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OF THE STATE CREATE
CUSTOMARY LAW IN
THE KYRGYZ AKSAKAL
COURTS

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Imagining the State in Rural Kyrgyzstan: how perceptions of the state create customary law in the Kyrgyz *aksakal* courts¹

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Abstract

In this paper I examine how the image of the state comes to be constructed in rural Kyrgyzstan. Taking the example of the Kyrgyz courts of elders (*aksakal* courts) I show how elders perceive the Kyrgyz state and state law and how these perceptions influence the way they carry out their court sessions. By using a divorce case dealt with in an *aksakal* court I show how images of national and international legal elements define the procedures and the outcome of the court case. This paper contributes to the expanding literature on the anthropology of the state. I argue that anthropology can only tackle “the state” by looking at how its image is created in local practices. What we can observe in these practices, however, are less representations of “the state” than often entirely new practices.

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Introduction

“We don’t have a state here any more!” This was a common expression among villagers of the two mountain villages in the northwestern Kyrgyz province of Talas where I did fieldwork in 2005 and 2006. Situated in a side valley with no direct access in the main road that connects the provincial centre of Talas with a mountain pass over which one has to drive in order to reach any other part of the country, people in this area really do live on the periphery. During Soviet times, however, the villages had been organised as one collective farm (*kolkhoz*) and formed part of a dense network of agricultural units. As such they were subject to the controls of the Soviet authorities. “The state”, apparently, had been there, but must have left after the Soviet Union collapsed. Where did it go? And what has replaced it?

Since there is no Archimedean point from which to start thinking about “the state”, only numerous situated knowledges (Gupta 1995: 392), I have selected the institution of the Kyrgyz *aksakal* courts as an example of how anthropology can actually study “the state”. I will particularly focus on how Kyrgyz elders of the two local village courts (*aksakal* courts – kyrg. *aksakaldar sotu*)³ perceive the Kyrgyz state and state law and how these perceptions influence the way they carry out their court sessions. Perceptions of what the state is, is nourished firstly by the visits of state authorities coming from the provincial centre or the capital to the villages; secondly, by what is being broadcast and published in the (state-) media, and thirdly, by memories the *aksakals* have about the former Soviet state and the early days of independence. The image of the state, therefore, has three different sources: personal encounters with officials, the media and the memories of Soviet times.

By using ethnographic data gathered during twelve months of field research, I will describe how in the context of feeling being left to their own devices, the *aksakal* court judges construct the image of the Kyrgyz state, thereby inferring new shapes and colours to it. Next to their knowledge about customs, I argue, it is the constructions of knowledge about the state that *aksakals* apply in their decision-making procedures in order to not only emphasise their judgements, but also to maintain and elevate their authority and their status among the village population. In their court sessions, *aksakals* try to create a state court-like look and introduce procedures they describe as being derived from state laws. I argue that by referring to state laws unfamiliar to average villagers, they stress their personal status as a knowledgeable person in the court as well as in the village. They also invoke the state as a threat to people brought before the court who do not want to heed their decisions. All this leads to a paradoxical situation: While state officials in Bishkek “imagine communities” (Anderson 1991) and currently think of strengthening what they consider to be customary law, the courts of elders “imagine the state” and apply procedures and norms they trace to state law.

After describing the three different sources from which villagers are drawing to create an image of the state, I will analyse a divorce case brought before an *aksakal* court as one of many possible ways to show how the state comes to be imagined in rural Kyrgyzstan. I will show that although hardly anything in this divorce case was executed in accordance to state law, everything was presented and conceived as being legal. The image of the state, of state courts and state law are reconstructed in various, mediated ways – by the court members as well as the involved parties.

³ The term *aksakal* (kyrg.) literally means ‘white beard’. Mostly, respected older men are members of this court. However, the term *aksakal* applies only to those men, who behave righteous and enjoy authority in the community.

While local customs play an important role in *aksakal* court cases, I am arguing in this paper that court sessions are also shaped by images of national and international legal elements that define the procedures and the outcomes of local court cases. Before starting with my ethnographic data, I shall briefly discuss my own perception of how studying “the state” from an anthropological perspective is possible.

2. Studying the State through its Local Imaginations

In his paper on the difficulties of studying the state, Philip Abrams (1988 [1977]: 69) argues that the state as a system does not exist and, therefore, cannot be studied as such. This, however, has not been the reason why anthropologists have so far not paid a lot of attention to this topic. For anthropologists, the state long seemed not an appropriate subject of inquiry; too difficult to grasp, observe or interrogate, it has been blanked out of the discipline until recently (Vincent 1990). Veena Das and Deborah Poole (2004) on the other hand have argued that anthropologists have always dealt with questions related to the state when writing about social order, authority and rationality. In a recent turn, the discipline has rediscovered the state and started to approach it in new and creative ways. Das and Poole (2004: 6) suggest that anthropologists should analyse the local manifestation of bureaucracy and law as culturally informed interpretations that constitute the modern state. Michael Herzfeld (1992: 156) states that there is no such thing as an autonomous state except in the hands of those who create and execute its ostensibly self-supporting teleology. He tackles this problem by looking at bureaucracy as official pronouncements where personal identity and state authority are aligned. He argues that whenever “the bureaucracy” is blamed (by citizens and bureaucrats alike), the teleology of the state is reaffirmed (ibid. 37). However, by focusing on the local level, most anthropologists try to detect footprints of the state in local practices. Chris Fuller and John Harriss (2001: 11) argue in this line when complaining that most literature illuminates our understanding of local political action, but does not tell us much about the state itself. Likewise, Thomas Blom Hansen (2001: 2) states that the sublime qualities of the state are accessible from the local level where people transform them into practices that take on a more profane dimension.

