

Legal Reform in Central Asia: Battling the Influence of History

Roger D. Kangas

For much of the past decade, discussions of legal reform in Central Asia have been couched in terms of “Soviet-era versus Western approaches” with respect to how laws are codified and how improvements might be made. More fundamental to the current debates and the problems facing the Central Asian states in the twenty-first century is the influence of pre-Soviet tradition on the contemporary legal environment.¹ Specifically, the region must resolve the contradiction inherent in the impersonal nature of codified law, and the fluid, personal aspect of the current power relationships that reflect long-held traditions in the region.

Lack of true reform in countries such as Turkmenistan and Kazakhstan has created relatively high levels of mistrust, doubt, and concern among the respective populations, thus weakening the ability of states to carry out their constitutional and legal duties. This was a problem that faced great unifiers of the past, such as Tamerlane.² The notion of creating a strong state structure and a concurrent legal environment was of utmost importance to this medieval leader of Central Asia. His contemporary counterparts face similar problems. Adherence to the law, as such, is tainted by mistrust among the general population and capricious violations by those supposedly charged with enforcing it.

This chapter is an effort to assess the developmental level of legal regimes in the five Central Asian states. When discussing such broad notions as legal reform, one must be mindful of defining terms. In this instance, the focus will be on the notion of rule of law, which can be defined as the ability to abide by an external, abstract set of norms that allow members of a society to co-exist. When there are disputes, the parties involved seek solutions through a mechanism framed by these very norms. The empiri-

cal evaluation of constitutions, legal and criminal codes, and the ability of law enforcement agencies to abide by such measures are fundamental.³ In evaluating the legal aspect of the Central Asian states, the basic developments of these concepts in Central Asian society will be outlined. With independence, the Central Asian governments had to quickly create their own structures, the products of which were largely follow-on measures from the previous era. However, in the past decade some changes of note have occurred, providing a modest base for comparison of the respective developmental paths of the five Central Asian states. Finally, the current challenges to true legal reform in the region will be assessed and the efforts of foreign assistance measures designed to address these concerns outlined. While the governments of Central Asia have been self-congratulatory in their own assessments of legal reform at home, the reality appears to be different.

Legal Antecedents

Central Asia has had a long history of legalism and legal studies. Documents and books showing early efforts at creating rule of law are often on display in national museums in Central Asia.⁴ Unfortunately, intertwined with the tradition of legal scholarship in the region are the results of despotism that prevailed for the past half-millennium. It was often the case that rather complex legal codes repeatedly were flaunted by ruling houses or dynasties at various times. This tension between “rule of law” and the absolute authority of the ruler is key to understanding legal traditions in Central Asia.

Given the rich history of the region, it is no surprise to find many layers of legal structures, political entities, and the interpretative framework for them. These influences have been both positive and negative, and reflect the tension between the need to standardize law and the ability of leaders to assert their own authority. While this tension parallels events in Europe throughout the past two millennia, unique aspects of the Central Asian environment ensured that the outcome would be different. Moreover, these differences themselves are often difficult for outsiders to fully understand, as they reflect cultural patterns specific to the region. These developments have been visible in both the pre-Russian and Russian/Soviet eras, which have provided their own lasting legacies to Central Asian legal thought.

The Pre-Russian Legacy

It is impossible to assess thoroughly the pre-Russian legal tradition in Central Asia in a few pages. However, several key points can be stressed, as noted by past works on this subject.⁵ One can point to four specific waves of influence in the pre-Russian era: Islamic, Mongol, Timurid and Emirate/Khanate. Each of these periods created potential frameworks for legal discourse and action, but at the same time gave significant latitude to the ruling elite and, ultimately, the leader.

Islamic

First of all, in accounts of pre-Soviet Central Asia, a strong emphasis on the role of Islam is present in the creation of political and societal relationships. The adherence to the Muslim faith was, and remains, the cornerstone of interpersonal interaction. Law, as a system of governance, was rooted in the Islamic tradition introduced to the region as early as the late-600s A.D., but really took root when the region was consolidated a century later. Unlike past invaders, the Muslim forces of the eighth and ninth centuries sought to do more than simply conquer territory. As an example, when Alexander the Great traveled through Central Asia in the third century B.C. and subdued regional potentates, his goal was to pacify the region for territorial and financial gain, before proceeding to the next target of opportunity. He did not consider instilling new legal codes or frameworks within the region.⁶ In contrast, the Islamic invasion of the eighth century A.D. involved the actual conversion of communities and the total restructuring of belief and fealty systems. As happened in other territories conquered by Muslim armies, there was a fundamental understanding that Islam as a way of life would dominate, replacing what existed prior to its arrival.⁷

From a legal perspective, the central element of Islamic tradition in the region was Shari'at law. Based upon a mix of sources, such as the Qu'ran, hadith and subsequent documents, Shari'at law was, and remains, an evolving concept.⁸ Indeed, over the centuries, differences of interpretation within the Muslim community have arisen. Such law was critical in the settled regions of Bukhara, Khiva and other oases communities, as these were more regulated than nomadic regions. Bukhara and Samarkand, in particular, became centers of Islamic jurisprudence and learning for the entire Muslim world in the tenth and eleventh centuries. What was created in these cities eventually was applied to the surrounding region. However, as time passed, these cities represented a much more conserva-

tive and unreformed interpretation of Islam, especially as Central Asia was cut off from most of the Sunni Muslim world by the sixteenth century.⁹

The above sequence of events was particularly important to the settled regions of Central Asia. In contrast, the nomadic communities in Central Asia, while incorporating some aspects of Islamic law into their legal codes, also relied heavily on existing traditional measures. Called by different names, such practices often were honed to reflect the specific needs and communal priorities of a given group. The most common term used was *Adat*, which is often called customary law. *Adat* was regulated through precedent and past practices.¹⁰ Moreover, it took into account differences between tribal and clan grouping, with the variations found among Kazakh, Uighur, Kyrgyz and Turkmen clans. Power of arbitration often rested in the hands of a particular individual (the bey among the Kazakhs, for example).

Overall, the Islamic influence created a framework for Central Asia within which legal issues could be evaluated and discussed. It also linked the region to the broader, outside world and afforded legitimacy to the ruling elite. After all, if this elite could structure its authority under the auspices of Islam, the population could not legitimately seek an alternative form of government. The significance of Islam was thus profound: It offered both a way in which people could interact within society and also provided justifications for the form of government that dominated the region.

Mongol

The thirteenth century saw the introduction of the Mongolian public administrative system, the longer-lasting influence of the invasion and conquest by the armies of Genghis Khan.¹¹ The great Khan introduced to the region a form of public administration that permitted a rather thin layer of Mongolian, Turkic and Chinese bureaucrats to rule over vast swaths of territory. For the next two centuries, the Mongol empire gradually broke up into a number of sub-regions, with Central Asia falling under the authority of Genghis Khan's son Chaghatai. The Chaghatai dynasty ruled Central Asia until the beginning of the fifteenth century.¹²

During this period, the basic concepts of Islamic jurisprudence survived, but were subsumed under Mongol law. The reality of having such a far-reaching empire meant that at local levels, autonomy was allowed. As long as the subjects in the region paid their taxes and supported the larger empire at specific times, they were left alone. The Mongols were the first major empire in the region where the center of power was a significant

distance away from Central Asia, and thus required the employment of indigenous bureaucrats and lawgivers. Ultimately, this proved to be the undoing of Mongol control over Central Asia.

Timurid

The collapse of the Mongol empire's hold over Central Asia in the fifteenth century was due primarily to the rise of Tamerlane also known as Timur the Lame.¹³ The historic significance of this period is less a case of how the legal framework changed, as to how its legitimacy was articulated. For the most part, the Timurids adopted the same structure as their predecessors. The successive reigns of Shah Rukh and Ulugh Beg saw a greater emphasis on reinforcing Islamic precepts into the legal framework.

