Customizations of Law: Courts of Elders (Aksakal Courts) in Rural and Urban Kyrgyzstan

This article deals with a neotraditional institution: the aksakal courts (courts of elders, or “whitebeards”) in Central Asian Kyrgyzstan. Founded in 1993 by the first president of the country, and based on an elaborate law enacted in 2002, the newly appointed aksakal judges were supposed to judge according to what were considered to be the customs and traditions of the Kyrgyz. In this article I show in what ways the judges’ way of “being aksakals” often accords neither with the letter nor intent of the law, but reflects a more fundamental way of ordering the world, here referred to as customization. I argue that the ways in which the court members in rural and urban Kyrgyzstan link themselves to traditionalist imagery and state trappings reveal a more general point about how people in contemporary Central Asia engage with their being-in-the-world. This is particularly relevant in times of social change such as those initiated after the dissolution of the Soviet Union. [law, ordering, neotraditionalism, state, elders, Kyrgyzstan, Central Asia]

In 1993, two years after the break-up of the Soviet Union, Askar Akaev, the first president of the now-independent Central Asian country of Kyrgyzstan, founded the aksakal courts. The institution was established by presidential decree throughout the country by 1995, but was put into practice first in the countryside, where the authority of the elders and the force of salt (customary law) were widely thought to be unbroken. The newly appointed aksakals were mostly men over the age of 60 who already occupied several roles within the local context: they were heads of households, uruu (elders of their lineages), and had served in important positions in the kolkhoz (Soviet collective farms). They had thus acquired different types of knowledge, and the role of mediator in dispute cases was not new to them. According to the law on the aksakal courts, they were supposed to decide disputes “according to the customs and traditions of the Kyrgyz” (Law on the Aksakal Courts, art. 2). However, because their new role in the aksakal courts formally established them as judges, they initially voiced concerns over their lack of so-called proper legal knowledge. They also complained that state officials and state judges showed little interest in their efforts. After realizing that the state mostly transferred to them those cases that were considered minor (theft of animals, land and water disputes, domestic violence, division of property), they stopped waiting for instructions from state judges or state officials and began to customize the institution in a way that emphasized...
its “ancient” character. The dispute management in the village aksakal courts is nowadays increasingly discussed as being salt boiuncha (according to customary law), even though images of the state, state law, and state judges play a key role in the way the courts are set up and operate.

Years later, in 2004, the institution was introduced in the capital, Bishkek. It was thus taken out of its seemingly traditional context and subsumed under existing hierarchies as part of the newly created urban local self-governance structure. Unlike in the countryside, city aksakal courts were not overseen by any whitebeards; instead, the judges were mostly women of non-Kyrgyz ethnic background, who had been socialized in an urban setting in which Russian was the dominant language. The courts reported to the city administration, which reviewed their documents and even paid the chairperson a small salary to ensure accountability. All this bound the urban aksakal courts’ members to state institutions and officials. But like their rural colleagues, the members of the city aksakal courts felt equally left to their own devices when it came to the proper ways of dispute resolution. Still, many enthusiastically embraced their new role and sought to be caring mediators, as suggested by their tapping into the idealized image of the whitebeard.

How they devised their own blend of customary law and state law, and how they adapted the image of the whitebeard, is referred to in this text as customization. My interest in this, which I prefer over such alternative concepts as invention of tradition or vernacularization, stems from my observation that the ways in which the court members link themselves to traditionalist imagery and state trappings reveal a more general point about how people in contemporary Kyrgyzstan engage with their being-in-the-world.

As material on rural courts is more readily available (see Beyer 2006, 2010, 2014), I present a somewhat asymmetrical comparison biased toward the urban courts, which are a more recent innovation and have not attracted much scholarly attention.

The Introduction of the Aksakal Courts

When the first president of the country, Askar Akaev, a former physics professor, introduced the aksakal courts by presidential decree, he was seeking a balm for the emerging postsocialist ills in the mythical past of Kyrgyz heritage.

Akaev struggled not only to reform the country’s economic, political, and legal systems, but also to define what it meant to be Kyrgyz in the first place. For this purpose, he not only elevated the significance of certain places and historical figures (Van der Heide 2008), but also related these to contemporary challenges connected to the state’s independence. The image of the aksakal in Kyrgyzstan is that of an old, long-bearded man who wears a kalpak (felt hat) and a long robe skillfully embroidered with traditional ornamentation. Aksakals are assumed to be wise and knowledgeable about the customs and traditions, as well as the arts and crafts, of the Kyrgyz people. Their duty is to teach the younger generation about ak zhol (the right way; literally, the white path) of living a moral life. They mediate between conflicting parties,
drawing on their extensive knowledge of customary law, kinship relations, proverbs, and stories. As household heads or lineage elders, and sometimes both, aksakals need to be present at all life-cycle events—births, marriages, and funerals—where they serve as the “guardians of cultural knowledge” (Ellen 1993:231, see also Beyer and Girke 2015).