While I agree with these authors on the importance of studying how the state comes to be imagined locally, I disagree in the point that this would allow us to know about “the state itself”. I argue that there is no state outside of localised political action. Since the state is “made” only through practices, it cannot be “accessible” since this would presuppose an a priori existence of an entity somewhere outside and independent of localised practices. If the state is “an idea” more than “a system” as Abrams (1988 [1977]: 75) has convincingly argued, then one has to investigate how and where these ideas about the state come into being. According to Abrams, the state can be understood as an “ensemble of institutionalised political power” (ibid. 74) or as a “structuration within political practice” (ibid. 82). As such, it is more an ideological project than a real entity. Whereas Akhil Gupta (1995: 393) suggested looking at representations of (state) practices in order to understand “the state”, I argue that what we can observe in local political action are not representations of the state or state practices, but often entirely new practices.

3. Imagining the State through Visiting State Officials, the Media and Memories

When people complain that they have no state, as villagers in Talas frequently do, they are – according to Michael Herzfeld – affirming their desire for precisely such a source of justice in their lives (Herzfeld 1992: 10). I will now look at the three different sources through which the image of the state is created in rural Kyrgyzstan.

3.1. Inviting “People”

The Kyrgyz village population develops an idea about the state through documents: identity cards, application forms for children’s allowances, pensions or veteran’s benefits, birth and death certificates, written complaints and tax forms. According to Das and Poole, these documents bear the double sign of the state’s distance and its penetration into everyday life (Das and Poole 2004: 15). In order to obtain any of these documents, one has to go to the mayor’s office. There, fellow villagers – either the mayor himself or his secretary and one or two assistants – will deal with the villagers’ requests and complaints. In general, people hardly ever leave the village to interact with state institutions outside of the village realm. One mother explained:

My daughter-in-law receives money from the state for her three children. But last year we did not receive anything. I went to the secretary of our village who usually distributes the money and she said she couldn’t give us the money because she did not receive anything from Talas. If you do not get financial assistance from the state and want to find out why, you have to go to Talas. In order to go to Talas we would have to pay 80 Som⁴ in all and come home with an empty stomach. So we are forced to wait. (Mother, October 2005)⁵

Occasionally, however, “the state” comes to the village; the head of the region (*akim*)⁶, his deputy (*zam-akim*) or the head of the oblast (*gubernator*) come to the village to either talk to the mayor and his assistants or to make announcements to the general village assembly. Since these visits often occur unannounced even to the mayor himself, people have to be invited on short notice. Usually, the phone in the mayor’s office rings in the morning, announcing the arrival of someone “from the province”. Quickly the mayor orders that the “people” (*el*) be invited to an assembly. The librarian will use the computer and printer donated by an international organisation to produce small invitation notes saying something along the lines of “You are kindly asked to come to the mayor’s office at 2 pm today due to the arrival of an official from the state”. The mayor will sign these invitations and his assistants will rush through the village to spread the news. Inviting “people” means inviting important men from the village, mostly *aksakals*. In those meetings, hardly a woman or a younger man will be present. The town hall (*klub*) will be filled with people wearing *kalpaks* (Kyrgyz felt hats worn by old men) with an occasional headscarf or baseball cap

⁴ Som is the Kyrgyz currency. 1 Euro is about 50 Som, 1 US\$ about 40 Som. Currently, the minimum pension is about 400 Som a month.

⁵ People in the village generally have a good knowledge about the administrative procedures of state bureaucracy. Next to the fact that they know about the costs involved when reaching out to state institutions (transport costs as well as administrative fees and bribes), they can judge when contacting state institutions is doomed to failure. Child allowances are usually a couple of months late due to the fact that the authorities in the capital do not distribute the money to the regions. This might have been a reason for the mother to decide not to spend the money on transportation in order to inquire about her money in Talas.

⁶ All italicized terms in brackets are Kyrgyz expressions in the singular form.

in-between. The state official sits on the stage of the *klub* (a building mostly used for theatre and music performances and all kinds of festivities), with the mayor and other people from the municipality (*aiyl okmotu*) joining him. They look down onto the village elders sitting next to each other in old cinema folding chairs, looking towards the stage. Announcements, preparations for local elections, discussions with the residents and their problems will thus be voiced. Villagers usually try to convince the visiting state official that the village lacks agricultural machinery like tractors and combines, as well as good seed varieties. They mention the holes in the asphalt on the main road, the lack of public transport to Talas and that thieves get away with cattle stealing since there is no policeman in the village. They then ask the official to fulfil these needs. In one of those meetings, villagers asked the *akim* for financial aid to repair the broken water pumps on the main road. The *akim* answered:

I already told you that you should organise an association through which you could get money. Write a project through an association and try to get money from an international organisation. The water pump could be also bought from this money. Our government cannot provide you with water pumps! (*Akim* of Talas rayon, October 2005)

Another official of the region who had come with the *akim* and who is responsible for water management, added:

We bought water pumps for Talas, but it is hard for us to take care of them. People stole them and took all the parts. It is better not to rely on the state and to write a project through an association instead. The money will be transferred to the association on the basis of the law. In Kyzyl Ata [another village] people wrote a project and got a grant for 4.5 million Som! (State official, October 2005)

