Law has had a checkered history in Russia. The rule of law, as evidenced by an independent judiciary that applies the law in an even-handed manner to all who come before it, 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 *pravo gosudarstvo* or a “state based on the rule of law.” Both Yeltsin and Putin have reiterated this goal, yet their actions have brought their commitment into question. The heavy-handed prosecutions of political opponents of the Kremlin over the past decade suggest that the willingness to use law as a weapon to achieve short-term goals is a vestige of Soviet life that lives on in post-Soviet Russia. Though these prosecutions have become the most well-known feature of the Russian legal system, both domestically and internationally, they do not tell the whole story. They have occurred within a legal system that has undergone remarkable institutional reforms over the past two decades. Focusing on its many persistent shortcomings is easy, but unfair.

Under Putin, the legal system is best conceptualized as a dual system, under which mundane cases are handled in accordance with the prevailing law, but under which the outcomes of cases that attract the attention of those in power can be manipulated to serve their interests. To put it more simply, justice is possible and maybe even probable, but cannot be guaranteed. This lack of predictability is unfortunate, but does not make Russia unique. Law is inherently messy. Many countries aspire to the rule of law, but none has yet achieved it in full measure. Articulating the rules is always easier than applying them to concrete circumstances. Some gap between the law on the books and the law in practice is inevitable. The efforts to bridge this gap in Russia are the subject of this chapter.
HISTORICAL OVERVIEW

The role of law in any society is not dependent solely on written law and formal legal institutions. It is also influenced by how these laws and institutions are understood and by how they are used (or not used) by both the powerful and the powerless within that society. These attitudes, often referred to as legal culture, are neither uniform nor consistent. They are influenced by many factors. Primary among them are the common perceptions of the responsiveness of law and legal institutions to the interests of society. For some, these perceptions are shaped by their own experiences. But in Russia, much as in the rest of the world, the vast majority of citizens have had no first-hand encounters with the formal legal system. For them, their attitudes toward the legal system are influenced by beliefs about how law has worked in the past as well as by mass media accounts about how the legal system is presently functioning and/or anecdotal accounts of the experiences of friends or family. As a result, making sense of the role of law in Putin's Russia requires some knowledge of what came before.

The Soviet Union is often referred to as a lawless society. Taken literally, this was not true. The Soviet Union possessed all the elements of a typical legal system. 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. 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. The legislature, though composed of representatives who were ostensibly popularly elected, operated as a rubber stamp for decisions made by party leaders. Likewise, judges tended to toe the party line. All understood that anyone who diverged would not be invited to stand for reelection 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. 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. 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. He regularly invoked the goal of creating a pravovoy 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. 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 even-handed manner without clear proof of a shift in judicial behavior. Along similar lines, Gorbachev introduced the principle of judicial review to Russia for the first time. He created the Committee on Constitutional Supervision. Although not a full-fledged constitutional court, this committee was empowered to review acts of the executive and legislative branches, making it an early (albeit feeble) attempt at checks and balances. The members demonstrated a commitment to human rights and to requiring the state to live up to its obligations under the law that had previously been absent. The committee issued only twenty-three decisions in its short two-year (1990–1991) life and was ineffective in enforcing them. Once again, its impact was largely symbolic. 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 toward an embrace of a legal system grounded in the rule of law.

Reform to the legal system was less of a marquee issue under Yeltsin, but continued throughout the 1990s. In some ways, the challenges were mitigated by the disintegration of the Soviet Union. No longer did reformers have to concern themselves with how reforms would play out in all the republics, which became independent countries in 1992, but the immense size of Russia as well as its federal character left reformers with their hands full. At the same time, Yeltsin’s decision to abandon the halfway reforms that characterized perestroika and to embrace the goals of creating a democracy and a market economy complicated the task of legal reformers. The institutional infrastructure for both democracies and markets is grounded in law. Much of the Soviet-era legislation and many of the era’s legal institutions were inadequate to the task. Russian reformers turned to Western advisors for assistance in writing the new laws and creating the necessary institutions. 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. Almost no area of law was left untouched by the legislative whirlwind of the 1990s. 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. The result was a continued skepticism toward the usefulness of law; a sentiment that was
only deepened as the new institutions were rocked by a series of corruption scandals. Snapsnaps of the judicial system taken at the beginning and end of the 1990s would reveal dramatically different pictures. Though the basic court system remained intact and continued to handle the bulk of cases, other more specialized courts were introduced. The most well known is the stand-alone Constitutional Court. The Constitutional Court represented a dramatic break with Russia’s autocratic tradition. Through its power of judicial review, the court was entitled to declare acts of the legislative and executive branches to be unconstitutional, thereby making the judicial branch into an equal partner for the first time in Russian history. In its early days, the court took some highly controversial positions, most notably siding with the legislature against Yeltsin in the lead up to the October Events of 1993. Yeltsin disbanded the court during this crisis and, when it was reconstituted in early 1994, the justices, having learned their lesson, shied away from disputes with political overtones. Less well known, but essential to the development of a market economy, was the emergence of a hierarchical system of arbitrazh courts in 1992. These courts were not created out of whole cloth, but were built on the foundation of the Soviet-era system for resolving disputes between state-owned enterprises. Critical changes were made in terms of the status of the decision-makers (raised from arbiters to judges) and jurisdiction (expanded to include disputes involving private firms as well as bankruptcy), but the arbitrazh courts represent a creative adaptation of Soviet-era institutions to serve the needs of the new Russia. (See below for a more detailed discussion of how each of these court systems works.)