The promotion of aksakal courts allowed Akaev to use the neotraditional institution as one of several tools in his nation-building efforts, emphasizing not only its suitability for modern reforms but also the aksakals’ strong links to their forefathers and the continuing importance of customs and traditions for the Kyrgyz population. In order to create political identification and commitment, he adduced “a plethora of empathic images and memories” (Parkin 1996:xxii), and called upon the aksakals to invoke these in public.

The aksakal courts were intended as an alternative to state courts; as such, they must be viewed in light of the decentralization efforts that Kyrgyzstan began to implement in 1996, when the ayıyl ökmütü (rural municipality, consisting of one or several villages) was introduced as a new administrative unit in order to strengthen self-governance in the regions. Today, there is an aksakal court in each ayıyl ökmütü. Similar developments of politicizing tradition and the public role of the elders can be observed in other Central Asian countries (on Kazakhstan, see Kenzhaliev 2005:340; on Uzbekistan, see Noori 2006). Although officially framed as more rights to the regions, decentralization can just as easily be interpreted as less work and expense for the central state. As von Benda-Beckmann et al. put it, “plurality may
actually reinforce structures of inequality as the plurality of forums available decreases the binding power of any law” (2009:12). Issues that are regarded as minor by the police or the courts are often sent directly to the aksakal court of the claimant's home community, thereby depriving the claimant of formal judicial expertise. Some villagers are required to deal with the aksakal courts first if they want to have their cases considered by state organs at all. Because the law does not specify the aksakals’ capacities and jurisdiction, local human rights activists and international organizations criticized the institution in its early years. As a result, Akaev drafted the 2002 law, *On the Aksakal Courts.*

In that law, article 1 defines aksakal courts as “societal organs that are formed voluntarily and on the basis of elections and self-governance.” Articles 2 emphasizes that aksakals should be guided in their decision making as well as in the instructions they give to the people by “historically established Kyrgyz customary law.” The court is to consist of five to nine elected members (art. 8), and a judge is not allowed to preside over cases that involve close relatives (art. 13), although neither article is strictly observed in the village context. Aksakals are allowed to decide on family disputes, property issues, and disputes involving irrigation and overgrazing (art. 15). This article drives home the point that the aksakal courts were geared toward a rural, not urban, context.

Having established the guilt of a defendant, aksakals can issue a verdict and punish them in these ways: (1) issue a warning, (2) require a public apology to the victim(s), (3) administer a public reprimand, (4) require the guilty party to compensate for material damages, (5) fine the guilty party an amount not to exceed the equivalent of three months’ salary at minimum wage, or (6) sentence the guilty party to community service. If the court cannot get the parties to reconcile in a property- or family-related case, it makes a unilateral decision on the question under consideration. If necessary, aksakal courts are empowered to hand matters over to the regional courts. The case has to be transferred to a state court if the required quorum of judges is not present (arts. 16 and 25). This rarely happens, but aksakals frequently mention their power to transfer cases to the state as a rhetorical strategy to make sure that the disputing parties develop an interest in settling matters in the aksakal court.

The losing party, as well as other persons participating in the case, can appeal the decision of an aksakal court within ten days from the date the verdict is issued. Appeals are submitted to the raion (district) or the city court that has jurisdiction over the territory on which the aksakal court was established. The cases, session minutes, and the judgment need to be recorded in writing (arts. 24 and 27). At least once a year the aksakal judges must report to state judges (art. 35). This is rarely done in the countryside, where aksakal judges know that state courts have little interest in their work. According to the law, court sessions are supposed to be free of charge (art. 23).

The specification of the aksakal courts’ role by means of a separate law and the increasingly popular approach of alternative dispute resolution (ADR) among international donors led to a change in public discourse: aksakal courts are now presented as mediating bodies and effective dispute management institutions, and as
“democratic and responsible to their constituents” (Giovarelli and Akmatova 2002:vii). The underlying assumption was that the courts were adapted to village life because their working principles were based on “pre-Soviet traditional clan-based customs” (Simpson 2003).

Such international perspectives on the aksakal courts in 2002 were as a rule empirically misinformed, or at least rather superficial. When international observers claim that “customs are slowly changing, but customs are more important than law in the villages” (Giovarelli and Akmatova 2002:19), they reveal a lack of understanding about the relationship between law and custom in rural Kyrgyzstan. The statement is not wrong, per se, but it does not help clarify exactly how the two legal repertoires relate to one another. Customary law is not a fixed body of norms or rules; it is constantly in the making, albeit backed up by the rhetoric of stability and continuity (see Chanock 1998). To try to thoroughly and objectively document customary law would be to turn a blind eye to the fact that it only maintains its relevance as it remains flexible; to capture and codify its rules and principles at a given moment in time would reduce its practical use in future situations.

