

REVITALISATION, INVENTION AND CONTINUED EXISTENCE OF THE KYRGYZ *AKSAKAL* COURTS: LISTENING TO PLURALISTIC ACCOUNTS OF HISTORY

Judith Beyer

Introduction

This article investigates conceptions of history as perceived and theoretically embodied in terms such as revitalisation, invention, and continued vitality. These terms have been used extensively in scientific and non-scientific literature for the description and analysis of post-colonial and postsocialist societies. In this paper, it is argued that these terms and the concepts behind them do not explain and elucidate the meaning of history for society and its members, but rather camouflage it. It argues for a pluralistic conception of history and for investigation of the meaning attached to it rather than its fitting into one of the scientific categories such as revitalisation, invention, and continued vitality. There is not one history, but many different historical accounts. When investigating the historical origins of a contemporary cultural or social phenomenon, the question therefore should not be 'is it revitalised', 'invented' or 'continued' but 'revitalised, invented or continued for whom'? The case of the Kyrgyz courts of elders (*aksakaldar sotu*¹) will serve as an example of how various local and foreign actors perceive

¹Translation of all Russian and Kyrgyz words follows the standard ALA-LC Romanisation tables.

the historical development of this institution and why several versions of its history exist.²

The appearance of the Kyrgyz court of elders as an official organ of the Kyrgyz state in 1995 was introduced by the former Kyrgyz president Askar Akaev and his government as the revitalisation of an old traditional Kyrgyz institution. According to the law on the *aksakal* courts, these courts “...judge according to moral norms that reflect the customs and traditions of the Kyrgyz” (Art. 1, I, 2, Law on the *aksakal* courts, June 2002). The state has since then regarded the institution as particularly suitable to solve disputes on the local level. While international organisations in the first years of the institution excoriated it, because two cases of serious human rights violations had occurred under the courts’ authority, their attitude towards the *aksakal* courts has changed significantly in recent years from protest to cooperation. *Aksakal* courts are now considered a regular feature of Kyrgyz village life. In the villages, however, people do have differing versions of the historical development of the *aksakal* courts. They refer to them either as being revitalised, as invented or as never having ceased to exist throughout Kyrgyz history. These manifold views on the history of the courts do not show an uncertainty of the ‘real’ historical background of the courts, but rather point to a pluralistic concept of history.

In this article the historical development of the Kyrgyz *aksakal* courts will be presented as it is perceived by the local population of two villages in northern Kyrgyzstan, where fieldwork was carried out. Also, the perceptions of the former Kyrgyz president, local and international NGO’s as well as in scientific literature will be described. The different conceptions regarding the historical origin, development and future of this institution will be analysed as well as the scientific debates and theories that have coined the current understanding of terms such as revitalisation, invention and vitality. It will become clear that not only are the *aksakal* courts approached rather differently according to who is talking about

² Data and materials presented here stem from anthropological field research in the Central Asian Republic of Kyrgyzstan, which was carried out from August 2005 until September 2006. The project is financed by the Volkswagen Foundation and the Max Planck Institute for Social Anthropology in Halle, Germany. The Graduate School GSAA in Halle, Germany, also financially supported the first months of research. The author would like to thank Dave Gullette, Christine Bichsel, Franz von Benda-Beckmann and the editor of the journal for their helpful comments on the paper.

them, but also that people's views on this institution are not limited to one of the three categories. The *aksakal* court might be considered revitalised, invented and ever present by one and the same person, depending on the question asked and the context. If one does not notice the pluralistic conception of history as perceived by the local actors, the answers one receives might indeed be fitted into one of the categories, it should be noticed also that they display only one of many perceptions of history. For anthropology, which is interested in the 'general picture', this limitation is not a concentration on a specific feature, but a misconception of the local meanings of history. Anthropology needs to address the different conceptions of history present in people's narratives. Apparent contradictions do not signal an incomplete knowledge about history, but rather reflect its pluralistic character.

The article will first describe the official discourses on the historical development of the *aksakal* courts as perceived and delineated by the former Kyrgyz president Askar Akaev, international and non-governmental institutions as well as researchers writing about the institution. In these discourses, the institution is either presented as being revitalised, as invented or as never having ceased to exist. However, the authors have not sufficiently consulted historical data to be able fully to substantiate their reasons for describing the institution in these terms. Therefore, the second part of this article is devoted to giving an overview on the changing of the institution over time. It will become clear that the *aksakals* as individuals have had an important position in pre-revolutionary Kyrgyz society, as well as during the Tsarist and Soviet times. Nowadays, villagers in northern Kyrgyzstan, where fieldwork was carried out, characterise them as having been trustworthy and honest, regardless of the respective political system ruling over the country. The third part of the article, then, will describe local discourses on the *aksakal* courts prevailing in contemporary Kyrgyzstan. While making use of some of the official discourses as well, the population also differentiates between *aksakals* as individuals, and *aksakals* as members of an institution. It is the continuity of the individual *aksakals* as lineage elders and their interconnectedness with the modern institution of the court that accounts for the existence in contemporary Kyrgyzstan of several versions of the institution's historical development. In the conclusion, it will be argued that the role of anthropology should be the recording, description and analysis of all discourses present, and not a differentiation between 'real' history and the imaginations of it as invented, revitalised or continued.

Official Discourses on the Historical Development of the *aksakal* Courts

The revival of an ancient tradition for the sake of nation-building, for future-oriented state ventures and out of personal motivation: The former Kyrgyz President Askar Akaev

In January 1995, the then Kyrgyz president Askar Akaev announced “the formation of a wide network of autonomous and active civil institutions, independent of state and political structures”. A provisional statement was adopted and Akaev signed a decree on the establishment of courts of elders, which was approved on January 25, 1995. The institution of the *aksakal* courts quickly spread throughout the country. The voluntary decision whether to have an *aksakal* court in one’s village or community was, however, heavily influenced by the state courts and other delegates from the state who informed the villages about Akaev’s plans and lobbied for its establishment.

Aksakal courts are mentioned in the country’s constitution. According to Art. 92, they can be constituted in villages, settlements and towns by the local population, local parliaments (Kyrg. *kenesh*) or other representative bodies of local self-government. They should consist of elders who enjoy the respect of the community. *Aksakal* courts can deal with torts, family disputes, and disputes over land, property and water as well as other matters which, under the law, fall within their jurisdiction. All parties to a dispute have to agree to have their case considered by an *aksakal* court in order to undertake mediation. Decisions by the courts may be appealed before state courts (Art. 92 of the Kyrgyz Constitution). In 2002, a separate law on the *aksakal* courts describing the institution and defining the setting up of the court, its procedural rules, and the limits of its jurisdiction was introduced (Beyer 2005a). References to the jurisdiction of *aksakal* courts can also be found in the penal and the civil codes of the country. In 2004, the enlargement of the role and jurisdiction of the *aksakal* courts continued. Originally a rural phenomenon, *aksakal* courts have been established in the capital of Bishkek and in the southern city of Osh as well. Moreover, according to the registers of members of the city-*aksakal* courts, women are also joining the institution.³

³ Decree ‘On the registration of *aksakal* courts in Bishkek’, 30 June 2004. The term *aksakal* (Kyrg.) literally means ‘white beard’. This is why some people

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Today, there are about 1000 of these courts throughout the whole country, and no municipality (Kyrg. *aiyl okmotu*) is without an *aksakal* court. Akaev had also planned to extend the responsibilities of *aksakal* courts further in the years to come (Akaev 2005). But before he could realise his plans, he was ousted from office in March 2005.

