

VARIETIES OF LEGAL ORDER

The Politics of Adversarial and
Bureaucratic Legalism

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COPING WITH AUTO ACCIDENTS IN RUSSIA

Kathryn Hendley

Automobile accidents offer an intriguing arena for studying adversarial legalism in action. The costs of accidents in most polities are usually at least partly socialized through health insurance and disability policies, but in many nations compensation for injuries arising from car crashes also comes from claims made against motorists and their insurers—and those claims often result in disputes that can end up being litigated.

Adversarial legalism decentralizes the enforcement of law, putting it in the hands of everyday citizens. The literature on disputing, though, makes a compelling case that both institutional structures and social attitudes profoundly shape the extent to which citizens mobilize the law. U.S.-based studies have documented the power of insurance companies and their willingness to use their customers' fears of litigating to fashion settlements that favor them (Ross, 1980). Analogous concerns in Japan have contributed to the popularity of mediated settlements (Tanase, 1990).

This chapter focuses on Russia, a setting in which adversarial legalism has not been extensively studied. The many differences in the institutional landscape and history between Russia and most other western countries make it an intriguing case study. The relatively low transaction costs associated with going to court in Russia has made litigating an increasingly popular option, yet my study demonstrates that a host of institutional and attitudinal factors discourage everyday Russians from mobilizing the law.

For much of the 20th century, Russians were spared the tragedies associated with auto accidents because few people had cars. The preference for guns over butter was a defining feature of the Soviet Union. The shortage of cars and other consumer goods was an inevitable consequence. With the collapse of state socialism and the introduction of market mechanisms, cars have become almost as

ubiquitous in Russia as elsewhere. The number of accidents has exploded. Indeed, Russia has emerged as a world leader in fatal accidents. On a per capita basis, Russia has almost five times more fatalities than Japan, about three times more than Germany, and about 60 percent more than the U.S. (Belova, 2010).

Like their unfortunate counterparts elsewhere, Russians who have been involved in auto accidents have a range of choices about how to respond. This chapter explores the factors that shape their decisions. I begin with a brief overview of the formal mechanisms available to Russians, laying out their pluses and minuses. I then turn to an analysis of actual behavior, which is grounded in 29 focus groups and 79 follow-up interviews I conducted in five Russian cities (Kushchevskaya, Moscow, Tomsk, Saratov, and Shumerlia) during the summers of 2007 and 2008. These conversations yielded 70 stories about various types of traffic accidents.

In analyzing the experiences of the focus group participants, I make use of the conceptual framework of the “disputing pyramid” laid out by Felstiner, Abel, and Sarat (1980–81). It provides a language and structure for making sense of the process by which people engage (or decline to engage) in adversarial legalism. The first hurdle is “naming,” a process of determining whether to recognize an experience as injurious.¹ The second hurdle is “blaming,” a process of deciding whether there is a third party who is responsible. The final hurdle is “claiming,” a process of deciding whether to seek a remedy from whoever is to blame. This final stage of claiming can be broken into a variety of types of claims. Injured parties may seek out recompense informally in lieu of, or as a prelude to, litigation. The distinctive aspect of adversarial legalism is that the law is only enforced if individuals reach the claiming stage, and only results in formal legal action if the individual is unsatisfied with the outcome of making a claim.

The pyramid is a useful image. The main finding of this body of research is that most disagreements fall away at the base. The value of the model lies in its focus on the reasons why disagreements do or do not grow into full-fledged disputes. While not losing sight of the role played by the nature of the disagreement and the relationship between the parties, Felstiner et al. identify a number of factors that act as transformational agents by facilitating or discouraging the transition of disputes from one stage to another. Key among these is the worldview of the injured parties which, in turn, is influenced by their religion, class, prior experiences with the legal system, and the underlying legal culture. From an institutional perspective, lawyers, who act as gatekeepers, emerge as especially important at the final stage of claiming.

The model of the disputing pyramid was developed with the U.S. in mind, and sociolegal scholarship on the U.S. has used it to good effect (e.g., Calavita & Jenness, 2013; Albiston, 2005; Engel & Munger, 2003; Merry, 1990). The basic logic, however, transcends the U.S. experience. The model has been used to elucidate disputing behavior in Canada (Kritzer et al., 1991), China (Michelson, 2007), and Thailand (Engel, 2005). I have previously employed it in the Russian

context to explore disputing behavior regarding overdue payments between industrial enterprises during the 1990s (Hendley, 2001), and the decision-making process of homeowners who were left dissatisfied by home repair projects (Hendley, 2010). Though the basic pyramidal structure of disputing is universal, the motivations for moving forward or abandoning a dispute are deeply contextual. Variation in the structure of legal institutions and in legal culture leads to differences in individuals' willingness to mobilize the law.

