
SHAPING A STATE AND LAW IN A “MOUSETRAP”

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After the breakup of the Soviet Union, in the absence of stable peace and a strong central government, the successor institutions of legislation and law enforcement in Abkhazia are nearly powerless. The territory experienced deadly armed conflict, mainly between ethnic Abkhaz and Georgians (August 1992-September 1993) that resulted in tens of thousands dead, hundreds of thousands of displaced persons, and a destroyed infrastructure. Over six years later Abkhazia functions as a de facto independent state, although there is no peace settlement, and no country in the world recognizes it. The borders are tightly controlled by Russian forces that limit the flow of people, goods and ideas, giving residents (whose passports are not recognized outside Abkhazia) and visitors a sense of living in a mousetrap, a term that some Abkhaz have used to describe their predicament.

On a daily basis people fear external threats. They follow closely all news about activities on the borders and political developments in the neighboring territories because these are matters of life and death. At the same time they have to cope with the internal stresses of rising crime. They have nowhere to run from these external and internal dangers; hence, the sense of being trapped. They live in a state of limbo, not knowing when this situation will end. The people do not feel they are part of Georgia; they go about their daily lives as citizens of an independent nation. Yet daily reminders keep them acutely aware that their territory is not a nation state. This is the context of their lives as they discuss competing trends in shaping the contours of a new state and law.

Official Abkhaz policy is to establish strong law enforcement and a judicial system that largely follows the post-Soviet Russian model. However, in public discussions about legal reform a salient trend among ethnic Abkhaz is toward indigenous values and legal practices. This is a reflection of strong nationalistic sentiments among the population. It is also in response to the troubling high crime and realization that the criminal code and the institutions of law enforcement and justice are not nearly as effective as the unofficial mechanisms based mainly on indigenous concepts and values. People do not report crimes. They fear retribution from the criminals and expect no protection from law enforcement. When criminals are convicted their relatives are sometimes able to exert enough pressure for their release. People seek justice by taking the law into their own hands (through blood revenge), or they appeal to informal authorities to mediate their conflicts – the mafia, the patron spirits of sacred sites, and councils of elders, depending on the nature of the case.

Abkhazia is not a unique place in terms of how the resurgence of indigenous law is manifesting itself where people are fighting to maintain their identity and control over their destinies. Jane Collier (1995) tells how Indians in the Mexican state requested her assistance in recreating indigenous law because she had recorded these practices in the 1960s when she had conducted fieldwork in the area. She points out that to the Indians requesting her expertise, custom was something objectifiable and touchable that you could put into a law book. Collier says that what she was doing then, when she was studying these practices, was participating in the modern myth that custom is rules. Since then the anthropology of law has shifted from a focus on “rules” to “processes,” from “a concern with how judges or other third parties reach decisions toward studies of how ordinary people perceive and manage the conflicts of everyday life.”

The approach to custom as rules can be traced to the experience of European countries when they established their colonial regimes. They adapted indigenous practices to the dominant legal system and essentially created the practice and notion of customary law. Peter Fitzpatrick (1992)

talks about how modernizing state regimes try to “museumize” forms of social order, treating them like residues of pre-modernity. The Soviet state also objectified indigenous customs that it sanctioned, which has left a powerful legacy in the thinking of post-Soviet anthropology and of the intelligentsia of indigenous peoples.

Legal anthropologists recognize that indigenous forms of social order are a part of everyday life and should not be analyzed as survivals of the past. As Moore maintains, these practices are “integral elements in an ongoing political order” (1989: 277). Custom is the essence of everyday life. That is why the study of a society’s legal system tells us about social relations in a culture.

Abkhazia provides a rich context for examining social relations through the lens of indigenous legal practices in a post-Soviet state. The Soviet vision of the modern state was one that modernized and rationalized everything; old customs were supposed to fall aside and people were to become post-national. Now that the state has collapsed, it appears at first glance that the vestiges of pre-modern customs that were supposed to have been stamped out are alive and well. At the same time we hear discourse about building a modern state with a modern legal system that might follow either models largely based on the Soviet system or Western models. These are the competing influences in the present drama of developing culture, polity and law in Abkhazia. It is not always clear whether we are witnessing a society regressing from the modern or soaring toward the modern and the post-modern.

