

# ASSESSING THE RULE OF LAW IN RUSSIA

*Kathryn Hendley\**

## ABSTRACT

The mainstream scholarly literature and the mass media agree that Russia has made little progress in moving toward the “rule of law.” Their negative assessment of the value of law in Russia is buttressed by a recent series of high-profile cases in which the results were clearly manipulated by the Kremlin. This article argues that such cases are aberrations and should not be viewed as reflective of the capacity of the Russian legal system. It documents the profound institutional reforms undertaken over the past two decades. Judged on those terms, it has surely moved closer to the ideal of the “rule of law.” But law does not exist merely on paper. It becomes meaningful only when put into action. Whether Russia’s legal culture has undergone as much of a radical change as its institutional structure is a trickier question. The increased willingness of individuals and firms to submit their disputes to the courts would seem to be a good sign, but is undercut by the lack of trust in the courts, as reported by pollsters. The article lays out all of the relevant evidence, and argues that the current system of indexing the “rule of law” fails to capture reality, not just in Russia, but elsewhere. A new agenda for researching “rule of law” potential and reality is explored.

## TABLE OF CONTENTS

I. Defining the “Rule of Law” .....	349	R
A. Procedural Regularity .....	350	R
B. Accessibility .....	350	R
C. Efficacy .....	351	R
II. The “Rule of Law” in Russia .....	351	R
A. Procedural Regularity .....	354	R
B. Accessibility .....	363	R
C. Efficacy .....	368	R

---

\* William Voss-Bascom Professor of Law and Political Science, Director of the Center for Russia, East Europe & Central Asia, and Associate Dean for Research and Faculty Development, University of Wisconsin-Madison. Thanks are due to Lauren McCarthy, Derek Gilliam and Adam Brown for research assistance and to Bill Burnham for comments on an earlier draft.

D. Conclusion.....	370	R
III. Evaluating Existing Measures of the “Rule of Law” in Russia.....	370	R
A. Index of the “Rule of Law”.....	371	R
B. Measures of the Component Elements of the “Rule of Law”.....	373	R
C. Scholarly Assessments.....	377	R
IV. Alternative Methods of Measuring the “Rule of Law” in Russia .....	379	R

The transition from state socialism toward market democracy that is underway in Russia is typically characterized as dualistic. In reality, however, it is a triadic process, encompassing political, economic, and legal reforms. The importance of re-conceptualizing the role of law is often downplayed in favor of a more technocratic view of law as a means to an end.<sup>1</sup> Within the policy and scholarly community, many have argued that the absence of the “rule of law” has undermined the reform process.<sup>2</sup> Yet all too often the “rule of law” is not clearly defined.<sup>3</sup> This “black box” approach to the “rule of law” complicates efforts at measurement. In this article, I begin by laying out a working definition of the “rule of law.” I then operationalize that definition by working through each of its elements in the Russian context. In my view, the concept is useful only when seen as a compendium of its component parts. This approach allows us to move past the hand-wringing that is typically associated with discussions of the Russian legal system and to proceed to a more grounded assessment of the role of law in Russia, paying particular attention

---

<sup>1</sup> Friedman is illustrative. He argues:

[F]or the first time in history, we all have the same basic piece of hardware – free markets. The question is, which countries will get the economic operating systems (neoliberal macroeconomics) and software (regulatory institutions and laws) to get the most out of those free markets. . . . Russia is the egregious example of a country that plugged into the herd with no operating system and no software, with predictably horrendous results.

Thomas L. Friedman, *A Manifesto for the Fast World*, N.Y. TIMES MAG., Mar. 28, 1999, at 40.

<sup>2</sup> ANDERS ASLUND, BUILDING CAPITALISM: THE TRANSFORMATION OF THE FORMER SOVIET BLOC 369-70 (2002). See also MICHAEL McFAUL, RUSSIA’S UNFINISHED REVOLUTION: POLITICAL CHANGE FROM GORBACHEV TO PUTIN 326-28 (2001).

<sup>3</sup> Not only has the phrase become popular with scholars, but it has also seeped into the popular vernacular. A search of the Lexis-Nexis database revealed more than 3000 uses of the phrase in the print media between January 1 and March 1, 2006.

to its evolution over the past decade. My appraisal will be followed by a review of other efforts at measuring the “rule of law” in Russia, with an eye to the elements of the “rule of law” captured by each metric. The article concludes with a series of recommendations about how the “rule of law” might be more effectively measured.

### I. DEFINING THE “RULE OF LAW”

Any discussion of the “rule of law” inevitably begins with a few caveats. The first is a recognition that the concept is subject to a wide variety of definitions.<sup>4</sup> Indeed, this is why I treat it as a term of art by putting it in quotes. Some emphasize the procedural elements of the “rule of law,”<sup>5</sup> while others contend that the “rule of law” has substantive content as well.<sup>6</sup> My own position falls somewhere in the middle, though edges closer to the proceduralists’. In other words, the definition of the “rule of law” that resonates with me and that will be reflected in this article lies in *how* law is enacted, implemented, and understood, rather than in the *content* of any particular law. A more substantive approach risks being ethnocentric; there is a danger that the values of the countries or multilateral institutions that are funding reforms aimed at building the “rule of law” are preferred, whether intentionally or not.

The second caveat is a recognition that the “rule of law” is a relative concept and is best treated as an ideal type. No country has ever fully realized the “rule of law.” Rather, as the various indices recognize, countries move back and forth on a continuum from legal systems labeled repressive to those that embody the “rule of law.”

The essence of the “rule of law” is the principle of one law for all. In an ideal system, law is applied by apolitical judges in an evenhanded manner without regard for the wealth or political connections of the parties. This universalistic principle is easy to state, but what does it look like in practical terms? What are the indicators of the presence or absence of the “rule of law?” I propose to

---

<sup>4</sup> John K. M. Ohnesorge, *The Rule of Law, Economic Development, and the Developmental States of Northeast Asia*, in *LAW AND DEVELOPMENT IN EAST AND SOUTHEAST ASIA* 91 (Christoph Antons ed., 2003).

<sup>5</sup> LON L. FULLER, *THE MORALITY OF LAW* (rev. ed. 1969).

<sup>6</sup> DOUGLASS C. NORTH, *INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE* (James Alt & Douglas North, eds., 1990).

break the concept down into three parts: (1) procedural regularity; (2) accessibility; and (3) efficacy.

### A. *Procedural Regularity*

Procedural regularity can, in turn, be broken down into its constituent parts. Its institutional manifestation is judicial independence. Much like “rule of law,” judicial independence is an over-used phrase that has come to mean different things to different constituencies. We can all agree that in a liberal democracy, judges ought to be independent from those with power (whether economic or political), but a quick glance around the world demonstrates the lack of consensus as to how to achieve this goal.<sup>7</sup> Assessing judicial independence is likewise a thorny proposition. I will look to mechanisms aimed at ensuring the individual integrity of judges (such as the system for selection and discipline) and the institutional independence of courts (such as budgetary arrangements) as proxies.

The protections afforded to citizens are equally important for ensuring procedural regularity. Often these are referred to as “due process protections.” Among the most important of these is the commitment to laws that are clear in terms of their reach and predictable in terms of their application. Selective prosecution and retroactive laws are to be avoided. Both reflect the sort of particularistic law that is abhorrent to a system aspiring to the “rule of law.”

### B. *Accessibility*

The second critical element of any “rule of law” definition is a legal system that is accessible. One hallmark of accessibility is transparency, both in terms of an ability to find the law and an ability to observe and participate in the formulation of that law. Accessibility is also a function of complexity, *i.e.*, the extent to which ordinary citizens are able to use the law, with or without assistance from legal professionals. It follows that the final indicators of accessibility are the availability of such legal expertise and the independence of the legal profession.

---

<sup>7</sup> APPOINTING JUDGES IN AN AGE OF JUDICIAL POWER: CRITICAL PERSPECTIVES FROM AROUND THE WORLD (Kate Malleson & Peter H. Russell eds., 2006); *see also* JUDICIAL INTEGRITY (Andras Sajó ed., 2004).

### C. Efficacy

Even a well-drafted law can lie dormant if it is overly ambitious. Thus, any assessment of the “rule of law” should be sensitive to the presence of laws that are literally impossible to obey. These laws generally tend to undermine the legitimacy of law, as people come to view it as declarative rather than meaningful. One concrete measure of efficacy can be found in the extent to which litigants are able to enforce judgments.

## II. THE “RULE OF LAW” IN RUSSIA

Law has had a checkered history in Russia. By almost any definition, the “rule of law” has been mostly absent. During the Soviet era, the leaders of the Communist Party used law in a blatantly instrumental fashion. This began to change in the late 1980s, when Gorbachev put forward the goal of a *pravovoe gosudarstvo*, or a “state based on the rule of law.”<sup>8</sup> Both Yeltsin and Putin have reiterated this goal, yet their actions have brought their commitment into question.

The legal system, as it has evolved over the past decade, is best conceptualized as a dual system under which mundane cases are handled in accordance with the prevailing law, but cases that attract the attention of those in power can be manipulated to serve their interests.<sup>9</sup> To put it more simply, justice is possible and even probable, but it is not assured. This lack of predictability is unfortunate, but it does not make Russia unique. It suggests that Russia continues to struggle towards the goal of a *pravovoe gosudarstvo*, as do most other countries. What makes Russia different from most other countries is historical context. When courts in most other countries reach results that seem to be dictated more by the preferences of the powerful than by the law, observers tend to dismiss such cases as outliers. For Russians, however, such cases bring back painful memories and suggest a return to past tactics that had seemingly been abandoned. Thus, making sense of the

---

<sup>8</sup> For background on the meaning of *pravovoe gosudarstvo*, see Harold J. Berman, *The Rule of Law and the Law-Based State (Rechtsstaat)*, 4 HARRIMAN INST. F. 1 (1991).

<sup>9</sup> The conceptualization of the Russian legal system as dualistic was first suggested by Sharlet with regard to the Stalinist system. He, in turn, was drawing on the ideas Fraenkel developed in light of Nazism. See Robert Sharlet, *Stalinism and Soviet Legal Culture*, in *STALINISM: ESSAYS IN HISTORICAL INTERPRETATION* 155-56 (Robert C. Tucker ed., 1977); see also ERNST FRAENKEL, *THE DUAL STATE: A CONTRIBUTION TO THE THEORY OF DICTATORSHIP* (E.A. Shils trans., 1941).

role of law over the past requires some knowledge of what came before.

The Soviet Union is often referred to as a lawless society. Taken literally, this is not true. The Soviet Union possessed all the elements of a typical legal system.<sup>10</sup> It had a complex body of statutory law as well as a series of constitutions. It had a hierarchy of formal courts that mirrored what would be found in any Western democracy, as well as a well-developed system of alternative dispute resolution that allowed for neighborhood mediation in so-called "comrades' courts."<sup>11</sup> But all of these institutions were firmly under the thumb of the Communist Party. Though the constitutions prominently proclaimed their commitment to the principle of judicial independence, the absence of judicial review made the constitutions largely symbolic. Judges tended to toe the Party line.<sup>12</sup> All understood that anyone who diverged would not be invited to stand for re-election and the short five-year terms ensured that judges were kept on a short leash. At the same time, this should not be taken to mean that Party officials dictated the outcomes of all cases. Judges were left alone to resolve many (perhaps most) of the cases they heard in accord with the law and their consciences.<sup>13</sup> But judges knew that at any moment the telephone might ring and they might be told how to decide a specific case. The specter of "telephone law" hung over all cases and gave rise to a culture of dependency within the judiciary. Over time, fewer and fewer calls were needed as judges developed an instinct for what the Party wanted.<sup>14</sup> Not surprisingly, ordinary citizens grew skeptical of the power of the law to protect their interests. This legal culture of distrust persists to some extent to the present day and has stymied efforts to reform the legal system.

Gorbachev was the first Soviet leader to make a systematic effort to change the role of law.<sup>15</sup> He regularly invoked the goal of

---

<sup>10</sup> Berman, *supra* note 8.

<sup>11</sup> GEORGE FEIFER, *JUSTICE IN MOSCOW* 113-29 (1964).

<sup>12</sup> George Ginsburgs, *The Soviet Judicial Elite: Is It?*, 11 *REV. SOCIALIST. L.* 293 (1985).

<sup>13</sup> See FEIFER, *supra* note 11, at 47-79; see also KATHRYN HENDLEY, *TRYING TO MAKE LAW MATTER: LEGAL REFORM AND LABOR LAW IN THE SOVIET UNION* (1996).

<sup>14</sup> In writing about repressive law, an ideal type that they set up as an alternative to a legal system that is autonomous or grounded in the "rule of law," Nonet and Selznick comment that "repression is perfected when it can forego coercion." The Soviet courts had achieved this sort of perfection. See PHILIPPE NONET & PHILIP SELZNICK, *LAW AND SOCIETY IN TRANSITION: TOWARD RESPONSIVE LAW* 32 (Transaction 2001).

<sup>15</sup> HENDLEY, *supra* note 13.

creating a *pravovoe gosudarstvo* in his public statements. Moreover, he took concrete actions to that end. His reforms to the electoral system brought an end to the era of the rubber-stamp legislatures and his policy of *glasnost* allowed a glimpse into the law-making process for the first time. Under his tenure, the judicial selection system was overhauled, eliminating the Communist Party's stranglehold and granting judges life tenure. Though these reforms were certainly necessary to achieving judicial independence, they were far from sufficient. Judges could not shake off the mantle of dependency so easily. Citizens were likewise slow to abandon their skepticism regarding the capacity of judges to rule in an even-handed manner without clear proof of a shift in judicial behavior. How far Gorbachev would have pushed the reforms of the legal system had he not lost power is unknowable. What is clear is that he initiated a series of key institutional reforms that pushed Russia away from its Soviet legacy and towards an embrace of a legal system grounded in the "rule of law."