The Social Practice of Customization

The term customization describes a particular aspect of ordering, understood here as an activity aimed at (re)gaining a sense of normativity, regularity, and certainty in one’s life. Ordering is directed against the perceived unruliness, uncertainty, and irregularity of people’s everyday realities. It occurs in direct interaction with others, and also when an Other is only imagined. It encompasses verbal and nonverbal communication, embodied practices, and discourses (Maynard and Clayman 2003:195; see also Garfinkel 1984[1964], 2002). Ordering in the form of customization is a cultural technique by which actors frame and eventually come to perceive cultural norms, values, and practices as their own. This is particularly relevant in times of social change, such as those initiated after the dissolution of the Soviet Union. Contemporary anthropological work in postsocialist countries has emphasized people’s creative ways of filling the gap that a “withdrawing” socialist state has left behind (Caldwell 2007; Kay 2012; Read and Thelen 2007). Customization emphasizes the creative potential of actors to engage with their being-in-the-world and their capacity to act as bricoleurs (handy person, Levi-Strauss 1966). People scrutinize and reinterpret cultural forms in their own logic until such forms are perceived and enacted as “custom(ary law)” (see also Scheele 2009). My particular use of the term in the analysis of the aksakal courts highlights how the courts’ members manage to relate to this neotraditional institution and their new role as judges. In both settings, the result of customization is that, over the course of time, the aksakal court, its legislative organization, and the role of the aksakal as judge are increasingly perceived as nashy in Russian and as bizdiki in Kyrgyz (ours, in both translations).

Inda and Rosaldo (2002:16−17) used customization in the context of globalization to describe a process of making foreign (cultural) forms customary. Inda and Rosaldo chose the term over alternatives such as creolization (Hannerz 1992), transculturation
(Lull 2000), and indigenization (Appadurai 2002; Merry 2006). Franz von Benda-Beckmann (2003) speaks of adatisation for the incorporation of Islamic legal concepts and Arabic terms into Minangkabau adat (customary law) (249); Gregory Massell 1980[1968] uses the term traditionalization to refer to what happened when the Central Asian population was brought into contact with Soviet legal institutions (231). Anthropologists such as Stagl (1981:284) and Elwert (2000:69) have taken the concept of Nostrifizierung from German administrative law and used it in their studies on migration and intercultural communication (nostrification, from the Latin genitive nostri [ours]; literally the act of making something “ours”). All these terms indicate a social practice by which people manage to frame social change, political and legal developments, and cultural innovations not as something that happens to them but as something they make happen or as something that is not really a change at all.

Following Inda and Rosaldo (2002:40 n. 22), I find customization less ideologically loaded and free of the connotations these other terms have accumulated. I also chose customization over the aforementioned terms because I am dealing with a novel institution. There was no stable and established foreign cultural form that Kyrgyz people began to appropriate on a local level. The institution that was presented to them was based on a mere idea of their first president, which he gleaned from his reading of the Kyrgyz epic Manas and other folkloric sources—hence neotraditional. When the city aksakal courts were set up in the capital, they were explicitly introduced as something that already existed in the countryside and, therefore, were traditional in Kyrgyz culture, even though its rural history was less than a decade old.

One could raise the question of how customization relates to the role of history in such processes, particularly in the phenomenon of “invented tradition” (Hobsbawm and Ranger 1983:12). Hobsbawm and Ranger argued that, first, traditions are invented in order to cement group cohesion; second, that such inventions legitimize action; and third, that they occur most often in times of rapid social transformations. Sahlins (1999) rejected the concept altogether, describing it as an “easy functionalist dismissal of the people’s claims of cultural distinction” (399). His criticism of the overemphasis on the instrumental use of history in anthropology is well taken, but in my view all actors constantly engage in the invention of tradition as a social practice. To claim that this is a problem is to misunderstand the processes by which people order the material and immaterial world around them. My methodological primacy rests with how my informants practice customization.

**Customizing the Aksakal Courts in the Countryside**

Data on which this article is based were gathered over 15 months of field research (2005−2006) in two neighboring villages in northern rural Kyrgyzstan, where I investigated the workings of two aksakal courts as part of my broader research focus on legal pluralism. Research in the countryside was conducted among ethnic Kyrgyz and in the Kyrgyz language. Additionally, I gathered data on aksakal courts in two districts in Bishkek, the country’s capital, where research took place in a multiethnic
environment and was conducted in the Russian language. This was followed by six weeks of fieldwork, which took place between 2008 and 2010.

In my field research I discovered that the dispute cases the aksakal courts considered could be grouped according to season: in the spring they were mostly related to the division of land; in the summer to the shortage of water; in the autumn to the theft of animals; and in the winter to hooliganism. Only divorce cases occupied the aksakals throughout the year. No salary or any other benefit was given to the aksakal judges for their work. The fact that the local population recognized them as “wise elders” was thought sufficient to both qualify and reward them for the new job.

