CHAPTER ONE

Nomadism and *Adat*

Throughout the nineteenth century, the economy of the Middle Horde Kazakh clans was firmly based in nomadic pastoralism. The imperatives of the nomadic way of life shaped many of the principles, rules and procedures of Kazakh judicial customs [*adat*]. That is, the meanings and values that Kazakhs attached to such principles as justice, retribution, crime and punishment, and judicial authority were in many ways deeply rooted in the everyday relationships of the nomad to his livestock, the land and his kin. As long as the Middle Horde Kazakhs remained nomads, *adat* was conditioned at least in part by nomadic needs. In this chapter, I examine the features of Kazakh nomadic pastoralism and kinship organization that were important to the expression of the rules and procedures of *adat* adjudication. I explore the relationship of the Middle Horde Kazakh nomad to land and livestock. Kinship, land and livestock formed the basis of the relationship between *adat* and nomadism, which was manifested in the person of the *biy*: the *biy* was at once a judge and the respected leader of a nomadic kinship group. Through an examination of the ways that the *biy* expressed his authority, I seek to understand how the judicial behavior of the Middle Horde Kazakhs was shaped at least in part by their identity as nomads. In the second half of the nineteenth century, the relationship of *adat* and nomadism was severely challenged by the changes in socioeconomic conditions of nomadic herds as well as the reconfiguration of power relationships under Russian colonial rule.

The Relationship of the Middle Horde Nomads to Land and Livestock

Kazakh nomadic pastoralism was a way of life characterized by seasonal migration of herds of livestock to pastures and water sources, which was necessary to ensure subsistence living of both the animals and the communities that tended them. Nomadic pastoralism as a form of animal husbandry was the main economic activity for the Kazakhs as a whole through the imperial period, and it was supplemented to varying degrees within the Great, Middle and Little Hordes by trade with neighboring settled communities and by irrigation agriculture. For instance, in general the Little Horde was more market-oriented at an earlier date than the Middle Horde, because of the proximity of their summer pastures to Russian military and trading posts, as well as provincial centers such as Orenburg and Astrakhan. In contrast, many of the clans of the Great Horde had little interaction with Russian markets until the mid-nineteenth

century, but they traded their animal products regularly at Central Asian oasis markets. The Great Horde also relied on elaborate canal systems of irrigation to provide water to their herds and for small-scale agriculture. In the nineteenth century, the Middle Horde Kazakhs gradually learned to take advantage of trade opportunities at Russian outposts (like Akmolinsk and Karkaralinsk), which grew in number and in size on their territories, and at the same time, agriculture gradually became an important aspect of the steppe economy as land for nomadic pastoralism became scarce.[1]

Mountain aul

Source: Central State Archive of Film Documents and Audio Recordings of the Republic of Kazakhstan, Almaty, Kazakhstan

In the nineteenth century, the Middle Horde Kazakh nomads practiced their way of life in a territory that is defined geographically with the natural boundaries of the Irtysh and Ishim Rivers in the north to the Chu and Syr-Darya Rivers and Lake Balkhash in the south, and from the Tobol and the headwaters of the Turgai Rivers at the eastern edge of the Orenburg steppe in the west to the Tarbagatai and western Altai mountain ranges in the east.[2] Under Russian colonial rule in the second half of the nineteenth century, this territory was roughly coterminous with the administrative units of Akmolinsk and Semipalatinsk *oblasts.*

In the continental climate of this region, summers were hot, winters extremely cold, and precipitation was very low throughout the year.[3] In the northern and central regions of Akmolinsk and Semipalatinsk *oblasts*, the semi-arid landscape of flat plains and low mountain ranges (such as the Altai foothills and the Tarbagatai and Chingistau ranges) was dotted with many lakes, springs and swamps, and intersected by great rivers, such as the Irtysh, Nura and Ishim and their tributaries. Here, sheltered mountain valleys or fertile river valleys and surrounding forests made for good winter pastures for all livestock. In the south, the semi-arid land gave way to desert and semi-desert, called in Kazakh the *Betpaq Dala* ["Ill-fated Steppe"][4] and in Russian the *Golodnaia Step'* ["Hungry Steppe"]; the region was essentially uninhabitable during the hot summer months. The Chu and Sary-Su Rivers, as well as sparse natural

underground springs, served as the main water sources for all inhabitants of the region, and many clans had their winter pastures there.

The system of nomadic migrations to seasonal pasturage represented an economic strategy for exploiting the scarce resources of this semi-arid steppe region. The character of the terrain and the seasonal variations in availability of water and fodder dictated when and where the nomads could migrate, and with which types of livestock. Nomadic groups or camps, called *auls,* migrated with their livestock to separate spring [*kökteu*], summer [*zhaylau*], fall [*küzeu*] and winter [*qïstau*] pastures. Each pasture was chosen for the qualities it provided for subsistence living in that season. In the summer, the main concern of pastoralists was water supply; herders could generally rely upon natural grasses for livestock fodder. In the winter, the focus of migration was on securing an adequately sheltered spot in which to pasture herds for as many months as snow remained on the ground; water was obtained from the snow. The spring and fall pastures were located in close proximity to the winter pasture. As soon as the snow melted in the spring, herds were moved to the spring pastures, which provided them access to fresh grasses; in the fall, herds were brought from the summer pastures to a stopping point around a water source, where they would remain only until the first snow fell. Underlying this system of seasonal pasturage was the dictate that grasses remain untrammeled and uneaten during the seasons not designated by the nomadic group for its use. Thus, in the words of Chokan Valikhanov [Shoqan Uälikhanov] (1835–65), the Kazakh ethnographer and imperial official, "while it appears that the Kirgiz use enormous expanses of land, in fact they only use a little at a time."[5]

Until the late nineteenth century, many Middle Horde Kazakhs wintered in the south and migrated to the fertile pastures of the north for the summer months. Some herds travelled distances of hundreds of *verstas*[6] between summer and winter pastures. The Baganalï Nayman clans maintained long migrations from the Chu River in the south to the Irtysh River in the north.[7] In addition, it was very common for many of the clans of the Little Horde to winter on the banks of the Syr Darya and summer in the northern parts of Turgai *oblast.* Even in the second half of the nineteenth century, Little Horde clans continued such migrations.[8] But not all nomads travelled so far each year: migrations were generally twenty to fifty *verstas* in length in the north, and up to 200 *verstas* in the southeast.[9] Especially in the eastern regions, clans spent their winters in the river plains and summers in the mountain valleys, where grasses and streams were plentiful and the air was cooler. The type and amount of land needed for one's herds depended on the proportion of different kinds of animals in the herd and the quality of the pasture land, and this in turn determined the length, speed and frequency of migrations. Thus,

> … [I]n more well-off households having many and more mobile types of livestock (horses, camels), the process of migration did not demand great expenditure of time and took place at great speeds, and in poorer households with a high proportion of lessmobile animals (sheep) and with a deficit of sources of transport, the process of migration demanded large expenditure of time and labor and took place very slowly.[10]

The fact that migrations were conducted seasonally shaped the value that nomads attached to their land. For the nomad, the relative value of land was based in the quality of its grasses and accessibility of its water supply, both of which were important for

ensuring the subsistence needs of their livestock. Good land was the main source of competition and the object of disputes among migrating *auls* and the kinship groups that represented them. Migrations were generally coordinated at the level of the *aul* or by a designated migration leader *(köshbasï)* of the clan to which a group of *auls* belonged.[11] During summer migrations, a scout was used to stake out claims to the perimeters of the pasture land and water supply for his *aul.*[12]

The degree to which migration routes, destinations, land allocation and grazing rights among *auls* of a certain clan or region had to be coordinated by its leaders depended on the relative stability or instability of herd sizes and clan relations in any particular year.[13] Competition was fiercest in periods of instability, when nomads were displaced from pastures because of war or disease; at these times, clan leaders would gather in the spring to coordinate migrations to summer pastures.[14] At various time in the history of the steppe region, Kazakh nomads suffered significant displacement and loss of livestock as a result of warfare, disease, and *zhut* [disaster of late winter and early spring when thaw is followed by a freeze, and the ground is covered with ice, making it impossible for animals to dig through to the ground to eat grass; *zhut* often resulted in massive loss of livestock]. As a result, the pasture needs of nomadic groups could change, and all clans who migrated in the region would assume the political role of organizing the allocation of new migration routes and pasture use among all clan branches.[15] For instance, in the first quarter of the eighteenth century, Kalmyk nomadic incursions devastated the Kazakh population in the south of the steppe and forced many kinship groups to flee to the north. The whole map of migratory patterns shifted as a result.[16] In addition, Rusanov stated that in the mid-eighteenth century, Middle Horde Kazakhs of the Qïpchaq, Basentein, Argïn, and Uaq clans, seeking protection from Kalmyks still inhabiting the territory, were wooed by the Russian government to pastures on the right side of the Irtysh River within Tomsk province. This change also required rerouting of migrations.[17]

