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Justice, power and informal settlements: understanding the juridical view of property rights
in Central Asia

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Abstract

The article examines how judges and lawyers struggle to legitimise and normalise private property rights against attempts by poor and migrant groups to politicise housing and social needs in Central Asia. It will discuss the juridical understanding of justice and equality in relation to property rights violations on the outskirts of major cities in Kyrgyzstan and Kazakhstan. It will argue that the juridical system is central in construing property rights and obligations, and in so doing social inequalities are legitimised and naturalised in a neoliberalising post-Soviet space. The article uses the concepts of ‘the moral economy’ and ‘the juridical field’ to examine how judges and lawyers justify and normalise their ways of interpreting and ordering the social world.

Keywords: moral economy, property rights, judiciary, social inequalities, post-socialism

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This article examines how judges and lawyers struggle to legitimise and normalise private property rights against attempts by poor and migrant groups to politicise housing and social needs in Central Asia. It discusses the nature of their moral justifications and evaluations of private property and informal settlements (or illegal housing) on the outskirts of major cities in Kyrgyzstan and Kazakhstan. Their construals of rights and obligations are central in shaping and de-politicising unequal social relationships between powerful actors and disadvantaged groups. The article aims to contribute to the literature on the moral dimensions of economic and social life in developing and post-Soviet economies (e.g. Hann 2018; Wiegratz 2016).

All economies are ‘moral’ economies, because economic activities are not solely driven by the pursuit of individual self-interest, but are influenced by other moral sentiments as well as concerns, norms, rules, rights and discourses (Keat 2000; Sayer 2004). Rules and rights do not merely regularise and normalise economic relations, they justify and rationalise who should do, get or control what (Sayer 2018). Property relations are particularly important in neoliberal economies, because they expand the sources of unearned income based on the ownership and control of existing assets at the expense of asset-poor groups (Sayer 2015).

The study uses the concept of ‘juridical field’ to examine how legal professionals struggle for legitimacy and authority to impose their ways of defining, naming, categorising and ordering persons and things into moral visions and ideals for society (Bourdieu 1987). Judges and lawyers can contest other actors’ (e.g. the administrative state) interpretations of individuals’ status and rights. Legal discourse is a form of symbolic domination, sanctioning particular ways of interpreting and ordering the social world (Bourdieu 1987). In the process, it justifies and normalises unequal social relations and differential access to resources, recognition and representation.

During the Soviet period, the judiciary was subordinate to the Communist Party, and its role in the commercial sphere was restricted to enforcing the state’s economic plans (Anderson *et al.* 2005). While the judiciary had a limited scope for economic matters and private law, it was responsible for non-economic matters, mostly civil and criminal law. The transition from communism to capitalism required a dramatic change in legal and judicial institutions. In particular, judicial reform focused on independence from the executive, new roles and skills for judges and lawyers, and capacity-building for courts to operate effectively (Anderson *et al.* 2005).

Chang (2011) observes that the view that poor-quality institutions (such as weak property rights and corrupt law agencies) are the root cause of economic problems in transition and developing countries has become widespread in development economics. Since the late 1990s the International Monetary Fund (IMF), the World Bank and Western governments started to impose ‘governance-related conditionalities’, which required recipient countries to adopt ‘better’ institutions that improve governance. The donors’ normative values involved maximising market freedom and protecting private property (Chang 2011).

The World Bank promotes the rule of law through legal and judicial reform (Barron 2005). The rule of law requires a government to offer assurances that there will be no legislation to interfere with market processes, to limit property rights, and to make investment in the society more precarious, or that it will keep such legislation to a minimum (Waldron 2012). The World Bank maintains a ‘Rule of Law’ index for countries, alongside other governance indicators, such as control of corruption. Waldron (2012) explains that the index is used to measure the ideal of economic freedom for the benefit of investors, neglecting other ideals, such as human rights and democracy.

After the collapse of the Soviet Union, major Western donors started to create a legal infrastructure for a market economy in Central Asia (Anderson *et al.* 2005; USAID 2005).

They supported the drafting and adoption of constitutions that enshrined an independent judiciary, protection of property rights and economic freedoms. Anderson *et al.* (2005) observe that the World Bank emphasised legislative drafting for commercial, financial and sectoral reform during the early years of transition. Some donor assistance focused on developing the formal aspects of the judicial system, such as self-governing bodies, appointment and disciplinary procedures, judicial training centres and access to justice (Anderson *et al.* 2005; International Crisis Group 2008). Donors also tackled procedural and organisational issues to make the courts work ‘better’ by funding modern facilities, case management practices, training of court and law enforcement staff, and greater transparency and accountability (Anderson *et al.* 2005).

The implementation of neoliberal reforms varied in Central Asia, with Kyrgyzstan and Kazakhstan being more pro-market than their neighbours (Pomfret 2010). In post-Soviet countries, the process of privatising lucrative state assets (including mines, factories and agricultural land) favoured powerful actors, who were part of or were close to political and administrative elites (Harvey 2005). Acquiring property rights to valuable assets allowed the new owners to have quasi-monopoly power and to extract economic rent (Sayer 2015). Cooley and Heathershaw (2017) observe that presidents of Central Asian states and their entourage amassed huge wealth, some of it siphoned off to tax havens.

In contrast, most of the rural population was dispossessed and impoverished. Collective farms were privatised, and farm land was distributed to employees, who often struggled to eke out a living on small plots (Sabates-Wheeler 2007). Many rural people abandoned farming, and migrated to major cities in search of better economic prospects (Isabaeva 2014). Cuts to social expenditure meant that state provisions, and in particular social housing, were inadequate to satisfy basic needs. Bayat (2000) observes that accommodation invariably becomes privatised, as people seek practical solutions through the market or ‘quiet encroachment’ on private and public land (i.e. informal settlements).