The villagers in my two fieldsites approached their aksakal courts for a variety of reasons, among them the fact that court sessions were free of charge and that, because the aksakals live nearby, hearings could take place upon request. Moreover, having one’s case dealt with by the aksakal court guaranteed that a dispute would be kept ichinde (inside), that is, within the village. The option of transferring a case to a state court was usually rejected by disputing parties, who felt that it would be uïat (shameful) to do so.

During court sessions, which are always conducted in the Kyrgyz language, aksakal judges rely on mediation in the multisited negotiations. These are being done in kyrgyzcha (the Kyrgyz way), with the judges actively participating in the often-heated discussions. Aksakal judges allow for people’s shared histories to enter the courtroom along with the actual cases. Common residency, shared ancestry, and professional experience provide opportunities for the aksakals to invoke notions of neighborliness, amity, and harmony. The aksakals’ aims are, as they say, to bring people together again and to make peace. Although the procedures and remedial sentences often contradict state law, they are perceived as the best way to ensure parties’ compliance with judgments.

Nevertheless, most of the aksakal judges denied their own juridical competence, claiming that they were “only simple people” who “do not know the [state] law.” Very few had been to a training seminar (conducted by the United Nations), during which they would have been expected to learn how to resolve disputes according to state law or how to objectively distinguish between subjective good and bad customary law. The fact that former president Akaev created a court of aksakals resulted in the general population and aksakal judges alike expecting this to be a state-like institution. Even though the aksakals had little contact with state officials, let alone state judges, they asked for written statements from the claimants, for documents and certificates, wrote minutes of their decisions, and emphasized their position as judge by, for example, casually mentioning that usually all attendants at court were supposed to get up from their seats when a judge entered the room. Court sessions took place in the mayor’s office, and the aksakals asked the mayor’s secretary to attend in order to write the minutes of the case. One head of an aksakal court that I often attended particularly enjoyed sitting in the mayor’s chair during court sessions, while the mayor was relegated to a normal chair off to the side.
While state courts are becoming almost inaccessible for villagers because of the cost and the distrust in distant officials, who are regarded as corrupt and not knowledgeable about everyday life in the countryside, aksakal judges stress performing as state courts in terms of procedural style, courtroom etiquette, and legal ritual, all of which are symbolic of state judges’ authority and legitimacy (Just 2007:117; Arno 1993; Beyer 2014). In doing so, they might be viewed as an extension of state courts that bring a form of stately legal authority to the countryside. However, the aksakal judges in my field sites turned their courts into institutions that were increasingly accepted and portrayed by villagers as an alternative to state courts. Aksakal judges frequently said things like, “We don’t have a state here anymore,” when complaining about the lack of interest state judges had in their activities (Beyer 2014: 99). The particular customization of the aksakal courts has resulted in a new aspect of customary law that now incorporates state judges’ rhetoric and ceremony as imagined by the elders and the village population.

Customizing the Aksakal Courts in the Capital

All of the above-mentioned dispute settlement techniques are connected to a rural pastoral lifestyle. Urbanization is a recent development in Kyrgyzstan: Bishkek gained the status of city only in 1878. Large groups of Russian settlers arrived in 1926, when the place became the capital of the newly established Kirghiz Autonomous Socialist Soviet Republic. The central part of the city was built on a rectangular grid plan during the Second World War, followed by the development of planned suburbs after the war. Throughout its young history, Russians and others of non-Kyrgyz ethnic origin have dominated the city. Tranum quotes a half-Tatar–half-Uzbek, who recalled:

Bishkek was founded 140 years ago by Russians. Therefore, there was only a small indigenous population in the city. However, [Kyrgyz] young people would come to the city to study and they would stay in the city and become russified. Shepherds’ children would come and study and live here. This began the process of russification of the whole population. [2009:184]

Many long-term inhabitants of Bishkek have surprisingly little knowledge about the countryside and are disconnected from the flow of everyday life there. This often includes a lack of knowledge about customs and traditions, the Kyrgyz language, agricultural work, and animal husbandry. Most of them, however, assert that the rural way of life is the true Kyrgyz lifestyle, even though they do not participate in it themselves. The introduction of the aksakal courts in the capital was perceived by many of my informants in Bishkek as a cultural displacement of something that, although perceived as an integral component of “being Kyrgyz,” did not belong in the city context.

