

## Resisting Multiple Narratives of Law in Transition Countries: Russia and Beyond

Kathryn Hendley

- BURBANK, JANE. 2004. *Russian Peasants Go to Court: Legal Culture in the Countryside, 1905–1917*. Bloomington, IN: Indiana University Press. Pp. xix + 374. \$49.95 cloth.
- FEIFER, GEORGE. 1964. *Justice in Moscow*. New York: Simon and Schuster. Pp. 336. \$20.95 paper.
- KAMINSKAYA, DINA. 1982. *Final Judgment: My Life as a Soviet Defense Attorney*. Trans. Michael Glenny. New York: Simon and Schuster. Pp. 364. Out of print.
- LEDENEVA, ALENA V. 2013. *Can Russia Modernise? Sistema, Power Networks and Informal Governance*. Cambridge: Cambridge University Press. Pp. xv + 332. \$90.00 cloth; \$32.99 paper.
- MCDONALD, TRACY. 2011. *Face to the Village: The Riazan Countryside under Soviet Rule, 1921–1930*. Toronto: University of Toronto Press. Pp. xvii + 422. \$75.00 cloth.
- POLITKOVSKAYA, ANNA. 2004. *Putin's Russia: Life in a Failing Democracy*. Trans. Arch Tait. London: Harvill Press. Pp. 304. \$17.00 paper.
- POPOVA, MARIA. 2012. *Politicized Justice in Emerging Democracies: A Study of Courts in Russia and Ukraine*. Cambridge: Cambridge University Press. Pp. xii + 197. \$103.00 cloth; \$29.99 paper.
- ROMANOVA, OL'GA. 2010. *Butyrka*. Moscow: Izdatel'stvo Astrel'. Pp. 316. 240 rubles.

*The literature on the role of law in countries with so-called hybrid regimes that are stuck somewhere between democracy and authoritarianism tends to dwell on the politicization of law and the courts. This has the effect of discounting the importance of the vast majority of cases that are decided in accord with the law. Taking Russia as a case study, this essay reviews a cross-section of the literature on its courts in order to document this tendency and explore why alternative narratives of law have failed to gain traction: Burbank's *Russian Peasants Go to Court* (2004); Feifer's *Justice in Moscow* (1964); Kaminskaya's *Final Judgment* (1982); Ledeneva's *Can Russia Modernise?* (2013); McDonald's *Face to the Village* (2011); Politkovskaya's *Putin's Russia* (2004); Popova's *Politicized Justice in Emerging Democracies* (2012); and Romanova's *Butyrka* (2010).*

### INTRODUCTION

The transition away from authoritarianism has proven thornier than originally anticipated. Evidence abounds in a variety of institutional and cultural settings; courts are no exception. The “rule of law” rhetoric extolling the importance of

---

Kathryn Hendley, William Voss-Bascom Professor of Law and Political Science, University of Wisconsin–Madison, studies legal reform in contemporary Russia.

politically independent courts that resolve disputes according to the law in an evenhanded manner has been universally embraced, but realizing these goals has proven elusive for many transition countries. In contrast to developed democratic systems, in which the very idea that a political leader would openly dictate the outcome of a court case is anathema, show trials, in which the result is predetermined by the underlying political realities, are sad facts of life in transition countries that tend to be plagued with weak or formalistic democracies. These cases attract a great deal of media and scholarly attention and often become the public face of the legal system. But do they tell the whole story? Should such legal systems be dismissed as bereft of the “rule of law,” as is the current practice among those who design and maintain the various indexes of legal development? I question this assertion, arguing that the noise produced by these high-profile cases can mask a reality in which the vast majority of cases being brought to the courts are being processed according to the law and without any outside interference.

In his recent *LSI* review essay on courts in transition countries, Tom Ginsburg pushed for a move away from abstract discussions of what courts ought to do and toward an empirical evaluation of what they actually do. He emphasized “the concept of the *role* of courts in the broader political and social system as being crucial for understanding courts in fragile environments” (2012, 721). Yet Ginsburg’s essay and works he reviews are limited to the capacity of elite courts in non-Western contexts to build democracy; the everyday tasks of courts are dismissed as “marginal” (739). Although I agree with the importance of studying high-profile cases and the courts that handle them, I advocate integrating everyday law into the analysis in order to produce a more nuanced story. We routinely accept the reality of multiple narratives about Western legal systems, but are oddly reluctant to do so in transition contexts.

The coexistence of politicized justice with ordinary justice is a common story. The work of Ernst Fraenkel (1969) provides a useful framework. Writing about Nazi Germany, he saw the state as dualistic and divided it into a normative state in which law reigns supreme and a prerogative state in which law takes a back seat to political needs. While some have used Fraenkel’s insights in a whole-cloth manner to analyze the state (Jayasuriya 2001; Meierhenrich 2008), I use his ideas to open the door to multiple narratives of law in transitional or hybrid political systems. To the basic categories of politicized and nonpoliticized cases, the division that Fraenkel emphasizes, reality dictates the need for receptivity to narratives driven by corruption and bureaucratic inertia.

Generalizing across geographic boundaries is difficult due to the profound differences in institutional structures and legal culture. I take Russia, where courts have a notoriously checkered history, as my case study. Though the details will surely be different, I expect that the analysis of the literature on the Russian courts will resonate with that on the many other countries lost in the netherland between authoritarianism and democracy.

The Russian case highlights the question of how to think about courts that sometimes (but not always) fall short of their goal of evenhandedness. In Russia, as elsewhere, reactions tend to cluster in two camps. Some observers recoil in horror from the lack of commitment to universalistic justice and dismiss the courts as a

sham. They argue that the mettle of any legal system is tested by cases with political overtones and that if judges bend to the wind in such cases, then they cannot be relied on in any case (Politkovskaya 2004; Gessen 2012; Mendras 2012; Ledeneva 2013; Feifer 2014). In the words of the old saw, “the fish rots from the head.” Others take a more hopeful view, arguing that toeing the line in cases that raise touchy political issues cannot be taken as an unwillingness to abide by the law in mundane cases (Feifer 1964; Sharlet 1977; Smith 1996; Kurkchiyan 2003; Burbank 2004; Hendley 2011). Intertwined into these debates is the broader question of legal consciousness. Those who are dismissive of courts tend to view society as being aloof and distrustful of law. Those at the other end of the spectrum are less convinced of society’s legal nihilism, seeing its members as being capable of distinguishing between situations in which courts can be relied on to follow the law and those in which politics will trump law.

This essay is divided into three parts. Each focuses on a distinct time period that is distinguished by a different form of state power, which is reflected in the remarkably different institutional structure of the courts: post-Soviet Russia, the Soviet Union, and tsarist Russia. As part of the Great Reforms undertaken in 1864 during the reign of Tsar Alexander II, the courts were reformed and professionalized. Justice of the peace (*mirovye*) courts were introduced in urban settings and township (*volost’*) courts were available in the countryside. Following the October 1917 Revolution in which the Communist Party took power, this structure was abandoned in favor of a unified set of courts for which judges were selected in single-candidate elections controlled by the Party. Following the collapse of the Soviet Union in December 1991, which marked the beginning of the contemporary Russian state, the basic hierarchy of courts remained intact, though the heavy hand of the Communist Party was removed. Much as in other continental legal systems, judges are selected by qualification commissions, the membership of which is dominated by the judiciary. Despite the differences in the political and judicial structures in these time periods, the tendency to dismiss the courts as marginal persists. Yet through the sociolegal scholarship, different narratives can be teased out that suggest that the common wisdom about the courts deserves to be rethought.

## LAW AND COURTS IN CONTEMPORARY RUSSIA

In the waning years of the Soviet Union, a call for a “rule of law based state” (*pravovoe gosudarstvo*) dominated both official rhetoric and scholarly writing on both sides of the collapsing Iron Curtain (e.g., Kudriavtsev and Lukasheva 1988; Barry 1992). A series of fundamental reforms of both the substantive law itself and the judicial system were undertaken that were aimed at stripping the courts of the baggage of seven decades of state socialism (Solomon and Foglesong 2000). Despite these changes, criticism of the post-Soviet courts as handmaidens to the Kremlin persists. Driving this image are the periodic show trials of regime opponents and the criminalization of business disputes, pursuant to which the powerful and unscrupulous manufacture evidence of fraud against entrepreneurs and take over their

companies while they languish in jail. The outcomes of these types of cases are never in doubt. They vividly expose the inadequacies of the legal system and, for many, they capture its essence. In 2010, reporters from *The New York Times* won a Pulitzer Prize for the series, "Above the Law," which details the hopelessness of the Russian courts and the inability of Russians to rely on law to protect themselves from an arbitrary state.<sup>1</sup> The Russian press is equally pessimistic about the courts, and much of the scholarly literature in Russia and elsewhere follows suit.

