

Authoritarian Pluralism:

Why Does the Chechen Government Promote Customary Law and Sharia?

Egor Lazarev

Abstract: When and why do authoritarian governments in the post-colonial states promote non-state legal orders, such as customary law and Sharia, that seemingly undermine state monopoly on rule-making and enforcement? The conventional wisdom is that non-state legal orders persist in post-colonial settings due to weak state capacity, path dependency, or culture. In contrast, I argue that promotion of non-state legal orders is a rational political strategy pursued by political leaders who aim for 1) gaining additional legitimacy; 2) increasing discretion; 3) coalition-building; and 4) signaling autonomy vis-à-vis the metropole. If the benefits are so appealing, why then do some political leaders pursue this strategy, while others don't? I assume that the major costs for a ruler are that non-state legal forums might be hijacked by the challengers to their rule and that the metropole might punish the peripheral leaders for undermining the established legal order. Therefore, I argue that the promotion of non-state legal orders depends on the relative strength of the authoritarian ruler vis-à-vis the potential local opposition and the metropole. I develop this argument with an in-depth analysis of Chechnya under Ramzan Kadyrov's rule (2007-present). I put contemporary Chechnya in historical and comparative perspectives with the de facto independent Chechnya (1991-1999) and the neighboring region of Ingushetia. The analysis highlights the political logic of informal institution-building.

After the large-scale terrorist attack on Chechnya's capital Grozny on December 4, 2014, Head of the Chechen Republic Ramzan Kadyrov proclaimed through his Instagram account that relatives of people who kill police officers would be expelled from the region "without the right to return, and their houses will be razed to the ground." A few days later, unidentified militias burned houses of the alleged terrorists' families. The government referred to the principle of collective punishment, which is one of the core principles of the Chechen customary law *adat*, but it is against Russian state law.

Another high-profile case that brought legal pluralism in Chechnya to the attention of Russian and Western media was a wedding in May 2015.¹ The independent Moscow-based liberal newspaper *Novaya Gazeta* claimed that Nazhud Guchigov, 47 years old, who served as a local police chief in one of the districts of Chechnya, tried to force Louisa Goilabiyeva, a 16-year-old schoolgirl, into marrying him against her will. When the story became public, Guchigov denied all these accusations and said that he did not know Goilabiyeva, did not plan to marry anybody, and that he was happy with his first and only wife. However, a week later, this story took an unexpected turn: Ramzan Kadyrov intervened into the case and announced that the marriage was going to happen and that his associate had ensured him that the girl and her relatives agreed to the marriage. This "wedding of the millennium" was broadcast on Chechen television, and Kadyrov himself participated in the ceremony. The story of Louisa Goilabiyeva was widely interpreted as evidence of the abrogation of Russian state law in Chechnya in favor of customary practices (child-marriage) and religious norms (polygamy).

These anecdotes illustrate the state of legal pluralism in postwar Chechnya, i.e. presence of the multiple legal orders in the same social field. Even though there is only one *de jure* legal system in Chechnya - Russian statutory law - there are also parallel systems of *de facto* law: one based on customary law (*adat*) and the other one based on Islamic law (Sharia).

¹ The Guardian. "Chechen teenager 'forced' to marry police chief amid growing row in Russia" May 18, 2015; Julia Ioffe "Putin is Down with Polygamy." *Foreign Policy*, July 24, 2015.

Some degree of legal pluralism is present in all contemporary societies. Even in developed democracies with a strong rule of law, formal state laws coexist and interact with diverse sets of normative orders, such as in adjudication among religious minorities, university codes of honor, and internal corporate statutes (Merry 1988).

Legal pluralism is particularly pervasive, however, in postcolonial societies and so-called fragile or weak states, where formal state institutions have to compete for jurisdiction with powerful informal normative orders that are rooted in religion and tradition. According to some scholarly estimates, as many as 61 countries explicitly recognize some forms of traditional governance and customary law (Holzinger et al. 2016), and in many other countries and regions, non-state legal orders operate without being formally recognized.

The conventional wisdom is that non-state legal orders persist in the post-colonial settings due to weak state capacity, path dependency, or cultural demands from the population (De Juan 2017; Hooker 1975; Isser 2011).

Other scholars, however, argued that legal pluralism has political nature, i.e. it is an outcome of deliberate strategic behavior of politicians. Perhaps most famously, Mamdani (1996) argued that colonial authorities in Africa developed “legal apartheid” that restricted formal rights to a privileged minority, while subjugating poor rural majority to the “decentralized despotism” of imposed “customary” law. Mamdani showed that colonialism paradoxically strengthened, and in some places even created, customary rule in Africa. Hussin (2016) highlighted the political nature of Islamic law in India, Egypt, and Indonesia. She argued that Islamic law was formed as a result of constant bargaining for power between the British colonial authorities and local elites. Buehler (2016) concluded that in post-colonial Indonesia, secular politicians enacted Sharia norms in provinces and municipalities where there were strong Islamic movements. And Massoud (2013) emphasized how the rulers of

Sudan strategically promoted Sharia law in order to undermine the independent judiciary left from British colonial rule.

In this paper, I further develop a theory of the political logic legal pluralism promotion in post-colonial settings in order to address the puzzle from the anecdotes above: why does the government of the Chechen Republic, which is formally in charge of implementing state law, actively promote customary law and Sharia?

The Chechen regional government headed by Ramzan Kadyrov is excessively repressive and attempts to regulate all spheres of life in Chechen society. The government has established a strict monopoly on political power; however, at the same time, it has been actively promoting legal pluralism. Most tellingly, Kadyrov introduced qadi courts (a Sharia institution) and councils of elders (an adat institution) all across Chechnya, when he consolidated his power in 2007.

Conventional wisdom, derived from Max Weber's work, suggests that rulers should seek to monopolize social control and oppose alternative nonstate legal institutions (Weber 1917). As Sezgin (2013, p 20) puts it: "the ability to establish a monopolistic control over the legal affairs of a subject population has come to be viewed as an inseparable aspect of stateness." However, I argue that legal pluralism directly strengthens, not undermines, the authoritarian government. I outline four main motivations for the strategic promotion of legal pluralism: (1) legitimacy, (2) discretion, (3) coalition-building, and (4) signaling of autonomy vis-à-vis the metropole.

However, if the benefits are so appealing, why then do some political leaders pursue the strategy of legal pluralism promotion, while others don't? I argue that the major costs for a ruler are that non-state legal forums might be hijacked by the challengers to their rule and that the metropole might punish the peripheral leaders for undermining the established legal order. Therefore, I argue that promotion of non-state legal orders depends on the relative strength of the authoritarian ruler vis-à-vis the potential local opposition and the metropole.

I develop this argument with an in-depth analysis of Chechnya under Ramzan Kadyrov's rule (2007-present). First I show that promotion of customary law and Sharia in Chechnya are not artifacts of weak state capacity or popular demand, but rather a sophisticated political strategy. Second, I test my argument about the impact of the ruler's power resources on the promotion of legal pluralism by putting contemporary Chechnya in historical and comparative perspectives. I gain analytical leverage to test my argument through cross-temporal comparison of postwar Chechnya (2007-2017) with the de facto independent Chechen Republic of Ichkeria (1991-1999), as well as the cross-regional comparison of Chechnya with a neighboring region of Ingushetia.

The study is based on archival materials, secondary sources, and semi-structured interviews, collected during seven months of fieldwork. For this study, I conducted 73 were interviews in Chechnya, 14 in the neighboring Republic of Ingushetia, and 8 with the members of the Chechen diaspora in Europe. In both Chechnya and Ingushetia, I interviewed authorities in charge of all three alternative legal systems: judges, prosecutors and police officers (Russian state law), imams and qadis (Sharia), and elders (adat). In addition, I interviewed government officials, including the former officials of the separatist Ichkeria state, leading ethnographers, historians, journalists, and members of NGOs.

My analysis highlights the political logic of informal institution-building. It adds the role of political agency to the descriptive structural typology of the formal-informal institutional arrangements proposed by Helmke and Levitsky (2004). The paper does not argue that non-state legal orders are pure products of the rational political strategies; of course these strategies are shaped by the norms, symbols, and actors, embedded in history and culture. However, it argues against cultural and historical determinism that treats informal institutions as "black boxes" inherited from the past.

The paper links the politics of legal pluralism promotion to the theories of authoritarian survival (Bueno de Mesquita et al. 2003; Gandhi and Przeworski 2007). Promotion of legal pluralism

in autocracies is especially puzzling since they are expected to be against any kind of politically meaningful pluralism. It is true that both dictatorships, for instance, Sudan (Massoud 2013), and democracies, for instance, post-Suharto Indonesia (Buehler 2016), promote non-state legal orders for political purposes. The framework on authoritarianism, nevertheless, allows me to show that promotion of non-state institutions is a viable non-electoral strategy of political survival. This logic can be extended to democracies, but it is rooted in the logic of authoritarian politics, i.e. the logic of political survival irrespective to elections (Gelbach, Sonin, and Svobik 2016).

Exploration of the politics of non-state justice under authoritarian rule extends the recent scholarship on law and authoritarianism (Ginsburg and Moustafa 2008; Moustafa 2014; Solomon 2007; Scheppele 2010; Stern 2013). My study shows that authoritarian rulers does not necessarily face only the choices between the rule of law and the lawlessness or between the rule of law and the rule by law, but they also have to navigate between formal and informal legal institutions. I show that authoritarian rulers in their approaches towards law care not only about how to prosecute potential political challengers or how to build appealing legal conditions to attract investment (Moustafa 2014; Solomon 2015), but also about such mundane cases as divorce, car accident, or small debt, because the ways these cases are resolved have a potential impact on the ruler's legitimacy and because resolution of these cases becomes an important arena of contestation for social control.