In a speech to *aksakal* court members in February 2005, just one month before the 'March revolution' took place, Akaev stressed the strong link of the current institution to its forefathers, the uniqueness of the *aksakal* court and its suitability for modern reforms:

While I was writing my book 'The Kyrgyz State and the national epic *Manas*' I had to read and review the history of the Kyrgyz people through the whole 2200 years of its existence. I determined that Kyrgyz people were a united force back then. They not only built on their spiritual nomad civilisation, but also knew how to govern themselves. The Kyrgyz *aksakals* and their courts played a big role in this regard. This becomes clear when reading Kazybek's poem. He said: 'One word was said to those who overstep the limits. There were not any courts and no police, just *aksakals* together, admonishing each other.'⁴ ... Starting from last year we are working on local self-governance and it doesn't mean that we are following after some Western countries, as some people think. These principles of self-governance were in the history of the Kyrgyz people. There have never been *aksakal* courts in the history of other countries. (Akaev 2005).

The reasons for presenting the introduction of the *aksakal* court as a revival of a traditional Kyrgyz institution are the following. Firstly, it allowed Akaev to use the institution as one of several tools in his efforts at nation-building. On the national level the Kyrgyz government puts enormous effort into the construction of

demand to change its name into 'people's court' (Interviews with legal experts and NGO activists, 09.05).

⁴ The Kyrgyz poet Kazybek was born in 1901. Being a son of a *manap* (rich man), he was imprisoned during the Stalin era and died in 1936 (according to other sources, 1943). He is famous in Kyrgyzstan for his poems, some of which he wrote during his imprisonment.

a Kyrgyz nation and a national identity. Campaigns such as the proclamation of the existence of a Kyrgyz state for 2200 years, or the definition of the epic *Manas* as the history of all Kyrgyz, serve to build up a sense of national identity. Kyrgyzstan became independent in 1991 after the break-up of the Soviet Union and since then has struggled not only to reform its economic, political and legal system, but also to define what it means to be 'Kyrgyz'. In this respect, Akaev not only referred to places or historical figures, but also made use of the legal sphere. By establishing the *aksakal* courts in 1995, he found another creative way to realise the project of nation-building. The courts were established in the heyday of nationalistic politics, during which Kyrgyz was made the official state language and non-Kyrgyz encountered increasing problems in finding and keeping work. This, along with a declining economy and a decreasing standard of living led to a large wave of emigration of Russians, Germans, Ukrainians and other 'minorities' who had, taken together, formed 48% of the country's population in 1992 (CIA 1992). Currently *aksakal* courts are mostly comprised of ethnic Kyrgyz only, with exceptions in urban areas such as the capital Bishkek. Although women can become members of the institution, the vast majority are still male.

Secondly, *aksakal* courts were established as dispute management institutions which were alternatives to the state courts as part of the decentralisation efforts of the government. Since 2002 the Kyrgyz government, with the financial and logistical help of the United Nations, has carried out various reforms aimed at decentralising the state administration and thereby transferring responsibilities and rights to local regions. This policy can be seen as a continuation of reforms which started in 1996 when a new administrative unit, the municipality (Kyrg. *aiyl okmotu*), was introduced in order to strengthen the regions' capacities to govern themselves. Nowadays, each *aiyl okmotu* has one *aksakal* court. In the above quotation, Akaev is linking this recent administrative reform to the history of Kyrgyz society in general and the *aksakal* courts in particular. In this regard, it becomes particularly clear that the existence of *aksakal* courts in today's Kyrgystan is much more than just a 'survival'. They are also of significance for modern state reforms since they had been institutions of local self-government long before Western reformers deemed this approach especially suitable for the country. However, the policy which is often framed as 'more rights to the regions' could also be read as 'less work for the central state'. In the context of the *aksakal* courts this means less work for the police and the state courts, especially the regional courts, to which claimants had addressed their problems before. While the consequences of this have yet to be analysed, one could already state that the possibilities for citizens to apply to a legal institution of their choice have been

limited. Issues which are regarded as ‘minor’ by the police or the courts are now being sent, without the consent of the claimants, directly to the *aksakal* court of the village from which the claimant comes. This way, villagers are forced to interact with this institution if they want to have their cases considered by official organs at all.

Thirdly, the establishment of *aksakal* courts provided Akaev with advantages in dealing with international organisations. Especially in regard to the approach of alternative dispute resolution (ADR), *aksakal* courts could be presented as suitable in their function as mediating bodies and as effective dispute management institutions. Recent reports assessing the value of *aksakal* courts referred to them as being “democratic and responsible to their constituents” (Giovarelli and Akmatova 2002: vii, for the World Bank). They were therefore regarded as ‘available’ (UNFPA et al. 2003: 5) for the objectives of international organisations. In his speech to the *aksakals* in February 2005, Akaev directly refers to these concepts. He said:

To my mind this unique national court system plays a big role in the development and the realisation of the conception of the national idea that Kyrgyzstan is a country of human rights (Akaev 2005.⁵

From his speech, held at the republican meeting of *aksakal* court members in February 2005, a fourth reason why Akaev had established the *aksakal* courts becomes clear. This is at the same time his most personal one: He was hoping to consolidate his position as president, by using the influence of the *aksakal* courts in the villages for his own political ends. At the time of his speech, he was specifically thinking of the upcoming parliamentary and presidential elections and directly asked the attending *aksakals* for help:

As you know, our constitution says that basic human rights and freedom are guaranteed for everyone. Thus we put human rights above all. ... Unfortunately, some political groups do not respect the constitution. We should not allow those people to destabilise the situation, to disrespect our laws and trample on them, and to attempt to import political games from other states in order to

⁵ ‘Kyrgyzstan – a country of human rights’ was also the president’s slogan of the year 2003.

rule the situation. Our state, which is well known as the ‘democratic island’, should remain the same. (Akaev 2005)

However, one month later he had to flee the country when on March 24, a large group of protesters gathered in front of the president's administrative building and eventually took over the block. The cause for the people's discontent seemed to be the devastating result of the parliamentary elections in February and March 2005, in which only six out of seventy-five seats went to opposition figures. While the son and daughter of president Askar Akaev had won seats, well-known politicians such as the current president Kurmanbek Bakiev had not. The immediate cause of the uprising, however, was not the election fraud, but a long-time discontentment with Akaev and his family among the Kyrgyz population (Beyer 2005b). Kurmanbek Bakiev became interim president and – on July 10, 2005 – new president of the country.

The concept of ‘revitalisation’

When looking for a theoretical concept that describes the rhetoric and practice of Akaev in establishing the *aksakal* courts and presenting them as a national identity marker, as pre-modern self-governance bodies, as advocates of human rights, and as bearers of the societal equilibrium, the term ‘revitalisation’ comes to mind quite swiftly. The term is generally used to mean bringing back to activity or prominence something which either has been forgotten or, often due to external pressures on a society or group, such as colonialism, has been unable to be practised for some time and is therefore regarded as in danger of dying out. This could be anything from indigenous languages, to cultural practices or local institutions. Other terms such as ‘re-viving’, ‘re-establishing’, or ‘re-building’ are often used synonymously and interchangeably. All of them describe an effort to transfer an important feature of the society or group considered to come from the realms of the past into the present again. The goal thereby is to shape, influence and ameliorate the future.

Although nothing much has been written about the Kyrgyz *aksakal* courts so far, the few scientific publications dealing with this institution also refer to them as being ‘reinforced’ and ‘revived’ (both terms used in Handrahan 2001: 478) or circumscribe the concept of revitalisation by referring to Akaev's endeavours as “[taking] into account mistakes made by the Soviet Union and integrating traditional institutions into the state structure ...” (Temirkoulov 2004: 97). Next to

the *aksakal* courts, these authors also see revitalisations of ‘Muslim identities’, cultural practices such as bride kidnapping, and the Kyrgyz language as such at work. In general, these revitalisations occurred not directly after independence, but in the mid-nineties when the first euphoria of creating a market economy, a democratic state, and the principle of a rule of law had to give way to a more demure contemplation of postsocialist realities. *Aksakal* courts were established in 1995, after the first big bang of ‘shock therapy’ had trailed off, after famous Western consultants had packed their bags to move on to other countries in ‘transition’, and after the country itself had recovered from the shock of suddenly being independent and instead was trying to define its national identity.