In addition to the structural innovations, the de-politicization of the process of selecting judges, begun under Gorbachev, was consolidated under Yeltsin. The constitution, approved by popular referendum in December 1993, provides that judges be appointed by the president, with the proviso that nominations to any of the top courts be confirmed by the Federation Council. The seemingly unchecked power of the president to select lower level judges might seem to be an example of the expansive (perhaps overly expansive) powers granted to the president by this constitution. In reality, however, it constituted the final step in a system intended to preference competence over political reliability, a noteworthy reversal from the previous system in which judges served at the pleasure of the Communist Party. Under the new system, anyone with a law degree who was at least 25 and had at least five years of work in the legal profession was eligible to become a judge. Their applications were assessed by judicial qualification commissions, who forwarded their recommendations up the bureaucratic chain. Though the president was entitled to reject these recommendations, he rarely did. After an initial three-year probationary period, judges on the courts of general jurisdiction and the arbitrazh courts received life tenure, subject to a mandatory retirement age of 65. Allegations of judicial corruption and other malfeasance were handled by the judicial qualifications commissions, which had the power to sanction and even to remove judges.

A review of the legal infrastructure at the close of Yeltsin’s tenure reveals many of the necessary building blocks for the rule of law. The introduction of judicial review combined with the efforts to insulate judges at all levels from political pressure are critical to creating judicial independence. But below the surface lurked the culture of dependency that had developed over the decades of Soviet power. Many Russian citizens still doubted that these judges would be willing to take on the Kremlin to protect citizens’ rights. The emergence of the Constitutional Court as a vigorous defender of human rights helped, but could not entirely erase their suspicions. Russia is a superb example of the difficulty of changing legal culture. Changing the underlying institutional structure is revealed as a necessary but not sufficient condition to achieving this goal.

**LEGISLATIVE REFORMS UNDER PUTIN**

Putin’s consolidation of power within the Duma and his emasculation of the Federation Council allowed for legislative reforms that had eluded Yeltsin. During the 1990s, a number of key pieces of legislation, such as the labor code, the tax code, the criminal procedure code, and the land code, had stalled due to opposition within the Duma. As a result, those affected had to hobble along using the either stop-gap presidential decrees or Soviet codes, which had been amended so many times they had come to resemble a patchwork quilt. Not only did this undermine the predictability of law by making it difficult to discern the rules, it also left the guiding principles of the Soviet era in place, at least on paper. Under Putin, these codes (along with many others) were passed and, while they marked a principled shift away from Soviet-era norms, the manner in which they were passed may signal a return to the Soviet style of rubber-stamp legislatures.

The criminal procedure code in effect when Putin took office was originally passed under Khrushchev. Although much amended, human rights activists still argued that it failed to protect the rights of the accused. A new code, which enhanced the rights of judges at the expense of the police, got bogged down in the Duma in the latter years of Yeltsin’s tenure. This changed under Putin. As Remington documents, United Russia (the Kremlin-affiliated party) was able to take advantage of both its numbers and the ability of its leaders to enforce party discipline and build coalitions to push Putin’s legislative agenda through the Duma.

The new code was passed and came into effect in 2002. Under its terms, the police are required to obtain warrants for investigative activities that pre-
viously 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 the rules regarding pretrial detention can and will be disregarded when inconvenient for the Kremlin. Judging a system solely on high-profile cases can be dicey. 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. Passing a law is just the beginning. Changing ingrained behaviors of state officials is infinitely more difficult and pales in comparison to trying to change the attitudes of ordinary Russians toward the legal system. 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 held out against numerous reform efforts aimed at making its activities more transparent.

The labor code was the subject of much discussion during the 1990s. Everyone understood that the Soviet code, which dated back to the Brezhnev era, was inadequate. It created strong protections for workers, making it almost impossible for management to fire them, whether for cause or not. The code reflected a societal commitment to full employment that was at the heart of state socialism. Yeltsin’s decision to transform Russia into a market economy meant that featherbedding could no longer be tolerated. Yet the law lagged behind this political reality. Indeed, many managers resisted it as well. The strong tradition of paternalism did not die with the Soviet Union. Managers who had come of age in the old system endeavored to keep workers on the books even when they were unable to pay them. A law drafted in the early 1970s could not possibly have contemplated such events and it rapidly became irrelevant. Managers felt emboldened by this vacuum to do whatever was necessary to save their firms and, in far too many cases, to line their own pockets. The chaotic nature of the privatization process and the dramatic economic depression that accompanied it only added fuel to the fire. Whether they remained on the job and unpaid or were laid off, workers were left feeling abandoned. A few turned to the courts for protection, aided by public interest law firms, which had sprung up in various corners of Russia under the auspices of the independent trade unions. Though judges often empathized with the workers, the remedies available under the law were ineffective. Courts had the right to impose fines on managers who violated the law by failing to pay their workers, but were powerless to enforce their orders in a world where firms appeared to lack assets. Trade unions also organized periodic public rallies and other types of protests aimed at stopping this prac-

tice of delaying wage payments to which public officials responded mostly with promises.

Competing drafts of a new labor code began circulating in the late 1990s. The version supported by the Kremlin broke with tradition by allowing management to fire workers at will. Not surprisingly, trade union activists opposed this version and put forward a draft that would have tilted the balance toward workers. The situation stalemated as representatives of the Communist Party of Russia resisted the market-driven principles of the Kremlin’s draft. Once Putin took power, he was able to break this logjam and get his preferred version passed in late 2001. He accomplished this not through the power of persuasion, but rather through brute force. The message sent would seem to be that the fledgling experiment with a law-making process in which the views of society are reflected and respected is over. Putin’s style harkens back to the Soviet period when the legislature took its cues from the Kremlin and obediently approved anything put before it. This top-down view of law leaves no room for society to feel any sense of ownership in the law and may contribute to a renewal of the disdain and distrust of law exhibited during the Soviet era.

Putin’s behavior with regard to the law monetizing pension benefits and the law governing relations between the state and nongovernmental organizations has certainly extinguished any lingering doubt as to whether Putin sees law as a reciprocal process in which both state and society participate. In the summer of 2004, the Kremlin proposed replacing in-kind benefits for pensioners and invalids (such as free bus passes and medical care) with monetary grants. These plans were met with howls of disapproval by the groups affected, who feared the cash grants would be inadequate to meet their needs and would not keep up with inflation. Pensioners mounted a series of public protests, but were unable to stop the bill from being enacted.