Finally, since Chechnya is not an independent country, but rather a region of Russia, my analysis contributes to the scholarship on subnational authoritarianism (Gibson 2013). I show how the pursuit of autonomy from the federal center plays out in the promotion of non-state institutions. I also draw a parallel between post-colonial sub-national authoritarianism with the metropole-colony relations and thus put Chechnya in wide historical and contemporary perspectives.

The Political Theory of Legal Pluralism

Legal pluralism is a situation in which two or more legal systems coexist in the same social field (Merry 1988). Legal pluralism has been common in history (Berman 1983). Benton and Ross (2013) showed that pluralistic legal structures were the norm in the empires. In the contemporary world, legal pluralism is often a product of colonialism which was characterized by the transplant of European codified law into a society that is governed by customary and/or religious norms (Bowen 2003; Hooker 1975; von Benda-Beckmann 2002).

Legal pluralism is a prominent topic in socio-legal studies (Merry 1988). The large share of theoretical work on legal pluralism is deliberately descriptive and conceptual, preoccupied with the issue of defining what law is (Griffith 1986; Tamanaha 2008). In this paper, I do not engage in the conceptual debates on legal pluralism; instead I theorize the strategic factors that determine government policies towards state and non-state legal orders.

The point of departure in my reasoning is that both colonial rulers and the rulers of postcolonial societies face a dilemma about what to do with nonstate indigenous legal orders. I assume that a ruler who governs a society where there are multiple alternative legal orders has three broad potential policy options towards nonstate alternative legal orders: suppression, promotion, and tolerance. Ataturk's abolishment of Sharia law in Turkey and Nyerere's ban of customary law in Tanzania are fine examples of the suppression logic (Starr and Pool 1974, Moore 1986). The promotion logic requires active government support for the nonstate legal orders. This support can be both formal, through the official recognition of nonstate legal orders and the provision of salaries and other benefits to authorities in charge of them, and informal, through de facto support. Finally, the tolerance approach holds when the government in charge of state law neither suppresses, regulates, nor promotes nonstate legal orders.

I argue that the approach towards legal pluralism a leader chooses depends on a calculation of costs and benefits. On the one hand, legal pluralism creates a situation of fractured sovereignty; in other words, it undermines the state's monopoly on the legitimate use of law-making and law enforcement (Migdal 1988). Legal pluralism might also have negative economic repercussions. For example, the coexistence of multiple legal codes in Ottoman Turkey inhibited commercial expansion by reducing the credibility of contractual arrangements (Artunc 2017). From the standpoint of a progressive ruler, the presence of customary or religious law is also an indicator of backwardness and a source of human rights violations in the form of discrimination against women and other marginalized groups. All of these considerations might motivate a ruler to suppress nonstate legal orders.

On the other hand, legal pluralism might present substantial benefits to the ruler by helping to address the problems of authoritarian control over the masses and elite power-sharing (Svolik 2012). First of all, nonstate legal orders rooted in custom and religion often enjoy high legitimacy. Therefore, their suppression can be politically costly, while support for them can be politically beneficial. A ruler who supports customary or religious law can borrow legitimacy from these sources. According to Rubin's (2017) theory of the propagation of rule, "Religious legitimation is especially attractive to rulers because it is inexpensive" (p 12). Rubin stresses that is especially true for Islam, as a result of the historic circumstances of the development of its doctrine. Rubin uses this framework to explain why the Ottomans suppressed printing for more than two centuries. This was done to keep the status quo and legitimacy based on Islam. The argument can be easily extended into the legal domain. For example, Sharia law has a very high legitimacy in northern Nigeria, therefore many northern politicians publicly endorse Sharia law and in early 2000 formally introduced it in northern states (Kendhammer 2013).

Second, I posit that legal pluralism can provide a ruler with another important benefit: discretion. Max Weber highlighted that discretion is a fundamental feature of sultanistic regimes. He wrote, “Where domination is primarily traditional, even though it is exercised by virtue of the ruler’s personal autonomy, it will be called patrimonial authority, where instead it operates primarily on the basis of discretion, it will be called sultanism.” (Weber, 1922, p. 1020). Increase of discretion and deliberate weakening of formal state judicial institutions may be especially appealing to authoritarian rulers who aim to increase their chances of political survival. Functionally, promotion of legal pluralism in this regard is equivalent to the well-known solution of the ‘fragmented judicial system’ that is used by some authoritarian leaders, for example, Franco in Spain, to undermine the coherence and thus the potential independence and power of the judiciary (Moustafa 2014; Solomon 2015). Under legal pluralism, state and non-state legal orders counter-balance each other and allow the ruler to maneuver between them.

Third, support for nonstate legal orders can also serve as a tool of concession during coalition-building. Support for nonstate legal orders can be used to co-opt the authorities in charge of these orders, or ‘legitimizing agents’ in Rubin’s (2017) terms, into political machines. For example, in South Africa the ANC supports customary law arbitration by chiefs because chiefs are effective agents of electoral mobilization (De Kadt and Larreguy 2017). Similar alliances are common in many other African countries, where strong chiefs are in charge of both arbitration and electoral mobilization (Baldwin 2015).

In addition to the cooptation of traditional and religious elites, a ruler who promotes legal pluralism, can also coopt the beneficiaries of the non-state legal orders. Legal orders have strong distributional consequences (Sandefur and Siddiqi 2013). Customary law, as a cornerstone of clan-based governance, is explicitly discriminatory towards women (Hudson et al. 2015). Hirsch (1998), Mir-Hosseini (1993), and Orsanloo (2009) showed how women often successfully mobilize Islamic

legal notions to concretely improve their living conditions. Thus, Islamic law gives women some agency for protecting their rights. But in relative terms, religious legal orders discriminate against women more than secular statutory laws. State law based on Western standards typically assumes formal gender equality and therefore is relatively more beneficial for women. Different legal orders have different distributional consequences along many other dimensions: age, wealth, class, urban-rural divide. In other words, different legal orders produce relative winners and losers. Thus, promoting non-state legal orders can win support for the ruler among the beneficiaries of these orders.

Finally, promotion of legal pluralism can be used by a ruler to signal autonomy vis-à-vis the metropole. In case of a post-colonial national political unit, a ruler who promote customary or religious law distances their country from the former colonial power or ‘international community’ that usually stands for ‘the rule of law,’ commonly understood as a Western statutory law. In case of a sub-national political unit, a ruler who promote customary or religious law distances their region from the federal center that stands for national legal system. For instance, in Nigeria, the governors of the Northern states promoted Sharia as a means for ensuring their autonomy from the center (Kendhammer 2013). Imposition of Sharia law was also a guarantee of autonomy in case of Aceh (Aspinall 2009). Recognition of customary justice also serves as a means to increase autonomy of the indigenous people in many Latin American countries (Yashar 1998).

If the benefits are so numerous and appealing, why then do some political leaders pursue the strategy of legal pluralism promotion, while others don’t? I assume that the major cost for a ruler are that non-state legal forums might be hijacked by the challengers to their rule and that the metropole might punish the peripheral leaders for undermining the established legal order. This theoretical approach focuses on three actors: the ruler, the potential opposition, and the metropole. The potential opposition are elite groups that want to overthrow the ruler. The metropole wants to ensure control over the ruler through implementation of metropole’s law; the ruler in turn wants to

increase its autonomy from the metropole. Thus, the ruler must navigate between the Scylla of the potential opposition and the Charybdis of the metropole when dealing with non-state legal orders.

I argue that promotion of non-state legal orders depends on the relative strength of the authoritarian ruler vis-à-vis the potential local opposition and the metropole. If the authoritarian rule is consolidated and there are no viable challengers (*established autocracy* in Svoboda's (2012) terms), a ruler will promote non-state legal orders to increase its autonomy from the metropole. If the ruler dominates the potential challengers in terms of power resources, but the potential challenge is still viable (Svoboda's *contested autocracy*), the ruler would not promote non-state legal institutions out of a fear that these alternative forums of power might be hijacked by the challenger. However, when the ruler becomes severely weakened and the power is likely to switch to the challenger the ruler might promote non-state legal orders in order to get additional legitimacy or build an alternative power structure. These logics suggest a U-shaped relationship between the promotion of legal pluralism and a ruler's power. Figure 1 depicts the argument.

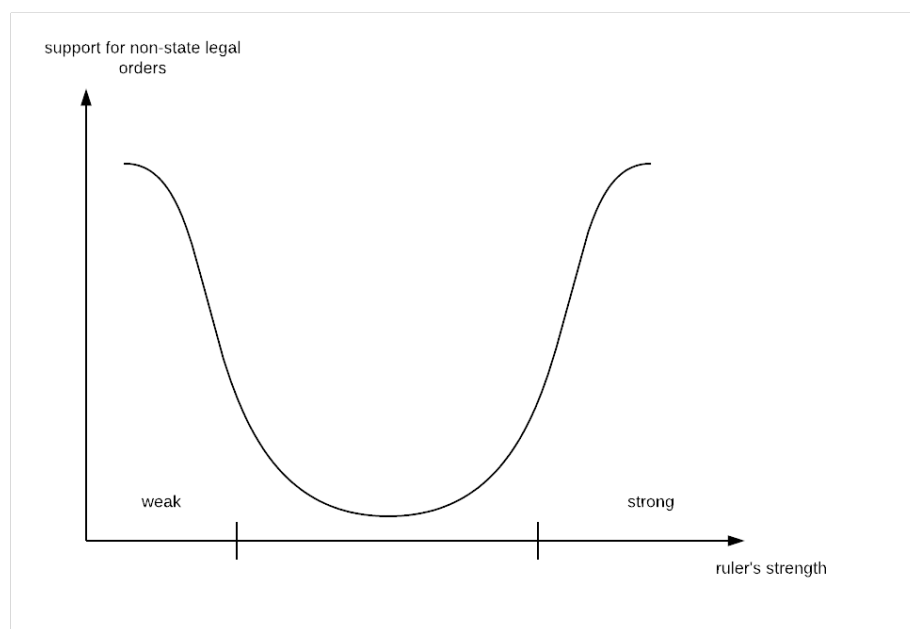


Figure 1: Support for Non-State Legal Orders Conditional on Ruler's Strength vis-à-vis Potential Challengers

In the subsequent chapters, I test the political theory of legal pluralism with the case study of Chechnya and comparative analysis of Kadyrov's Chechnya (2007-present) with the de facto independent Chechnya (1991-1999) and neighboring republic of Ingushetia across different time periods.

