Introduction

Turpal-Ali, a young man, and Deshi, a young woman from one of the villages in Chechnya, were in love and wanted to get married.[1] But Deshi's parents were strongly against their marriage. The issue was that Turpal-Ali and Deshi were distant relatives and according to Chechen customary law, known as *adat*, a bride and a groom cannot be related within seven generations. Turpal-Ali then decided to arrange a bride-kidnapping, a practice also justified by references to custom. Turpal-Ali and his friends kidnapped Deshi from the street and brought her to his family home, hoping that this act would change her parents' decision. Families of women kidnapped this way often force them to stay and get married to avoid potential rumors and ultimately protect family honor. However, Deshi's parents remained firm. They took their daughter back. Then they appealed for religious arbitration – a Sharia trial – against Turpal-Ali. Unlike adat, Sharia sees bride-kidnapping as a gross transgression. Deshi was apparently complicit in the kidnapping, but she denied it during the Sharia arbitration. A local qadi, an Islamic judge, heard the case and ruled that Turpal-Ali should be punished with flogging, forty strokes. According to custom, any corporal punishment is a serious offense against one's honor and Turpal-Ali's family became very angry at Deshi and her family.

[1] I use pseudonyms throughout the book, except when I write about or quote public figures – state officials, high-level religious leaders, and academics, who wanted to be named and did not express any politically sensitive opinions. For Chechen and Russian words, I use a simplified Library of Congress transliteration standard, except for names that have appeared prominently in Western publications.

Some time later, the elders of the village were drinking vodka at the river bank. Alcohol is effectively banned in Chechnya, but some Chechens who belong to the older "Soviet" generation still manage to get liquor. During this gathering, Musa, Turpal-Ali's family patriarch, publicly offended Deshi's honor by calling her a slut. In response, Said, Deshi's family patriarch, punched Musa in the face. When Musa came home, he told his three sons that he had been beaten by Said. The sons took baseball bats and knives and went to Said's house to avenge the offense. Despite the fact that Said was much older than the attackers, he was able to fight back. In fact, he was a master of wrestling, and during the fight he took a knife away from one of Musa's sons and killed him with it. The murder trial that I attended in a district court judged Said according to Russian state law. In parallel, the two families were negotiating to avoid blood revenge, another major customary institution, in response to the murder of Musa's son. The fact that Said killed the man in an act of self-defense mattered little. According to adat, blood must be avenged with blood. As a part of the informal resolution between the two feuding sides, Said's family was banished from the village. The details of the events that led to the murder and the negotiations regarding blood revenge were not heard in the courtroom – I learned them in the corridors of the court.

This anecdote illustrates the state of legal pluralism in contemporary Chechnya. Even though there is only one de jure legal system – Russian statutory law – there are also powerful parallel systems of de facto law: one based on customary law (adat) and another based on Islamic law (Sharia). Individuals have to navigate the complex interrelationships between these legal systems and sometimes have to choose which forum to bring their disputes to.

The presence of multiple alternative legal systems also has a tremendous political significance. References to adat and Sharia have become commonplace in media reports on Chechnya. For example, after the large-scale insurgent attack on Chechnya's capital Grozny on December 4, 2014, the Head of the Chechen Republic Ramzan Kadyrov proclaimed through his Instagram account that relatives of people who killed police officers would be expelled from the region "without the right to return, and their houses will be razed to the ground." A few days later, unidentified militias burned the houses of the alleged terrorists' families. The government referred to the principle of collective punishment, which is one of the core principles of the Chechen customary law, but which violates Russian state law. Magomed Daudov, the Speaker of the Chechen Parliament and Kadyrov's closest associate, went even further.

Once he called for Sharia arbitration against a politician from the neighboring Republic of Ingushetia. Another time, he announced blood revenge against a popular anti-government blogger. Both Kadyrov and Daudov are high-level Russian state officials in charge of implementing Russian state law. Yet they publicly appealed to non-state legal systems rooted in tradition and religion. On the institutional level, the government of Chechnya semi-formally introduced qadi courts (a Sharia forum) and councils of elders (a customary forum) all across the region, even though these institutions are not compatible with Russian law.