The Process of Auto Accident Claiming in Russia

Russian law requires those involved in an auto accident to report it to the traffic police. In contrast to Japan, where such officials have earned a high level of societal respect, the Russian traffic police are uniformly seen as deeply corrupt.² Russian websites publish city-specific price lists of the amounts that need to be paid based on the alleged offense (*Heofitsial'nye*, n.d.).³ In an effort to curtail bribes, the rules about traffic tickets have been revised. Violators no longer pay the traffic police directly, but are now given a ticket and asked to pay via bank transfer. This reform has done little to curb abuses. Alleged violators are typically offered two prices. If they hand over cash to the officer, then the amount is reduced. But there is no documentary record of the transaction and, not surprisingly, this money goes directly into the officer's pocket.⁴ Those who want to abide by the law can insist on getting a ticket and paying it at their bank. Few bother. Not only do they see little value in upholding laws that the police themselves are openly flouting, but doing so requires them to stand in line at their bank (Zernova, 2012, p. 481).

If those involved in an accident wait for the traffic police, then the traffic police will produce a report that details what happened and who was at fault. This report becomes the centerpiece of any formal process, whether the venue is an insurance company or a court. If a driver disagrees with the assessment of the traffic police, he or she has the right to challenge it in court.

But before contemplating litigation, most Russians seek compensation for their losses through their insurance policies. Much like the abundant supply of cars, private insurance companies are a post-Soviet phenomenon. Indeed, Soviet officials were openly hostile to the very idea of liability insurance. They argued that "it would be entirely destructive of the moral functions of civil liability and that a man who insured beforehand his carelessness was either half-intending it or, at least, not trying strenuously to avoid it" (Tay, 1969, p. 15). The elaborate social safety net left the Soviet state as the primary insurer.⁵ With the legalization of private property as part of the transition to the market, however, the role of the state has changed. It continues to provide basic medical insurance, but private insurance companies have stepped in to protect property interests. As to motorists, insurance became mandatory in 2003 (*Ob obiazatel'nom*, 2002). Drivers are required to have a minimal policy for collisions, for which the rates are set by the state, but are free to buy supplemental insurance. Russians' concern about the high

incidence of traffic accidents led them to be generally supportive of the move to mandatory insurance.⁶

In their relatively short lives, Russian insurance companies have already managed to follow in the footsteps of their western counterparts by earning the disdain of their clients. Most Russians find insurance companies unresponsive at best, manipulative at worst. Initially, victims of traffic accidents had to seek compensation from the insurance company of the driver at fault, which had little interest in whether these victims were satisfied with their services. In 2009, the rules were changed to allow those involved in accidents to work directly with their own insurance companies.⁷ Tales of foot-dragging by insurance companies persist in the Russian press and on web forums, on which people share their experiences and offer advice. More troubling are claims of systematic efforts to minimize claims by co-opting supposedly independent appraisers. When policy holders were asked in 2012 by the National Agency for Financial Research why they had switched insurance companies, concerns with service were a close second behind increases in premiums.⁸

Those who are dissatisfied with the amount recovered from their insurance companies can appeal to the courts. Such cases take several forms. Individuals can sue their insurance companies for violating their policies. Individuals can also take the other driver(s) to court to pursue either civil or criminal remedies. Not infrequently, insurance companies sue each other to recover the amounts they have paid out to their clients.

The persistence of high-profile politicized cases in which the outcome is dictated by the Kremlin rather than the law (e.g., Mikhail Khodorkovsky, Pussy Riot) has compromised the overall independence of the Russian courts. Yet use of the courts has increased markedly in the post-Soviet era. As I have argued elsewhere, Russians are able to distinguish disputes in which litigation is likely to be productive from those in which it is counterproductive (Hendley, 2011). They know that it's pointless to involve the courts in disputes that attract the attention of political leaders, or that concern economic elites. But Russian courts scrupulously follow the law in mundane cases (Hendley, 2017). Claims arising from injuries sustained in auto accidents fall into this category, and the number of cases related to traffic accidents has increased.⁹ (See Table 5.1, p. 118.)

This has been facilitated in part by major changes in legal doctrine in the post-Soviet years. Within the Soviet legal system, tort law was a mostly unwanted stepchild. In the heady years following the October Revolution, Communist Party officials saw tort law as a vestige of the past (Hazard, 1952). They believed that comprehensive social insurance would obviate the need for private causes of action.¹⁰ By 1922, cooler heads prevailed, and a chapter on tort law was included in the civil code (chapter 13, 1922 GK). It was drawn from a never-enacted czarist draft that, in turn, had been based on German law. The 1964 civil code made few changes in the area of tort law. Compensatory damages were available when a petitioner could demonstrate harm caused by another. Punitive damages were not

allowed; they were seen as a “bourgeois legal institution” that amounted to unjust enrichment (Barry, 1996, p. 183). Driving a car was a fairly unusual activity, and it was deemed to be an inherently dangerous activity that triggered strict liability (article 454, GK 1964). Liability attached to the driver of the car rather than the owner, which was a clever way for the state to avoid liability, given that most cars were the property of Soviet state-owned enterprises (Barry, 1967, p. 76). But tort claims of any stripe were not numerous (Barry, 1979, p. 237).