A Brief History of Legal Pluralism in Chechnya

Legal pluralism emerged in Chechnya as a result of Russian colonization in the 19th century. Before the colonization, Chechens never had a centralized state. Clans (*teips*) and territorial communities were the principal social organizations; they were governed according to customary law, known as *adat* (Lieven 1999; Tishkov 2004). Most importantly, as in other clan-based stateless societies throughout the world, Chechen *adat* assumes that the subject of the law is the family and clan, rather than the individual. All disputes within the clan are resolved by its head. The worst punishment is ostracism, exclusion from family and clan. The ultimate regulator of interclan transgressions is blood revenge.

Adat norms in Chechnya have been transmitted through early childhood socialization and have never been codified. In the 19th century, Imperial Russian military officers and academic ethnographers (sometimes they were the same people), wrote down many *adat* norms and attempted to systematize them. However, these attempts were bound to be incomplete due to the flexible and context-dependent nature of *adat*.

Islamization occurred in Chechnya relatively late, from the 16th to the 18th century (Gammer 1994). With the adoption of Islam, Chechens started to use Sharia norms, but the use of these norms in Chechnya was highly selective. Usually Sharia norms were used when they did not contradict *adat* regulations (Zelkina 2001).

The situation dramatically changed in the 19th century as a result of Russian colonization and the related Caucasian War (1818-1864). Brutal Russian colonization caused deep resentment in

Chechnya. The most notorious rebellion in Chechnya started in 1840, when Chechens invited Sheikh Shamil, a famous religious and military leader from neighboring Dagestan, to lead an insurrection. Shamil managed to organize effective guerilla warfare against the Russian Empire for several decades. More importantly, he managed to build the first centralized state in Chechnya and Dagestan. Shamil's state, which functioned from 1840 to 1856, was a military theocracy. The state had an elaborate government apparatus, a system of taxation, and a unified legal system. Sharia was the ideology and political base of Shamil's state (Bobrovnikov 2002, p 137).

After the defeat of Shamil's insurgency, the Russian administration effectively utilized Shamil's government structure (Bobrovnikov 2002). The Russian administration also formalized legal pluralism and introduced a division of jurisdictions: personal law issues, including marriage, divorce, and inheritance, as well as religious property, were under Sharia jurisdiction; petty crime and property disputes were regulated by adat; and criminal cases went to Russian courts. The only custom that the Russian administration banned was blood revenge.

After the October Revolution, the Bolshevik government in the North Caucasus initially built a surprising coalition with Islamic clerics and established "Red Sharia courts." However, upon consolidation of its rule in the mid-1920s, the Soviet government eliminated Sharia courts. Many respected clerics and elders were repressed. The Soviet government attempted to suppress both adat and Sharia, although it never fully succeeded in doing so.

Thus, even during Soviet times when the state had very high coercive capacity, legal pluralism persisted in Chechnya. When the state weakened and subsequently collapsed in 1991, its role became even more prominent, as one would expect.

Perestroika and glasnost, as implemented by Mikhail Gorbachev in the second half of the 1980s, brought nationalist and religious revival to Chechnya. A significant part of the national intelligentsia that emerged in Chechnya in the late Soviet period organized into proto-political

movements and clubs with a nationalist agenda. In 1990, supporters of Chechen independence from Russia organized the all-Chechen Congress, which elected Dzhokhar Dudayev, the only Chechen who held the rank of general in the Soviet military forces, as its leader. In September 1991, amid mass demonstrations in support of Chechen independence, Dudayev's supporters ousted the communist leadership and took power in the republic. In a short period of time, Dudayev was elected as the President of Chechnya and declared its independence from Russia. President Dudayev came up with a new name for his new state: the Chechen Republic of Ichkeria (ChRI).² Since 1991, Chechnya has been a de facto independent state.

While the executive and legislative branches in Ichkeria were radically transformed, the judiciary remained organized much the same way as it had been during the Soviet period. Many Russian cadres who worked in courts and law enforcement agencies left Chechnya after the declaration of independence, but former Soviet judges, prosecutors, and police officers who were of Chechen nationality largely kept their positions. Thus, by and large the Soviet law was still applied in the separatist republic. The eruption of armed conflict with Russia in 1994 changed the situation dramatically.

In response to the Russian invasion that aimed to crash Chechen independence and “reestablish the Russian constitutional order” in the region, Chechens rallied around Dudayev and mobilized en masse to fight. The first war ended with the de facto victory of the Chechnya side in 1996. By that time the Chechen leader Dudayev has been killed by a Russian airstrike and the acting President was his deputy Zelimkhan Yandarbiyev. In 1996, Yandarbiyev, unexpectedly announced the establishment of Sharia as the law of the independent Chechen state. In 1997, Yandarbiyev took part in the presidential race, but it was clear that he was going to lose to the more popular rebel leader,

² According to Derluguian (2005), Dudayev took the name “Ichkeria” from the writings of the famous Russian poet of the 19th century, Mikhail Lermontov.

Aslan Maskhadov. Maskhadov won election as President of the ChRI in 1997, but he had to comply with the imposition of some elements of Sharia law: he could not roll back the decree about Sharia because it was considered sacred.

Implementation of Sharia was not an easy thing. First, Chechnya lacked specialists in Islamic law who could serve as qadis, or Islamic judges. Second, many Sharia norms were unknown to the population. Third, it was unclear what to do with the remaining Soviet courts, prosecutors, and police. The result of these dilemmas was the formation of two parallel judicial systems: Soviet secular law and Sharia law.

In 1999, President of ChRI Aslan Maskhadov, who by that time had adopted the Islamic name Khalid, announced an introduction of full Sharia rule in Chechnya. All non-Sharia institutions ceased to exist according to this decree. This decision was a result of a political struggle between Maskhadov and his opponents who had adopted an Islamist agenda, which I analyze in the subsequent sections.

In the fall of 1999 the Second Chechen War erupted. By early 2000s, Moscow reconquered Chechnya, abolished Sharia courts and reintroduced Russian state law in Chechnya. For a long period of time, Chechnya operated under de facto military rule, characterized by severe human rights violations. Gradually, the federal center transferred power to Ramzan Kadyrov, who became President of Chechnya in 2007. Under Ramzan Kadyrov, the regional government of Chechnya started to actively revitalize customary and religious judicial institutions – the process I document in the next section.

The Use and Abuse of Non-State Legal Systems in Kadyrov's Chechnya

Ramzan Kadyrov has publicly acknowledged his ultimate support for Sharia and adat on many occasions. French journalist Pierre Avril reported that Kadyrov told him: “In my opinion, Sharia law is above the laws of the Russian Federation.”³ In the spirit of Sharia implementation, Kadyrov effectively banned alcohol sales in Chechnya, introduced “modest” dress codes for women in all public spaces, and encouraged polygamy.

The government of Chechnya has been actively promoting polygamy as a response to the perceived imbalance between men and women as a result of war, because more men were killed. This imbalance made the Chechen government concerned about the “reproduction potential of the nation” and about “public morals.”⁴ The government’s solution was the informal, but active, encouragement of polygamy. The government issued an informal decree according to which all government employees had to take second wives. High-level bureaucrats and businessmen were strongly encouraged to have multiple additional wives. As a result, the practice of polygamy became widespread in a short period of time.

Kadyrov’s government has been regularly referring to the adat norm of collective responsibility in its practices. During the counterinsurgency phase, the government persecuted the relatives of rebels in order to force them to surrender. For example, in 2004, Chechen security forces arrested 40 relatives of the prominent field commander Magomed Khambiyev—including women and old people—and held them hostage to force Khambiyev to abandon fighting.

Subsequently, when the large-scale insurgency was crushed, the government used collective punishment against the relatives of the critics of the regime and those who joined radical Islamist groups in Syria and Iraq. For example, in 2016, Chechen state television reported on the gathering of

³ Pierre Avril, “Tchéchénie: les deux faces du régime Kadyrov”, *Le Figaro*, 27 May 2010

⁴ Interview # 15. January 2015, Grozny.

the *chinkboi* teip that publicly denounced Ahmed Zakayev, the leader of the Ichkeria government in exile, who lives in London. The report stated: “Collective responsibility is one of the traditional institutions of self-regulation in Chechen society. By denouncing the relative, members of his family and his clan confirm that from this moment they can’t be responsible for his actions.”⁵

In a similar vein, the government has been punishing the relatives of the young men and women who went to fight in Syria and Iraq or who participate in the sporadic insurgent attacks in Chechnya. For example, since 2008 the government of Chechnya has extensively used the practice of burning down the houses of the family members of alleged insurgents.⁶ The day after the insurgent attack on Grozny in 2017, which I witnessed in the field, the government arrested more than 100 relatives of the insurgents. They all were immediately fired from their jobs. The government also stopped giving pensions and welfare payments to these people. After another violent insurgent attack in December 2016, the government organized congresses of the elders of several settlements, which decided to expel the relatives of the insurgents who fought in Syria from Chechnya.⁷ The government of Chechnya also announced blood revenge against the families of the insurgents who killed police officers in that December 2016 attack, even though the insurgents were killed in the fight as well.