Perhaps more important was that legal authority was indigenous and not dependent upon an outside power. For the first time in almost 700 years, the seat of power and the cultural roots of authority were from Central Asia itself. Interestingly, the Timurid dynasty exemplified the same caprice and omnipotent power that previous leaders had.¹⁴ This was because there remained the strong belief that the ruler was above the law, and that the personal qualities of Central Asian leadership were paramount. However, even today's scholars note that this shift of legal authority from an outside source to a local one was a critical step forward for legal developments in the region. Though the Timurid period is often cast as one mired in violence and expansion, the very survival of the state depended on a cohesive legal regime.

Khanate/Emirate

Barely 100 years later, the unified, Timurid political system came crashing down. The armies of Shaybani Khan sacked the key cities of Samarkand and Bukhara and drove the Timurid dynasty out of the region. Babur, who was the ruler at the time, eventually re-established his authority in the South Asian subcontinent, founding what was to become the Moghul dynasty. Within Central Asia, Shaybani Khan was unable to solidify his authority over the entire region, and competing political entities soon emerged. Thus began an era of fragmented Khanates and Emirates in Central Asia.¹⁵

With the demise of any unifying force, rule of law also was fragmented. Dynastic leaders ruled the key political entities in Central Asia. Writers and poets of the succeeding centuries noted, often with despair, the lawlessness that prevailed across the region.¹⁶ Indeed, intellectuals from Bukhara found reason to criticize the form of government in the

state, hoping to reform the system to reflect a more legally sound system. This was particularly true in the late-nineteenth century, when the rulers of the Emirate of Bukhara were Muzaffar al-Din and Abd al-Ahad.¹⁷ In short, while a written and precedent-based tradition of rule of law in Central Asia existed prior to the Russian conquest, it remained at odds with the political reality of the time. Ultimately, law became a mere shell for despotic rule.

The Jadidist movement exemplified the pressure for political and legal reform in Bukhara and Khiva. Much has been written on the competing reform agendas of the Jadids.¹⁸ Even the more conservative members of this movement advocated a change in the current legal regime in the protectorates. Whether it was a return to traditional Shari'a law or the introduction of Western (Russian) law, the consensus view was that the very nature of political power in the region was an impediment to order and progress. Because of the absolute authority of the Emir of Bukhara and Khan of Khiva, such reform efforts ultimately failed. Consequently, up through the Russian Revolutions of 1917, the legal reformers of Central Asia often remained in exile.

Russian and Soviet-era Law

For the present-day regimes in Central Asia, the Russian and Soviet eras hold special significance. The existing legal structures in the region are products of what transpired during this period, as is the current generation of political officials and legal experts. The institutional arrangements that developed were at odds with the traditional notions of law cited earlier, but in numerous instances, one finds a merger of such concepts and an accommodation of traditional forms of authority within the new Russian, and then Soviet, legal regime.

Imperial Russia

The territories fully incorporated in the Russian Empire saw a more forceful introduction of Russian law. The protectorates of Bukhara and Khiva, on the other hand, were able to rely on their own traditions. From the Russian perspective, the feeling was that Russian law was superior to local custom and law; however, the general policy allowed local law to exist in certain cases.¹⁹ As Russian political structures were established in the region—particularly in the area of today's Kazakhstan, Kyrgyz Republic, and parts of northern Uzbekistan—the Russian overlords had to decide the extent to which local law would prevail. These regions, designated

Turkestan and Transcaspia, saw the development of Russian law not only for Russian subjects, but also for the indigenous population.

The application of law was always a challenge, as noted by evaluations coming from St. Petersburg. In the 1880s and again in the early 1900s, commissions were sent from St. Petersburg to evaluate the colonial rule in the region. For example, the Giers Commission of 1882 focused on how effective public administration could develop where there was a dearth of qualified officials and a lack of proper funding.²⁰ Most critically assessed was the notion that bureaucrats resorted to relying on traditional, and often corrupt, forms of governance.

Bukhara and Khiva, the two remaining protectorates, remained stagnant in their own personality-based systems.²¹ The frustration experienced by reform-minded individuals in these territories prompted some to find common cause with various revolutionary and reformist groups in Russia itself, including the radical Bolshevik faction of the Russian Social Democratic and Labor Party—the precursor to the Communist Party of the Soviet Union (CPSU).²² Thus, ironically, the Jadidist reformers came to the conclusion that external assistance would most likely be required to enact change in their countries—and they sought assistance from groups that would eventually result in their downfall.²³ Naturally, there were critical debates within the reformist community and a significant number did not side with the Bolsheviks, either joining the local insurgencies²⁴ against the Red Army or simply emigrating.

The Soviet Period

The Soviet era actually began with a nod towards local custom. It was not until the mid-1920s that various diktats were announced which folded local courts and juridical proceedings into the Soviet experience.²⁵ By the 1930s, the Central Asia region was under Soviet control, although this continued to be a struggle for Soviet officials in the ensuing decades. The tension between trying to enforce objective legal codes and the reality of personal rule continued through this period, often with tragic results. Soviet publications and contemporary studies are replete with accounts of how the Soviet government tried to quickly institute their own legal norms in the region. From the initial “unveiling” campaign in the 1920s, which advocated that women should remove their traditional veils as a sign of modernity, to the legal restrictions placed on Islamic organizations, the Soviet leaders sought to radically transform the concept of law in Central Asia.²⁶

In the beginning, the Soviet leaders were keen to introduce law as a form of social engineering and development. As noted by Peter Solomon in his work on Soviet law, the ramifications were legion. Law played several key roles: it was an explanation of socialist legality, it possessed an educational function, and it legitimized the new economic system that was being put in place. It was imperative to ensure that the population understood how and why the centrally planned economic system was necessary. Indeed, economic crimes were often considered more severe than crimes of violence, with a greater share of capital punishment decisions made for embezzlement, forgery and bribery.²⁷

While varying in practical importance, “socialist law and order” (*sotsialisticheskaya zakonnost’ i pravoporiadok*) was the defining framework during most of the Soviet period. During the 1920s and 1930s, Stalin flaunted these laws and the notion that a legal structure was in place seemed dubious at best. The arbitrary nature of the Great Purge has been well documented, and it was the object of Soviet legal reform in the 1950s and 1960s, when there was an attempt to return to “Soviet law.” Central Asia experienced all of these shifts within the Soviet system. In reaction to the Stalinist era, the emphases on institutions and frameworks were critical to the Soviet leaders. For example, in 1987, the CPSU Central Committee adopted a resolution entitled “On Measures to Increase the Role of the Prosecutor’s Oversight in Strengthening Socialist Legality and Law and Order.” Such cumbersome measures were designed to specify how the Procuracy, for example, could carry out its duties.²⁸

Because of its subservient place in the Soviet Union, Central Asia did not become a source of reform or opposition. For the most part it was a passive participant in these discussions—with one important exception. During the Brezhnev era, there was a return to the sort of administrative policies that existed during the Mongol and Imperial Russian periods—one of demanding fealty and loyalty from the region while simultaneously leaving the internal workings of the region to the devices of the local leaders.²⁹ Up through the Gorbachev reforms of the 1980s, there were varying interpretations of the extent to which this *de facto* autonomy existed.