The elimination of strict liability for auto accidents in the post-Soviet civil code (article 1079, GK RF part 2) opened the door to liability insurance.¹¹ Insurance companies are only obligated to pay damages in cases of fault. As a result, formal admissions of fault have profound legal consequences. Where neither or both sides acknowledge responsibility, insurance companies often refuse to pay (Arakcheev, 2008). Thus situations where the traffic police are unwilling or unable to determine fault are particularly vexing.

The Soviet-era ban on punitive damages has also disappeared. Though the chapter on torts is silent on this issue, the general provisions of the post-Soviet civil code are amenable to so-called moral damages (article 151, GK RF). Judges have considerable discretion in setting the amount. They are directed to take into account the nature of the plaintiff’s suffering and the nature of the defendant’s actions. The amounts available are trivial compared to the huge sums awarded by U.S. juries in egregious torts claims.¹²

Responses to Involvement in Auto Accidents

Traffic accidents are, by definition, jarring. It is not surprising that all of the focus group participants who reported accidents recognized the experience as injurious. They have “named” the injury. This stands to reason, given that being in an auto accident is by its very nature upsetting at best and life-threatening at near worst. It is at the next steps of the disputing pyramid that the focus group participants took different paths.

Doing Nothing or “Lumping It”

In 27 of the 70 accidents reported, the victims made no effort to seek a remedy. Doing nothing is a common, but under-studied, response to problems. Even in the U.S., with a populace that prides itself on defending its rights, Sandefur (2007, pp. 123–125) found that many opt for inaction when faced with problems that could be solved by mobilizing the law. She identifies three general reasons for opting out: (1) feelings of shame and embarrassment; (2) an unfavorable balance of power in the parties’ relationships; and (3) frustrated resignation. These motivations turn out to be useful categories when analyzing the behavior of my Russian focus group participants.

One subset was stymied because they believed they were partially to blame for the accident, giving rise to a sense of embarrassment about the incident. As

a result, they did not feel entitled to blame the driver. The basic fact pattern was the same for all these cases. The victims were hit while crossing the road in an unofficial crosswalk, sustaining serious injuries. A Saratov woman told of an elderly relative with failing eyesight who was killed after being struck by a car in St. Petersburg. Miroslava; a 40-year-old seamstress from Shumerlia, who had been struck when she was in the third grade, still walked with a limp. Neither the focus group members nor the victim-participants themselves felt much empathy. The fact that the victims were mostly children and the elderly, who are universally seen as among the most vulnerable in any society, made their lack of compassion striking. For the most part, the victim-participants took responsibility for their fates.

Intertwined with the shame felt by these victims at their stupidity was a belief that their negligence eliminated any chance of recovery. As a result, they did not allow themselves to ponder who to blame or how to claim. The other members of the focus groups shared this understanding of the law. The most extreme example was provided by Regina, a 55-year old cleaning woman from Shumerlia. Some years ago, her eight-year-old daughter had been hit while crossing the road by two soldiers driving a Moskvich.¹³ The soldiers brought her home. They offered to take her to the hospital and to provide monetary compensation for the young girl's injuries. Regina declined, explaining that her daughter had probably not been paying sufficient attention. She understood that the soldiers felt bad, but did not believe they were responsible. As Regina told her story, others around the table nodded in agreement.

In reality, however, the situation was not as straightforward as the focus group participants believed. Russian law embraces comparative negligence (article 1083, GK RF part 2). In theory, this means that even if the pedestrian is found to be partly at fault, the driver might still be liable for some proportion of the pedestrian's injuries. In fact, courts are generally unforgiving when dealing with drivers who hit pedestrians. In such situations, the law reverts back to the Soviet rule for strict liability. Though several of the focus groups included people with legal education, no one spoke up to correct this misimpression. None of them had bothered to consult the law on this question. Yet their confidence in the unavailability of a legal remedy was complete, illustrating that sometimes what people believe the law to be can take on a life of its own (Hendley, 2010; Ellickson, 1991).