In 2017, the government of Chechnya conducted “moral passportization,” an informal census of young men and women from 14 to 35 years old, who had to provide all their contact information, *teip* (clan) and *vird* (Sufi order) membership, information about their older relatives, and a reference letter from their imam and local police officer.⁸ Elena Milashina, a prominent journalist from *Novaya Gazeta* who extensively covers Chechnya, interpreted this policy as an attempt to institutionalize a

⁵ <https://grozny.tv/news.php?id=10540>

⁶ <https://memohrc.org/ru/news/chechnya-ciloviki-prodolzhayut-primenyat-princip-kollektivnoy-otvetstvennosti-v-otnoshenii>

⁷ <http://www.kavkaz-uzel.eu/articles/294735/>

⁸ <https://www.novayagazeta.ru/articles/2016/02/26/67580-ottsy-za-synovey>

policy of “hostage-taking,” when older relatives and the community take responsibility for the actions of the youth, who are considered to be the most disloyal to the government.

The government often uses references to customary law and Sharia in their attempts to regulate women’s behavior and appearance. One infamous case is depicted in Joshua Jaffe’s report on Chechnya in *The New Yorker*. Jaffe claimed that “the republic is now governed by diktats inspired by Sharia jurisprudence and Kadyrov’s personal interpretation of *adat*, a traditional Chechen code of behavior. In 2010, after vigilantes drove around Grozny firing paintballs at uncovered women, Kadyrov said that he wanted to ‘give an award’ to the men.”⁹

All these descriptions highlight one common feature: the government of Chechnya is heavily involved in interpreting, enforcing, and even inventing customary and religious norms. This is in fundamental conflict with the very principles of self-regulation of Chechen society, which preserved these principles despite almost two centuries of imperial and Soviet rule. Chechen customary law is the social order of the stateless society. For instance, the principle of blood revenge as the ultimate regulator of conflicts and a deterrence mechanism makes sense only in the absence of a third-party institution of law enforcement. In the postconflict period it became the government that dictates what is custom and what is Sharia, and carries them out. Jaffe reported a Chechen woman’s perception of this change: “When I was a young girl, my grandfather made me wear a head scarf,” she said. “I was afraid of him. He explained to me, ‘You are a Chechen girl, and so you will wear a head scarf.’ But today we don’t have such grandfathers, and instead their role is played by the Department of Spiritual and Moral Education.”¹⁰

The government of Chechnya does not promote legal pluralism, where alternative autonomous legal orders would function in parallel, but rather aims to establish control over all three

⁹ <https://www.newyorker.com/magazine/2016/02/08/putins-dragon>

¹⁰ <https://www.newyorker.com/magazine/2016/02/08/putins-dragon>

alternative legal orders and create a legal hybrid. One of my respondents, a respected alim with a degree in Islamic law from Al-Azhar, the most prestigious center of Islamic education in the world, told me that the government prohibited him from adjudicating disputes according to Sharia and directed him to transfer all disputants to the imam of his village, who had received a mediocre Islamic education and was not fluent in Sharia norms.¹¹ This highlights that the government co-opts some elders and Islamic authorities and delegates them power to adjudicate disputes, but restricts the functioning of nonstate legal orders if the authorities in charge of them are not sanctioned by the government.

Even though the Chechen government controls the functioning of the nonstate legal orders to a certain degree, these nonstate orders still enjoy limited autonomy, which is a rare thing in Kadyrov's Chechnya. In the end, the resolution of particular disputes according to adat and Sharia are left to the discretion of the elders and qadis (see Rosen 1980 on discretion by qadis elsewhere).

In addition, the Kremlin, which imposed Kadyrov, is likely to negatively perceive the prevalence of customary and religious arbitration in Chechnya because it violates the monopoly of Russian law in the region. Most notoriously, when Ksenia Sobchak, a prominent liberal journalist, asked Vladimir Putin at his 2016 press conference about the practice of collective punishment for the relatives of alleged insurgents in Chechnya, and relatedly whether Russian law functions in Chechnya at all, Putin unequivocally denounced practices that go against the Russian Constitution. These considerations reiterate the need to resolve the puzzle: Why does the government of Ramzan Kadyrov promote legal pluralism?

¹¹ Interview # 13, rural Chechnya, January 2015.

State Capacity and the Persistence of Adat and Sharia in Chechnya

One plausible explanation of the prevalence of nonstate legal orders in Chechnya is that the government has no capacity to suppress them. Adat and Sharia persisted in Chechnya to some extent despite decades of Soviet attempts to eliminate these systems of dispute resolution. However, the insights from my qualitative studies cast doubt on the state capacity explanation. I analyze the sudden abolition of the bride kidnapping custom to show that the government in fact has great power to intervene and either encourage or discourage customary and religious practices.

According to a human rights report published in 2010, as many as one in four marriages in Chechnya began with the woman being kidnapped and forced to wed against her will.¹² Sometimes bride kidnapping was consensual, mostly when the girl's parents did not approve of the marriage, but in many cases kidnappings were not consensual. In the latter cases men kidnapped brides as a matter of pride after being rejected, or because they were jealous that another man was promised the woman by her family.

Bride abductions in Chechnya became endemic during the conflict, especially after the end of the Second Chechen War. One of my female respondents told to me, "After the war there were many men with weapons. They did whatever they wanted. They saw a beautiful girl for the first time in their life on the street and then immediately abducted her in the presence of her mother and father. No one was able to stop them - they had guns."¹³

According to some estimates, about 90 percent of marriages that resulted from abductions ended in divorces. Bride kidnapping also had detrimental consequences for abducted women's psychology, health, and social status within the new families. Many girls were kidnapped when they were 13 or even younger.

¹² Radio Free Europe. Despite Official Measures Bride Kidnapping Endemic in Chechnya. October 21, 2010. http://www.rferl.org/content/Despite_Official_Measures_Bride_Kidnapping_Endemic_In_Chechnya/2197575.html

¹³ Interview # 41. August 2015, Grozny.

The custom of bride kidnapping was embedded in the local culture and widely accepted as legitimate. Even the victims of abduction recognized the legitimacy of the custom, reasoning that “our ancestors lived this way.” However, by 2015 the practice of bride kidnappings in Chechnya had effectively been ended: “Maybe there will be one or two cases in the whole republic, but several years ago there were hundreds if not thousands such cases.”¹⁴ How did it happen that one of the most notorious Chechen customs has been abolished in such a short period of time?

According to one prominent human rights activist in Chechnya, abolition of the custom of bride kidnapping was a result of a deliberate coalition-building effort. Chechen activists managed to build a surprising coalition between Chechen Islamic clergy, European human rights activists, and Vladimir Putin. First, human rights activists tried to exploit the fact that bride kidnappings severely violate the principles of Koran. Sharia explicitly requires that legal marriage needs consent from both parties. A marriage without consent or performed under coercion is considered void and may be annulled on those grounds. Moreover, abduction of a person is also strictly prohibited in Sharia. In 2008-2009, human rights activists attended all public events organized by the Chechen Muftiat, the religious administration of the republic, and consistently asked the same question: What is the position of Sharia on bride kidnapping? My respondent remembers that even though representatives of the clergy were Chechen men who either supported bride kidnapping or did not want to speak against it, they had to publicly acknowledge that the practice was against the Koran and Sunna.

Second, human rights activists promoted the agenda of fighting bride kidnapping on the international level. In the 2000s there were many conferences devoted to the problems of human rights in Chechnya, and activists raised the issue of bride kidnapping at all of them. As a result of this international campaign, Vladimir Putin was repeatedly asked about bride kidnapping in Chechnya at his press conferences. At some point, according to my respondent, Putin was asked about it by Angela

¹⁴ Interview # 16. mid-level official in Ministry of Justice. January 2015.

Merkel during their negotiations in Moscow. After that Putin allegedly called Ramzan Kadyrov and asked him to stop bride kidnapping by any means.¹⁵

Even though Kadyrov's militia fighters were the most common bride abductors, as they had absolute power and almost no accountability, Kadyrov obeyed and publicly denounced the practice of bride kidnapping. Islamic leaders in Chechnya followed Kadyrov and also denounced it. In addition, Kadyrov promised to prosecute kidnappers under Russian law, and at the same time introduced an informal fine against the bride kidnappers' clan: one million rubles (approximately \$30,000). Chechen custom also assessed a fine, but it was almost 10 times smaller. Thus, the Chechen government combined all three sources of authority: religious reasoning, formal legal enforcement, and a customary fine practice.

These policies had an immediate effect: kidnappings basically stopped. At the time of my interviews, all respondents recognized this as a major achievement of Ramzan Kadyrov. Most officials in the government and the Muftiat also condemned the practice and praised Kadyrov for eliminating it. As one imam put it: "Thanks to Allah, thanks to Ramzan, we got rid of this stupid custom!"¹⁶ Government officials blamed Ichkeria separatists for the spread of bride kidnappings. The general condemnation of separatist leaders and their policies allowed these Chechen men to reconcile their identity with the abolishment of the custom. Finally, as Kadyrov promised, some abductors have been prosecuted. During my fieldwork, I was told about several criminal cases in which kidnappers got long prison sentences.