Otherwise, if times were stable, each clan and its member *auls* had its traditional territory in which it migrated between summer and winter pastures.[18] However, land was not “owned”; it was only loosely identified with the clan for as long as its members pastured there. This loose territorial affiliation was a feature of Eurasian nomadic land use that can be traced back to the *ulus* system of inherited patrimony developed under the Mongol empire of Chingis Khan.[19] When the Kazakh tribal federations, called hordes [*zhuz*], emerged at the end of the sixteenth century,[20] the khan of each horde claimed his own *ulus* within which territory all clans who claimed membership within that horde migrated. Furthermore, each khan was served by a sultan [*töre*] of the social stratum of hereditary nobility called White Bone [*aq süiek*], who were considered elite or noble because they traced their ancestry to Chingis Khan; these sultans also claimed their own *ulus* territory as long as they remained in the service of the khan.[21] Within each *ulus* of the White Bone sultans, Kazakh nomads of the Black Bone [*qara süiek*], or commoner, social stratum were organized into clans [*ru*][22] and lineages.[23] Thus, Kazakh society was divided into White Bone and Black Bone social strata,[24] but all Kazakhs claimed affiliation to a particular horde, and they all traced descent to a mythical ancestor, Alash.[25]

Kazakh kinship organization was highly complex, and identification of a strict structure is impossible.[26] However, it is clear that each Kazakh demonstrated his kinship affiliation in two interconnected ways. First, he traced his lineage, customarily

back seven generations, beginning with the primary kinship group called the *bir ata balasï* ["children of one father"].[27] The *bir ata balasï* was a patrilineal extended family that identified itself with one common "father" [*ata*], or ancestor. It consisted of anywhere from three to fifteen or more tents that together formed the nomadic camp [*aul*]. The size and composition of the *aul* fluctuated over time, as descendants of the *aul* leader branched off to form their own *auls*. In part, new *auls* formed when the father passed to each son his "share" [*enshi*] in inheritance of household property and livestock. New *auls* were typically formed when the land that it occupied could no longer ensure effective grazing for the herds that shared common seasonal pastures and migration routes.[28]

Second, each Kazakh identified with the clan in which his lineage belonged. The clan was not a fixed group, but a flexible affiliation that combined genealogy with ties formed by allocation of land and grazing rights, redistribution of livestock, and mutual aid.[29] As Krader argued: "clan genealogies could be fictive, as long as the purpose was served by expressing mutual relatedness and as long as neighbor clans accepted it in relation to their own status."[30] Thus, while clan membership could shift, it was important for all Kazakhs to establish that they belonged to a particular clan.[31] Establishing clan membership was done in a number of ways, including reciting one's genealogy [*shezhire*], expressing the clan's battle cry [*uran*] during feuds with other clans, and partaking in practices of mutual aid [*zhärdem*] within the clan group. Among the forms of mutual aid were the following: *zlourtshïlïq* was aid for the purpose of paying a debt; *zhilu* was aid in case of natural disaster; *qïzïlköteru* involved the giving of lambs in equal portions from each clan herd to the member groups that had suffered loss of sheep; *saun* was the giving of cattle for milking to those in need; and *tasïmal* referred to rich helping poor during migration.[32]

The relationship of different Kazakh kinship groups to each other was mapped onto a system of genealogical seniority or status that helped organize land usage, redistribution customs, and political leadership at all kinship levels.[33] The Kazakhs of the Middle Horde were divided into six major clans: Argïn, Nayman, Kerey, Qïpchaq, Qongïrat and Uaq. Each of these clans was subdivided into major lineages, and these in turn recognized major sublineages. Each of these divisions fit within the seniority system. For instance, within the Argïn clan, one of the lineages was the Meyram. In Kazakh genealogy, Meyram was the eldest son of Argïn and as the son of Argïn's eldest wife [*baibishe*], he and his offspring occupied the highest status in the Argïn kinship hierarchy. The Meyram recognized five major sublineages, that is, the Quandïq, Suyïndïq, Shegendik, Begendik, and Karakesek. Argïn also had seven sons by his second wife, Momïn, and their sublineages are identified as *Zhetimomïn* [the seven Momïn]. At the bottom of the hierarchy of Argïn lineages were the offspring of Argïn and his youngest wife, *Toqal-Argïn*.[34]

But how each clan measured its status next to the other clans, and how the sublineages were ranked within the lineages was constantly shifting, depending on the relative political weight of the kinship group. While certain clans, such as the Qïpchaq, were always higher in the seniority system because they were formed from ancient Turkic tribes long before the Kazakh tribal union was formed, the lineages within hordes or clans could not necessarily claim permanency to their ranking. For instance, Grodekov was informed in the 1880s that all Great Horde clans had higher kinship status than any Middle and Little Horde clans, and that within the Great Horde,

the Dzhalair clan [*rod*] had earned its seniority. Grodekov related a story of how the Dzhalair clan had claimed seniority only after its namesake outperformed his enemies in stealing horses. The Dzhalair had therefore not always been the most senior of the Great Horde clans.[35]

The shifting seniority system and political relations among clans in general found expression through the raising and redistribution of livestock. The well-being of the nomadic community was measured in large part by the well-being of the groups' animals. Livestock provided Kazakhs with its main source of food (animal meat and dairy products), shelter (sheep's wool to make felt matting that covered the nomadic tent [*üi, shangïraq*]),[36] clothing (animal hides for leather, wool and fur), and transport (camels and horses).[37] Animals provided the main source of exchange in establishing and maintaining kinship relations through brideprice [*qalïm*], inheritance [*enshi*], bonds of life-long friendship [*tamïrlïq*], tokens of respect for kinship group leaders [*sïbagha*, *soghïrn],*[38] and mutual aid. Animals were also the main measure of a fine [*aiïp, toghïz, qun*] when punishment was sought for wrongdoing; *aiïp* and *toghïz* were fines for less serious crimes, while *qun* was demanded as retribution for murder, rape and other heinous crimes. While livestock was not the only measure of the wealth [*daulet*] of a particular kinship group, the diversity of its functions in the community made it a vital aspect of nomadic subsistence and maintenance of cultural norms.

Livestock was "owned" by and tended in the *aul*,[39] and land was used commonly by members of that production group. All livestock of a certain clan or clan's lineage was marked by that group's brand or symbol [*tamgha; en*],[40] so that at a higher level of the kinship hierarchy it all belonged to the same group and was subject to redistribution that was symbolic of the reciprocity and mutual aid that linked clan members. The larger a clan's herds, the more that clan was expected to participate in redistribution measures, especially during times of natural disaster. These efforts also helped the clan keep its poorer members from "falling away" from the nomadic group,[41] which in turn afforded that clan more respect and honor in the community at large, because of its demonstrated ability to protect its own. On a practical level as well, guaranteeing subsistence to the poor members allowed the lineage to control most effectively the land use of all nomadic groups in that region. Especially during migrations, the poor joined the rich to allow all nomadic groups to function efficiently and reap maximum benefits from pooled labor.[42] Thus, a segmented hierarchy of kinship groups was bound together by its mutual aid and mutual reliance on all kinship levels so as to most effectively ensure the maintenance of their livestock. As Khazanov observed, for nomads, kinship was the "best alternative expression of social relations," because the demand for seasonal migrations prevented the establishment of permanent territorial and neighborly links.[43] It was through an intricate maze of political and social relations mapped symbolically and practically through livestock exchange and coordination of land use for individual herds that a nomadic community "cohered."[44] At the same time, political authority of certain clans over others and of leaders within clans was gained (or lost) through the ability to maintain these functions and bring benefits to one's own kinship group.[45]