THE PUZZLES

The persistence and power of non-state legal systems in Chechnya should not be surprising, especially given the long history of resistance to Russian rule and state repression in the region. In the post-Soviet period, resistance and repression culminated in two bloody wars (1994–1996 and 1999–2009).[2] In the mid-1990s, Chechnya was a de facto independent state where Sharia law was implemented. During the wars, many Chechens mobilized to fight the Russian army. In turn, the Russian army used brutal violence against the population. Thus, the long history of the conflict can potentially explain why many Chechens reject state-sponsored justice and turn to religious and customary authorities to solve their disputes.

But not all Chechens reject state law. Consider the case of Seda, a woman who lived in Grozny, the capital of Chechnya. Seda was kicked out of her home by her husband and his relatives when she was seven months pregnant. She returned to her parents' home, where she gave birth to a girl. A few months later, the relatives of her former husband arrived at her parents' house and demanded that she return "their child." According to Chechen customary law, children belong to their paternal family. Seda's male relatives agreed with the reasoning of her former husband's family and gave the baby away. Despite social pressure to

[2] The periodization of the Second Chechen War is complicated. The Russian government never recognized it as a war and framed it as a counterterrorist operation. It started in 1999. By summer 2000, the Russian army had taken over all the major cities and declared that the military operation was over. However, the guerilla war and counterinsurgency raged on for another 6–7 years. The Russian government lifted the counterterrorist operation status in Chechnya in 2009, which is the official end of the conflict. People in Chechnya also have different views on when the war ended.

accept her fate, Seda filed a lawsuit in a state court. The court ruled in her favor and returned Seda's daughter to her.

Seda's behavior is not an anomaly. From 2009, when the Second Chechen War officially ended, to 2016, when I finished my field research, Russian state courts in Chechnya, which were literally reestablished on the war's ruins, heard more than half a million cases.[3] The vast majority of them – around 70 percent – were civil disputes. Given that Russian state law was considered the "law of the enemy" during the war, and that reliance on it can be penalized by family and community ostracism, the fact that state law is nevertheless utilized in dispute resolution in postwar Chechnya is striking. No less striking is that the government of the Chechen Republic, which is formally in charge of implementing state law, openly promotes customary law and Sharia, as the anecdotes above indicate. In this book, I address these two interrelated puzzles. First, I study government policies towards non-state legal systems – the legal politics of state-building from above. Second, I explore the individual legal preferences and behavior that constitute state-building from below.

THE ARGUMENT

This book argues that state-building can be productively explored through the lens of lawfare – the use of state and non-state legal systems to achieve political, social, or economic goals.[4] I employ the notion of lawfare to capture the agency of politicians and lay individuals within the structural conditions of legal pluralism, a situation when state law co-exists with non-state legal systems. I contend that legal pluralism is not just an artifact of a weak state or underdevelopment. Nor is it simply a reflection of a ruler's ideology or an aspect of local culture. Politicians

[3] To be precise, from 2009 to 2016 the courts heard 522,476 cases. Civil disputes constituted 69 percent of all cases. The Justice-of-the-Peace Courts heard 68 percent of the cases, and the courts of general jurisdiction remaining 32 percent. Calculated by the author based on government statistics from the Judicial Department of the Chechen Republic (*Upravlenie Sudebnogo Departamenta v Chechenskoy Respublike*).

[4] In using the term "lawfare," I build on the conceptual framework proposed by Mark Massoud. See Massoud, Mark Fathi. *Law's fragile state: Colonial, authoritarian, and humanitarian legacies in Sudan*. Cambridge University Press, 2013. The anthropological understanding of lawfare adopted in this book is different from its understanding in security studies as the use of law as a weapon of war. For the latter perspective see, for example, Dunlap Jr., Charles J. "Lawfare today: A perspective." *Yale Journal of International Affairs* (2008): 146–154, and Kittrie, Orde *Lawfare: Law as a weapon of war*. Oxford University Press, 2016.

sometimes suppress non-state legal systems and often ignore them, but in other political configurations they strategically promote legal pluralism. Individuals sometimes attach strong normative commitments to justice systems based on tradition and religion, but in other situations strategically "shop" between state and non-state forums. Top-down legal politics and individual legal beliefs and behaviors together shape the particular form of state-building.