This case study of the "death" of the custom of bride kidnapping shows that the government has enough coercive capacity to eradicate customary and religious norms. In the next section I explore why the government does the opposite and promotes customary law and Sharia.

¹⁵ I was told this story independently by two human rights activists, but was not able to find a verification of it in Russian or German media.

¹⁶ Interview with a head of one of mountain districts. January 2015.

The Political Benefits of Promoting Legal Pluralism in Chechnya

In the theory section, I outlined four main motivations for the strategic promotion of legal pluralism: (1) legitimacy, (2) discretion, (3) coalition-building, and (4) signaling of autonomy. In this section, I provide empirical support to these assertions.

First, legal pluralism increases the government's legitimacy by associating it with traditional and religious sources of power. Kadyrov's regime is largely based on military force and repression, but even the most repressive authoritarian regimes need popular belief that the ruler's powers are legitimate. Kadyrov especially emphasizes his Islamic credentials and his commitment to Sharia justice. By organizing government-sponsored qadi courts in each district of Chechnya, Kadyrov follows the logic of "religious outbidding" (Snyder 2000; Toft 2007): he presents himself as even more Islamic than his major opponents, who are Islamist rebels.¹⁷ Islam and Sharia have almost unquestioned legitimacy in Chechnya, therefore associating his government with Sharia increases support for Kadyrov, especially among the youth. Qadi courts are not the only example of Kadyrov's strategy of constructing a Chechen-Islamic cultural hegemony: he has built mosques in every village in Chechnya, opened an Islamic University in Grozny, sponsored madrasas and a competition of *kebafiz* (pupils) who memorize the Koran, sponsored television broadcasts about Islam, and obliged all government employees to wear "traditional Islamic dress" that was allegedly designed by Kadyrov himself. After the Charlie Hebdo attack in January 2015, Kadyrov organized a rally of one million people "in support of the Prophet Muhammad." Islamic symbols play a crucial role in the functioning of Kadyrov's government, and the presence of Islamic courts is an important part of the government-imposed cultural hegemony.

¹⁷ After the military defeat of separatists in 2000, Chechen rebels turned to Islamist ideology and guerilla warfare tactics.

Likewise, association with Chechen customary law promotes Kadyrov's legitimacy among traditionalists. Even though Kadyrov relies on young people in his government -- most offices are occupied by people under 35¹⁸ -- in public he always pays respect to elders and emphasizes his commitment to Chechen traditions. For instance, Kadyrov organizes congresses of his *teip*, *benoi*, invests in rebuilding the ancient Chechen towers in the mountains, and polices the following of Chechen customs at weddings. Most notoriously, his government banned "European wedding dresses" and also regulated "the appropriate dance moves" for wedding dances. Traditionalists applaud these initiatives because they "allow us to preserve our traditions, our culture."¹⁹

Second, legal pluralism strengthens authoritarian control by giving the ruler more discretionary power. If there is one legal order, everyone has to obey its regulations, including the ruler. If there are multiple parallel legal orders, the ruler can strategically cherry-pick principles across legal orders and avoid the restrictions each of them imposes. As stated in the theory section, Weber emphasized discretion as the single most important feature of the extreme form of patrimonial authoritarian regime that he called *sultanism*. Kadyrov perhaps would approve of the classification of his regime as sultanism; all his subordinates openly call him "Padishah," which is "king" in Persian.

The use of legal pluralism to increase discretionary power can be seen in Kadyrov's counterinsurgency policies. Collective punishment is one of the principles of Chechen customary law, but it is against both Russian law and Sharia. Another example is government-sponsored introduction of polygamy, which is rooted in Sharia but is against Russian law and Chechen customary law.

Third, legal pluralism is used for coalition-building. Promoting nonstate legal orders allows the ruler to incorporate religious and traditional authorities into his coalition. By formal recognition of informal nonstate forums of justice, the state establishes regulation over them. Thus, it prevents the

¹⁸ Kadyrov himself became President of Chechnya when he was 30.

¹⁹ Interview # 33, rural Chechnya, January 2015.

formation of elites with a source of power independent from the ruler and turns “strong legal pluralism” into “weak legal pluralism” (Merry 1988). In my interviews, respondents revealed that the Chechen authorities extensively screen candidates for both customary and religious positions for their political loyalty. The government promotes the “right elders,” most of whom are either active or retired government or security personnel. The government also questions all candidates for religious positions about their attitudes towards “Sufi Islam, Wahhabism, and Syria.” Only those who endorse official Sufi Islam and denounce Wahhabis and fighters in Syria can get a position. Even after that, all religious activities are under strict surveillance. But in addition to this stick, there is also a carrot: both religious and customary authorities are on the government payroll.

The theory stated that in addition to co-optation of customary and religious authorities, legal pluralism also facilitates coalition-building by incorporating the beneficiaries of nonstate legal orders into the ruler’s coalition. Most importantly, nonstate legal orders based on custom and religion are particularly beneficial for men; women in turn are much more likely to demand state law that recognizes gender equality. The conflict in Chechnya disrupted traditional patriarchal order and led to mobilization of state law among women in the post-war period (Lazarev 2018). This postwar female legal mobilization through state law was followed by a strong backlash from the Chechen government, which has been actively promoting customary law and Sharia in family matters and sabotaging the enforcement of state law in gendered disputes. I argue that by promoting legal pluralism the ruler can build a tacit contract with men: their political loyalty in exchange for control over their families. For instance, the government’s policy favoring polygamy resonated well with many men. Their reasoning is: “We are Muslims and therefore we have the right to marry several times.”²⁰

I found some tentative support for the proposition that many men traded loyalty to the government for the re-establishment of patriarchy. For instance, Khasan, a man in his 30s who belongs

²⁰ Interview # 2, August 2014. Grozny.

to the Chechen intelligentsia, told me, “After the war... and before Ramzan (Kadyrov took power in 2007) we had a feminist rule here. All government jobs below ministers were occupied by women. Men were simply unemployed. Now things changed. Ramzan brought back the order.”²¹ Support for Kadyrov’s government cannot be systematically measured due to the high political sensitivity of the issue, but my interviews suggest that many men support Kadyrov at least in part because of his reinforcement of a patriarchal social order through promotion of Sharia and adat and implementing gendered policies like making headscarves obligatory for women.

Fourth, I argue that Kadyrov promotes nonstate legal orders as a means of increasing his autonomy and signaling his indispensability to the Kremlin. Kadyrov was imposed by the Kremlin and to a great extent relies on the Kremlin’s monetary transfers and military aid. According to a common expression of Kadyrov’s opponents, “Kadyrov’s regime in Chechnya rests on Russian bayonets.” At the same time, many powerful players in the Kremlin, most importantly *siloviki* from the FSB and the army, despise Kadyrov and dream about his removal. Quite often rumors appear that Kadyrov will be removed from office. In this light, promotion of customary law and Sharia signals that the head of Chechnya is not like a governor in other Russian regions: this position requires the ability to navigate multiple legal orders. In other words, the signal implies that Moscow cannot appoint an outsider to govern Chechnya, like it did in neighboring Dagestan in 2017, because this outsider would have to deal with polygamy, blood revenge, and the complicated clan structure. Emphasizing these unique “essentialist elements” of the Chechen political landscape strengthens Kadyrov’s position by signaling that no one but him is able to do the job.

This analysis shows that the government has several strong motivations for promoting legal pluralism. But what are the costs of this strategy? Some costs were shown in previous studies of legal pluralism. For instance, Kuran (2004) and Artunc (2017) showed that legal pluralism creates

²¹ Interview # 51, February 2016, Grozny.

institutional uncertainty, such as ambiguous property rights, which is bad for economic development. Kadyrov's regime largely depends on transfers from the federal center; therefore, it does not need to care that much about investment. Thus, I focus on political costs rather than economic ones.

In the subsequent sections, I test the argument that the decision to promote legal pluralism ultimately depends on the power struggle between the ruler versus local potential challengers and the metropole. The analysis is based on a cross-temporal comparison of the politics of legal pluralism in the de facto independent Chechen Republic of Ichkeria (1991-1999) and a cross-regional comparison of Chechnya with the neighboring Republic of Ingushetia.

Cross-Temporal Comparison: Ichkeria vs. Kadyrov's Chechnya

Ramzan Kadyrov often contraposes his government to the government of de facto independent Ichkeria, highlighting his loyalty to Russia. At the same time, many observers argue that de facto autonomy from Russia is almost as high under Kadyrov as it was during the years of Chechen independence – and that his power is higher than Ichkeria's authorities ever was.²² A cross-temporal comparison of government policies towards customary law and Sharia between these two periods in the post-Soviet history of Chechnya will allow us to better understand the role of the political factors that shaped these policies. In both cases, the governments of Chechnya were quite autonomous in terms of their policies towards the alternative legal orders, but in both cases they had to consider other players: the Kremlin and the real or potential opposition. Therefore, the set-up is good for comparative analysis.

The Chechen authorities who declared independence from Russia in 1991 originally pursued a secular state-building process that had little if any room for Sharia and adat. In an interview with

²² Joshua Jaffe. Putin's Dragon. Is the ruler of Chechnya out of Control? The New Yorker. <https://www.newyorker.com/magazine/2016/02/08/putins-dragon>

Ekaterina Sokirianskaia, Khussain Akhmadov, the chair of the Chechen Parliament in 1992-93, stated, “There was no mention of traditional institutions and very little emphasis on religion in that first Constitution. All MPs had the Constitutions of the United States and of European countries on our desks. We produced many decent laws. We were oriented towards a European democratic model.” Similarly, one of my interviewees, the former Prosecutor General of ChRI, told me, “When we were writing the Constitution we had copies of the Constitutions of Lithuania and Georgia in front of us.”²³ Ichkeria’s first president, Dzhokhar Dudayev, shared these secular and modernist views. The Ichkeria Constitution of 1992 pronounced Islam as the official religion, but at the same time pronounced the principle of the freedom of religion.