Contrast of Traditional and Soviet Structures

It was the emphasis on institutions and structures within the Soviet system that created problems for the Central Asians. Ultimately, the role of personalities remained important in Central Asia, in spite of measures adopted during the Soviet period. Highlighting the problems on Soviet law in the region was the “Cotton Scandal” of the 1980s, often referred to

as the “Uzbek Affairs.” In it, Soviet investigators uncovered a widespread corruption network in the Central Asian republic of Uzbekistan that involved government officials fabricating cotton production figures. By recording higher-than-actual numbers for cotton harvests, extra income was provided to local officials. Scores of top officials in the Uzbek S.S.R. were indicted, tried and punished for a range of economic crimes centering around the misrepresentation of data on annual cotton harvests. Indeed, First Secretary of the Uzbek Communist Party, Sharaf Rashidov, was suspected of being the key figure in this scandal, but his death in November 1983 pre-empted any trial or serious investigation.³⁰ However, the long-term damage of this event was that it pitted the Russian perception of local adherence to law (or the lack thereof) with the Uzbek feeling that law was really a tool of the Russians to repress the local community.³¹

The Gorbachev reform agenda further exacerbated tensions in the region vis-à-vis Moscow. Not only did Gorbachev replace key leaders in the republics, but he also stressed the need to combat lawlessness and corruption in Central Asia. Indeed, the stereotype within the Soviet Union of Central Asians as being lazy and corrupt had fallen to a new low. The legacy of the cotton scandal and Russian view of the archaic clan relations that permeated the systems in the region only worsened the situation.³² Limited attempts were made in 1989 and 1990 to reform the entire Soviet legal framework, divorcing it from communist ideology. However, any lasting impact was cut short as a result of the dissolution of the Soviet Union in 1991.

At the time of independence, the Central Asian states found themselves in difficult situations with respect to the legal regimes in the newly created countries. Previously, legislation had been dictated from the central government, with such efforts not being trusted. Now, the burden was on the new national governments to establish order. But serious questions faced these states: Should there be a return to past legal frameworks? Did this require a reconsideration of Islamic law? How did one factor in traditional custom, or even the historic legacies of individuals such as Tamerlane? These questions became the subject of discussion and debate within the region and among Western scholars, shaping the understanding of legal reform in Central Asia. As will be seen, each state approached these questions with great trepidation and concern, mainly as there was a sense that too much reform could lead to political and social instability.

Respective Frameworks of Legal Regimes in Central Asia

Common to all five Central Asian states was the suddenness of independence. Initial legal structures were often replications of the existing Soviet models. When reforms along Western lines were introduced, one saw slight divergence from the foundations of socialist legalism. However, the extent to which these new legal norms were adopted varied, often with a gap between what was on paper and what took place in practice. In the past decade, all five countries of Central Asia have introduced distinct structures, such as constitutions, legal codes and procedures for law enforcement agencies. At the same time, there are difficult challenges, including the forms of leadership, corruption and an inability or lack of desire by officials to actually enforce these very codes. Not surprisingly, the extent to which a given country has been able to develop legal reforms depends upon a number of internal dynamics.

Kazakhstan

Communist Party of Kazakhstan First Secretary Nursultan Nazarbaev assumed the position of "President of the Kazakh S.S.R." in the waning months of the Soviet Union and has remained in office ever since. An erstwhile supporter of Gorbachev's reform agenda in the 1980s, Nazarbaev took on the public persona of a reformer himself.³³ As a result, there was a flurry of legislation in the early-1990s that suggested a real effort to transition from an authoritarian communist party system to one based on rule of law.³⁴ He presented an initial constitution in 1993 and electoral laws in 1994 that supported a more vibrant notion of political pluralism. These provided a template for diversifying power and authority within the Kazakhstani political and legal system. Indeed, the electoral laws may have been too successful, for the legislature began to challenge Nazarbaev's reform measures and sought to introduce their own.

By 1995, it was clear that the country was not developing into a democracy. The constitution had been re-written and extensive legislative reform was enacted in that year under the auspices of correcting potentially corruptive rules and regulations. In addition, the constitutional reform was carried out in order to minimize the importance of the legislature, which could have developed as a base of opposition to the president.³⁵ To his critics, it was obvious that Nazarbaev passed criminal codes directed against his opponents and created legal support for maintaining his tenure in office.

Eventually, attention was directed at a broader range of legal issues. The 1997 criminal code currently sets the framework for legal actions in the country.³⁶ For the most part, it remains a hybrid document, including some of the Soviet-era rights and responsibilities, as well as new concepts introduced from Western advisors and programs. These include the rights of citizens, criminal procedures, the rights of the detained, and other basic measures. Questions continue to arise as to how these are to be enforced. Either the wording is sufficiently vague, or the responsibilities of law enforcement agencies are simply not spelled out. Perhaps most troubling from a structural perspective is that the legal system is exclusively an executive branch prerogative. The Interior Ministry, which houses the police and security forces, is responsible for upholding the law. On occasion, these forces are unaware of legislative changes and ignore acts by the legislature. Law enforcement officials continually stress that they do not have the resources sufficient to fight real corruption and crime. When one sees police officials signaling cars for inspection at major intersections in Almaty in order to extort money from the motorists, it is clear that corruption hits at all levels of the law enforcement community.³⁷

In addition to these structural challenges, other problems remain. While a legal regime exists in the country, the personal rule of President Nazarbaev remains paramount, and he has repeatedly used the legal system to undermine his political opposition. The apogee of these attacks came in 2001, when former Prime Minister Akezhan Kazhegeldin was tried in absentia for crimes ranging from corruption to abuse of power. Another individual who was targeted in recent years is the former Akim (Governor) of Pavlodar Oblast, Galymzhan Jakianov. Charged and convicted on corruption charges in 2002, Jakianov had reportedly challenged Nazarbaev on a number of procedural issues, specifically that Akims should be directly elected and not appointed by the President.³⁸

In sum, legal reform in Kazakhstan is at a crossroads. After an initial flurry of activity and a de-Sovietization of the legal language, it is still difficult to conclude that the country has a strong sense of rule of law. Arbitrary enforcement, irregular funding of police and a leadership system that encourages the outright flaunting of the law by top officials underscore the range of problems that still confront Kazakhstan. That these issues are at least being discussed in the country is an indicator that reform is possible; however, recent signs are less than hopeful.

The Kyrgyz Republic

Perhaps the most intriguing case of legal reform in the 1990s was the Kyrgyz Republic. Once cast as a showcase success story for the region, the government of President Askar Akaev received extensive support from international aid organizations and foreign governments to create an island of democracy in Central Asia. For much of the 1990s, foreign analysts continued to support this belief.³⁹ However, electoral missteps in the late-1990s and a series of attacks on opponents to the president soured this belief.

Compared to the other states in the region, the Kyrgyz Republic does have a more developed sense of rule of law. The Kyrgyz legislature adopted its first post-Soviet constitution in 1993, a document praised by numerous outside organizations and governments as being the most progressive in Central Asia.⁴⁰ Citizenship is not restricted by language competency or ethnicity, and basic rights of speech, assembly, religion, movement and even ownership of private property are all noted. It took another five years, but a completely new criminal code has been introduced in the country. Up to that point, a hybrid of Soviet-era and new measures were in place. In the new code, particular attention is paid to what the courts, procurators and law enforcement agencies can and cannot do. For the latter, detailed restrictions on search and seizure, detentions and arrests, and even evidence handling are provided.⁴¹ The new code represents certain innovations that have taken place in the areas of law enforcement and prosecution. The court system that was established is based on a prosecutorial model more in line with European countries than the former Soviet Union.

Similar to the situation in Kazakhstan, the reality is somewhat less encouraging. Ethnic minorities, especially the Uighurs, claim that they are purposefully targeted in police actions. In addition, they complain of unfair practices in employment and advancement in the government sector and in state-owned business. The sense of being second class citizens permeates such groups. Some, such as the Russians, Ukrainians and Germans, have left for their home countries. The government has made gestures to these groups by creating societies that can channel interests in cultural events and educational institutions, but these are often underfunded and poorly supported.⁴² Religious groups, in particular, feel pressure directed at them as part of the global war on terrorism. As a result of the actions in Afghanistan following the September 11 attacks in the United States, Kyrgyz officials have stepped up their own measures against suspected terror-

ist supporters in the country. Not surprisingly, this approach has targeted ethnic minorities and religious-based organizations.