Legal reform has continued in post-Soviet Russia. Yeltsin's decision to abandon the halfway reforms that characterized *perestroika* and to embrace the goals of creating a democracy and a market economy brought law to the fore. The institutional infrastructure for both democracies and markets is grounded in law. Much of the Soviet-era legislation and legal institutions were inadequate for the task. Almost no area of law was left untouched by the legislative whirlwind of the 1990s. The inexperience of Russian policy makers with market democracy caused them to turn to Western advisors for assistance in writing the new laws and creating the necessary institutions, especially under Yeltsin. Many of these advisors approached Russia as if it was a *tabula rasa*, disregarding what existed on paper as well as the prevailing legal culture. The top-down nature of these reforms and the unwillingness to pay attention to the needs of those who would be impacted felt familiar to Russians, who recognized the *modus operandi* from their Soviet past, albeit under a new banner.<sup>16</sup> The assessment of these reforms that follows looks not only at the way the institutions were supposed to work, but also recognizes how they actually work (or fail to work) and reflects a sensitivity to how these reforms are perceived by ordinary Russians.

---

<sup>16</sup> Kathryn Hendley, *Legal Development in Post-Soviet Russia*, 13 POST-SOVIET AFFAIRS 228 (1997).

*A. Procedural Regularity*

Judicial independence is the institutional indicator of procedural regularity. As I noted above, the Soviet-era courts were entirely dependent, both individually and institutionally. The effort to free them from this yoke has continued over the past decade, though there is some evidence of backsliding in recent years. I begin by examining the selection and tenure processes, which are aimed at the creation of a judicial corp with integrity. I then turn to institutional mechanisms of enhancing the independence of the courts.

The method of selecting judges and supervising them once they are on the bench has profound implications for the independence of the judicial system. Ideally, judges should look only to the law in resolving disputes; neither politics nor promises of financial payoffs should factor into their decisions. But when judges feel beholden to a political benefactor (whether an individual or a party) for their appointments or for their continued tenure in office, their impartiality can be compromised. Likewise, when judges are poorly compensated, they may feel entitled to accept gratuities for case outcomes. Lifetime tenure is a potential solution to the dilemma of patronage, but runs the risk of creating a judicial corps detached from society because they answer to no one. Judges, even those with lifetime appointments, must be held accountable if they misbehave. Some sort of oversight is necessary. Yet it requires a delicate touch; otherwise it risks undermining their independence. As this suggests, the mechanics of maintaining a judicial system grounded in the rule of law is excruciatingly difficult and highly political. Striking an acceptable balance between independence and accountability can be elusive.

Locating this equilibrium point in post-Soviet Russia has proven to be particularly vexing. Initially, the primary goal seemed to be ensuring independence. Judges were granted lifetime tenure.<sup>17</sup> Judicial qualifications commissions (JQCs) were created in the late 1980s. Composed entirely of judges, they were charged with vetting applications. Their recommendations were then forwarded to the office of the President, who had final authority over

---

<sup>17</sup> Note that this lifetime tenure is subject to a mandatory retirement age of 65. It does not apply to the Justices of the Peace, who serve for set terms, nor does it apply to the Constitutional Court, where judges serve non-renewable terms of 12 years. See WILLIAM BURNHAM & G.M. DANILENKO, *LAW AND LEGAL SYSTEM OF THE RUSSIAN FEDERATION* 122 (2d ed. 2000).

2006] *ASSESSING THE RULE OF LAW IN RUSSIA* 355

who was to be appointed.<sup>18</sup> The selection process included objective criteria, such as a standardized written exam, as well as more subjective elements, such as an oral interview and a comprehensive background check. Empowering judges to pick their colleagues signaled a preference for competence over political reliability.

Under Putin, concerns about the lack of judicial accountability have given rise to subtle but important changes in the selection system.<sup>19</sup> The composition of the JQCs has been altered. Judges no longer enjoy a monopoly, but still make up two-thirds of the membership of the JQCs at all levels, leaving them with effective control if they act in concert.<sup>20</sup> This change was sharply criticized by judges, who interpreted it as an effort by Putin to exert more control over the courts. While it is true that the change allows other voices into the decision-making process and that it is reasonable to expect that these newcomers will reflect Putin's point of view, it is also true that most other European countries with organs analogous to the JQCs include a mixture of judges and laypeople.<sup>21</sup> Both before and after these reforms, most of those who apply to become judges have been accepted. For example, about 80 percent of those who applied in 2004 passed the qualifying exam and, of that group, over three-fourths were recommended for judicial posts by the JQCs.<sup>22</sup>

---

<sup>18</sup> Article 128 of the 1993 Constitution gives the President the power to appoint judges. *Konstitutsiia Rossiiskoi Federatsii* [Konst. RF] [Constitution] art. 128. The detailed rules regarding the selection process are contained in the Law on the Status of Judges. *Judges' Status Law of the Russian Federation* 1992, No. 1, Item 3132, available at <http://www.supcourt.ru/en/jstatus.htm>.

<sup>19</sup> Alexei Trochev, *Judicial Selection in Russia: Towards Accountability and Centralization*, in *APPOINTING JUDGES IN AN AGE OF JUDICIAL POWER: CRITICAL PERSPECTIVES FROM AROUND THE WORLD* (Kate Malleson & Peter H. Russell eds., 2006).

<sup>20</sup> The Higher Judicial Qualification Commission, which is responsible for recommending judges for the top courts, has 29 members, 18 of which are judges drawn from various corners of the judicial system. The remaining 10 include members of the public appointed by the Federation Council and one presidential representative. The emasculation of the Federation Council means that all of these 11 members are effectively Putin's representatives. The membership of lower level JQCs is smaller, but similarly structured. *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* [SZ RF] [Russian Federation Collection of Legislation] 2002, No. 11, Item 1022.

<sup>21</sup> Peter H. Solomon, Jr., *Threats of Judicial Counterreform in Putin's Russia*, 13 *DEMOKRATIZATSIYA* 325-46 (2005).

<sup>22</sup> *Obzor rezul'tatov deyatel'nosti vysshei kvalifikatsionnoi kollegii sudei Rossiiskoi Federatsii i kvalifikatsionnykh kollegii sudei sub'ektov Rossiiskoi Federatsii za 2004 god*, [http://www.vkks.ru/print\\_page?id=28](http://www.vkks.ru/print_page?id=28) (last visited Jan. 8, 2006).

In addition to selecting judges, the JQCs have sole responsibility for disciplining judges. This brings some level of accountability into the mix, but opens the door to the possibility of politically-inspired retribution. Possible sanctions range from private reprimands to dismissals. Such decisions are made in two contexts. Russian judges receive life tenure only after they successfully complete a three-year probationary period and the JQCs make the decision to retain these newcomers. Such decisions are supposed to be based on job performance, but some contend that JQCs (egged on by court chairmen) are using this opportunity to purge the judicial corps of anyone who threatens to rock the boat politically. The paucity of reliable data makes such allegations difficult to substantiate.<sup>23</sup> Once judges have gotten over this hurdle, any and all complaints about their behavior are referred to the JQCs. The number of complaints has grown by about 10 percent during each year of Putin's tenure. Although litigants raised more than 22,000 complaints before JQCs in 2004, this represented less than 0.2 percent of the cases brought before Russian courts. Motives for filing complaints are varied. More than three-fourths of the complaints brought from 2001 through 2004 were based on alleged procedural violations (including delays). Relatively few (less than 10 percent) alleged unethical or illegal behavior by judges.<sup>24</sup> Hidden within these statistics are litigants who are acting strategically. Because any complaint must be investigated and, even if later deemed frivolous, can cause embarrassment to the named judge, litigants may attempt to influence judges by threatening to file a complaint. Under the current system, powerful anecdotal evidence of dismissals of judges who refused to toe the line exists,<sup>25</sup> but the actual

---

<sup>23</sup> The data released for 2002 indicate that, of those judges who were disciplined by JQCs, 27 percent were still in their probationary period. The majority (53 percent) had been on the job for over ten years. See Plenum Verkhovnogo Suda Rossiiskoi Federatsii, [http://www.supcourt.ru/print\\_page.php?id=472](http://www.supcourt.ru/print_page.php?id=472) (last visited Nov. 5, 2006).

<sup>24</sup> See *Obzor rezul'tatov deyatel'nosti vysshei kvalifikatsionnoi kollegii sudei Rossiiskoi Federatsii i kvalifikatsionnykh kollegii sudei sub'ektov Rossiiskoi Federatsii za 2004 god*, *supra* note 22; see also *Obzor rezul'tatov deyatel'nosti vysshei kvalifikatsionnoi kollegii sudei Rossiiskoi Federatsii i kvalifikatsionnykh kollegii sudei sub'ektov Rossiiskoi Federatsii za 2003 god*, [http://www.supcourt.ru/print\\_page.php?id=474](http://www.supcourt.ru/print_page.php?id=474) (last visited Jan. 8, 2006).

<sup>25</sup> See, e.g., Guy Chazan, *Benched: In Russia's Courts, A Judge Speaks Up – and Gets Fired*, WALL ST. J., Aug. 5, 2004, at A1.

2006] *ASSESSING THE RULE OF LAW IN RUSSIA* 357

number of dismissals is relatively low, constituting only seventy-three in 2004,<sup>26</sup> seventy in 2003, and thirty-six in 2002.<sup>27</sup>

In the past few years, German Gref, the head of the Ministry for Economic Development and Trade, has attempted to revamp the system with the goal of increasing Moscow's control over the judiciary. The first effort came in the wake of the Beslan tragedy and called for reconfiguring the membership of JQCs to give Putin a majority. Though overwhelmingly approved by the Federation Council, the proposal was withdrawn before being taken up by the Duma. The precise reason is unclear, but perhaps the resistance to the reordering of the JQCs by the heads of the three top courts (see Figure 1), combined with the strong opposition from certain Duma representatives, contributed to the proposal's withdrawal.<sup>28</sup> In March 2006, Gref came forward with another proposal aimed at rationalizing the judiciary.<sup>29</sup> Under this latest plan, JQCs would retain control over selection, though eligibility would be restricted to those with 10 years of legal experience. It would make firing judges more difficult, by requiring approval by the Supreme JQC as well as legislative approval. It would also impose an automatic requirement to investigate judges whose verdicts have been overturned three times. Whether any of these proposals will be enacted into law is unclear. As Gref explained, they represent an effort to enhance the independence of the judiciary. Whether they will have that effect if enacted is doubtful. Equating frequent reversals with incompetence may make sense to an economist like Gref, but this is less obvious to lawyers. A judge may have a spate of tough cases that provoke reversals, and this sort of rule may dampen the ardor

---

<sup>26</sup> To put these data in perspective, the sixty-seven judges dismissed in 2004 represent 0.36 percent of the total judges in the courts of general jurisdiction and the six from the *arbitrazh* courts represent 0.2 percent of total *arbitrazh* judges.

<sup>27</sup> *Obzor rezul'tatov deyatel'nosti vysshei kvalifikatsionnoi kollegii sudei Rossiiskoi Federatsii i kvalifikatsionnykh kollegii sudei sub'ektov Rossiiskoi Federatsii za 2004 god*, *supra* note 22; *see also Obzor rezul'tatov deyatel'nosti Vysshei kvalifikatsionnoi kollegii sudei Rossiiskoi Federatsii i kvalifikatsionnykh kollegii sudei sub'ektov Rossiiskoi Federatsii za 2003 god*, *supra* note 24; *Obzor rezul'tatov deyatel'nosti vysshei kvalifikatsionnoi kollegii sudei Rossiiskoi Federatsii, kvalifikatsionnykh kollegii sudei sudov obshchei yurisdiktсии, arbitrazhnykh i voennykh sudov a takzhe v pervye sformirovannykh kvalifikatsionnykh kollegii sub'ektov Rossiiskoi Federatsii za 2002 goda*, [http://www.supcourt.ru/print\\_page.php?id=472](http://www.supcourt.ru/print_page.php?id=472) (last visited Jan. 8, 2006).

<sup>28</sup> Solomon, *supra* note 21, at 331-32.

<sup>29</sup> Olga Pleshanova & Mikhail Fishman, *German Gref Poshel Po Sudam*, *KOMMERS.*, Mar. 18, 2006, at 1. *See also Francesca Mereu, It May Get Harder to Hire and Fire Judges*, *MOSCOW TIMES*, Mar. 7, 2006, at 3.

of judges for creativity, a commodity already in short supply in Russia.

Judicial independence can be compromised by financial dependence, both individually and institutionally. Judges' salaries reflect their status in Russian society. Similar to other European countries which share a civil law legal heritage; judges in Russia are seen as bureaucrats, not sages.<sup>30</sup> As a rule, salaries available to judges are lower than those available to lawyers in private practice (but higher than those who work in-house for corporations). During the 1990s, when Yeltsin's government regularly faced revenue shortfalls, the payment of judges' salaries (especially within the courts of general jurisdiction) was frequently delayed, leaving judges vulnerable to offers by litigants or state officials to make up the difference in return for favorable rulings. Putin has emphasized the need to pay judges a living wage. In this sector, wage delays have become a thing of the past. Moreover, Putin has authorized increased hiring of both judges and staff in an effort to decrease workloads and make these jobs more appealing.