Others opted to do nothing, as Sandefur suggests, because their accidents had been with people more powerful and well connected. These participants engaged in blaming, but saw the power differential as blocking any potential for claiming. For example, David, a 25-year-old security guard from Kushchevskaja, was involved in a hit-and-run accident that sent him to the hospital. At the time, he was a soldier doing his mandatory service. Initially he hoped to get the other driver to cover the cost of his medicine. When it turned out that the culprit was the former police chief of a nearby town, the traffic police advised him to drop it. As he told the story, there was an implicit threat that the repercussions of pursuing

a claim would be worse for him than for the driver at fault. He took the hint, saying that this sort of outcome was typical for Russia.

A power differential between drivers with no official government connections can play out in the same way. In the wake of the transition to the market, private firms and their leaders have gained great clout (Kryshtanovskaya & White, 2005). Several focus group members shared their difficulties in this regard. Vladimir, a 51-year-old Moscow mechanic, sustained a concussion and was on bed rest for over a month after a 3 A.M. collision with a ZIL 130 truck that belonged to the powerful Mikoyan machine-building factory.¹⁴ The driver admitted to speeding at the time of the accident. Unlike the pedestrian-victims who felt their negligence barred them from seeking a remedy, Vladimir's failure to take action was due to his belief that fighting the factory was "useless." The behavior of the traffic police at the scene only confirmed his sense of the political reality. Their report favored the truck driver. When the other focus group participants said that the driver from the Mikoyan factory had probably paid off the police, Vladimir did not disagree. Indeed, no one in the group faulted Vladimir for not pursuing the case. Several shared their own feelings of impotency. Ida, a 40-year-old Muscovite who worked as a chief accountant for a private firm, spoke for many when she said that Russians "have nowhere to go that guarantees a positive result." A few held out hope that the introduction of mandatory insurance would cure the sorts of difficulties faced by Vladimir, whose accident occurred before the law requiring all drivers to be insured had been passed.

Most accidents involve at least two drivers, and so a decision to do nothing does not necessarily act as a shield if the other driver decides to pursue the matter. When Elvira, a 44-year-old state bureaucrat, was hit while parked on a Saratov street, she resolved to do nothing when she learned that the other driver was the general director of a local furniture factory. She was convinced that he would be able to outgun her in court. To her surprise, the driver claimed that he was the victim and demanded 15,000 rubles, arguing that she opened her door with no warning. Finding this claim absurd, she ignored it, and found herself a defendant in a court case. Much like Vladimir, she saw the bias of the traffic police as fueling the claim. Though all the witnesses said the other driver was at fault, the police report stated that it was mutual fault. This opened the door for the lawsuit. We will return to this incident when discussing how courts deal with claims related to auto accidents. The point here is that doing nothing requires mutual assent.

Many of those who talked themselves out of pursuing a claim feared the possible backlash from more powerful counterparts. Though resignation can sometimes mask deeper anger, this was not the sense conveyed. Neither those directly affected nor others in the focus groups lashed out against the injustice of the system. Rather, there was a collective shrug and a rhetorical "What can be done?"

"Frustrated resignation," Sandefur's phrase, arose from several sources. Some felt that the damage to their car or to themselves wasn't serious enough to warrant further action. In other words, the costs, typically measured in terms of wear

and tear on their psyche, outweighed the potential benefits. Others were reluctant to go to war with adversaries that had greater resources, such as municipal authorities or insurance companies.¹⁵ Even when they felt they had been swindled by their insurance companies, few relished the prospect of suing them. The most common refrain was that to do so would be "useless." Some felt stymied due to the boilerplate language buried in their insurance policies. Anatolii, a 51-year-old midlevel manager from Tomsk, told of the aftermath of an accident involving a minivan owned by his wife. The van was used in her business; it was intended to be driven primarily by her employees, one of whom was driving it at the time of the accident. The traffic police found her employee to be at fault. Anatolii and his wife did not dispute this finding. Initially they thought the damage to the van would be covered by insurance. His wife had purchased comprehensive insurance with an eye to just this sort of situation, but learned to her chagrin that her policy did not include other drivers. When they purchased the insurance, no one pointed this out to them. Anatolii attributed this to the negligence of the insurance agent, but admitted that neither he nor his wife had read the policy carefully. This being the case, they felt they had no recourse. The other members of the group commiserated. Some had gone through similar experiences. All agreed that they routinely signed contracts without reading them.¹⁶ The bottom line was that the insurance company had no obligation to compensate them. Anatolii and his wife were left holding the bag. He was resigned to his fate, saying, "Such is life."

Negotiation With the Other Driver

A common response to accidents in Russia is to talk to the other driver in hopes of working out an informal accommodation. It proved popular among the focus group participants, half of whom took this route. Because the parties were almost always strangers, establishing trust was difficult. What all those who sought to negotiate a settlement shared—regardless of whether their efforts were successful or not—was a firm belief about who was to blame, a desire for a remedy, and the willingness to approach a stranger to claim it. Put in terms of the Felstiner et al. typology, they were "claiming" (1980—81). The remedies were not always monetary. Sometimes victims simply wanted an apology or an acknowledgment from the other driver of having been at fault. When money was at issue, the amounts were not exorbitant.