The keys to the puzzles of state-building lawfare in places like Chechnya – i.e., conflict-ridden peripheries where the local population is culturally distinct from the core group of the state – are found in the political and social cleavages that exist within these regions. The major political cleavage that arises is from conditions of nested sovereignty – empires in the past and federalism now. Almost all of the peripheries of postcolonial states are characterized by acute problem of fragmented social control. Aceh in Indonesia, Mindanao in the Philippines, each of the seven ethnic states in Myanmar, Kashmir in India, the Kurdish regions of Turkey, Syria, and Iraq, the Anglophone regions of Cameroon, the Tuareg regions in Mali, the Mexican state of Chiapas, and many other "rogue" peripheries illustrate this point. Communities living in these peripheries have their own systems of justice that are often rooted in tradition and religion. Under the conditions of nested sovereignty, both central and peripheral rulers in these peripheries may pursue their own state-building projects and lawfare based on manipulation of the plural systems of justice.

The central societal cleavage of state-building lawfare is gender. Family life, and in particular the regulation of female sexuality is a major arena for struggles over social control. Questions about who can marry and/or divorce whom as well as how; who inherits property; and notions of honor and shame are crucial for national, ethnic, and religious boundary-making. Consequently, the state and social forces expend special effort to control these spheres. Deshi's and Seda's stories exemplify the critical role that gender plays in peripheral state-building lawfare.

Both political and societal cleavages that drive state-building lawfare in the periphery are actualized and intensified by armed conflict. The canonical theoretical approach associated with Charles Tilly links state-building to external warfare.[5] The account presented in this book changes the focus to internal conflict, in particular the separatist armed struggle that

[5] Tilly, Charles. *Coercion, capital, and European states,* AD 990–1992. Oxford: Blackwell, 1990.

fractures nested sovereignty and leads to competitive state-building. Studying the interrelationship between warfare and lawfare has an important analytical advantage. Legal pluralism is deeply embedded in history and culture. Conflict serves as a shock that destabilizes societies and presents an opportunity to explore the micro-foundations of individual behavior and government policies under legal pluralism. In this book, I understand conflict as a process: the radical rupture of "normal" social life as a result of experiences of violence that leave profound social and political legacies.

Conflict and political violence accompanied state-building lawfare throughout Chechen history. Legal pluralism developed in Chechnya in the nineteenth century as a result of Russian colonization and anticolonial armed struggle. I argue that when the metropole's grip on the periphery is firm, legal politics is dictated by center's ideology and state capacity. The Russian Empire institutionalized legal pluralism in Chechnya in the nineteenth century as a part of its divide-and-rule strategy and as a response to low state capacity and the orientalist vision of the local society. The Soviet authorities, driven by their high-modernist ideology of legal centralism and relying on soaring state capacity, attempted to eradicate custom and Sharia in Chechnya. However, the project ultimately failed because of Stalin's forced deportation of the entire Chechen nation to Central Asia in 1944. This brute use of state violence strengthened Chechen national identity and alienated Chechens from state law. Yet when the metropole's power falters as a result of political crisis or conflict, local rulers turn legal pluralism into an arena for lawfare aimed at ensuring their political survival.

The book documents how in postwar Chechnya the regional government headed by Kremlin-imposed ruler Ramzan Kadyrov promotes customary law and Sharia to facilitate local political control. First, this policy allows the local ruler to borrow legitimacy from tradition and religion, which both have great appeal among the Chechen population and especially among men. Second, it increases the autonomy of the regional authorities from Moscow, the metropole. Third, it follows the rationale of coalition-building: the local government incorporates the traditional authorities and ideological supporters of non-state legal systems into its coalition.

The decade-long separatist armed conflict transformed the nature of coalition-formation through the militarization of authority. The war brought men who used to carry guns into government offices. Even though many of them now wear suits rather than uniforms, their

governance practices differ fundamentally from those of the ideal type of Weberian bureaucrat. These rebels-turned-bureaucrats are strong ideological supporters of custom and Sharia. Promotion of non-state legal systems in postwar Chechnya can be interpreted as a concession to this powerful constituency.

At the same time, the conflict paradoxically created demand for state law from below. I document how the experiences of state violence during the First Chechen War led to an alienation from the Russian state among the local population. However, everything changed during the Second War. Collective state violence during the Second War led to deep structural transformations. It ruined traditional hierarchies and spurred the penetration of state law into Chechen family and community life. What was distinct about the Second War? It was more brutal, longer in time, and involved massive inter-Chechen violence. The effects of these conflict-induced structural transformations overshadowed the strengthening of ethnic and religious identities in response to state violence.