Adat, Nomadism, and the *Biy*

In its broadest sense, *adat* referred to the guiding principles governing the behavior and interaction of individuals within the nomadic community and its kinship structures, which were upheld and enforced in everyday life by commonly-accepted obligations, responsibilities, sanctions and forms of punishment. *Adat* is not a uniquely Kazakh concept. The word itself is of Arabic origin and it refers to custom or customs. In pre-Islamic times, *adat* was the set of principles of behavior and social interaction that guided Arabian society. As Islam took root as a religion in Arabia, *Shariat* [path, way], the Sacred Law of the Muslim faith, was superimposed onto *adat*, and became the supreme authority for judging ethical behavior and community order among the Muslim faithful. In the Kazakh steppe, as in other islamicized regions of the world, this syncretism formed the foundation of a complex web of judicial practices, many of which were simply called *adat* among the nomads. It is not my task here to analyze which elements of Kazakh *adat* were pre-Islamic or non-Islamic and which were based in *Shariat*, but it is important to recognize that *Shariat* and *adat* coexisted; in the minds of nomadic litigants, the distinctions between them could be blurred significantly.[46]

As a body of rules, procedures and principles to guide individual and group behavior, *adat* was not codified nor was it represented in permanent political or legal institutions; rather, its authority lay both in its accessibility to all members of the community, and in its practical interpretation by respected individual authorities within that community. The unwritten rules of *adat* adjudication were framed loosely by tradition and precedent, which varied locally in time and space. In this sense, *adat* embraced regional differences in interpretation and the individual judgement of judicial authorities, while still offering a procedural framework for resolving disputes that defined the legal culture of the larger, nomadic community. In its ideal, the common goal of *adat* adjudication was to achieve a sense of "justice" by restoring the "harmony" or consensus of the community and the interests of its members.[47] In effect, to achieve a sense of "justice" meant ensuring just compensation or retribution for an act of wrongdoing, in compliance with community standards of moral behavior and expectations of kinship solidarity. As Makovetskii observed, the severity of an act of wrongdoing was measured in how it affected daily living and kinship relations, so that insulting one's parents or vandalizing one's own *aul* were worse crimes than robbery from another *aul* or crimes against someone outside of the Kazakh nomadic community.[48] Similarly, Grodekov noted that "customs of private life are not distinguished from judicial customs; moral obligations are not separated from legal ones, and domestic and administrative penalties [are not different] from judicial penalties."[49] In other words, there was no distinction in *adat* between crimes and breaches of civil rights or obligations because the commission of both had equally broad ramifications in the well-being and efficient functioning of the nomadic community.

The rules and procedures of *adat* were in essence flexible, but they were predicated upon the connection between maintaining cultural continuity and the well-being of the nomadic economy. That is, the success of *adat* in practice depended to a large extent on the values and needs of the members of the nomadic community who legitimized *adat's* authority. Therefore, *adat* was as flexible as the changing consensus needs of the nomad demanded; by the same token, nomads were rational and pragmatic in everyday decision-making for the goals of securing subsistence living for themselves and their livestock.[50] A distinguishing feature of nomadic pastoralist societies was

the flexibility of clans and their member groups to accommodate to economic and political influences from outside their communities (i.e., from sedentary societies), because at a very basic material level, they needed to maintain their herds of livestock, and with them, the kinship relationships that were formed and reproduced by the exchange of livestock.[51] V.V. Radlov, the brilliant Russian linguist and ethnographer, very perceptively observed among the Kazakhs in the midnineteenth century the

> … constant changes in relations of power among tribes, provoked by the necessities of these true nomads and conditioned by the demands of natural redistribution of livestock in the interests of the whole people. I consider that such flexibility is the main condition of the well-being of a nomadic people.[52]

It is with this principle of flexibility in mind that the role of the *biy* can be understood as both nomadic clan leader and arbiter of disputes in Kazakh nomadic society.

The authority of the *biy* as clan leader was to a large extent culturally rooted in his ability to negotiate the symbiotic relationship between nomadic needs and kinship group relations. In the same way, the *biy's* judicial authority was also culturally rooted, and the two roles were intertwined. Although the term *biy* is most often translated as judge, it is wrong to associate the position with a formal court of law, such as one would find in the reform era legal system in Russia proper. That is, traditionally the *biy* owed his title neither to formal training, nor to appointment to a post. Rather, he accepted the honor of being called a *biy* by virtue of his knowledge of Kazakh *adat* and of his ability to mediate a situation fairly. In general, a *biy* was any person to whom disputants turned to help them resolve disputes. [53] His authority as judge extended in the community only when he was called upon by disputing parties to exercise it, or by kinship groups to prevent disputes over land or property.[54] Knowledge of the precepts of *adat* translated into power, just as knowledge of the terrain, water sources, and location and distribution of neighboring herds brought political power to one's kinship group within the nomadic community.[55]

Balliuzek provided a typical idealization of the *biy* that could be found among pre-revolutionary ethnographic accounts of customary law:

> The duty of judge falls on the so-called *biys.* This title, in the popular mind, belongs to those few who combine in themselves a natural intelligence and gift of eloquence with a deep knowledge of native customs of the people and the historical legends behind them. Only by the sum total of these natural abilities and knowledge obtained through them is the reputation of a *biy* deserved; or, in other words, the *biy* is the living manuscript of the people, their jurist or legal scholar.[56]

Balliuzek went on to admit that such a combination of qualities was naturally rare, and that few *biys* truly measured up to these expectations. Some *biys* had such good reputations as fair and impartial judges that they permanently retained the title of *biy,* passing it down to their offspring and producing a reputation as a family of *biys.*[57] Typically, each kinship group included a person who was recognized by his knowledge, wisdom and fairness as the *biy* for that group. But being fair and impartial was a difficult task that involved striking a balance in practice between negotiating an end to a conflict, ensuring proper compensation for wrongdoing, and being sensitive

to the competing demands to uphold the well-being, reputation and honor of the clans represented by the litigants on each side. Some *biys* were models of integrity and nomads came from several days' travel away to have their disputes heard by a particular *biy*,[58] while others, who owed their position more to the wealth and size of their kinship group than to their knowledge of *adat*, demonstrated bias in favor of their relatives. Some could stop the "most savage reprisals," while others could not make either side accept their judgements.[59]

The cultural rootedness of the *biy's* powers and authority is expressed in the procedure that he followed in mediating a dispute. The *biy* made his judgements openly, publicly and orally, in front of at least three witnesses, but the whole *aul* or larger extensions of kinship groups could observe the proceedings if they so desired.[60] The type of disputes and the kinship relationship of the disputing sides determined the choice and number of *biys* involved in the resolution process. For instance, a minor quarrel between two members of the same *aul* was usually resolved by a respected elder [*aqsaqal*] of that *aul*. Leont'ev described a procedure by which two litigants would take their case to the recognized *biy* of the *aul*, and if he could not resolve it, the litigants would go to the *biy* of a higher lineage group with a hypothetical case to be resolved. Based on his resolution made along general principles, the litigants would return to the *aul biy* and come to a resolution of their specific case.[61]

However, if a dispute involved nomads of different *auls* or kinship groups, more than one *biy* was allowed to take part in the resolution of the conflict. The disputing sides would agree upon one neutral *biy*, the *töbebasï* [literally, head of the gathering], to act as chief mediator and to oversee the resolution proceedings among the several *biys* chosen by the litigating parties on both sides.[62] For larger-scale disputes involving extended levels of kinship groups, or for more heinous crimes such as murder, rape or mutilation, a larger gathering of from eight to twenty-four *biys* was convened, called a *kenges*, again with the respected *töbebasï* appointed as chief mediator.[63] These gatherings for dispute resolution were also held in conjunction with funerary feasts [*as*] of particularly honored clan leaders, when representatives from all Kazakh clans came great distances to pay their respects to the deceased. Funerary gatherings provided the perfect opportunity to attempt to resolve long-standing disputes among different kinship groups, because all parties were expected to come to the funeral in the spirit of respect and goodwill.[64]

Whether in the context of a small hearing in front of one *biy,* or at a large hearing like a *kenges* where a *töbebasï* had to be appointed, the choice of the mediator was crucial in ensuring a fair and impartial hearing. Impartiality in the *biy's* decision-making could only be ensured if the outcome of the dispute had no major bearing on future kinship relationships between the *biy* and the disputing sides. Kazakhs preferred to go to complete strangers rather than to someone who might render a judgement impartially based on his kinship relationship with the plaintiff or defendant.[65] Thus, if a plaintiff in a land dispute was from the Argïn clan and the defendant was a Nayman, they would look for a *biy* from a third clan to resolve their case, perhaps a Qïpchaq who did not migrate in their region, and thus had no vested interest in the land, livestock, kinship obligations or other subjects from which a dispute may arise. Chokan Valikhanov explained that in a large scale dispute over horsetheft among Middle Horde clans, the disputing sides would search out a *biy* from

outside of the six clans of the Middle Horde entirely, in order to prevent possible bias in the dispute resolution process.[66]