Another noticeable shortcoming in the country's rule of law is that key opposition figures remain subject to harassment. Daniyar Usenov and Feliks Kulov are undoubtedly the most celebrated cases, but other activists are targeted as well. These individuals have voiced their opposition to President Akaev's administration and have questioned the reform measures enacted in the past decade. These figures were not allowed to run in the 2000 presidential election on dubious, technical grounds, thus Akaev avoided a situation where he might not actually continue in office.⁴³ In fact, President Akaev repeatedly has used the legal system to target opponents and have them declared ineligible to stand for office. In addition, Zamira Eschanova, the editor of *Res Publica*, periodically spends time in jail for her articles criticizing the president, proving the fact that the media has limits, as well.

This emphasis on protecting the reputation of the president underscores an emerging trend in the country: the elevation of the status of Askar Akaev to that of supreme leader. While his authority is perhaps less secure than that of his neighbor, Nazarbaev, it is apparent that Akaev is not above obviating the rule of law to strengthen his position. As he maneuvers through restrictions on running for an additional term in office in 2004, it is likely that he will be declared immune from all prosecution if, or when, he eventually steps down as president.

Uzbekistan

Unlike the governments of Kazakhstan and the Kyrgyz Republic, Uzbekistan was reticent to accept Western assistance in attempting legal reform. Indeed, when the Uzbek constitution was under review for ratification by the *Oliy Majlis* (legislature), an external panel of the American Bar Association was given barely a week to assess, evaluate and make recommendations on the document. The constitution was accepted in December 1992, without including any of their cursory comments. As with the other Central Asian states, the Uzbek constitution lists a range of freedoms: speech, religion, assembly, property ownership, and the like. In an effort to stress the multi-ethnic nature of Uzbek society, the right to express one's national heritage is also enshrined in the constitution.⁴⁴

The current criminal code was enacted in 1994, with several amendments and additions taking place since that time. In 1998, the code was overhauled and the death penalty restricted for certain types of crimes. Further reforms took place in late-2001 and punishments were reduced for

many non-violent crimes. Given troubles with the Islamic Movement for Uzbekistan (IMU), Hizb ut-Tahrir and the conflict in Afghanistan, crimes related to acts of terrorism were given high priority, and are currently the only ones permitting capital punishment.⁴⁵ In the years after the Afghan campaign, the government has expressed a sense of being under siege.

Structurally, the Uzbek judicial system is quite comprehensive. A Constitutional Court oversees the legality of parliamentary laws and executive decrees, a Supreme Court is the highest court for criminal and civil cases, and a Supreme Economic Court oversees matters such as privatization law, foreign investment and monetary disputes. The court system exists at multiple levels, with local level courts and appellate equivalents at regional and *wiloyat* (state) levels. Ostensibly, one can appeal cases to higher levels, much along the lines of the U.S. court system.⁴⁶

Since independence, Uzbekistan has followed a path of solidifying the power of the executive, creating a rather feeble legislature, and establishing a legal code that is impressive on paper, but has enough loopholes to allow the government to do as it wishes. For example, the president is now above reproach with respect to prosecution, and those who criticize him are subject to investigation and trial. More important, with respect to the rule of law, the president has the ability to override *Oliy Majlis* decisions and circumvent normal legislative procedures if he deems it necessary. Rule by decree has been the norm for much of the past decade.

Perhaps the most common criticisms leveled against the Uzbek notion of rule of law is that it is arbitrary and that law enforcement agencies enact it with varying levels of excess. The government arrested thousands of individuals following the February 1999 bombings in Tashkent, often holding them for weeks and months before pressing charges. Human Rights Watch, a non-governmental organization that focuses on human rights conditions worldwide, has been particularly vocal on Uzbekistan's record. Years after the February bombings, some individuals still remain in custody and have yet to be officially charged. Once an individual is charged, trials have become difficult to monitor and it appears that irregular standards are being used time and again.⁴⁷

The Interior Ministry, which is responsible for the prison system in Uzbekistan, has been accused of being responsible for numerous deaths of prisoners under suspicious circumstances. These prisoners range from individuals suspected of being Islamic extremists to secular political opponents, most of whom find themselves in the Jaslyk prison, located in the far western reaches of the country. More recently, Human Rights Watch

reported additional cases of mistreatment and persecution of secular opposition figures.⁴⁸

The problem of Uzbek human rights abuses has been the topic of several protests by foreign Ambassadors to the country, most notably the Ambassadors from the United Kingdom and the United States. Of particular concern has been that Uzbekistan is of strategic importance to the United States. Human rights groups have often said that Uzbekistan is now using this connection to shield its own abusive policies. On the other hand, several amnesties of prisoners have taken place in recent years and it seems that the Uzbek government is being more receptive to the criticisms levied against it by the international community.⁴⁹

As with the Kyrgyz Republic and Kazakhstan, the presidential system of Uzbekistan dominates the country's political process, ultimately affecting the notion of rule of law. As in the other two states, Uzbek leaders tend to act as if personal connections and influence are much more important than impersonal laws. The fact that Uzbekistan was never considered to be a bastion of reform actually might help it in the near future, for unlike in Kazakhstan and the Kyrgyz Republic, the international community still has some interest in seeing if reforms can take place. Indeed, the U.S. government expressed this argument in the early-2000s.

Turkmenistan

Without question, the most dubious legal regime in Central Asia belongs to Turkmenistan. As with the other countries, a constitution and basic legal code were adopted in the first few years. Much of this was a direct regurgitation of the Soviet-era documents, replete with the same flowery verbiage. The reality remains much the same—rule of law is arbitrarily honored and the government itself does not abide by these documents.

The current constitution was ratified in May 1992. Not surprisingly, it harkens to the 1977 Soviet constitution with its emphasis on citizen responsibilities, as opposed to rights. There is the usual listing of rights, such as speech, assembly, religion and press. However, these are limited by Article 19, which notes that they cannot harm the social order and national security. The constitution is also silent on the issue of enforcement of rights. The criminal code finally was modified in June 1997. Like those of its neighbors, Turkmenistan's code notes punishments, procedures and rights.

The court system of Turkmenistan is structurally balanced: Local and regional courts hear criminal and civil cases. Decisions can be appealed to the higher levels, if that level deems the case important enough.

At the highest level is a Supreme Court, which ostensibly only will hear cases of national importance. The president appoints all judges and chairs the Supreme Court. The court system to date has not challenged the constitutionality of any presidential decree or law, nor has it established a strong legacy of legality. Making things more difficult, no independent lawyers currently practice, and the notion of fair legal representation is still wanting.⁵⁰

The Interior Ministry is responsible for enforcing the criminal code. International human rights organizations repeatedly have criticized the means by which police and security forces uphold the law.⁵¹ Human rights violations are legion and the conditions of prisons are considered to be some of the worst in the former Soviet Union. Minority groups and religious organizations, in particular, have experienced the difficult legal environment. For example, the Law on Religious Organizations restricts the way in which faiths can be registered in the country. Given the number of signatures needed, only the Sunni Muslim and Eastern Orthodox faiths are technically legal.⁵²

The personalistic rule of President Saparmurat Niyazov means that, ultimately, the caprice of a leader sets the tone for politics and society in Turkmenistan. Individuals who run afoul of the president often are convicted on trumped-up charges. President Niyazov has declared that a fundamental feature of Turkmen law is the adherence to the *Ruhnama*, or “holy book” that he supposedly wrote.⁵³ It is a collection of sayings and narratives that suggest specific ways in which Turkmen must live. This book, representative of Niyazov’s leadership style, discards any form of structure and objectivity.