In Kyrgyzstan and Kazakhstan, local authorities have been reluctant to evict poor illegal settlers for fear of social and political unrest (Author). Over time the authorities have regularised some informal settlements by upgrading public services and integrating them into the urban planning (Hatcher 2015; Yessenova 2010). While most low-income settlers have *de facto* tenure security, many of them seek *de jure* security and formal rights. Scholars (including Azuela and Meneses-Reyes 2014; Smart 2001; Hohmann 2013; Thorn and Oldfield 2011; Fernandes 2010) draw attention to similar operations of justice, power and the legal status of low-income informal settlements in Latin America, Asia and Africa.

This article contributes to the literature on the moral economy of post-socialist countries in two ways. First, it examines how judges and lawyers help to reproduce social inequalities through legal discourses that morally justify unequal property relations between people. Second, it discusses how the juridical field is an important site for contestations between different social actors, including the administrative state and subaltern groups. The role of the judiciary in creating and sustaining economic domination is neglected in post-socialist studies.

This paper is divided into five sections. The first section will examine how theoretical ideas on the moral economy and the juridical field can offer critical insights on property relations. In section two, I will briefly describe the research design and methods. The third section will explore the findings, analysing social relations and moral justifications involved in informal settlements. The fourth section will discuss the findings, drawing out several theoretical points. Finally, the conclusion will suggest how the article has contributed to the literature on the moral economy.

Ideas on economic and property relations

The moral economy

When considering normative ideas about property and housing, it is common to turn to political writings on human rights. For instance, Sen (1999) and Nussbaum (2000) discuss the importance of individuals having the freedom to have, be or do things that are necessary for human flourishing. They go beyond the economic narrow concern with income distribution to examine human capabilities, such as to have shelter and property rights on an equal basis with others. But the human capabilities approach offers an abstract account on the nature of justice and what is good. It makes little reference to actually existing institutions and practices, does not discuss what produces injustice, harm and suffering, and ignores common forms of injustice and social problems (Sayer 2018).

‘Moral economy’ refers to how moral sentiments, norms and beliefs shape both formal and informal economic practices and institutions, and the way these are reinforced, compromised or overridden by economic power and pressures (Sayer 2007). Several scholars (including Mandel and Humphrey 2004) have observed that although the market ideology has expanded into many areas of people’s professional, economic and personal lives in Eurasia, moral values remain important and affect economic behaviour. Hann (2006) and Benda-Beckmann *et al.* (2009) describe how property relations are embedded in wider social relations and moral values in post-socialist countries.

In addition to being an object of study, moral economy is a kind of inquiry that embraces both analytical and evaluative modes (Sayer 2000). An understanding of the moral dimension of economy involves ‘enquiries into how economic action is continuously shaped by subjective convictions of good and bad’ (Hann 2018: 250). The moral economy approach ‘analyses and assesses the fairness and justifications of actually existing economic relations and practices’ (Sayer 2018: 23). In recognising how economic arrangements affect human flourishing and suffering, social analysis cannot avoid normative implications (Sayer 2007).

While Hann (2018) uses the term ‘the moral dimension’ to refer to how economic behaviour is influenced by moral values, the relationship between economic phenomena and morality is much closer. Sayer (2007) argues that economic institutions and processes are partly constituted by moral concerns and norms. There are three ways in which economic practices and morality are interdependent and in tension.

First, social relations, such as property or financial ones, have a constitutive moral dimension, in that people have some ideas of their rights, responsibilities and entitlements, of how they are supposed to behave, and of the appropriate conditions and circumstances under which they are supposed to exist (Sayer 2007). In economic relations and roles, people have ideas on what constitutes unreasonable behaviour, how to behave towards each other, and how roles should be performed. Once economic institutions and practices become established, issues of moral legitimacy become normalised and de-politicised (Sayer 2007). Such economic arrangements are viewed as how things are and what people deserve, as in the ‘belief in a just world’.

Second, social relations are contingently affected by people having some understanding of others’ situation, a degree of propriety, and some awareness of what kind of relations and things are conducive to well-being (Sayer 2007). These moral qualities, however partial or imperfect, are the pre-conditions of economic and social practices. Smith (1976) argues that social disparities between people can affect people’s fellow-feelings, moral sentiments and judgements of others’ motives and actions as either praiseworthy or blameworthy, proper or improper.

In addition to the structural and agential moral properties, the third moral dimension examines the unintended consequences of economic actions on people's well-being (Sayer 2007). Evaluating moral consequences is as important as understanding moral justifications and influences on economic practices. People's relation to the world is one of concern. They continually have to monitor and evaluate how the things they care about are faring, and what to do next (Sayer 2011). They assess how the world is and ought to be.

While Whyte and Wiegatz (2016) rightly insist that neoliberal moral economies tend to produce fraud and corruption, it is important to understand that neoliberalism has promoted exchange-value based on the ownership and control of assets, and has legitimised unearned income, such as interest and rent (Sayer 2015). Neoliberalism produced shifts in the balance of power in relations between employers and employees, lenders and borrowers, landowners and tenants, donors and recipients, the state and citizens, and international financial institutions and nation-states (Sayer 2018). This involved not merely changing property rights of valuable assets, but re-shaping moral norms, justifications and expectations.

In studying poverty and marginality in post-Soviet countries, many researchers (e.g. Round and Kosterina 2005; Satre and Morell 2016) understandably focus on the poor and the disadvantaged. But to understand why they are in that situation, attention is needed on unequal social relations between people, and how such relations are morally constituted. This study examines how the judiciary, as an external authority, evaluates and justifies the unequal social relationship between property owners and squatters.

The juridical field

Bourdieu's (1987) concept of the juridical field examines how legal professionals and extra-legal actors struggle to impose their ways of defining, categorising and ordering persons and things into moral visions for society. This process does not merely produce a form of symbolic domination over society, but creates unequal social relations between people in the economy in terms of differential rights, responsibilities and access to resources. Under neoliberalism, the juridical field becomes an important site of struggle for the ownership and control of existing assets, and the ability to extract economic rent.