Once the two sides had agreed to a *biy*, the resolution process would begin. In general, it was the *biy's* job to help the litigants to negotiate a resolution to their dispute, taking into account the specific features of each case, not to hand down a judgement based on abstract or universal principles, and to appropriately punish the side he deemed to be responsible for causing the conflict. The purpose of the *biy* was to determine how the two sides could attain satisfaction through retribution, compensation or by persuading both sides to take responsibility for their actions. The decision of the *biy* was not meant to assign guilt or innocence, but to uphold viable kinship relations and clan honor within the subsistence-oriented nomadic economy.[67]

A good example of how the *biy* practiced *adat* in this way was the use of the oath as a form of evidence.[68] Typically, the *biy* first requested an explanation of the dispute from both sides. If the *biy* was not convinced by either explanation, he could ask for evidence. If the evidence produced was insufficient to determine the guilt or innocence of the defendant, then the *biy* could ask that an oath be taken [*zhanberu*; literally, to give one's soul] attesting to the soundness of the defendant's character. The procedure of oath-taking allowed the plaintiff to name someone from among the defendant's kin to vouch for the latter's character, thus clearing him of suspicion of guilt [*zhan aighaqtïng tazasï;* literally, cleansing the evidence of the soul]. If a Kazakh gave his oath as to the soundness of the character of the defendant, then it no longer mattered to the *biy* whether the defendant was "guilty" or not; it was only important that kinship solidarity had been upheld by a respectable person, so that other expressions of nomadic kinship relations, such as mutual aid or arrangement of marriages, could go on functioning normally. If, however, the defendant refused to allow the oath, and no other evidence could be gleaned, the *biy* would negotiate a resolution by making both sides take partial responsibility for wrongdoing, called *"zharï bölu"* [to divide in equal shares] or *"qarïndas bölu"* [to divide among relatives]. In colonial case records, this procedure is referred to simply as *"qarïndas"* [Russian: *karandas*]. In practice, the term referred to dividing responsibility for a purported act of wrongdoing between the plaintiff and the defendant (and their kinsmen). For instance, if the accusation was that eight horses were stolen, the defendant was responsible, under *qarïndas*, for giving the plaintiff four horses. *Qarïndas* worked as a compromise when the *biy* was unable to determine absolute guilt or innocence.[69]

Once the *biy* had made his decision, he then had to ensure that it was enforced and that the wronged party received proper compensation. A *biy* judged and punished all cases on the same scale, with the common measure being the relative damage done to the well-being of the nomadic community at large or the kinship group in particular. Most punishments were in the form of fines of livestock (the most basic measure of a nomad's wealth and well-being),[70] with the size depending on the level of and reason for the misdeed.[71] Ideally, the *biy* knew something about the economic situation of each disputing party, so he could weigh their claims against their means, and decide on fair punishment accordingly. Under *adat*, there were two types of punishment in the form of fines: *aiïp* and *qun. Aiïp* [literally, guilt] was the compensatory fine for minor misdeeds and theft, ranging in number and type of animals from one horse [*bir-at-aiïp*] and one horse and a cloak [*at-ton* or *at-chapan*] to several sets of nine animals

[*toghïz*] including camels, horses and sheep. *Qun* [blood-money] was paid for more serious crimes such as murder; it too was measured in livestock and could reach 2000 sheep or 200 horses or twenty camels.[72] The *biy* also had the right to ask compensation for his legal services, called *biylik*; the amount of *biylik* varied in proportion to the gravity of the crime and concomitant size of *aiïp* or *qun.*

It was the duty of the *biy* to make sure that payments of *aiïp* or *qun* (and *biylik)* were made promptly and properly. If the punished party failed to follow through with compensation for his wrongdoing, the inaction reflected poorly on the *biy*, for it meant that his authority was not sufficiently respected. On the other hand, if he commanded the respect that was traditionally due to a *biy*, the power to enforce his decision followed naturally. Thus, the authority of the *biy* was measured both by how fairly he judged and how successfully he enforced his judgements. Indeed, colonial official Geins observed that the biy was only significant if he had enough power to force the guilty to fulfill his sentence.[73] The *biy* whose authority was respected could boast his own high personal reputation, which in turn elevated the status of his kinship group.

The symbiosis of *biy* authority and clan status within the nomadic community dated back to previous centuries, when the Kazakh political structure was still led by the khan. Before 1822, when khans still functioned as supreme heads of the hordes and clans of Kazakhs nomads, a *biy* served alongside the khan as the judicial authority of the clan.[74] His legal decisions could be questioned formally by one person: the khan himself.[75] Such *biys* were well-known throughout the steppe, and they buttressed the power of the khan, the clan, and the lineages that made up that clan. Their authority derived from their knowledge of ancient customs of tribal politics that were traced back to Kasim Khan (d. 1520), who ruled over all Kazakh tribes in one of its few periods of tribal union; Esim (Ishim) Khan (1598–1628), who ruled from the city of Turkistan, the center of "cultural and political life" of the Syr-Darya basin at the time of his rule; and Khan Tauke (1680–1718), who also ruled over a united Kazakh polity, when the center of power was based in the Syr-Darya cities of Tashkent and Turkistan.[76]

The role of *biy* as symbol of clan status within the nomadic community was not limited to those who served alongside the khan. On a lower level in the kinship hierarchy, a *biy* could serve the same function of enhancing the power of his kinship group as did the *biy* who served in a more formal capacity alongside the khan. For instance, if the clan leader made decisions that were beneficial for the material well-being and honor of the nomads in his clan, such as arranging a marriage that connected them with another respected clan, negotiating nomadic migration to a particularly fertile summer pasture, or dividing herds in inheritance fairly to a father's sons, then the *biy's* authority as mediator became a natural extension of his clan's high status. If, on the other hand, the clan was small and insignificant in size and wealth next to other nomadic groups, the *biy* of that clan who was particularly knowledgeable about land rights, conventions of livestock distribution and kinship relations, and just in the resolution of conflicts, could raise the status of his clan. Radlov went so far as to argue that "the [a]uthority and strength of clan subdivisions … depends on the authority and influence of the *biy*"[77].

By the same token, a clan's authority and power could diminish if the *biy* associated with that clan made decisions that were questioned. The questioning of a *biy's* powers of reasoning and his judgement of appropriate punishment was an integral part of the

dispute negotiation process, because the outcome of each case (the severity of the in-kind punishment) was so closely tied to the well-being of the individual nomadic group involved and the overall honor of the kinship group's name. Thus, if a case came to the point that the *biy* was not convinced by the evidence provided and he asked for an oath or for *qarïndas*, it could be interpreted to mean that the *biy* lacked the skill necessary to perceive the truth of the matter and bring the two sides together to resolve their disagreement. A Kazakh saying goes: "a bad *biy* makes one take an oath, a good *biy* finds out who set the fire" [*zhaman bi zhangha saladï, zhaqsï bi zhaqsïrghandï tabadï*].[78] In such a scenario, if the sides did not believe the *biy* had investigated the case to the proper extent or if he did not display suitable knowledge of the customs with which the case demanded familiarity, then the disputants could turn to a second *biy* of their choosing, and then to a third, if they were still left unsatisfied.[79] Finally, the litigant dissatisfied with the *biy's* decision but convinced of the merits of his own case had the right to force further investigation of the case by committing *barïmta*, the taking and holding of livestock as ransom until just resolution was ensured. This custom will be examined in detail in Chapter Six. Thus, a *biy's* decision was never final, although, significantly, a check on the abuse of this existed: kinship relations and upholding of clan honor dictated that if the *biy's* integrity was questioned unjustly, it would reflect poorly on the honor of the litigant's kinship group. Furthermore, a person who brought the false claim against the *biy* could be subject to corporal punishment.[80]

There was a fluidity to this aspect of the practice of *adat*: the relative power and authority of each *biy* varied according to his own knowledge and abilities and according to the wealth, reputation and political power of his kinship group. Alternatives to a *biy's* decision could usually be sought from other sources, including another *biy* or larger gathering of *biys*, *Shariat* as interpreted by qadis or mullahs, and *barïmta.* The *biy's* role and his procedure for seeking just resolution of disputes could vary, depending on the severity of the crime, the individuals involved and the status of their kinship groups, and other factors. Each decision took into account the exigencies of nomadic life on the steppe, and each *biy* tried to fuse those realities with an interpretation of the principles of *adat* as he understood them. As such, the practice of *adat* was intimately connected with the practice of nomadism, and the values and meanings that nomads attached to land, livestock and kin. Furthermore, the fluidity of the practice of *adat* made it vulnerable to change.[81] In the second half of the nineteenth century, as the Russian Empire continued its colonization of the steppe, significant changes occurred in the nomadic way of life of the Middle Horde Kazakhs. In this context, the ability of the nomads to practice *adat* was contingent upon their successful negotiation of evolving political, socio-economic and cultural conditions.