In short, Turkmenistan represents perhaps the widest gap between rhetoric and practice. However, it is also important to note that international organizations seldom are able to conduct interviews or collect data in the country independent of official Turkmen sources. Thus, it is difficult to gauge the extent to which rule of law issues are actually being addressed within the country’s judicial and political systems. At best, anecdotes from exiles or observations from foreigners working in the country are the most reliable information.⁵⁴

Tajikistan

A possible exception to these rather pessimistic case studies is Tajikistan. Mired in a civil war for most of its first six years after independence, Tajikistan has been viewed as a country in perpetual crisis and lawlessness. A number of volumes have been published outlining the course of events

that dominated the country between the years of 1992, when the fighting began, and 1997, when a peace accord was signed.⁵⁵ To an extent, the government was never able to extend a rule of law to the entire country. Indeed, today pockets of Tajikistan remain effectively outside of the central government's control.⁵⁶

However, an important legal reform development in Tajikistan is the founding document of the National Reconciliation Committee that set the terms of the 1997 peace agreement. In it, the warring sides agreed to abide by certain rules, based on an equitable sharing of political offices in the government. The Constitution of 1994 remains the primary legal document of the country. Again, on paper, the constitution lists a range of individual freedoms and responsibilities. Yet the period of the civil war witnessed countless violations of constitutional authority. A reversal of this trend was, and remains, a key element of the post-war agreement. The criminal code has yet to be significantly reformed and the current structure resembles that of the Soviet period. In short, the notion of "guilty until proven innocent" prevails, and harsh penalties still apply to most levels of crime, including economic crimes, which were often deemed the most severe in the Soviet Union.

Tajik law does prohibit discrimination for ethnic, religious and gender reasons, although this is not always enforced. Uzbek minorities, for example, consistently complain of being left out of the political process. In addition, religious minorities have difficulties in Tajikistan. Jews, Baha'is and Zoroastrians are often relegated to fringe status in the country. Sunni Islam remains paramount in the country with the small Russian minority practicing Eastern Orthodox. In addition to the common problems of arbitrary enforcement and government caprice, regional and local warlords periodically use their own form of frontier justice. Every year, rival clans murder scores of officials and businessmen. This form of frontier justice is particularly problematic in the outlying regions, especially the Badakhshon region.⁵⁷

Following the example of the other four presidents, Imomali Rakhmonov also has created conditions where ultimately he will be immune to any future prosecution if he steps down from office. Still, the focus on the leader does not exist as strongly in Tajikistan as it does in, say, Turkmenistan. However, it is clear that individual personalities and familiar relationships dominate the political process in Tajikistan. Moreover, the groups excluded from this inner circle, such as the Uzbeks of Sogd wiloyat, find themselves unprotected in the legal system.

Basic Dilemmas and Reform Efforts

To varying degrees, all five Central Asian states face the conundrum of trying to establish viable legal systems. At the same time, the respective presidents are reluctant to give up their power and actually abide by “rule of law” principles. These challenges have been the focus on international assistance programs, the success of which is dependent upon how diligently the countries accept and implement reform.

Challenges

Corruption

Without question, corruption is deemed critical in Kazakhstan and the Kyrgyz Republic, according to public opinion polls. One would suspect that such views are held in the other three states of the region, although full, clear surveys on the situation are not forthcoming. As opposed to notions of episodic corruption in the respective states, corruption in Central Asia is seen as being systemic.⁵⁸ While much of what is known about corruption in Central Asia is based on a few studies and anecdotal evidence, they shed light on the general problem throughout the region.⁵⁹

Not surprisingly, the effect of corruption on the legal system is profound. To ensure judgment, payments must be made. Judges are poorly and irregularly paid, and often are swayed by much-needed financial gain in their decision-making. Likewise, defense attorneys require fees beyond their salary, and even investigative police require some form of bribery. Studies by Transparency International and Freedom House indicate that such corruption exists in all five Central Asian states.⁶⁰ However, because of access problems, it is not surprising that the only detailed studies have taken place in Kazakhstan and the Kyrgyz Republic.⁶¹

Ultimately, this type of corruption erodes the moral foundation of the legal system and precludes citizens from truly respecting the judicial process. This lack of confidence means that citizens often go to alternative sources of justice, including tribal and clan leaders or even the mafia and other criminal elements. The former only reinforces traditional modes of authority while the latter perpetuates a lack of adherence to the law.

Retribution

The legal system in each of the countries has been used to punish political opposition, often on spurious charges. In Kazakhstan, political opponents of Nazarbaev, such as Akezhan Kazhegeldin, have been brought up on charges of corruption. The same can be said for Abdy Kuliev in Turkmenistan, Feliks Kulov in the Kyrgyz Republic, and Shukhrullo

Mirsaidov in Uzbekistan. In Uzbekistan, such charges also befall regional hakims and other subordinates of Karimov, when they're deemed to be getting too powerful. The Cabinet of Ministers today is a collection of survivors of these periodic, but not fatal, purges. In Kazakhstan, even a family figure has been recently charged with corruption: The previously mentioned Zhakianov, who was the Hakim of Pavlodar Oblast, is a relative of Nazarbaev's wife.

Nowhere is the legal system used with such caprice as in Turkmenistan. For many years, President Niyazov has used the legal system to charge his opponents and subordinates who are acquiring too much power with various crimes to remove them from possible opposition. It is rare for top officials to remain in the same office for more than a year, and in the past three years, the president has completely re-staffed his cabinet on several occasions. The November 2002 assassination attempt was yet another pretext for reshuffling individuals in the power ministries.⁶² It is interesting to note that these charges, particularly the ones that deal with abuse of office or corruption, are probably grounded in reality. However, the arbitrary nature of filing charges against some corrupt *hakims* while letting another equally corrupt official go free is what many find disturbing. Indeed, all of the problems previously noted are accentuated when retribution against actual forms of corruption are unevenly applied.

Retribution is not only directed against political figures. In addition to the case of Zamira Eschanova in the Kyrgyz Republic, the political leaders have targeted other journalists. In October 2002, Sergei Duvanov, a journalist from Kazakhstan, was charged with sexual crimes. That he was about to embark on a speaking tour of the United States and Europe to discuss the state of the media in Kazakhstan was most likely more than a coincidence; previously, he had written negative articles about the Nazarbaev family.⁶³ In general, due to such potential threats, journalists in the region tend to censor themselves and avoid such confrontations.

Transparency

Another factor is transparency, which is defined for this context as the ability to clearly see and evaluate the decision-making process in the legal system. In short, a transparent process is one in which there is an openly-understood logic, devoid of back-room deals and capriciousness. According to the non-governmental organization Transparency International, the states of Central Asia fare poorly in this respect. In recent reports where the states have been mentioned, their rankings are abysmal and charges of systemic corruption are rife. Besides these external evalua-

tions, anecdotal evidence from citizens and officials in the region indicate that this is a key concern for domestic stability and ultimately, regional security. Uncertainty plays a large part in the legal system and corrodes any confidence that citizens of the Central Asian countries have in a reform agenda.

This situation parallels that of the Khanate period in Central Asian history, as well as the Soviet era. The difference today is that foreign investment was not a factor during those times. Indeed, besides eroding the public confidence in the legal code, the impact on foreign investment must be noted. According to a number of impartial reports, the business climate in all five Central Asian states is abysmal, at best, for potential investors—unless they are the major corporations in the energy sector. The basic rule of thumb is that all discussions that are looked on favorably at the presidential level are most likely going to succeed.⁶⁴ However, those that have to deal with the ministries and bureaucracies of the region more often than not fail. In the long run, the reality of an unstable business environment may be the most harmful effect of the lack of effective legal systems in Central Asia.⁶⁵

Efforts at Reform

The question that remains, in light of this rather pessimistic appraisal, is what can be done? Indeed, legal professionals have been working for over a decade to rectify the current situation and infuse a more rigorous adherence to law. Surprisingly, there have been internal efforts as well, although these tend to be adversely affected by financial constraints. In Kazakhstan and the Kyrgyz Republic, independent lawyers have established their own associations. In Uzbekistan, a similar effort is underway for defense attorneys. Because the legal professions in each of these states had been state-run for much of the past century, the level of independence remains rather low. In addition, human rights organizations within the countries have attempted to register in order to open up offices within the respective countries, with a recent success being the legalization of the Human Rights Society of Uzbekistan in 2002. It is hoped that if such offices do open—whether for international or country-based groups—they will provide the impetus for governments to be more transparent in the legal reform process.