Negotiations suggest a willingness to forgo punishment. In theory, settlement did not preclude criminal charges. But the stories elicited from the focus group participants suggest that the purpose of releases—whether written or oral—was to settle all claims. This, of course, raises an ethical dilemma as to whether a driver should be able to escape criminal liability. When the injuries are minor, moral compunctions tend to be ignored. But when they are life-threatening, some are troubled by allowing the driver to sidestep criminal responsibility.

The discussion in one of the Saratov focus groups is instructive. Filipp, a 22-year-old salesman, told of a recent incident in which several of his friends were badly injured. In the revelry following their university graduation, several of his friends got into a car driven by a young man whom they did not know. All of them were drunk. The driver wrapped his car around a telephone pole. He was not injured, but his passengers were. One young woman was in a coma for eight days. The other had a fractured hip and a variety of internal injuries. According to Filipp, the driver approached the families of the victims with a generous settlement offer. Representatives from the prosecutor's office encouraged settlement, hinting that their drunkenness could complicate any prosecution. Some focus group participants were pragmatic about this story. They said that, were they in the unfortunate shoes of the families, they would take the money, noting that it could be helpful in paying for treatment. More generally, they argued that pursuing criminal sanctions should take a backseat to restoring those injured to full health; they would prefer to spend their time and energy focused on their own recovery or advocating for loved ones rather than badgering the police to go after the other driver. Filipp reported that the parents of these young women were preoccupied with their medical care. On the other hand, despite criticizing his friends for getting into the car, Filipp was unforgiving when it came to the driver: "It seems to me that he's done something horrible—he's endangered the lives of others. One girl may be an invalid for her entire life, if she survives. He's a grown-up and needs to answer for his behavior."

As in the U.S., many of those involved in auto accidents prefer to avoid involving their insurance companies. Unlike in the U.S., however, the rationale is not connected to fears over increased premiums. Most Russians have only the basic policy for which the rates are set by the state, so Russians try to settle on the spot to avoid having to go through the bureaucracy of their insurance companies.

Gennadii, who works as a department head in an industrial enterprise, was traveling in a Volga with several colleagues, one of whom was driving. When they tried to overtake a Moskvich at high speed, the driver lost control and smashed into the other car. The Volga landed in a ditch. According to Gennadii, no one involved had any interest in going the official route due to the inevitable paperwork involved. Neither side called the traffic police, though they showed up, as did a local television news crew. In order to put a stop to any potential claims, one of Gennadii's colleagues simply bought the damaged Moskvich from the other driver. No receipts were exchanged. It was an oral agreement, but everyone left satisfied. The other driver was badly hurt; the payment for his car was presumably intended to cover any incidental medical expenses as well. Gennadii implies that the traffic police and the camera crew were paid to hush up the accident. The other members of this Tomsk focus group were entirely supportive of his handling of the incident.

In situations where physical injuries were profound, the assistance provided by the driver at fault sometimes took a more practical form. Fatima, a 25-year-old

student who worked at a charitable organization, saw her life turned upside down when she accidentally hit a teenager crossing a busy street in Moscow. Fatima was stuck in traffic. Next to her was a large truck. As she was inching along in a crosswalk, she failed to see the teen darting through the maze of traffic. The girl sustained a compound fracture of her leg. During the months she spent in the hospital, Fatima was a constant presence, bringing food to sustain her and her mother (who was single with another child to support as well). She also provided over \$3,000 to ensure that the girl received first-rate treatment and to cover her tuition for higher education, money that she raised by selling her car. At first, the family refused to talk to Fatima. As she put it, "The mother wanted to strangle me." After four months of apologies and material support, she wore the mother down, but the teenager never wavered. During the frosty period, the family filed a civil suit against Fatima and supported the police in pursuing criminal charges. By the time these lawsuits were set for trial, relations had thawed and the family withdrew its civil claim and asked the court for lenience in the criminal case.

Viktorina, a 44-year-old Tomsk teacher, was hit while crossing a crowded street in 2001. The driver was immediately surrounded by witnesses. Much like Fatima, he said that he never saw her. She was not as badly hurt as the Moscow teen, but did sustain a concussion and later needed surgery to repair her leg. During the three months of her recovery, the driver was vigilant. When she was unable to walk, he carried her in his arms to his car and took her to her treatments. He paid for her treatment. In her words, "He did everything to ensure my recovery and to make amends." After three months, when she was literally back on her feet, he offered her a final payment of 10,000 rubles and asked her to sign a release of liability. She went along. By that time, they had developed what she described as a "human relationship" (*chelovecheskoe otnoshenie*). She had no desire to ruin his life by going to the traffic police and bringing a criminal case that, at a minimum, would cause him to lose his license (which he needed for his job) for a sustained period.