However, to refer to these processes, such as the establishment of *aksakal* courts, as revitalisations, as has been done up to now, is, in regard to the underlying theoretical concept, wrong. The concept of revitalisation in these publications is always used in a lay sense, ignoring the origin of the term, which dates back to the year 1956, and the writings of Anthony F. Wallace. An ethnohistorian, he defined it as “deliberate, conscious, organized efforts by members of a society to create a more satisfying culture” (Wallace 1956: 265). Revitalisations occur under high stress for individual members of the society and under disillusionment with a distorted cultural *Gestalt* (279). According to Wallace, revitalisation processes involve religious action as a major means for carrying out cultural change: “No revitalisation movement can, by definition, be truly nonsecular....” (Wallace 1956: 277). Published in the 1950s, this theoretical model was developed in the tradition of structural-functionalism. Aiming at “equilibrium restoration”, as Wallace retrospectively described it (Wallace 2004), the concept looks at societies as organisms, developing in a linear way and, in case of high stress, aiming at restoring a stabilised state of being by “innovating not merely discrete items, but a new cultural system, specifying new relationships as well as, in some cases, new traits” (Wallace 1956: 265). The possibility of revitalising a “traditional culture now fallen into desuetude” (Wallace 1956: 275) is, according to Wallace’s understanding, just one choice of identification among many others (such as, for example, the importation of foreign cultural systems such as in the cargo cults). What is nowadays commonly understood and described as revitalisation was, in Wallace’s concept, only one aspect, namely the choice the leader or group had of what it wants to identify with while revitalising society.

In 2004, Wallace himself noted that his concept was “sometimes used as a generic term without reference to its source” (Wallace 2004: vii) and that “the concept has been applied in contexts far removed from the situations mentioned as illustrations

in the original article” (Wallace 2004: vii). He, however, is open towards extending the concept to “larger, even imperial politics” (Wallace 2004: ix) as it is done in the joint volume ‘Reassessing revitalization movements’ edited by Michael Harkin (Harkin 2004). However, this volume also adheres to the initial assumption that it is religion which mostly impacts on revitalisations. In his introduction to the volume, Harkin defines the core features of revitalisation as millenarian expectations, prophecy, and crises in key dimensions of social life (Harkin 2004: xxv). None of these features, except for the last, which is also the most general one, fit the context in which the *aksakal* courts were established. Harkin also adds that revitalisation movements are often not nativistic. This again shows that ‘re-establishing’ traditions, institutions or practices is just one possible characteristic of revitalisations and not its main criterion. By labelling all these processes ‘revitalisations’, one not only ignores the scientific concept underlying the term, but also limits oneself to only one account of history. That is, in the case of the *aksakal* courts, to consider this a revitalisation means to limit ourselves to the official discourse of the former president. There are more ways of describing the historical development of these courts, as will be shown in the next subsection.

The invention of an institution, its use for modern mediation approaches and the problem of enduring ‘custom’: international and non-governmental organisations

Not long after the *aksakal* courts had started operating, bad news reached the Kyrgyz public and international organisations. A Kyrgyz citizen was allegedly stoned to death by fellow residents after the village *aksakal* court had pronounced him guilty of extortion. Also, in other places *aksakal* courts had permitted the whipping of culprits. Amnesty International was furthermore concerned with “extra-legal militias operating under the authority of *aksakal* courts [that] have subjected people to illegal detention and ill-treatment and have administered punishments handed down by the *aksakal* courts (Amnesty International 1996: 7).” The UNHCR called for effective supervision and monitoring of *aksakal* courts (UNHCR (CRS/C/Q/KYR/1) 2000), and local NGOs demanded the immediate abolition of the institution (e.g. Anon. 1996). One of the leading figures of that time recalls:

It was a big mistake. They were really hastily organised because it was an initiative from above. And awful things started happening. They started putting people in *zyndani*. *Zyndan* was the kind of prison people in Central Asia used to have in the

Middle Ages. They are usually deep in the ground. They used to keep people there (Human rights activist, 09.05).

After intensive lobbying by local NGOs and the pressure of international organisations exerted on the government, Akaev had to react to the accusations. But instead of abolishing the courts as some organisations had urged, he defined their limits of jurisdiction and continued to lobby for them. Since no further severe offences against human rights were reported in the following years, the negative publicity stopped and a shift in politics could be observed. International organisations and local NGOs discovered the usefulness of the *aksakal* courts for their own ends. While in the mid-1990s, soon after the institution had been formed, the *aksakal* court had a bad reputation as being patriarchal and violating human rights, international organisations and local NGOs have now found ways of making use of this institution. They regard it as an important part of the local village structure. Instead of arguing against it, they have adopted a new way of interacting with the *aksakal* courts by training their members in human rights, women's rights and the general principles of law. For these organisations and outside experts investigating the activities of *aksakal* courts, the institution was described as: "new" and "created" (Giovarelli and Akmatova 2002: 6), "set up" (Amnesty International 1996: 6), "initiated" (human rights activist, interview 09.2005) or "emerged" (Simpson 2003). They did not see any 'revitalisation' at work as the former president Akaev had presented it. According to the understanding of these organisations, the courts were easily adapted to village life, because their working principles were based on "pre-Soviet traditional clan-based customs" (Simpson 2003), which were now being channelled through the institution of *aksakal* courts. *Custom* in the sense employed by these authors has either a negative connotation as in the statement above or is something one has to deal with because "[C]ustoms are slowly changing, but customs are more important than law in the villages" (Giovarelli and Akmatova 2002: 19).

At a seminar conducted by an international organisation especially for *aksakal* court members, two young trainers from the capital of Bishkek arrived in the countryside with an agenda to instruct the old men (there was only one female judge present) on women's rights to land. The two-day seminar consisted of several panels aiming at educating the *aksakals* on legislation, especially with regard to land rights and women's rights, but also on procedural law. That is, how to set up a court meeting, how to meet the legal requirements for coming to a decision, how to record the hearings, how to stick to time limits set by the law and so on. Eventually, this procedural aspect of law became the main content of the

seminar since it was obviously the area in which the trainers detected most deficiencies. Both the seminar conductors and the judge of the regional court, who was also invited to talk about the interaction between state courts and *aksakal* courts, complained about the non-satisfactory ‘outlook’ of the court meetings and paperwork and also about the low level of legal knowledge of the *aksakals*. Discussions about how many members had to be present at a court meeting, whether the secretary might be counted as a court member, or about which articles had to be applied went on for hours and obviously confused the participants, who were anxious to understand all of these things. Towards the end, the judge himself noticed the underlying paradox of the seminar’s endeavour. He said:

Of course you cannot write on the level on which judges write. It demands a lot of ... experience. But you see, the meaning of your writing is not clear. You are writing everything in a simple Kyrgyz language like: ‘He came, sat, and we talked.’ And at the end you don’t provide proof of why you made such a decision (Judge of the regional court, 09.05).