Along similar lines, a bill aimed at making NGOs more accountable to the state was passed in December 2005 over the strong objections of many, both domestically and internationally, who felt the law would fatally compromise the independence of NGOs. Putin put forward amendments that purported to address these criticisms, but NGO leaders claimed they fell short. In its final form, the bill requires all NGOs to reregister, a tactic familiar from the Soviet era, when it was used as a way to purge undesirables from the Communist Party. NGO activists suspect that reregistration will be used as a pretext to get rid of those NGOs that are distasteful to the authorities. Moreover, the law is riddled with vague language that gives authority considerable discretion in terms of enforcement, another tactic that is reminiscent of the Soviet past. Precisely how the law will work in practice remains to be seen, but the process of adopting it sent a strong signal that opposing Putin is a waste of time.
JUDICIAL POLITICS UNDER PUTIN

Judicial Selection and Supervision

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; politics should not 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. Lifetime tenure is a potential solution, 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 independence. As this suggests, the mechanics of maintaining a judicial system grounded in the rule of law is exquisitely 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. Judicial qualifications commissions (JQCIs) were created in the late 1980s. Composed entirely of judges, they were charged with vetting applications. Their recommendations were then forwarded to the president, who had final authority over who was to be appointed. 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 signals 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. The composition of the JQCIs has been altered. Judges no longer enjoy a monopoly, but still make up two-thirds of the membership of the JQCIs at all levels, leaving them with effective control if they act in concert. 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 the change allows other voices into the decision-making process and it is reasonable to expect these newcomers will reflect Putin’s point of view, it is also true most other European countries with organs analogous to the JQCIs include a mixture of judges and laypeople. As part of Putin’s effort to consolidate power in the wake of the Beslan tragedy, a more radical proposal was put forward that called for equal representation of judges and laypeople on the JQCIs, with an additional non-judge to be appointed by the president. Though this proposal was approved overwhelmingly by the Federation Council, it was withdrawn before being taken up by the Duma. Precisely why is unclear, but perhaps the resistance to the reordering of the JQCIs by the heads of the three top courts (see figure 5.1) combined with the strong opposition by certain Duma representatives contributed. While the floating of this sort of proposal would seem to indicate Putin would like to have more control over the courts, especially the three courts of last resort, he has not since moved forward on this agenda. The requirements of prior legal experience and of passing an exam remain intact, ensuring some minimal level of qualifications. Opening JQC membership to non-judges creates an avenue for societal concerns to be expressed.

In addition to selecting judges, the JQCIs have sole responsibility for disciplining judges. This brings some level of accountability into the mix. Possible sanctions range from private reprimands to dismissals. Such decisions are made in two contexts. Russian judges receive life tenure only after successfully completing a three-year probationary period and the decision as to whether to retain these newcomers is made by the JQCIs. Such decisions are supposed to be based on job performance, but some contend that JQCIs 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. Once judges have gotten over this hurdle, any and all complaints about their behavior are referred to the JQCIs. 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 JQCIs 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. Hidden within these statistics are litigants who are acting strategically. Because any complaint must be investigated and, even if later deemed to be frivolous, causes embarrassment to the named judge, litigants may attempt to influence judges by threatening to file a complaint. Had the proposal to equalize the membership of JQCIs between judges and laypeople been adopted, it would likely have contributed to more politically driven sanctions, including dismissals. Under the current system, powerful anecdotal evidence of dismissals of judges who refused to toe the line exists, but the actual number of dismissals are relatively few, constituting only 73 in 2004 (67 from the courts of general jurisdiction and 6 from the arbitrasch courts). An additional 323 were subjected to lesser forms of discipline (296 from the courts of general jurisdiction and 27 from the arbitrasch courts).

In contrast to the U.S. judicial system, in which legal professionals go on to the bench after a fairly lengthy career in some other legal arena, becoming a judge in Russia is a career choice made at a much earlier stage of life. Those interested in becoming a judge typically go to work for the courts as an assis-
tant to a judge immediately after completing their legal education in order to gain the necessary experience to apply for a judicial post. Once they get onto the bench, most stay for their entire work life. The gender makeup of the Russian judiciary has shifted from being primarily female during the Soviet era, to being more evenly divided.\textsuperscript{43} Though the prestige of the judiciary has risen considerably since the demise of the Soviet Union, it remains lower than in the United States. This general phenomenon is not unique to Russia, but is common to countries that share a civil law legal tradition.\textsuperscript{44} The situation in Russia has been complicated by the salaries available to judges, which are lower than those available to lawyers in private practice (but higher than those who work in-house for corporations), as well as by the ongoing threats to the physical security of judges who rule against those associated with organized crime groups. Under Putin, both issues have been addressed. He has consistently pushed for better and more consistent funding for the courts. Not only has that increased judges’ salaries, but it has also facilitated the hiring of more judges, which has decreased their workload. Those who apply to become judges stand a better-than-even chance of succeeding. In 2004, about 80 percent of those who applied passed the qualifying exam. Of the candidates remaining, more than three-fourths were recommended for judicial posts by the JQCs.\textsuperscript{45} Better funding has also ensured better protection for judges on the job. Most courthouses screen entrants, allowing only those with pending cases to enter. Notwithstanding these improvements, it remains difficult to recruit a sufficient number of judges to staff the courts. Institutional efforts aimed at enhancing the status of the judiciary represent a starting point, but are effective only if accompanied by societal trust. This has been slow to develop, as evidenced by public opinion polls indicating a majority of Russians continue to believe judges are not independent.\textsuperscript{46}

The Constitutional Court

The Constitutional Court is a post-Soviet innovation. Its purpose 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, making it one of the few institutions remaining in Russia capable of standing up to Putin. Before analyzing the extent to which it has taken advantage of its apparent power, a few words of background are in order.