The budget shortfalls of the 1990s also affected the courts' ability to operate. Rampant was anecdotal evidence of courts that ran out of money for such basic necessities as postage and office supplies. Courts turned to local governments for stopgap funding. Though this allowed courts to function, it created a serious public relations problem. Local governments are frequent litigants and many assumed that their beneficence influenced outcomes. In 1999, the federal legislature closed this door by requiring that all funding for courts come from the federal budget. Along similar lines, in a 1998 case, the constitutional court upheld the requirement that any cut in funding had to be approved by the Council of Judges, thereby finding that the government cannot unilaterally cut the funding of courts, even if the reason is not discriminatory.<sup>31</sup> On the other hand, the Soviet-era rule that judges' housing is to be provided by the state persists, providing an opening for influence peddling.<sup>32</sup>

---

<sup>30</sup> JOHN HENRY MERRYMAN, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF WESTERN EUROPE AND LATIN AMERICA* 35-37 (2d ed. 1985).

<sup>31</sup> For a full discussion of this case and its broader implications, see BURNHAM & DANILENKO, *supra* note 17, at 58-59.

<sup>32</sup> Yu Koreneva, *Predostavlenie Zhilykh Pomeschenii Sud'yam Kak Mery Sotsial'noi Zashchity*, *ROSSIISKAYA IUSTITSIYA*, Jan. 2006, at 51 (2006).

In addition to giving the judicial branch greater control over its finances, the introduction of judicial review has contributed to making the judiciary a more equal branch of government, at least from an institutional point of view. Judicial review is exercised by the constitutional court, which is a post-Soviet innovation.<sup>33</sup> The purpose of the constitutional court is to ensure that the constitution remains the preeminent legal authority in Russia. To that end, it is empowered to invalidate legislative and/or executive acts as unconstitutional, providing an important check on these two branches. Although chastened by its treatment during the October events, the court continued to be a thorn in the side of Yeltsin. Among other things, his opponents used the court to challenge his authority to conduct the war in Chechnya. Fewer such cases have been brought under Putin. The cases that address the constitutionality of Putin's legislative initiatives tend to go his way. For example, the constitutional court has issued a series of decisions upholding Putin's plans to eliminate popular elections for governors, the latest of which came in the final days of 2005.<sup>34</sup> There are a few exceptions, such as the October 2003 decision that invalidated an open-ended clause of the law governing media rights in campaigns that had been adopted at the behest of Putin.<sup>35</sup> But for the most part, the court has avoided confrontations. Institutionally, it remains one of the few actors capable of standing up to Putin, but it has rarely done so.<sup>36</sup>

---

<sup>33</sup> The first effort at judicial review came under Gorbachev with the introduction of the Committee on Constitutional Supervision. See Herbert Hausmaninger, *The Committee of Constitutional Supervision of the USSR*, 23 CORNELL INT'L L.J. 287-322 (1990). This committee was not a full-fledged court, but had the power to review acts of the other branches. It issued only twenty-three decisions during its short life (1990-91) and was ineffective in enforcing them. See also Alexander Blankenagel, *Toward Constitutionalism in Russia*, 1 E. EUR. CONST. R. 25 (1992).

<sup>34</sup> Alexei Trochev analyzes this line of cases thoroughly in his dissertation. See Alexei Trochev, *The Zigzags of Judicial Power: The Constitutional Court in Russian Politics, 1990-2003* (2005) (unpublished Ph.D. dissertation, University of Toronto) (on file with author). For the most recent decision, see [http://www.ksrf.ru:8081/SESSION/S\\_\\_shyf8VgS/PILOT/main.htm](http://www.ksrf.ru:8081/SESSION/S__shyf8VgS/PILOT/main.htm).

<sup>35</sup> *Postanovlenie Konstitutsionnogo Suda Rossiiskoi Federatsii po Delu o Proverke Konstitutsionnosti Otdel'nykh Polozhenii Federal'nogo Zakona "Ob Osnovnykh Garantiyakh Izbiratel'nykh Prav i Prava na Uchastie v Referendume Grazhdan Rossiiskoi Federatsii v Svyazis Zaprosom Grupi Deputatov Gosudarstvennoi Dumi i Zhalobami Grazhdan S.A. Buntmana, K.A. Katanyana i K.S. Rozhkova*, 6 VKS 3-30 (2003).

<sup>36</sup> Its preferential treatment of Putin can be illustrated not only by case outcomes, but also by the cases accepted. Between 1995 and 2003, the Court heard 88 percent of presidential petitions, while taking only about half of those initiated by legislators and about a third of those from the regions. *Id.* at 139.

All of these efforts—both in terms of trying to create a morally upstanding judicial corps and to seal off the courts from political and economic pressure—mean little if people are unaware of them and do not trust the courts. This question of public confidence in Russian courts is difficult to assess. The data on public participation and the results of public opinion polling are at odds. The constitutional court receives about 15,000 petitions per year, most initiated by ordinary citizens.<sup>37</sup> Yet a February 2006 poll by VT-SIOM revealed that only 2 percent of Russians considered themselves well acquainted with the work of the court.<sup>38</sup>

Turning now to other indicators of procedural regularity, such as an absence of retroactive legislation and the tightening of legislative language to make its scope clearer, there is no question that such goals are woven into the rhetoric of both Yeltsin and Putin. But to what extent has the reality matched the rhetoric? The record is mixed. On the plus side, the constitutional court has stepped in regularly to insist on greater clarity in legislation, and the quality of legislation has improved steadily, if slowly. In addition, Putin's dominance of the Federal Assembly has facilitated the passage of a number of critical laws, including a criminal procedure code, a labor code and a land code. A combination of the strength of the anti-Yeltsin forces in the Duma and the inability of his administration to build working coalitions on specific issues created a stalemate. The practical result was that merely figuring out the governing rule was often very difficult. In many areas the law came to resemble a patchwork quilt, composed of much-revised Soviet codes and executive decrees. Observers have been critical of the substance of some of the Putin-era codes, but the fact that the "rules of the game" are now clearer and easier to find is undisputable.<sup>39</sup>

---

<sup>37</sup> Alexei Trochev, Presentation at the University of Wisconsin, Judicial Politics in Putin's Russia: An Informal Discussion (Oct. 20, 2005).

<sup>38</sup> A majority of those surveyed (62 percent) responded that they knew "practically nothing" of the court, while 29 percent said that they knew a bit about the court. Only 12 percent viewed the court as "completely independent, both legally and factually." *Konstitutsionnii Sud: Organ Vazhnyi, no Malozvestnyi*, <http://www.wciom.ru/?pt=40&article=2295> (Nov. 5, 2006).

<sup>39</sup> A good example would be the labor code. The new code, passed in late 2001, has been criticized by trade union activists as being too pro-management. See Sarah Karush, *Proposed Code Has Labor Up in Arms*, *MOSCOW TIMES*, Dec. 1, 2000, at 1. But the Soviet code, which dated back to the 1970s and was premised on the existence of a command economy, was simply unworkable. Even if one disagrees with the substance of the new code, the fact that the rules are now clear is a step forward.

On the other hand, the apparent unwillingness of the members of the Federal Assembly to challenge Putin has raised the specter of a return to the rubber-stamp legislature of the Soviet Union. During that era substantive policy was made within the elite circles of the Communist Party and then transmitted to the Supreme Soviet, where it was approved without debate.<sup>40</sup> The move to a “pager democracy” eliminates the chaos that characterized the Duma under Yeltsin but is problematic from the perspective of building the “rule of law.” It has returned policy making to the shadows, making it impossible for citizens to feel a sense of ownership by observing the process.

Also tangled up in the concept of procedural regularity is a commitment on the part of the state to be constrained by its own laws. In the Russian context, this requires a disavowal of the instrumental view of law that held sway for so long. The adoption of a new criminal procedure code in 2002 seemed to be a step in such a direction. Under its terms, the police are required to obtain warrants for investigative activities that previously could be carried out without judicial supervision. The code also limits the circumstances under which the accused may be kept in pretrial detention. Whether all of these procedural niceties are being observed in practice is a different question. The Khodorkovsky case, in which the Yukos chief was jailed while awaiting trial on fraud charges despite not meeting the prerequisites of the code, shows that the rules regarding pretrial detention can and will be disregarded when inconvenient for the Kremlin.<sup>41</sup>

The litigation surrounding Mikhail Khodorkovsky and his oil company, Yukos, raises broader challenges to Russia’s commitment to the “rule of law” than simply whether the requirements of the criminal procedure code were respected. In an apparent return to Soviet policy, Khodorkovsky was singled out and the courts were used as an extension of the Kremlin to eliminate someone who had become inconvenient. The result was to renationalize the company retroactively under the color of law and to imprison Khodorkovsky. In both the criminal case in the courts of general jurisdiction, and the tax case in the *arbitrazh* court, the outcomes were never in doubt. What is different from the Soviet era is that

---

<sup>40</sup> Mikhail Delyagin, *The ‘Pager-ization’ of Democracy*, MOSCOW TIMES, Dec. 16, 2003, at 8.

<sup>41</sup> For more detail on the case, see generally William Thompson, *Putting Yukos in Perspective*, 21 POST-SOVIET AFFAIRS 159 (2005).

the public understood what was happening. In a series of polls in the fall of 2004, the Levada Center found that over 40 percent of those surveyed believed that the courts were being pressured to reach the desired outcomes.<sup>42</sup>

Of course, judging a legal system solely on high-profile cases can be misleading. The extent to which the state lives up to its obligations in more mundane cases is unclear, but the strong culture of back-door dealings between judges and prosecutors creates grounds for suspicion. One key institutional player that has proven resistant to change is the procuracy. The procuracy is a uniquely Russian component of the legal system that is not only charged with prosecuting crime but also with supervising justice more generally. It has stubbornly resisted numerous reform efforts aimed at making its activities more transparent.<sup>43</sup>

Some view the low acquittal rates (see Table 1) as evidence of continuing collusion between judges and prosecutors. Perhaps that is part of the story, but these data need to be viewed in context. In Russia (as in other countries with civil law traditions), the burden of proof associated with indictment is considerably higher than that in the United States.<sup>44</sup> So it is not entirely surprising that almost all of those taken to trial are convicted. The more telling statistic would be how many cases wash out during the investigation, but these data are not available. As Table 1 indicates, those who opt for jury trials are more likely to be acquitted. Jury trials had been selectively available under Yeltsin,<sup>45</sup> but the new criminal procedure code makes them available throughout Russia to those accused of serious felonies.<sup>46</sup> An increasing number of defendants

---

<sup>42</sup> *Otnoshenie naseleniya Rossii k delu kompanii YUKOS*, LEVADA CENTRE, Feb. 3, 2005, available at <http://www.levada.ru/press/2005020304.html> (last visited Jan. 11, 2006). Interestingly, in a November 2005 survey, only 23 percent of respondents thought the Kremlin would continue the vendetta against Yukos by prosecuting its lawyers or others associated with the case. *Rossiyanе o posledstviyah "dela YUKOSa"*, LEVADA CENTRE, Dec. 10, 2005, available at <http://www.levada.ru/press/2005111002.html>.

<sup>43</sup> Gordon B. Smith, *Putin, the Procuracy, and the New Criminal Procedure Code*, in *PUBLIC POLICY AND LAW IN RUSSIA: IN SEARCH OF A UNIFIED LEGAL AND POLITICAL SPACE* 169 (Robert Sharlet & Ferdinand Feldbrugge eds., 2005).

<sup>44</sup> BURNHAM & DANILENKO, *supra* note 17, at 533 n.217.

<sup>45</sup> See Sarah J. Reynolds, *Drawing Upon the Past: Jury Trials in Modern Russia*, in *REFORMING JUSTICE IN RUSSIA 1864-1996*, 374-96 (Peter H. Soloman ed., 1997). See also Stephen C. Thaman, *The Resurrection of Trial By Jury in Russia*, 31 *STAN. J. INT'L L.* 61, 61-72 (1995).

<sup>46</sup> Russians seem ambivalent about the merits of juries. In an April 2004 public opinion survey, when asked whether juries were (1) fairer and more independent than judges; (2) less knowledgeable and experienced than judges and more likely to be influenced by the

are choosing juries. In the first two full years of the new system, the percentage of those who were eligible for jury trials and opted for them, grew from 8.3 in 2003 to eleven in 2004. The unpredictability of juries is unsettling to a regime accustomed to convictions and their verdicts are routinely appealed. Acquittals have proven more vulnerable than convictions. In 2002, for example, the Supreme Court reversed 32 percent of jury acquittals and 5.9 percent of jury convictions.<sup>47</sup> As politically sensitive cases have begun to reach juries, the Federal Security Service (FSB) has called for cases involving crimes against the state to be declared off-limits for juries.<sup>48</sup> Though the law has not been changed to accommodate the preferences of the FSB, subsequent politically-charged trials have been manipulated in a relatively blatant fashion in order to achieve the desired outcomes.<sup>49</sup>

### B. *Accessibility*

Thus far, the focus has been on the “supply” side of the “rule of law.” But putting into place the formal protections of judicial independence means little if people are not aware of them and are not willing to make use of the courts and other legal institutions. In order to be able to use the law, people must be able to find it. Soviet-era law was notoriously non-transparent. Legislation was published in official collections, but these were poorly indexed and not easily available to lawyers or ordinary citizens. This system of official publication remains unchanged but the market has stepped in to make it easier to find the law. Several internet search engines that operate much like Lexis are available. Like Lexis, they are expensive. Some regions have set up legal information centers that allow citizens access to them at no charge. For those on a budget, much of the information is available in the public domain on the internet. According to the EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS), the situation for businesses has improved in recent years. When firms were asked whether legal information was easy to obtain, 56 percent re-

---

parties; or (3) basically the same as regular courts, respondents were fairly evenly divided. *Rossiyane o sude prisyazhnikh*, LEVADA CENTRE, May 11, 2004, <http://www.levada.ru/press/2004051106.html> (last visited Jan. 11, 2006).

<sup>47</sup> BURNHAM & DANILENKO, *supra* note 17, at 534.

<sup>48</sup> Solomon, *supra* note 21, at 325-46.