The key obstacles for reform efforts, as noted, are financial and structural. In both areas, international organizations have played key roles. Initially, groups such as the American Bar Association provided expert advice on the drafting of legal codes and constitutions. However, the problem has

been that with each re-write of constitutions, power becomes more centralized and obstacles for opposition groups greater. Indeed, advice offered by outside observers has largely been ignored.

In other areas, success has been greater. The American Bar Association continues to support one of the earliest efforts to aid the legal system in Central Asia: the Central and East European Law Initiative (CEELI) Project. Working with lawyers in the region, CEELI lawyers and staff members conduct analyses of draft laws and civil codes, as well as train the newly-emerging cadre of lawyers within these countries. Initiated in all states, CEELI remains active in Kazakhstan, Uzbekistan and the Kyrgyz republic.⁶⁶ Other non-governmental organizations are also engaged in the region, offering their services to governments and non-governmental associations alike.

Because the obstacles noted above adversely affect the economic and business climate in Central Asia, the World Bank has remained engaged in the reform process. This international financial institution is devoting resources to stabilizing the legal regimes in the countries, so as to promote a more active investment climate. In addition, transparency is a central theme in recent Bank reports, which note the trend towards limited improvements in Kazakhstan and the Kyrgyz Republic, with more serious shortcomings in Uzbekistan.⁶⁷ As one example, the World Bank is initiating a legal reform project in Kazakhstan that has a budget of up to \$18.5 million.

This compliments an initiative by the European Bank of Reconstruction and Development (EBRD) on court reform that is being offered to all five Central Asian countries. According to EBRD officials, this effort follows on legal reform measures that have included reform programs on transaction security, bankruptcy law, telecommunications, leasing, arbitration, and taxation. Finally, the European Union (EU) has focused its attention on strengthening the legal regime in Central Asia. Through its Technical Assistance to the Commonwealth of Independent States (TACIS) Program, the EU has offered training programs for procurators and other legal experts. Perhaps more ambitious is the effort by the EU to create a common legal regime in the Central Asian and South Caucasus regions, paralleling the efforts to do the same within Europe. Such goals are long-term, but it is clear that support is available.

With each of these efforts, there are shortfalls and obstacles. The United States Agency for International Development (USAID), which contributes millions of dollars in assistance to the region each year, must balance out programs for legal reform with those devoted to economic,

environmental, educational and health reform, to name a few. Moreover, as security assistance continues to be a high priority for the countries in the region, the receptivity of the governments for extensive legal aid is questionable.

Conclusion

In each of the Central Asian states, efforts have been made to resuscitate legal systems that many considered to be moribund. Both internal and external organizations have initiated reform measures, although it is too early to tell how effective they will be. More broadly speaking, several observations can be made regarding the status of legal reform in Central Asia. First of all, all of the countries have made efforts to use the discourse of Western legalism in their respective frameworks. Second, this has both been a product of, but also a reason for, substantial international assistance in reconstructing constitutions, legal codes, and procedures for law enforcement agencies. Third, in spite of this aid, much remains to be done. It is clear that many of the pre-Soviet and Soviet-era traditions and methods are still applicable to the current states, and a true transition to a rule of law society has yet to take place.

In all five states, while there is evidence that legal reforms are taking place, much work is still required. Indeed, it appears as if the initial flurry of activity involved in creating actual codes and constitutions was deemed sufficient and the actual enforcement of the laws has yet to be fully implemented. That said, it is also clear the respective states are attempting to reshape the legal discourse from the Socialist legalism framework of the twentieth century to a more Western-oriented legal code that focuses on rights and responsibilities of the individual, as opposed to groups. However, even this latest layer of legal discourse has yet to tackle what remain key dilemmas and challenges to the respective systems.

Admittedly, it has been just over a decade and to expect a complete transformation in such a short period of time is asking too much. Since a transition in logic, theory and belief is required, it is no surprise that common citizens and those who find themselves in the legal system are more than cynical. Fundamental to the problem of legal reform in Central Asia is the notion of trust. Do the respective populations actually believe in the authority of

law in their countries, versus the notion of a powerful leader? Are those surrounding the leaders viewed as mere kleptocrats who are pillaging the system in manners little different than their Soviet-era predecessors? To date, the status is mixed. While the situation varies in the respective countries, the problems are still apparent in all.

The problem of trust is a significant legacy from the Soviet era. Because justice and law were deemed arbitrary, a general lack of trust and respect for the concept of law developed. Previous, indigenous forms of law were banned, leading some to insist that return to such practices would enhance the respect for law. That said, it is evident that even pre-Soviet/pre-Russian law was not always seen as just and fair. When given the option of having a case heard in a Russian or a Shari'at court, the parties involved often opted for the Russian court, where remuneration was in monetary terms, not in disfigurement or death. In the Soviet era, the legal system was seen as competent at the lower level for minor offenses. However, for politically designated crimes, it was seen as a tool of the Communist Party. Today, it seems, this mentality has not changed. Ultimately, for the political systems of Central Asia to survive past the current generation of autocrats, a sound and credible legal system must be firmly entrenched. The written and rhetorical foundations exist—now it is incumbent upon the five states to put meaning into these words.

Notes

¹ For the purposes of this chapter, Central Asia is defined as the states of Kazakhstan, the Kyrgyz Republic, Tajikistan, Turkmenistan, and Uzbekistan. Clearly, references to pre-1924 Central Asia will include names of states and empires that existed within the geographic setting of these five states.

² Harold Lamb, *The Earth Shakers* (Garden City, NY: Doubleday, 1949); Rene Grousset, *The Empire of the Steppes: A History of Central Asia*, translated by Naomi Walford (New Brunswick, NJ: Rutgers University Press, 1970), 409-469.

³ The challenge remains trying to assess what is in writing and what is actually enforced. Throughout much of the Soviet period, laws were quite extensive and often appeared to be rather fair and judicious. The actual implementation of these laws, on the other hand, revealed a system that was often capricious and unbalanced. Often legal codes were used for political reasons and to maintain a certain power relationship.

⁴ Many of these are designed to prove the origin of certain civilizations in the region, predating those outside Central Asia. Perhaps as a Soviet legacy, they are also presented as relics (“perezhitki”) of oppressive, pre-capitalist societies. This is particularly evident in the national museum in Bukhara, Uzbekistan.

⁵ For an assessment of these periods, see Grousset, *op cit*. The strengths of these traditions are discussed in Edward A. Allworth, *The Modern Uzbeks: From the Fourteenth Century to the Present, a cultural history* (Stanford, CA: Hoover Institution Press, 1990), and Vasilii V. Barthold, *Four Studies on the History of Central Asia*, translated by V. Minorsky and T. Minorsky (Leiden: NL: E.J. Brill, 1958).

⁶ Peter Green, *Alexander of Macedon 356-323 B.C.: A Historical Biography* (Berkeley, CA: The University of California Press, 1992). This is also assessed in Russian scholarship. See I.S. Shiffman, *Aleksandr makadonskii* (Leningrad: "Nauka," 1988).

⁷ A basic precept of the growing Muslim world was to establish a broad framework within which various societies and cultures could live. These developments were evolutionary and reflected a maturation of Islamic thought over the first several centuries of the faith's existence. See Wilfred Cantwell Smith, *Islam in Modern History* (Princeton, NJ: Princeton University Press, 1957), and Svat Soucek, *A History of Inner Asia* (Cambridge, UK: Cambridge University Press, 2000).

⁸ Shafi'is Risala, *Islamic Jurisprudence*, translated by Majid Khadduri (Baltimore, MD: The Johns Hopkins Press, 1961).

⁹ The "decline" of these Central Asian centers of learning was the result of geographic isolation, the struggles of the Islamic world vis-à-vis the European Christian world, and even the opening up of trade routes to the orient that bypassed the "great silk road." Consequently, Central Asian Islam did not experience the reform movements that took place in the Arab world in the eighteenth and nineteenth centuries.