When the Bishkek aksakal courts came into existence in 2004, they were organized in ways that were fundamentally different from their rural counterparts. Bishkek
is divided into four districts, each consisting of a number of microdistricts formed either by a conglomerate of socialist housing blocks or by more recently established settlements on the edges of the city. Each microdistrict is represented in one of the four district administrations through a territorial’noe obshchestvennoe samoupravlenie (local council; hereafter TOS). Each council consists of elected members and is headed by a chairman, who presides over the activities of the different committees that can be created by the residents; one of these committees is the aksakal court. In Bishkek, all TOS have to report quarterly to the Sektor po koordinatsii deiatel’nostii organov territorial’nogo samoupravlenia (the Sector for the Coordination of TOS; hereafter, sector). Among other things, the sector is responsible for informing the district court of the activities of the city aksakal courts.

Aisuluu Sultanalieva, a Kyrgyz woman in her late forties who has been working in the district administration since 2003, is the head of the sector for the Oktiabr’ district of the city. During my fieldwork, I learned from her data on the city aksakal courts that there were 18 aksakal courts in the Oktiabr’ district—one for each micro district. In contrast to the countryside, every aksakal judge in the district had to have a card—to be renewed every year—that identified him or her as a judge. Also in contrast to the villages, each head of an aksakal court received a regular small monthly salary of 460 som (the equivalent of 23 EUR at that time). Moreover, all members of the courts were expected to attend regular training seminars carried out by one of the district judges. They were also expected to deliver written reports and all minutes of their court sessions quarterly to Aisuluu Ezhe’s staff. All documents were filed in folders reserved for each aksakal court’s activities. In her folder system, I also found detailed biographies of each court member, their photographs, and their addresses, in case they needed to be reached urgently. I noticed that she frequently drew on military-inspired vocabulary: she referred to the aksakals as moi soldaty (in Russian, my soldiers). The most striking difference from my rural experience was, however, that many courts were staffed by female members of non-Kyrgyz ethnic background. This was remarkable, given the fact that the image of the aksakal is that of an elderly, ideally white-bearded Kyrgyz man.

On the basis of this detailed material on all 18 aksakal courts, I selected two courts on which to focus my research. They were part of two TOS located in the southern margins of the city, each in charge of up to 70 socialist housing blocks built in the 1950s and ’60s and representing up to 30,000 people. Both of their offices were located in old Soviet kindergartens.

Meeting Olga Aksakal

I met with Olga Mirzaevna, the head of the aksakal court of the first TOS, on April 6 2006 in her newly renovated office, where the walls were decorated with the Kyrgyz flag and pictures of mountains, lakes, and fields of flowers that she herself had painted. A petite, ethnic Uzbek, she spoke with me in Russian. “You can see that women rule in this building,” she laughed as she welcomed me into their office. A Russian woman in her late seventies was sitting at the table, preparing tea for us.
She was another member of the aksakal court; all in all, there were five women on the court. As they kindly showed me their documented court cases from the previous quarter, I saw that, just as in the documents I had read in Aisuluu Ezhe’s office at the district administration, the main reason for disputes in the TOS seemed to be damage to apartments from water dripping down from apartments above. The next day Olga Mirzaevna took me along on a case she described as “unfinished business.” She first gave me a tour of “her” neighborhood, which she claimed to have built with her own hands. She had been a technical manager in Soviet times, responsible for providing all the houses with plumbing, heating, and a sewage system. When I asked her about her biography, she started singing a song: “I was raised in the field and I was laid by a hen, ta-rarra-ray. I do not have a mother, I do not have a father.” She clarified that she was brought up in an orphanage, where people started calling her Olga, a Russian name, although originally she had had an Uzbek name. Knowing that I was interested in her work as an aksakal judge, she added:

I personally think that I have to work for the sake of the government because the government raised me and brought me up. This is my opinion. . . . But for others it’s hard. Yesterday, my other aksakal colleagues were asking questions concerning this issue [not receiving a proper salary for their work] at the district administration, and the administration’s answer was that we have to work for free for the sake of the people. [field notes, April 7 2006]

Her statement was striking mostly because she did not hesitate to refer to herself and her female colleagues as aksakals, despite their divergence from the iconic image. Moreover, due to her personal background, she seemed to be at peace with the expectation of state personnel that she should work “for the sake of the people.”

She led me to one of the apartment blocks, where we climbed up to the fourth floor and rang a doorbell. An elderly woman (EW) opened the door, and the two women greeted each other like old friends:

Olga Mirzaevna: Here is a document for you [handing it to the woman]. You can familiarize yourself with it later.

EW: Welcome to my house [taking document and putting it on a shelf behind her; I start to take my shoes off as is usually done before entering a house]. [Pointing to a puddle on her floor] It’s better to leave them on. It is wet, you see?

OM: We will not enter; we will just look at the place where the water is coming down. [To me] See, this is how that neighbor is flooding her—can you see?

EW: Everything is dripping down from there [pointing to a wet spot on the ceiling].

OM: I will write a statement on the basis of what I have seen. They will have to clean and whitewash it and fix the damage, or they will give you money so that you can hire someone to
do it for you—it depends on how we negotiate with her. [To me] Does that make sense?