After two hours, the officials left the village – and only came back several months later. In these meetings, officials present themselves as the brokers of other state agents, who are in higher positions than themselves. New requirements, laws or rules are presented as coming “from Bishkek” where the government sits. Even the head of the oblast will justify new regulations that met with criticism from the villagers by referring to the capital. Thereby, the presence of the responsible and acting state is – even in the presence of its officials – located even further away from the villagers. Whereas many *aksakals* usually come to those meetings to pay tribute to the state official and engage in discussions, those elders working in the *aksakal* court complain that the state has stopped being interested in their work. One *aksakal* recalls:

They used to come and invite us to seminars and talks. They used to teach us about the law. But that was five years ago. Nobody has controlled my documents since then. Nobody has come to ask me about my work. (Head of an *aksakal* court, August 2006)

The *aksakals* argue that the president has forgotten them. In talks, *aksakals* always emphasise the withdrawal of the state – from general village life as well as in regard to their activities in the *aksakal* court – and their feeling of being left to themselves.

3.2. *Watching Television*

Besides hearing from the state in personal encounters with officials, watching television is one of the major sources to get an idea about the state in the village. Whereas radio and newspapers are rare, almost every family has a television set and receives up to five channels. Of the three Kyrgyz channels, one is broadcast in the Russian language, the other two in Kyrgyz. All three are either owned by or are under the control of the Kyrgyz state authorities. Sometimes villagers also receive a Kazakh and a Chinese channel, but the quality is very bad. The image of the state is formed especially through what is being shown on TV. Of special interest are the announcements made by the president, interviews with state officials and reports about other parts of Kyrgyzstan. News about animal husbandry, agriculture, upcoming (national) elections and referenda, changes in legislation (mostly the constitution, but also other laws) as well as short-term visits of foreign politicians are next to musical performances, festivities during national holidays and the weekly lottery-show among the most-watched events. People watch the news and discuss them later on the street, in their houses over tea or during meetings in the *klub*. Villagers often refer to what they have seen on TV when making a statement that requires further legitimation. During the above-mentioned visit by the state officials to the village, a member of a local farmer's association brought up a dispute between the mayor and his association over a barn that had belonged to the collective farm (*kolkhoz*), but was then privatised and transferred to the association. The mayor allegedly sold the barn to someone else, even though it was the property of the association. In order to emphasise his claim of wanting the barn back, the villager said:

I saw an announcement on TV where the politicians were talking about the requirements of the creditors. Before they will give us technology and money for credits we have to have a certain place where we can store this technology. Without fulfilling this requirement we won't be able to get anything. We need the barn back! (Villager, October 2005)

From this statement as well as from the ones before, it not only becomes obvious how strongly interlinked international organisations and the nation-state are in Kyrgyzstan, but also that knowledge about the state and other institutions is often achieved through the media (see also Hansen 2001; Gupta 1995). In 2006, members of the *aksakal* court carefully watched the news regarding the constitution and the introduction of other laws since after the "March revolution" in 2005 the legal sphere underwent significant changes. When in fall 2006, after several months of internal discussion, a draft version of the new constitution was presented to the public, the *aksakals* noted that "their" article 92, in which the duties of the *aksakal* courts are formulated had been removed.⁷ When a politician from Bishkek invited "people" to the regional capital Talas to discuss the new wording of the constitution, the head of one of the *aksakal* courts followed this invitation. During the meeting he told the politician:

We have seen that in the new version [of the constitution] the *aksakal* courts are not included. Why? Aren't we doing a good job here? Put us back in! (Head of an *aksakal* court, September 2006)

⁷ The reason for wanting to remove the *aksakal* courts from the constitution was that the *aksakals* were not an official judicial organ of the state but a part of the local self-governance structure. Especially non-governmental institutions claimed that either the *aksakal* courts have to be removed or that their institution has to be included into the constitution.

The politician, a member of the constitutional committee, explained that there had been dissonances amongst the committee members. He promised to try his best to reintegrate the article into the constitution. The *aksakal* was satisfied. When in November 2006 the new constitution was adopted, including a mention of the *aksakal* courts (now in Art. 39), he attributed this to his personal engagement.

3.3. Remembering the Soviet State

The third source from which people create their image of the state is in remembering the Soviet state. People today complain about the non-engagement of the current government in village affairs. They feel left to their own devices. Looking back at the Soviet state, they first mention that there was work and order. One old woman explains:

One had to work. If the plan was not fulfilled, they would humiliate us. They would come after us and make us work. The leader used to come to the brigadier and the brigadier used to come to our houses saying: “Go to work!” There was order (*tartyp*). When we had a good leader, our plan was implemented well. And if we had a bad leader, then work would stop. We planted wheat and they used to give us awards during the holidays. And now, in this time, everything is so slow. (Old woman, May 2006)

The good and ordered life the old woman recalls here is related directly to the state authorities and the ability of the *kolkhoz* administration to make people work. Order, something described as positive, was established through severe control and pressure by officials (see also Humphrey 2002: 28 and Pelkmans 2006: 194). However, instead of criticising this, the old woman saw in it the reason for the success of the *kolkhoz*: The stricter the leader of the *kolkhoz* was the better people worked. Material well-being and personal acknowledgement are directly linked to constant control and surveillance by the state.⁸