This comment shows two misunderstandings on the judge’s side: Firstly, he did not recognise that the persons he was talking to had experience as well – not as state judges, but of a different kind that enables them to solve a lot of disputes without the state courts even taking notice of them (since often the secretaries do not report solved cases to the state courts). Secondly, he made no effort to understand according to which principles the *aksakals* are working and on what they base their decisions. What is described as ‘talking’ gets shrugged off as using ‘simple Kyrgyz language’. One of the trainers, a Kyrgyz, added:

You know that you sometimes solve the issues on the basis of some Kyrgyz traditions. It is good to solve them on the basis of the traditions if it does not harm the people, for instance, convincing a couple not to divorce. But it is bad when traditions harm the private property of a person. For example by saying ‘There is no need to quarrel about such a small parcel of land.’ (Trainer of an international organisation, 09.05).

In general, an elementary disinterest as to which ‘traditions’ and ‘customs’ *aksakal* courts apply is prevalent in all publications issued by international and non-governmental organisations. International organisations take ‘tradition’ or ‘custom’ as a self-fulfilling prophecy, as something that has been kept up for ages and is

incredibly difficult to change. Members of non-governmental organisations, on the other hand, do not even bother about ‘tradition’ and ‘custom’ since they – being Kyrgyz themselves – believe to know everything about it from the start. The trainer, however, also misunderstood two other things. Firstly, being Kyrgyz is not in itself sufficient to understand what is meant by these terms. ‘Tradition’ or ‘custom’ are not entities which automatically become part of a person at birth. In the quotation given above, it is the trainer who defines what are ‘good’ traditions (e.g., not to divorce) and which are ‘bad’ (e.g., not to respect private property).⁶ He is also ignoring the fact that the *aksakals* might hold different views on the society’s customs or traditions and how they have changed over the course of time. While publications regularly refer to the knowledge and wisdom of the *aksakals*, no one strives to find out their understanding of these terms, let alone observe the execution of an *aksakal* court meeting where these abstract categories become activated.

In summary, it can be stated that the institution of an *aksakal* court is often portrayed as being staffed with people who have a specific knowledge of local traditions and customs and are respected by the population. But they do not act in accordance with the law and, therefore, have to be trained and educated from the start. The organisation’s understandings of enduring ‘traditions’ and ‘customs’ are seen as legitimating the agency of the institution as such, but in practice they hinder it from successful operation. In the eyes of international and non-governmental organisations, the institution of the *aksakal* court is seen as an invention of the postsocialist era that bases its legitimacy on traditions and customs of the presocialist era. The fact that the *aksakal*’s understanding of tradition and custom is either taken for granted or not taken into consideration at all shows that international and local non-governmental organisations treat the institution as such as a cultural black box, which can be filled with modern concepts of local self-governance, alternative dispute resolution, civil society and human rights.

⁶ One should remember that this was a seminar about women’s rights to land and that divorce issues are always related to property issues, including land. Also, in almost all cases it is the woman who is filing for divorce and for a just separation of the couple’s property. In the example given, the *aksakal* court is inevitably confronted with having to apply what the trainer termed ‘good’ and ‘bad’ traditions at the same time.

The concept of ‘invention of tradition’

When thinking about a theoretical concept that might describe the viewpoint of international and non-governmental organisations in regard to the *aksakal* courts, the term ‘invention of tradition’ comes to mind. The term was coined by Eric Hobsbawm and Terence Ranger (1983). Hobsbawm defined ‘invented tradition’ as

...a set of practices, normally governed by overtly or tacitly accepted rules and of a ritual or symbolic nature, which seek to inculcate certain values and norms of behaviour by repetition, which automatically implies continuity with the past. In fact, where possible, they normally attempt to establish continuity with a suitable historic past. (Hobsbawm 1983: 1).

Hobsbawm argues that traditions are invented in order to cement group cohesion, but also for the legitimization of action, and that historians and anthropologists have not yet paid sufficient attention to such political usage of history (Hobsbawm 1983: 12). So what appears to be ancient at first appearance has quite often been invented over a short period of time. Inventions of tradition, according to the editors of the joint volume, occur most often in times of rapid social transformations.

In his essay on the invention of tradition in colonial Africa, Terence Ranger argues that the most far-reaching inventions of tradition took place when the Europeans believed themselves to be respecting age-old African custom. What was called *customary law* was in fact invented by colonial codification (Ranger 1983: 250). According to Ranger, the invented traditions of African societies – whether invented by the Europeans or by Africans themselves in response – distorted the past but became realities in themselves through which a good deal of colonial encounter was expressed (Ranger 1983: 212). Likewise, Martin Chanock is of the opinion that the laws which were described as being ‘customary’ in colonial Africa were interactively constructed from what British officers considered ‘traditional’ for African societies and “partly from the successful assertion of interests by some sections of the African rural population” (Chanock 1992: 286; also Chanock 1985).

In his essay on colonialism and the perception of tradition in Fiji, John Clammer argues that “[C]olonialism in Fiji has succeeded not only in physically ruling an alien people, but in imposing its own ill through-out ideology or image of that society, and so dominating them mentally ...” (Clammer 1973: 219). The mental

image he is talking about is a model of the hierarchical sequence of agnatic kin groups which was developed by colonial commissioners and furthered by anthropologists. The latter often did not know that this ‘traditional model’ was a product of colonial officers on the one hand and of natives who had to succumb to this model in order to hold or acquire land rights on the other. After colonialism, Clammer sees the Fijian society enmeshed in “a web of errors” (Clammer 1973: 217) since the old ‘traditional’ model is now taken for granted. According to Clammer, anthropologists should not fall “into the trap of accepting the new image as the old, and confusing both with the authentic” (Clammer 1973: 220). New anthropological field research is going to “confront every Fijian with the lack of authenticity of his own social structure ...”, he concludes (Clammer 1973: 220).

As in the field cases of the above mentioned literature, ‘traditions’ and ‘customs’ of the Kyrgyz *aksakal* courts are also being assumed without having been subject of particular interest let alone thorough investigation. They legitimise the agency of international and non-governmental organisations, who carry out their programmes in the name of local ‘traditions’ and ‘customs’. Hobsbawm differentiated between invented and old traditional practices (Hobsbawm 1983: 10) and saw the role of anthropologists in detecting the differences between them. However, while Hobsbawm only recognised an ‘either-or’ option, international and non-governmental organisations in Kyrgyzstan make use of both possibilities. International and non-governmental organisations regard the Kyrgyz *aksakal* courts as being invented and traditional at the same time, thus buying into two totally different concepts of time. The reason for doing this lies in the fact that they can thus be instrumentalised for very different purposes. The fact that the organisations treat them as cultural black boxes shows that they are not considered features of Kyrgyz social life in the first place, but as institutions invented or ‘set up’ from above. They are thus treated as being ‘available’ for modern approaches introduced by the organisations, since they, as invented institutions, do not know enough or know nothing about law. On the other hand, they are referred to as bearers of tradition, able to exert influence on the population because of their wisdom and knowledge. But the reference to ‘traditions’ and ‘customs’ only serves as a legitimisation to accomplish the organisations’ own goals.

While the path-breaking notion of the ‘invention of tradition’ also sets off a lively discussion about the extent to which history can be invented at all, authors such as Marshall Sahlins reject the concept of ‘invention of tradition’ altogether, describing it as an “easy functionalist dismissal of the people’s claims of cultural distinction” (Sahlins 1999: 399). He complains about the increasing focus on the

instrumentalisation of history and the general rhetorical shift in anthropology away from culture to politics. Michael Herzfeld also rejects the concept since it would suggest that there is something like an “ultimately knowable historical past” (Herzfeld 1991: 12). In the context of modern Crete, where his fieldwork took place, speaking of an ‘invention of tradition’, he says, would only reproduce the state’s own denial of ordinary people’s participation in ‘real’ history (Herzfeld 1991: 12).