Judges have 'world-making' powers, naming and titling objects in cases of private property ownership, and instituting and absolving rights and obligations in cases of state administrative affairs (Bourdieu 1987). In this context, judges are involved in constructing socio-spatial space in which some social groups gain valuable assets at the expense of others. Property concerns the way in which the relations between people with respect to valuable things are given form and significance (Benda-Beckmann *et al.* 2009). Hohmann (2013) observes how slum development, social belonging and human rights are connected to social and legal struggles for the power to define and order persons and things.

The juridical field is a site of competition for control, leading to a hierarchical system within the field that structures differential professional prestige and power attached to legal specialities, approaches and careers (Bourdieu 1987). In addition to the internal competition, legal professionals engage in a struggle for monopoly of power with those outside the field (e.g. politicians and activists) to gain and sustain an acceptance for their conception of the law's relation to society (Bourdieu 1987).

The juridical field does not operate independently of other social fields and corporate actors. The state plays a significant role by legitimising legal practitioners' credentials, recruiting and dismissing judges, pronouncing decrees, and financing the courts. As the courts adjudicate private property rights, and hence business interests, the juridical and commercial

fields overlap. Lacking economic, cultural and symbolic capital to contest or interpret legal texts, poor and disadvantaged groups lack direct influence in the juridical field.

The juridical language has a rhetoric of impartiality and fairness that produces two effects. First, it neutralises conflicts, evoking a legal process based on an impartial and rational application of legal doctrines, which are recognised to have universal and logical qualities. Legal professionals distance themselves from financial dealings and political questions to create a neutral space in which equal parties engage in rule-bound exchanges of rational arguments (Bourdieu 1987). But such a construction is a deliberate mis-recognition and denial of the economic and the political, aimed at disguising interested judgements. Contrary to self-representations of impartiality, judges can possess class and immoral sentiments, resulting in lack of sympathy and concern for marginalised groups (Author).

Second, the juridical language creates a universalising attitude, designed to express the generality of the rule of law (Bourdieu 1987). It is committed to facts and objectivity, presupposes an ethical consensus, and has little room for idiosyncratic judgements or personal discretion. But the rhetoric of neutrality and universality masks the ideological neoliberal bias towards moral individualism and the market economy.

Legal judgements are acts of naming or instituting, in which authorised, public and official speech is spoken in the name of and to everyone (Bourdieu 1987). They normalise symbolic violence and domination, proclaiming what is historical, contingent and unequal as rational, universal, impartial and fair. Legal judgements often ratify and sanctify the doxic view of social divisions and classifications. While the courts possess world-making powers to categorise property violations and illegal occupations as legitimate, how they actually adjudicate depend on social and political forces operating in the juridical field.

The article can be situated in a broader international theoretical context in relation to socio-legal studies. Braverman *et al.* (2014) argue that the legal geography scholarship highlights how nearly every aspect of law involves some spatio-temporal frame of reference, and every bit of space is inscribed with legal significance. It critically analyses justice, power and space. Delaney (2010: 157) observes, ‘While all inhabitants of the nomosphere¹ continually make legal sense (take up traces, exercise rights and authority, confirm the rights of others, and so on) lawyers and judges do so under special conditions and with distinctive results.’

Delaney (2010) explains that owing to their institutional position and their status as state agents, judges are [authorised](#) to empower and disempower others, to rule, order and command, and to unleash or restrain state and symbolic violence in ways that lawyers cannot. Judges and lawyers are referred to as ‘nomospheric technicians’, who have different access to power to confer, inscribe, interpret and contest legal meanings onto places and lifeworlds (Delaney 2004). Power is exercised, justified, criticised and experienced through spaces and places, where the powerless are often displaced, dispossessed and disavowed through the force of reason.

Azuela and Meneses-Reyes (2014) observe that in the early 1930s the post-revolutionary Mexican state was committed to social justice. It expropriated large landholdings to distribute to the urban poor, who had migrated from rural areas and could not access formal housing through the market. The expropriation of land served to distribute wealth concentrated in a few hands, and to achieve social order and political legitimacy arising from the migration.

The affected landowners resisted the expropriations, and in many cases federal judges ruled in their favour. But the Supreme Court upheld the state’s eminent domain power on the grounds of public benefit. By the 1940s, prestigious lawyers wrote newspaper articles against

¹ The ‘nomosphere’ refers to ‘the cultural-material environs that are constituted by the reciprocal materialisation of the legal and the legal signification of the sociospatial’ (Delaney 2004: 851).

land expropriation for new settlements. The government also became more committed to a market economy, and abandoned the rhetoric of social justice (Azuela and Meneses-Reyes 2014). In 1951 the Supreme Court declared that the state's use of eminent domain was unconstitutional for the creation of new settlements.

Azuela and Meneses-Reyes (2014) argue that low-income informal settlements can provide the state with an opportunity to exercise largesse and obtain political clientele. In declaring informal settlements to be illegal, the courts can push low-income settlers to seek concessions from the government. State programmes can regularise informal settlements through titling and/or upgrading public services (Fernandes 2011). By placing the urban poor outside the law, judges help to create a political regime in which the government can exploit and subordinate the poor (Azuela and Meneses-Reyes 2014). [Azuela and Meneses-Reyes's \(2014\) study offers particular insights that help to inform the analysis of the author's findings.](#)

Research Design

Critical realism helped to shape the research. The research strategy was retrodution. Retrodution aims to discover the underlying causal powers and mechanisms that explain observed regularities in particular contexts (Sayer 1992; Blaikie 2010). The author developed a hypothetical model of causal mechanisms that was assumed to produce observable or familiar events (i.e. moral evaluations on informal settlements). The analysis then worked back from the empirical data to possible explanations. The model included agents' emotions, dispositions and deliberations and pre-existing social and cultural structures (e.g. inequalities, norms and discourses) that had constraining and facilitating implications for action.

An interview's central attraction is that the researcher can directly access interviewees' deliberations and evaluations (Smith and Elger 2014). In critical realism, interviews are theory-driven, meaning that the researcher's theory is the subject matter of the interview, and interviewees confirm, falsify or refine that theory (Pawson 1996). Interviews connected the author's research agenda to the interviewees' understandings and evaluations. They helped to investigate the relationships among the different causal mechanisms (e.g. deliberations, discourses and inequalities), the varying contexts in which these mechanisms operated and the anticipated and unanticipated outcomes. The author did not merely collect detailed information about the participants' understandings and evaluations, but sought to test and refine hypotheses about them.