In the discussion of cases like Viktorina's, the focus groups were openly suspicious of the motives of the do-gooders. The groups doubted their sincerity and believed that their help was cynically motivated to ensure that the victims forgo legal action against them. The analysis of failed efforts at negotiation shows that Russia has its share of unscrupulous con men who promise the world only to disappear into thin air. Fatima provides some insight into how this happens. After her accident, she sought out a lawyer to help her sort through her options. He offered to help her create an alibi to avoid liability that would stand up in court. He counseled her against going to see the teenage victim in the hospital and assured her that the girl would be helped with a generous "gift" in due course. The combination of the accident and her encounter with this lawyer gave rise to a "road to Damascus" conversion for Fatima. Raised as a secular Muslim, she converted to Christianity and thereafter devoted her life to charitable work. She fired the lawyer and resolved to do right by the girl.¹⁷ She explicitly linked her choices to

her faith, saying that Christians do not bribe their way out of problems: "If a person has forgotten about God, he lives however he wants. If a person is a believer, then he does not budge; he is like stone. Of course, there can be exceptions. But I know of many people who will not betray their beliefs for any amount of money." She had the moral fiber to stand up to temptation, but not everyone does.

A number of participants in the focus groups told of unfulfilled promises. Most common were promises of money that never materialized. When this happened in the wake of a fender-bender, the victim learned a lesson about human nature but was not unduly harmed. More problematic are accidents that give rise to serious physical injuries, where the broken promises undermine the ability of victims to secure first-rate medical treatment. What happened to Anton, a 31-year-old geologist from Saratov, is a tragic example. Several years before, when he was a college student, he was waiting at a railroad crossing when a car came barreling out of a nearby gas station and hit him. He lost consciousness. When he awoke, he was in the hospital with a shattered pelvis. The mother of the other driver, who was also a student, came to see him. She explained that her son had no money, but promised that her family would take care of everything for Anton if he signed a release. Once he signed, the mother and her son disappeared. Anton's initial treatment was botched. He was in and out of hospitals and on crutches for the next three years. In reflecting on what happened, Anton acknowledges that he probably could have pursued the other driver in court, but says that it would have been unlikely to produce a windfall, given that he was a student. His main concern at the time was not punishing the other driver or his mother, but getting better. Though an agnostic, he does not attribute his behavior to his religious beliefs, like Fatima, he is satisfied that he behaved fairly.

Sometimes it is the victims themselves who are the scam artists. The Russian media is replete with stories of people who make a good living by jumping in front of cars and pretending to be more seriously injured than they are. Examples of ham-handed practitioners of this art can be found on the internet. One goal of introducing mandatory insurance was to discourage this practice. Whether it has succeeded is difficult to know. The desire of many to avoid interacting with their insurance companies leaves them vulnerable. Liubov, a 56-year-old Muscovite who works as the chief accountant at a small factory, was with her husband when they hit an elderly man with their new car. He had been in his own car, but jumped out. He injured his head; blood was everywhere. Liubov and her husband felt bad. When the old man and his daughter called to ask for money and help, they initially gave them money. Her husband also brought food to the man. But as the demands became more frequent and the amounts increased, they grew suspicious. They began to tape his calls. When he asked for \$10,000, they played the tape for the police. The investigation was terminated and the requests stopped. No doubt many people lack the common sense and courage exhibited by Liubov and her husband, and so are held hostage to the demands of pseudo-victims. It is likely not coincidental that they were driving a new car when this happened. These con

artists target those whom they perceive as rich, assuming they have greater access to money and a strong desire to avoid the criminal courts.

Bribery can color the options available to the parties. When Ida's daughter was hit on New Year's Day in 2006, she sustained an open fracture of her right hip and leg. Ida spoke candidly of how the doctors and nurses told her that they would provide aggressive treatment only if she paid them under the table. Not only did she have to navigate a corrupt medical system, she also felt the consequences of corruption in her treatment by the legal system. Her daughter had been in a *zebra*, a designated crosswalk when she was hit. The driver, who was from Azerbaijan, was speeding and made little effort to brake for her. When Ida met him, his wife offered to pay her \$1000 to hush up the incident. It was Ida's understanding that the driver himself did not speak Russian. She refused the money, not because she was squeamish about accepting a payoff, but because she was not yet sure how much her daughter's treatment would cost. In quick order, the Azerbaijani couple vanished along with their offer. The indifferent attitude of the traffic police left Ida convinced that the money had gone to them. Some months later, she coincidentally got a job working for a procurator. He insisted that she hire a lawyer to pursue the case. Proving what happened has not been easy. At the time of the focus group, she was discouraged, saying that she had probably wasted her money on the lawyer. As this suggests, not all failed negotiations end with the victim doing nothing, like Anton. Sometimes such failures are merely a way station on the path to litigation.

