socialist Central Asia

Research >
Central Asia

Several legal systems operate in Central Asia today: newly introduced Western law, practices left over from the Soviet era, and traditional systems based on custom and religion. The latter did not disappear during the Soviet era, but adjusted themselves to Communist state-party hierarchies. The symbiosis of traditional society and socialist legacy is the main stumbling block for legislative reform in Central Asia today.

By Irina Morozova

Traditional systems of law informing current practice include customary law (*adat*) and religious law (*Sharia* except in Christian Georgia and Armenia and Buddhist Mongolia). *Adat* has proven remarkably stable while *Sharia* has survived the centuries; they are closely linked and often identified as one. Customary law, functioning in the form of strong communal relationships and the awarding of social status according to age and kinship hierarchies, is strong in rural areas and exists in modified form in the cities. Religious systems of law in post-Soviet societies are weaker; seventy years of secular education have left their mark. While the new independent states all proclaim themselves to be secular republics, ideas of Muslim law are still alive. *Sharia*, however, is no longer in serious use.

Of the social institutions informing customary law, the social class of *agsakals* has been especially durable. At the top of the social pyramid resides the *agsakal*, an old man seen as experienced and wise; his decisions are to be followed by family and community. The institution of the *agsakal* is legally recognized in Turkmenistan where it is called The Council of *Agsakals*. In Mongolia, often called the most open and democratic country in Asia, respect for *agsakals* still persists, albeit in weaker form. The social group also survives in the Eastern and Southern regions of the Russian Federation – Buryatia, Tuva, Kalmykiya, Tatarstan, and especially in the Northern Caucasus.

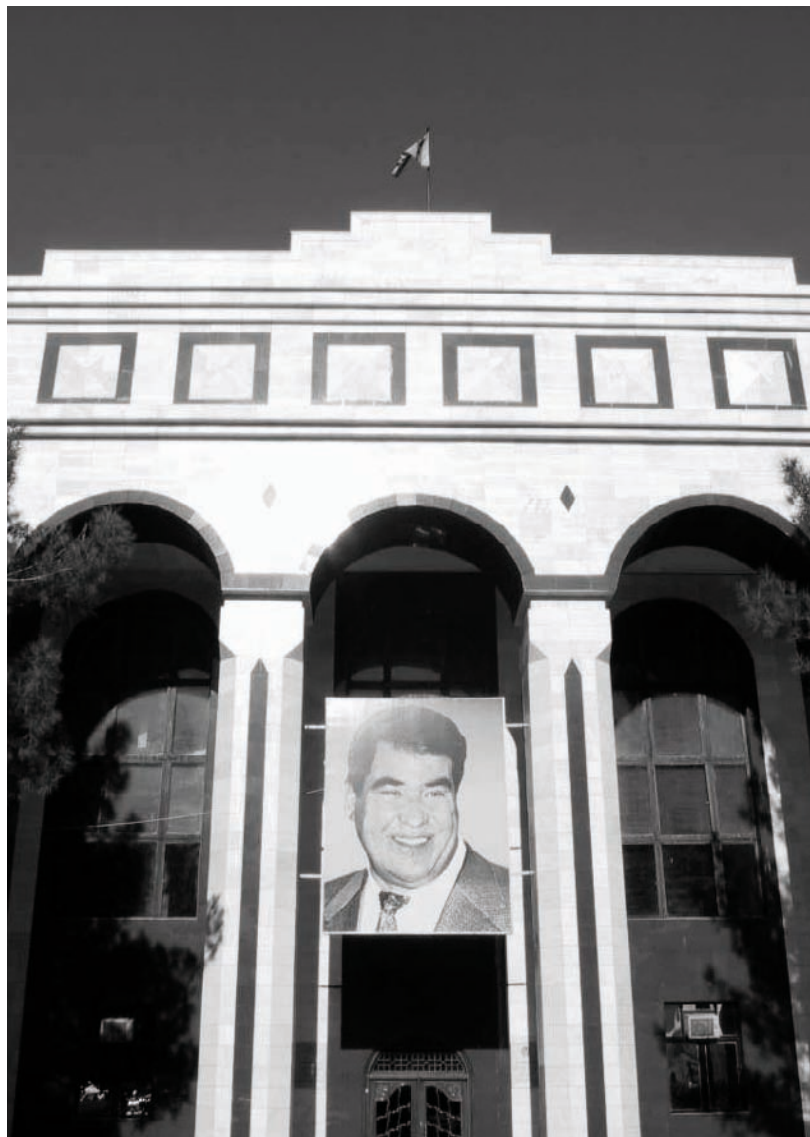
Customary law is also reflected in the system of clans, very much alive in the contemporary politics of Central Asia and the Southern Caucasus. In the beginning of the 1990s the struggle between clans in Tajikistan became so acute that it led to civil war. One of the threats to the rule of the President of Turkmenistan S. Niyazov is consolidation of an oppositional clan. The Uzbek President I. Karimov regularly purges members of the Samarkand, Tashkent and Bukhara clans from his administration.¹ In Kazakhstan, strategic industries and the most profitable sectors of the economy belong to, or are controlled by, members of the presidential family and their relatives.² The principle of social-economic redistribution among members of the clan is one of the main obstacles to the development of Western-style legal institutions. Clan identity ill fits individually based democratic conceptions of law; the effective application of the latter is routinely sacrificed to the pursuit of clan interests.