The study initially used purposive sampling to recruit participants relevant to the research questions (Bryman 2012). The author and several research assistants sent emails and rang Supreme Court judges requesting their participation in the study. Then requests were made to city judges, retired judges and prominent lawyers. Over half of the participants were recruited in this way. The study then used snowball sampling to recruit the remaining participants (Bryman 2012). Participants suggested fellow judges and lawyers, who would be willing to participate.

The study was based on semi-structured interviews the author and several research assistants conducted in Almaty, Astana, Bishkek and Osh. The sample consisted of 29 participants, of which 16 were Supreme Court, city and retired senior judges, 12 high-profile and local lawyers, and one ombudsman. The sample size reflected the methodological aim to gather rich and detailed qualitative data through in-depth interviews (Smith and Elger 2014). At the start of the interviews, the participants consented to be recorded, and were assured that the data would be anonymised and stored in password-protected files. The interviewees were assured of confidentiality, and their names have been pseudonymised.

The participants hailed from the four cities. The Supreme Courts of Kyrgyzstan and Kazakhstan are located in the respective capitals of Bishkek and Astana, where the interviews with Supreme Court judges were conducted. Most low-income informal settlements are in Bishkek and Almaty, where most of the interviews with city judges and senior lawyers were held. Some low-income squatting occurred in Astana and Osh, though not on the same scale as the other two cities. Some interviews with city judges and lawyers were conducted in these two cities.

Satybaldieva (2015) offers a Bourdieusian framework of social stratification in Central Asia based on people's volume and composition of economic, social, cultural and symbolic capital and their trajectory in the social space. In the study, most participants were upper-middle class. The Supreme Court, city and retired judges possessed academic qualifications, and occupied senior professional positions in the legal system. But their high cultural and symbolic capital did not necessarily convert into high economic capital. Several judges in the study complained that the judiciary was poorly funded, and that judges received low salaries and pensions compared to other elites and professions (cf. International Crisis Group 2008).

The lawyers in the sample were mostly upper-middle class, possessing a high level of economic, social, cultural and symbolic capital. Some were ex-judges, who either set up their own law practice, or worked for international donors. They had become wary of political interference and/or poor income in the profession. Several lawyers in the study were partners in prestigious law firms. Of these, some were committee members or advisors to regulatory bodies or law tribunals. Some lawyers were self-employed or worked for local NGOs.

The interviews were conducted in Russian, and each interview lasted on average 45 minutes (ranging from 30 minutes to one and a half hours). The interview questions examined how judges and lawyers evaluated informal settlements, what moral norms and concerns predominated their understandings, and what economic and political pressures shaped their judgements. The interviewees were encouraged to discuss what were the rights and obligations of non-legal professionals, including the local authorities, property owners and illegal settlers, and what kind of justice underpinned their evaluations.

All the interviews were digitally recorded, and then were transcribed and translated into English by the research assistants. The author read the transcripts several times to understand what themes were emerging (Silverman 2011). While some initial codes were derived from the author's research agenda, others emerged from the interview data. In this way, the author avoided his preconceptions distorting his interpretation of the data (Fletcher 2017).

The codes were changed, eliminated and supplemented as the data warranted until every piece of text was coded (Fletcher 2017). Some codes were re-coded into theoretical-informed categories that allowed for greater conceptual clarity. There were several prominent codes (such as 'corrective justice', 'legal independence', 'legal impartiality' and 'moral justifications') that reflected the critical realists' claim that structural and agential properties and powers are distinct (Carter and New 2004). In total, there were 29 codes. NVivo 10 computer software was used to help with coding the data (Bazeley and Jackson 2013).

Several key codes, such as 'corrective justice', 'distributive justice', 'legal impartiality' and 'property problems', were used to analyse how judges and lawyers morally evaluated informal settlements. The analysis revealed many similarities and some differences among the participants' evaluations. Other codes, including 'corruption', 'internal legal competition', 'professional union' and 'international agencies', were also developed, but they were not used for this article. At the end of the coding stage, the author wrote extended notes on each code to develop his analytic thinking (Rapley 2011).

This study relied on qualitative interviews with judges and lawyers, and the data and findings triangulated with the author's previous research in the region (Author). His previous

study examined how different social groups (illegal settlers, city authorities, local NGOs and international donors) understood, evaluated and managed informal settlements in Kyrgyzstan and Kazakhstan. It focused on several key topics, including the illegal settlers' access to justice, the strategy of legal empowerment and the public policy of city registration.

The study's overall research question **was** how **did** judges and lawyers morally evaluate informal settlements. There **were** also two sub-questions: i) what moral norms and concerns **did** judges and lawyers have in making such evaluations; and ii) how **did** class and power affect them?

Empirical findings

Juridical understanding of justice and equality

Weinrib (2001: 109) argues that the juridical understanding of justice views property law as 'a repository of moral reasoning about responsibility for harm, rather than as a device for promoting economic goals'. In the study, most judges and lawyers discussed the internal normative dimension of the relationship between property owners and squatters in informal settlements. They viewed squatting as an example of unjust enrichment, where one party had gained at the expense of the other party, and the courts had to undo the wrong. Asyl, a senior judge in Bishkek, observed that in informal settlements the relationship between the parties was morally correlative, in which illegal settlers had harmed property owners:

We know that rights of one person end where another person's rights begin. Therefore, the rights of those who have come and seize the land end there, where the rights of private property of another person begin. Therefore when the court decides fairly, it makes decision based on the law. Therefore, we believe that the legal decision is a fair decision. . . . The right to private property has to be protected . . . If a person's legal rights have been violated, why should not the perpetrator be liable?