Author: Hmm [nodding].

OM: So this is the kind of work we have [she takes the document from the shelf and reads it out loud]. So this is what I wrote: “If they will not compensate for the damage, we will transfer it to the district administration or to the district court.” [To EW] Let her [the neighbor upstairs] sign this and write “I have been informed,” and then we will decide what to do.

EW: I have actually called the district court already and they told me that there are no lawyers at the district court so they cannot consult with me on the issue. They told me I should go and see a lawyer first.

OM: But you have to pay for them [the lawyers]! You will have to wait and be patient instead.

Author [to EW]: Why, if I may ask, did you address the court and not Olga?

EW: I did address her first.

OM: She has not gone to any court yet.

EW: [Pointing to Olga] She is our aksakal here.

OM: She will not go anywhere until I tell her to.

EW: She is our aksakal; she has been helping me for many years.

OM: That’s right.

EW: So she is working for me. [Field notes, April 7 2006]

Just as in the countryside, citizens in the capital have come to rely on fellow citizens to help solve their disputes. While EW must have held out some hope when she called the district court, she was duly disappointed. Olga, on the other hand, was proud to be of help and gained prestige from being the aksakal of her neighborhood. She had appropriated the image of the wise elder in a way that allowed her to claim that EW would not “go anywhere” without her consent. While there was no legal basis for this assumption, I encountered other examples in Bishkek where aksakal judges described themselves, and were perceived by others, as the key to maintaining harmony among neighbors in the microdistrict. The urban aksakals did, however, face many problems related to their work.

Getting Trained by the District Judge

The following week a judge from the district court gave a training seminar for the members of all aksakal courts in the Oktiabr’ district. All in all, about 70 people were present. Aisuluu Ezhe opened the meeting: “Sit closer. Well, good morning. As we said last time, we will be meeting every three months. We will be exchanging our experiences. Today there are new members present who were elected recently. But let us first listen to the words of the judge from the Oktiabr’ district” (field notes, April 12 2006). Ignoring her request, a man immediately raised his hand and announced that their aksakal court did not own a stamp and that they always had to use the stamp of the TOS to authenticate their documents. The judge first dismissed
this issue as irrelevant, but then said that, according to state law, every aksakal court should have a stamp. Moreover, they should not use the stamp of the TOS, as this was illegal. Anyway, the judge continued, their documents did not need a stamp, and only copies should be verified. When some other aksakals started asking who should hand out the stamps, Aisuluu Ezhe cut them short and told them that this issue would be discussed later. However, another man raised his hand and asked yet another question that related to the technical formalities of the office:

Man: I have the following question. Judges are elected for three years, but the ID card is given for only one year. It is time consuming to renew the ID cards. For example, we spent four whole months on it.

Judge: This question does not concern me.

Aisuluu Ezhe: Please ask questions only about your law. If you don’t understand something in here [points to the law on aksakal courts], please ask.

Judge: What kind of problems do you usually have to deal with? Civil cases?

Only after Aisuluu Ezhe and the district judge made clear that they wanted questions concerning actual disputes did the aksakals switch from what concerned them most—symbols of the state and the current lack thereof in their offices—to the content of cases. All of the issues they subsequently raised were related to the misuse of apartments: illegal subletting, overcrowding, flooding, and neglect. The district judge first denied the competence of the aksakals to consider most of the cases they mentioned. “This is not for you to decide,” he said. Next, he told them to behave like judges would, saying things like, “You must read the law”; “You must have the civil codex ready”; and “You must collect only the relevant information.” Although they listened attentively to what the judge told them, I noticed that most of the aksakals in the audience still seemed puzzled by this procedure. A woman raised her hand and said in response:

Woman: Now there is this show about a federal judge.

Judge: You mean a federal judge in America?

Woman: I mean the federal judge who is broadcast on TV.

Judge: Ah. It’s more or less a reality TV program.

Woman: Yeah, it teaches us a lesson. It shows us how one judges properly.

Judge: But sometimes it is not close to our real life. There [in the United States] people behave in a very civilized way: they are quiet, they don’t yell at each other.

Woman: Of course. And we have to act like them too. We don’t need anything else. But here people sometimes even start to drat’sia (in Russian, fight) in our court.

What is striking here is to whom the urban aksakals do not look to for guidance on how to solve disputes: their fellow aksakals in the countryside. For urban russophone citizens of Bishkek, the countryside has rarely been the model for practical policy making. While on an individual level, the city aksakals have embraced their new
image as “whitebeards,” on an institutional level, they prefer to look to state court judges or abroad for suggestions about how to conduct their court sessions.