Dobrosmyslov, “Zaboty imperatritsy Ekateriny II o prosveshchenii Kirgizov,” *Trudy Orenburgskoi uchenoi arkhivnoi kommissii* vyp. IX (Orenburg, 1902), 51–63; Ch.Ch. Valikhanov, “O musul'manstve v stepi,” *Sobranie Sochinenii* T. 4 (Alma-Ata, 1985), 71–5; Allen Frank, “Tatarskie mully sredi kazakhov i kirgizov v XVIII-XIX vekakh,” in G.F. Valeeva-Suleimanova, ed., *Kul'tura*, *iskusstvo Tatarskogo naroda* (Kazan, 1993), 124–31.

52 For an indication of the different ways that each horde was brought under Russian rule in the eighteenth century, see Alexei Levshin, *Opisanie*; *Istoriia Kazakhskoi SSR.* T. 3 (Alma-Ata, 1979); Ch.Ch. Valikhanov, “Kirgiz-Kaisaki [Stat'i iz ‘Geograficheskogo-statisticheskogo slovaria Rossiiskoi imperii’].” *Sobranie sochinenii* T. 4 (Alma-Ata, 1985), 197–204. On the differences in the construction of a legal-administrative system in different regions of the steppe and Central Asia in the nineteenth century, see I.I. Kraft, *Sudebnaia chast’;* A. I. Dobrosmyslov, *Turgaiskaia oblast. Istoricheskii ocherk* (Tver’, 1902); E. Bekmakhanov, *Kazakhstan.*

53 To a certain degree, there is a general validity of ethnographic material that is applicable to all Kazakh hordes. In general, where this is the case, I have freely incorporated material that is based on the Little Horde and Great Horde, as well as the Middle Horde.

Chapter One: Nomadism and *Adat*

1 On trade, see V.S. Batrakov, “K voprosu o torgovykh sviazakh kazakhov so srednei aziei i rossiei v XVIII veke,” *Materialy po istorii Srednei Azii* (Tashkent, 1966) 11–24; Zh.K. Kasymbaev, “Rol’ gorodov vostochnogo Kazakhstana v ukreplenii torgovykh otnoshenii s kochevym kazakhskim i russkim krest'ianskim naseleniem v nachale XX veka,” *IzANKazSSR. Seriia obshchestvennykh nauk* 1979, no. 6:52–7. For an indication of the extent of the development of agriculture and trade among Middle Horde clans in the middle of the nineteenth century (before large-scale settlement of the steppe by Slavic peasants), see Krasovskii, 2:75–87, 206–88. And on irrigation agriculture among Great Horde clans, see Ch.Ch. Valikhanov. “O khlebopashestve.” *Sobranie sochinenii* T. 1, 184–8.

2 V.V. Vostrov and M.S. Mukanov, *Rodoplemennoi sostav* (Alma-Ata, 1968), 56; N.E. Masanov, *Kochevaia tsivilizatsiia Kazakhov* (Almaty: Sotsinvest & Moscow: Gorizont, 1995), 58.

3 On the climate of this region, see Masanov, *Kochevaia*, 47–55; V.P. Kurylev, *Skot, zemlia, obshchina u kochevykh i poluchevykh kazakhov* (SPb: Muzei antropologii i etnografii, Rossiiskoi Akademii Nauk, 1998), 18–21 and passim.

4 This translation of the word *betpaq* is taken from E. Koichubaev, *Kratkii tolkovyi slovar’ toponimov Kazakhstana* (Alma-Ata, 1974), 66. There are several alternative etymologies (all of Iranian origin) that would render the meaning of *betpaq* as “shameless, indecent,” “joyless,” or as “very hot” and “uninhabitable”. See also the dictionary: T. Zhanuzaqov, ed., *Qazaqstan geografialïq ataularïnïng sözdigi (Zhezqazghan oblïsï)* (Almaty: Ghylym, 1990), 70f. *Dala* is the Kazakh word for “steppe”.

5 Ch.Ch. Valikhanov, “O kochevkakh Kirgiz,” *Sobranie sochinenii* T. IV (Alma-Ata, 1985), 107. For a detailed description of the seasonal uses of pasture lands, see also N.E. Masanov, *Problemy sotsial'no-ekonomicheskoi istorii Kazakhstana na rubezhe XVIII–XIX vekov* (Alma-Ata: Nauka, 1984), 44–72; Chormanov, “Zametki,” 1–30.

6 One *versta* is equivalent to 3500 feet, or, roughly, two-thirds of a mile.

7 G. Potanin, “O rukopisi kapitana Andreeva o Srednei kirgizskoi orde, pisannoi v 1785 godu,” *IzIRGO* 1875, T. IX, vyp. 2:108. Potanin compared Andreev's observations made in 1785 with Krasovskii's made in 1868, and found that the Baganalï had formerly migrated to the Irtysh, but by 1868 were only going as far north as the Ishim River.

8 A.I. Dobrosmyslov observed in 1902 that two-thirds of the Little Horde Kazakhs in Turgai *oblast* migrated between summer pastures in the north of the *oblast* and winter pastures in Syr-Darya *oblast.* See his *Turgaiskaia oblast*, 424.

9 Potanin, “O rukopisi,” 108.

10 Masanov, *Kochevaia*, 172. See also Krasovskii, 2:53–4 and 3:18–9.

11 Raport Poruchika Aitova (1846) in S.V. Iushkov, ed., 82; Krasovskii, 3:22; L.F. Balliuzek in Iushkov, ed., 212–3.

12 Grodekov, 110; Raport Sosnovskogo (1846) in Iushkov, ed., 109. Wilhelm Radloff [V.V. Radlov] observed that an *aul* tried to keep its summer destination secret so that other *auls* would not know to compete for the same spot *[Aus Sibirien. Löse Blätter aus Meinem Tagebuche* Second Edition (Leipzig, 1893), 417].

13 Masanov argued that the leader of a large clan lineage would give a “signal” to begin the summer migration, but otherwise there was no system to coordinate migrations, because seasonal and economic needs determined when and where nomadic groups could migrate. *Kochevaia*, 153.

14 Chormanov, “Zametki,” 3.

15 Anatoly M. Khazanov, *Nomads and the Outside World*, Second Edition (Madison, WI: University of Wisconsin Press, 1994), 151.

16 See N.A. Aristov, "Zametki ob etnicheskom sostave tiurkskikh piemen i narodnostei i svedeniia ob ikh chislennosti," *Zhivaia starina* 1896, vyp. III-IV: 353. See also Shakarim Kudaiberdy-uly, *Rodoslovnaia Tiurkov, Kirgizov*, *Kazakhov i khanskikh dinastii* (Alma-Ata: Zhazushy, 1990), 353.

17 1. Rusanov, "O polozhenii kirgiz-kaisakov, pereshedshikh v XVIII stoletii v peredelu Tomskoi gubernii," *Tomskie gubernskie vedomosti* 1862, no. 32:241–2. See also Kurylev, *Skot,* 95.

18 Raport Polovorotova (1846) in Iushkov, ed., 99; Kh. Argynbaev, "Narodnye obychai i pover'ia kazakhov, sviazannye so skotovodstvom," *Khoziastvenno-kul'turnye traditsii narodov Srednei Azii i Kazakhstana* (Moscow, 1975), 197; T. Sedel'nikov, *Bor'ba za zemliu v Kirgizskoi stepi* (SPb, 1907), 14; D.Ch.Ia. Khanykov, ed., "Poezdka Pospelova i Burnasheva v Tashkent, v 1800 godu," *VestlRGO* 1851, ch. 1, kn. 1:5; Khazanov, 177.

19 G.A. Fedorov-Davydov, *Obshchestvennyi stroi Zolotoi Ordy* (Moscow, 1973), 44–67; David Morgan, *The Mongols* (Cambridge, MA: Blackwell, 1986).