In exploring these complexities, we must ask whether what we are seeing in such places as Abkhazia is evidence that the assumption of moving forwards or backwards from the modern hinders our ability to fully grasp these phenomena. In post-Soviet Abkhazia we see evidence of the hybrid development of the Soviet state, which set about to catapult indigenous peoples into the industrialized world. When the Soviet Union collapsed, tumultuous changes rocked its communities, enabling us to see more clearly the pre-Soviet and Soviet legacy, while also providing insights into the future. These hybrid trends have fertile ground that was nourished in the Soviet Union. Even in this tiny territory we can hear discourse and see evidence of these seemingly contradictory developments.

This article argues for taking a close look at the possibility that mostly, despite the state, but also in part, because of the state, indigenous values and legal practices continually evolved and survived the Soviet Union. These values and legal practices had an important function. They regulated daily behavior, and, in some ways, provided a channel for resistance. Indeed, kinship and other social relations in the Caucasus that pre-dated the Soviet Union and gave rise to certain legal practices that remained intact throughout the Soviet period (Ledeneva 1998).

This study is based on in-depth interviews over the course of two decades of field work in Abkhazia, and, since 1995, involvement in Abkhaz and Georgian citizen dialogues that seek a resolution to the conflict. The article begins with an outline about how Soviet law developed in Abkhazia and the Caucasus as a whole. The rest of the paper examines the current hybrid legal practices and discourse in Abkhazia on the various trends of legal reform, ranging from indigenous law to Soviet or Western law.

Development of Soviet Law in the Caucasus

The modern Soviet legal system tried to stamp out what were referred to as the “vestiges” of “outmoded” customs. It claimed that the social relations that had given birth to such practices, i.e., blood revenge, had been eradicated and therefore had no functional role in society. As early as 1922, the lawmakers of the new Soviet state passed resolutions against crimes based on practices that were considered “survivals of clan culture” (Mokrinsky 1927). By 1927 they began revising the criminal code to include a special section (chapter ten) that specified the punishment for such crimes. This is how Mokrinsky (1927), a Soviet legal expert described these practices: “Acts that are in this chapter

are the survivals of an outmoded economic system, late echoes of religious, legal and moral trends, and restraints on the cultural and economic development of the nation”(108-9). Chapter ten included three types of crimes: those involving blood revenge (the most difficult of “survivals” to combat), crimes related to women’s rights, and what Mokrinsky refers to as “kulak” law, that is, mainly the practice of hired labor on farms.

What he and the other Soviet ideologists meant by “survivals” coincided with the Tylorian (1958) approach that entered Soviet ideology through Lewis Henry Morgan (1877) and Friedrich Engels (1972). Mokrinsky wrote that these practices continued “out of historical inertia and a conservative spirit inherent in the masses (106).” According to this approach, these practices had outlived their times; they were no longer based on contemporary economics or politics. What was once progressive and relevant was now regarded as a means by which a minority oppressed the majority of the population. The Soviet state could not tolerate these survivals.

The justification for taking criminal action against the followers of indigenous legal practices was that educational methods against them alone would not solve the problem. In order to change people’s mentality it was necessary to outlaw “harmful” practices and strictly enforce the criminal code. The authorities were frustrated by the reality that many of these crimes were never brought before law enforcement agencies “because due to the mountain traditions that had not yet died out most people preferred to resolve these cases with the help of relatives, honored elders and mullahs” (Mokrinsky 1927:105).