<sup>49</sup> *Id.* See also Steven Lee Myers, *2nd Jury Convicts A Physicist Who Was Acquitted of Spy Charges*, N.Y. TIMES, Nov. 6, 2004, at A10.

sponded positively in 2002, compared to 67 percent in 2005.<sup>50</sup> Tables 2 and 3 provide a window into the extent to which Russians are using the internet to explore legal questions. In addition, the laws and commentaries on such questions are published and widely distributed. Many courts have established their own websites on which information about their activities (including decisions) are published.<sup>51</sup>

Table 3 confirms that many of those who consult the internet on legal matters are searching for help from lawyers or notaries. The extent to which legal expertise is available is another measure of accessibility. It has become fashionable to judge countries by per capita lawyers. The divided nature of the legal profession in Russia complicates such calculations. Records are kept on the number of *advokaty*, who have traditionally been litigators (Table 4), but finding the number of procurators, government lawyers or in-house business lawyers is well-nigh impossible. There is little doubt that the popularity of law as a profession has increased dramatically, as evidenced by the doubling in the number of *advokaty* and by a spike in the number of law schools.<sup>52</sup> But whether people are able to find the sort of legal expertise they need is a tougher question. A closely related question is the extent to which lawyers are essential, either in litigation or in other settings. The Soviet-era procedural rules were fairly straightforward, allowing litigants to forego the services of lawyers. Further facilitating this was the tradition of Soviet judges helping those who were unfamiliar with the process. Putin's strength in the legislature has led to a fundamental reworking of all of the procedural codes. The goal has been to enhance the efficiency of the courts and the result has been greater complexity. My own recent observational research in the *arbitrazh*

---

<sup>50</sup> WORLD BANK, RUSSIA: BEEPS-AT-A-GLANCE 13 (last revised, Feb. 7, 2006), available at <http://siteresources.worldbank.org/INTECAREGTOPANTCOR/Resources/BAAGREV20060208Russia.pdf>.

<sup>51</sup> All three of the top courts have extensive websites. See Constitutional Court, <http://www.ksrf.ru> (last visited Nov. 5, 2006); Supreme Court, <http://www.supcourt.ru> (last visited Nov. 5, 2006); Higher *Arbitrazh* Court, <http://www.arbitr.ru> (last visited Nov. 5, 2006). Some lower level courts also have elaborate websites. See generally Tatarstan Supreme Court, <http://www.tatsud.ru> (last visited Nov. 5, 2006); Lipetsk *oblast'* Court, <http://oblsud.lipetsk.ru> (last visited Nov. 5, 2006); Moscow City *arbitrazh* Court, <http://www.msk.arbitr.ru/index.asp> (last visited Nov. 5, 2006); Ekaterinburg *arbitrazh* Court, <http://www.ekaterinburg.arbitr.ru> (last visited Nov. 5, 2006).

<sup>52</sup> Two hundred and seventy one law schools were operating in Russia in 2004, only 108 of which were accredited. At the outset of the transition in 1986, there were only 100 law schools, all of which were state-run. BURHAM & DANILENKO, *supra* note 17, at 133-34.

2006] *ASSESSING THE RULE OF LAW IN RUSSIA* 365

courts convinces me that judges continue to observe the Soviet tradition of assisting poorly prepared litigants (rather than sending them on their way as their U.S. counterparts would likely do). This may enhance the accessibility of the legal system, but it can slow down the process.

To what extent do Russians take advantage of the opportunities available to them through the legal system? The discussion of this question is divided into the behavior of individuals and firms. This makes sense not just because the incentives to litigate are quite different, but also because the Russian judicial system distinguishes between them in terms of jurisdiction (see Figure 1). Cases involving individuals are brought in the courts of general jurisdiction, while those involving firms are relegated to the *arbitrazh* courts.<sup>53</sup> Both have access to the constitutional court, but only when their cases raise questions of constitutional law.

The courts of general jurisdiction can be found in every administrative district, making them the most accessible and the busiest of the Russian courts. As Figure 1 indicates, these courts have a traditional pyramidal structure. Most cases that have not been diverted to the justice of the peace (JP) courts originate in the district courts, which are located in each rural or urban district; more serious matters are heard for the first time by the *oblast'* courts (which also serve as courts of appeal for the district courts).<sup>54</sup> The JP courts were authorized in 1998, but came to fruition under Putin. They represent an effort to make the legal system more accessible to ordinary citizens. Simple cases (both civil and criminal) are heard at this level, thereby freeing up the other courts to focus on more complicated cases. The data suggest that these JP courts have lived up to their promise. As Table 5 indicates, in 2004 almost 65 percent of all civil cases and slightly more than 30 percent of

---

<sup>53</sup> As Figure 1 indicates, both hierarchies have appellate courts which provide litigants with options when they are dissatisfied with the outcome. Thanks to Russia's accession to the Council of Europe in 1996 and its ratification of the European Convention on Human Rights in 1998, its citizens now enjoy the right to appeal to the European Court of Human Rights (ECHR). Russia's citizens have flooded the court with petitions. From 2002 to 2004, more petitions to the ECHR came from Russia than from any other country (European Court 2004). A full review of how the appeals process works, either domestically or in Strasbourg, is beyond the scope of this article.

<sup>54</sup> In 2004, only 0.2 percent of civil cases and 0.5 percent of criminal cases originated in the *oblast'* courts. *Sudebnaya Statistika: Grazhdanskie Dela*, ROSSIISKAYA IUSTITSIYA, Sept. 2005, at 36. See also *Sudebnaya Statistika: Ugolovnye Dela*, ROSSIISKAYA IUSTITSIYA, Nov. 2005, at 34.

criminal cases originated in these courts. Delays have lessened as a result.<sup>55</sup>

Table 5 documents the steady increase in the workload of these courts. Most revealing of accessibility is the number of civil cases because litigants in these cases come to the courts willingly. Civil cases almost doubled between 1996 and 2004. Table 6 breaks out several categories of civil claims. Unfortunately, the data do not break down these various categories into cases initiated by citizens and those brought by the state. Nor does it allow us to determine the extent of repeat players within the system. Nevertheless, the data do provide a glimpse into how the introduction of market incentives has changed the complexion of civil litigation, especially in the realm of housing and land.

Cases involving firms are heard in the *arbitrazh* courts. These courts were built on the foundation of the Soviet state *arbitrazh* system, which had been used to handle disputes between state-owned enterprises.<sup>56</sup> The transition from *gosarbitrazh* to *arbitrazh* courts in 1992 brought with it an increase in status and an expansion in jurisdiction to include all legal entities (both state-owned and private). Western social scientists have been dismissive of these courts, characterizing them as slow, incompetent, corrupt and expensive. The underlying assumption is that firms turn to private enforcers or the mafia when disputes arise.<sup>57</sup> Empirical research paints a different picture. Surveys, combined with caseload data, demonstrate that the courts are both useable and are actually being used by firms. A 1997 survey found that about 80 percent of firms surveyed had gone to the *arbitrazh* court in the previous year (Table 7). The results from BEEPS, fielded in 2002 and 2005, were more modest, indicating that about a third of the firms surveyed

---

<sup>55</sup> Delays in criminal cases are particularly troubling systemically. In the mid-1990s, the statutorily-imposed deadlines were not met in more than 25 percent of criminal and civil cases. See PETER H. SOLOMON & TODD FOGLESONG, *COURTS IN TRANSITION IN RUSSIA: THE CHALLENGE OF JUDICIAL REFORM* 118 (2000). In 2002, this delay rate was down to 12 percent and, by 2004, had been reduced to less than 5 percent. See *Rabota Sudov Rossiiskoi Federatsii v 2002 Godu*, ROSSIISKAYA IUSTITSIYA, Aug. 2003, at 69-78. See also *Ob Deiatel'nosti Federal'nikh Sudov Obshchei Iurisdiktsii i Mirovykh Sudei v 2004 Godu*, ROSSIISKAYA IUSTITSIYA, June 2005, at 26-48.

<sup>56</sup> Stanislaw Pomorski, *State, Arbitrazh in the U.S.S.R.: Development, Functions, Organization*, 9 RUTGERS-CAM. L.J. 61 (1977).

<sup>57</sup> See generally Jonathon R. Hay & Andrei Shleifer, *The Private Enforcement of Public Laws: A Theory of Legal Reform*, 88 AM. ECON. REV. 398 (1998). See also VLADIMIR VOLKOV, *VIOLENT ENTREPRENEURS: THE USE OF FORCE IN THE MAKING OF RUSSIAN CAPITALISM* (2002).

had recently been to court.<sup>58</sup> These results are confirmed by the official caseload data, reported in Table 8, which show a steady increase in the number of cases decided. From 1996 to 2004, the number of cases has almost doubled nationally and has grown even more in some regions. Just as interesting is the shift in the composition of cases over the life of these courts. At first, almost all cases revolved around inter-enterprise disputes, with relatively few cases involving the state. Now, as Table 9 shows, the caseload is more evenly split. Not only does this reflect a more aggressive posture of the state, especially in the tax arena, but it also reflects a greater willingness on the part of individuals to confront the state.<sup>59</sup>

The *arbitrazh* courts are not an institution stuck in the past. Over their relatively short life, the leadership of the *arbitrazh* courts has consistently worked to enhance accessibility, rewriting its procedural code twice.<sup>60</sup> Table 10 provides a contextual framework by documenting the heavy workload of *arbitrazh* judges. Over the past few years, the burden has increased substantially. All of the courts are authorized to hire more judges, but the complex hiring process and the fact that the job is not considered highly desirable means these positions are unfilled. Recent meetings between Putin and the chairman of the *arbitrazh* courts have been dominated by this issue.<sup>61</sup> Table 10 also reveals the likelihood of prevailing and demonstrates a systemic bias in favor of plaintiffs, whether firms or state agencies.

Hanging over any discussion of the Russian courts is corruption. Everyone—from Putin to judicial leaders to ordinary Russians—concedes that corruption is a persistent problem.<sup>62</sup> Indeed,

---

<sup>58</sup> WORLD BANK, *supra* note 50, at 13.

<sup>59</sup> Kathryn Hendley, *Suing the State in Russia*, 18 POST-SOVIET AFFAIRS 122 (2002).

<sup>60</sup> In addition to reforms to the formal procedural rules, there has been sensitivity to small issues that might compromise accessibility. For example, when the requirement that firms pay an up-front filing fee calculated as a percentage of the amount sought after threatened to disenfranchise cash-poor firms during the 1990s, an exception to that rule was developed which permitted a delay in the payment of these fees. Because liability for these fees is shifted to the defendant if he loses, the effect was an opening of the courts to almost any firm. See Kathryn Hendley, *Reforming the Procedural Rules for Business Litigation in Russia: To What End?* 11 DEMOKRATIZATSIYA 363, 365 (2003). See also Kathryn Hendley, *Growing Pains: Balancing Justice and Efficiency in the Russian Economic Courts*, 12 TEMP. INT'L & COMP. L.J. 301, 306 (1998).

<sup>61</sup> See transcript of the opening remarks at the meeting between Putin and Ivanov on March 15, 2006, <http://www.kremlin.ru/text/appears/2006/03/103118.shtml>.

<sup>62</sup> Ethan S. Burger, *Corruption in the Russian Arbitrazh Courts: Will There Be Significant Progress in the Near Term?*, 38 INT'L LAW 15 (2004).

Anton Invanov, the chief of the *arbitrazh* courts, concedes that “to completely triumph over corruption is impossible. . . . [T]here is not a single country in the world where this has been achieved. But it is possible to keep it to a minimum.”<sup>63</sup> The Kremlin is battling the problem through increased funding (including salary hikes) and greater oversight of the personal finances of judges. Documenting corruption is very difficult. Those who lose in court are quick to attribute their losses to the fact that the judge was bribed, but proof is generally elusive. For some, blaming corrupt judges rather than acknowledging the shortcomings of the cases or the lawyer may be more palatable. The paucity of evidence has done little to dampen Russians’ belief in judicial corruption. BEEPS revealed that only about a quarter of the firms surveyed in 2002 and 2005 regarded the courts as honest and uncorrupted.<sup>64</sup> The results of public opinion polling are similar (Table 11). Though no one has systematically investigated the link between such beliefs and behavior, it is reasonable to assume that Russians approach the courts with trepidation. Yet the caseload data—both for the courts of general jurisdiction and the *arbitrazh* courts—do not support this hypothesis. This puzzle of why use of the courts is increasing in the face of an apparent lack of trust in the integrity of the judiciary deserves to be explored.

### C. *Efficacy*

The process by which many of the new laws and legal institutions were created in post-Soviet Russia has left them removed from the day-to-day reality. Under Yeltsin, Western advisors were brought in to help and, though uniformly well-intentioned, most were ill-equipped to fashion laws that met the needs of this transitional polity.<sup>65</sup> Further complicating matters is the absence of any tradition of legislative drafting that is grounded in reality, a problem that persists to the present day. All too often, the resulting laws look good on paper but are ignored in practice. For those who had grown accustomed to “going around” (*oboiti*) rules during

---

<sup>63</sup> Vladislav Kulikov, *Arbitrazh Vkhodit v Internet*, Ros. GAZ, Oct. 18, 2005 (translated by author).

<sup>64</sup> WORLD BANK, *supra* note 50, at 13.

<sup>65</sup> For example, the Western advisors who drafted the joint-stock company put protections into place for minority investors that would have worked beautifully in their own countries (e.g., cumulative voting and prohibitions on insider dealing), but which did little good in Russia.

2006] *ASSESSING THE RULE OF LAW IN RUSSIA* 369

the seven decades of Soviet power, these new laws felt like more of the same. To be fair, some of the institutions that seemed stillborn at first have taken hold gradually.<sup>66</sup> It is important to remember that Russia as a market democracy remains a work in progress and premature assessments can do more harm than good.