¹⁰ For a concise discussion of Adat, see Anuar Galiev, "Traditional Institutions in Modern Kazakhstan" (1997), electronically published by the Slavic Research Center in Hokudai, Japan, <<http://src-h.slav.hokudai.ac.jp/sympo/97summer/galiev.html>>.

¹¹ Depending upon the source material and transliteration method, Genghis Khan is also referred to as Chinggis Khan or Ghenghis Khan, among others. See Leo de Hartog, *Genghis Khan: Conqueror of the World* (London: I.B. Tauris, 1989), and Robert Marshall, *Storm from the East: From Genghis Khan to Khublai Khan* (Berkeley, CA: The University of California Press, 1993).

¹² Grousset, *op cit.*, 326-346.

¹³ Of the Barlas tribe, Tamerlane (1336-1405) was a local political and military figure who quickly consolidated his authority by forging alliances or defeating opponents in swift attacks. At the time of his death, Tamerlane had conquered most of Central Asia and territories stretching into modern-day Iran, Afghanistan, Pakistan, and China.

¹⁴ Soucek, *op cit.*

¹⁵ Seymour Becker, *Russia's Protectorates in Central Asia: Bukhara and Khiva, 1865-1924* (Cambridge, MA: Harvard University Press, 1968). See also Helene Carrere d'Encausse, *Islam and the Russian Empire: Reform and Revolution in Central Asia* (London: I.B. Tauris, 1988).

¹⁶ Adeeb Khalid, *The Politics of Muslim Cultural Reform: Jadidism in Central Asia*. (Berkeley, CA: The University of California Press, 1998), and Faizulla Khodzhaev, *Kistorii revoliutsii v Bukhara* (Tashkent: Uzbekscoe gosizdat, 1926).

¹⁷ In Central Asian history, these two Emirs were notorious for their corrupt regimes and opulent lifestyles at a time when the "forces of modernization" were slowly enveloping the Emirate. Critics from within the country wrote of the regime's shortcoming, and Russian officials in Central Asia parlayed this into a dependency relationship by creating a "protectorate system" for Bukhara and the neighboring Khanate of Khiva. See Seymour Becker, *op cit.*

¹⁸ See Khalid and Carrere d'Encausse as two excellent studies of Jadidism at this time. "Jadidism" itself means "new school," or "new method" and represented a reformist movement that existed in the Muslim regions of the Russian empire and the neighboring protectorates in the late-nineteenth and early-twentieth centuries. Modeled after the reformist movements that emerged in nineteenth-century Egypt and the twentieth-century Ottoman Empire, this reform movement had a number of sub-groupings. Some advocated political reform; others sought a return to a "more pure" form of Islam; and still others emphasized a greater unity of the various Turkic peoples. The Jadidist movement was eventually overtaken by events in the Russian empire, particularly the Bolshevik Revolution and the creation of the Soviet Union, at which time many either emigrated or were victims of the Stalinist purges for being "nationalists."

¹⁹ Helene Carrere d'Encausse, "Organizing and Colonizing the Conquered Territories," in *Central Asia: 120 Years of Russian Rule*, edited by Edward Allworth (Durham, NC: Duke University Press, 1989), 151-171. For a range of interpretations of this policy, see *Russia's Orient: Imperial Borderlands*

and Peoples, 1700-1917, edited by Daniel R. Brower and Edward J. Lazzerini (Bloomington, IN: Indiana University Press, 1997).

²⁰ Carrere d'Encausse, 155.

²¹ Khalid, *op cit*.

²² Tragically, the Jadidists believed that the Bolsheviks would ultimately leave the region alone, supported by Lenin's concept of "national self-determination." However, by the mid-1920s, J.V. Stalin had compromised the parameters of national self-determination so much that it was impossible for the minority regions to gain their independence. The respective leaders of the various ethnic regions were subsequently targeted in the purges of the 1930s. See Richard Pipes, *The Formation of the Soviet Union: Communism and Nationalism, 1917-1923* (New York: Atheneum, 1980).

²³ This was the dilemma faced by regional elite such as Faizulla Khojaev. A member of the Young Bukharans, Khojaev agreed to work with the new Soviet government and was instrumental in bringing Bukhara into the Soviet Union as a central component of the newly-formed Uzbek Soviet Socialist Republic. He remained active in Uzbek politics until 1937, when he was arrested for a range of anti-state crimes. He was executed the following year. The bulk of this "First Generation" of Central Asian leaders met similar fates. See Alexandre Bennigsen and S. Enders Wimbush, *Muslim National Communism in the Soviet Union* (Chicago, IL: The University of Chicago Press, 1979).

²⁴ The most prominent insurgency was the "Basmachi" movement, which lasted from 1919-1923 as a full-fledged force and until the early 1930s as a less-effective guerilla force. See Glenda Fraser, "Basmachi (parts I and II)," *Central Asian Survey* (1987) 6, no. 1, 1-73, and 6, no.2, 7-42.

²⁵ Gordon B. Smith, "The Legal System: Toward a Civil Society," in *Soviet Politics: Struggling with Change* (New York: St. Martin's Press, 1992), 202-232.

²⁶ For a discussion of restrictions on Central Asian culture, see Shoshana Keller, *To Moscow, Not Mecca: The Soviet Campaign Against Islam in Central Asia, 1917-1941* (New York: Praeger, 1991).

²⁷ See Peter Solomon, *Soviet Criminal Justice Under Stalin* (Cambridge, UK: Cambridge University Press, 1996).

²⁸ For an assessment of the legal reforms that took place in the 1980s, see works by Eugene Huskey, including "Soviet Justice in the Age of Perestroika," *Christian Science Monitor*, August 22, 1989, 18 and "The Soviet Criminal Process: Expanding the Right to Counsel in Pre-Trial Proceedings," *American Journal of Comparative Law*, 34, no. 1 (1986).

²⁹ Gregory Gleason, "Fealty and Loyalty: Informal Authority Structures in Soviet Asia," *Soviet Studies*, 43, no. 4 (1991).

³⁰ Even today, there is controversy surrounding Rashidov's death. Russian journalists claim that he committed suicide, while those sympathetic to him suggest a more sinister demise. Most likely, his death was through natural causes (officially, a heart attack). Through much of the 1980s, his reputation was tarnished in the Soviet Union. It was not until the 1990s that President Islam Karimov officially "rehabilitated" Rashidov. For an assessment of the "Cotton Scandal," see Gregory Gleason, "Nationalism or Organized Crime? The Case of the 'Cotton Scandal' in the USSR," *Corruption and Reform*, 5, no. 2 (1990), 87-108.

³¹ James Critchlow, *Nationalism in Uzbekistan: A Soviet Republic's Road to Sovereignty* (Boulder, CO: Westview Press, 1991).

³² James Critchlow, "Prelude to 'Independence': How the Uzbek Party Apparatus Broke Moscow's Grip on Elite Recruitment," in *Soviet Central Asia: The Failed Transformation*, edited by William Fierman (Boulder, CO: Westview Press, 1991), 131-158.

³³ Nursultan Nazarbaev, *My Life, My Times, and the Future* (London: Pilkington Press, 1998).

³⁴ Martha Brill Olcott, "Nursultan Nazarbaev and the Balancing Act of State Building in Kazakhstan," in *Patterns in Post-Soviet Leadership*, edited by Timothy J. Colton and Robert C. Tucker (Boulder, CO: Westview Press, 1995), 169-190.

³⁵ The drama of this intra-Kazakh power struggle is well noted in Martha Brill Olcott, *Kazakhstan: Unfulfilled Promises* (Washington, DC: CEIP, 2002).

³⁶ "Kazakhstan," *Nations in Transit, 2002 Report* (New York: Freedom House, 2003), 217-220.

³⁷ A common practice is for *militia* (police) to occasionally flag motorists down and cite a violation. However, a modest “fee” will generally satisfy the arresting officer, and the motorist is allowed to proceed. While motorists dislike this occurrence, some do see it as the only way in which street police actually get paid (wage arrears are major problems in government departments).