The Stalinist reign of terror, from the late 1920s to the early-1950s, which involved the application of chapter ten of the criminal code, succeeded in eradicating the open practice of “survivals” of indigenous law in both urban and rural communities. Caucasian indigenous law began adapting to the new institutions and practices of the Soviet state. The newly established governing bodies of communities and collective and state farms resolved civil and land disputes, and petty criminal cases, often according to precedents of local judicial practices that pre-dated the Soviet era. These were usually sanctioned approaches. According to contemporary informants, some of the unsanctioned indigenous legal structures and practices continued underground in ethnic Abkhaz villages where traditional mediators, both religious and nonreligious, resolved many community conflicts in secrecy. About half of Abkhazia’s seven divine courts at sacred sites continued to operate in secrecy. Although contemporary Abkhaz villagers maintain that there was one informant in every village, these unsanctioned practices and gatherings were possible without consequences because of (1) the unspoken solidarity of most of the homogeneous Abkhaz population; and because (2) Abkhaz spoke their own language that was unintelligible to the local KGB management (mainly comprised of ethnic Georgians). This was a form of resistance to Sovietization.

After 1957, and especially in the early 1960s, these “vestiges” of the pre-Soviet system were declared dead. The official line was that the Soviet peoples had been modernized and civilized. Not even ethnographers were supposed to write about contemporary practices of “harmful” traditions that they might discover during their fieldwork. In the Caucasus some of these were bride abduction, the use of charms to protect children and adults from curses, the practice of various indigenous religious beliefs, and blood revenge. Anthropologists could only refer to these practices as having occurred in the past.

In this period the Soviet authorities sought ways to use sanctioned traditional legal practices to curb crime in Caucasus communities. To take the place of ad hoc groups of elders called upon by the community on a case by case basis to resolve local conflicts, the Soviet authorities organized permanent councils of elders as mechanisms to parallel the state courts to handle various civil disputes. They also authorized these councils to prevent assaults related to blood revenge, which had continued without interruption over the decades, or to mitigate the consequences of such assaults. This represented both recognition of the continuity of indigenous practices despite all efforts to

stamp them out, and the value in harnessing indigenous mechanisms to work for the state. These practices became formalized, trapped in law books and, thus, somewhat distorted. The elders became servants of the Soviet state.

A.I. Baramia, a Georgian legal expert, wrote that “assaults on life and health, including murders and other crimes committed on the basis of blood revenge, are among the most dangerous crimes that require daily efforts to fight. Although such crimes are not committed everywhere, they still occur in places like Georgia (especially in the mountain regions), as well as in other union republics” (1965:3). Among his recommendations for addressing these problems was to encourage the operation of councils of elders who were regarded as genuine authorities in their communities. It is noteworthy that Baramia’s research, which led to one of the very few Soviet documents that contradicted the official story that blood revenge was no longer practiced, was conducted during the relatively liberal Khrushchev era.

Law in Post-Soviet Abkhazia

The current de facto Abkhaz government and parliament inherited the Soviet era legal system, and are reforming it largely following the contemporary Russian legal model. The new laws that they have adapted meet the needs of their state-building project. Lawmakers in Abkhazia also look for ideas in new laws passed in other post-Soviet countries, including Georgia. Through their examination of this legislation they may see evidence of the influence of Western liberal and neo-liberal law brought to the post-Soviet states by academics and non-governmental agencies promoting democratic reforms and civil society in the region. The Abkhaz, however, do not receive any direct information from organizations and individuals who are advising their neighbors, the Georgians, and other former Soviet republics. Most of the funding for such work comes from Western governments that are prevented from providing resources for democratic reforms to the unrecognized Abkhaz parliament and state government. Therefore the arsenal of knowledge available to the Abkhaz is mainly what they inherited from the Soviet state, what they can learn from post-Soviet republics, and what they know about indigenous practices that survived the Soviet state and were recreated by it.

The only community that has some direct access to Western liberal and neo-liberal ideas about the state is the embryonic community of non-governmental organizations that has received funding for development and training from Western private foundations, international non-governmental humanitarian aid organizations, the United Nations and the OSCE. This community wants to develop legislation that would spell out the rights of the non-governmental sector and its relations with the state, but the only funding assistance available is for drafting a code of conduct to guide these relationships. Not even the funders of non-governmental sector development want to get involved in the drafting of legislation for an unrecognized state.

The issue of private land ownership has been discussed. As is the case with many post-Soviet states, no new privatization laws have been passed. Abkhaz lawmakers explain that because the territory is small and land is limited, privatization is not in the interests of the state. They argue that land ownership opens the possibility of large monopolies that will leave the majority of the people without land. The legal alternative is long term leasing of the land.