The Soviet legal system imposed on the Central Asian and Caucasian peoples had a certain modernizing effect on traditional societies. While Soviet legal institutions appeared Western, they did not work in practice the way they were supposed to on paper. While social systems based on clan-patronage and kinship were criticized during the Soviet period, they did not disappear – they adjusted themselves to Communist state-party hierarchies. By the 1960s, the reform of administrative systems was complete; clan relationships and the social cult of the *agsakal* had mutated into the structures of national *nomenklatura*.³

The Soviet legacy

Post-Soviet societies all face problems of establishing new national identities and working out common understandings of legal conduct. Since the early 1990s, governments, oppositions, intellectuals and foreign observers have tried to introduce discussion on legal systems into the public domain. While Central Asian political and intellectual elites want to appear in favour of public debate, the discussions they sponsor are either unprofessional or serve narrow political interests. With authoritarian regimes controlling the public domain, key topics are banned from discussion while affected groups are not adequately involved.

To date, debate on the state of law has focused on overturning the Soviet legacy. Concepts of legitimacy and law are now expressed in terms of democracy, civil society, human rights



Government building with photo of president

Courtesy of Delaine Swenson

and the market economy. These concepts serve as antonyms to another range of terms: Soviet one-party system, totalitarian state, communist ideology and planned economy. Post-Soviet politicians, journalists and populists, perhaps believing that the new terms reflect acquired sovereignty, juggle them for career purposes. The active use of the democratic lexicon, however, has yet to further the understanding, much less the application, of democratically based law.

When Western legal concepts are discussed in public, Central Asian intellectuals and politicians frequently misinterpret them, especially if they are understood through the lens of traditional political culture. Very few intellectuals were schooled in the history of democratic thought. One common presumption was that democracy was free of ideology. Another was that democracy as a philosophy, without the institutions that gave it practical realization, brought security to Western Europe and North America. Others ignored the long time-span necessary to build democratic civil societies. To the extent that democracy entails education and tradition, it is necessary to bring up individuals capable of solving conflicts democratically – through legal institutions.

Legal illiteracy among populations, the inexperience of

‘the active use of the democratic lexicon has yet to further the understanding, much less the application, of democratically based law’

Central Asian legal specialists and the persistence of entrenched habits create other dilemmas. Many inhabitants of the former USSR had grown accustomed to Moscow’s dominance. They seldom recognized the need to learn about their rights, tending to believe bureaucrats would know better, and would observe and defend their rights. After the USSR’s disintegration, Western emissaries and consultants filled the vacuum of external patronage, their observations and opinions gracing the front pages of local newspapers.⁴

The past legitimizes

Central Asian intellectual elites play a significant role in developing legal concepts. During the late Soviet and post-Soviet periods, university professors and scholars in academies of science aspired to political influence; sociologists, historians and philologists now advise politicians. Academics are charged with developing discourses of nationhood and national development, and to emphasize their democratic and legal nature.

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Concurrently governments appeal to the legacy of ancient and medieval Central Eurasian empires and khanates. There are simply too few regional analysts able and allowed to write on the essential contradictions between the political culture of the medieval khanates, the successors to which the present states pretend to be, and the democratic civil societies that they claim to be building. In official ideologies, the historical features of modern Central Asian nations are listed together with Western democratic values.⁵ The promotion of national symbols and the celebration of historical anniversaries have become typical ways to demonstrate the legality of political regimes. Here we may be witnessing a modification of customary law: the more ancient the history of the nation, the longer the genealogy of the ruler, the more lawful the regime.

If in the first years of independence political analysts speculated on the democratic elements within Central Asian traditional political cultures, by the end of the 1990s many had grown pessimistic, wondering if democracy was ill-suited to the region. Central Asian populations have likewise become more cynical, evidenced by the widespread mistrust of all authority and legal regimes. By doing so, they approve the authoritarian – even totalitarian – political systems that operate in most of the countries today. <

References

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