Settlement With Insurers

For some auto accident victims an insurance payment resolved their claim. The incidents recounted during the focus groups spanned the time period before and after the imposition of compulsory insurance. There is no question that few Russians bothered to obtain insurance before they were required to do so. Indeed, a majority of Russian drivers continue to flout the law ("Strakhovanie postepenno vozvrashchaetsia," 2012). But for those who did have insurance, most were able to get paid. Not all came away satisfied by the experience, but only one of the focus group participants was sufficiently disgruntled to pursue her claim to the courts.

Not surprisingly, those who had purchased comprehensive insurance (rather than the minimal compulsory policy), were more likely to be content.¹⁸ Yet even this group complained about the endless red tape. Vladislava grumbled about being forced to do the legwork for the insurance company, and was insulted when her agent left her with the impression that she was somehow to blame for the damage to her car, even though she had been hit by a drunk driver. She was also dissatisfied with the amount she received. In her words, "I tried to complain within the insurance company But it was to no avail—I was stuck with their procedures. They didn't help me. I came away disappointed in insurance companies generally."

The idea of suing the insurance company was unappealing. "I understood that my health was more valuable and decided not to initiate a lawsuit."

Those who had only compulsory insurance were uniformly dissatisfied, both with the way they were treated and with their payouts. They felt that their insurance companies had co-opted the so-called independent appraisers to underestimate the cost of repairs. Several told of how they got their estimates bumped up by bribing these appraisers. None of them thought it was worth the effort to litigate.

Litigation

Going to court was no one's first choice. It represented a grudging response to an inability to resolve problems through negotiation. Taking on a lawsuit required a strong commitment, regardless of whether the target was an individual or an entity. Despite the clarity of the procedural rules, which opens the door to self-representation, many hired lawyers to help them. Even so, they took on much of the responsibility for assembling the bits and pieces of evidence needed to prevail. Proof problems were the most commonly cited obstacle to going to court—it was a much bigger concern than fears of politicized justice.

Not surprisingly, those who took this route were stubborn characters. Petitioners typically describe themselves as being driven by principle more than money, which makes sense given that the amounts recoverable are rather modest, at least by U.S. standards. Likewise, the targets of these lawsuits use every trick in the book to escape liability. After all, if the parties were open to amicable settlement, the case would not have gotten to court. A somewhat extreme example is the behavior of the driver who hit Katya, a 20-year-old Saratov university student. He plowed into her, sending her car flying across several lanes of traffic, where it was stopped by a tree. He and his family walked away from the incident, but Katya was knocked unconscious and spent several months recovering in the hospital. The traffic police report declared him to be at fault, but he refused to acknowledge responsibility and made no effort to contact her. She tried to get criminal charges brought against him, but because he had not been drunk and she had survived the accident, the police were uninterested. She then resolved "to beat him up financially." For Katya, this was a matter of principle. In her words, "My parents told me to let it go . . . but I have such strong resentment and pain that I had to pursue it."

The lawsuit turned into a soap opera. Acting on the recommendation of friends, she located a lawyer to whom she paid a 20,000-ruble retainer. They agreed that the lawyer would also get 15 percent of any amount recovered. The complaint sought 1 million rubles in moral damages. It is doubtful that she had any realistic expectations of recovering anything close to that amount. Not only are Russian courts disinclined to award such large amounts, but the driver was a schoolteacher with a monthly salary of 4,000 rubles. In addition, anticipating a lawsuit, he had transferred all his assets (including his apartment) into his wife's name. When he

received the complaint, he made an abortive suicide attempt and checked himself into a psychiatric facility, where he was beyond the reach of the courts. When we spoke, 18 months had elapsed since the incident, but he was still there. Katya's lawyers had tried to convince the judge of his bad faith. She was sympathetic but told them that the case could not go forward until the defendant was declared legally competent. She ordered an independent psychiatric evaluation, but it was carried out by the same doctor who had been treating the defendant, and came to the same conclusion. Over the months of waiting, Katya's ardor dimmed, but she was reluctant to abandon the case due to the money she had already put into it. Her belief in the ability of courts to right wrongs—which made her a bit of an outlier among the focus group participants—also kept her in the game.¹⁹ But she did not view herself as an exception. As she said, "I think I am not the only person who believes in the law."