There were nevertheless activists at the Congress of the Chechen People, the organization that installed Dudayev as the president of Ichkeria, who demanded implementation of Sharia law. In several secondary sources I have encountered the following description of how Dudayev responded to these demands. According to these sources, Dudayev said:

The Koran and Sharia are holy, and it’s pointless to talk about them in vain. Everything has its time. There are a lot of Muslim countries in the world, but only a few of them live strictly according to Sharia. Besides, not every Chechen is a Muslim. We all know this well. The roots of Islam in Chechnya were greatly undermined by the Communists, and it is impossible to restore them in an hour or a year. I respect your perseverance, but I consider it premature. If today we declare Sharia law, tomorrow you will demand that I begin to cut down the heads and hands of sinners. But you are not thinking that tomorrow a rare participant of the Congress of the Chechen people will keep his head and hands. You are not ready for this now, and so am I. Let us, therefore, establish the order based on the Koran in our souls, and the order based on the Constitution in our public life.”²⁴

In 1992, the newly proclaimed Chechen Republic of Ichkeria witnessed an intense conflict between President Dudayev and the Parliament over ministerial appointments and control over the institutions. The conflict went so far that Dudayev dissolved the Parliament. In order to gain additional legitimacy

²³ Interview # 58, February 2016, Grozny.

²⁴ Abubakarov, Taimaz “Chechnya and Russia: Societies and states”. P 193.

in this political struggle, President Dudayev decided to promote neocustomary institutions. For example, he paid symbolic support to the all-Chechnya council of elders, which adopted the historic name of Mekh-Khel. He also organized numerous meetings and consultations with village and clan elders across Chechnya (Sokirianskaia 2009, 178).

However, when elders attempted to criticize the President, Dudayev response was, “I called you to serve the nation, not to split it. You are here because of me. If you serve the nation, you can stay and help me. If not, you can go home... [I] didn’t ask you here to tell me what to do.” (as quoted in Lieven: 1998:343, see also Sokirianskaia 2009, 180).

Thus, Ichkeria under Dudayev largely preserved the Soviet state legal system; re-emerging customary institutions had minor influence. Dudayev’s rule faced strong opposition, and he did not want to disperse his presidential power to customary and religious orders. Instead he attempted to consolidate state power in his hands.

In 1996, Dudayev was assassinated by the Russian army. Vice-President Zelimkhan Yandarbiyev became the acting interim president. In summer 1996, Chechen rebels organized a major offensive operation, captured Grozny, and forced the Russian government to sign a peace agreement, the Khasavurt Accords. After the peace agreement, which ended the First War, Ichkeria scheduled a presidential election. Acting President Yandarbiyev was challenged by many other candidates, including two of the most prominent rebel commanders, Aslan Maskhadov and Shamil Basayev. Facing imminent electoral defeat, Yandarbiyev announced the establishment of Sharia law in Chechnya.

Most people with whom I discussed Yandarbiyev’s decision considered it to be a political maneuver. It was clear that Yandarbiyev was going to lose to the more popular rebel leader Aslan Maskhadov. Yandarbiyev appealed to his brothers-in-arms to quit the race and allow him to be the president in the spirit of unity, but these appeals had no effect. In response, Yandarbiyev announced

implementation of Sharia law, which clearly undermined the power of the secular office of the president. The new president could not publicly go against this decision because of the high status of Sharia in Chechen society. The Chechen Parliament declared imposition of Sharia law as a violation of the Constitution of ChRI, which created a permanent crisis in the relationship between the executive and the legislative branches of the government.

Imposition of Sharia law was met with skepticism even among the former rebels, who by and large supported Islamist ideas. One of my respondents put it the following way: “We all knew that Sharia is sacred. But no one knew exactly what it was.”²⁵ Another respondent, a former rebel commander, was very harsh in his assessment of the introduction of Sharia: “Yandarbiyev deliberately screwed us over with his sporadic Sharia idea. No one knew how to implement it, so the only thing he achieved was that he undermined our state.”²⁶

All my respondents agreed that imposition of Sharia was purely a strategic act in Yandarbiyev’s struggle for power. Because of the high legitimacy of Sharia, newly elected President Aslan Maskhadov had to comply with its partial imposition. As a result, for almost three years (1996-1999) there were two parallel systems of justice in Chechnya: Soviet state law and Sharia.

The Chechen state in the interwar period had very limited material resources and administrative capacity. One of its biggest challenges became rampant crime, including kidnappings for ransom that proliferated across Chechnya.

Maskhadov’s rule was constantly challenged by other prominent warlords who formed political parties and movements, published newspapers that criticized the President, organized mass protest rallies, and even engaged in violent clashes with the president’s supporters. As a result, Maskhadov’s rule was very limited: at some points of his presidency he controlled only Grozny and

²⁵ Interview # 114. Nansi, France. June 2016.

²⁶ Interview # 110. Paris. June 2016. In Russian this phrase was even better: “О мертвых либо хорошо, либо ничего. Но Яндарбиев, конечно, подложил нам свинью со своим Шариятом.”

several loyal rural districts. The main points of criticisms by Maskhadov's opponents were that he was "too lenient towards Russia" and that he was "not Islamic enough." Maskhadov's legitimacy was based on the secular institution of elections, therefore in order to undermine this legitimacy the opposition actively promoted the Islamist agenda. The strict implementation of Sharia law and abolition of all secular institutions became the main opposition demands.

For almost three years, Aslan Maskhadov resisted the demands to fully implement Sharia law. However, in 1999, in an unexpected political maneuver, Maskhadov, who by that time had adopted the Islamic name Khalid, announced an introduction of full Sharia rule in Chechnya. By implementing full Sharia rule, Maskhadov took the initiative away from the opposition, leaving them without their main demand. However, as Maskhadov's former advisor Mairbek Vatchagayev acknowledged, this decision also ultimately undermined Maskhadov's rule.²⁷ He was elected in accordance with the Constitution of the ChRI, and introduction of Sharia basically cancelled the Constitution and left Maskhadov's office without any legitimacy. In addition, the Parliament of ChRI did not agree with the decree, ruled it unconstitutional, and gave Maskhadov a vote of no confidence. In place of the ChRI Parliament, Maskhadov announced the formation of a *shura*, an Islamic council. The opposition formed an alternative shura. The internal political conflict and "Sharia outbidding" were stopped only by the start of the Second Chechen War when the Russian army invaded in 1999.

This description of politics around legal pluralism in the de facto independent Chechen Republic of Ichkeria supports the claim that the promotion of nonstate legal orders based on custom and religion was a strategic element of a political struggle, rather than the manifestation of weak state capacity or a response to the demands of the population. In fact, most of my respondents emphasized that Sharia in Ichkeria was imposed from above; the majority of the population was skeptical about the idea of living under Sharia law. Establishing and promoting nonstate legal orders was used by

²⁷ Interview with Mairbek Vatchagayev. Paris. June 2016.

incumbents to increase their legitimacy by association with religion and tradition. The interwar period was an outbidding game between the opposition and Maskhadov in terms of who among them was more Islamic. At the same time, incumbents were wary of strengthening the nonstate judiciary too much. The political field in Chechnya in the 1990s was always fragmented, and incumbents were afraid that powerful legal orders based on tradition and religion might become arenas of political contestation and ultimately be hijacked by the opposition. Therefore, Dudayev's and Maskhadov's support for nonstate legal orders was always quite limited. Maskhadov implemented Sharia only as an unexpected maneuver when his power became severely weakened by the constant challenge from the opposition.

In contrast, Kadyrov, who was installed to rule Chechnya in 2007 by the Kremlin, quickly eliminated (literally) all viable political opponents, and established a strict political monopoly. Therefore, he did not have to worry that the alternative legal forums might be hijacked by the opposition.

One thing that unites Ichkerian policy towards legal pluralism with Kadyrov's is that in both cases promotion of adat and Sharia were used to ensure more autonomy vis-à-vis Moscow. According to one of my high-level respondents, who held a ministerial position in the Ichkeria government in the 1990s, promotion of Sharia was needed because "otherwise we lived according to the Russian laws. So it made no sense that we wanted to be independent. By emphasizing the use of Sharia, we emphasized that we are not part of Russia anymore."²⁸ My analysis suggests that Kadyrov's promotion of custom and Sharia serves a somewhat similar role of signaling autonomy from the Kremlin.

²⁸ Interview # 58, February 2016. Grozny.

Cross-Regional Comparison: Chechnya vs. Ingushetia

If promotion of customary law and Sharia are beneficial to the rulers, why do the leaders of other Muslim-majority regions of Russia not implement the same policies as Kadyrov in Chechnya? In this section and the next, I analyze policies towards the alternative legal orders in Ingushetia, the Muslim-majority region of Russia that neighbors Chechnya.

Ingushetia presents the ideal comparative case for Chechnya. It has the same constellations of legal orders: Russian state law, Sharia, and adat. Ingush people and Chechens are basically the same ethnic group, sharing the same culture and social structure. During the Soviet period, Chechnya and Ingushetia were a united republic.

Ingushetia formally split from Chechnya in 1992. General Ruslan Aushev, a hero of the Soviet war in Afghanistan, became president of the republic. Aushev was immensely popular. In 1992 elections he received 99% of the vote; in 1998 he was re-elected with 65.5% of the vote. Aushev was a secular leader who did not initially support promoting adat and Sharia in Ingushetia. The president suppressed the People Congress of Ingushetia, the popular neotraditionalist movement, and closed down the Islamic center in one of the towns in Ingushetia. Aushev enjoyed wide popularity and did not tolerate alternative centers of power.