Alena Ledeneva's *Can Russia Modernise?* (2013) serves as a good illustration. Her book makes the argument that under Putin's leadership, the Russian state has been transformed into a *sistema* designed to institutionalize his power as well as enrich the political elite (*silovki*) who surround him. Others have put forward this argument, but what makes Ledeneva's book of interest to sociolegal scholars is her attention to the courts. She contends that "officials have at their disposal courts that can be directed and managed, and use them as a means of punishment and as an instrument for supporting certain interest groups" (151). Ledeneva's evidence is drawn largely from the experience of Olga Kudeshkina, a judge whose failure to go along with the flow in the notorious "Three Whales" extortion case led to her dismissal from the bench in Moscow. Kudeshkina's story is compelling. She refused to bow to pressure from her superiors to cover up massive bribery and extortion at the highest levels of the Russian government. But even her own words suggest the exceptional quality of the situation in which she found herself. "In my eighteen years working in the courts it was the first time I had come across such open and cynical pressure. It could only be termed a mockery of the law" (153). Prior to moving to Moscow, she served as a judge in her native Siberia. "I do not remember experiencing such pressure when I worked as a judge in the Kemerovo region in the early 1990s. . . . Perhaps we were just lucky that our chairmen took the principle of judicial independence seriously" (158).

Ledeneva contrasts Kudeshkina's principled stand with the behavior of Olga Egorova, the chairman of the Moscow city court, who unquestioningly conveyed the commands of Kremlin insiders and orchestrated Kudeshkina's removal. Egorova becomes the symbol of all that is wrong with the Russian courts. She allows herself to be a relay station in the system of "telephone law" (*telefonnoe pravo*), a practice carried over from Soviet era that preferences status and connections over law. In reflecting on what happened to her, Kudeshkina sees Egorova as a cog in the larger political system, saying, "I understand that this is not her [Egorova], this is *sistema*. If it had not been she, it would have been someone else. Maybe a different person, a bit better or a bit worse, but in the end the actual person didn't matter. Nobody could have worked differently there and then. Anyone not complying with commands of the Kremlin, Putin and the like would be removed" (154).

Generalizing from Kudeshkina's experience, Ledeneva uses the lexicon of Nonet and Selznick (2001) to characterize the contemporary Russian legal system as repressive. The hallmark of such systems is the subordination of law to politics. The "Three Whales" case is a classic example of this phenomenon, as are the even

---

1. <http://topics.nytimes.com/top/news/world/series/abovethelaw/index.html>

more high-profile cases of Mikhail Khodorkovskii, Pussy Riot, and numerous others.<sup>2</sup> Ledeneva argues that the expectations of compliance with the desires of the Kremlin has been so deeply ingrained that overt commands are rarely needed (2013, 162); these unspoken expectations spill over to the vast majority of cases in which the Kremlin exerts no direct pressure. Nonet and Selznick clearly had the Soviet system in mind as they laid out the defining qualities of repressive law (2001, 35–36). Whether it is as neat a fit for the post-Soviet system is less obvious. Repressive law, much like autonomous and responsive law, is presented as an ideal type. As they note, “every political order is repressive in some respects and to some extent” (30). Ledeneva makes a persuasive case for its presence in the Russian context, but whether it predominates is less clear. She sidesteps the question of whether justice in today’s Russia has parallels to the Stalinist era. Others are less reticent. Masha Gessen, both in her column in the *International Herald Tribune* (2012a) and in her biography of Putin (2012b), has pointed out the similarities between show trials under Stalin and Putin. She concludes that “the courts existed to do the bidding of the head of state and dole out punishment as he saw fit to those he saw fit to punish” (2012b, 251).

Another emerging body of literature that provides additional evidence about the repressive elements within the contemporary Russian legal system are the memoirs of entrepreneurs who have been dragged through the criminal justice process by disgruntled former business partners.<sup>3</sup> The phenomenon is captured in a macabre quote from a lawyer: “Lawsuits have replaced the contract killings of the 1990s as a more humane way to get rid of competitors” (Feifer 2014, 288). Emblematic is *Butyrka*, the joint diary of Olga Romanova (2010) and her husband, Aleksei Kozlov, much of which was initially published online as a blog, to which each contributed entries. Kozlov was arrested on charges of fraud, and both he and Romanova believe that the criminal case was initiated with forged evidence by a shadowy member of the upper house of the Russian parliament, identified as “S,” whom Kozlov had crossed in a complicated business transaction.<sup>4</sup> Months before the case was decided, “S” bragged to friends that Kozlov would receive a sentence of eight years, and this is exactly what happened. Kozlov’s defense lawyer characterized it as “bought and paid for” (186). Although in her entries, Romanova describes the trial as “like something out of Kafka,” much like Kudeshkina, she does not hold a grudge against the judge (101). She sees him as an upstanding (*poriadochnyi*) man in an untenable situation. He could “either judge fairly and forget about his career or follow through on the order and give 8 years, as was promised . . .” (102). The

---

2. For background on these cases, see Sakwa (2014) and Gessen (2014). Each case has spurred an excellent documentary film: *Khodorkovsky* (2011), directed by Cyril Tusch, and *Pussy Riot: A Punk Prayer* (2013), directed by Mike Lerner and Maxim Pozdorovkin.

3. For an overview of this practice, see Firestone (2009). Iana Iakovleva, who wrote about her victimization through these practices (2008), now leads a nongovernmental organization for the defense of entrepreneurs, known as *Biznez Solidarnost'* (<http://www.kapitalisty.ru/>). Discrediting a business partner through the criminal justice process is distinct from, but similar to, the practice of *raiderstvo*, by which underhanded tactics are used to wrest control of a corporation away from its founders (Firestone 2008; Rochlitz 2014).

4. “S” was identified as ex-Senator Slutsker by Iulia Latynina, a columnist for *Novaia gazeta*. She comments: “Senator Slutsker is unusually lucky. His enemies either get prison terms . . . or a bullet in the head . . .” (2012).

memoir format captures the emotional rollercoaster of their experience in a way that often eludes scholarly tomes. It conveys both the numbing tedium of Kozlov's months of detention, during which every day seemed like "groundhog day" (*den' surka*), as well as the scariness that came with the murkiness of the system (87). Both were convinced from the outset that the only way out of their predicament was bribing the right official, but Romanova takes a number of wrong turns as she tries to identify who needed to be paid off. Summing up his experience in an understated style, Kozlov concludes: "My case constitutes a clear example of corruption in law enforcement organs" (185).

The specter of corruption hangs over the analysis of both Ledeneva and Romanova, but moves to the fore in Anna Politkovskaya's *Putin's Russia* (2004).<sup>5</sup> She argues, "nobody seeks justice in courts that flaunt their subservience and partisanship. Nobody in his or her right mind seeks protection from the institutions entrusted with maintaining law and order, because they are totally corrupt" (246). In her view, judges pay little attention to the dictates of the law. Foreshadowing Ledeneva and Romanova, she believes "telephone law" has become the norm (197). She grounds her argument in detailed analyses of several high-profile cases, including the efforts of the survivors of the *Nord-Ost* terrorism attack to seek recompense from the state, the trial of Colonel Iurii Budanov for the rape and murder of a young Chechen girl, and the byzantine process by which state insiders were able to capture key industrial assets in the Urals. Politkovskaya documents how the judges in these cases were more concerned with pleasing their political masters than with uncovering what happened and holding the perpetrators accountable.

Maria Popova's book, *Politicized Justice in Emerging Democracies: A Study of Courts in Russia and Ukraine* (2012), takes a different tack. Like Ledeneva, Romanova, and Politkovskaya, she is concerned with politically salient cases, but her aim is to contribute to the ongoing project of developing a theory to explain the evolution (or lack thereof) of judicial independence.<sup>6</sup> Popova gathered data on almost 2,000 candidates who participated in the 2003 parliamentary elections in Russia and over 100 electoral cases filed with the courts. She examines both the decision to go to court and the outcome of the cases. In working with the data on electoral cases, she relies on information from the electoral commissions and the local press to code for the candidates' likelihood of winning, the competitiveness of the electoral district, political affiliation, and availability of administrative resources (help from the Kremlin).

---

5. Well-respected by Russia specialists, Politkovskaya was a journalist who sought to expose unpleasant truths. She made her reputation through her reporting on the war in Chechnya and was killed in 2006 while investigating Roman Kadyrov, the Putin-backed leader of postwar Chechnya. Her murder remains unsolved. Her life and death serves as the basis for Martin Cruz Smith's novel, *Tatiana* (2013).

6. Popova's goal is to challenge the dominance within the political science community of theoretical approaches that argue that, in transition countries, robust competition in the political arena tends to spur greater judicial independence (e.g., Helmke 2002). Yet her analysis resonates with many of the basic themes of sociolegal scholarship. For example, even though she does not reference Galanter (1974-1975), her argument is consistent with his. She contends that the "haves" among candidates, namely, those who enjoy support from established political elites and benefit from their expertise and connections with the courts, tend to prevail over the "have nots," who tend to be either political neophytes or affiliated with fringe political parties.