One indicator of efficacy is the ability to enforce court judgments. The institutional mechanism for judicial enforcement underwent a complete reworking in 1998.<sup>67</sup> Though the result constitutes a significant improvement, it is far from perfect. The in-house statistics of the enforcement bureau claim only about 50 percent success over recent years.<sup>68</sup> This statistic has been widely touted as demonstrating the impotency of the system (e.g., European Commission 2005). But it needs to be interpreted carefully, always remembering that involvement of judicial enforcers (*sudebnye pristavy*) is not automatic; only those cases where the judgment is not paid voluntarily or where the bank accounts of the losing party are insufficient to cover the judgment come to their attention. Even then, the “winner” must take affirmative action to seek their assistance. Consequently, not all cases end up in the hands of the *sudebnye pristavy*. The cases that do garner attention tend to be the toughest. The available data do not allow a calculation of the percentage of cases that end up in their hands. Moreover, evaluating all cases together is not helpful. Surely the differences between recovering child support payments and a multi-million ruble judgment merit separate analyses. The leadership of the *sudebnye pristavy*, many of whom have been drawn from the FSB, has been resistant to efforts by Western researchers to figure out what is really going on.

As a result, little empirical research exists on this critical question of enforcement. The only study is one that I conducted in 2001 that followed up on a set of one hundred non-payments cases in the *arbitrazh* courts in Moscow, Saratov, and Ekaterinburg.<sup>69</sup>

---

<sup>66</sup> Collateral is a good example. Our 1997 survey found little evidence that firms were demanding collateral for loans. See *infra* note 94. By contrast, the 2002 iteration of BEEPS found that demands for collateral in the form of buildings and machinery had grown more common. WORLD BANK, *supra* note 50, at 13.

<sup>67</sup> Peter Kahn, *The Russian Bailiffs Service and the Enforcement of Civil Judgments*, 18 POST-SOVIET AFFAIRS 148 (2002).

<sup>68</sup> See [http://www.fssprus.ru/material.asp?material\\_id=190&dept\\_id=9](http://www.fssprus.ru/material.asp?material_id=190&dept_id=9) (last visited Mar. 15, 2006).

<sup>69</sup> Kathryn Hendley, *Enforcing Judgments in Russian Economic Courts*, 20 POST-SOVIET AFFAIRS 46 (2004).

Almost two-thirds of the firms ended up recovering something (Table 12). Of these fortunate firms, about half had no need to seek the assistance of the *sudebnye pristavy* either because their judgment was paid voluntarily or because the defendant-debtors had had enough in their bank accounts to pay the amount owed. Of those who did go to the *sudebnye pristavy*, 45 percent were successful in recovering all or part of their judgments. Generalizing from this sort of preliminary study is problematic but it does suggest that the situation may not be quite as grim as the official statistics would lead us to believe.

#### D. Conclusions

Over the past two decades, Russia's legal system has undergone a profound set of institutional reforms. Judged on those terms, it has surely moved closer to the ideal of the "rule of law." But law does not exist merely on paper. It becomes meaningful only when put into action. Whether Russia's legal culture has undergone as much of a radical change as its institutional structure is a dicier question. The increased willingness of individuals and firms to submit their disputes to the courts would seem to be a good sign, but this is undercut by the lack of trust in the courts, as reported by pollsters. In a qualitative study of Russian legal culture, Kurkchiyan argues that "the *negative* myth of the rule of law is dominant" and that it is self-perpetuating.<sup>70</sup> This insight helps explain the predisposition to negativity that has persisted in the face of institutional reforms aimed at increasing the independence of the judiciary.

### III. EVALUATING THE EXISTING MEASURES OF THE "RULE OF LAW" IN RUSSIA

A number of measures of the "rule of law" exist for Russia. Few of them make any effort to analyze the situation on the ground in the sort of detail set forth above. Instead, there is a disturbing tendency to rely on attitudinal measures. While I wholeheartedly agree that attitudes are a critical component of any assessment of the "rule of law," in that they are the best reflection of legal culture, they are highly problematic in the Russian context.

---

<sup>70</sup> Marina Kurkchiyan, *The Illegitimacy of Law in Post-Soviet Societies*, in *LAW AND INFORMED PRACTICES: THE POST-COMMUNIST EXPERIENCE* 25, 30 (Denis J. Galligan & Marina Kurkchiyan eds., 2003).

The reason for this problem is embedded in the negative myth of the “rule of law” that has been identified by Kurkchiyan.<sup>71</sup> The Soviet past has socialized people to expect little of the legal system to the extent that when they have a positive experience, they seek to rationalize it. In other words, positive experiences have become the exceptions, as opposed to the opposite effect that we are accustomed to in the United States. As a result, questions to ordinary Russians, or to so-called experts, produce the expected results, namely that relying on law is hopeless. The tendency of the Russian media to focus on politicized cases, such as Khodorkovsky and Sutyagin, only feeds the beast. Further complicating matters is the absence of any tradition of empirical legal research. As a result, moderating strongly held public opinion with the results of research projects that present contrary views is unlikely.

#### A. *Index of the “Rule of Law”*

The World Bank Institute (WBI) has produced an index of the “rule of law.” It is one of six indicators that has been developed as part of an ambitious project to compare governance capabilities across the globe.<sup>72</sup> The goal is admirable. All too often, discussions of progress get bogged down due to the inability to compare across countries. There is a seductive appeal to the idea that each country can be boiled down to a rank that can then be used for statistical analyses. Graph 1 provides a taste of how the data can be presented to allow such comparisons. At the same time, the appearance of comparability is somewhat deceiving because not all of the sources used are available for all countries. As a result, the composition of the indicators can vary considerably among countries.

The WBI “rule of law” index is an amalgamation of ten to sixteen sources (the number and identity of the sources varies slightly over time). These sources overwhelmingly prefer attitudinal over behavioral data. Those who have studied the internal mechanics of this index report that the internal weighting of the index is such that it is based about 75 to 85 percent on “expert

---

<sup>71</sup> *Id.*

<sup>72</sup> The WBI website contains a wealth of information regarding these indices, including the underlying data, presented in a variety of formats and a series of scholarly papers expounding on the data. Daniel Kaufman et al., *Governance Matters IV: Governance Indicators for 1996-2004* (World Bank Policy Research Working Paper Series, Paper No. 3640, 2005), available at <http://www.worldbank.org/wbi/governance/pubs/govmatters4.html>.

opinion” type indicators, rather than on the opinions of ordinary Russians or on survey-based indicators. This is both because these sorts of indicators are more available and because the aggregation methodology assigns greater weight to sub-indicators that are more closely correlated with other sub-indicators. Given that all these experts tend to read each others’ ratings and take them into account in compiling their own reports, these sorts of expert opinion indicators tend to be more congruent with each other than they would be with a genuine public opinion survey.<sup>73</sup> Looking past these methodological criticisms, the strong skepticism towards law that has been inherited from the Soviet era has rendered these expert reports from Russia a one-note chorus. They appear to do a better job of capturing the common wisdom about the role of law in Russia than any aspect of the “rule of law.” The lack of transparency with respect to some of the underlying methodology leaves me unconvinced of their merits.<sup>74</sup>

There are also problems with the limited behavioral data incorporated into the WBI “rule of law” index. BEEPS, a survey of enterprise behavior in the former Soviet Union and Eastern Europe, has been incorporated into the Russian index. It includes several questions about firms’ use of legal institutions as well as their attitudes towards the legal system. These behavioral data provide useful information about firm behavior, but tells us nothing about the use of courts by ordinary citizens. In addition, those who have compiled the index have arguably overused these BEEPS data. The 2002 BEEPS was used for both the 2002 and 2004 indicators. BEEPS also contains a wealth of attitudinal data, such as the opinions of firm representatives on the capacity of courts to be fair and to enforce their judgments. Many of these opinion data points are not backed up with behavioral measures (such as whether the respondents were actually able to collect their judgments).

---

<sup>73</sup> For a discussion of the inner workings of the WBI indices, see James H. Anderson & Cheryl W. Gray, *Transforming Judicial Institutions in Europe and Central Asia*, paper prepared for the Annual Bank Conference on Development Economies, held in St. Petersburg, Russia (Jan. 19-20, 2006), available at <http://siteresources.worldbank.org/INTDECABC2006/Resources/cherylgray.PDF> (last visited, July 28, 2006).

<sup>74</sup> For example, a number of the component indicators of the WBI “rule of law” index rely exclusively on reports of unnamed experts (for example, the Business Risk Service, the Grey Area Dynamic of the Merchant International Group, and Columbia University’s State Capacity Project). Precisely how they go about weighing the information provided is unclear.

As a general matter, the murkiness of the method for creating the WBI index makes it unclear which elements of the “rule of law” are included. Some of the expert reports purport to evaluate judicial independence in addition to addressing the extent to which the state lives up to its obligations under the law and the relative presence of due process. Such analyses would provide insight into the level of procedural regularity. Other expert reports include proxies for accessibility (the extent of delays within the system) and efficacy (ability to enforce judgments), but a review of the websites for the groups that prepare these reports provides little insight into the bases for them. A number of the reports are proprietary, with background information limited to paying clients, thereby making them even harder to unpack.

The available information indicates that corruption has been over-emphasized. Of the sixteen sources that made up the 2004 indicator, all claimed a concern with corruption. The degree of corruption is unquestionably relevant to any assessment of the “rule of law” in that it helps us understand not only the extent to which the government is living up to its obligations under the law, but also the ability of firms and citizens to get a fair hearing in the courts. But it is only part of the story. Nowhere in this myriad of indicators can I find any effort to incorporate the rise or fall in cases brought in the courts or any effort to document empirically the level of enforcement of judicial decisions. Some of the indicators ask experts to report on the experiences of litigants, but whether this is done through careful empirical evidence or through rumors exchanged over the water cooler is unclear. The dearth of empirical research leaves me suspicious that the data are closer to the latter.

#### B. *Measures of Component Elements of the “Rule of Law”*

Creating indices has become a growing industry. Among the most well-respected are those prepared by Transparency International. Its indices on corruption are integrated into the WBI index. Its Corruption Perceptions Index (CPI) routinely ranks Russia near the bottom; in 2005, it shared the rank of 126th with Albania, Niger, and Sierra Leone.<sup>75</sup> While I agree with the index compilers

---

<sup>75</sup> Transparency.org, Transparency International Corruption Perceptions Index 2005 (last visited Oct. 8, 2005), [http://ww1.transparency.org/cpi/2005/cpi2005\\_infocus.html#cp](http://ww1.transparency.org/cpi/2005/cpi2005_infocus.html#cp). For background on how the index is put together see Johann Graf Lambsdorff, *The Meth-*

that Russia has a serious corruption problem, I question its exact placement. It falls below several former Soviet Union countries that are outright dictatorships, such as Belarus and Kazakhstan. Moreover, the methodology underlying the CPI is similar to that for the WBI index, a composite that brings together results of expert reports and various surveys of businesspeople, but contains no behavioral data. Like the WBI index, the composition of source materials varies among countries, undermining the ability to compare across borders. Among the countries that share Russia's rank, none share the same number of inputs. There are twelve sources for Russia, three for Albania and Sierra Leone, and four for Niger.<sup>76</sup>

The public integrity index provides another measure of corruption and "rule of law." Its conclusion about Russia is similar to that of Transparency International, but the way it goes about reaching that conclusion is more transparent. Of the twenty-five countries included, Russia is ranked 22nd and is placed in the category of "very weak" protections (along with Guatemala, Indonesia, Turkey, Venezuela, and Zimbabwe).<sup>77</sup> Its country report lays out the process by which the conclusions were reached.<sup>78</sup> It provides very specific questions, many of which correspond closely to the "rule of law" criteria that I suggested at the outset of the article. With regard to each sub-indicator, it explains the questions that were posed and how they went about answering them. For some questions, reliance was placed on statutory provisions, but for others, experts or practitioners provided opinions.<sup>79</sup> Whenever possible, they provide the name of the source, which is extremely helpful in assessing the weight that should be assigned to each opinion. The index would be stronger if more opinions were sought. For example, with regard to the question of whether courts

---

*odology of the 2005 Corruption Perception Index* (Sept. 2005), [http://www.icgg.org/downloads/CPI\\_Methodology.pdf](http://www.icgg.org/downloads/CPI_Methodology.pdf).

<sup>76</sup> Transparency.org, Survey Sources for the Transparency International Corruption Perceptions Index, [http://www.transparency.org/policy\\_research/surveys\\_indicies/cpi/2005](http://www.transparency.org/policy_research/surveys_indicies/cpi/2005) (last visited Mar. 20, 2006).

<sup>77</sup> There are some striking discrepancies among placement of countries in these two indices. Turkey, which falls below Russia in the public integrity index, was ranked in 65th place in the CPI index, well above Russia. See *Global Integrity: An Investigative Report Tracking Corruption, Openness and Accountability in 25 Countries*, <http://www.publicintegrity.org/ga/ii.aspx?cat=VI> (last visited Mar. 23, 2006).

<sup>78</sup> CENTER FOR PUBLIC INTEGRITY, *GLOBAL INTEGRITY: RUSSIA* (2005), <http://www.publicintegrity.org/docs/ga/2004/Russia.pdf> (last visited Mar. 23, 2006).