With their paper on transformation and change in Minangkabau, Franz and Keebet von Benda-Beckmann contributed to the deconstruction of what has often been presented as traditional Minangkabau *adat* law. When they state that “Dutch policy created the conditions for the gradual dissolution of political and socio-economic groups and for the emergence of a new type of internal lineage differentiation in access to land” (F. and K. von Benda-Beckmann 1985: 262), they recognise the colonial influence which led to the creation of “a partly transformed adat or adat law different from that produced and reproduced in villages” (F. and K. von Benda-Beckmann 1985: 339). However, they do not conclude that this new differentiation is somewhat ‘unauthentic’ and that there is a ‘real’ history behind these developments (see Kahn 1980). In their re-examination of customary law in Minangkabau, they even come to the conclusion that “many of what appear to be elements of change were in fact integral parts of the traditional social organization” (F. and K. von Benda-Beckmann 1985: 273). Elsewhere Franz von Benda-Beckmann directly comments on what he calls “the creation of the traditional law discussion” (F. von Benda-Beckmann 1984). In his opinion, many of the legal anthropologists who deconstruct customary law as being created tend to be too selective with their sources, focusing mostly on court decisions and literature of the colonial era. They confine their analyses to customary law only, thereby ignoring parallel developments concerning “state, government, western or modern law” (F. von Benda-Beckmann 1984: 28). According to him the influence of the colonially created customary law on the local normative systems is not proven: “[V]illagers reproduce what they consider to be ‘their’ normative system in everyday activities and processes of decision-making; a law quite different qua form, structure and content from the traditional laws which were being created in other contexts” (F. von Benda-Beckmann 1984: 29). In contrast to authors such as Hobsbawm and Clammer, von Benda-Beckmann recognises that there is not ‘one’ traditional law, but different processes of its reproduction under not only legal, but also economic, social and political influences.

Likewise, the aim of this article is not to find out the ‘authentic’ historical development of the *aksakal* courts, but to present and explain the different viewpoints on the institution. Therefore, the standpoint of international and non-governmental organisations mentioned above is regarded as forming but one more possible way of approaching the courts’ history. Since these organisations as third party actors belong neither to the state nor to the local population, one could, however, as Herzfeld, certainly describe the approach of the organisations towards the *aksakal* courts as an instrumentalising approach.

A third body of publications does not concern itself with the difficulties of possible ruptures in the history of the *aksakal* courts or with differences in their form and function, but claims the continued vitality of the institution throughout time.

Emphasis on continued vitality: other publications about Kyrgyz aksakal courts

In many publications, neither the revitalisation aspect nor the invention aspect of the *aksakal* courts is emphasised. These publications neglect the specific historical development of the institution and instead claim its continued vitality. The *aksakal* courts are said to have continuously been concerned with conflict mitigation:

In most of the Central Asian countries, traditional courts of the ‘aksakal’ (court of elders) exist, which often function as pre-judicial, conflict resolution bodies. (UNECE, OSCE and ABA/CEELI 2002: 5).

Conflicts are not to be ignored. They should be prevented where possible, but what is more important is to help people developing mechanisms through which interests can be mediated and conflicts resolved locally. Traditional mechanisms can be of use in this respect (e.g. courts of *aksakals*) (Krylova 2004: 10, for Swiss Agency for Development and Cooperation)

These publications stress the survival of the courts even during times of hardship such as the Soviet period. Somehow, it seems, these courts, as well as their traditions and customs, have managed to survive and are nowadays operating actively and therefore important partners in efforts of conflict mitigation. By avoiding any discussion about the historical origin or development of the institution and simply stating its continued vitality, these authors not only simplify matters,

but at the same time stress the importance of the institution as such and legitimise their cooperation with it.

Regarding this third historical viewpoint forming another part of the official discourse on the *aksakal* courts, there is no specific theoretical debate at hand, such as in the concept of ‘revitalisation’ or the ‘invention of tradition’. However, observations of a more general kind regarding the assumed continuity in this institution can be made. At the outset we should note that nothing in history can ever continue without being subject to significant changes throughout the course of time. Especially in regard to the *aksakals* it should be noted that the Soviet period with its massive and profound political, economic, social and cultural reforms could not have failed to have an influence on any local Central Asian institution as well as on any individual. In regard to the *aksakal* courts, publications stressing the continuity aspect, for example, cannot explain how the institution managed to survive during the Soviet Union, when all local legal institutions were officially abolished. In general, none of the authors who refer to the *aksakal* courts as either ‘revitalised’, ‘invented’ or ‘continued’ seem to have taken historical data into consideration when writing about the institution. Taking a look at historical materials from Soviet times, the Tsarist period and also pre-revolutionary times, however, helps to understand under what circumstances the institution under study was shaped and influenced.

Historical Data on the Development of the *aksakal* Courts

This following historical discussion is not meant to present an ‘authentic’ version of the *aksakal* courts’ development in contrast to the ‘constructed’ versions presented before. Rather, it is argued that a careful reading of available sources from Tsarist and Soviet times will provide a more detailed account of the development of the institution, since the above mentioned body of literature did not consult scientific or colonial writings at all. However, one has to bear in mind that the overarching goal of the Tsarist as well as the Soviet administration was to understand Central Asian societies in order to change them according to their own ideas. Especially reports of colonial officials and ethnographers in these times were written under the influence of specific political missions. But the caution that has to be exercised when analysing these materials is eventually of no different kind from that regarding materials which make up the official discourse on the *aksakal* courts presented before. Inasmuch as available, current publications about

the historical development of customary law in Central Asia in general and of the *aksakal* court in particular are also considered here.

Lineage elders and gatherings of aksakals: Pre-revolutionary times

Before the conquest of Central Asia by the Tsarist troops in the 19th century, the Kyrgyz did not possess a codified legal system. Family issues, property relations and conflicts were passed on orally within society. The Kyrgyz, being nomads at that time, occupied the territory between the mountains of the Tien Shan and the Pamir. Within their complex kinship system, the economic and territorial unit of the encampment, together with the extended family, can be considered to have been the most important groupings in terms of everyday life. Encampments were composed of up to fifteen extended families, whose members were agnatic relatives (Kyrg. *bir atany baldary*, meaning ‘children of one father’) (Schmitz 1990: 73; Abramzon 1971: 183). They formed a constant social and economic entity in the sense that during the winter months they lived together in one village in the valleys (Kyrg. *aiyl*) and in the summer months herded together on a common pasture ground in the mountains (Kyrg. *zhailoo*). Extended families and encampments had their *aksakals* who presided over the activities of the unit and acted as mediators and judges in cases of conflict. While the term *aksakal* on the one hand could be used to refer to all old men in general, it is in a more narrow sense only used to address those old people who have earned respect and authority within the village as a result of their moral behaviour, integrity and wisdom gained through experience.⁷ Decisions of the *aksakals* were based on customary law (*adat*) which in turn was influenced by the Islamic *shari’a*. Local judicial practices (Kyrg. *erezhe*) were orally transmitted and changed throughout the course of the years. There was no official court of *aksakals*, but rather gatherings and councils (Kyrg. *kenesh*) during life-cycle rituals (such as births, marriages, deaths and obsequies) and in acute cases of conflict. If one recalls the quote mentioned by the former Kyrgyz president Askar Akaev, the poet Kazybek had said nothing else: “There were not any courts and no police, just *aksakals* together, admonishing each other.” Any other interpretation seems to be – even for Akaev who was eager

⁷ As one *aksakal* termed it: “The pleasure of being called *aksakal* does not go to all old people. Not to those who drink boso [slightly alcoholic beverage made out of barley flour] and hang out on the streets. Not every *aksakal* is an *aksakal*.” (Aksakal, 10.05).

to present the *aksakal* courts as the re-establishment of an ancient Kyrgyz institution – fictitious.