Top officials characterize the resurgence of indigenous practices such as blood revenge and mediation at sacred sites as evidence of weak state institutions. One top official told me that “if the state cannot protect the people, the people feel that they must protect themselves.” Officials want to correct this situation with a strong legal system and law enforcement based on their experience with the Soviet system. To those in their society who are urging reforms that reflect what they refer to as Abkhaz “customary” law, officials respond with the notion that the true customary law of this region evolved from the Soviet state.

The prosecutor's office is doing everything possible to eradicate the practice of blood revenge. An official told me that after the war the prosecutor's office was left with only 20% of its staff. Now it has built back 80% of the necessary employees. This fact is cited as evidence of progress toward stronger law enforcement. Another indication cited of such progress since Abkhazia became de facto independent in 1993 is that no longer are families of criminals coming to the prosecutor's office with tanks or other kinds of weapons to force the release of a prisoner, as was the case during and shortly after the war.

Like their Soviet predecessors, Abkhaz officials believe that indigenous law as practiced through the councils of elders is useful for preventive measures, and therefore should be encouraged. They point out that since the population is armed there has to be an effective mechanism in the community to stop people from using their weapons against each other when antagonisms arise. It appears that the state uses these councils to maintain control over their citizens in much the same way as the Soviet state did.

The prosecutor general accepts the idea that the divine courts of sacred sites may play a positive role in indigenous conflict resolution, but he is adamantly against using as evidence in court the fact that someone had sworn innocence at the site. According to widespread Abkhaz beliefs, a person's innocence is not questioned in such cases because the consequences are so grave to one's family for generations to come if a lie is told to the patron spirit of the site. The prosecutor general does not allow such evidence in court because he knows that not everyone will agree to go to a sacred site, even if given the opportunity, and because many Abkhaz are afraid of the power of this spirit. They cannot be sure they will not have to pay for other misdeeds while swearing an oath of innocence about the one under investigation. This official also believes that those who might not at all believe in the force of the spirit could easily lie at the site, and thus thwart justice.

The prosecutor general is also adamant that a murderer should never go free just because the elders, following the traditions of indigenous law, managed to reconcile the murderer with the family of the victim in a case of blood revenge. According to indigenous law, if the victim's family is reconciled with the murderer, there are no consequences, no punishment. If the family forgives, the state should have no further role in the matter. When the prosecutor general was interviewed about these matters in 1998, he was outraged when a man who had committed murder in the name of blood revenge was set free by a local court. He said he punished all the officials who had not prosecuted the murderer, because they had condoned the reconciliation process and ignored the law.

Some Abkhaz officials want to incorporate indigenous practices into the new legislation. In addition to a parliamentary commission that looks at the broad picture of legal reform, another commission is operating in the parliament whose specific purpose is to see to it that the values of traditional indigenous law are taken into account in revising legislation. The members of the commission talk about their task in much the same way that Soviet lawmakers discussed the need to preserve the "good" traditions and drop the "harmful" ones. To assist in this process Abkhaz anthropologists have set out to record the history of these practices in much the same way that Zinacantan leaders sought Jane Collier's expertise.

While there is a tendency in Abkhazia to artificially promote "tradition," it is also clear that many of the indigenous practices operating today reflect deep rooted cultural beliefs that have remained at the core of the people's identities as individuals and as a group. Controversy over the death penalty provides one such example. The indigenous punitive system before the arrival of Russian rule in the Caucasus did not involve executions, other than within the framework of blood revenge. In the post-Soviet era Abkhaz authorities have not carried out one execution, although about twenty men have been sentenced to death according to their formal law. Informants say that this is because Abkhaz were never able to accept the death penalty as a legitimate means of

punishment. It appears as though not even the new Abkhaz authorities can bring themselves to follow this practice inherited from the Soviet system.

In the past several years I have heard numerous dramatic stories that reflect deep-rooted cultural beliefs about crime and punishment. Ordinary citizens, as well as government officials, have sought justice from the patron spirits of sacred sites and in following the ancient laws of blood revenge. I present the following story to illustrate the fundamental tensions between indigenous cultural values of conflict resolution and the state building project of Abkhaz authorities.