After the woman made her comment, the judge changed his message and started talking about community values, social order, and how they should always judge “peacefully,” invoking idealized images of both Soviet and ancient times:

Judge: It was like this in the time of the [Soviet] Union when the whole society had to do certain things for a person. When the law didn’t work, the notion of society worked. And everything was done on this “social” level. And the Communist Party paid for everything. The Communist Party was like law at that time. And now you should resolve issues to ensure that order is kept. You should remind people of the old times and how they used to live together peacefully. The aksakals in former times would gather and solve disputes between their families and in the community peacefully. We need to remind ourselves of these capacities nowadays. I wish you good luck. Always try to decide peacefully.

Woman: We always decide peacefully.

The conversations reveal the communicative strategies of the district judge, who realized rather late that his suggestions to consult “the law” were misplaced, given the fact that the aksakals were not very well prepared to cope with this task. Since he could not treat them as (junior) colleagues because they lacked juridical education, he switched to a discourse in which he aligned the city aksakals with the idealized image of the wise elder I had already encountered many times in the countryside.

From these conversations, it also became clear that the district judge could not help the aksakals with their actual cases at all. Most of the problems they talked about either not “concern him” or were supposed to not concern them. Citizens, however, nearly always turned to the aksakal courts with their problems because the district courts tended to send cases back to the microdistrict, just as in the countryside where provincial courts sent cases back to the villages. The meeting thus showed not only the range of problems city aksakals had to deal with but also that they were left to their own devices in the end. While they should—according to state law—not deal with these issues at all because they were “for the courts,” they were the only ones who were approachable and who felt a sense of obligation. When I discussed this with my acquaintance, a judge from the district court, she told me that she did not know of a single case that had been transferred from the aksakal courts to the district court in the last year, and said that this was because of the negative public image of state courts: “People are afraid of state courts. They always think of the iron cages and that it is uiat to go there.13 It is also expensive: you need a lot of documents, you have to travel there. . . . All this is expensive. Here, in Kyrgyzstan, the aksakals decide. This has been done since ancient times.”
Conclusion

A reading of the various legislative acts on the aksakal courts provides little empirical value. Any claims or assumptions about legal or, in fact, customary practices in today’s Kyrgyzstan can only be judged on the basis of their actual application in different settings, and especially in regard to how they are creatively customized by people who “make do” under unfavorable conditions. The cultural technique that I call customization allows my informants in rural Kyrgyzstan to order their own and others’ lives by perceiving novel cultural forms as their own. Such quotidian invention of tradition is inevitable, as it is a particular way of ordering the world. The two different forms of legal customization, one employed in rural parts of Kyrgyzstan and one in the country’s capital, mirror the ambiguity inherent in the term and its semantic oscillation: in the rural setting, legal customization refers to a process of incorporation into a legal repertoire usefully called salt; in the urban setting, it indicates increasing appeals to custom (in the sense of tradition). In the countryside, I am particularly concerned with the local perception that customary law is zhutuu (swallowing) elements of noncustomary (legal) repertoires such as state law and Islamic law. This emic view is accompanied by a creative process or practice that keeps salt flexible: irrespective of countless acts of incorporation and silent forgetting of cultural elements, it remains “ours” and is perceived as unchanging. In this context the term customization captures this gradual incorporation of noncustomary law into salt.

In the country’s capital, however, I observed customization mostly in the second meaning of the term: the newly appointed urban judges, often middle-aged, female, and not ethnic Kyrgyz, adopted the image of the rural aksakal as wise elder, while state judges invoked customs when it came to the legitimation of the institution. Although most aksakals in Bishkek clearly lacked the stereotypical characteristics of age, appearance, and gender that implicitly come with being a “whitebeard,” they referred to themselves as caring and responsible aksakals nonetheless and were acknowledged by their neighbors as such. However, salt is almost never invoked by the city aksakals, who have been brought up in an urban context and have lived most of their lives detached from village life. They often do not speak Kyrgyz, either because they are from another ethnic group (generally Russian) or because they grew up in a russified environment where knowledge of Kyrgyz customs and traditions was often reduced to what was propagated in the media.

In summary, aksakal court members everywhere often encountered situations where the expectations of them from above (state officials and state law) and from below (constituents) could not easily be reconciled. Both urban and rural aksakals seem to derive their legitimacy from the trappings of the state, which they perceive as lacking in the aksakal courts. Judging from the legal basis on which they were initially institutionalized, it would appear that the aksakal courts and the aksakal judges have turned out differently from what founder Akaev initially imagined them to be. Nevertheless, he was successful in the sense that the establishment of the courts has allowed people to re-create new modes of communal dispute management and, at the same time, give those people working in the courts, both rural and urban, a new sense of commitment.
Notes

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1. See the Constitution of the Kyrgyz Republic 1993, art. 79. Starting in 1993, the aksakal courts have been mentioned in all versions of the country’s constitution. Their assignation has been amended several times: in 1993 they were part of the judiciary; in 2003 they were incorporated into the local self-governance structure; and in 2007 they were subsumed under the section on citizenship, where they remain in the most recent version of the constitution from 2010. Although their legal basis is often unclear today, people nevertheless continue to refer to them as courts.