According to villagers, order does not exist among the population per se, but needs to be created and maintained by an individual leader – in the past the *bij*, the *manap* and the lineage elder. During Soviet times it was the *kolkhoz* directors and today it is the mayor, the *akim*, the *gubernator* and the president. Especially in the early years of collectivisation, the Soviet authorities tried to exert pressure on villagers by appointing leaders with whom the villagers did not share kinship ties. The directors of the *kolkhoz* in Talas as well as other leading figures such as the head agronomist, were usually not from the village in which they were working. They had to change their work place frequently and often worked in all provinces of the country in the course of their careers.⁹ Was the head of a given unit not capable of establishing and keeping order, “work stopped” as the old woman said. Not only have the labour opportunities in the *kolkhoz* disappeared, but also the demanding and at the same time nurturing “state” that managed to establish order in the village. Instead, the state authorities increasingly refer villagers to international organisations. Today, many people in the village complain that the kind of order existing during Soviet times was never

⁸ However, the old woman also recalled how she used to trick the authorities. She said: “At those times, all the animals belonged to the *kolkhoz*, but we hid some of them because we needed them for festivities. In winter, they would come and check and in summer they would check again.” (Old woman, May 2006)

⁹ This principle applied even more for the *sovkhos*, which was truly a state enterprise.

restored again after independence. The *aksakal* courts were added as a dispute-management institution to the local village structure in 1995 precisely for these reasons: their main duty is to establish and maintain order among villagers by settling their disputes.

4. The Introduction of the Kyrgyz *Aksakal* Courts

The introduction of the *aksakal* courts in 1995 provided village elders with an unexpected opportunity to regain an official position in the village community. After the collapse of the Soviet Union and the privatisation of the state enterprises, only few individuals managed to obtain work outside of their private agricultural activities. Today, the municipality is the only possibility to find a job in the village. The possibilities for employment are, however, limited, and since co-operation with international organisations has become extremely important for Kyrgyz villages, it is mostly the middle generation that is qualified for positions such as mayor, secretary, land expert, tax inspector or librarian. These positions require travelling to the regional capital Talas, meetings at the provincial level, participation in seminars and conferences organised both by state authorities and development organisations as well as occasional trips to Bishkek. Older people, who often had important positions during Soviet times, were thought of only years after independence when the *aksakal* courts were added to the other village institutions (see Beyer 2005a).

Most *aksakals* working in the court today are used to being listened to. During Soviet times they worked as agronomists, heads of the *kolkhoz*, and brigadiers or directors of village schools. They felt honoured, when they were nominated to form part of the *aksakal* court, although they do not benefit financially since their work is unpaid. Being a court member, then, is about regaining ones status in the village community. The former president Akaev made this apparent during a republic-wide meeting of *aksakals* in February 2005, where he publicly honoured the best court members in the country. Akaev had also planned to provide *aksakals* with a regular salary (Akaev 2005), which he was not able to put in place before he was ousted from office in March 2005 (Beyer 2005b). As a consequence, the *aksakals* in Talas remain fond of the former president and – especially in light of the chaos the “March revolution” has caused – portray him in an increasingly positive manner.

Individual *aksakals* in their function as lineage elders have mediated disputes within their families, within and between lineages (*uruu*) and in larger meetings (*kurultaj*) since pre-Soviet times. In contrast to other institutions of customary law such as the *bij* or the *manap*¹⁰, I argue that *aksakals* were not targeted during Tsarist and Soviet times since they did not stand out as an institution and, therefore, never caught the attention of Russian colonial and later Soviet power holders (Beyer 2006). Even during Soviet times, they managed to settle disputes on the *kolkhoz* level – an unofficial practice condoned by the Soviet administration, but mostly performed in secrecy.

In tune with international projects of “empowerment” and decentralisation, in 1995 the independent Kyrgyz nation-state transferred responsibilities that had until then been exclusively in the hands of state courts and state judges to the *aksakal* courts and, therefore, to lay judges. It is

¹⁰ *Bij*s are considered to have been leaders of larger kinship units. Like the *aksakals*, to become a *bij* one had to be respected in the community and to have a good knowledge of the customary law. The Russian anthropologist Olga Brusina differentiates between the activities of *aksakals* and *bij*s by saying that *aksakals* used to manage disputes within the encampments, whereas *bij*s mediated between encampments as well as within and between *uruus* (Brusina 2005: 230). *Manaps* were rich or aristocratic persons who possessed many cattle, but who also distinguished themselves as leaders in times of war and as mediators in cases of conflict.

important to note that this was not done in response to initiatives of the local population, demanding more rights and powers and the acceptance of customary laws as official legal norms. Campaigns of local self-governance in Kyrgyzstan have always been initiated top-down by state authorities, mostly with the help of transnational actors as consultants and financial supporters. The establishing of the *aksakal* courts must be seen in the light of transnational and national policies that assume decentralisation to be a benchmark of “good governance” (see Bierschenk and De Sardan 1999: 37).