Asyl explained that property rights had established responsibilities, and that a person who had violated another person's property was liable. As illegal settlers were held responsible for causing loss and injustice through their violation of the other party's rights, the courts were morally obligated to defend the latter's rights and repair the wrong. Weinrib (1994: 277) explains that legal justice links 'the parties in a bipolar relationship that mirrors the bipolarity of the wrong being corrected'. Drawing on Aristotle's (2009) treatment of justice in *The Nicomachean Ethics* Book V, Weinrib (1994) explains that in corrective justice the sole function of a judge is to undo the injustice of the correlative gain and loss.

Coleman (1995) describes how unjust transactions can disrupt the initial equality between parties. Squatting creates a dis-equilibrium between property owners and illegal settlers, because the latter have suffered a loss at the hands of the former. The courts are then obligated to re-establish the initial equality by depriving one party of the unjust gain, and restoring it to the other party. In the study, several judges and lawyers saw the relationship between the parties in terms of a zero-sum game, which required rectification and re-balancing. As Dinara, a Supreme Court judge in Astana, explained:

Our obligation is to defend the people, but in every process we have two sides. One side is right, and the other side is not right. We make a decision on the basis of the law, and one side wins. The other side always says that the judge was not fair. Our purpose is not to help the other side, but to uphold laws, rights and obligations. . . . A judge is not an NGO [non-governmental organisation] – we can't work in this way.

In cases of illegal occupation of land, Dinara judged the property owners to be victims, because they had suffered a loss by virtue of the squatters' gain. When the courts sought to

reverse unjust gains through eviction orders or demolition of squatters' houses, some human rights activists and NGOs in Kazakhstan and Kyrgyzstan accused the courts of being unfair, uncaring or corrupt (Author). But Dinara maintained that juridical justice did not support or advocate on behalf of needy or vulnerable groups, but rather applied the law. This meant rectifying the wrongdoing, and restoring the parties' initial positions. Dinara and several other judges maintained that it was illegitimate for the courts to dispense charity or re-distribute resources based on human needs or social inequalities. Their primary focus was corrective justice, not distributive justice.

Weinrib (1994: 292) explains that in corrective justice the conception of individual equality abstracts from the particulars of the parties' economic and social life to 'the sheer relationship of wrongdoer and sufferer'. People's social and personal characteristics, such as wealth, status, power and needs, are considered to be irrelevant in assessing wrongdoing. In the study, all the judges and lawyers maintained that people were equal before the law, and had equal moral status. Aibek, a senior judge in Bishkek, was adamant that social or economic status had no bearing in disputes of corrective justice:

The question of whether the parties are poor, rich or middle class is illegitimate and improper. It's not about that. All of us are equal before the law. It's written in the Constitution and in any other laws. When the courts consider some specific cases, no-one looks at the parties' financial position. The question is about their rights and whether actions were lawful or not. The court protects legal rights. The fact is that when land plots were seized by squatters, they committed abuses.

Aibek believed that the courts determined what was right or wrong on the basis of the parties' rights, duties and actions, rather than their social position, needs and virtues. Most of the judges in the sample justified their construal of illegal settlers as wrongdoers and property owners as victims, irrespective of their class, status and character.

Critically, the abstraction of individuals from their social positions enabled most judges in the study to ignore social and economic disparities between the parties, and to justify rectification of illegal settlers' wrongdoing. In the interviews, many judges and lawyers were reluctant to engage in questions about the vast differences in power and resources between the parties. Instead they sought to neutralise and normalise inequalities and power in terms of individual rights and responsibilities. Bourdieu (1987) critically observes that the juridical construction of individuals mis-recognises and denies the economic and the political, and disguises interested judgements in favour of the status quo.

Bourdieu (1987) argues that the juridical language is committed to impartiality, rationality, objectivity and the generality of the rule of law. This allows judges to appear to be neutral and fair in court proceedings. All the judges in the study claimed that there was little room for personal values and convictions in adjudicating cases of property violations and illegal occupations. Nurlan, a Supreme Court judge in Astana, insisted that judges were limited in their interpretation of the law and their concern for poor and vulnerable groups:

We don't interpret the law as we want to. Our activity is limited by the law. . . .
Judges simply enact the law. If we've good and clear laws, judges don't have room for manoeuvre. . . . Although a judge is a civil servant and so is accountable to the people, he must be impartial. Opportunities for judges to help poor groups are very limited. . . . The law can be unsympathetic or even severe to poor groups, but nevertheless the judges will apply the law.

Nurlan explained that judges were duty-bound to apply the law in an impartial and fair manner. Although their judgements had severe consequences for marginalised groups, they had to execute the law. Several judges claimed to embody professionalism and justice, and they framed their judgements on informal settlements in terms of objectivity and neutrality.

Aristotle (2009: V.4.1132a20-25) notes that in disputes of corrective justice, ‘to go to the judge is to go to justice; for the nature of the judge is to be a sort of animate justice; and . . . the judge restores equality.’

But critically, the juridical rules and norms regularised unequal social relationships between the parties. Restoring ‘equality’ meant rectifying the correlative gain and loss arising from informal settlements, so as to re-establish the parties’ status, positions and power prior to squatting. In this way, the judges did not simply ratify and sanctify the doxic view of social divisions and classifications, they legitimised and normalised social suffering and violence against disadvantaged groups (Bourdieu 1987). The juridical construal of justice and equality was an active discourse that mis-recognised and de-politicised harm and power, by proclaiming what were historical, contingent and unequal patterns of resources as rational, just and equal.

Sayer (2018) observes that rules, norms and rights do not merely regularise economic relations, they justify and rationalise who should do, get or control what. In the study, the judges described how property relations were partly morally constituted by individual rights and responsibilities, by ideas of corrective justice and equality, and by a professional ethos of impartiality and fairness. In doing so, the judges provided moral justifications of unequal economic relationships between powerful actors and disadvantaged groups, of unequal ownership and control of scarce resources, and of social suffering of poor and migrant groups.