Popova uses the data to test her strategic pressure theory, which “posits that intensifying political competition only further reduces the level of judicial independence because it increases the benefits that weak incumbents get from dependent courts and expands the set of cases that become politicized” (8). She asserts that if the courts were independent from the incumbents, then pro-government candidates should win less often than opposition candidates, but her data do not support this. She concludes that despite the apparent adequacy of the electoral law on the books in Russia, “progovernment candidates bolstered their reelection chances through violations of the electoral law with impunity” (70).<sup>7</sup> Because she does not investigate the underlying merits of any of the cases, the foundation for her explanation is shaky.<sup>8</sup> She assumes that pro-government candidates do not have stronger cases than other candidates and contends that they prevail thanks to their access to administrative resources. The result is a story of politicized justice.

All these studies of the post-Soviet Russian judicial system present compelling evidence that judges are unable or unwilling to stand up to powerful interests in cases with political and/or economic salience. It is worth noting that the cases explored are not the most well-known examples of show trials. Instead, as Ledeneva points out, these are “second-tier cases” (2013, 165), demonstrating that the sources of telephone law extend beyond the walls of the Kremlin. No careful reader could dispute that today’s Russian courts are deeply flawed. But do these shortcomings render the system completely unreliable and unusable? Along similar lines, are these authors correct when they conclude that Russians are reluctant to take their disputes to court? Ledeneva summarizes this line of argument succinctly: “Folk wisdom portrays the law as being only for the stupid: big people go above it, small people go under it and clever people go around it” (2013, 159).

This folk wisdom falls into the trap of assuming a single narrative of law. Not surprisingly, the publicity surrounding show trials and other politically salient cases leaves most Russians wary of law and courts.<sup>9</sup> This hardly marks them as unusual. In-depth interviews convince me that Russians have a nuanced view of what sorts of problems can be brought to the courts that is consistent with the dualism thesis (Hendley 2011). Like many of us, they hold multiple, sometimes contradictory, opinions about the courts. For example, most are skeptical of tangling with the state or individuals who are wealthier or better connected than they are unless their claims are perceived as nonthreatening (Hendley 2009). This reality can be seen by

---

7. Area specialists will be intrigued by her finding that the effect is greater in Ukraine than Russia (96–97).

8. Popova suggests that efforts to capture the merits are futile and unimportant: it is “all but impossible to capture case merit in an observable variable. If we could, judges and courts would be superfluous. It is also extremely hard to capture judges’ true perceptions of case merit, not least because judges themselves may find it impossible to distinguish between faithful interpretation of case merit according to the legal text and their personal prejudices on the subject or preconceptions about the litigants. Case merit is basically unobservable in individual cases . . .” (91).

9. From 2001 through 2013, the Levada Institute fielded a poll on trust in key institutions to a representative sample of Russians (Doverie 2013). The results show the general skepticism of Russians toward institutions. The only institution that enjoyed the complete trust of a majority of Russians over this decade was the presidency. In 2001, only 13 percent of Russians reported that they fully trusted the courts, a level of support that was similar to that for the legislature, the police, and the prosecutorial service. By 2013, the level of support for the courts was 21 percent. Other institutions experienced a similar increase.

contrasting their willingness to challenge the tax authorities (Hendley 2002; Trochev 2012) with their reticence to challenge local authorities who maneuver to assume control of their firms through bankruptcy proceedings (Lambert-Mogliansky, Sonin, and Zhuravskaya 2007).

At the same time, empirical research documents the willingness of Russian firms and individuals to use the courts to handle their mundane disputes.<sup>10</sup> As interenterprise arrears mounted in the 1990s as a negative consequence of the transition from state socialism to the market, a scholarly consensus emerged that managers were avoiding the *arbitrazh* courts (a hierarchy of courts created in 1991 to deal with commercial disputes) and had privatized the enforcement of contracts to security firms staffed with mafia ties that were staffed by former KGB agents (e.g., Greif and Kandel 1995; Black and Kraakman 1998; Hay and Shleifer 1998; Varese 2001). A seemingly endless series of colorful anecdotes of the “Wild East” fueled this view (Handelman 1995; Volkov 2002; Satter 2003), but the ethnographic fieldwork I was doing in the early 1990s in industrial enterprises and *arbitrazh* courts left me skeptical (Hendley 1998a, 1998b). In an effort to get a better sense of the use (or nonuse) of law by economic actors, I collaborated with several economists to organize a survey of over 300 industrial firms spread out across six regions in Russia to assess their attitudes toward, and use of, law and courts (Hendley, Murrell, and Ryterman 2000). Our Russian counterparts openly ridiculed our interest in the courts, telling us that everyone knew that Russian firms distrusted the courts and never used them. The survey results painted a different picture. Much like the findings of the US-based CLRP studies and their progeny (e.g., Felstiner, Abel, and Sarat 1980–1981; Engel 1984; Merry 1990), our survey confirmed that Russian firms exhausted all other options before turning to the courts. Even so, almost 80 percent of surveyed firms had been to the *arbitrazh* courts during the two years preceding the 1997 survey (Hendley, Murrell, and Ryterman 1999, 853). This would be a high incidence of use for a system perceived as fully functional. For one that had the reputation of being unusable, it was astonishing. Others who have undertaken surveys of Russian firms likewise found use of the *arbitrazh* courts to be commonplace (Johnson, McMillan, and Woodruff 2002; Gans-Morse 2012).

Yet the narrative of firms and individuals stymied by the lack of usable courts persists in the media (e.g., Clover 2010; Bohlen 2013; Feifer 2014) and nonspecialist social science literature (e.g., Gaddy and Ickes 2002; Treisman 2011; Easter 2012; Mendras 2012). Perhaps this is because Russians, like their counterparts elsewhere, delight in recounting horror stories centering on the courts. Russian survey-based research sometimes picks up these attitudes. For example, Gudkov, Dubin, and Zorkaia (2010), from the well-respected Levada Institute, contend that a majority of Russians have “nihilistic attitudes towards courts,” which they attribute to

---

10. Much like Americans (e.g., Kritzer and Volker 1998), Russians who have been to the courts tend to be more positively disposed toward the courts (Gorbuz et al. 2010). Research aimed at uncovering the perceptions of litigants about their experiences in the justice of the peace courts (JP courts), which handle simple cases, reveal that most felt they had been treated fairly and that their judges were impartial. (Kriuchkov 2010 [survey of litigants in JP courts in the regions surrounding Nizhni-Novgorod, Rostov-na-Donu, and St. Petersburg]; Voronkov and Ezhova 2010 [monitoring of JP courts in St. Petersburg and Perm, combined with surveys of litigants]).

“inertia from the Soviet experience and their lack of belief that the court will uphold the rights of ordinary citizens in all situations” (9). In my fieldwork, I often found that, when pressed, these anecdotes turned out to be urban myths rather than personal experiences. The low public trust in courts, at least as measured by pollsters, may also be contributing to the stickiness of the unusability narrative. The idea that trust drives use or, more accurately, that a lack of trust will forestall use, is intuitively appealing. In Russia, it turns out that other factors, including need and prior experience, play a more important role than trust in determining use (Hendley 2012a). As I have argued elsewhere, the low cost of using the Russian courts, as measured in time, money, and potential relational damage, may also diminish the hesitance to litigate (Hendley 2004).

## LAW AND COURTS IN THE SOVIET UNION

The contemporaneous narrative of law during the Soviet era (1917–1991) was even more single-minded than in the recent period. Notwithstanding his legal education, Lenin’s disdain for law is well-documented (Burbank 1995). One of his first acts after coming to power was to disband the existing court structure in favor of revolutionary tribunals in which ideological purity rather than law was used to assess claims (Rendle 2011). Although these tribunals were abandoned by 1922, the courts that followed in their wake were notoriously used as a conveyor belt to the GULAGs. Both historical fiction (Koestler 1941; Solzhenitsyn 1963; Chukovskaia 1994) and memoirs (Ginsberg 1967; Solzhenitsyn 1974–1978; Figs 2007) have poignantly captured the tragic fate of those caught up in this system. In the public trials of high-profile figures, the careful compliance with procedural regularities and the convincing confessions of the defendants fooled many politically savvy observers into believing what they were seeing (e.g., Davies 1941, 269–73). This hyper-attentiveness to legal niceties was notably absent in the vast multitude of hearings that were closed to the public. The deliberately vague language of the statutes governing anti-Soviet behavior gave the authorities almost unlimited discretion and facilitated their ability to act under the color of law. As the ability of the Soviet regime to control information began to break down after Stalin’s death, transcripts of the trials of several dissidents leaked to the West, confirming the kangaroo court quality of the proceedings (e.g., Labeledz and Hayward 1967; Litvinov 1972). Although the focus is usually on the ugly side of Soviet-era dualism, Communist Party members saw its soft side. Cases involving the misdeeds of Party members tended to be diverted away from the courts to the Party’s control committee (Clark 1993; Shelley 1984),<sup>11</sup> except when, during its periodic campaigns against corruption or other antisocial behavior, the Kremlin needed a high-profile sacrificial lamb to demonstrate its commitment to living up to the letter of the law (Feofanov and Barry 1996; Solomon 1996; Gorlizki 1999; LaPierre 2012).

---

11. Some types of malfeasance were ignored because they were necessary to keep the economy operating on an even keel. A good example is the common practice of padding production reports (known in Russian as “eye washing” or *ochkoviratel'stvo*) (Pomorski 1978).