20 The exact time and circumstances under which the Kazakh nomads organized into three hordes is still debated. For the debate, see *Istoriia Kazakhskoi SSR. T. 2: X-XVII v.* (Alma-Ata, 1979), 248–9. It seems most likely that the hordes emerged after Khan Tevvekel conquered the Syr-Darya River basin cities of Tashkent and Turkistan in the late sixteenth century, and consolidated power over all Kazakhs; in this scenario, each horde *[zhuz* literally means "hundred"] represented a territorial-military unit. On this version, see Ch.Ch. Valikhanov, "Stat'i," 200.

21 T.I. Sultanov, *Kochevye plemena Priaral'ia v XV-XVII vv. (Moscow,* 1982)*, 77–110. Indeed, the "power of sultans [White Bone] had…a specific political and territorial meaning," which was associated with the power structure of the ruling khan (Kliashtornyi & Sultanov, 347–8).*

22 In the Kazakh language, the word *ru* (also *uru)* referred to several taxonomic levels in kinship hierarchies. The *ru* affiliation could be at the level of the horde *("Orta Zhuz ruï")*, or at a lower level in the clan lineage *("Nayman rui"). Ru* could be used interchangably with other terms, such as *ata* [father, ancestor], *tuqïm* [family, clan], the Arabic word *taifa* [tribe], or the Mongol word *uryq* [descendant]. What is most important to consider is the context in which the word is used, although even then *ru* could very easily be understood to mean two or more taxonomic levels, or it could simply mean descendant, with its place in a lineage purposely left vague. In the Russian language, scholars have attempted more clearly to define semantically the relative status of kinship affiliations in a hierarchy of groups from largest to smallest: *plemia*, *rod*, *otdelenie, podotdelenie.* Analogously, in English, scholars refer to tribes, clans, lineages and sublineages, but again, the meaning of *ru*, *rod*, or clan in scholarly analysis of Kazakh kinship relations can only be determined by the context in which it is used. In this study, I am not engaged in a close kinship analysis of Kazakh social structure, and I use the terms "kinship group" and "clan" interchangeably.

23 There was no affiliation of a particular clan with a particular *ulus;* indeed, they were very mixed. The political authority of the sultan in this set-up derived from the great respect that all Kazakhs reserved for those who legitimately traced their descent to Chingis Khan. See Levshin, ch. 3, 165. For an example of the *ulus* territorial-clan composition, Spasskii observed in 1820 that a sultan named Khan-baba ruled over six branches of the Naiman clan, numbering 35,000 families, who migrated in a certain territory. Similarly, two sultans had control of the same number of families in the Argïn clan who migrated within a designated territory. See G. Spasskii, "Kirgiz-Kaisaki Bolshoi, Srednei i Maloi Ordy," *Sibirskii vestnik* 1820, ch. 9–10:87–8.

24 There were also other social strata in Kazakh society: *khodzha*, a special caste of revered religious elites who traced their ancestry to the Muslim Prophet Muhammed; *tölengut*, the retinue of sultans and khans; and slaves. See Sultanov, *Kochevye,* 84–5.

25 For one example of the Alash origin myth of the Kazakhs, see: "Alasha-khan" in *Kazakhskii fol'klor v sobranii G.N. Potanina* (Alma-Ata, 1972), 67–8.

26 Anthropologists have sought to identify the kinship structure of the Kazakh nomads as a "conical clan," described by Thomas Barfield as a "model of nested kinship groups" [Thomas Barfield, *The Nomadic Alternative* (Englewood Cliffs, NJ: Prentice Hall, 1993), 147]. See also Elizabeth Bacon, *Obok. A Study of Social Structure in Eurasia*, (NY: Wenner-Gren Foundation for Anthropological Research Inc., 1958), 66–80. For a general definition of a conical clan, see Marshall Sahlins, *Tribesmen* (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1968), 24ff; Paul Kirchhoff, "The Principles of Clanship in Human Society," in Eugene Cooper and Andrei Simic, eds, *Readings in Cultural Anthropology* (Dubuque, IA: Kendall/Hunt Publishing Co., 1994), 189–98.

27 Kurylev, "Semeino-rodstvennye gruppy," 133. Also called *bir ata* or *atabalasï.*

28 Grodekov, 16; Radloff, *Aus Sibirien,* p. 513. On *aul* structure typical of Eurasian nomads, see Sevyan Vainshtein, *Nomads of South Siberia* (Cambridge: Cambridge University Press, 1980), 243–6.

29 On the "impermanent" nature of kinship ties, see Bacon, *Obok*, 72. Sahlins *(Tribesmen)* defined clan membership as "putative": "membership in a clan is verified by parentage, not ancestry: one is a child of a man of the patrician, therefore oneself a member of the clan, and therefore of the same heritage as other members" (p. 52.). This definition is easier to understand when contrasted to lineage, which Sahlins defines as genealogical membership demonstrated by strictly spelling out one's line of ancestors (ibid.).

30 *L. Krader, Social Organization of the Mongol-Turkic Pastoral Nomads (The Hague: Mouton & Co., 1963), 197.*

31 Bacon, *Obok*, 68.

32 See S.L. Fuks, *Obychnoe pravo*, 49–60; Makovetskii, *Materialy*, 271–2; Balliuzek, 211; G.F. Dakhshleiger, "Settlement and Traditional Social Institutions of the Formerly Nomadic Kazakh People," in Wolfgang Weissleder, ed., *The Nomadic Alternative. Modes and Models of Interaction in the African-Asian Deserts and Steppes* (The Hague, 1978), 363; Zh.O. Artyqbaev, *Kochevoe obshchestvo,* 213.

33 Ch.Ch. Valikhanov, "Kirgizskoe rodoslovie," *Izbrannye proizvedeniia* (Moscow, 1986), 251.

34 See Zh.O. Artyqbaev, *Kazakhskoe obshchestvo v XIX veke: traditsii i innovatsii* (Karaganda: Poligrafiia, 1993), 47. Vostrov and Mukanov (p. 72) list seven main sublineages of the Meiram: the above five, plus the Shubartbala and Kambar. On seniority, see Barfield, 148; Kliashtornyi & Sultanov, 350.

35 Grodekov, 7–8.

36 Russian ethnographers called the nomadic tent *yurta*, which derived from the Mongol word *(yurt)* meaning homeland or territory of nomadic migrations. See Fedorov-Davydov, 44. In nineteenth century Russian administrative language, the nomadic tent was called *kibitka.*

37 Krasovskii (2:53–4) ranked transport animals, in order of importance for migration, the carrying of trade supplies and other labor needs as follows: camels, horses, cattle.

38 *Sïbagha* was the portion of meat given in the spring as a token of respect to khans, sultans and biys. *Soghïm* was the livestock meat slaughtered in winter and given by each family to the sultan. See d'Andre in Iushkov, ed., 138–9; Dakhshleiger, 366.

39 As Khazanov pointed out (p. 123), the Kazakhs did not own livestock as private property, because redistribution mechanisms of mutual aid and exchange ensured regular movement of livestock among different social and kinship groups. See also, e.g., Grodekov, 102; Balliuzek, 212. S.L. Fuks *(Obychnoe Pravo*, 24) argued that the *tamgha* was the sign of family property for the rich and nobles only; otherwise, it designated the common property of all members of a clan.

40 Levshin, *Opisanie.* Cited from S.V. Iushkov, ed., p. 22. The Kazakh word *en,* meaning earmark or brand, is the root of the word *enshi*, noted earlier as meaning the son's share of an inheritance.

41 Khazanov, 155. For a similar description of the relationship between rich and poor households among the Kirghiz of the Pamir Mountains, see M. Nazif Shahrani, *The Kirghiz and Wakhi of Afghanistan. Adaptation to Closed Frontiers* (Seattle & London: University of Washington Press, 1979), 145–49.

42 Masanov, *Kochevaia*, 184.

43 Khazanov, 139.

44 See John G. Galaty and Pierre Bonte, eds, *Herders*, *Warriors*, and *Traders. Pastoralism in Africa* (Boulder, CO: Westview Press, 1991), 9, for an argument made throughout the volume of articles: that livestock have social and cultural value to pastoralists, which cannot be measured in terms of capital investment. See also Claude Lévi-Strauss' discussion of *lohola* (brideprice) in South Africa as a measure of kinship relationships through indirect exchange of livestock, in *The Elementary Structures of Kinship* (Boston: Beacon Press, 1969), 466–71. Kinship status was also expressed during rituals and everyday social interaction such as gathering for meals and reception of guests. See e.g., Grodekov, 7; I.I. Ibragimov, "Ocherki byta Kirgizov. I. Pominki," *Drevnaia i novaia Rossiia* 3, 9 (1876), 55.