<sup>79</sup> *Id.*

2006] *ASSESSING THE RULE OF LAW IN RUSSIA* 375

actually review executive actions, Russia receives a middling score based on the response of an NGO leader in Pskov.<sup>80</sup> The peer review comment was that “no convincing evidence of the review practice was reported.”<sup>81</sup> While I fully endorse the instinct to look beyond Moscow and to talk to people actively involved in trying to hold the state to task, a wider range of respondents would make the score more credible. The peer review comment is remarkably unhelpful, leading me to wonder about the rigor of that process. Along similar lines, they question whether the judicial selection process is transparent and, based on an interview with an advisor at the Institute for Legal Reform (set up to administer World Bank programs) they conclude that process is not always transparent. The peer review comment is that the judicial corps is “a clan-like system based on personal connections and political affiliations.”<sup>82</sup> Again, although I endorse the inclusion of the question and the quest to reveal what is actually happening, I wonder whether the shallowness of the effort to gather information undermines its credibility. At the same time, this index does a better job of getting at “rule of law,” as I have defined it, than any of the other indices reviewed.

Another index that has gained considerable sway is contained in the annual Nations in Transit report prepared by Freedom House. It is based on reports by its own staff members as well as country specialists working as consultants. They draw on NGO reports, newspaper reports, and official data. Its “rule of law” measure is an average of the scores obtained on two sub-indicators: corruption and judicial framework and independence. The former reflects the approach of the other indices; the latter tracks more closely with my definition of “rule of law.” It endeavors to measure equality before the law, judicial selection, constitutional protections of human rights, compliance with judicial decisions and reforms to the criminal process. The summary of its findings is more substantive and reveals more detailed knowledge of what is going on in Russia than either the WBI or CPI indices.<sup>83</sup> Those involved have clearly dug into the crime statistics and are well-ac-

---

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 26.

<sup>82</sup> *Id.* at 31.

<sup>83</sup> See Freedom House – Nations in Transit Country Report, Russia (2004), <http://www.freedomhouse.org/template.cfm?page=47&nit=342&year=2004&display=law> (last visited Mar. 24, 2006).

quainted with the inner workings of the constitutional court. At the same time, it reveals the familiar tendency to reduce the state of the Russian legal system to a few high-profile cases. The precise process by which they arrive at the overall score for either corruption or judicial framework is murky. On both measures, Russia under Putin has basically been holding steady.<sup>84</sup>

The Central and East European Legal Initiative (CEELI) of the American Bar Association has developed tools to evaluate various pieces of the “rule of law.” CEELI has been active on the ground across the former Soviet Union with a program of sending volunteer U.S. attorneys to assist with legal reform. In recent years, its research office has developed a set of assessment tools in the form of indices that focus on judicial reform, reform of the legal profession, enforcement of judgments, and gender discrimination. As with the other indices, CEELI’s goal is to facilitate cross-country comparisons by policy makers.<sup>85</sup> With regard to each issue area, the CEELI researchers have developed a set of factors for consideration that are drawn from international standards. Its assessment is carried out on a factor-by-factor basis, with conclusions focused on whether the conditions for each individual factor are positive, negative or neutral. It does not come to any overall conclusion, nor does it assign any sort of point value to the achievements of a country. CEELI’s researchers (most of whom have little regional experience) begin the process and then conduct interviews with thirty to thirty-five key informants. More emphasis is placed on the law on the books than on the law in action. If read carefully, the reports merely document whether the formal law protects various rights rather than making any claims about actual practice. Perhaps that is a more honest way to proceed, given that they lack the capacity to do a full-fledged investigation. Whether policy makers appreciate the limitations of these assessments is doubtful.

---

<sup>84</sup> On a one to seven scale, with seven representing authoritarianism, Russia has alternated between scores of 4.5 and 4.75 on judicial framework and independence since 2001. On corruption, its scores have inched downward from 6.25 to 6.0 in 2002, to 5.75 in 2003 and 2004. *Id.*

<sup>85</sup> At present, judicial reform reports have been prepared for sixteen countries (not including Russia), legal profession reports have been prepared for seven countries (not including Russia), and gender discrimination reports have been prepared for four countries (including Russia). It is only a matter of time before reports are prepared focusing on Russia in all areas. All of these reports can be accessed on CEELI’s website at <http://www.abaceeli.org>.

### C. Scholarly Assessments

Social scientists have occasionally turned their attention to the “rule of law.” Those who study public opinion have looked at the courts consistently if somewhat superficially. They regularly ask a representative sample of Russians to assess various institutions, including courts. Examples include the Center for the Study of Public Policy, run out of the University of Strathclyde by Richard Rose, and the Levada Center, a Moscow-based operation run by one of Russia’s leading sociologists, Yuri Levada. A summary of their findings on courts is set forth in Table 11. Neither Rose nor Levada is particularly interested in courts or in the “rule of law.” They ask about courts in order to provide a complete view of the Russian institutional landscape. Probably unintentionally, they provide confirmation of the negativity of Russians toward the legal system. Neither scholar makes any effort to explore his findings; perhaps they are unaware of the discrepancy between their results and the trends within the caseload statistics.

A variety of social scientists have investigated Russian legal culture and the extent to which the “rule of law” has been embraced by the populace.<sup>86</sup> Although none of these scholars are experts on Russian law, each makes a contribution to what we know. Carnaghan’s work is particularly interesting. She allows her respondents to speak for themselves. One former librarian told her:

[M]aybe our institutions can’t work the same as everyone else’s. All Western countries came out of the tradition of Roman law . . . and all of them are extremely law-abiding. But we, excuse me, are never going to wait for a green light when there is not one car on the road. We have our own minds. No cars—what in the devil am I waiting for? Naturally, I’m going to cross the street. Therefore laws aren’t all that important to us. To produce and observe laws—it’s just another culture. Like cockroaches, we try to creep away to some chink where the law won’t reach us.<sup>87</sup>

---

<sup>86</sup> See, e.g., James L. Gibson, *Russian Attitudes Towards the Rule of Law: An Analysis of Survey Data*, in *LAW AND INFORMATIONAL PRACTICES: THE POST-COMMUNIST EXPERIENCE* 77 (Denis J. Galligan & Marina Kurkchiyan eds., 2003); see also Arthur H. Miller et al., *Conceptions of Democracy Among Mass and Elite*, in *Post Soviet Societies*, 27 *BRIT. J. POL. SCI.* 157 (1997); Ellen Carnaghan, *Thinking About Democracy: Interviews With Russian Citizens*, *STUD. PUB. POL’Y* 322 (1999).

<sup>87</sup> Carnaghan, *supra* note 86, at 322.

Other scholars have also made good use of qualitative methods to uncover Russians' views.<sup>88</sup> Gibson employed a different methodology; he carried out a series of mass surveys in Russia during the 1990s.<sup>89</sup> His results are sometimes problematic due to his lack of knowledge about Russia.<sup>90</sup> He is, however, well-respected as a scholar of comparative legal systems. His work on Russia reveals strong support for the principle of the "rule of law," but notes that behavioral indicators lag behind. He does not explore why his attitudinal data are different from that of the public opinion pollsters. He attributes the failure of Russians to live up to the ideals of the "rule of law" to a desire to go along. There is something inconsistent in his argument. If a belief in the "rule of law" is becoming standard, then why aren't social norms changing accordingly? It goes without saying that all of these studies, whatever their merits, do little to advance the goal of having comparable indicators for all countries.

What is lacking from the literature is a comprehensive study of attitudinal and behavioral data by someone with a solid grounding in the Russian legal system. The absence of any such work by Russian scholars may seem odd. Understanding this requires an appreciation of the traditions within the Russian legal academy. Though it is now beginning to change, doctrinal research has long been preferred over empirical studies. This stems from both the restrictions on the freedom of scholars during the Soviet era and the strong belief in a need for detailed exploration of statutory law that is present in most European (non-common law) countries.<sup>91</sup> As someone who is strongly committed to empirical research, I have felt the chill of the Russian scholarly community. When we set out to carry out a study of contracting practices of Russian firms in the mid-1990s, we were consistently told the work was a waste of time because everyone understood that law was unimportant to Russian business. Our survey revealed a more complicated story.<sup>92</sup> Others have continued on this path in terms of analyzing how businesses

---

<sup>88</sup> See CAROLINE HUMPHREY, *THE UNMAKING OF SOVIET LIFE: EVERYDAY ECONOMIES AFTER SOCIALISM* 69-146 (2002).

<sup>89</sup> See Gibson, *supra* note 86; see also James L. Gibson et al., *On the Legitimacy of National High Courts*, 92 AM. POL. SCI. REV. 343 (1998).

<sup>90</sup> For example, Gibson mixes up the Supreme Court and Constitutional Court. See Gibson, *On the Legitimacy of National High Courts*, *supra* note 89, at 343.

<sup>91</sup> MERRYMAN, *supra* note 30, at 56-60.

<sup>92</sup> Kathryn Hendley et al., *Law, Relationships and Private Enforcement: Transactional Strategies of Russian Enterprises*, 52 EUR.-ASIA STUD. 627 (2000).

use the law.<sup>93</sup> As a general matter, however, the approach continues to be the exception rather than the rule for legal research in Russia.

#### IV. ALTERNATIVE METHODS OF MEASURING THE “RULE OF LAW” IN RUSSIA

This brings us to the eternal question for Russia specialists: what is to be done (*chto delaet*)? We can all agree on the worthwhile goal of having a more meaningful measure of the role of law in Russian life. But reaching consensus on how to go about realizing that goal is difficult.

The first step is to decide on the task. Is the goal to have a metric that is comparable across the world or to have an accurate picture of the “rule of law” in Russia? Most of the indices discussed above are aimed at the former. While the idea of being able to place countries on a spectrum from repressive to “rule of law” is appealing, as we look at the underlying methodology of these indices, we find that comparability is illusive as a result of the inconsistent evidence being used. Moreover, these indices tend to be grounded almost exclusively in attitudinal evidence gathered from elites. Whether this process could be remedied is a question that is beyond the scope of this article. To be sure, a methodology that would be genuinely comparative and would include evidence of how people actually use the law and legal institutions would be more time consuming and expensive.

My preference would be to create a process that would allow us to obtain periodic snapshots of the “rule of law” in Russia. Indeed, moving away from this fuzzy term—“rule of law”—towards a project aimed at assessing Russia’s progress toward various sub-goals would be even more appealing. At the same time, I recognize the political appeal (perhaps necessity) of sticking with the “rule of law” project. But the current practice of relying heavily on expert reports grounded in expert opinion, creates measures that are too unreliable. Behavioral data need to be included. This would require regular and comprehensive surveys of legal behavior and attitudes. The type of expert report currently relied upon by the existing indices could be factored in, but would not be the pri-

---

<sup>93</sup> Timothy Frye, *The Two Faces of Russian Courts: Evidence from a Survey of Company Managers*, 11 E. EUR. CONST. REV. 125 (2002).

mary focus. My recommendation contemplates two surveys, one for individuals and another for firms.

This is not a “pie-in-the-sky” proposal. It is already underway for firms. BEEPS, a survey of firms across the former Soviet bloc (including Russia) that has now been run multiple times, is a good start. In its current form, however, it is not entirely adequate to the task. Right now, the primary goal is to assess the extent to which firms are embracing the market. Law is just one of many market mechanisms that are evaluated. The law-related questions could be pulled out and combined with other questions that go more to the specifics of the Russian legal system. The 1997 enterprise survey, on which I collaborated with Randi Ryterman and Peter Murrell, provides another approach.<sup>94</sup> We had four separate questionnaires, for general directors, sales directors, supply directors, and legal counsel, each of which probed how these parts of the firm dealt with legal questions. Perhaps our approach erred on the side of too much information, but somewhere in the middle of the spectrum lays the appropriate approach.<sup>95</sup> As I noted earlier, this empirical work on enterprises has helped create a more nuanced view of how Russian enterprises use or avoid law. There tends to be a lag between the realities revealed by the survey results and the attitudes of elites. For example, in my own research, I have often encountered general directors who insist that the *arbitrazh* courts are a waste of time, only to discover when I speak with the lawyers that this enterprise is actually making regular and productive use of the courts. BEEPS reflects only the general director’s opinion, whereas our approach captures any discrepancies between the two. This data can also be used as a starting point for scholars who are more interested in qualitative approaches. Surveys are, of course, incapable of capturing all of the information that we might like to have. For instance, they are particularly clumsy at revealing gradual change. But one would hope that once the data were available from the survey, enterprising scholars

---

<sup>94</sup> Hendley et al., *supra* note 92, at 632.

<sup>95</sup> See Kathryn Hendley et. al, *Agents of Change or Unchanging Agents? The Role of Lawyers Within Russian Industrial Enterprises*, 26 *LAW & SOC. INQUIRY* 685, 685-715 (2001). In this article, we were able to examine certain issues that elude BEEPS. One example is the role of lawyers within the firm, which is critical for assessing accessibility of law. *Id.*

(both Russian and Western) would use it as a foundation for probing more deeply into enterprise behavior vis-à-vis law.<sup>96</sup>

In understanding the “rule of law,” investigating the behavior of ordinary citizens in relation to the law is critical. Here, I cannot point to a positive example in the Russian context, though there are examples from elsewhere that could be built upon. One of the first and still best studies was the civil litigation research project carried out in the United States in the late 1970s.<sup>97</sup> It endeavored to explain how, and why, litigation evolved. It looked into caseload data in federal and state courts and surveyed individuals. This study, though certainly seminal, is not a perfect role model for assessing the “rule of law” in Russia. More appropriate would be the recent work of Hazel Genn.<sup>98</sup> She has undertaken studies of the way in which people in England, Wales, and Scotland use the law to solve their problems and used survey methods in her research. She first constructed a representative sample and then did follow-up interviews with a subset of her sample. Her books include the text of the survey instruments. Although some of her questions are naturally specific to the setting, many could be adapted to the Russian case. What I particularly like about her approach is her effort to understand the evolution of legal cases. She starts by asking the respondents how they solve problems, not by assuming that litigation is the solution. Yet another intriguing example of how to explore legal behavior is provided by Ewick and Silbey.<sup>99</sup> After carrying out a mass survey in New Jersey, they looked into how some of the respondents experienced law.<sup>100</sup> This is a more qualitative approach that would be appropriate in Russia as a second stage.