The indisputable fact that Soviet courts were, in fact, manipulated by those in power in some cases made it easier to believe it happens in all cases. Fraenkel's (1969) insight that courts can be both politically craven and positivistic was first applied to the Soviet case by Robert Sharlet (1977) in his influential essay on the role of law under Stalinism. Though Cold War tensions made any sort of fieldwork unthinkable,<sup>12</sup> he inferred that Soviet-era judges generally resolved cases without political resonance in accordance with the written law at the same time that results in politically sensitive cases were being dictated by the Kremlin. His insights were confirmed by the path-breaking ethnography of Soviet courts undertaken by George Feifer (1964) in the early 1960s. His book, *Justice in Moscow*, gave us our first glimpse of the day-to-day reality of low-level Soviet courts. He explains his goals:

I was interested not in cases defining the fringes of political rights, but in all those ordinary cases in the middle: the daily cases that deal with common crimes and disputes; the great mass of cases that have nothing at all to do with state security or ideological purity; . . . the kinds of cases Americans never hear about (Soviet terror and political trials make so much better news copy) but which most directly affect Ivan, that average fellow. I wanted to know what happens to *him* when he falls afoul of the law, his wife, or his boss. (1964, 15)

The months of observing hearings at trial-level courts revealed a judiciary more preoccupied with ensuring that its decisions would withstand appellate review than with winning the approval of Communist Party bosses. There is an inescapable logic to what he found. From a practical point of view, the Party could not possibly take an interest in every case brought to the courts. Feifer attributes the tendency of judges to berate litigants about being drunk on the job or sparring with neighbors in a communal apartment to their pedagogical task of contributing to the creation of the new Soviet man (Berman 1963). But read with an eye to the comparative literature, his account feels familiar to readers of *The Faces of Justice*, Sybille

---

12. For the most part, the scholarly literature of the Soviet era is limited to the law on the books, making it difficult to get a broader sense of the activities of Soviet courts. The authorities limited the freedom of action of scholars; Western scholars responded by trying to deduce how courts worked from the available information. Other Communist countries followed the lead of their Soviet comrades (Sperlich 2007, 21). John Hazard (1962/1963), a pioneer in the field of Soviet legal studies who spent a year attending a Moscow law school in the 1930s, wrote a wonderfully evocative article in the early 1960s in which he analyzed what the arrangement of the furniture in Soviet courtrooms could tell us about how they operated. Soviet scholars did not pick up the slack. The combination of their civil law heritage and the clear desire of the authorities to preserve a sunny story about the day-to-day operation of state socialism produced an endless stream of articles focused on statutory law, all of which began with an obligatory citation to Marx and/or Lenin. Vladimir Rimskii (2007) searched for evidence of sociolegal research prior to the late 1980s, when Gorbachev's policies of *perestroika* and *glasnost'* lifted the constraints on public discussion. He located only one study, a doctoral dissertation by A. S. Grechin (1984). Grechin used survey methods to study the legal consciousness of the working class. Upon completion, the dissertation was promptly classified. Although declassified in 1999, it remains accessible only by going to the library of the Institute of Sociology of the Academy of Sciences in Moscow and reading it on the premises. When I did so, the reasons for limiting access were immediately apparent. Among other revelations, his research belied the Kremlin's claims that Soviet citizens were outraged by pilfering of state property, documenting that most saw such behavior as acceptable and were troubled only when private property was stolen (187–89).

Bedford's study of European courts (1961), or any of the many ethnographies of US courts (e.g., Conley and O'Barr 1990; Merry 1990; Bogira 2005). Feifer comments that "[t]here was a matter-of-factness, an everydayness, a quiet sadness, a weariness. All issues seemed to move, very slowly, to their fated ends, and the sameness of the cases and repetitiousness of the 'story' compounded the feeling of *deja vu*" (1964, 50).

*Final Judgment*, Dina Kaminskaya's (1982) memoir of her life as a trial lawyer (*advokat*) during the 1960s and 1970s in the USSR, documents the dualistic nature of the legal system by laying out her experiences in the criminal justice system, representing political dissidents and ordinary Russians. She argues that convictions were preordained in both types of cases, albeit for different reasons. For her high-profile cases, the outcomes were dictated by telephone law. More interesting are her run-of-the-mill cases. By the time she was practicing, a kind of bureaucratic inertia had set in that was reflected in a strong preference for convictions. Acquittals came to be seen as black marks on the records of all involved, from the police to the prosecutor to the judge.

In those days, anyone accused of a politically motivated crime such as anti-Soviet behavior had to vet his choice of lawyer with the KGB. Not all *advokaty* were willing to participate; many feared that doing so would jeopardize not only their future but the prospects for their children.<sup>13</sup> Once approved, *advokaty*'s freedom of action was severely curtailed. Most made no affirmative defense; they simply pleaded for leniency in sentencing. Kaminskaya was different. For example, when defending Vladimir Bukovsky, who had been arrested in 1967 for silently holding up a placard in Pushkin Square in central Moscow that sought the release of several friends detained by the KGB, she put forward a defense that would be familiar to civil rights activists elsewhere. She pointed to the language in the Soviet constitution that protected freedom of expression, and reasoned that the state had failed to establish a crime (176). Both she and Bukovsky knew that these arguments would fall on deaf ears and he was convicted.<sup>14</sup> His conviction stood up on appeal.<sup>15</sup> Kaminskaya's rich discussion of her involvement in the cases of Brezhnev-era dissidents ought to be intriguing to sociolegal scholars interested in the efforts of lawyers to push back against authoritarian regimes.

In the second part of her memoir, Kaminskaya tells of her efforts to secure an acquittal for two teenagers accused of raping and killing a classmate, a case that,

---

13. Kaminskaya and Vasily Samsonov, the chairman of the Moscow Bar Association, had planned to represent the writers Yulii Daniel and Andrei Sinyavskii, respectively. Communist Party officials pressured them to go along with the expert witness testimony as to the anti-Soviet nature of their writing. They wanted the lawyers to enter guilty pleas for them. Fearing he would be disbarred, Samsonov capitulated. Kaminskaya refused and was denied permission to participate in the trial. As she reflects back on the experience, she writes, "I have told this story primarily because I believe the greatest evils in these post-Stalin years are perpetrated not by villains and hatchetmen but by collaborators and appeasers. . . . All of us—lawyers, judges, doctors—have chosen professions that give us the right to make decisions affecting the fate of our fellow human beings. And if we neglect our professional duty to the detriment of those who are dependent upon us, we should not be in the profession" (171). For more on the trial of Siniavskii and Daniel, see Labeledz and Hayward (1967) and Feofanov and Barry (1996, 38–49).

14. See Bukovsky (1978) for his vantage point.

15. Kaminskaya's experiences shine a light on one element of politicized justice that has changed. Contemporary political dissidents are free to hire whomever they want to represent them, including foreign counsel, if desired. Of course, some might question the value of this right when the outcome of politicized trials remain predictable.

unlike Bukovsky's, had no political implications. Acquittals were quite rare even in ordinary cases in the post-World War II Soviet Union.<sup>16</sup> Drawing on interviews with émigrés from the USSR who had experience in the criminal justice system, Peter Solomon (1987) learned that the decline in acquittals beginning in the late 1940s was due to changes in performance indicators for police and prosecutors. An effort to improve the quality of the investigatory process quickly degenerated into a ferocious campaign against acquittals and the practice of judges returning cases for supplementary investigation, both of which came to be seen as a "source of embarrassment" (534). This, combined with the tendency of judges to defer to prosecutors (*prokurory*) meant that securing an acquittal was an arduous uphill battle for an *advokat*. Kaminskaya's experience proves Solomon's thesis, and illustrates yet another key narrative of Soviet law. As she combed through the volumes of evidence and uncovered flaws in the investigation, she repeatedly had to battle against the bureaucratic preference for pushing the case forward to a conviction. Despite her efforts, the boys were initially convicted. The trial judge turned a blind eye to Kaminskaya's arguments about the misconduct of the police and prosecutor. The boys and their families pinned their hopes on the appellate system. Kaminskaya notes that "the [family's] faith in Soviet justice was greater than mine. They knew less about it than I did" (1982, 141). But the Supreme Court took note of her arguments and ordered further investigation.<sup>17</sup> The subsequent retrial led to an acquittal, which Kaminskaya credited to their good fortune in getting a judge who was willing to look past bureaucratic politics and decide the case on the merits.