Besides the *aksakals* with responsibility for restoring and keeping peace within the village, there were other groups whose rights and duties also included dispute management: the *biis*, the *kazis* and the *manaps*. In contrast to the *aksakals*, these institutions have been extensively described in colonial and Soviet literature on Central Asia. *Biis* are considered to have been leaders of larger kinship units (Kyrg. *uruu*⁸). Like the *aksakals*, to become a *bii* one had to be respected in the community and to have a good knowledge of the customary law. The Russian anthropologist Olga Brusina differentiates between the activities of *aksakals* and *biis* by saying that *aksakals* used to manage disputes within the encampments, whereas *biis* mediated between encampments as well as within and between *uruus* (Brusina 2005: 230). *Biis* are known to have formed arbitral courts regularly in order to settle disputes. Russian authors who have investigated the procedural rules of those courts and analysed cases from those times point out the rather complex normative structures of this court system.⁹ While courts of *biis* were predominantly active in the northern part of today's Kyrgyzstan and in the Kazakh territory, the southern part of the region, the Ferghana valley, had its own court system, made up of the so-called *kazi* courts. These courts were established by the Khans of the Khokand Khanate and applied the *shari'a* only. Unlike the *aksakals* and *biis*, the *kazis* were elected to office. In order to become a judge, they had to complete a special education (Kozhonaliev 2000: 39). *Manaps*, on the other hand, were often simply rich or aristocratic persons who possessed many cattle, but who also distinguished themselves as leaders in times of war and as mediators in cases of conflict. In order to maintain control and establish wealth, they also imposed taxes on their followers, such as fines for the infringement of a common law (Kyrg. *aiyp*) or taxes for the use of pasture (Kyrg. *otmai*).¹⁰ As shown, pre-colonial

⁸ There is much contradiction in Russian, Kyrgyz and Western literature on Kyrgyz kinship terminology. The term *uruu* has often been associated with 'tribe' in English literature and 'plemia' in Russian, the term *uruk* with 'clan' and respectively 'rod'. However, 'lineage' is also often referred to as *uruk*. Even among the Kyrgyz themselves the terms *uruu* and *uruk* are not clearly defined, *uruu* often being used as the only term. For a discussion on Kyrgyz kinship terminology see Schmitz 1990 and Gullette n.d.

⁹ See for example Slovkhotov 1905 and for a general overview Brusina 2005.

¹⁰ For a list of taxes paid to *manaps* in the Yssyk-Kol area see Gullette n.d.

Kyrgyz society already possessed a variety of different, and more or less institutionalised mechanisms for dispute management. The customary law applied by these institutions varied regionally from south to north and locally from smaller to larger kinship units, and generally changed in the course of time. All of those three institutions mentioned here underwent significant changes with the arrival of the Russians in the 19th century.

Ignoring the aksakals: the Tsarist period

When the Russians concluded their invasion of Central Asia in 1876 with the take-over of the Khokand Khanate, all of the legal institutions mentioned above had already been subject to a 'reformation' by the Tsarist administration. In the years before, Russian army officers, Russian ethnographers and other scientists had been sent out on expeditions and fieldwork to investigate the 'customs' of the new societies of the expanded Tsarist Empire. Information about the pre-colonial and colonial period we have nowadays derives almost exclusively from the writings of these persons (E.g: Radloff 1870; Zagriazhskii 1871, 1874; Ivanov 1881; Izraztsov 1897; Korzhenevskii 1899; Grodekov 2000 (1889); Leontev 1890; Dingelstedt 1891; Sabataev 1900; Bukeikhanov 1910; Iakovlev 1912; Gins 1913; Brodovskii 1913.) Their findings were used by the colonial administration to formalise and codify the Kyrgyz *erezhe* and downgrade it in comparison with the newly introduced laws of the Russian colonial powers. According to Martin (2001), Russian officials and scholars in this way 'invented' customary law by first locating it within a body of written 'customs' that might have reflected the customary law of a particular kinship group, but certainly not of the whole society. Then, the 'primitive' law of the locals was contrasted with the more 'civilised' law of the Russians and consequently said to be outdated. Next to the legal institutions described above, special military courts (Russ. *imperskie sudy*) for the resolution of conflicts between locals and migrated Russians were established (Huskey and Iskakova: 2002). However, a decree issued in 1868 also arranged for a further application of customary law: Courts of *bii* could continue to decide what the Russian administration considered to be 'minor issues'. The Russian courts, however, dealt with serious offences such as homicide. Decisions made by the *bii*s could – in contrast to the situation in pre-colonial times – be appealed against. They could also be annulled by the Russian administration (Kozhonaliev 2000: 68). Moreover, the Russian administration 'Russified' the courts of the *bii* insofar as they had to be elected and appointed following the same procedures as the newly appointed regional administrators. They also had to keep a record of their

decisions, received a stamp and – because of the territorial re-arrangement of the Governorate-General of Turkestan that divided members of one *uruu* into different administrative districts - had to preside over cases other than those of their own kin.

Although the aim of the Russian colonisers was to allow for a continuation of ‘customary law’ as they understood it in order to keep things quiet, the newly introduced changes led to unintended consequences. According to Brusina, people tried to influence the nomination of their own kin for the position of *bii*, using various methods ranging from the manipulation of elections up to the murder of other candidates. Once in office, the new *biis* themselves tried to acquire as much wealth as possible, often cooperating with officials, ‘staging’ cases and selling decisions (Brusina 2005: 242 f.). In general, this development led to a growing mistrust in the courts of *bii* among the population. Since the reforms concentrated on the northern territories (today’s Kazakhstan and northern Kyrgyzstan), the southern part and the Fergana valley were initially less targeted. As a result, cases were reported of nomads starting to turn to the *kazi* courts instead. More often, however, dispute management shifted completely away from the institutionalised courts towards the gatherings of the *aksakals* who, not being targeted by the administration, received considerable popular confidence and to some extent took the place of the Russified courts of *biis* (Sabataev 1900: 66ff).

The abolition of local legal institutions: the Socialist period

When the Soviets in 1927 decided to abolish customary law and its institutions altogether, the courts of *biis* had already ceased to be considered authorities. *Manaps*, as individual leaders, were simply added to the number of other class enemies (Russ. *kulaki*). Because of their wealth and leading positions, they could be easily targeted as ‘feudal elements’. The first collectivisation phase starting in 1928 was aimed at diminishing their influence among the population by collecting their cattle, forcing the nomads to settle and establishing a country-wide network of administration offices. Due to their official character and the increasingly rigid policy against all traditional legal institutions and Muslims in general, the *kazi* courts in the southern part of Kyrgyzstan ceased to exist in the public realm. As for the *aksakals*, however, they seem to have escaped the focus of the Soviets. *Aksakals*, being regarded as family members and ‘old people’ in the first place, were simply not recognised as a legal institution by the administration, although

their increasing activities had been noticed towards the end of the Tsarist Empire (Brusina 2005: 249).

Against the background of this historical baseline, the following local accounts of the *aksakal* courts' development over time will become clearer. A more comprehensive historical understanding of *aksakals* and *aksakal* courts is important since villagers in northern Kyrgyzstan, where fieldwork was carried out, not only named different time periods when being asked about the origin of the *aksakal* courts, but also made use of more than one historical account, depending on the situation and the questions asked.