In addition to moral rules and norms partly constituting property relations, the latter were contingently affected by people having an understanding of others’ situation (Sayer 2018). In the study, several judges and lawyers exhibited a lack of a moral concern and sympathy for illegal settlers. Their upper-middle class sentiments shaped their attitudes and treatment towards them. The squatters were characterised as dishonest, undeserving and irresponsible, and were treated with contempt, suspicion and fear. The judges claimed that some illegal settlers were motivated to take land plots to sell to others at a profit, and that other settlers had abandoned the ethos of hard work in rural areas, thereby causing lawlessness and disorder in the city.

When land invaders say that they’re in despair, I don’t believe them, because they were making money from selling land plots. They captured the land, and made a lot of money. We’ve already examined many cases of scam, and have already convicted many of them.

Asyl, a senior judge in Bishkek

Land grabbers have land plots in their villages. If they would have cultivated them, their lives would have been a lot easier. But instead they’ve taken everything in the city, and have created problems for themselves, the state and the rest of society.

Tima, a senior judge in Bishkek

Asyl and Tima showed little sympathy for the illegal settlers’ plight, characterising them as criminals, illiterate and ill-disciplined. The mass media often framed illegal settlers in disparaging terms, such as ‘invaders’, ‘grabbers’ and ‘barbarians’ (Schroder 2010). The media portrayal of their wanton destruction of private property was contrasted with the orderly and honest conduct of some urban residents, who waited patiently to be accommodated by the state (Satybaldieva 2018a).

Bourdieu (1987) explains that the juridical field is a site of social struggle over the law’s relation to society, and interpretations of legal texts. Some NGO activists and radical lawyers challenged the juridical stance on corrective justice and formal equality, and its framing of

informal settlements. They appealed for distributive justice and the legalisation of informal settlements (Hatcher 2017). Burul, a prominent lawyer in Bishkek, drew upon Marxist ideas to criticise the way the law defended powerful and business interests:

Concerning the relationship between the wealthy landowners and the illegal settlers, the problem is who writes the laws and who uses it? If we recall Marxism and Leninism, . . . it turns out that the law defends rich people's interests. . . . Rich businessmen and wealthy former officials are elected to Parliament, and accordingly what laws will they adopt? The courts will apply laws that protect rich people's interests, and whether they can take into account poor people's interests is a big question.

Burul problematised the self-representation of judges as autonomous, rational and impartial professionals. In Central Asia, rich and powerful groups controlled the legislative branch of government, and indirectly affected the judiciary (Author). Despite the occasional protests and rallies outside of government buildings, illegal settlers and poor groups were largely passive or marginal actors (Satybaldieva 2018b). In adjudicating informal settlements, most judges in the study attempted to neutralise power and inequalities by creating impartial legal proceedings in which the parties were abstracted from their social circumstances, and were engaged in rule-bound exchanges of rational arguments. In the process, they disavowed the economic and the political (Bourdieu 1987).

Juridical understanding of re-distribution and compensation

Azuela (1987) argues that informal settlements represent a potential contradiction for a government. On the one hand, land invasion blatantly infringes private property, thereby undermining the rule of law and capitalism. On the other hand, a government can have political control over the urban poor by regularising informal settlements and re-distributing land, especially following a revolution in the country. Judges evaluate and navigate between the underlying tensions and competing discourses on informal settlements – the rule of law and social justice, a market economy and political stability, corrective and distributive justice (Azuela and Meneses-Reyes 2014).

The 2005 Tulip Revolution in Kyrgyzstan ousted the incumbent corrupt political regime from power, and a populist government was elected on a promise to re-distribute resources (Radnitz 2010). The newly elected President Bakiyev had mobilised the rural vote to bolster his party's popularity with a tacit understanding that existing informal settlements in the capital Bishkek would receive official recognition. This form of politics in Central Asia is referred to as 'patron-client relationships', in which rich and powerful individuals seek political support from poor constituents in exchange of economic and welfare resources (Radnitz 2010). The populist government's political legitimacy rested on carrying out its re-distributive promises, though this conflicted with its duty of corrective justice. Emil, a senior judge in Bishkek, explained the conflict of interests facing the populist government and the courts:

[The migrants] came and illegally took land because the government promised them it. . . . They come here [to Bishkek] and say, 'Give us what we want!' . . . Land grabbing is a political issue to appease the masses. The land that they've grabbed is already being legitimised. . . . But the legal owners have the right to eliminate property violations, and go to the courts. The courts, in principle, would support the owners.

While the populist government tried to strengthen its authority by officially recognising some informal settlements (Hatcher 2015), Emil insisted that the courts had a duty to protect the

property owners, whose rights had been violated by the illegal settlers. Several judges believed that the government's populist strategy was short-sighted and harmful to society. Emil explained that the government had to abide by the rule of law and enforce corrective justice, otherwise the social order would be undermined:

Poor people have all the rights, and they can do whatever they want because they're now supported more like victims. It is outrageous now, because if they take everything, you begin to lose the ground under your feet.

Emil criticised the government for acquiescing to illegal settlers' demands. The government had emboldened poor and migrant groups to squat, and the courts seemed powerless to evict them. In this situation, several judges blamed the populist government for creating a social crisis.

In 2008 President Bakiyev signalled a reversal of his position, and pointed to the need to strengthen the judiciary and to restore the rule of law for the benefit of investors. He said, 'The state should give a signal to society, to business and to foreign investors that in Kyrgyzstan human rights and property rights are guaranteed, and the supremacy of the rule of law is assured. That is why today we are in desperate need of judicial reform' (quoted in International Crisis Group 2008: 19-20).

In April 2010 President Bakiyev was overthrown in a political uprising. Mindful of the need to restore the rule of law, to calm investors and to secure international recognition of the new administration, the interim President Otunbayeva prohibited new land invasions in Bishkek and Osh (Author). In contrast to her predecessor, she was less sympathetic towards new settlers, viewing them as 'invaders'. In the context of a growing hostility towards the unruly urban poor, the courts adjudicated against attempts to seize land. In some cases the courts ordered the demolition of illegal houses (Author).

Before the presidential election in October 2011, the candidate Atambayev visited one of the largest informal settlements in Bishkek, and he promised to improve the living conditions (Hatcher 2015). Atambayev won the election, and he secured funds from the federal budget to upgrade public services at the settlement by the end of 2011. Azuela and Meneses-Reyes (2014) argue that in placing low-income settlers outside the law, the judiciary show their commitment to a market economy, and provide politicians with an opportunity to make concessions and control the urban subaltern.