2. An uruu comprises a group of agnates who view themselves as having descended from a common ancestor. Uruu is thus a relative term because its range of significance depends on ego and refers to various depths of genealogical descent. Uruu membership plays a material and practical role in contemporary, everyday life and during specific events such as life-cycle rituals (Beyer 2011).

3. Only one month after he had given a speech at a festival in Bishkek, where he publicly honored “the best aksakals in the country” (Unpublished Speech by Askar Akaev, February 2, 2005), and promised to further extend the responsibilities of aksakal courts, and even to pay them a salary, Akaev was ousted and fled the country. Large parts of the population were dissatisfied with his leadership, accused him of corruption, and staged what has come to be known as the Tulip Revolution, the first of two revolutions that rocked the young and unstable country between 2005 and 2010. Nevertheless, Akaev is widely regarded and respected as the founder of the aksakal courts in Kyrgyzstan. Kurmanbek Bakiev became interim president and, on July 10, 2005, the new president of the country. The possible payment of a salary to the aksakals was also discussed under his presidency, but no changes in legislation were made. After another coup d’état in 2010, during which Bakiev fled the country, Almazbek Atambaev became president in December 2011, succeeding Roza Otunbaeva, who had served as interim president. Currently, a working group within the president’s administration is reforming the code of civil procedure, one chapter of which deals with appealing aksakal court decisions. A local legal scholar has been appointed to investigate this aspect in detail.


5. The literature on the nature of customary law in anthropology is extensive. This article does not review this body of literature (e.g., Dundes Renteln and Dundes 1995), but shows how in Kyrgyzstan customization is practiced as a reaction to political, legal, and social change.

6. “Uiat!” is a common and powerful exclamation in the Kyrgyz language. It is often invoked in order to stress that one is afraid of others’ reactions to one’s own
behavior. While the fear of such an accusation is voiced in front of an audience, the consequences of it lie predominantly in the imaginative realm. I therefore translate the term as shame anxiety.

7. All documentation in the countryside was in the Kyrgyz language, as was communication inside and outside the aksakal court. Russian is simply not spoken in many rural areas, and most people, young and elderly alike, have only rudimentary knowledge of it. In the capital, Russian is the lingua franca and used for documentation. It allows for communication across ethnic groups and with state officials.

8. For more information, see Chapter 8 of the law “On Local Self-Governance” (No. 228, November 30, 2011).

9. This name is a pseudonym.

10. During the time of my fieldwork, 50 som was equal to 1 euro. One loaf of bread cost five som. The salary was thus small, but given the fact that older people usually also received a pension that was not much more than a judge’s salary, it was a decent amount of additional income.

11. Ezhe means older sister in Kyrgyz, and is the appropriate way for me to refer to an older woman.

12. Of the 18 aksakal courts in the Oktiabr’ district, two were staffed entirely by women and one was staffed exclusively by men. In all other instances, women comprised half of the staff. There were no aksakal courts where all members were ethnic Kyrgyz. A study of the Bishkek aksakal courts that is currently being carried out by Meghan McCormack suggests that the number of ethnic Kyrgyz aksakal judges in Bishkek is increasing. This would be in line with patterns of out-migration of ethnic Russians and in-migration of ethnic Kyrgyz from the countryside to the city (Schröder 2010).

13. Courtrooms throughout the former Soviet Union have an iron cage with vertical bars where defendants must sit during the courtroom proceedings.

14. I am thankful to an anonymous reviewer for pointing this out to me.

15. As new elements are included in the repertoire of salt, without doubt many others disappear as they fall out of fashion, are forgotten, or are dropped in tacit agreement. An analysis of what is no longer part of salt, however, is beyond the scope of this article.

References Cited

Appadurai, Arjun

Arno, Andrew

Benda-Beckmann, Franz von

Beyer, Judith

Beyer, Judith and Felix Girke

Caldwell, Melissa

Chanock, Martin

Dundes Renteln, Alison, and Alan Dundes, eds.

Ellen, Roy

Elwert, Georg

Garfinkel, Harold
Giovarelli, Renée, and Cholpon Akmatova

Hannerz, Ulf

Hobsbawm, Eric

Inda, Jonathan and Renato Rosaldo

Just, Peter

Kay, Rebecca

Kenzhaliev, Zaylagi

Lévi-Strauss, Claude

Lull, James

Maynard, Douglas, and Steven Clayman

Massell, Gregory
Merry, Sally Engle

Noori, Neema

Parkin, David

Read, Rosie, and Tatjana Thelen, eds.

Sahlins, Marshall

Scheele, Judith

Schröder, Philipp

Simpson, Meghan

Stagl, Justin

Tranum, Sam, ed.

Van der Heide, Nienke