Also relevant to any assessment of the “rule of law” in Russia are the caseload data collected by the courts. The ability to do so is

---

<sup>96</sup> For example, I carried out a series of case studies of the surveyed enterprises in order to understand better the variations of how firms dealt with non-compliant customers. Kathryn Hendley, *Beyond the Tip of the Iceberg: Business Disputes in Russia*, in *ASSESSING THE VALUE OF LAW IN TRANSITION ECONOMIES* 20 (Peter Murrell ed. 2001).

<sup>97</sup> DAVID M. TRUBEK ET AL., *CIVIL LITIGATION RESEARCH PROJECT FINAL REPORT* (1983) (on file with the Institute for Legal Studies of the University of Wisconsin Law School).

<sup>98</sup> See HAZEL GENN, *PATHS TO JUSTICE: WHAT PEOPLE DO AND THINK ABOUT GOING TO LAW* (1999); HAZEL GENN & ALAN PATERSON, *PATHS TO JUSTICE SCOTLAND: WHAT PEOPLE IN SCOTLAND DO AND THINK ABOUT GOING TO LAW* (2001).

<sup>99</sup> PATRICIA EWICK & SUSAN S. SILBEY, *THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE* (1998).

<sup>100</sup> *Id.*

compromised by some of the oddities in how they are collected. Judges are asked to fill out information cards with regard to each case. This provides us with baroque detail on the type of case and the outcome, which is certainly helpful, but it reveals nothing about the parties themselves, their size, their experience in litigation or the effectiveness of their counsel (or whether they had counsel). These reporting forms date back to the Soviet era. Though they have been updated to reflect changes in substantive law, the basic goal remains the same. What is necessary is a thorough rethinking of the purpose of the forms. The importance of this task has been raised with top officials within the Russian legal establishment, but has never been a top priority for them. Russian scholars are not pressing for such changes, largely because they are mostly uninterested in exploring legal behavior. The presentation of the data collected is uneven. Some statistics are available online. Russian legal journals publish periodic summaries of national-level data. These provide us with a starting point, but are inadequate for detailed analysis.

None of the options I am suggesting will solve the problem of assessing progress toward the “rule of law” over the past decade. We can attempt to reconstruct the extent to which law was used through caseload data and other indicators (as I have done above), but certain data are simply lost to us. Though we could attempt to do this by asking individuals and firms about their past behavior, such data are notoriously unreliable. Particularly vulnerable are questions that probe into the underlying motivations, which may be clear for a time, but become hazy as time passes. Yet understanding the reasons why law is used or avoided is the key to any assessment of the “rule of law.” At this point, the best course of action is to endeavor to do better in the future.

FIGURE 1: FLOW CHART OF THE RUSSIAN JUDICIAL SYSTEM

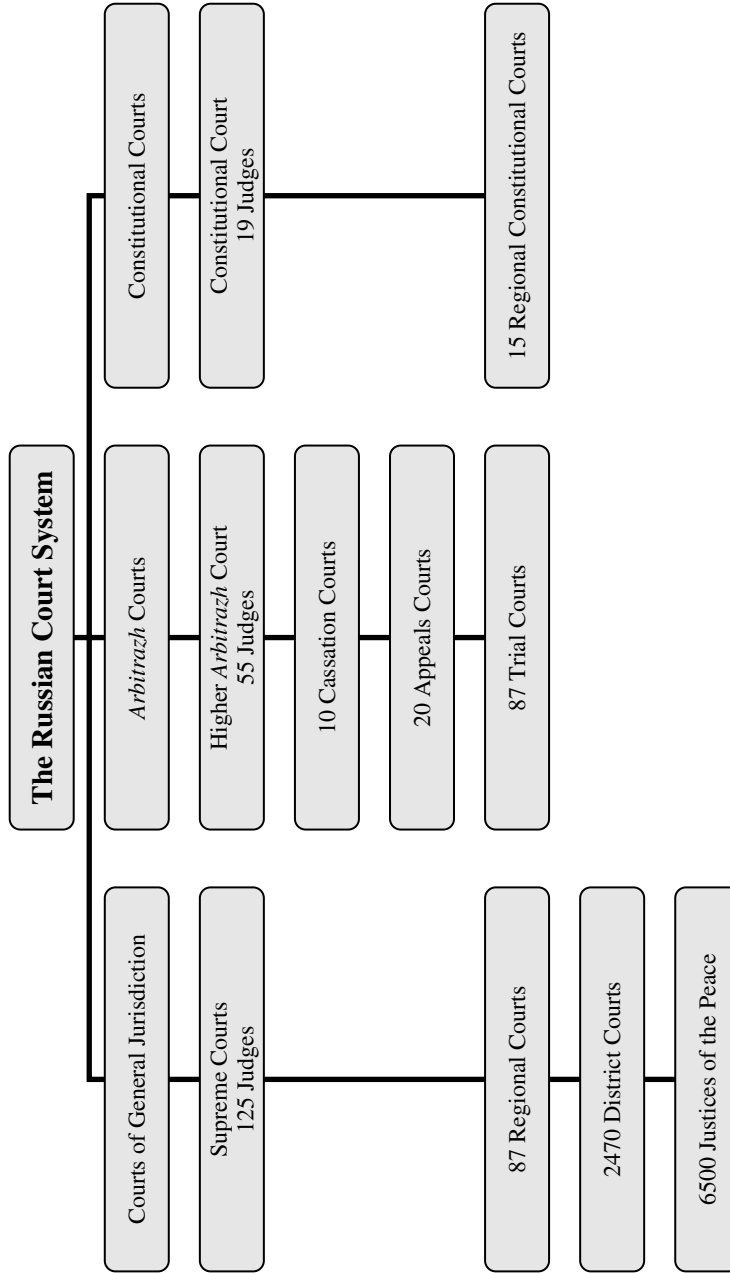


TABLE 1: ACQUITTAL RATES IN CRIMINAL TRIALS IN THE  
RUSSIAN COURTS: 1996-2005<sup>101</sup>

	1996	1998	2000	2002	2004	1st half 2005
Bench trials (district)						
acquittal rate	0.3%	0.36% (all courts)	not reported	0.71%	0.61%	0.51%
Jury trials (oblast level only)						
% of trials w/juries	N/A	N/A	N/A	3.3%	11%	11.2%
acquittal rate	N/A	N/A	N/A	10.4%	20.2%	20.9%

TABLE 2: INTERNET SEARCHES ON LEGAL TOPICS BY  
RUSSIANS—ACCORDING TO SPYLOG.RU<sup>102</sup>

	July 2004	December 04	June 2005	December 05
Sessions (last at least 30 minutes)	212,100	179,400	125,600	179,500
Hits (last a few minutes)	431,200	366,400	316,400	411,600

TABLE 3: SUBJECT-MATTER OF INTERNET SEARCHES ON LAW BY  
RUSSIANS – ACCORDING TO SPYLOG.RU<sup>103</sup>

	July 2004	December 04	June 2005	December 05
Family law	none reported	none reported	40,974	67,266
Business law	31,165	33,210	158,158	78,153
Housing law	4,250	1,821	none reported	34,373
Looking for lawyers	13,528	10,339	93,706	114,404
Looking for notaries	5,147	5,506	74,084	53,969
Citizenship law	none reported	7,175	4,248	none reported

<sup>101</sup> Sources: *Obzor statisticheskikh svedenii o sostoianii sudimosti i rabote sudov po rassmotreniiu ugovnykh del za 1994-1996*, <http://jurqa.h12.ru/all.docs/u/a/twmoo8n9.html> (last visited Mar. 23, 2006); *Rabota sudov Rossiiskoi Federatsii v 1998 godu*, ROSSIISKAYA IUSTITSIYA, Aug. 1999, at 52-54; *Rabota sudov Rossiiskoi Federatsii v 2002 godu*, ROSSIISKAYA IUSTITSIYA, Aug. 2003, at 69-78; *Obzor deiatel'nosti federal'nikh sudov obshchei iurisdiktсии i mirovykh sudei v 2004 godu*, ROSSIISKAYA IUSTITSIYA, June 2005, at 26-48; *Obzor deiatel'nosti federal'nikh sudov obshchei iurisdiktсии i mirovykh sudei v pervom polugodii 2005 goda*, ROSSIISKAYA IUSTITSIYA, Jan. 2006, at 30-46.

<sup>102</sup> Sources: *Monitoring Sektora: Iuridicheskie uslugi, Iyul' 2004 goda*, SPYLOG, GLOBAL'NAYA STATISTIKA, Nov. 11, 2004, <http://gs.spylog.ru/tcu/5/node/329.html>; <http://gs.spylog.ru/tcu/5/node/455.html> (last visited Dec. 2004); *Monitoring Sektora: Iuridicheskie uslugi, Dekabr' 2004 goda*, SPYLOG, GLOBAL'NAYA STATISTIKA, Jan. 28, 2005, <http://gs.spylog.ru/tcu/5/node/625.html>; *Monitoring Sektora, Iuridicheskie uslugi. Iyun' 2005 goda*, SPYLOG, GLOBAL'NAYA STATISTIKA, Aug. 2, 2005, <http://gs.spylog.ru/tcu/5/node/745.html> (Dec. 2005) (last visited Mar. 13, 2006).

<sup>103</sup> Sources: *Monitoring Sektora: Iuridicheskie uslugi, Iyul' 2004 goda*, SPYLOG, GLOBAL'NAYA STATISTIKA, Nov. 11, 2004, <http://gs.spylog.ru/tcu/5/node/329.html>; <http://gs.spylog.ru/tcu/5/node/455.html> (last visited Dec. 2004); *Monitoring Sektora: Iuridicheskie*

TABLE 4: NUMBER OF RUSSIAN ADVOKATY: 1996 TO 2004.<sup>104</sup>

	Number of advokaty
1996	26,300
1998	35.300
2000	43,300
2002	48.800
2004	53,971

TABLE 5: CASES DECIDED BY THE RUSSIAN COURTS OF GENERAL JURISDICTION: 1996-2005 (IN THOUSANDS)<sup>105</sup>

	1996	1998	2000	2002	2004	1st half 2005
Total cases	6,075	7,703	8,878	7,973	10,726	5,656
Oblast courts	11	15	21	18	35	15
District courts	6,063	7,687	8,753	4,409	3,330	1,486
Justice of peace courts	N/A	N/A	104	3,546	7,360	4,154
Total criminal cases	1,199	1,137	1,331	1,000	1,059	569
Oblast courts	10	11	10	8	6	3
District courts	1,189	1,127	1,309	747	719	362
Justice of peace courts	N/A	N/A	11	245	335	205
Total civil cases	3,058	4,752	5,016	5,038	5,851	3,103
Oblast courts	1	5	11	10	12	5
District courts	3,057	4,747	4,913	2,672	2,030	932
Justice of peace courts	N/A	N/A	92	2,356	3,809	2,167
Total admin cases	1,818	1,813	2,532	1,935	3,815	1,984
Oblast courts	not reported	not reported	not reported	not reported	17	8
District courts	1,818	1,813	2,531	990	581	192
Justice of peace courts	N/A	N/A	1	945	3,216	1,783

*uslugi, Dekabr' 2004 goda*, SPYLOG, GLOBAL'NAYA STATISTIKA, Jan. 28, 2005, <http://gs.spylog.ru/tcu/5/node/625.html>; *Monitoring Sektora, Iuridecheskie uslugi. Iiun' 2005 goda*, SPYLOG, GLOBAL'NAYA STATISTIKA, Aug. 2, 2005, <http://gs.spylog.ru/tcu/5/node/745.html> (Dec. 2005) (last visited Mar. 13, 2006).

<sup>104</sup> Sources: Goskomstat, *Prestupnost' i pravoporyadok v Rossii: statisticheskii aspekt*, at 60 (2003); *Advokatskie Palati Sub'ektov RF*, FEDERALNAYA PALATA ADVOKATOV ROSSIISKOI FEDERATSII, <http://www.advpalata.ru/index.phtml?cid=5020147> (last visited Nov. 12, 2006).

<sup>105</sup> Sources: Goskomstat, *Prestupnost' i pravoporyadok v Rossii: statisticheskii aspekt* (2003); *Rassmotrenie sudami grazhanskikh del*, ROSSIISKAYA IUSTITSIYA, July 1997, at 52; *Rassmotrenie sudami administrativnykh del i drugikh materialov*, ROSSIISKAYA IUSTITSIYA, July 1997, at 52-53; *Rabota sudov Rossiiskoi Federatsii v 1998 godu*, ROSSIISKAYA IUSTITSIYA, August 1999, at 52-54; *Rabota sudov Rossiiskoi Federatsii v 1998*

386 *CARDOZO J. OF INT'L & COMP. LAW* [Vol. 14:347]TABLE 6: CIVIL LITIGATION IN THE RUSSIAN COURTS OF GENERAL JURISDICTION: 1996-2004 (IN THOUSANDS)<sup>106</sup>

	1996	1998	2000	2002	2004	% change 96 to 04
Family law	885	865	1003	1,017	992	12%
Labor law	716	1,450	576	633	641	-10%
Housing law	162	172	237	263	680	320%
Land disputes	9	11	17	34	56	522%
Consumer rights	42	71	47	49	70	67%
Tax disputes	29	63	108	168	not reported	479%*

\* Comparison between 1996 and 2002.