The Second Chechen War was a blow to all hierarchies – whether generational, clan, or class, but especially in gender relations. As a result, after the war, a sizable share of Chechen women started using the Russian state legal system, a system that, in contrast to customary law and Sharia, at least formally acknowledges gender equality. State law is corrupt, inefficient, slow, and its use is associated with community and family ostracism. Yet, many Chechen women prefer to use state law.

My study suggests that the disruption of gender hierarchies can be attributed to several interrelated mechanisms. Perhaps the most significant cultural change was that the conflict forced women to enter the public sphere. Women became the representatives of their families and communities and as such interacted with military and civilian administrations. Even women who remained traditionalists at heart had to learn the bureaucratic practices of the Russian state. At the same time, conflict gave rise to militarized masculinity and neotraditionalism among Chechen men. This divergence was multiplied by changes in bargaining power within families due to wartime transformations of gender positions in the labor market. Simply put, the war left many men unemployed and many women became the breadwinners in their families. Furthermore, the effect of the disruption of gender hierarchies was exacerbated by the more general process of community disintegration. Extended families and communities became substantially less powerful as a result of the killings of influential leaders, mass migration, and intracommunal feuds.

This change diminished the ability of the extended family and community to apply social pressure against women who used state courts. Finally, after the war, many of the NGOs created during wartime refocused on gender problems and served as support structures for women's legal mobilization.

This book shows that women's legal mobilization in Chechnya faced a strong backlash from the Chechen regional government. The most notorious manifestations of the neotraditionalist policies of the Chechen government have been the semiformal introduction of polygamy, support for the practice of honor killings, and the imposition of a restrictive women's dress code. Furthermore, the men in charge of state law actively disrupt its functioning. For instance, law enforcement agencies often do not enforce child custody decisions in favor of mothers who, like Seda, won their cases in court. This backlash can be interpreted as an attempt to build a political order on the re-traditionalization of social order.

Thus, this book reverses the classic story of state-building. In contrast to the dominant narrative, in which the government attempts to penetrate a strong society, and the society resists these attempts, this book shows how local agents of the government can undermine state justice systems by promoting non-state institutions, and how some segments of the population can voluntarily use formal state law that might seem foreign to them. The book shows that legal pluralism is an inherently political phenomenon, an arena of contestation between individuals, social groups, and political actors.

SIGNIFICANCE OF THE STUDY

This book is about Chechnya, a tiny region approximately the size of Connecticut or Northern Ireland. However, its role in post-Soviet Russian politics has been inversely proportional to its size. For instance, Vladimir Putin's rise to power from relative obscurity has often been attributed to his initiation of the Second Chechen War. Speculations about Chechnya abound in Russian and Western media, but academic studies on the ground have been rare. This book provides an account that incorporates both the notorious Chechen warlords and ordinary Chechens, with a particular focus on their everyday life, disputes, worldviews, and narratives about history. The book deals with the politicized and controversial issues of Sharia law, armed conflict, and gender relations. It de-exoticizes these phenomena by relating them to state-building under legal pluralism.

The issue of legal pluralism is relevant well beyond Chechnya. In his grand account of the formation of Western law, historian Harold Berman observed that "the coexistence and competition within the same community of diverse jurisdictions and diverse legal systems" was "perhaps the most distinctive characteristic of the Western legal tradition."[6] Some degree of legal pluralism is present in all contemporary societies. Even in places with a strong rule of law, formal state laws coexist and interact with alternative dispute resolution forums, adjudication among religious minorities, university codes of honor, and internal corporate statutes.

Legal pluralism is particularly pervasive, however, in postcolonial societies and so-called fragile or weak states, where formal state institutions compete for jurisdiction with powerful legal systems that are rooted in religion and tradition. According to some scholarly estimates, as many as sixty-one countries explicitly recognize some form of traditional governance and customary law.[7] In many other countries and regions, non-state legal systems operate without being formally recognized. For example, in Afghanistan after the U.S. invasion, the formal state legal system coexisted with Taliban courts, which operated according to Sharia, as well as with arbitration through a myriad of customary organizations.[8] In sub-Saharan Africa, many countries grant substantial de jure powers to customary leaders or informally guarantee these chiefs nonintervention in their jurisdiction.[9] Recently, there has been a resurgence of traditional governance in Latin America.[10] Quite often,

[6] Berman, Harold J. *Law and revolution, the formation of the western legal tradition*. Harvard University Press, 1983: 9.