From a technical, legal point of view, the Constitutional Court stands on equal footing with the Supreme Court and the Higher Arbitrazh Court (see figure 5.1), but it is unlike them in several important respects. First, it does not stand at the apex of an elaborate hierarchy of courts that stretch across Russia. It is a stand-alone court.\textsuperscript{47} Second, it is a much smaller court, with only nineteen judges, who are organized into two chambers for working pur-

poses. The background of these judges is quite different from that of their counterparts on the other two top courts, most of whom have worked as judges for their entire careers. By contrast, the members of the Constitutional Court are drawn from the top ranks of legal scholars and come to the bench only after several decades of working in universities or research institutes. This means they are free of the legacy of dependence that hangs over the rest of the Russian judiciary. Because they mostly come from a scholarly background, their opinions are more literate and lengthier, providing a clearer window into their thinking than is possible with opinions from the other courts. This is facilitated by the fact that only this court enjoys the right to write dissenting opinions. Finally, the decisions of Constitutional Court are unique in that they serve as precedent. As is the norm in other European countries that share Russia’s civil law legal heritage, the decisions of the courts of general jurisdiction and the arbitrazh courts are binding only on the parties to the specific cases.

The Constitutional Court receives approximately fifteen thousand petitions per year.\textsuperscript{48} Almost all come in the form of individual complaints centering on alleged violations of constitutional rights. The remaining cases stem from claims initiated by the president, a group of legislators (at least 20 percent of the members of either chamber), or regional governments. The president has enjoyed greater success than others. Between 1996 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.\textsuperscript{49} On average, the Court issues twenty full-fledged decisions on the merits each year. Not all of these involve an up-or-down vote on the constitutionality of a particular law or regulation. Many of its opinions lay out the justification for legal norms’ constitutionality. These so-called authoritative interpretations can have the effect of rewriting the law under the guise of ensuring its constitutionality. They have given the Court tremendous influence in many areas of law (including tax, contracts, and social benefits) that would not appear to fall under its jurisdiction.\textsuperscript{50} In addition to these decisions on the merits, the Court also issues about 420 rulings (opredelenie) each year dismissing cases in which the petitioner’s claim is successful but a full-fledged opinion is deemed unnecessary because the principle was established in an earlier case.\textsuperscript{51} These rulings have the effect of concretizing rights.

Since its reconstitution following the October Events, the Constitutional Court has been reluctant to immerse itself in political controversy. Its ability to do so has been institutionally constrained by the decision to limit its jurisdiction to cases brought to it; the Court can no longer take up cases on its own initiative.\textsuperscript{52} The Court has also adopted a more deliberative pace for resolving cases. In contrast to the chaotic practices of the early 1990s, when decisions were sometimes issued on an overnight basis, cases now take eight or nine months to wind their way through the system, allowing time for the
sort of back-and-forth discussion among the judges that is familiar to students of the U.S. Supreme Court. In terms of the substance of its decisions, the Constitutional Court has consistently been supportive of Putin’s agenda to curtail regional power. It 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. Even when the regions prevail, as in the March 2003 case brought by the legislatures of Bashkortostan and Tatarstan, the court is careful to note that regional governments are entitled to expand their powers only to the extent that they do not infringe on the federal system. The Court seemed to feel emboldened by the Kremlin to bring the regions to heel. One member of the Court noted, “We struck down the key clauses of 7 constitutions of the republics in June 2000 only after President Putin announced his crackdown on recalcitrant regions; we would not have been brave enough to do this under Yeltsin.”

Getting its decisions enforced is a problem the Constitutional Court shares with the courts of general jurisdiction and the arbitrasch courts. Enforcing judgments is not just a problem in Russia; it is a problem that plagues courts everywhere. For the most part, litigants are expected to live up to the obligations imposed by the courts out of a combination of respect for the institution and a fear of being identified as noncompliant and shamed. The lack of societal trust in courts turns these assumptions upside down in Russia. Flouting judicial orders brings no disgrace. The Constitutional Court has attempted to remedy the problem by creating a department charged with monitoring its decisions. But the small size of the department (four people) and intransigence of the underlying political issues have hampered efforts at improving the record on implementation. For example, there have been a series of decisions, dating back to the Committee on Constitutional Supervision, declaring the system of residence permits to be an unconstitutional restriction on freedom of movement. Yet regional leaders, particularly in Moscow, have consistently ignored these decisions with no repercussions. While Putin has mimicked Yeltsin in looking the other way on residence permits, he has been more aggressive in forcing compliance on those issues that interest him. For example, after the Court struck down the gerrymandering law in Orenburg, local officials complied only after being strong-armed by Putin’s staff.

The Courts of General Jurisdiction

The courts of general jurisdiction are the workhorses of the Russian judicial system. Any case that is not specifically allocated to the Constitutional Court or the arbitrasch courts lands in their lap. In 2004, the workload of these courts, constituting almost six million cases, was ten times greater than that of the arbitrasch courts. They employ almost thirty thousand judges. They handle all criminal cases as well as any civil or administrative case that affects an individual (rather than a firm). The number of cases heard by these courts has risen at a steady pace of about 10 percent per year under Putin. The increase has been driven by civil cases; the number of criminal cases has actually decreased in recent years. The rise in civil claims is particularly intriguing, given that these are cases brought by individuals. Whether this reflects a fundamental shift in attitudes toward the legal system, namely a greater willingness on the part of Russians to use the courts to protect their interests is unclear. Making such a determination would require an investigation capable of tracking all potential disputes and assessing why they never evolved into full-fledged lawsuits. This sort of research has yet to be undertaken. Yet it is fair to assume that, in Russia, as elsewhere, most disagreements are settled through negotiations and, therefore, that relatively few disputes proceed to court. However, the way in which Russia’s judicial system was compromised during the Soviet era may make Russia a special case. Results from public opinion polling seem to indicate that many dismiss the idea of going to court as absurd and even dangerous, but the caseload data suggest the truth may be more complicated.