In contrast to Ledeneva and Politkovskaya, who tell similar tales and attribute the behavior to the twisted logic of telephone law and corruption, Kaminskaya's is a story of bureaucratic inertia and careerism. Under pressure to solve a horrific crime, the police investigators and the prosecutors fastened on the two boys and construed the evidence to support their supposition. The case then took on a life of its own, and no one within the criminal justice system wanted to stop the runaway train because doing so would likely have dire consequences for advancement. This sort of rush to judgment, followed by a stubborn resistance to alternative explanations, is hardly unique to Russia. Despite repeated efforts to reform Russia's criminal justice system, the institutional incentive system uncovered by Solomon and illustrated by Kaminskaya's experience has changed little in present-day Russia.<sup>18</sup> Quantitative indicators of success continue to hold sway (Paneyakh 2014). Though adversarialism

---

16. Solomon and Foglesong (2000, 106) report that the acquittal rate dropped from 10 percent to 2–3 percent after the war. By the 1960s, it had dropped to a fraction of 1 percent. It remained at that level through the 1980s. For an intriguing comparative analysis of the role of acquittals in western Europe, Canada, and Russia, see Solomon (2013).

17. A conversation between Kaminskaya and one of the Supreme Court justices reveals the unspoken bias in favor of prosecutors. He told her: "The case should have been closed. There's nothing more to investigate. But we decided to give the procuracy the chance to make another try. Then they can quietly let the case drop themselves. That way there'll be fewer complaints and less fuss" (145).

18. This has created a hospitable environment for the sort of "commissioned" (*zakaznye*) cases described by Romanova (2010) in her memoir. When a packet of documentary evidence implicating someone is delivered to the police, it is generally accepted at face value. Of course, the under-the-table payments for doing so that are rumored to be part of the process also help the grease the skids (Firestone 2009).

has formally been embraced in Russia, few defense lawyers challenge the state's version of facts by engaging in their own investigation.

The opening of the archives of the Soviet era in the 1990s has allowed for a reexamination of many aspects of daily life, including the role of law.<sup>19</sup> Notable among these is Tracy McDonald's book, *Face to the Village: The Riazan Countryside Under Soviet Rule, 1921–1930* (2011). Much as Sharlet predicted, McDonald's archival research reveals that peasants turned to the courts regularly to handle mundane problems, such as slander, divorce, alimony, theft, and property damage. She found that the courts were dealing with a "massive caseload" (87). Much as would be predicted by the sociolegal literature, peasants used "the courts if they could but they would also resort to vigilante justice in matters they believed the regime failed to resolve adequately, such as the punishment of horse thieves or arsonists" (92). Judges tended to look the other way, even though central authorities were keen to stamp out vestiges of self-help, which they viewed as backward. The reports commissioned by these central authorities indicated widespread corruption, but McDonald notes that "much of the reported corruption in the courts was simply the continuation of practices long associated with justice in the countryside. Deals were often sealed with samogen [moonshine] or a leg of mutton, which greased the wheels of village life and local politics" (96). McDonald's work vividly demonstrates the multiplicity of narratives of law in the Soviet era.

## LAW AND COURTS IN TSARIST RUSSIA

Much of the literature on present-day Russian and Soviet-era law takes legal nihilism as a given. When gearing up for his successful 2008 presidential campaign, Dmitri Medvedev famously commented that "[w]ithout exaggeration, Russia is a country of legal nihilism. . . . [N]o other European country can boast of such a level of disregard for law" (Polnyi tekst 2008).<sup>20</sup> Nor is this perception a recent phenomenon. It has endured through Russia's many political upheavals. Alexander Herzen, a prominent political philosopher of the nineteenth century commented: "Whatever his station, the Russian evades or violates the law wherever he can do so with impunity; the government does exactly the same thing."<sup>21</sup> In a much-quoted essay from 1909, the legal philosopher Bogdan Kistyakovsky wrote: "the Russian intelligentsia never respected law and never saw any value in it. Of all the cultural values, law was the most suppressed. Given such circumstances, our intelligentsia

---

19. See Solomon (2015a, 2015b) for an overview of the ways in which the opening of the archives has deepened our understanding of Soviet criminal justice.

20. Using data collected through the Russian Longitudinal Monitoring Study—Higher School of Economics (<http://www.cpc.unc.edu/projects/rlms-hse>), a nationally representative sample of Russians, I explored the veracity of Medvedev's claim (Hendley 2012b). Based on data collected in 2006, I found that about 24 percent of Russians were open to the idea of going around the law if it proved inconvenient. The limited comparative data suggest that this is not unusually high. I had initially hypothesized that older generations who had lived through the Stalinist purges would be most nihilistic but, somewhat counterintuitively, I found that this group was less skeptical of law than were their children. James Gibson (2003) found that survey data from the 1990s show a lower level of legal nihilism than is usually assumed.

21. Quoted by Huskey (1991, 68) and Tumanov (1989, 21).

could not have hoped to develop a sound legal consciousness, which, on the contrary, remains at the lowest possible level of development” (1977, 113). Many scholars accepted such statements as reflective of empirical reality. As legal historians dug deeper into the archival records, however, some argued that they ought to be viewed as polemics (e.g., Wagner 1997, 21; Burbank 1997, 84; 2004, 5). This archival research documented that the ancestors of the peasants McDonald studied were not as nihilistic as Herzen or Kistyakovsky had assumed; they also used the courts when appropriate.

As I noted at the outset of the essay, the Russian courts underwent a profound reform in 1864 as part of the Great Reforms that came in the wake of the end of serfdom (Wortman 1976). The result was the creation of different courts for urban and rural dwellers. On paper, the courts diverged sharply in that the urban justice of the peace (*mirovye*) courts strictly relied on statutory law and the rural township (*volost'*) courts were authorized to use both statutory law and customary law. The license to use custom gave rise to a belief that outcomes in the *volost'* courts were inherently capricious and unpredictable. Sergei Witte, who served as a close advisor to Alexander III and his son Nicholas II, the last two tsars of Russia, expressed this common wisdom: “Essentially, the court system did not exist among the peasants, but took the crude form of justice in the shape of the *volost'* court” (Frierson 1986, 526).

In an odd parallel to the literature on present-day Russian courts, legal historians have debated the relevance of the *volost'* courts to peasants in prerevolutionary Russia. Some argue that the unreliability of formal legal institutions such as the police and the *volost'* courts left peasants to fend for themselves. In support of this thesis, they point to the use of various forms of self-help, such as arson and *samosud*,<sup>22</sup> an informal form of summary justice that often took the form of violence against alleged perpetrators that ranged from floggings to ostracism to hangings. Whether these mechanisms supplanted or supplemented is a matter of considerable dispute among scholars. Stephen Frank views the *volost'* courts as impotent when it came to dealing with criminal behavior. He quotes approvingly from a 1908 report of the governor of Riazan': “the peasantry’s participation in incidents of *samosud* is evidence of the unquestionable collapse of their trust in the court . . .” (1999, 297). He sees the late-nineteenth century as a time of increasing crime and instability in the Russian countryside, and contends that “violence and the ignoring of state law . . . were not features of *samosud* alone but characterized Russian justice far more broadly” (248).

Contrast this portrayal to that of Cathy Frierson in her research on arson as a form of self-help in the late tsarist period. While conceding that peasants’ use of arson sometimes reflected a lack of confidence in the courts and the police and/or an unwillingness to suffer through the procedural niceties, she finds a sense of justice at the core of such behavior. In her words, “peasants often committed arson not out of irrational vengeance or ‘blind spite,’ but according to a code of behaviors that was understood and enforced widely in their communities” (1997b, 122–23).

---

22. *Samosud* is a compound word. It combines the word for doing something oneself (*samo*) with the word for court (*sud*) to create a word that captures a do-it-yourself court.

She finds this reflected in the widespread belief that arson was unacceptable in certain situations.

More generally, Frierson is part of a group of scholars who have delved into the archival records and have come away convinced that self-help remedies coexisted with remedies available through the courts (e.g., Farnsworth 1986; Wagner 1997; Popkins 2000; Burbank 2004). Just as I argue that present-day Russians understand when going to court is feasible, these scholars argue that prerevolutionary peasants intuitively knew which ways of dealing with their problems were best under the circumstances. Frierson contends that peasants went to court when the rules were uncertain and resorted to self-help when the communal norms were well-established (1997a, 311).

In *Russian Peasants Go to Court: Local Culture in the Countryside, 1905–1917* (2004), Jane Burbank makes a passionate case for studying the everyday practices of the *volost'* courts. Much like I am arguing against reducing contemporary Russian law to what happens in show trials, Burbank rails against the tendency of some scholars to treat *samosud* and other extralegal strategies as typical. While not denying their persistence, she sees them as *part* of the story, rather than as the whole story. “I look at the ordinary usages people made of the township courts. Study of ordinary and, for most plaintiffs, voluntary engagement with the legal system reverses a long-term trend of finding resistant, exotic, or otherwise aberrant behaviors in the countryside” (15).