According to the separate law on the *aksakal* courts, these courts “(...) judge according to moral norms that reflect the customs and traditions of the Kyrgyz” (Art. 1, I, 2, Law on the *aksakal* courts, June 2002). However, what these customs and traditions are exactly, is not specified any further. The government’s policy of legal decentralisation, which is often framed as ‘more rights to the regions’, could also be read as ‘less work for the central state’. In the context of the *aksakal* courts this means less work for the police and the state courts, especially the regional courts, to which claimants had addressed their problems before. Thus, citizens’ options to apply to a legal institution of their choice have been limited. Issues regarded as ‘minor’ by the police or the courts are now being sent, without the consent of the claimants, directly to the local *aksakal* court. Villagers are thus forced to interact with this institution if they want to have their cases considered by official organs at all. The effects decentralisation measures have in the local arena to which they are applied have been little researched (but see Rösel 1999; Rösel and von Trotha 2005; von Benda-Beckmann 2001, 2005, 2007; Agrawal and Ribot 1999; Nordholt and van Klinken 2007). To date, there is little evidence of in how far the optimistic assumptions of international organisations and national governments hold true. These stakeholders usually focus on the positive results supposed to stem from decentralisation measures such as democratisation and the direct and full participation of all local actors in political processes. Critical voices, however, argue that in order to successfully decentralise a political system, informed citizens, responsible politicians, and fair-minded judges – ergo, a functioning democracy – should be a precondition and not a result of decentralisation (see Rösel 1999). In Kyrgyzstan, state authorities were not sharing their power when they decreed that a legal institution manifest itself on the local level. When introducing the *aksakal* courts, “the state” was not very strong and capable of “empowering” communities. It decentralised the legal sphere because it was weak and lacked the capacities to administer the law itself. Politicians were getting rid of citizens’ problems that had come to be declared as “minor” when brought before state courts. I argue that beside an attempt to formulate national identity and having to react to increasing pressure from international organisations to democratise and decentralise the state bureaucracy, this was the main reason for the creation of the *aksakal* courts. In contrast to many other examples where citizens are portrayed as taking their rights into their own hands, the Kyrgyz population did not demand the recognition of their customary laws in legal affairs. Customary law in Kyrgyzstan is generally not regarded as a ‘weapon of the weak’ (Scott 1985). This has to do with the fact that customs (*urp-adat; salt*) are not considered to be law in the first place. When talking about law, people would always use the Russian word *zakon*. Law, ergo, is always associated with state law. And “the state”, as I have shown, is increasingly perceived by the population as residing outside the village. The *aksakal* courts, therefore, are in the paradoxical situation of having to form part of “the state” on the one hand and having to substitute it on the other.

In the next section I describe a divorce case dealt with in an *aksakal* court session. During the session, “the state” and “state law” enter the realm of local village life where people complain that “there is no state”. I will show how through the imagining of the Kyrgyz state and state law the setting up, the procedure and the outcome of this *aksakal* court session are shaped. I will focus on the agency of the head of the *aksakal* court and his court members and analyse the reasons for their specific argumentations which involve “the state” in various ways. What we will be witnessing is not a representation of an already existing state legal practice, but the creation of an entirely new customary law.

5. “There is this Law ...”: imagining the state in *aksakal* court sessions¹¹

I am sitting in the house of the main *aksakal* (Aksakal) together with my partner (who accompanied me during field research) and my assistant. We are having tea together while the *aksakal* chats about the latest village news. I ask him about any new disputes since I have not been in the village for two weeks. He suddenly remembered a letter of complaint (*aryz*) to which he had not yet reacted and decided to resolve this case today. The fact that the petitioner is in the hospital and currently not in the village, does not bother him: “We will take her brother since he wrote the *aryz* in her name.” He explains that this case is about the divorce of Ainura and Emil¹². The couple has two sons and a daughter and lived together with Emil’s parents for nine years. Ainura, however, is mentally ill and often not capable of caring for her husband and children. Finally, Emil sent her back to her parent’s house. He kept their two sons, whereas Ainura decided to take their daughter with her. Emil found a new wife and she moved in with him and his parents. Ainura’s family now wants Emil to divorce officially, to give them her daughter’s birth certificate and her share of the land. They are neither claiming land for Ainura, nor the payment of alimony. Emil did not react to the demands and the family turned to the head of the *aksakal* court for help.

We leave the *aksakal*’s house to pick up Ainura’s brother, but since he is not home, we take his sister (Sura) with us instead. Then, we pick up another *aksakal* court member (Aksakal_2) from his house (who was not informed about the case). Together we visit Emil and his parents. There, on the street in front of their house, the *aksakal* starts talking to Emil and his mother (EmilMo). A neighbour, also an old man (Aksakal_N), joins the group.

Aksakal (approaching Emil): I received a message from the policeman about you. I will save you. You married another woman without divorcing your wife. Or do you want to go to the regional court? Or do you want to come to the mayor’s office instead, so that I can save you? Choose one of these and be quick.

Aksakal_2 (to Aksakal): I will also divorce. Will you save me too? (laughs).

Aksakal (ignoring the comment) (to Emil): Did you understand me?

Emil: When?

Aksakal: Now.

Sura: And bring Eliza’s birth certificate (Ainura’s daughter).

¹¹ The following account is based on a transcription of the whole court case, as well as on my diary entries. Due to space limitations, I have shortened the case significantly without, however, changing the sentences in themselves.

¹² All names are pseudonyms.

Aksakal: If you don't agree, I will just send my decision and the note from the policeman to the regional court and you will go there. The regional court will deal with you. (to Aksakal_2) He married another woman without divorcing his first wife and leaving her with three children.

Aksakal_2: When was this?

Sura (to Emil): Generally one should get married after getting divorced.

Emil: I have my two sons with me.

Sura: You have them, but who will take care of your wife now?