The courts of general jurisdiction can be found in every administrative district, making them the most accessible of the Russian courts. This has only increased under Putin with the introduction of a new layer of courts, the justice of the peace (JP) courts (see figure 5.1). The JP courts were first authorized in late 1998 and were intended to provide a way to siphon off simpler cases, thereby alleviating the burden on the already existing courts. Creating thousands of new courts proved to be easier said than done. When Putin took over, none existed but, by the end of 2005, JP courts existed in most parts of Russia. From an institutional perspective, they have lived up to their promise. In 2004, almost 65 percent of all civil cases and slightly more than 30 percent of criminal cases originated in these courts. Thanks in large measure to this, delays throughout the entire system have been lessened. The JP courts have also benefited litigants by making courts more accessible, both geographically as well as in terms of the simplified procedure. Those dissatisfied with the JP courts are entitled to appeal the judgment to a higher court, though relatively few exercise this right, suggesting that most are satisfied with their treatment in JP courts.

As figure 5.1 indicates, these courts have a traditional pyramidal structure. Most cases that have not been diverted to the 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 regional courts (which also serve as courts of appeal for the district courts). The court of last resort for this system is the Supreme Court of the Russian Federation. In addition to its pure judicial function of reviewing individual cases, the court is also charged with overseeing the general development of judicial practice. To this end, it peri-
odically issues guiding explanations of legislation that has been interpreted in contradictory fashion by lower courts. These explanations are binding on the lower courts. Ironically this gives the Russian Supreme Court greater institutional latitude than that enjoyed by the U.S. Supreme Court, though few would argue that the political clout of the Russian court approaches that of its American counterpart.

Putin’s control of the legislature allowed for thorough reforms of the three procedural codes (administrative, civil, and criminal) that govern the day-to-day operations of the courts of general jurisdiction. Some of the innovations of the new criminal procedure code have been discussed above. The code also changed the operation of the courts by institutionalizing jury trials throughout Russia. Jury trials, which had not been available during the Soviet era but which had been part of the czarist legal heritage, had been employed on an experimental basis since 1993 in nine regions. Defendants charged with serious felonies can opt for a jury trial, and have been doing so with increasing frequency. Jury trials accounted for 11 percent of such trials in 2004, compared with 8.3 percent in 2003. Defendants tend to fare better with juries than with judges. While acquittals are almost nonexistent in non-jury trials (constituting less than 1 percent), the acquittal rate in jury trials was 8.5 percent in 2002. Juries are clearly more mercurial than judges. Whether this will continue to be tolerated in Putin’s Russia is unclear. Jury verdicts, including acquittals, have been subject to appeal from the outset. 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. As politically sensitive cases have begun to reach juries, the FSB has called for cases involving crimes against the state to be declared off-limits for juries. The FSB does not relish being embarrassed by acquittals as they were in the Danilov case (in which he was acquitted by a jury of spying charges on the grounds that the information he conveyed was not classified). The FSB ultimately got a conviction, thanks to the overturning of the first jury verdict and a retrial that produced the desired guilty verdict by another jury. But the messiness was distasteful. Though the law has not been changed to accommodate the preferences of the FSB, subsequent politically charged trials have been fairly blatantly manipulated to achieve the desired outcomes.

The broader impact of the availability of jury trials on Russians’ attitudes toward the legal system is unclear. Elsewhere, juries have been justified on the grounds that they allow defendants to be judged by their peers and that they provide jurors with hands-on experience in how a democratic system operates. The relatively small number of Russians who have served on juries undermines any argument that they are building support for democracy. Russians themselves seem ambivalent about their merits. 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 parties; or (3) basically the same as regular courts, respondents were fairly evenly divided. Of course, juries have been in full operation for only a few years. It is perhaps premature to expect any societal impact.

The Arbitrash Courts

The basic mission of arbitrash courts has remained intact under Putin. Though key changes have been introduced, these reforms have been aimed at solving nagging practical problems rather than at consolidating the Kremlin's control over the courts. As always, these courts continue to handle economic disputes, though their relevance to economic actors has been questioned. The mass media as well as a number of social scientists have argued that Russian firms avoid the courts, preferring to resolve their disputes with the assistance of organized crime groups. Support for this argument is provided by anecdotal evidence as well as the many public opinion surveys that document Russians’ distrust of the courts. Yet targeted empirical research has consistently shown that, notwithstanding their vociferous complaints about the legal system, managers are using these courts in ever increasing numbers. The number of cases brought to the arbitrash courts grew by almost 600 percent from 1994 to 2004. The willingness of economic actors to submit their disputes to the court is driven by the comparatively low costs and speed of the process. This is not to say that litigation is the only or even the preferred mechanism of resolving disputes. For Russian managers, much as for their counterparts elsewhere, turning to the courts is a last resort, used only when efforts at negotiation have failed. Rather, the point is that litigation is a viable option for commercial disputes in Russia.

The jurisdiction of the arbitrash courts is threefold: (1) disputes between firms (irrespective of ownership structure), (2) disputes between firms and the state, and (3) bankruptcies. At the outset, almost all cases fell into the first category but, over time, the docket has shifted. Comparing the case distributions for 1994 and 2004 for two of the largest arbitrash courts illustrates the point well. In 1994, disputes between firms dominated the docket, constituting 97 and 96 percent for the Moscow City and the St. Petersburg courts, respectively. By 2004, however, the tables had turned. These disputes made up only 59 and 35 percent, respectively, of the cases decided. The dramatic increase in the percentage of cases involving the state can be partially explained by the general economic recovery under Putin, which has led to fewer debt recovery cases. Given that the vast majority of cases involve tax disputes, this shift also indicates citizens are becoming less tentative about suing the state and the state is becoming more aggressive in collecting what is owed to it. As plaintiffs, both taxpayers and the state enjoy a robust success rate of over 70 percent, suggesting arbitrash judges may be guilty of a pro-petitioner bias, but contradicting the common wisdom that they are in the pocket of the state.