Burbank describes the *volost'* courts as “an institution run by and for peasants. Cases were heard and decided by three or four peasant judges, sitting in the presence of a scribe who recorded the proceedings. No lawyer or other advocate would be present at the court; litigants—usually peasants—presented their own cases” (4). Though Burbank starts from the assumption that most disputes were handled informally, her analysis is grounded in the observable record, namely, in hundreds of case files drawn from the archival files of ten *volost'* courts.<sup>23</sup>

Burbank paints a vivid picture of these courts that diverges sharply from the nihilistic vision of peasant life that Witte (the close advisor to Tsars Alexander III and Nicholas II quoted earlier) put forward. Burbank begins by focusing on the efforts of Praskovia Arefeva, an illiterate unmarried peasant woman from a small village to the west of St. Petersburg, to recover an inheritance. This micro-history approach documents that Arefeva and others involved in the case took law seriously; they shared “a sense that they could use legal means to resolve disputes” and believed that the “law was the ultimate authority over allocation of essential resources” (46). Once decisions were made, they became a source of law for future litigants, belying Witte’s image of rough justice. Burbank argues that all those involved, despite their lack of formal schooling, had a clear understanding of how the *volost'* courts and the appellate instances worked. In the rest of the book, Burbank does a superb job of sketching the daily routine of the *volost'* courts and their challenges. She includes a wealth of data documenting the types of cases and the

---

23. Burbank studied seven *volost'* courts from the region surrounding Moscow, two from the region surrounding St. Petersburg, and one from the region near Novgorod (18).

characteristics of litigants.<sup>24</sup> Like McDonald, Burbank finds that the amounts at issue were “modest by elite standards but clearly meaningful to litigants” (85). Parallels also emerge between the sorts of disputes that ended up in rural courts. Both before and after the October Revolution, the docket was dominated by family squabbles and debt collection. Other legal historians who have studied the archival records of the *volost*’ courts agree with Burbank that peasants used these courts and that out of the cases evolved a set of norms on which peasants relied (e.g., Farnsworth 1986; Frierson 1997a).

Burbank begins and ends her book puzzling over the persistence of the narrative of peasants who were “too primitive to understand ‘real’ law and too uneducated to administer ‘real’ justice” (5).<sup>25</sup> In her concluding chapter she places some of the blame for the tenaciousness of this simplistic version of peasants’ interactions with *volost*’ courts in tsarist Russia at the feet of Anton Chekhov. In his short story, “A Malefactor,”<sup>26</sup> Chekhov humorously sketches out a dialogue-of-the-deaf confrontation between a judge and a peasant who has removed a nut from a railroad tie to use as a counterweight when fishing. The peasant tells the judge this is a longstanding practice in the village, explaining that they always leave enough nuts to support the rails. The judge’s references to the code sections that criminalize such actions seem to go over the head of the peasant. As he is being dragged off to jail, he mutters to the judge: “You ought to judge sensibly, not at random. . . . Flog, if you like, but flog someone who deserves it, flog with conscience” (1999, 65). In the view of the peasant, the formal law is irrelevant; the only crime being committed is by the judge. Burbank notes the resonance of this story among historians and literary icons, including Leo Tolstoy. “Chekhov’s message, according to interpreters then and now, was that peasants lived by a different moral code, could not understand the reformed legal system, and thus constituted a threat to the public good. The idea of responsibility and accountability before the law were unthinkable by peasants. They lived by different rules” (2004, 247).

## CONCLUSION

I share Burbank’s frustration. The appeal of the narrative of legal nihilism driven by a combination of low legal literacy and telephone law is understandable. Certainly, it is more exciting than the somewhat dull reality revealed by studying the records of mundane court cases. Perhaps the tendency of the media to emphasize the flashier side of the story makes sense. The puzzle is why scholars have proven so resistant to incorporating the alternative narratives produced by studying everyday practice. Doing so would allow us to bring down some of the remaining barriers produced by the decades of the Cold War, which left many in the West

24. Additional data are available at: <http://www.nyu.edu/projects/burbank/statistics/index.htm#>.

25. Burbank is referencing a larger literature that questions the supposed backwardness of Russian peasants in the tsarist era (e.g., Kotsonis 1999; Dennison 2011).

26. The Russian title of the story is “*Zloimyshlennik*,” not an easy word to translate (2006). Burbank renders it as “The Plotter.” I agree with Constance Garnett, the translator of a well-respected English edition of Chekhov’s stories, who renders it as “A Malefactor.”

ready to think the worst of Russia (Graham 2013). Its 2014 annexation of Crimea has only served to reinforce these instincts.<sup>27</sup>

A more complete analysis of the Russian legal system reveals a dualistic system: ordinary citizens are actively using courts to deal with mundane disputes, but are avoiding them when they suspect the case might be politically sensitive. And thanks to the opening of archival records of courts in the Soviet and Tsarist periods, we now know that this is not a new phenomenon, but is a continuation of earlier practices. Yet this empirical reality runs counter to the common wisdom, which projects a single narrative, namely, that Russian courts exist and have existed to be mobilized by the regime to deal with its enemies; that they were staffed by judges who responded to commands from political elites rather than to the law. As always, there is some truth to this common wisdom. Echoing the arguments of Feifer and Burbank as to earlier eras, politicized justice in present-day Russia is a reality, but is only part of the story. To pretend that it is the sole reality is to deny the experiences of millions of Russians who have successfully taken their problems to the courts for resolution.

More troubling are the theoretical implications of this tunnel vision for the assessment of the rule of law in Russia. We find ourselves in the age of indexes. All too often these indexes are grounded in expert testimonials. Prominent legal activists are asked to share their thoughts. Few have any direct experience on which to draw. Their opinions tend to reflect the prevailing common wisdom, creating a kind of echo chamber effect. The well-publicized show trials trump the multitude of quotidian cases and Russia unsurprisingly languishes near the bottom of most indexes. This has the effect of convincing casual observers of the veracity of the common wisdom. It is a vicious circle that has been unwelcoming of counternarratives.

I suspect that Russia's story is not unique; that the richness of how law works in other transition countries has likewise been discounted in favor of simpler stories of politicized justice. This is understandable. The flagrant manipulation of judicial outcomes that is a carry-over legacy of authoritarianism strikes Western observers as outrageous and intolerable in a society committed to the rule of law. They are quick to jump to the conclusion that law cannot matter under such circumstances. Yet these same observers are less troubled when confronted by the routine injustices produced by resource inequalities of litigants in their own systems. Whether these are functional equivalents is open to debate. What is less debatable is that all legal systems live in glass houses when it comes to achieving the ideals of the rule of law. My hope is that by integrating the realities of everyday law, we can move away from stereotypes, and can open a debate on how to theorize the role of law in countries like Russia where law matters sometimes but not always.

## REFERENCES

- Barry, Donald D., ed. 1992. *Toward the "Rule of Law" in Russia? Political and Legal Reform in the Transition Period*. Armonk, NY: M.E. Sharpe.
- Bedford, Sybille. 1961. *The Faces of Justice*. London: Collins.

---

27. Typical is an editorial by Roger Cohen (2014) on Russian foreign policy in which he casually notes the "coopted judiciary" of Russia as if it is self-evident.

- Berman, Harold J. 1963. *Justice in the U.S.S.R.: An Interpretation of Soviet Law*. Cambridge: Harvard University Press.
- Black, Bernard, and Reinier Kraakman. 1998. A Self-Enforcing Model of Corporate Law. *Harvard Law Review* 109 (8):1911–82.
- Bogira, Steve. 2005. *Courtroom 302: A Year Behind the Scenes in an American Criminal Courthouse*. New York: Alfred A. Knopf.
- Bohlen, Celestine. 2013. One Man Against the Kremlin. *International Herald Tribune* May 11. <http://www.nytimes.com/2013/05/11/world/europe/11iht-letter11.html> (accessed April 14, 2014).
- Bukovsky, Vladimir. 1978. *To Build a Castle: My Life as a Dissenter*, trans. Michael Scammell. New York: Viking Press.
- Burbank, Jane. 1995. Lenin and the Law in Revolutionary Russia. *Slavic Review* 54 (1):23–44.
- . 1997. Legal Culture, Citizenship, and Peasant Jurisprudence: Perspectives from the Early Twentieth Century. In *Reforming Justice in Russia, 1864–1996: Power, Culture, and the Limits of Legal Order*, ed. Peter H. Solomon, Jr. Armonk, NY: M.E. Sharpe.
- . 2004. *Russian Peasants Go to Court: Legal Culture in the Countryside, 1905–1917*. Bloomington, IN: Indiana University Press.
- Chekhov, Anton. 1999. A Malefactor. In *Early Short Stories, 1883–1888*, ed. Shelby Foote, trans. Constance Garnett. New York: Modern Library.
- Chekhov, A. P. 2006. Zloimyslennik. In *Izbrannoe: Rasskazy, Povesti, P'ecy*. Moscow: Eksmo.
- Chukovskaia, Lidia. 1994. *Sofia Petrovna*, trans. Aline Werth. Evanston, IL: Northwestern University Press.
- Clark, William A. 1993. *Crime and Punishment in Soviet Officialdom: Combating Corruption in the Political Elite: 1965–1990*. Armonk, NY: M.E. Sharpe.
- Clover, Charles. 2010. Russia: Laws Do Exist But Enforcement is Patchy. *Financial Times* October 6. <http://www.ft.com/intl/cms/s/0/02d211e8-d016-11df-bb9e-00144feab49a.html#axzz2ysPM-FIwj> (accessed April 14, 2014).
- Cohen, Roger. 2014. Russia's Weimar Syndrome. *International New York Times* May 2. <http://www.nytimes.com/2014/05/02/opinion/cohen-russias-weimar-syndrome.html?partner=rssnyt&emc=rss> (accessed May 10, 2014).
- Conley, John M., and William M. O'Barr. 1990. *Rules Versus Relationships: The Ethnography of Legal Discourse*. Chicago, IL: University of Chicago Press.
- Davies, Joseph E. 1941. *Mission to Moscow*. New York: Simon and Schuster.
- Dennison, Tracy. 2011. *The Institutional Framework of Russian Serfdom*. Cambridge: Cambridge University Press.
- Doverie institutam vlasti. 2013. <http://www.levada.ru/07-10-2013/doverie-institutam-vlasti> (accessed April 14, 2014).
- Easter, Gerald M. 2012. *Capital, Coercion, and Postcommunist States*. Ithaca, NY: Cornell University Press.
- Engel, David M. 1984. The Oven Bird's Song: Insiders, Outsiders, and Personal Injuries in an American Community. *Law & Society Review* 19 (4):551–82.
- Farnsworth, Beatrice. 1986. The Litigious Daughter-in-Law: Family Relations in Rural Russia in the Second Half of the Nineteenth Century. *Slavic Review* 45 (1):49–64.
- Feifer, George. 1964. *Justice in Moscow*. New York: Simon and Schuster.
- Feifer, Gregory. 2014. *Russians: The People Behind the Power*. New York: Twelve.
- Felstiner, William L. F., Richard L. Abel, and Austin Sarat. 1980–1981. The Emergence and Transformation of Disputes: Naming, Blaming, Claiming .... *Law & Society Review* 15 (3–4):631–54.
- Feofanov, Yuri, and Donald D. Barry. 1996. *Politics and Justice in Russia: Major Trials of the Post-Stalin Era*. Armonk, NJ: M.E. Sharpe.
- Figes, Orlando. 2007. *The Whisperers: Private Life in Stalin's Russia*. New York: Metropolitan Books.
- Firestone, Thomas. 2008. Criminal Corporate Raiding in Russia. *International Lawyer* 42 (4): 1207–29.