Aksakal (to Emil): Who gave birth to your children?

Emil: Why are you threatening me? I don't care. I can even die.

Sura: Who is talking to you like this? Are you stupid or something?

Aksakal: Hey, come here! I will save you peacefully.

EmilMo (to Aksakal): Dear relative, I am half way to my death and so is my husband. Don't talk bullshit. How long will you torture this guy?

Emil: I am ready to die.

Sura (to EmilMo): Dear relative let him divorce legally.

EmilMo: What do you know about legal things? He might die.

Emil (to both *aksakals*): I can die and I will take one of you with me to my grave. I promise if I die, I will kill one of you too.

Sura (to EmilMo): Dear relative, I have told you that we need to separate them in the *aksakal* court. That's it.

EmilMo: Shut up. Since that time I feel really bad and so does my husband.

Aksakal (to EmilMo): Relative, who is talking bad to you? Let's do it like this: send him and I will give him a paper, which says he is divorced. I want to save him.

EmilMo: Yes, ok. He is in your hands, in the hands of our relative.

Aksakal_2: Let's just make them divorce.

Aksakal: Let the new *kelin* (kyrg. daughter-in-law) live normally.

Sura: Yes. We don't have any ill will towards his new wife.

After this conversation, the two *aksakals* of the court and Sura go to the mayor's office to wait for Emil. A couple of minutes later, Aksakal_N brings the accused and his new wife (the *kelin*) to the mayor's office. The couple looks afraid and sceptical. Since all the offices in the building are closed, there is no room to sit down to discuss the case. Therefore, the *aksakals* and Ainura's sister take a seat on the window ledges of the entrance hall while the couple crouch on the floor. The *aksakals* make sarcastic remarks to each other about these working conditions. It is cold and windy even inside the building since some of the windows are broken and the entrance door does not close properly. The court session begins. The *aksakal* first reads the *aryz* aloud. After a couple of questions about the content of this *aryz*, the *aksakals* again explain the need to divorce first before getting married again. When interrogated, Emil is told to stand up in front of the court when he is questioned. After having answered, he is told to sit down again. After the accused was made aware of the issue at stake, the head *aksakal* again emphasises that there is no need for a conflict and that after he signed the paperwork, their divorce will be legal and he could officially marry his new wife. Ainura, on the other hand, would then be able to get the children's allowance since she, then, would be a single mother. The couple asks whether they will be allowed to register their marriage

in Talas afterwards. The *aksakals* confirm. Later, the head *aksakal* will write a note stating that Ainura and Emil have decided to not live together any more and that the *aksakal* court has taken notice of their decision.¹³ Thus, the court session ends amicably. Everyone gets up to leave the hall. While the relieved looking couple is leaving the building, the head of the *aksakal* court approaches the couple's neighbour:

Aksakal (to Aksakal_N): After court one has to pay 100 Som. There is this law (*zakon*).

Aksakal_2 (to Aksakal): Now how will you explain this? Do you have this law?

Aksakal: That guy (Emil) has to pay 100 Som.

Aksakal_N: Ok, I can tell him.

Aksakal_2: Yes, tell him.

Judith: Why does he have to pay 100 Som?

Aksakal: For our work. I will give thirty Som to the mayor and for seventy Som I will buy something to eat for the *aksakals*.

Aksakal_2: I don't know whether it will work out or not.

Aksakal: We will make it work out.

Judith: I have not heard about this law.

Aksakal_2 (to me): There is such a law. Write down this law.

We leave the hall together. The accused and his wife are sitting in front of the building, waiting for us. Their neighbour, Aksakal_N, approaches them:

Aksakal_N: There is a law of theirs. I will explain it to you. Since the decision was solved to your favour, you will get your decision after having paid 100 Som.

Aksakal: Thirty Som for the mayor.

Aksakal_N: You will pay for the mayor.

Aksakal: And seventy Som for me.

Aksakal_N: For the court's labour.

Aksakal_2: Then that's it.

As usual, the court session winds up in the small contractor's shed left over from Soviet times, which some villagers have rebuilt into a store and a place where usually men sit down together to drink (tea and vodka). The head of the *aksakal* court orders tea and cookies for everyone and vodka for himself (the other *aksakals* do not drink alcohol). These things were paid for by the couple. Emil went home immediately while his wife serves food and drinks to the group. Later, after she has left as well, the mayor of the village, together with the tax inspector, arrive from a meeting in Talas and join us. They get to hear about the new law:

Aksakal (to mayor): Hey! From now on it will be like this: One has to pay 100 Som before a court session starts. Thirty Som for you and seventy Som for the document.

¹³ In contrast to how the *aksakal* presented it, however, this is not the divorce itself, but only the first step towards it. The actual divorce will have to take place in front of a state court. What is solved, however, is the question of how the property, the land and the children will be "divided" among the couple. When I left in September 2006, the couple has not been to the state court.

Mayor: (looking irritated) Hmm?

Tax inspector: Before each court session starts?

Aksakal: Yes. Until one pays, the court session won't start.

Aksakal_N: He says that he has this law before reviewing a court session.

Aksakal: It is written in the back cover of the book, which I got from Akaev.

Aksakal_2: Do whatever you want, but don't forget to buy something for us.

Aksakal: Aren't you eating something right now?

Aksakal_2: But you started it only today.

Tax inspector: Yes, it would be nice to have tea after the court session.