Like the courts of general jurisdiction, the arbitrash courts are organized hierarchically. All subjects of the Russian Federation have a trial-level court, typically located in the capital city of the subject. When resolving cases, arbitrash judges generally limit themselves to written evidence; they rarely hear the testimony of witnesses. Anyone dissatisfied with the result is entitled to appeal. The first appeal is heard de novo, meaning that the three-judge panel reviews the evidence submitted at trial for factual and legal errors. Until recently, these appellate courts were institutionally embedded in the trial courts. This meant the same set of judges were empowered to hear both trial and appellate cases. Litigants were troubled by this state of affairs, worrying that judges’ reluctance to overrule their colleagues would hamper their chances at reversals. In 2003, however, responding to the concerns of litigants, these two courts were separated institutionally. The number of appellate courts was decreased to twenty, organized on a regional basis. The other parts of the appellate structure remained unchanged. (See figure 5.1.) The final and ultimate appeal is to the Higher Arbitrash Court. In addition to hearing appeals, this court also routinely issues interpretations of legislation and administrative regulations that are binding on the arbitrash courts.

The reworking of the arbitrash procedural code in 2002 further demonstrates the pragmatic character of the Putin-era reforms. This new code made a multitude of changes aimed at streamlining the work of the courts, such as limiting the number of cases requiring a three-judge panel at the trial level. The prior code had empowered single judges to resolve inter-firm disputes on their own, and the new code expands this to include most cases involving the state. Bankruptcy cases still require a three-judge panel. While this change will allow cases to be processed more quickly, it may have the unintended consequence of facilitating corruption, in that one judge is easier to sway than three. The new code also clarifies that disputes involving competing claims to stock ownership are within the arbitrash courts’ jurisdiction. Because the prior code had denied access to the arbitrash courts to individuals (non-firms), disputes involving both individual and corporate shareholders ended up being brought simultaneously in the arbitrash courts and the courts of general jurisdiction, and sometimes led to inconsistent outcomes, which undermined the public’s faith in the courts. The decision to assign all these cases to the arbitrash courts reflects a respect for their greater expertise.

The European Court of Human Rights

With Russia’s accession to the Council of Europe in 1996 and its ratification of the European Convention on Human Rights in 1998, it now falls within the jurisdiction of the European Court of Human Rights (the ECHR) in
Strasbourg. Were Russians as nihilistic about law as is typically assumed, this would have made no difference. But Russians have flocked to the ECHR in record numbers. From 2002 to 2004, more petitions to the ECHR originated from Russia than from any other country. Indeed, the Russian petitions constituted 16 percent of the total number submitted in 2004.29 This tells us that Russians still believe justice is possible and that they are searching out ways of holding their courts and government to account. At the same time, the fact that more than half of the Russian petitions have been declared inadmissible reveals that Russians remain unclear about the precise function of the ECHR.30 Moreover, a 2001 public opinion survey revealed that only 19 percent of respondents would appeal to Strasbourg if they were dissatisfied by their experiences with the Russian courts, indicating that many remain unaware of their options.31

The Russian government has a mixed record at the ECHR. When the decisions have gone against it, they have been accepted and paid without question. The impact of these decisions on governmental policy is more difficult to assess. For example, in Kalashnikov v. Russia, decided in 2002, the petitioner argued the conditions of Russian prisons violated his human rights.32 The Russian government essentially conceded his point, attempting to defend itself on the grounds that all prisoners were treated abysmally and that they were not singling out the petitioner. The ECHR was unswayed and ruled against Russia, but it is doubtful its opinion prompted an improvement in prison conditions. On the other hand, the availability of recourse to the ECHR has undoubtedly affected judicial behavior. A substantial number of the Russian petitions are grounded in complaints about treatment at trial, such as unreasonable delays and inability to enforce civil judgments. Russian judges, worried that their opinions will become the subject of appeals to the ECHR, are taking more care to live up to their procedural obligations. Though it might be more gratifying if such behavior stemmed from a commitment to the rule of law, fear of public humiliation can be a powerful stimulant and, perhaps, over time, the behavior will become ingrained. Regardless of the incentive for the behavioral change, it inures to the benefit of litigants and the legal system.

THE POLITICS OF THE LEGAL PROFESSION UNDER PUTIN

In many countries, lawyers are potent catalysts for legal reform. Their comprehensive knowledge of the law makes them well qualified to identify where changes are needed. Such changes may be either iterative or fundamental. Their willingness to embrace these changes and to operationalize them through their clients can have a profound impact. Merely passing a law is only a first step. More difficult is integrating new norms into daily life. Lawyers can be integral in this process.

The legal profession in Russia has not traditionally performed this sort of role. The reasons are complicated. As in other countries with civil law traditions, lawyers tend to act more as technicians than as social activists. The divided nature of the profession in such countries also contributes to its political passivity. In Russia, for example, there is no single organization that speaks for lawyers, nor is there any uniform system for licensing lawyers. This inevitably gives rise to a fragmented profession. The Soviet heritage, under which lawyers were heavily regulated and their independence was constrained, has only deepened this natural instinct.

Most of the state regulations governing lawyers were eliminated and/or ignored in practice during the initial transition. The traditional distinction between litigators (advokaty) and business lawyers (ivriskonsul'ty) broke down during the 1990s. Private law firms, which had been outlawed during the Soviet era, sprang up and included both varieties of lawyers. Courts treated them similarly. This permissiveness was viewed with dismay by many advokaty, who had long viewed themselves as the elite of the legal profession. Admission to the advokatura had always been a rigorous and selective process, in contrast to becoming an ivriskonsul't, which simply required advanced legal education. Ivriskonsul'ty took advantage of the laxness of the regulatory regime to establish themselves as experts in business law, a specialization that had been more-or-less nonexistent during the Soviet era and an area of law not much exploited by advokaty (who tended to focus on criminal defense work). This laxness may also have contributed to a doubling in the advokatura, which grew from 23,400 in 1995 to 48,800 in 2002.4 This number is actually only a fraction of the total lawyers in Russia, which would also include procurators and ivriskonsul'ty. It does, however, reflect the growing popularity in legal education, as evidenced by a spike in the number of law schools.