During one of my visits to Abkhazia in 1998 an Abkhaz father killed a son after learning that the young man had raped and killed a teenage neighbor woman in their rural community while under the influence of drugs. The son confessed the crime to his father the next day, and led his shocked father to the place in the woods where he had left his victim's body. When the father realized the story was true he ordered his son to wait there until he returned. Meanwhile the father went to several of his neighbors asking to borrow a rifle without explaining why. Finally, one of his neighbors gave him the weapon that he used to murder his son who was waiting dutifully for his father by the side of the young woman he had killed the day before.

Everyone I spoke to in the community, without reservation, condoned the father's murder of his son as the only response that was morally conceivable. These people included non-governmental activists who are promoting civil society in this war-torn area, officials who are building a state without the world community's recognition, and ordinary citizens overcoming unimaginable obstacles just to survive each and every day. This act was seen as the only way for the father to cleanse his family's shame, and to prevent revenge from the victim's family. Since the victim came from a "weak" family, that is, there was no apparent member capable of retaliation, at least not in the near future, people speculated that the father had taken this into account, and, essentially, took revenge on behalf of the victim's family. This made his deed all the more honorable in the eyes of the community and also ensured total reconciliation between the two families.

Despite what people called "bad rumors" coming from the prosecutor's office about action that might be taken against the father, most felt that the man would not be arrested or tried, let alone imprisoned or executed for killing his son. The prosecutor was never able to make good on his commitment to disregard indigenous law and try any perpetrator of a crime according to Soviet and post-Soviet laws in Abkhazia. Indigenous law prevailed as it has in so many other post-war cases that I have recorded. All those I spoke to explained that these traditions run too deep in the community for the prosecutor general to violate them and ignore overwhelming public opinion. No one thought it would have solved the problem if the father had turned in his son to the authorities, because even when a criminal has served time in Abkhazia it never placated the victims' family. Some minimal form of revenge, even if ritualized or spoken as a threat, has always been necessary to "put things right."

It is striking how the people constructed this story. No one in the community saw that there was another way for the father to act and still uphold his honor. Abkhaz public opinion would not allow the prosecutor to follow the non-indigenous way. This is the lens through which people see justice. These are the narratives available to the people to explain the terrible events in their lives. Another man in another place and time going through a similar drama would be cast differently. This man was cast as a perfect father who acted appropriately according to tradition.

Conclusion

These competing ideas, stories, and discourses among Abkhaz about the direction that legal reform should take in this isolated land highlight the complexities of the struggle for identity and survival in post-Soviet territories. The outcome in this case will depend largely on the final settlement reached on Abkhazia's political status, on whether it will ultimately be an independent country or part of

Georgia. This final settlement also hinges on how these dramas and discourse will impact the political process. These are interdependent processes.

The formal laws and enforcement structures in Abkhazia represent continuity from the Soviet era. The informal, yet potent, traditional institutions and practices of indigenous law have remained more or less intact since the mid-1900s until the present. Undoubtedly, some of the actors in this post-Soviet drama are consciously creating custom, as was done in the Soviet era. We must be mindful, however, that they have a constituency that looks to them for just such leadership. People turn to the local and the indigenous to give them voice, because it is one of the only ways to be heard and to have some kind of power. It would be a mistake to discount this trend toward custom as rules as merely a political instrument or as a defense mechanism to protest domination. This trend reflects deep-rooted cultural beliefs that are at the core of the people's identities, as individuals and as a group. It reflects values and belief systems about relationships and how the world should be. When conditions eventually change, when survival is no longer an issue, this particular manifestation of nationalism might also change.

Meanwhile, all these actors are in perhaps a third "trajectory," neither pre-modern nor modern/post-modern. They are in the complex process of moving forward while looking backwards. They are thinking about shaping their legal system and contemplating their next moves in a state of limbo that leaves them dangling precariously between a past that cannot be revived and a future that people worry may never arrive. All the while the present is unfolding in confusing directions.

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