³⁸ Ironically, Jakianov was viewed as a “protégé” of Nazarbaev, distantly related to the president via Nazarbaev’s wife.

³⁹ For writings that assess these conflicting reputations, see Bruce Pannier, “The Kyrgyz Republic: The Early Dawn of a Bright Day?,” *Transition OnLine* <www.tol.cz>, January 16, 1998 and John Anderson, *Kyrgyzstan: Central Asia’s Island of Democracy* (New York: Harwood Academic Publishers, 1999).

⁴⁰ Eugene Huskey, “Kyrgyzstan: The Fate of Political Liberalization,” in *Conflict, Cleavage, and Change in Central Asia and the Caucasus*, edited by Karen Dawisha and Bruce Parrott (Cambridge, UK: Cambridge University Press, 1997), 242-276.

⁴¹ “Kyrgyz Republic,” *Nations in Transit, 2002 Report* (New York: Freedom House, 2003), 233-235.

⁴² In the mid-1990s, the Kyrgyz government established the “Slavonic University” in Bishkek, which would be an institute designed to cater to Russian-speaking citizens of the country. Because of the relatively high number of non-Kyrgyz speakers, there is a greater effort to establish such entities.

⁴³ Most likely, President Akaev would have received the plurality of votes in a potential second round and would have continued his term in office. However, the fear of receiving anything less than an overwhelming majority is perceived to be a weakness in the region—perhaps a holdover from the Soviet-era elections where 95 percent+ “voter approvals” were common.

⁴⁴ Roger Kangas, “State Building and Civil Society in Central Asia,” in *Political Culture and Civil Society in Russia and the New States of Eurasia*, edited by Vladimir Tismaneanu (Armonk, NY: M.E. Sharpe, 1995), 275-277.

⁴⁵ One can see a parallel with the Soviet death penalties for economic crimes. Terrorist groups today challenge the legitimacy of the current regime, much in the way that “speculators” and “capitalists” were seen as challengers to the legitimacy of the centrally-planned economy of the Soviet Union.

⁴⁶ “Uzbekistan,” *Nations in Transit, 2002 Report* (New York: Freedom House, 2003), 423-425.

⁴⁷ In mid-February 1999, a series of bombs exploded in Tashkent, killing and injuring scores of Uzbekistani citizens. While no group claimed responsibility, the government has concluded that it was the work of Islamic terrorists, specifically the IMU. Over 2000 individuals were arrested in the ensuing months, with over 100 receiving significant prison terms or the death penalty. The government explanation of these events can be found in the sensationalist book by Oleg Yakubov, *The Pack of Wolves: The Blood Trail of Terror* (Moscow: Veche Publishers, 2000).

⁴⁸ *Persecution of Human Rights Defenders in Uzbekistan* (New York: Human Rights Watch, May 1, 2003) is a recent example of these reports. Also see *Uzbekistan at Ten: Repression and Instability*, Asia Report N.21 (Osh/Brussels: International Crisis Group, August 21, 2001).

⁴⁹ Critics of the United States’ global war on terrorism use the “geopolitical argument” in explaining why it maintains ties with Uzbekistan. The U.S. Congress has had several hearings on this issue since October 2001.

⁵⁰ “Turkmenistan,” *Nations in Transit, 2002 Report* (New York: Freedom House, 2003), 395-398.

⁵¹ *Cracks in the Marble: Turkmenistan’s Failing Dictatorship*, Asia Report no.44 (Osh/Brussels: International Crisis Group, January 17, 2003).

⁵² “Unrecognized” faiths include Baha’is, various Evangelical Christian groups, and Hare Krishnas, among others. Churches with strong missionary components find it particularly difficult to work in Turkmenistan.

⁵³ Saparmurat Niyazov, *Ruhnama* (Ashgabat, TK: TurkGosIzdatel’stvo, 2002). The book is published in Turkmen, Russian, and English and is currently being translated into other languages as well.

⁵⁴ For example, when the International Foundation for Election Systems conducted public opinion surveys in Central Asia on issues of politics, economics, and social welfare, four of the five countries permitted the surveys to take place, even allowing the U.S.-based Non-Governmental Organization to partner with local organizations. Turkmenistan refused to permit the survey to take place.

⁵⁵ See Shirin Akiner, *Tajikistan: Disintegration or Reconciliation?* (London: Royal Institute of International Affairs, 2002) and Muriel Atkin, *The Subtlest Battle: Islam in Soviet Tajikistan* (Philadelphia, PA: The Foreign Policy Research Institute, 1989).

⁵⁶ Tajikistan is over 90 percent mountainous, with the eastern part of the country including some of the most remote villages in the region. Outside of Dushanbe, the government's control is sometimes challenged, although any violence is considered low-intensity as compared to the period of the civil war.

⁵⁷ *Central Asia: The Politics of Police Reform*, 14-20.

⁵⁸ Simply put, "episodic" corruption suggests that cases of corruption are isolated and are based on specific personalities and situations. They do not reflect on the legal or political system as a whole. "Systemic" corruption, on the other hand, is just that: corruption is required to function in the society, and the very nature of corruption permeates all levels of society—from politics to economy to healthcare and education.

⁵⁹ Nancy Lubin, *Central Asians Take Stock: Reform, Corruption, and Identity* (Washington, DC: USIP, 1995).

⁶⁰ While Transparency International has not conducted an in-depth study of Central Asia, they have included specific cases in the region for their annual reports. See <www.transparency.org> for further information, as well as the country reports in Freedom House's *Nation in Transit, 2002 Report*, *op. cit.*

⁶¹ These "rates" refer to illegal fees that one must pay for items ranging from licenses for restaurants, building permits, entrance fees for schools, opportunities for certain jobs, etc., See Roger Kangas and Craig Olson, *Anticorruption Assessment: Pavlodar Oblast, Kazakhstan* (Bethesda, MD: Development Alternatives Incorporated, November 1998).

⁶² On November 25, 2002, shots were allegedly fired at President Niyazov's car as he drove to office in Ashgabat. Almost immediately, key opposition figures such as Boris Shikhmuradov, Hudaiberdy Orazov and Nurmuhammed Hanamov were implicated. In addition, Niyazov went so far as to suggest the Uzbek and American ambassadors were somehow linked to the "criminal organization" that was out to assassinate him. Roger Kangas, "Memories of the Past: Politics in Turkmenistan," *Analysis of Current Events*, Vol.14, no.4 (December 2002),16-19.

⁶³ The investigation and trial have been covered extensively by the publication Eurasianet (<www.eurasianet.org>).

⁶⁴ This is a theme addressed by a number of recent articles, including Charles William Maynes, "America Discovers Central Asia," *Foreign Affairs*, Vol. 82, no. 2 (Mar/Apr 2002), 120-132; Martha Brill Olcott, "Pipelines and Pipe Dreams: Energy Development and Caspian Society," *Journal of International Affairs*, Vol. 53, no. 1 (Fall 1999), 305-323; and most recently Mark Berniker, "Despite Corruption Concerns, Kazakhstan Continues to Lure Investors," <www.eurasianet.org> (April 28, 2003).

⁶⁵ This view was most recently expressed in a report by the International Crisis Group at the time of the annual conference of the European Bank of Reconstruction and Development (EBRD), which was held in Tashkent, Uzbekistan in May 2003. See *Central Asia: A Last Chance for Change* (Osh/Brussels: International Crisis Group, April 29, 2003).

⁶⁶ For a variety of reasons, Uzbekistan remains a difficult country for the ABA to work. However, when addressing less political issues, such as property law, progress has been made. For example, see *Analysis of the Draft Civil Code Section on Property Rights for the Republic of Uzbekistan* (Washington, DC: CEELI, January 19, 1996).

⁶⁷ *Anticorruption in Europe and Central Asia* (Washington, DC: World Bank, May 2003).