- . 2009. Armed Injustice: Abuse of the Law and Complex Crime in Post-Soviet Russia. *Denver Journal of International Law & Policy* 38 (4):555–80.
- Fraenkel, Ernst. 1969. *The Dual State: A Contribution to the Theory of Dictatorship*. New York: Octagon Books.
- Frank, Stephen P. 1999. *Crime, Cultural Conflict, and Justice in Rural Russia, 1865–1914*. Berkeley, CA: University of California Press.
- Frierson, Cathy. 1986. Rural Justice in Public Opinion: The Volost' Court Debate, 1861–1912. *Slavonic & East European Review* 64 (6):526–45.
- . 1997a. "I Must Always Answer to the Law . . .": Rules and Responses in the Reformed Volost' Court. *Slavonic & East European Review* 75 (2):308–34.
- . 1997b. Of Red Roosters, Revenge, and the Search for Justice: Rural Arson in European Russia in the Late Imperial Era. In *Reforming Justice in Russia, 1864–1996: Power, Culture, and the Limits of Legal Order*, ed. Peter H. Solomon, Jr. Armonk, NY: M.E. Sharpe.
- Gaddy, Clifford G., and Barry W. Ickes. 2002. *Russia's Virtual Economy*. Washington, DC: Brookings Institution Press.
- Galanter, Marc. 1974–1975. Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change. *Law & Society Review* 9 (1):95–160.
- Gans-Morse, Jordan. 2012. Threats to Property Rights in Russia: From Private Coercion to State Aggression. *Post-Soviet Affairs* 28 (3):263–95.
- Gessen, Masha. 2012a. The Stalin in Putin. *International Herald Tribune* August 13. <http://latitude.blogs.nytimes.com/2012/08/13/the-stalin-in-putin/> (accessed June 13, 2013).
- . 2012b. *The Man Without a Face: The Unlikely Rise of Vladimir Putin*. New York: Riverhead Books.
- . 2014. *Words Will Break Cement: The Passion of Pussy Riot*. New York: Riverhead Books.
- Gibson, James L. 2003. Russian Attitudes Towards the Rule of Law: An Analysis of Survey Data. In *Law and Informal Practices: The Post-Communist Experience*, ed. Denis J. Galligan and Marina Kurkchyan. Oxford: Oxford University Press.
- Ginsburg, Evgeniia S. 1967. *Journey into the Whirlwind*, trans. Paul Stevenson and Max Hayward. New York: Harcourt, Brace & World.
- Ginsburg, Tom. 2012. Courts and New Democracies: Recent Works. *Law & Social Inquiry* 37(3): 720–24.
- Gorlizki, Yoram. 1999. Rules, Incentives and Soviet Campaign Justice After World War II. *Europe-Asia Studies* 51 (7):1245–65.
- Graham, Thomas. 2013. The Drive to Blame Russia. *International Herald Tribune* August 21. [http://www.nytimes.com/2013/08/22/opinion/global/the-drive-to-blame-russia.html?\\_r=0](http://www.nytimes.com/2013/08/22/opinion/global/the-drive-to-blame-russia.html?_r=0) (accessed January 21, 2014).
- Grechin, A. S. 1984. *Pravovoe soznanie rabocheho klassa. Dissertatsiia na soiskanie uchenoii stepeni doktora filosofskikh nauk*. Moscow.
- Greif, Avner, and Eugene Kandel. 1995. Contract Enforcement Institutions: Historical Perspectives and Current Status in Russia. In *Economic Transition in Eastern Europe and Russia*, ed. Edward P. Lazar. Stanford: Hoover Press.
- Gudkov, Lev, Boris Dubin, and Nataliia Zorkaia. 2010. Rossiiskaia sudebnaia sistema v mneniiakh obshchestva. *Vestnik obshchestvennogo mneniia* 4:7–43.
- Handelman, Stephen. 1995. *Comrade Criminal: Russia's New Mafiya*. New Haven, CT: Yale University Press.
- Hay, Jonathan, and Andrei Shleifer. 1998. Private Enforcement of Public Laws: A Theory of Legal Reform. *American Economic Review* 88 (2):398–403.
- Hazard, John N. 1962/1963. Furniture Arrangement as a Symbol of Judicial Roles. *ETC; a Review of General Semantics* 19:181–88.
- Helmke, Gretchen. 2002. The Logic of Strategic Defection: Court-Executive Relations in Argentina Under Dictatorship and Democracy. *American Political Science Review* 96 (2):291–303.
- Hendley, Kathryn. 1998a. Remaking an Institution: The Transition in Russia from State Arbitrazh to Arbitrazh Courts. *American Journal of Comparative Law* 46 (1):93–127.

- . 1998b. Struggling to Survive: A Case Study of Adjustment at a Russian Enterprise. *Europe-Asia Studies* 50 (1):91–119.
- . 2002. Suing the State in Russia. *Post-Soviet Affairs* 18 (2):122–47.
- . 2004. Business Litigation in the Transition: A Portrait of Debt Collection in Russia. *Law & Society Review* 31 (1):305–47.
- . 2009. “Telephone Law” and the “Rule of Law:” The Russian Case. *Hague Journal on the Rule of Law* 1 (2):241–64.
- . 2011. Varieties of Legal Dualism: Making Sense of the Role of Law in Contemporary Russia. *Wisconsin International Law Journal* 29 (2):233–59.
- . 2012a. The Puzzling Non-Consequences of Societal Distrust of Courts: Explaining the Use of Russian Courts. *Cornell International Law Journal* 56 (3):517–67.
- . 2012b. Who Are the Legal Nihilists in Russia? *Post-Soviet Affairs* 28 (3):1–37.
- Hendley, Kathryn, Peter Murrell, and Randi Ryterman. 1999. Do Repeat Players Behave Differently in Russia? Contractual and Litigation Behavior of Russian Enterprises. *Law & Society Review* 33 (4):833–67.
- . 2000. Law, Relationships, and Private Enforcement: Transactional Strategies of Russian Enterprises. *Europe-Asia Studies* 52 (4):627–56.
- Huskey, Eugene. 1991. A Framework for the Analysis of Soviet Law. *Russian Review* 50 (1):53–70.
- Iakovleva, Iana V. 2008. *Neelektronnye pis'ma*. Moscow: Praxis. <http://kapitalisty.ru/files/pisma.pdf> (accessed July 24, 2013).
- Jayasuriya, Kanishka. 2001. The Exception Becomes the Norm: Law and Regimes of Exception in East Asia. *Asian-Pacific Law & Policy Journal* 2 (1):108–24.
- Johnson, Simon, John McMillan, and Christopher Woodruff. 2002. Courts and Relational Contracts. *Journal of Law, Economics, & Organization* 18 (1):221–77.
- Kaminskaya, Dina. 1982. *Final Judgment: My Life as a Soviet Defense Attorney*, trans. Michael Glenny. New York: Simon and Schuster.
- Kistiyakovsky, Bogdan. 1977. In the Defense of Law: The Intelligentsia and Legal Consciousness. In *Landmarks: A Collection of Essays on the Russian Intelligentsia*, ed. Boris Shragin and Albert Todd, trans. Marian Schwartz. New York: Karz Howard.
- Koestler, Arthur. 1941. *Darkness at Noon*. New York: Macmillan.
- Kotsonis, Yanni. 1999. *Making Peasants Backward: Agricultural Cooperatives and the Agrarian Question in Russia, 1861–1914*. New York: St. Martin's.
- Kritzer, Herbert M., and John Voelker. 1998. Familiarity Breeds Respect: How Wisconsin Citizens View Their Courts. *Judicature* 82 (2):58–64.
- Kriuchkov, Sergei. 2010. *Otnoshenie grazhdan k mirovym sudam*. Moscow: Amerikanskaia assotsiatsiia iuristov.
- Kudriavtsev, V. N., and E. A. Lukasheva. 1988. Sotsialisticheskoe pravovoe gosudarstvo. *Kommunist* 11:44–55.
- Kurkchiyan, Marina. 2003. The Illegitimacy of Law in Post-Soviet Societies. In *Law and Informal Practices: The Post-Communist Experience*, ed. Denis J. Galligan and Marina Kurkchiyan. Oxford: Oxford University Press.
- Labeledz, Leopold, and Max Hayward. 1967. *On Trial: The Case of Sinyavsky (Tertz) and Daniel (Arzhak)*, trans. Manya Harai, Max Hayward, and Marjorie Villiers. London: Collins.
- LaPierre, Brian. 2012. *Hooligans in Khrushchev's Russia: Defining, Policing and Producing Deviance During the Thaw*. Madison, WI: University of Wisconsin Press.
- Latynina, Iuliia. 2012. My – nachali vspakhivat' asfal't. Eto nekrasivo i dovol'no-taki tiazhelo. No ia vperve pa mnogo let mogu skazat': ia gorzhus' Rossiei. Rossiia budet svobodnoi. *Novaia gazeta* March 10. <http://www.novayagazeta.ru/columns/51556.html> (accessed June 13, 2013).
- Ledeneva, Alena V. 2013. *Can Russia Modernize? Sistema, Power Networks and Informal Governance*. Cambridge: Cambridge University Press.
- Litvinov, Pavel M. 1972. *The Trial of the Four: A Collection of Materials on the Case of Galanskov, Ginzburg, Dobrovolsky & Lashkova 1967–68*, trans. Janis Sapiets, Hilary Sternberg, and Daniel Weissbort. London: Longman.