Local Discourses on the Historical Development of the Institution

Next to the official discourses on the historical development of the *aksakal* courts, other conceptions of their history exist among the Kyrgyz population. While some of the official interpretations can also be found in local sayings, new ways of looking at the institution are added here. On the one hand, villagers in northern Kyrgyzstan regard the *aksakal* courts as part of their national heritage, thereby confirming the historical discourse of the former president. However, if asked directly about the institution as an official organ recognised by the state, they would describe it as new. On the other hand, people differentiate between the *aksakal* court and *aksakals* as lineage elders. However, this differentiation is neither voiced explicitly, nor visible at first sight. The institution of the court and the institution of gatherings of lineage elders exist parallel to each other and are strongly interlinked. This is why people can talk about the continuation of the institution, its revitalisation and the invention of it at the same time.

As already mentioned, the few publications dealing with *aksakal* courts, be they scientific or organisational, mostly deal with the outlook of the institution and its form. Its functions and its bases of decision-making are either ignored or assumed. 'Traditions' and 'customs' are self-describing categories that need no further explanations. This is understandable insofar as finding out about content requires much more time and insight into a culture than finding out about form. Noticing this general absence of profound analysis of what *aksakal* courts are actually doing, field research started with questions related to their agency in the villages. The contextualisation of the current functioning of *aksakal* courts, however, needs to be set within a wider historical time frame, in order to understand their activities in contemporary Kyrgyzstan. By showing an interest in the historical

development of the institution, different local accounts of its history came up, which at first appearance often seemed contradictory. It is only through those contradictions, however, that the local discourses of history can be understood. They symbolise different possibilities of “actualising” (Giordano 1996) history for present circumstances. Again, the question is not whether the institution is ‘revitalised’, ‘invented’ or ‘continued’, but ‘revitalised, invented or continued for whom?’

Making use of official discourses – aksakal courts as a national institution

Villagers make use of the official discourse and would, for example, describe the courts as a national institution. They would link the *aksakal* courts to other prominent features of the current Kyrgyz nation-state such as the epic hero *Manas*: “*Aksakal* courts come from *Manas* times”, a villager explained (11.05). Being not only villagers, but at the same time citizens of the new Kyrgyz state, people also make use of the new identity concepts offered and promoted by the government. *Aksakal* courts in this regard are often described as an ‘ancient traditional institution’ and something that has always existed. However, as Herzfeld has shown, official rhetoric and concepts are not simply absorbed, but adapted and recasted in order to meet experiences and aspirations (Herzfeld 1991: 205). The *aksakals* themselves, for example, profited from this official discourse as the former president promoted it since he, by linking their current activities to the history of the Kyrgyz in general, granted them an honourable position in society. This position was made visible during the republican meetings of *aksakals*, where the best court members were publicly honoured by the former president himself. Other villagers would describe the institution as distinguishing them from the other Central Asian countries in order to stress the cultural and historical uniqueness of Kyrgyz society. In this regard, the authenticity of the institution is considered less important than what can be made of it, and identity issues can be more important than exact traditional knowledge.

However, when asked directly when the *aksakal* courts as an official organ as recognised by the law first came into existence, people would relate the institution to the former president and describe it as new. This, however, does not mean they regard the institution as artificial or not ‘theirs’. Be it new or ancient, it is regarded as staffed with respected people of their village. One *aksakal*, who had described the court as an ancient tradition before, explained in a different interview: “The courts were only introduced later under Akaev, but *aksakals* were

there before him” (12.05). The accumulation of this seemingly contradictory information led to other questions regarding the character of the individual *aksakals* working in the court. As it turned out, this was the key to understanding why different local accounts of the history of the courts exist.

The aksakal courts and aksakals as lineage elders

When asked about the *aksakal* courts in pre-Soviet times, the first answer given by the villagers was always that it is an ancient tradition originating in the past. People would elaborate on the influence *aksakals* used to have when the Kyrgyz were nomads and organised themselves in tribal units. The individual *aksakal* was presented as family head, lineage elder, politician, mediator and bearer of traditions at the same time. People equate the meetings of those *aksakals* with the current *aksakal* courts without mentioning the differences between these two institutions. For them, continuity was to be found with the position of the *aksakal* as an individual. Whether he worked alone or together with others during gatherings or in an institutionalised court was initially never mentioned. During the Tsarist and Soviet eras, individual *aksakals* acted as local authorities. As will be shown, they were often in an open dialogue with the Soviet administration, and sometimes hidden from the authorities.

After the Soviets had abolished all local legal institutions in 1927, they established a new court system throughout Central Asia. The villages received village councils (Russ. *mestnye sovety*) and comrades' courts (Russ. *tovaricheskiye sudy*, Kyrg. *zholdoshtuk sot*). While the village council was a political organ deciding on administrative tasks within the community, the court of comrades was officially responsible for keeping the peace in the village and mediating between conflicting parties. The local party secretary nominated persons for membership, choosing those who were most active in the kolkhoz. The party committee then appointed them. They could, however, not make any decisions about disputed cases and were not even allowed to impose fines (from talk with villager and former party secretary, 11.05). In 1936, more than five hundred of these courts existed throughout the country (Nurbekov 1981: 83). Looking at the ways dispute settlement was designated for the comrades' courts, one could be led to think they had been established as an alternative dispute management institution to the official court system. However, since they were not given any rights and powers, people did not make much use of the institution. When the former party secretary of one village in the northern part of Kyrgyzstan was asked whether *aksakals* were also

considered as members of the comrades' court, he denied this. A guest present during this conversation added: "They [meaning the Soviet administration] used to say 'Those old people need to rest'." But does the fact that the administration did not make use of the village *aksakals* mean they did not play a role in village life during the Soviet period? The same party secretary continued:

Within the *uruu*, they played a big role. For instance, if Mairambek¹¹ [his guest] and I were relatives, and I had offended him, he would go to Ulan Ata¹² to tell him about it. Ulan Ata would invite me and tell me that my behaviour was not right. (Villager and former party secretary, 11.05).

Talking to another inhabitant of this village, who was elected a lay judge during Soviet times to assist the main judge during court cases, the activities of *aksakals* and their relationship with the authorities become clearer. He said:

In any case *aksakals* would solve the problem first. Village *aksakals* would not let the problem reach the district or regional court. I have an example. My younger brother killed someone in a car accident. There was no *aksakal* court at that time, but we obeyed the *aksakals*. We gathered everyone from our *uruu* and told them 'Our brother has a problem, please help him. Who will go see the other side?' And then the *aksakals* went to talk to the other side. They would decide how much money and cattle had to be given to make up for the dead body. Only if *aksakals* did not manage to solve the problem, we would turn to the court. (Villager and former lay judge, 10.05).

This quote shows, firstly, that *aksakals* were, just as in pre-Soviet times, regarded as an important if not the most important local institution in regard to dispute management. It also shows that their activities were not restricted to somewhat 'minor' issues. They also seem to have managed disputes not only within the *uruu*, but also between different *uruu*. The anecdote of the former lay judge also shows that, in spite of being part of the former judicial system, he not only knew about

¹¹ All names are pseudonyms.

¹² *Ata* means 'father' and is a name affix used for all old men in Kyrgyzstan. Ulan Ata is the oldest *aksakal* of one of the two *uruus* in the village.

these activities, but was also directly involved in them, being a villager and member of the kinship system himself. While scientific and organisational literature up to now has mentioned *aksakals* as being respected village elders and acknowledged their influence in Kyrgyz society, so far nothing has been written about their engagement in dispute settlement. Lineage elders were not only active during the Soviet Union, but continue to play an important role in village life, especially with regard to dispute settlement nowadays. Ulan Ata, the lineage elder, describes his position in the following way:

People come to me with their problems. I summon all persons involved and try to find out what happened. Then they tell me their story. If a problem is easy, I solve it myself. If it is not, then I call Ydyrys, Toloberdi and Esenbek.¹³ I need three people. So I call three *aksakals*. We consult each other saying 'He is right and he is not right'. We come to a consensus and talk to the people who have problems. If the problem is easy, I solve myself. If it is not, I need other *aksakals*. (Ulan Ata, 11.05.)