Coleman (1995) argues that the moral duty to repair wrongful losses in corrective justice is pre-political, meaning that the duty would exist even in the absence of political institutions designed to enforce it. The duty of corrective justice is also non-instrumental, in that it does not serve a desirable collective or social policy goal. But political institutions are important, partly because they can contest the juridical stance on corrective justice, can offer an alternative account of justice based on re-distribution of resources, and can give political or economic reasons for not implementing the duty. In the study, most judges and lawyers maintained that central and local authorities had failed to tackle the problem of rural migration and informal settlements. Gulzat, a senior judge in Bishkek, observed that despite adjudicating that informal settlements were illegal, the government had regularised some of them:

[Concerning informal settlements], we solved the contention between the parties as a judicial question on the basis of existing law and established process. The problem is a socio-political issue. . . . [The migrants] came and occupied land plots. The weakness of our state was that it legalised the land and gave them documents. . . . The migrants realised that if they squat and act aggressively, the government will give in and make concessions.

Gulzat described how the government had ignored the legal view on informal settlements, and had recognised the illegal settlers' right to live in informal settlements. But this policy had exacerbated the problem, because more rural migrants arrived to Bishkek in the expectation that their illegal occupation of land would be legalised. Several judges explained that the Kyrgyzstani government was weak, and it lacked the capacity to stop rural migration or to evict squatters. Though what emerged was more complex, because the judiciary had inadvertently created opportunities for political clientelism, especially during election cycles (Azuela and Meneses-Reyes 2014).

Drawing on Aristotle's (2009) work on justice, Weinrib (2001) contrasts the different structures of corrective and distributive justice. The former links the doer and sufferer of an injustice in terms of their correlative positions. The latter deals with sharing of a benefit or burden, and involves comparing any number of parties. People's welfare may justify a redistribution of resources by comparing the needs of many parties, but in corrective justice welfare considerations are not pertinent.

In the study on informal settlements in Central Asia, distributive and corrective justice were intertwined. The government had infringed on the property owners' rights by formally redistributing their land plots to illegal settlers. Some judges and lawyers in the sample insisted that the government was wrong to legalise informal settlements without first buying the plots from their rightful owners. Accordingly, the owners were entitled for compensation for their loss. Bakyt, a lawyer representing a group of illegal settlers in Bishkek, explained that even though the government was acting in the interests of many illegal settlers, it still had to respect the owners' property rights:

By law private property is inviolable. Only the courts can take away the property from their owners. . . . If the state decides to satisfy the rights of the majority, and give them land, it still has to pay the owners some compensation for taking away their land. Based on the court's decision, the state is obliged to pay compensation.

While the government had the right to transfer land to disadvantaged and needy groups, Bakyt insisted that it was also liable for the loss suffered by the owners. Having legalised the informal settlements, the government was now responsible for repairing the wrong. Several interviewees argued that the government had to enforce the duty of corrective justice. If it was unable or unwilling to evict the illegal settlers, then it had to compensate the owners. Azuela (2011) observes that as a result of the judiciary construing landowners as victims, the question about the social function and use-value of property is conveniently left out of the legal process.

Weinrib (1994) maintains that if property owners' rights have been violated by others so that they are unable to access or potentially use their property, they can demand restitution or compensation. Their claims for compensation can be made even if the property had been left idle or unused for a considerable time prior to the violation. Critically, this understanding of compensation justifies and de-politicises the right to obtain income from mere ownership of assets. In the study, most judges and lawyers drew on the principle of corrective justice to defend the owners' rights to income and compensation irrespective of their contribution to wealth-creation. Bakyt described how the property owners in Bishkek were in a legal battle with the government over compensation, because their idle land plots had become valuable:

The owners are still in a court battle with the state. The state transferred the land plots without asking their owners. . . . What's interesting is that the land was for agriculture, and the owners didn't use it. It was not important for them. Because the land was re-categorised for housing it became expensive. That's why they don't want compensation, they want the land back, because it's more beneficial for them to sell it.

After the government had re-classified the land use for residential purposes, the plots became valuable assets. The property owners sought to profit from the change of land use by either claiming a larger compensation from the government, or selling their plots on the open market. [Author] argues that in several cases of informal settlements, the illegal settlers saw the idle and vacant land plots in terms of use-value and human needs, while the property owners construed them as exchange-value and economic rent.

Sayer (2015: 86) criticises moral and legal norms that justify and legitimise property owners' right to income on the basis of mere ownership, observing that 'ownership itself produces nothing'. Their right to income has more to do with power than what they actually do or deserve. In other words, their income is unearned, dependent on having private property rights, rather than making productive contribution. Sayer (2015) argues that property owners are able to extract wealth on the basis of power, morality and legality. They also produce social suffering and harm by using their quasi-monopoly power to extract economic rent, and to deny others the opportunity to use assets in productive ways. In the interviews, most judges and lawyers avoided making distinctions between use- and exchange-value of property, productive and unproductive investment, and earned and unearned income. Arguably, their defence of property owners' rights in terms of corrective justice resulted in distributive and contributive injustice for all.

Discussion

The purpose of the study was to examine how judges and lawyers morally construed and evaluated informal settlements. It particularly wanted to investigate what moral norms and concerns shaped their understanding of the relationship between property owners and illegal settlers. It also explored how power and class affected moral concerns and norms. The study sought to understand how moral justifications and norms are integral to unequal social and economic relationships between people.

The study found that among the sampled judges and lawyers their understanding of informal settlements was framed by the principle of corrective justice (Weinrib 1994; 2001; Coleman 1995). Most interviewees viewed the relationship between property owners and illegal settlers as morally correlative, in which the latter had wrongfully gained at the expense of the former. The judges argued that it was their duty to defend the owners' property rights, and to undo the unjust enrichment. In this way, they aimed to restore the initial equality and status between the parties. In some circumstances, the government had precluded the possibility of evicting the squatters, because it had legalised the informal settlements. The judges then supported the owners' right to claim compensation from the government.