Mayor: There needs to be tea after court, but I don't know ...

Aksakal: From now it will be like this: One will pay. Only then will we start a court session.

This case shows the various ways, in which the image of the state is invoked and reconstructed before, during and after the court session.

The first image of the state is invoked before the official court session takes place. The head *aksakal* approaches Emil with a threat. Should he be not willing to have his case considered by him, he will inform the state court. The note he assumedly got from the policeman was invented in order to frighten him. This shows that the image of the state and of the state courts is a threatening one, Emil is definitely daunted. But it also shows that the *aksakal* needs to invoke the presence of a policeman in addition to his own presence in order to ensure he gets his message across. This *aksakal* invoked the same image of the state in other court cases as well. This tactic was also made use of in the other *aksakal* court where I did research. Threats to transfer a case to the state courts are often needed to prompt disputing parties to back off from their position and work towards a compromise. Moreover, "keeping things amongst ourselves" was also a well-known strategy during Soviet times. In this case, however, the *aksakal* was not alert to Emil's aggressive reaction, his counter-threats to take him or the other *aksakal* present into death. Emil associated "state courts" directly with imprisonment and imprisonment with having to die. This was not the *aksakals* intention, although he certainly provoked it in saying he will "save" Emil. Emil's mother was equally threatened by the *aksakal's* behaviour. She reacted very emotionally, appealing to the fact that she and her husband are old and near death themselves, and that they and the *aksakal* are relatives. When Sura tried to clarify, she is told that she does not know about "legal things" and that Emil will indeed die, should his case be sent to the state court. Only after several pacification attempts does she lay the fate of her son into the *aksakal's* hands.

Invoking the image of a "threatening state" works because villagers remember the Soviet state (see the statement of the old woman above and the combination of fear and "order" in her argument). Stories about people being sent to prison during Soviet times are still told in the villages today. Having been to prison, means being forever stigmatised, so a villager, who used to work as a lay judge during Soviet times. While people respect *aksakals*, they fear the state courts. The *aksakal*, however, knows of this fear and presents himself as being in the position to hand the case over to the state. By appropriating part of the state's power, he raises his own authority.

The second image of the state is invoked during the court session. Although the surroundings in which the court session takes place is in no way comparable to a court room in the western sense, the procedures that the *aksakals* apply resemble state court procedures. Having the accused brought before the court, reading out the complaint, asking the couple to stand up when being questioned

and telling them when to sit down is reminiscent of state court procedures. It is precisely the procedural state court-like look that lends authority to the decisions of the *aksakals*, and not the legal basis on which they make these decisions. I argue that people associate these procedures with the state and state courts because of what is broadcast on (state) television. On the one hand, it is common to show discussions between the president and members of his cabinet on TV. In the case of the new Kyrgyz passports, which were supposed to be handed out to each citizen of the country, several months of chaos and uncertainty left only a small percentage of citizens with a new passport, when the president was broadcast talking to the two responsible government deputies at primetime. The camera showed all three men sitting around a table, with the president at the top, looking at the ministers, and the two ministers not looking up once from the table, busy taking notes. Every citizen watching this broadcast witnessed how the president denounced the state officials as being unable to establish order. He threatened to fire them, should they not be able to stop corruption in their departments and deliver the new passports to every Kyrgyz citizen. He also used this opportunity to explicitly assert his innocence in this case. Next to these staged broadcasts of the president, which very much resembled the court sentence of an almighty judge, I also credit the local knowledge about how state courts operate to the popularity of the American “Law&Order” series in Kyrgyzstan.¹⁴ Most interestingly, however, *aksakals* refer to TV shows in which court cases are staged in front of an actor playing a judge. Not only the *aksakals* in the two villages, but also those working in the capital Bishkek mentioned that often they learn about the behaviour of judges while watching these TV-shows. The image of the state, in this case, is clearly a mediated one – influenced by national as well as transnational perceptions of law and order.

The third image of the state in the abovementioned divorce case was invoked after the court session was over. It centres on the invention of a new law allowing the *aksakals* to impose a fee of 100 Som for their services. The conversation clearly demonstrates that such a law does not exist, but the reluctance of the other people privy to the conversation to deny this reveals the power imbalances between the head of the *aksakal* court, his deputy, the neighbour and later the mayor and the tax inspector. Michael Herzfeld has argued that bureaucrats can call upon two resources in escaping personal responsibility for their decisions: higher authority and the classifications to which “the system” subjects people (Herzfeld 1992: 95). Whereas the *aksakals* involved in the divorce case know that there is no such law, no one really challenges the claim of the head *aksakal* that there is. The fact that he was once invited by the former president to receive an award for being one of the most successful *aksakals* in the country boosts his authority among his fellow *aksakals* and the village administration. He alone owns a copy of the book (a compilation of state laws about the *aksakal* courts and in itself a symbol of bureaucracy) given to him by Akaev, in which the law in question is written on the back cover. The head of the court is therefore both playing on the fact that you have to do what the “book” tells you to and that he is the only one possessing a copy of it. As the head of the court, he has an outstanding position: he receives the letters of complaint, summons the disputing parties as well as the other *aksakal* members, guides the court session and, finally, makes the decision.