As can be seen from this quote, the village *aksakals* themselves also form an institution, which resembles the *aksakal* courts in some ways, but acts on a more informal level since it is not recognised by the law. According to Ulan Ata, the difference between his work and the work of the head of the *aksakal* court is the following:

He is a judge. His work is higher than ours. They record their cases and inform the regional court to ensure that they know about them. And we don't because we don't keep a record. We do everything orally (Ulan Ata, 11.05).

Other villagers would emphasise that they in any case would contact their elders first before going to a court – including the *aksakal* court. That means, the individual elders of the *uruus* are closer to the village population, not the *aksakal* courts as an institution as it is usually presented in scientific and organisational literature. This information, however, was only obtained after several months of field research. Since people only knew that the research was associated with the

¹³ These men are other lineage elders of their own lineages. When asked if he also considers cases from other *uruus*, he said: "Yes, if people come to me. But then I call *aksakals* from their *uruu* as well."

aksakal courts, they initially did not mention the dispute settlement functions of the individual *aksakals*. However, both institutions are strongly interlinked. Only after the apparent contradictions in the answers given had been pointed out, did villagers start to explain the differences and similarities of the court *aksakals* and the lineage elders. It then became clear that people were not providing contradictory information, but were often talking about both institutions at the same time, without differentiating between them. They would, for example, also equate the head of the court with the court itself, saying, “Our *aksakal* court is Sabatar Ata”. Since this person is also considered one of the elders of one lineage, he can be approached by the villagers as an individual *aksakal* or as the head of the court. Another person constantly mixed up the *aksakals* working in the courts and those who are lineage elders and not active in the institution. Approached about the confusion, he said:

Since he is an *aksakal*, I automatically consider him a member of the court. He could, for example, come to the court and would be regarded as a judge by everyone (Villager, 10.05).

The head of the *aksakal* court also stated that in some cases he consulted with the lineage elders and not only with the other court members. Although the elders do not invite the head of the *aksakal* court to their meetings, they would welcome him if he showed an interest in participating. Ulan Ata himself used to work as head of the *aksakal* court before and resigned due to his age and health condition. However, being the lineage elder is not a position one can resign from and therefore he still today mediates disputes in his home.

People have different versions of the institution’s coming into being and often present more than one version of its historical development during the same conversation. It might have survived since pre-revolutionary times or have been established by the former president. As these examples have shown, history – in this case the history of the *aksakal* courts – becomes ‘actualised’ in different ways and for different purposes. Christian Giordano suggested this word as a kind of umbrella term encompassing other terms such as ‘invention’ or ‘revitalisation’. In his opinion, the past is more or less intentionally ‘mobilised’ in the present and is usually evoked with specific aims in mind (Christian Giordano 1996: 99). Next to identity formation there might be political issues at stake such as decentralisation or the securing of one’s political status. In the case of the *aksakal* courts, this is not only done by the local population, but also on the level of the nation-state and by transnational organisations. However, Marshall Sahlin’s criticism of the

practice of putting too much emphasis on the instrumental usage of history in anthropology should be taken into account. Often people tap into a discourse without being aware of it. The official discourse of the *aksakal* courts as a national institution, for example, can be described as an internalised version of history. However, people are able to go back on one of their views on the institution and acknowledge that what they have just described as an ancient tradition actually became official only a couple of years ago. It is therefore crucial to investigate the instances in which they present the 'tradition' as ancient as well as those said to be of recent date.

As shown in this section, the 'actualisation' of history can also occur independently of political circumstances. Since history in itself is pluralistic, there do not have to be political motivations at hand in order to switch from official to local discourses or to favour one of possibly more historical versions. Rather, transitions between these discourses are smooth. A general differentiation between what Herzfeld has termed 'monumental time' (referring to a monumental conception of history as declared and defined by the nation-state) and 'social time' (referring to the embodied practices of the population) might often be too strong a demarcation (Herzfeld 1991). Also, describing a local institution or a local practice as being a 'revitalisation', 'invention' or having 'continuously existed' is most often nothing more than a labelling of only one of possibly more discourses on the historical development of the object under observation. One might have picked up the predominant discourse, but be at the same time missing other existing discourses that also shape the perception of a local institution in society. It is the continuity of the individual *aksakals* in all discourses under observation here which allows the Kyrgyz population to refer to the *aksakal* courts in different ways, depending on the situation and the questions asked.

Conclusion

Looking back at the different accounts of the Kyrgyz *aksakal* courts with a pluralistic conception of history in mind, the manifold interpretations of their development over time become clear. Firstly, they could be presented as a 'revitalised' institution by the former Kyrgyz president, since the *aksakals* as individuals have continued to exist throughout time, although they were officially not acknowledged during the Soviet period. In pre-Soviet times, they were recognised as important mediators in cases of conflict and their gatherings could be regarded as an institution of customary law. Officially not recognised during the

Soviet times, they now form a body of customary law, but act as an official organ of the Kyrgyz state.

Secondly, the institution of the *aksakal* court could be described as being ‘invented’ since the courts themselves have never existed before. Formal institutions such as courts were nonexistent during the times when the Kyrgyz were still nomads. Official positions were always related to individuals, not to institutions, e.g. the position of lineage elder, *bii* or *manap*. However, to regard the institution of the *aksakal* courts as being created out of nothing would mean taking into account only its form while ignoring its content. Here, again, the continuity aspect lies in the positions of the individual *aksakals* who have existed in pre-Soviet, Soviet and post-Soviet times. Nowadays, they still form the heart of the institution.

Thirdly, the institution could have been presented as having ‘continuously’ existed because the individual *aksakals* as lineage elders have never ceased to exist. However, to assume that their existence as such has kept alive old ‘traditions’ and ‘customs’ unchanged would be to deny the influence of history on society. Especially during the time of the Soviet Union massive transformations took place that did not leave any local institution or any individual unaffected. The current *aksakals*, for example, often occupied high positions within the Soviet system – as leader of the kolkhozes, teachers, or journalists. They, therefore, were confronted with and profited from knowledge that previously did not exist in Kyrgyz society. The knowledge they acquired during the Soviet Union today also constitutes one reason why they are working in the *aksakal* courts. Because of their know-how, they are, for example, consulted in cases of disputes related to land, water or irrigation, are approached when a letter needs to be written and are chosen by their fellow villagers as brokers between the village population and, for example, international organisations.¹⁴ Because of their experience as authorities of the former Soviet Union, they know how to deal with the new authorities of the independent nation-state and with ‘big people’ (Kyrg. *chong kishiler*, ‘big’ in this context meaning ‘powerful’) from other countries.

The data presented here show that all three concepts of time - revitalisation, invention and continued vitality - can be applied to the historical development of

¹⁴ The head of the *aksakal* court of one village, for instance, also occupies the position of treasurer in a project launched by the World Bank. He is in charge of the US\$25,000 the organisation has given the village for reconstruction work.

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the Kyrgyz *aksakal* courts. However, it is only in combination that they can reflect the plural accounts of history as perceived by local, national and transnational actors. In order to obtain a pluralistic conception and understanding of history, one has to be prepared to initially receive seemingly contradictory information. The role of the anthropologist, therefore, should not be to distinguish invented from old traditional practices, as Hobsbawm has claimed, or to confront the people under study with a “lack of authenticity” of their history as Clammer suggested (Clammer 1973: 220), but to record, describe and analyse the different discourses on local history which, taken together, mould into a rather complex, heterogeneous and composite picture of time.

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