In the study, the juridical conception of personhood was morally individualistic and abstract. Property owners and illegal settlers were assigned individual rights and responsibilities, and the correlative relationship between them was construed in terms of gain and loss, and wrongdoer and sufferer (Weinrib 1994; 2002). The judges insisted that the parties appeared before them as equal individuals, and their relative wealth, status, power and needs were irrelevant in adjudicating cases. In this way, affluent landowners and poor squatters were abstracted from their social and economic circumstances, and were judged on the basis of their liability for loss.

But critically, the juridical construal of justice, equality and individual neutralised and naturalised the social and economic disparities between property owners and illegal settlers. In the process of assigning the parties individual rights and duties and abstracting them from their social positions, most interviewees disregarded power and domination, and mis-recognised and denied the economic and the political (Bourdieu 1987). Rectifying the correlative injustice arising from informal settlements meant restoring the initial equality

between the parties, and re-establishing their differential status, positions and power. In this way, the interviewees did not merely ratify and sanctify existing social divisions and classifications, they normalised spatial forms of social suffering of disadvantaged groups (Bourdieu 1987; Delaney 2010).

In addition, most sampled judges and lawyers drew on corrective justice to justify and naturalise property owners' right to obtain income and compensation from mere ownership of assets (Sayer 2015). When Kyrgyzstan's populist government legalised several informal settlements, the interviewees defended the owners' claims for compensation from the government, even though their property had remained idle and unused for several years prior to squatting. Their right to income was unearned, in that it had more to do with power based on having private property rights, rather than being morally warranted on what they actually did to create wealth (Sayer 2015). In not making a distinction between use- and exchange-value of property, most interviewees justified and normalised the owners' ability to extract income simply because of their quasi-monopoly power over scarce assets.

Several judges in the study claimed to embody justice and professionalism, and believed that the court proceedings were rational, impartial and fair. But their stance on informal settlements proclaimed what was a historical and unequal allocation of property and the contingent rights associated with it as objective, just and equal. Their legal discourse was a form of symbolic domination that regularised and sanctioned a particular way of interpreting and ordering the social world (Bourdieu 1987). It justified and naturalised unequal social relations, differential access to resources, and social violence on marginalised groups. Moreover as a result of declaring informal settlements to be outside the law, the judiciary enabled governments to exploit and subordinate the urban poor through political clientelism (Azuela and Meneses-Reyes 2014).

Conclusion

This article has contributed to the literature on the moral economy, post-socialist studies and socio-legal studies in several ways. First, it argued that all property relations are moral relations, because they have rules and norms justifying who should do, get or control what (Sayer 2018). In this sense, all economies are moral economies (Keat 2000). Moral norms, rules and justifications partly constitute economic practices and institutions. Drawing on moral discourses, traditions and concerns, social actors evaluate economic institutions not as simply good or bad, but as good or bad in particular respects (Anderson 1993). The relationship between morality and economic institutions is much closer than suggested by some scholars (such as Thompson 1971; Polanyi 1957; Hann 2018), who often distinguish between a disembedded market economy and an economy embedded in social relations.

Second, the article argued that an economy involves social relations between people, rather than an aggregation of economic rational actors. Most property, financial and employment relations are very unequal, in that powerful groups have ownership and control of scarce and valuable assets, thereby constraining and placing marginalised groups in weak and compromising situations. (Sayer 2015). Occasionally, external authorities (e.g. the judiciary) evaluate these unequal social relations and their associated rights and outcomes. As Bourdieu (1987) notes, they are likely to ratify and sanctify the doxic view of social divisions and classifications. It is understandable that many studies (e.g. Scott 1985; Sen 1999) focus on disadvantaged groups to comprehend why they are in a state of want and **destitution**. But it is important for researchers to examine how social actors usually justify and normalise dominant economic relations that generate gains for the strong and social suffering of the weak.

Third, the article suggested that neoliberalism had expanded the sources of unearned income based on the ownership and control of existing assets, such as land and money (Sayer 2015). Such income is unwarranted and undeserved, because mere ownership produces nothing. Those who rely on unearned income are referred to as ‘rentiers’ (Hudson 2014). They are harmful to society, because they extract payments from others, who need or want to use the assets. Hobson (1937) and Tawney (1921) make an important moral economic distinction between ‘property’, which refers to assets used in a productive way for wealth-creation, and ‘improperty’, which refers to assets held by owners purely to extract economic rent. Arguably, after the collapse of the Soviet Union, the transition to a market economy expanded ‘improperty’ in post-socialist countries (Author).

Fourth, the article examined how the juridical stance on corrective justice differed from the government’s re-distributive strategy in tackling informal settlements. Rather than eliding the different parts of the state as sometimes happens in post-Soviet studies (see Heathershaw and Schatz 2017), researchers need to examine how different state actors struggle for legitimacy and authority to impose their ways of defining, categorising and ordering persons and things into moral visions for society (Bourdieu 1987).

Fifth, the article contributed to critical legal geography scholarship. Judges and lawyers, as nomospheric technicians, play an important role in justifying and normalising the social distribution of poverty and social suffering in spatialised ways (Delaney 2010). While they possess the capacity to recognise and respond to the suffering of others, class inequality and sentiments can affect their sympathy and moral evaluations of poor people’s situations (Sayer 2005). Furthermore, judges and lawyers in developing and transition countries are likely to draw on dominant legal discourses (e.g. the World Bank’s rule of law) to shape their evaluations and rationalisations of poverty and social suffering.

One policy implication arising from the article is to tackle ‘improperty’ and the harm caused by the unequal private ownership and control of scarce assets. One way to achieve this would be to change property relations, so as to promote the productive use of assets, and to restrict unearned income. The state, for example, could nationalise land and housing, so that their use and the rent paid to the state would be under democratic control (Sayer 2018). If this is seen to be politically unfeasible, the state could change the tax regime to target unearned income through taxes on land value and capital gains.

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