Drafts of a law that would restore the advokaty to their preeminent role were floated, but never passed during the 1990s. Under Putin, this state of affairs changed. His legislative dominance allowed for the passage of a law dealing with the legal profession in 2002.26 Though the law did not create a monopoly on courtroom practice, as desired by advokaty, it certainly made them the default option. In criminal cases, for example, defendants must use an advokat unless being represented by a family member. The law also established a standard process for gaining entry to the advokatura. Much like judges, prospective advokaty must satisfy the requirements of a qualifications commission, which include an oral exam. Though the questions come from a pre-approved list, some have argued that the subjective nature of evaluation leaves the door open for preferential treatment and for discrimination.27 The law takes an important step toward institutionalizing the independence of the
legal profession by establishing a privilege for attorney-client communications. Precisely what this means in practice remains unclear. The Kremlin’s decision to expand the attack on Yukos and Khodorkovsky to include the defense lawyers buttresses skepticism. The procurators’ threat to move for disbarment of several of Khodorkovsky’s lawyers for abuse of process harkens back to the Soviet era, when such threats were often used to keep advokaty from mounting a vigorous defense of their clients in politically motivated trials. On the other hand, there is no evidence of efforts to undermine the attorney-client relationship in nonpolitical cases.

CONCLUSION

This review of the role of law under Putin illustrates that easy conclusions are not possible. The reasons for criticism of his regime on this score are obvious. Putin’s legislative agenda has been pushed through with a heavy hand and often with the result of curtailing human rights. His willingness to use the courts as a weapon for punishing his political opponents quite rightly calls their independence into question. Such policies would be troubling in any context, but are particularly disquieting in post-Soviet Russia. They are disturbingly reminiscent of problem-solving tactics employed by Soviet leaders that would seem to have been renounced as part of the transition to a rule-of-law-based state (pravovoe gosudarstvo). On the other hand, the Putin era has witnessed institutional innovations aimed at moving Russia toward a pravovoe gosudarstvo. The introduction of the JP courts have made courts more responsive to citizens and have eased the strain on the district and regional courts. Along similar lines, the introduction of appellate courts within the arbitrazh courts responds to nagging complaints about the perceived influence of trial judges on appeals. The use of courts has continued to grow, suggesting a societal willingness to turn over disputes to the courts.

These seemingly contradictory indicators make sense only when the Russian legal system is analyzed as a dualistic system. The institutional progress cannot be dismissed as mere window dressing. After all, the vast majority of the millions of cases heard each year within the Russian judicial system are resolved on the basis of the law on the books, as interpreted by the judge, and without any interference from political authorities. Justice is not out of reach in Russia; it is the likely outcome in most cases. But the continued willingness of those with political power to use law in an instrumental fashion to achieve their short-term goals means justice can sometimes be out of reach. It also means that the commitment to the basic principle of the rule of law, namely that law applies equally to all, irrespective of their power or connections, is not yet complete. A gap between the law on the books and the law in practice exists in Russia, as in all countries. Surely it has receded from the chasm it was during the Soviet era. But whether it will increase or decrease as time goes on remains to be seen.

NOTES


15. In 1997, only 2 percent of the recommendations forwarded to the president were rejected. Solomon and Fogelson, *Courts and Transition in Russia*, 30.


17. Mikhail Khodorkovsky was arrested in the fall of 2003 on charges of fraud, tax evasion, and theft of state property in the course of privatization. At every stage of the process, the authorities skirted on the edge of legal proprieties, typically obeying the literal letter of the law (though not always), but trampling on its spirit. Western commentators have been uniformly critical of the process. E.g., Timothy L. O’Brien and Erin E. Arvedlund, “Putin vs. the Jailed Tycoon: Defining Russia’s New Rules,” *New York Times*, January 2, 2004, A1; Bob Dole, “Russia Has Put Itself in the Dock,” *Financial Times*, June 16, 2004, 16. Russians’ views are more nuanced. Public opinion polls reveal that, while most abhor the tactics used by the Kremlin, they are fairly evenly split on whether Khodorkovsky was actually guilty of the charges. See, for example, www.levada.ru/press/2005020304.html, January 11, 2006. Khodorkovsky was, in fact, convicted of all charges. His company, Yukos, was found to have underpaid its taxes. Key assets were auctioned off by the state to pay these debts, gutting the company. For an assessment of the case, see William Thompson, “Putting Yukos in Perspective,” *Post-Soviet Affairs* 21, no. 2 (April–June 2005): 159–181.


26. The Higher Judicial Qualification Commission, which is responsible for recommending judges for the top courts, has twenty-nine members, of which eighteen are judges drawn from various corners of the judicial system. The remainder includes ten members of the public appointed by the Federation Council and one presidential representative. The emasculation of the Federation Council means that all of these eleven members are, effectively, Putin’s representatives. The membership of lower-level JQCs is smaller, but similarly structured. Art., “Ob organakh sudiskogo sostojat- stva v Rossiiskoi Federatsii,” *Sobranie zakonodatel’stva*, no. 11, item 1022 (March 18, 2002).


29. The possibility of moving from life tenure to term appointments was raised by a high-level commission, appointed by Putin and headed by German Gref, the minister of the economy. The idea was quickly quashed. Peter H. Solomon Jr., “Courts in Russia: Independence, Power, and Accountability,” in *Judicial Integrity*, ed. Andras Sajo (Leiden: Martinus Nijhoff Publications, 2004), 242–244.


32. “Otsen rezultatov deyatelnosti.”