Over time, opposition to Aushev's rule emerged. One opposition leader, Idris Abadiyev, actively promoted neotraditionalism and customary institutions; the opposition umbrella organization was named the Council of Teips. The opposition stressed the need to strengthen the adat principle of governance that asserts that no one should be an authoritarian leader, but rather that councils of elders should make the important decisions. However, domestic opposition was not a very strong threat to Aushev's rule and he remained a strong proponent of the statutory law. The situation changed dramatically when Aushev got into a feud with the Kremlin.

Aushev was a vocal critic of the Chechen wars. In 1999, Aushev's opposition to the Chechen war led to confrontation with Vladimir Putin, the new leader of Russia. The Kremlin started to support the opposition within Ingushetia. In response, Aushev issued a decree that the magistrates' courts in Ingushetia would judge in accordance with the principles of adat and Sharia, and also legalized polygamy. A crazy maneuver for the Soviet general and self-proclaimed secularist. This was a strong signal to the Kremlin that Ingushetia deserved more autonomy and that the Kremlin should not intervene in its governance.

Upon the consolidation of Putin's power in the early 2000s, the Kremlin forced Aushev to resign. The new president of Ingushetia, Murat Zyazikov, a general of the FSB (KGB) imposed by the Kremlin, repealed Aushev's decrees about adat and Sharia and re-established the formal monopoly of Russian state law in Ingushetia. Zyazikov was a terribly unpopular president whose rule was marked by severe human rights violations and the rise of an Islamist insurgency in Ingushetia. The opposition to his rule was quite ubiquitous, and also included neocustomary organizations that named themselves the Mekh-Khel and the Council of Teips.

In 2008, Zyazikov was replaced by yet another general, Yunus-Bek Yevkurov, whose rule was also characterized by an interesting trajectory in terms of support for legal pluralism. In the beginning of his tenure, Yevkurov decided to legitimize his rule by association with the Qadiri Sufi brotherhood, the most numerous one in Ingushetia. He always highlighted that he was an observant Muslim and a Qadiri. The government provided strong support to the Muftiat, which was dominated by Qadiri followers. The Muftiat had been running an informal Sharia arbitration system, one quite similar to the one that exists in Chechnya under Kadyrov. The opposition tried to use this forum for their own goals: in 2011, the opposition sued Yevkurov in Sharia court for electoral falsifications during the

Russian parliamentary elections. One of the opposition leaders recalled, “They had to close down the Muftiat to avoid taking our appeal for Sharia justice.”²⁹

However, in 2016 the alliance between Yevkurov and the Muftiat broke down as a result of political and economic conflicts. This led to an intense confrontation between the secular and religious authorities in Ingushetia. The government even attempted to legally liquidate the Muftiat, created a parallel Islamic governance structure, and used its power to sabotage Sharia arbitration by the Muftiat. In 2018, during another round of the conflict over mosque property, Mufti Issa Khamkhoyev held a Sharia trial of Yevkurov for his intervention in religious affairs and ruled to ostracize him from the Muslim community of Ingushetia.³⁰ Not surprisingly, since the start of the conflict, Yevkurov spoke against increasing the power of religious arbitration and religious norms on multiple occasions. For instance, in a recent interview, he spoke against polygamy, in stark contrast to Kadyrov, who always promotes the idea.³¹

Analysis of the Ingushetia case shows that nonstate legal forums, both customary and religious, can be strategically used by the opposition and the government alike. When the government was strong, it basically disregarded the nonstate forums. In its turn, the opposition tried to use customary and religious institutions to legitimize their struggle. However, the confrontation with the Kremlin in the late 1990s forced the secular regional authorities to promote legal pluralism. Overall, the government of Ingushetia was never able to fully control the nonstate legal forums during the post-Soviet period. Moreover, these legal forums at times challenged the secular authorities, which illustrates the main cost of government promotion of legal pluralism.

²⁹ Interview with Idris Abadiyev. Nazran. August 2016.

³⁰ <https://www.kavkazr.com/a/yevkurov-shariatski-sud/29043522.html>

³¹ http://www.kavkaz-uzel.eu/articles/evkurov_against_polygamy/

Summary of the Comparative Analyses

Figure 2 summarizes the findings on the relationship between ruler's strength via-a-vis the challengers for Kadyrov in contemporary Chechnya, for Dudaeyv, Yandarbiyev, and Maskhadov in the Chechen Republic of Ichkeria, and for Aushev and Yevkurov in Ingushetia.

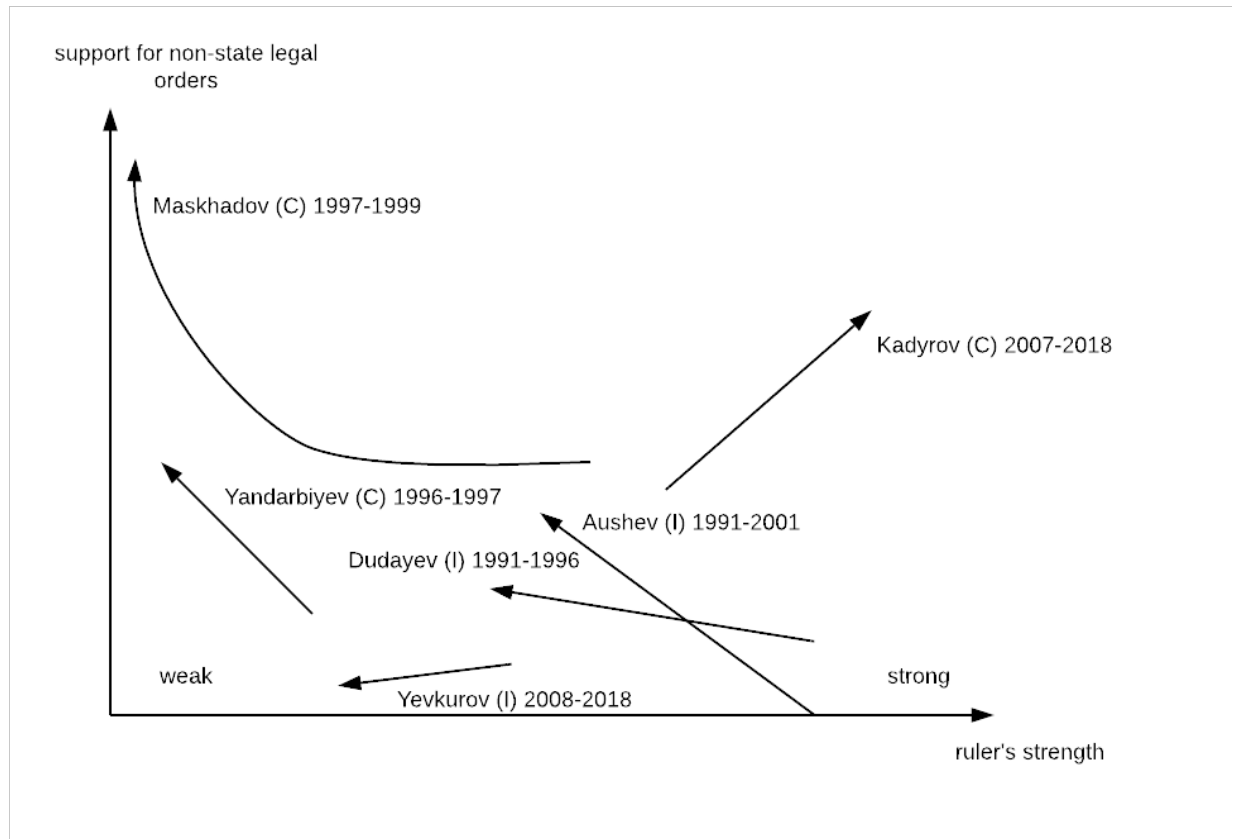


Figure 2: Empirical Patterns of Support for Non-State Legal Orders Conditional on Ruler's Strength in Chechnya (C) and Ingushetia (I) over the post-Soviet period

The figure shows that Kadyrov moved towards the promotion of legal pluralism upon consolidation of his rule and liquidation of all meaningful domestic opposition. All other leaders lost their strength upon time. Two leaders who started to lose their power dramatically, adopted a risky strategy to turn to non-state legal orders (Yandarbiyev in 1997 and Maskhadov in 1999). Both ultimately lost power almost right after that (for different reasons though). Ruslan Aushev, who

initially was strongly against non-state law turned to it when his rule was challenged by the federal center. In turn, one of his successors, Yevkurov went against non-state institutions when he faced strong local opposition. Dudayev, the first president of Ichkeria, adopted a more positive stance towards non-state law when he was challenged by the parliament, but ultimately his support for non-state law was rather minimal, since he always hesitated that the alternative forums of power will get out of his control.

The trajectories of rulers' policies towards non-state orders do not perfectly fit into the U-shape functional form predicted by the theory and depicted in the Figure 1. However, the analysis of these trajectories support the main proposition of the theory that rulers strategically adopt their stances towards non-state law in order to improve chances of their political survival by balancing between the opposition pushes for non-state legal orders and the metropole's pushes for state law.