45 On the link between political and kinship authority, see, e.g., Rouland, 190–1.

46 Even though *Shariat* and *adat* coexisted, the balance between them was not everywhere the same. In part, the balance was determined by the legal school that took root in a particular region. In Central Asia, the Hanafi school predominated, and it recognized the validity of custom where religious texts did not give sufficient guidance. But other variables existed as well. In particular, pre-Islamic or non-Islamic legal custom was more pronounced among islamicized nomads, often because of distance from Islamic centers of learning and trained legal scholars, or an absence in the local culture of a tradition of Islamic book learning and literacy, and this tended to result in a poorly developed understanding of *Shariat.* On the concept of *adat* in general, and how it coexisted with *Shariat*, see Clifford Geertz, "Local Knowledge: Fact and Law in Comparative Perspective," in *Local Knowledge. Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983), 167–234; Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge University Press, 1972), 16–21. For general discussions of the local peculiarities of Islamic religiosity in practice, see Dale F. Eickelman, "The Study of Islam in Local Contexts," *Contributions to Asian Studies* XVII (1982), 1–16; and M. Nazif Shahrani, "Local Knowledge of Islam and Social Discourse in Afghanistan and Turkistan in the Modern Period," in Robert L. Canfield, ed., *Turko-Persia in Historical Perspective* (Cambridge: Cambridge University Press, 1991), 161–88.

47 Geertz, "Local Knowledge," 210.

48 Makovetskii, *Materialy*, 281.

49 *Grodekov, 21. See also F.K. Girs, Otchet revizuiushchago, po vysochaishemu poveleniiu, Turkestanskii krai, tainogo sovetnika Girsa (SPb,* 1983*), 325.*

50 Olson, 1–38.

51 *See Galaty and Bonte, 13–17; Philip C. Salzman, ed., When Nomads Settle. Processes of Sedentarization as Aadatation and Response (NY: Praeger, 1980), 1–19; Khazanov. Soviet scholars such as Tolybekov do not interpret this as flexibility. Rather, Tolybekov (pp. 421–30) sees the "conservatism" of nomadic pastoralism in terms of the persistence of patriarchal and clanbased social organization.*

52 Radloff, *Aus Sibirien*, 517.

53 Most often, the *biy* was a man, but in some cases, a well-respected, elderly widow could play the role of mediator. Ibragimov, "Zametki," 234.

54 Ibragimov, "Zametki," 234; Valikhanov, "Zapiska," 91; Krasovskii, 3:83; Grodekov, 141f.

55 For a discussion of this culturally rooted style of leadership in ethnographic studies of other nomadic cultures, see, e.g., Thomas J. Barfield, *The Central Asian Arabs of Afghanistan. Pastoral Nomadism in Transition* (Austin: University of Texas Press, 1981), 62–8; M. Nazif Shahrani, "The Kirghiz Khans: Style and Substance of Traditional Local Leadership in Central Asia." *Central Asian Survey*, vol. 5, no. 3/4 (1986), 255–71; Frederik Barth, *Political Leadership among Swat Pathans* (London: The Athlone Press, 1965), 71–91; Beck, 200–34.

56 Balliuzek, 163. Numerous legends and tales convey this idealized image of the *biy.* See, e.g., "Spravedlivyi sud'ia" and "Vernoe reshenie," in V.M. SidePnikov, ed. *Kazakhskie skazki. Tom II.* (Alma-Ata, 1962), 349–52. Reprint from I.I. Kraft. *Iz kirgizskoi stariny.* (Orenburg, 1900), 128–32.

57 Valikhanov, "Zapiska," 87.

58 "Sud biia Bal'tekeia (legenda kirgiz-kaisatskoi Srednei Ordy)," *Vostochnoe obozrenie* 1885, no. 49–50:17–20.

59 Radloff, *Aus Sibirien*, 338.

60 Krasovskii, 3:82; Valikhanov, "Zapiska," 88.

61 A.A. Leont'ev. "Obychnoe pravo," 118–19.

62 Leont'ev (Ibid., 122) defined *töbebasï* specifically as "clan biy" *[rodovoi bit].* See also R. Marsekov, "Kirgizskii narodnyi sud," *KSG* 1900, no. 1–2; "Zakonopolozhenie," 51.

63 Krasovskii (3:85) made the distinction between a *kenges*, which was a large gathering [from the Kazakh verb, *kengesu*, to consult, advise] and a smaller mediating body, which he called a *zhuginis* [from the verb *shöginu*, to kneel oneself down]. In fact, as Ibragimov explained ("Zametki," 234), any Kazakh who sought counsel or resolution from a *biy* was supposed to appear before the *biy* "*shöginip*", i.e., on his knees, regardless of the number of *biys* or the type of resolution requested from them. The large gatherings of clan leaders were convened at the behest of the khan, usually in the fall, but they could be held as many as three times per year. See P.S. Pallas, *Puteshestvie po raznym provintsiam Rossiiskoi Imperii* (SPb, 1777), 579. Additionally, the *Zheti Zharghï* of Khan Tauke stated that all Kazakh sultans and clan leaders meet in the fall to discuss common affairs; this gathering was called a "*qurultai*" (Kliashtornyi & Sultanov, 347).

64 Ibragimov, "Zametki," 235.

65 Valikhanov, "Zapiska", 88.

66 Ibid., 87.

67 Grodekov, 142; S. Sabataev, "Sud aksakalov i sud treteiskii," *Etnograficheskoe obozrenie* 1900, no. 3:68.

68 For descriptions of Kazakh oath-taking, see: Balliuzek, 171–3; Grodekov, 208–24; A.K. Geins, *Motivy k vremennoi instruktsii uezdnym nachal'nikam Turgaiskoi blasti i soobrazheniia po upravleniiu Kirgizami* (Orenburg, 1878), 62; N. Izraztsov. "Obychnoe pravo ('adat') Kirgizov Semirechenskoi oblasti," *Etnograficheskoe obozrenie* 1897, no. 4:32f; M. Gotovitskii, "Znachenie i obriad prisiagi u kirgiz," *IuV* 1885, no. 5:189–93.

69 For examples of this procedure, see, e.g., GAOO, f. 3, op. 9, d. 13727, l. 8; TsGARK, f. 413, op. 1, d. 1, l. 1; Balliuzek, 165. See also Appendix, Cases One and Two.

70 The connection between the well-being of a Kazakh's livestock and his/her own well-being is made in a standard form of greeting still heard today: "*Mal-zhan aman ba?"* [Are your cattle and soul well?]

71 Girs, 325.

72 The size and composition of all fines varied, reflecting temporal and regional changes in relative values of specific animals. For instance, one *toghïz* (lit: nine) might contain 3 camels, 3 horses and 3 cows (Grodekov, 225) or it might contain one camel and 8 horses, or one horse and 8 sheep (Krasovskii, 89). The size of *qun* varied, depending on the status and gender of the person murdered or harmed and the circumstances under which the act of wrongdoing was committed. Makovetskii observed, for instance, that *qun* was 10–20 camels for the murder of a man, and 5–10 camels for murder of a woman (.*Materialy*, p. 278). For other sample measures, see also Balliuzek, 192–205; and Fuks, *Obychnoe pravo,* 100–06.

73 Geins, 58.

74 Balliuzek, 218.

75 C.Z. Zimanov, *Politicheskii stroi*, 105. The fact that the *biy* was subordinate in authority to the khan was not unique to Kazakh culture. Nazif Shahrani analyzed a similar hierarchy of leadership positions in his study of the Kirghiz of Afghanistan. See Shahrani, "The Kirghiz Khans," 263–70.

76 S.M.Ch., "Mestnyia izvestiia. Baian-Aul," *OPkAOL* 1890, no. 3:2. See also Grodekov, 24. For more on the Kazakh khanates in the sixteenth and seventeenth centuries, see, e.g., *Istoriia Kazakhskoi SSR* T. 2 (Alma-Ata, 1979), 264–382; Kliashtornyi and Sultanov, 261–356.

77 Radloff, *Aus Sibirien*, 514. See also Sabataev, "Sud aksakalov," 68.

78 A.A. Leont'ev, "Obychnoe pravo," 130. Leont'ev's Russian translation is: *"khudoi bii polozhit na prisiagu, a khoroshii bii (sam) naidet skrytago*." The etymology of "zhaqsïrghandï" [more accurately: zhaqtïrghandï] can be traced to the verb "zhaghu" (to set fire); the translation I am offering here renders more accurately the original meaning than the Russian version.