33. In 2004, women comprised a slight majority (56 percent) of all judges in the courts of general jurisdiction, but constituted more than two-thirds of all arbitrazh court judges. “Dast’ya, november 2004, 17.


35. “Otsen rezultatov deyatelnosti.” In 2004, 296 individuals applied for judicial posts. Of these, 62 failed to pass the written exam. Of the remaining 234, 179 were recommended to the president by the judicial qualification commissions.

36. In a series of three polls conducted between 2001 and 2003, the results for a question asking whether the respondent believed the courts were independent were quite consistent. Approximately 70 percent viewed the courts as not independent. A poll of 102 experts carried out in the summer of 2004 asked respondents to reflect on changes over the past year. Only 12 percent found that the independence of courts had increased. Most thought either that the situation had remained unchanged (45 percent) or had grown worse (41 percent). Russian Axis, “The Judicial System of the Russian Federation: A System-Crisis of Independence,” www.russianaxis.org/files/ 10/judicial.pdf (January 7, 2006).


40. Sharlet notes that this power was absent prior to the reconstitution of the Court in 1994. Sharlet, “Russia’s Second Constitutional Court,” 62.


42. Sharlet, “Russia’s Second Constitutional Court,” 62.


45. Trochev thoroughly analyzes this line of cases. “The Zigzags of Judicial Power,” 159–177. The most recent decision was issued on December 21, 2005, and is available at www.krsr.ru:8081/SESSION/S_shy8Vg5/PILOT/main.htm (January 12, 2006).


49. In terms of numbers of cases, the courts of general jurisdiction are dominated by noncriminal cases. In 2004, only 12 percent of cases were criminal. Administrative cases constituted 33 percent, while civil cases made up 52 percent. How much time was taken up by the various categories is not clear from the statistical data. “Obzor deyatelnosti federal’nykh dvuzh obshchei tvrischitei i riodykh sudei v 2004 godu,” Rossiskaya iustitsiya 6 (2005): 26.


51. The New Russian Barometer has tracked trust in a variety of institutions over the course of the transition. Its data show a gradual increase in Russians’ confidence in courts. In 1994, only 17 percent of respondents trusted the courts, whereas a decade later, the level of trust had risen to 24 percent. The comparison with the change in trust is in the president put the court data into perspective. Between 1994 and 2004, the trust level increased from 18 to 76 percent. Richard Rose, “Russian Responses to Transformation: Trends in Public Opinion Since 1992,” Studies in Public Policy 290 (2004): 19.


53. The JP courts are empowered to hear any criminal case for which the possible sentence is three years or less. They are empowered to hear any civil case involving an amount less than five hundred times the minimum monthly wage (approximately $1,750). Burnham, Maggs, and Danilenko, Law and Legal System of the Russian Federation, 73.

54. Solomon and Fogleseon report that in the mid-1990s, the statute-imposed deadlines for resolving cases were not met in more than 25 percent and 15 percent of criminal and civil cases, respectively. Courts and Transition in Russia, 118–119. But contrast, in 2004, this delay rate was down to about 9 percent for civil cases. “Sudebnaya statistika: grazhdanskie dela,” Rossiskaya iustitsiya 9 (2005): 44. Determining the delay rate for criminal cases is trickier because each component part (e.g., pretrial detention, investigation, trial, appeal) has separate guidelines. Burnham, Maggs, and Danilenko report that these guidelines are routinely violated with impunity. Indeed, these delays have served as the basis for a significant number of the cases brought to the European Court of Human Rights. Law and Legal System of the Russian Federation, 478–479, 506–507. Statistics are available on the length of the actual judicial process, revealing that about 80 percent of cases are resolved within six weeks. “Sudebnaya statistika: ugolovnye dela,” Rossiskaya iustitsiya 11 (2005): 41–42.

55. In 2004, 3 percent and 6 percent of criminal and civil cases, respectively, heard in the JP courts were appealed. “Obzor deyatelnosti,” 44–45. For a breakdown in the reasons why decisions by the JP courts were overturned, see “Sudebnaya statistika: deyatelnost’ sudov apellatsionnoi instantsii,” Rossiskaya iustitsiya 10 (2005): 44.


58. “Obzor deyatelnosti,” 29. Peter Solomon reports that there are enormous regional variations in the preference for jury trials. In Ivanovo, for example, jury were used in 53 percent of eligible cases. “Threats of Judicial Counterreform,” 335.


60. Burnham, Maggs, and Danilenko, Law and Legal System of the Russian Federation, 534.


64. In the Sutyagin case, the first judge abruptly resigned. His replacement was a judge who had handled a series of politically charged cases. Judge selection was skewed to favor the prosecution, resulting in several members of the jury who had worked for the FSB at some point. Solomon, “Threats of Judicial Counterreform,” 336.


66. See, for example, Jonathon R. Hay and Andrei Shleifer, “Private Enforcement

67. For example, a 1997 survey of 328 industrial enterprises found that 70 percent of these enterprises had been to court within the past year. Kathryn Hendley, Peter Murrell, and Randi Ryterman, “Law, Relationships, and Private Enforcement: Transactional Strategies of Russian Enterprises,” *Europe-Asia Studies* 52, no. 4 (June 2000): 627–656.


71. In 2003 and 2004, 53 percent and 55 percent, respectively, of the petitions submitted from Russia were declared inadmissible.


74. *Prezurnost i pravoporyadok v Rossii: statisticheskii aspekt* (Moscow: Goskomstat Rossii, 2003), 60.

75. Burnham, Maggs, and Danilenko report that 271 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. *Law and Legal System of the Russian Federation*, 133–134.


78. See, for example, Catherine Belton, “Yukos Accused of ‘Filthy Theft,’” *Moscow Times*, December 14, 2004, 1 (two Yukos lawyers jailed on embezzlement charges); Tim Wall, “Canadian Defense Lawyer Expelled,” *Moscow Times*, September 26, 2005, 1 (foreign lawyer expelled and demands from procurators that three Russian defense lawyers be disbarred).