TABLE 7: NUMBER OF CASES IN ARBITRAZH COURT DURING 1996: FREQUENCY AMONG 328 RUSSIAN ENTERPRISES<sup>107</sup>

Percentage of the sample of 328 enterprises is in parentheses

Number of Cases as Defendant	Number of cases as plaintiff				
	None	1-5	6-19	20-49	50 or more
	68	49	10	5	4
None	(20.7%)	(14.9%)	(3.1%)	(1.5%)	(1.2%)
1-5	20	51	25	10	8
	(6.1%)	(15.6%)	(7.6%)	(3.1%)	(2.4%)
6-19	4	4	21	9	5
	(1.2%)	(1.2%)	(6.4%)	(2.7%)	(1.5%)
20-49	0	1	5	11	4
	(0.0%)	(0.3%)	(1.5%)	(3.4%)	(1.2%)
50 or more	0	1	1	2	10
	(0.0%)	(0.3%)	(0.3%)	(0.6%)	(3.1%)

*godu*, ROSSISSKAYA IUSTITSIYA, Sept. 1999, at 51-53; *Rabota sudov obshchei iurisdiktii v 2000 godu*, ROSSISSKAYA IUSTITSIYA, Nov. 2001, at 76-77; *Rabota sudov Rossiiskoi Federatsii v 2002 godu*, ROSSISSKAYA IUSTITSIYA, Aug. 2003, at 69-78; *Obzor deiatel'nosti federal'nikh sudov obshchei iurisdiktii i mirovyikh sudei v 2004 godu*, ROSSISSKAYA IUSTITSIYA, July 2005, at 26-48; *Obzor deiatel'nosti federal'nikh sudov obshchei iurisdiktii i mirovyikh sudei v pervom polugodii 2005 goda*, ROSSISSKAYA IUSTITSIYA, Jan. 2006, at 30-46.

<sup>106</sup> Sources: Goskomstat, *Prestupnost' i pravoporyadok v Rossii: statisticheskii aspekt* (2003); *Sudebnaya statistika: grazhdanskie dela*, ROSSISSKAYA IUSTITSIYA, Sept. 2005, at 37.

<sup>107</sup> Source: Kathryn Hendley, *Do Repeat Players Behave Differently in Russia? Contractual and Litigation Behavior of Russian Enterprises*, 33 *Law & Soc. Rev.* 833 (1999).

TABLE 8: CASES DECIDED BY RUSSIAN ARBITRAZH COURTS (1992-2004)<sup>108</sup>

Court	1992	1994	1996	1998	2000	2002	2004	% change '96 to '04
National	338,162	208,081	290,094	398,622	534,490	697,085	809,344	179%
Moscow City	N/A	17,427	26,996	34,467	45,021	43,089	60,556	124%
Moscow Oblast	10,578	5,729	7,722	10,333	15,225	17,878	24,539	218%
St. Petersburg & Leningrad Oblast	18,662	8,916	12,651	21,361	29,869	37,737	50,170	297%
Sverdlovsk	14,750	7,869	7,980	10,120	9,743	27,519	39,054	389%
Novosibirsk	5,963	3,311	4,779	7,026	17,158	17,681	22,556	372%
Saratov	7,354	3,686	3,999	7,469	11,630	14,370	22,085	452%

<sup>108</sup> Sources: *Sudebno-arbitrazhnaya statistika: O rabote arbitrazhnykh sudov v 1992-94 godakh*, Vestnik Vysshego Arbitrazhnogo Suda RF [Vestn. VAS] [The Highest Arbitration Court of the RF Reporter] 1995, No. 4, pp. 75-77 (1995); *Sudebno-arbitrazhnaya statistika: Osnovnye pokazateli raboty arbitrazhnykh sudov Rossiiskoi Federatsii v 1996-97 godakh*, Vestnik Vysshego Arbitrazhnogo Suda RF [Vestn. VAS] [The Highest Arbitration Court of the RF Reporter] 1998, No. 4, pp. 21-23; *Sudebno-arbitrazhnaya statistika: Osnovnye pokazateli raboty arbitrazhnykh sudov Rossiiskoi Federatsii v 1998-99 godakh*, Vestnik Vysshego Arbitrazhnogo Suda RF [Vestn. VAS] [The Highest Arbitration Court of the RF Reporter] 2000, No. 3, pp. 6-12; *Sudebno-arbitrazhnaya statistika: Osnovnye pokazateli raboty arbitrazhnykh sudov Rossiiskoi Federatsii v 2000-2004 godakh*, Vestnik Vysshego Arbitrazhnogo Suda RF [Vestn. VAS] [The Highest Arbitration Court of the RF Reporter] 2005, No. 2, pp. 35-42; Annual Reports on Activities, submitted by *arbitrazh* courts to the Higher *Arbitrazh* Court for 1992 through 2004 (on file with the author).

388 *CARDOZO J. OF INT'L & COMP. LAW* [Vol. 14:347]

TABLE 9: SHIFT IN COMPOSITION OF CASELOAD IN ARBITRAZH COURTS—PERCENTAGE OF CASES FALLING INTO CATEGORIES OF INTER-ENTERPRISE, STATE-INVOLVED, & BANKRUPTCY: 1992-2004<sup>109</sup>

Court	1992	1994	1996	1998	2000	2002	2004
National							
Inter-enterprise	98	91	84		50	46	29
State-involved	2	9	16	N/A	48	48	68
Bankruptcy	0	0	0		2	6	3
Moscow City							
Inter-enterprise		96	93	82	16	51	52
State-involved	N/A	4	7	18	38	48	47
Bankruptcy		0	0	0	1	2	1
Moscow Oblast'							
Inter-enterprise		89	85	82	64	51	44
State-involved	N/A	11	15	17	35	46	54
Bankruptcy		0	0	1	1	3	2
Leningrad							
Inter-enterprise		97	89	77	49	43	34
State-involved	N/A	3	11	22	50	54	65
Bankruptcy		0	0	1	1	3	1
Sverdlovsk							
Inter-enterprise		96	84	79	48	54	31
State-involved	N/A	4	16	21	51	50	67
Bankruptcy		0	0	0	1	6	2
Novosibirsk							
Inter-enterprise		94	86	83	49	60	30
State-involved	N/A	6	14	17	50	37	65
Bankruptcy		0	0	0	1	3	5
Saratov							
Inter-enterprise		91	85	51	43	44	27
State-involved	N/A	9	15	49	55	49	70
Bankruptcy		0	0	0	2	7	3

<sup>109</sup> Sources: *Sudebno-arbitrazhnaya statistika: O rabote arbitrazhnykh sudov v 1992-94 godakh*, Vestnik Vysshego Arbitrazhnogo Suda RF [Vestn. VAS] [The Highest Arbitration Court of the RF Reporter] 1995, No. 4, pp. 75-77; *Sudebno-arbitrazhnaya statistika: Osnovnye pokazateli raboty arbitrazhnykh sudov Rossiiskoi Federatsii v 1996-97 godakh*, Vestnik Vysshego Arbitrazhnogo Suda RF [Vestn. VAS] [The Highest Arbitration Court of the RF Reporter] 1998, No. 4, pp. 21-23; *Sudebno-arbitrazhnaya statistika: Osnovnye pokazateli raboty arbitrazhnykh sudov Rossiiskoi Federatsii v 2000-2004 godakh*, Vestnik Vysshego Arbitrazhnogo Suda RF [Vestn. VAS] [The Highest Arbitration Court of the RF Reporter] 2005, No. 2, pp. 35-42; Annual Reports on Activities, submitted by *arbitrazh* courts to the Higher *Arbitrazh* Court for 1992 through 2004 (on file with the author).

TABLE 10: BASIC INFORMATION ABOUT THE ARBITRAZH COURTS<sup>110</sup>

	Number of judges (2004)		Monthly per judge caseload		Success rates—% of cases in which plaintiff prevails (2004)			
	Budgeted	Actual	2000	2004	All cases	Inter-firm disputes	Tax: state is pl	Tax: firm is pl
All <i>Arbitrazh</i> Courts	3544	2947	30	55	68	65	71	73
Moscow City Court	180	147	32	55	65	71	69	87
Moscow Oblast' Court	74	58	29	53	61	59	63	84
St. Petersburg & Leningrad Oblast	120	67	42	94	76	71	77	84
Sverdlovsk	93	73	37	66	74	67	71	76
Novosibirsk	59	49	28	57	64	59	72	63
Saratov	50	36	38	77	67	57	79	77

TABLE 11: RESULTS OF PUBLIC OPINION POLLING ON TRUST IN KEY RUSSIAN INSTITUTIONS: 1996-2004<sup>111</sup>

Institution:	1996	1998	2000	2001	2002	2003	2004
President:							
Russian Barometer (%)	12/25*	14	22/49**	50	NA	72	76
Levada Center (1-5 scale)	NA	NA	NA	3.9	4.12	3.89	NA
Courts:							
Russian Barometer (%)	19/20*	24	19/22**	23	NA	22	24
Levada Center (1-5 scale)	NA	NA	NA	2.8	2.73	2.91	NA
Duma:							
Russian Barometer (%)	13/22*	13	12/12**	7	NA	14	12
Levada Center (1-5 scale)	NA	NA	NA	2.84	2.9	2.91	2.7
Political Parties:							
Russian Barometer (%)	14/11*	7	9/11**	7	NA	14	13
Levada Center (1-5 scale)	NA	NA	NA	2.69	2.68	2.46	NA

\* Reflects change in opinion between the two rounds of the presidential election.

\*\* Reflects change in opinion before and after the transition from Yeltsin to Putin.

<sup>110</sup> Source for number of judges and per judge caseload: "Spravka o nagruzke po rassmotreniiu del i zaiavlenii arbitrazhnymi sudami Rossiiskoi Federatsii v 2002-2004 gg.," and "Spravka o nagruzke po rassmotreniiu del i zaiavlenii arbitrazhnymi sudami Rossiiskoi Federatsii v 2000-2002 gg." (on file with the author). Source other columns: for all arbitrazh courts: Sudebno-arbitrazhnaya statistika (2004 & 1995); and for the individual courts: the Annual Reports on Activities, submitted by arbitrazh courts to the Higher Arbitrazh Court for 2004 (on file with the author).

<sup>111</sup> Sources: Richard Rose, *Russian Responses to Transformation: Trends in Public Opinion Since 1992*, STUD. PUB. POL'Y NO. 390 (2004); L.A. Sedov, *Rezul'taty fevral'skogo oprosa VTsIOM, 2003*, LEVADA CENTRE, Jan. 11, 2006, available at <http://www.levada.ru/press/2003031400.html>.

390 *CARDOZO J. OF INT'L & COMP. LAW* [Vol. 14:347]TABLE 12: RECOVERY OF JUDGMENTS: OVERALL RESULTS FOR SAMPLE OF 100 NON-PAYMENTS CASES (1)<sup>112</sup>

	% of creditors that recovered some portion of judgment	Average % of judgment recovered	No. of cases in which debtors paid voluntarily	Average % recovered, excluding voluntary payments	No. of cases in which creditors got 100% of judgment (2)	No. of cases in which creditors got nothing
All Cases	64	46.7	6	43.5	33	43
Moscow	78	70	2	63.9	19	8
Ekaterinburg	50	37.8	1	34.5	9	15
Saratov	34.5	30	3	17.9	6	20

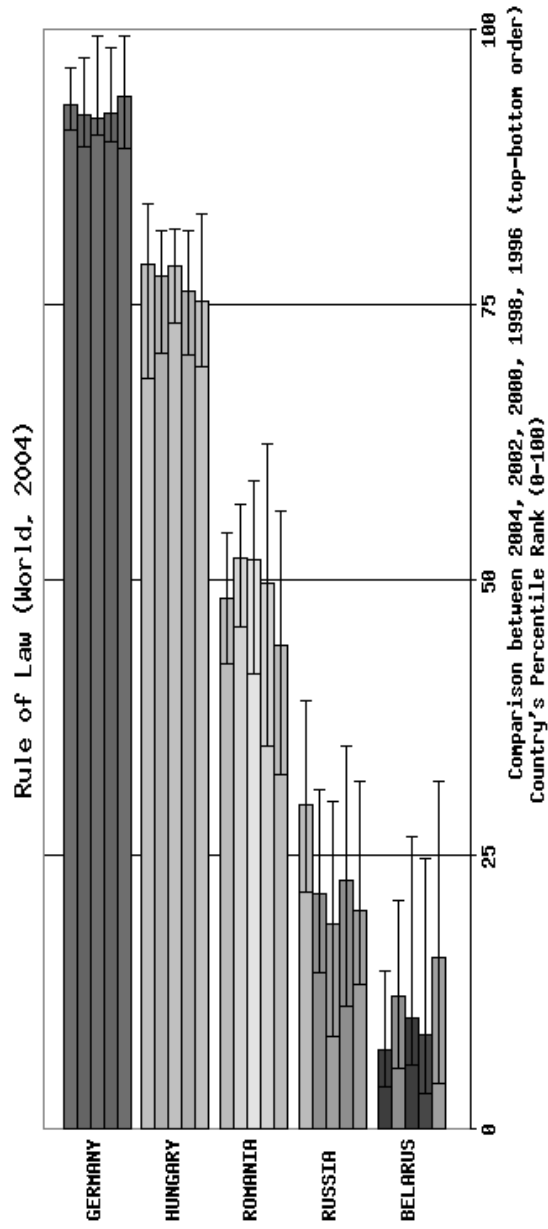
(1) Excludes the 8 cases where the creditors refused to answer follow-up questions.

(2) Excludes the 6 cases in which the debtors paid voluntarily.

---

<sup>112</sup> Source: HENDLEY, *supra* note 69 (2004).

GRAPH 1: COMPARISON OF WBI "RULE OF LAW" INDEX IN GERMANY, HUNGARY, ROMANIA, RUSSIA, & BELARUS: 1996-2004



Source: D. Kaufmann, R. Kraay, and M. Mastruzzi 2005: Governance Matters IV: Governance Indicators for 1996-2004 (<http://www.worldbank.org/wbi/governance/pubs/govmatters4.html>)