[7] Holzinger, Katharina, Roos Haer, Axel Bayer, Daniela M. Behr, and Clara Neupert-Wentz. "The constitutionalization of indigenous group rights, traditional political institutions, and customary law." *Comparative Political Studies* 52, no. 12 (2019): 1775–1809.

[8] Giustozzi, Antonio and Adam Baczko. "The politics of the Taliban's shadow judiciary, 2003–2013." *Central Asian Affairs* 1, no. 2 (2014): 199–224; Murtazashvili, Jennifer. *Informal order and the state in Afghanistan*. Cambridge University Press, 2016; Swenson, Geoffrey. "Why US efforts to promote the rule of law in Afghanistan failed." *International Security* 42, no. 1 (2017): 114–151.

[9] Baldwin, Kate. *The paradox of traditional leaders in democratic Africa*. Cambridge University Press, 2016; Boone, Catherine. *Property and political order in Africa: Land rights and the structure of politics*. Cambridge University Press, 2014. Mamdani, Mahmood. *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton University Press, 1996; Ubink, Janine. *Traditional authorities in Africa: Resurgence in an era of democratisation*. Leiden University Press, 2008.

[10] Carter, Christopher. *States of extraction: The emergence and effects of indigenous autonomy in the Americas*. PhD Dissertation, University of California, Berkeley, 2020; Díaz-Cayeros, Alberto, Beatriz Magaloni, and Alexander Ruiz-Euler.

legal systems based on tradition and religion are promoted at the subnational level. For example, some provinces in Indonesia, Malaysia, Nigeria, and Pakistan have recently adopted Sharia regulations, and states in Mexico have recognized traditional governance. These places are characterized by nested sovereignty – a political arrangement that allows for local rulers' political autonomy and thus approximates the imperial setup of indirect rule, which was a fertile ground for legal pluralism in the past.

Legal pluralism is a fascinating phenomenon in itself: how does a society function when there are multiple alternative rules of the game? Political theorists and legal scholars have long been writing about its normative implications for sovereignty, secularism, understanding of law and violence, legitimacy, minority rights, etc. – the list goes on.[11] This book looks at legal pluralism to rethink state-building.

State-building, understood as the institutionalization of the long-term domination of state organizations and personnel in society, has three major dimensions: coercive, extractive, and regulatory, or to put it simply, violence, taxes, and justice. Academic literature focuses primarily on the coercive and extractive dimensions. In this book, I shift attention to the regulatory dimension, that is, the use of state law vis-à-vis alternative forms of social control.[12] The issue of social control is essential because its

"Traditional governance, citizen engagement, and local public goods: Evidence from Mexico." *World Development* 53 (2014): 80–93; Van Cott, Donna Lee. "A political analysis of legal pluralism in Bolivia and Colombia." *Journal of Latin American Studies* 32, no. 1 (2000): 207–234. Yashar, Deborah. *Contesting citizenship in Latin America: The rise of indigenous movements and the postliberal challenge*. Cambridge University Press, 2005.

[11] Benhabib, Seyla. *The claims of culture: Equality and diversity in the global era*. Princeton University Press, 2002; Cohen, Jean, and Cecile Laborde, *Religion, secularism, and constitutional democracy*. Columbia University Press, 2016; Cover, Robert. *Narrative, violence, and the law: The essays of Robert Cover*. University of Michigan Press, 1992; Tamanaha, Brian. *Legal pluralism explained: History, theory, consequences*. New York: Oxford University Press, 2021.

[12] I build on Joel Migdal's approach to state-building. Migdal, Joel. *Strong societies and weak states: State-society relations and state capabilities in the Third World*. Princeton University Press, 1988; *State in society: Studying how states and societies transform and constitute one another*. Cambridge University Press, 2001. Among the recent contributions to understanding of state-building through the lenses of law, see Boucoyannis, Deborah. *Kings as judges: Power, justice, and the origins of Parliaments*. Cambridge University Press, 2021; Fabbe, Kristin. *Disciples of the state?: Religion and state-building in the former Ottoman world*. Cambridge University Press, 2019, and Franco-Vivanco, Edgar. "Justice as checks and balances: Indigenous claims in the courts of colonial Mexico." *World Politics* 73, no. 4 (2021): 712–773.