Conclusion

This paper provided a theory and empirical analysis of the political nature of legal pluralism. I argued that Ramzan Kadyrov's government has been promoting legal pluralism and undermining state law Chechnya strategically. First, this policy allowed the government to borrow legitimacy from tradition and religion, which both have large appeal among the Chechen population. Second, legal pluralism increased the government's discretion and allowed it to cherry-pick norms across alternative orders while avoiding regulations embedded in them. Third, this policy allowed Kadyrov to coopt traditional and religious authorities and build a tacit social contract with the beneficiaries of non-state law. Finally, promotion of legal pluralism gave Kadyrov's government some additional leverage vis-à-vis the Kremlin. Practices of collective punishment, polygamy, and honor killings, widely discussed in the Russian media, were strong signals to the Kremlin that it cannot rule Chechnya directly and that its local intermediaries are indispensable.

This study highlighted that government promotion of nonstate legal orders is largely driven by the struggle between the government and its potential opposition. I showed that Kadyrov's policy of promoting customary law and Sharia was not in any way unique and was used by other rulers of Chechnya and rulers of the neighboring region of Ingushetia for similar purposes of increasing legitimacy and signaling to the Kremlin. However, what is different is the extent of Kadyrov's use of legal pluralism. The study argued that Kadyrov's extensive promotion of nonstate forums was made possible by his strict monopoly on political power. Other leaders of Muslim-majority regions perhaps would love to do the same as Kadyrov, but they are afraid that if they promoted the alternative legal orders, these orders might be hijacked by the opposition and used against them. Kadyrov's strong personalist authoritarian regime diminishes this threat of a "Frankenstein effect" from promoting legal pluralism, when non-state legal orders can be turned against the ruler.

My finding on government subversion of state law in Chechnya by promotion of the non-state legal orders is aligned with scholarship highlighting that rulers might have a strategic incentive to undermine state institutions (Acemoglu et al. 2013, Sonin 2003). By showing the strategic nature of legal pluralism promotion, my study cast doubt on the pervasive explanation that legal pluralism persists as a result of political culture or weak state capacity. The study showed that legal pluralism is an inherently political phenomenon, and to a large extent is the result of power struggles between political actors.

The study is based on the detailed analysis of the case of Chechnya, but the intuitions from the analysis can be applied to numerous historical and contemporary cases. Within Russia, Troshev (2004; 2008) showed that governors established subnational constitutional courts in order to increase autonomy vis-à-vis the federal center. Troshev showed that subnational courts were paradoxically established only in those regions where power was consolidated in the hands of the ruler. Thus, the establishment of constitutional courts in the Russian regions in the 1990s and promotion of customary

law and Sharia in Kadyrov's Chechnya have a similar political logic of signaling autonomy under conditions of locally consolidated regime.

Numerous parallels with the political logic of legal pluralism promotion in Chechnya can be found in other post-colonial societies, where the governments often end up maneuvering between the rule of law according to the Western recipes and promotion of legal orders based on custom and religion. From South Africa to Kyrgyzstan, and from Nigeria to Indonesia, the rulers had promoted customary law and Sharia for political reasons (Bennet 2009; Beyers 2006; Buehler 2016; Kendhammer 2013; Laitin 1982). Massoud's (2013) research on Sudan showed how government introduced Sharia law in order to undermine the independent secular judiciary. Similarly, Moustafa (2014; 2018) showed the politicized nature of Sharia regulations in Malaysia, where the government subverted the "pluralist epistemological stance within the Islamic legal tradition, replacing it with an authoritarian legal form" and used these regulations to undermine the potential challenge for its rule from both Islamists, liberals, and non-Muslims opposition groups. Thus, this study on Chechnya opens a wide comparative perspective on the authoritarian institution-building in the post-colonial contexts.

References

- Artunç, Cihan. 2015. "The price of legal institutions: The beratlı merchants in the eighteenth-century Ottoman empire." *The Journal of Economic History* 75.3: 720-748.
- Baldwin, Kate. 2015. *The paradox of traditional leaders in democratic Africa*. Cambridge: Cambridge University Press.
- Bennett, Tom W. 2009. "Re-introducing African customary law to the South African legal system." *The American journal of comparative law* 57.1: 1-32.
- Benton, Lauren, and Richard J. Ross, eds. 2013. *Legal pluralism and empires, 1500-1850*. NYU Press.
- Beyer, Judith. 2006. Kyrgyz Aksakal Courts: Pluralistic Accounts of History, 53 *Journal of Legal Pluralism* 144
- Bobrovnikov, Vladimir. 2002. *Muslims of the North Caucasus: Custom, Law and Violence*. Moscow: Vostochnaia literatura. In Russian.
- Buehler, Michael. 2013. "Subnational Islamization through Secular Parties: Comparing Shari'a Politics in Two Indonesian Provinces." *Comparative Politics* 46(1): 63–82.
- Chanock, Martin. 1985. *Law, custom, and social order: The colonial experience in Malawi and Zambia*. Cambridge University Press.
- Derluguian, Georgi M. 2005. *Bourdieu's secret admirer in the Caucasus: A world-system biography*. University of Chicago Press.
- De Juan, Alexander. 2017. "Traditional" Resolution of Land Conflicts: The Survival of Precolonial Dispute Settlement in Burundi." *Comparative Political Studies*.
- de Kadt, Daniel, and Horacio Larreguy Arbesu. 2017. "Agents of the Regime? Traditional Leaders and Electoral Behavior in South Africa." *Journal of Politics*.
- Griffiths, John. 1986. "What is legal pluralism?" *The journal of legal pluralism and unofficial law* 18.24: 1-55.
- Helmke, Gretchen, and Steven Levitsky. 2004. "Informal institutions and comparative politics: A research agenda." *Perspectives on politics* 2.4: 725-740.
- Hendley, Kathryn. 2017. *Everyday Law in Russia*. Cornell University Press.
- Hooker, Michael Barry. 1975. *Legal pluralism: An introduction to colonial and neo-colonial laws*. Oxford University Press, USA.
- Hussin, Iza R. 2016. *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State*. University of Chicago Press

- Kendhammer, Brandon. 2016. *Muslims talking politics: framing Islam, democracy, and law in Northern Nigeria*. University of Chicago Press.
- Laitin, David. 1982. "The Sharia debate and the origins of Nigeria's second republic." *The Journal of Modern African Studies* 20, no. 3: 411-430.
- Lokshina, Tanya. 2014. "Virtue Campaign for Women in Chechnya under Ramzan Kadyrov: Between War Backlash Effect and Desire for Total Control." In *Chechnya at War and Beyond*, edited by Anne Le Huérou, Aude Merlin, Amandine Regamey, and Elisabeth Sieca-Kozlowski, 236–255. New York: Routledge.
- Mamdani, Mahmood. 1996. *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton University Press.
- Massoud, Mark Fathi. 2013. *Law's Fragile State: Colonial, Authoritarian, and Humanitarian Legacies in Sudan*. Cambridge University Press.
- Merlin, Aude. 1999. The Postwar Period in Chechnya: When Spoilers Jeopardize the Emerging Chechen State (1996-1999) in N. Duclos (ed.), *War veterans in Postwar situations, Chechnya, Serbia, Turkey, Peru, and Côte d'Ivoire*, Macmillan, Palgrave. pp. 219-239.
- Merry, Sally Engle. 1988. "Legal pluralism." *Law and society review* pp. 869–896.
- Migdal, Joel S. 1988. *Strong societies and weak states: state-society relations and state capabilities in the Third World*. Princeton University Press.
- Moore, Sally Falk. 1973. "Law and social change: the semi-autonomous social field as an appropriate subject of study." *Law & Society Review* 7.4: 719-746.
- Moore, Sally Falk. 1986. *Social facts and fabrications" Customary" law on Kilimanjaro, 1880-1980*. CUP Archive.
- Moustafa, Tamir. 2014. "Judging in God's Name: State Power, Secularism, and the Politics of Islamic Law in Malaysia." *Oxford Journal of Law and Religion* 3(1): 152–167
- Moustafa, Tamir. 2018. *Constituting Religion: Islam, Liberal Rights, and the Malaysian State*. Cambridge University Press.
- Rubin, Jared. 2017. *Rulers, Religion, and Riches: Why the West got rich and the Middle East did not*. Cambridge University Press.
- Sandefur, Justin, and Bilal Siddiqi. 2013. Delivering justice to the poor: Theory and experimental evidence from Liberia. In *World Bank Workshop on African Political Economy*, Washington, DC, May. Vol. 20.
- Starr, June, and Jonathan Pool. 1974. "The impact of a legal revolution in rural Turkey." *Law & Society Review* 8.4: 533-560.

- Sezgin, Yuksel. 2013. *Human Rights under State-Enforced Religious Family Laws in Israel, Egypt and India*. Cambridge University Press.
- Sokirianskaia, Ekaterina. 2009. "Governing Fragmented Societies: State-Building and Political Integration in Chechnya and Ingushetia (1991-2009)." *Political Science Department, Central European University, Budapest*.
- Sonin, Konstantin. 2003. "Why the rich may favor poor protection of property rights." *Journal of comparative economics* 31.4: 715-731.
- Tamanaha, Brian Z. 2008. "Understanding legal pluralism: past to present, local to global." *Sydney L. Rev.* 30: 375
- Tishkov, Valeri Aleksandrovich. 2004. *Chechnya: Life in a war-torn society*. University of California Press.
- Trochev, Alexei. "Less democracy, more courts: A puzzle of judicial review in Russia." *Law & Society Review* 38.3 (2004): 513-548.
- Trochev, Alexei. *Judging Russia: the role of the constitutional court in Russian politics 1990–2006*. Cambridge University Press, 2008.
- von Benda-Beckmann, Franz. 2002. "Who's afraid of legal pluralism?." *The Journal of Legal Pluralism and Unofficial Law* 34.47: 37-82.
- Weber, Max. 1922. *Economy and society: An outline of interpretive sociology*. Vol. 1. Univ of California Press.