In our divorce case, however, the head of the *aksakal* court also senses the fact that he cannot act completely outside the (state) legal realm. While he explains that a fee has to be paid after the court session is over and that the money will go to the mayor and to himself (and that he will use it to pay

¹⁴ The American “Law&Order” series is so popular that a Russian TV company has created a Russian equivalent called *zakon i poriadok*, which will probably also be broadcast in Kyrgyzstan soon.

for their food), he tells the mayor that the fee is to be paid before the court session will start and that the money will be for the mayor and for “the document”. In presenting the law and the distribution of fees differently to the mayor than to his fellow *aksakals*, he may be accounting for the mayor’s scepticism towards the new law. The mayor, in this case, represents the state since he forms part of the local state administration. Thus, the head of the *aksakal* court explains his new law in terms that sound as legal as possible; not he will be paid, but “the document”. The head of the *aksakal* court has not a lot to fear from the mayor who once was his pupil. Their teacher-pupil relationship in many ways has not changed and, thus, the mayor often keeps quiet instead of voicing his opinion. The position of the other *aksakals* is also interesting, since they sometimes ridicule the head and his way of judging, knowing that his authority is often based on the villager’s lack of knowledge about the state. But later they ally with him, revoking my objection that I had not heard about this new law. By telling me to write down this law, they assign the codification of the new customary law to the anthropologist – an appropriate thing to do given the fact that this had been the role of anthropologists in Central Asia throughout the history of the Russian conquest.

6. Conclusion

The relationship between an entity called “the state” and its dichotomous other, “the citizens”, has traditionally been described as one of power imbalances. Whereas “the state” is usually perceived as a powerful complex of institutions, staffed with individuals acting out predefined roles, the citizens are perceived as being subject to this entity. The power of the state was imposed on them with little room to react or resist. In current anthropological literature, the power monopoly of the state has been questioned by turning the attention and the focus of research to the strategies of the oppressed. It was found that citizens are not at all as passive and powerless as it was once thought. The state found itself being outwitted (Skalník 1989) when the weapons of the weak (Scott 1985) struck. The gap between the state and its citizens became even more significant, when local or indigenous modes of rebellion met patterns of state power that were imported or colonially imposed. Current anthropological literature is therefore examining citizens fighting the state with its own weapons, such as the law (Rajagopal 2003; Eckert 2006; Merry 2006). Here, the traditional weapons of the state are transformed into instruments of the people. In the course of this process, they are creatively reinterpreted to fit the needs of the citizens now using them against “the state”. This development can be seen as an outcome of increasing global interconnectedness, (human) rights discourses, and the enormous influence of transnational actors in countries formally termed the Third World.

Other literature on the state tries to understand how the state comes to be imagined and constructed in local practices and actions. In the case of rural Kyrgyzstan, the *aksakals* are not resisting or fighting the state, but instead use symbols and images of the state for their own devices (see also Fuller 2001: 25; Das and Poole 2004: 20). In contrast to most literature, the state in the case presented here is less of a real opponent than it is an imaginary adversary.

As I have shown in this paper, the image of the state is mediated threefold: through state officials visiting the villages, through (state) media, and through memories people have of the former Soviet state as well as of the early years of independence. However, these images of the state always have a real and practical dimension. Discourses about the state manifest themselves in the way people act. The *aksakals* invoke “the state” in order to raise their own authority in the village. They make

use of the fact that after the decentralisation campaign, state courts have stopped hearing “minor” disputes, sending these cases back to the *aksakal* courts. This is one of the reasons why villagers today turn to the *aksakal* courts right away (money, time and wanting to keep things in the village being the others). The fact that these images of the state resound in the village population encourages the *aksakals* further to act the way they do. The power vacuum the Soviet state has left behind is thus used creatively by *aksakals* to position themselves as new power holders. They feel that they are needed by villagers who come to them with their problems. Those who do not want to listen to them are intimidated: *aksakals* might make use of their broker position between the village and “the state” and transfer a case to the state courts.

Following Herzfeld (1992: 108), I define the position of the Kyrgyz *aksakal* courts as a “middle reach” where social actors (the *aksakals*) co-opt the official state rhetoric for their self-interested purposes while at the same time state authorities expropriate the language of “custom” and the symbolism of *aksakals* as the “bearers of tradition” to support the image of the Kyrgyz nation (see for example Akaev 2005). Michael Herzfeld (1992: 13) has argued that any symbolic form removed from its original context may easily relapse into something akin to its previous significance. He states that this provides members of the public with a means of conceptualising their own disappointments and humiliations. *Aksakals* feel betrayed by the state for not being rewarded for their work, neither financially nor – since Akaev was forced to go – at least publicly. The fact that Akaev had planned to pay them a salary is well-known to all *aksakals* and in this case, the head develops a new law in the former president’s name that allows them to at least have tea and cookies after their work. As in the case of “big men” described by Godelier and Strathern (1991) *aksakals* thus “represent at once the fading of the state’s jurisdiction and its continual refounding through its (not so mythic) appropriation of private justice” (cited after Das and Poole 2004: 14). Often, it is imagined state law (see also F. von Benda-Beckmann 2005) that is used by the *aksakals* to direct the outcome of a court case in the place of customary laws. The latter, nevertheless, structure and influence court sessions and everyday life. However, they are not perceived of as being law in the first place but as “just our customs”. I argue that customary *law* in the sense the Kyrgyz people understand the word *law* is only being created today since the state has introduced an official court of the *aksakals* and has stopped teaching about state law in a top-down manner. This new kind of customary *law* originates in a discursive mode in which the images of the state, state courts and state law, and finally transnational elements are the driving forces.

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