- McDonald, Tracy. 2011. *Face to the Village: The Riazan Countryside under Soviet Rule, 1921–1930*. Toronto: University of Toronto Press.
- Meierhenrich, Jens. 2008. *The Legacies of Law: Long-Run Consequences of Legal Development in South Africa, 1652–2000*. Cambridge: Cambridge University Press.
- Mendras, Maria. 2012. *Russian Politics: The Paradox of a Weak State*. London: Hurst & Company.
- Merry, Sally Engle. 1990. *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans*. Chicago, IL: University of Chicago Press.
- Nonet, Philippe, and Philip Selznick. 2001. *Law and Society in Transition: Toward Responsive Law* 2nd ed. New Brunswick, NJ: Transaction Publishers.
- Paneyakh, Ella. 2014. Faking Performance Together: Systems of Performance Evaluation in Russian Enforcement Agencies and Production of Bias and Privilege, *Post-Soviet Affairs* 30 (2–3):115–36.
- Politkovskaya, Anna. 2004. *Putin's Russia*, trans. Arch Tait. London: Harvill Press.
- Polnyi tekst vystypleniia Dmitriia Medvedeva na II Grazhdanskom forume v Moskve 22 ianvaria 2008 goda. *Rossiiskaia gazeta* January 24. <http://rg.ru/printable/2008/01/24/tekst.html> (accessed April 14, 2014).
- Pomorski, Stanislaw. 1978. Crimes Against the Central Planner: “Ochkovtiratel'stvo.” In *Soviet Law After Stalin: Part II Social Engineering Through Law*, ed. Donald D. Barry, George Ginsburgs, and Peter B. Maggs. Alphen aan den Rijn: Sijhoff & Noordhoff.
- Popkins, Gareth. 2000. Code Versus Custom? Norms and Tactics in Peasant Volost Court Appeals, 1889–1917. *Russian Review* 59 (3):408–24.
- Popova, Maria. 2012. *Politicized Justice in Emerging Democracies: A Study of Courts in Russia and Ukraine*. Cambridge: Cambridge University Press.
- Rendle, Matthew. 2011. Revolutionary Tribunals and the Origins of Terror in Early Soviet Russia. *Historical Research* 84 (226):693–721.
- Rimskii, V. L. 2007. Obzor sotsiologicheskikh issledovaniï sudebnoi sistemy SSSR, vypolnennykh v period s serediny 60-kh godov XX veka do kontsa 1991 goda. <http://www.indem.ru/Proj/SudRef/soc/Rim6091.htm> (accessed April 14, 2014).
- Rochlitz, Michael. 2014. Corporate Raiding and the Role of the State in Russia. *Post-Soviet Affairs* 30 (2–3):89–114.
- Romanova, Ol'ga. 2010. *Butyrka*. Moscow: Izdatel'stvo Astrel'.
- Sakwa, Richard. 2014. *Putin and the Oligarchs: The Khodorkovsky-Yukos Affair*. New York: I.B. Tauris.
- Satter, David. 2003. *Darkness at Dawn: The Rise of the Russian Criminal State*. New Haven, CT: Yale University Press.
- Sharlet, Robert. 1977. Stalinism and Soviet Legal Culture. In *Stalinism: Essays in Historical Interpretation*, ed. Robert C. Tucker. New York: W.W. Norton.
- Shelley, Louise. 1984. The Communist Party and the Administration of Justice. In *Ruling Communist Parties and Their Status Under Law*, ed. D. A. Loeber. The Hague: M. Nijhoff.
- Smith, Gordon B. 1996. *Reforming the Russian Legal System*. Cambridge: Cambridge University Press.
- Smith, Martin Cruz. 2013. *Tatiana: An Arkady Renko Novel*. New York: Simon & Schuster, 2013.
- Solomon, Peter H., Jr. 1987. The Case of the Vanishing Acquittal: Informal Norms and the Practice of Soviet Criminal Justice. *Soviet Studies* 39 (4):531–55.
- 1996. *Soviet Criminal Justice Under Stalin*. Cambridge: Cambridge University Press.
- 2013. Beyond Acquittals: Achieving Fairness Through Prosecutorial Discretion, Diversion, and Dismissal. Paper presented at the conference, “Obvinenie i obravdanie v postsovetskoi kriminalnoi institutsii,” European University, St. Petersburg.
- 2015a. Understanding the History of Soviet Criminal Justice: The Contribution of Archives and Other Sources. *Russian Review* 74 (3):401–18.
- 2015b. Understanding Russia's Low Rate of Acquittal: Pretrial Screening and the Problem of Accusatorial Bias. *Review of Central and East European Law* 40 (1):1–30.
- Solomon, Peter H., Jr., and Todd S. Foglesong. 2000. *Courts and Transition in Russia: The Challenge of Judicial Reform*. Boulder, CO: Westview Press.

- Solzhenitsyn, Aleksandr I. 1963. *One Day in the Life of Ivan Denisovich*, trans. Ralph Parker. New York: Dutton & Co.
- Solzhenitsyn, Aleksandr I. 1974–1978. *The Gulag Archipelago, 1918–1956*, trans. Thomas P. Whitney. New York: Harper & Row.
- Sperlich, Peter. 2007. *The East German Social Courts: Law and Popular Justice in a Marxist-Leninist Society*. Westport, CT: Praeger.
- Treisman, Daniel. 2011. *The Return: Russia's Journey from Gorbachev to Medvedev*. New York: Free Press.
- Trochev, Alexei. 2012. Suing Russia at Home. *Problems of Post-Communism* 59 (5):18–34.
- Tumanov, V.A. 1989. O pravovom nihilizme, *Sovetskoe gosudarstvo i pravo* 10:20–27.
- Varese, Federico. 2001. *The Russian Mafia: Private Protection in a New Market Economy*. Oxford: Oxford University Press.
- Volkov, Vadim. 2002. *Violent Entrepreneurs: The Use of Force in the Making of Russian Capitalism*. Ithaca, NY: Cornell University Press.
- Voronkov, V. M., and L. V. Ezhova. 2010. *Provedenie monitoringa sudebnykh zasedanii mirovykh sudei i oprosov uchstnikov sudebnykh protsessov: metodologiya, instrumentarii, protsedury realizatsii i kontrolya*. Moscow: OOO Imformpoligraf.
- Wagner, William G. 1997. Civil Law, Individual Rights, and Judicial Activism in Late Imperial Russia. In *Reforming Justice in Russia, 1864–1996: Power, Culture, and the Limits of Legal Order*, ed. Peter H. Solomon, Jr. Armonk, NY: M.E. Sharpe.
- Wortman, Richard S. 1976. *The Development of a Russian Legal Consciousness*. Chicago, IL: University of Chicago Press.