79 Ibragimov, "Zametki," 234; "Raport Poruchika Aitova: o kirgizskikh obychaiakh, imeiushchikh v stepi silu zakonov" (1846), in Iushkov, ed., 82.

80 According to two accounts, the person who made a false claim against a *biy* was subject to corporal punishment. See "Raport Iachmeneva" (1846), and "Raport Belozerova" (1846), in Iushkov, ed., 106 & 112, respectively.

81 On the notion of the vulnerability of the unwritten rules of *adat* to change, see Geertz, "Local Knowledge," 214.

Chapter Two: Law and Empire-Building

1 The four important pieces of legislation were: "Ustav o Sibirskikh Kirgizakh," *Polnoe Sobranie Zakonov* [PSZ],series 2, vol. 38, no. 29127; "Vremennoe polozhenie ob administratsii v Ural'skoi, Turgaiskoi, Akmolinskoi i Semipalatinskoi *obliastiakh*." PSZ, series 2, vol. 43, No. 46380; "Polozhenie ob upravlenii Akmolinskoi, Semipalatinskoi, Semirechinskoi, Ural'skoi i Turgaiskoi *oblastiami*." PSZ, series 3, vol. 11, no. 7475; "Vremennye pravila o primenenii sudebnykh ustavov k Turkestanskomu kraiu i stepnym *oblastiam." Sobranie uzakonenii*, 1898, No. 72. Reprinted (with commentary) in Kraft, *Sudebnaia chast*', 111–214.

2 Among the few published accounts we have of the territory of the Middle Horde Kazakhs before 1822 are: P.I. Rychkov, *Topografiia Orenburgskoi gubernii. Sochinenie P.I. Rychkova 1762 goda* (Orenburg, 1887), 101–15; P.S. Pallas, *Puteshestvie;* Potanin, "O rukopisi kapitana Andreeva," 107–10; D.Ch.Ia. Khanykov, "Poezdka Posnelova i Burnasheva v Tashkent, v 1800 godu," *VestlRGO* 1851, ch. 1, kn. 1:1–56; Spasskii, "Kirgiz-Kaisaki," 71–204; G. Gaverdovskii, "Obshchee obozrenie mestnosti kirgiz-kaisats-koi stepi," *Sibirskii vestnik* 1823, ch. 3, kn. 13:43–60.

3 Marc Raeff, *Mikhael Speransky. Statesman of Imperial Russia 1772–1839.* Second edition (The Hague: Martinus Nijhoff, 1969), 256.

4 B.M. Abdurakhmanova, "Razrabotka M.M. Speranskim 'Ustava o Sibirskikh Kirgizakh' 1822 g. i sotsial'no-politicheskie instituty kazakhskogo obshchestva," *Vestnik Moskovskogo Universiteta. Seriia 8: istoriia* 1991, no. 4:52; John P. LeDonne, *Ruling Russia. Politics and Administration in the Age of Absolutism*, *1762–96* (Princeton University Press, 1984), 269–88.

5 Raeff, *Speransky*, 340–2.

6 Yuri Slezkine, *Arctic Mirrrors* (Cornell University Press, 1994), 80–4; Raeff, *Speransky*, 322; Dov Yaroshevsky, "Empire and Citizenship," *Russia's Orient*, 67–8.

7 *Raeff, Speransky, 277.*

8 George Yaney, *The Systematization of Russian Government. Social Evolution in the Domestic Administration of Imperial Russia*, *1711–1905* (Urbana: University of Illinois Press, 1973), 30. It must be pointed out that this legal philosophy represented an ideal which seldom corresponded to the reality of legal practices and which varied widely throughout the empire. See E. Willis Brooks, "Nicholas I as Reformer: Russian Attempts to Conquer the Caucasus, 1825–1855," in *Nation and Ideology. Essays in Honor of Wayne S. Vucinich* (New York: Columbia University Press, 1981), 227–64. Brooks demonstrates that while Commander Ermolov (1816–27) in the Caucasus argued that local customs had to be changed "gradually," Vel'iaminov in the 1830s demanded force be used to make the native mountain peoples "speak, think and feel Russian." See also Marc Raeff, "Patterns," 31.

9 See, e.g., I. Anichkov, *Mirovoi sud i preobrazovanie nizskikh sudov* (SPb, 1907), 43; *Ministerstvo Iustitsii v pervoe desiatiletie tsarstvovaniia Imperatora Nikolaia II, 1894–1904* (SPb, 1904), 4; N.V. Kalachev, "Ob otnoshenii iuridicheskikh obychaev k zakonodatel'stvu," *ZapIRGOE* 1878, T. 8:3–11. In the same way that law was used to direct change among the Kazakhs, it was also used to direct change within Russian society itself. Both Wagner and Engelstein demonstrate that civil law was used to promote imperial visions of gender relations, morality, and family life. See William G. Wagner, *Marriage, Property and Law in Late Imperial Russia* (Oxford: Clarendon Press, 1994); and Laura Engelstein, *The Keys to Happiness. Sex and the Search for Modernity in Fin-de-Siècle Russia* (Ithaca & London: Cornell University Press, 1992).

10 In Russian texts, the word *adat* is rarely used; rather, lawmakers, officials and intellectuals used the terms "popular customs" [*narodnye obychai]* or "customary law" [*obychnoe pravo]*. In either case, the emphasis on "custom" served to juxtapose the informal nature of Kazakh customs against the formal Russian law *[zakon]*.

11 N.V. Riasanovsky, "Asia Through Russian Eyes," in Wayne S. Vucinich, ed., *Russia and Asia. Essays on the Influence of Russia on the Asian Peoples* (Stanford University Press, 1972); Slezkine, *Arctic Mirrors*, 73–

Glossary

(Kazakh words are marked with *)

adat*	custom, customary law
aiïp*	fine; guilt
aqsaqal*	white beard; respected elder
aq suiek*	White Bone
as*	funerary feast
ata-bölek*	father's reserve (family plot)
aul*	nomadic encampment
aul starshina	Kazakh elder of a nomadic encampment
barïmta* [baranta]	driving away of livestock in revenge
biy*	nomadic judge, clan leader
biylik*	compensation for judge's services
daulet*	wealth
desiatina	2.7 acres
en*	earmark; brand
enshi*	son's share of father's property in inheritance
erezhe*	set of rules promulgated at a legal assembly
grabëzh	robbery
kenges*	large legal assembly
kibitka	nomadic tent
Kishi Zhuz*	Little Horde
konokradstvo	horsetheft
kökteu*	spring pasture
köshbasï*	migration leader
küzeu*	fall pasture
letovka	summer pasture
oblast’	regional administrative unit; province

Orta Zhuz*	Middle Horde
nabeg	raid
narodnyi sud	people's court
qalïm*	brideprice
qara suiek*	Black Bone
qarïndas bölu* [karandas]	to divide among relatives; the act of settling a dispute in order to avoid taking a cleansing oath
qoy-bölek*	sheep's reserve
qun*	blood-money
qïstau* [kstau]	winter pasture
razboi	robbery, plunder
samovol'tsy	unauthorized peasant migrants
Shariat	Islamic law
shezhire*	genealogy
shöginip*	on one's knees (form for addressing a *biy)*
tamgha*	clan symbol; cattle brand
tamïrlïq* [tamyrstvo]	strong bond of friendship
töbebasï*	chief mediator at legal assembly
toghïz*	nine; fine in the amount of nine animals
töre*	sultan; nobility
uezd	county
uezd nachal'nik	Russian military-administrative commander of the county
Ulï Zhuz*	Great Horde
ulus	patrimony
urlïq*	theft
versta	3500 feet, or approximately 2/3 mile
volost’	district
volostnoi upravitel’	Kazakh leader of the district
vorovstvo	theft
vybornyi	delegate
zakon	law
zhaman is*	bad deed
zhan-beru*	give one's soul; give a cleansing oath
zhärdem*	mutual aid among kinship groups
zhasau*	dowry
zhataq*	sedentarized nomad
zhaylau*	summer pasture
Zheti Zharghi*	Seven Statutes (17th/18th c. Kazakh legal code)
zhigit*	young man

zhut*	late winter thaw followed by refreezing, covering the ground with ice and resulting in loss of livestock
zhuz*	hundred; horde
zimovka	winter pasture; semi-subterranean dwelling