Sometimes litigation can be part of a grieving process. Anna, a 40-year-old Moscow real estate agent, was in a horrific accident in which she lost control of her car when a drunk driver darted into her lane of traffic. Her car flipped over several times. Her brother, who was a passenger in the car, had to be cut out of the car by emergency technicians. He died without regaining consciousness. Anna spent six months recovering in the hospital, and was unable to return to work for another several months. The other driver and his family received only minor injuries. They never contacted her to express their regret. Nor did they attend her brother's funeral. Though she had their contact information, she did not reach out. She felt that their behavior telegraphed their character.

No one questioned the responsibility of the other driver. He was prosecuted and received a three-year sentence for drunk driving. But seeing the other driver in jail was not enough for Anna. She brought a civil lawsuit against him in an effort to recover her out-of-pocket expenses for medical care. She had been forced to pay under the table to get needed medications and to ensure she had the best surgeons. Unlike Katya, she did not hire a lawyer. Though she had a law degree herself, she had no litigation experience. In reflecting on the court case, she speculated that she might have done better had she had help from legal professionals, but noted the difficulty of finding reputable lawyers. The experience of her friends left her convinced that good lawyers were very expensive. She explained that any spare financial resources had gone to pay for her brother's funeral and her own medical expenses.

Though Anna won the lawsuit, she received no emotional closure from the experience. It only seemed to intensify her grief over her brother's death. She recovered 5,000 rubles, which was a small fraction of her actual medical expenses. The court took the formalistic position that medical care in Russia is free, thereby placing the burden on her to prove her financial outlays. She found the demands of the court for documentary evidence of her side payments to medical personnel to be unrealistic and humiliating. She felt pressured by the judge to drop the case and believed that the other side had bribed the judge. In contrast to Katya,

Anna did not trust in the integrity of the legal system, arguing that “any judge can be bought.” She concluded: “It is sad to live in a state where we are completely unprotected, where we have no hope.”

In the focus groups, I heard only one instance of a lawsuit against an insurance company rather than a driver. Kira, a 52-year-old bookkeeper from Tomsk, was a passenger in the family car being driven to the family's dacha by her husband. When they were going through a green light at a traffic intersection, they were hit by a foreign-made car that seemingly came out of nowhere. Their car was totaled. There were four people in the other car, each of whom had been drinking. The other car sped off after the accident, but was quickly apprehended. The traffic police said they were unable to determine who had been driving. Kira believes that this was a subterfuge designed to protect an influential local military official.

In any event, Russian law requires a determination of who was driving before an insurance company is required to pay. The insurance company clung to the letter of the law and refused to make a settlement. Kira and her husband found a lawyer to represent them who was a coworker of their daughter. The lawyer explained what sort of evidence would be needed. Her husband then tracked it down, wooing witnesses to come forward with traditional Russian gifts of wine and candy. Thanks to the help of the lawyer, they prevailed at trial, only to face an appeal, which they also won. In the end, they had to resort to the bailiffs (*sudebnye pristavy*) to recover the judgment of 32,000 rubles. This amount was not sufficient to buy a new car outright. They used a third of it as a down payment on a loan. They used another third to pay the lawyer.²⁰ The lawyer made no financial demands on them, but they were convinced that they could not have succeeded without her help, and so insisted that she take the money.

Though the experience was not pleasant—the litigation dragged on for 18 months and required them to persist through “terrible red tape”—Kira felt the insurance company gave them no choice. She insisted they were motivated by justice and not by a desire to punish. In her words, they pressed forward because they “decided that the law was on our side. Plus we weren't to blame.” In terms of her trust in the legal system, she falls somewhere between the extremes of Katya and Anna. She felt that they got justice from the courts, and did not see their experience as an aberration.²¹ The other members of her focus group were generally supportive of her choices. Several chimed in to say that the only way to get an insurance company to pay was to sue. Others said that they too would have sued in Kira's situation, but might have refrained if the amount at stake were less significant. Everyone—including Kira—was bothered by the fact that the identity of the driver was never established.

Of the participants in the focus groups, only Elvira ended up having to go through the full process as a defendant. As I noted earlier, she believed herself to have been the victim and had resolved not to pursue her claim. The status differential was a key factor in her decision. The other driver was the general director of a local furniture factory, whereas she saw herself as a lowly state bureaucrat.

Unfortunately, the other driver viewed himself as the aggrieved party and pursued her as a matter of principle. They met several times. She made him aware that her husband had connections to the local procurator's office in an effort to equalize their status, but he paid no attention.²² When he would not budge from his initial demand, she said they would have to leave it to the court. Sure enough, he brought a lawsuit against her in the justice-of-the-peace courts.

Elvira felt out of her element in the court. As the case proceeded, she believed that the judge consistently favored the other side, allowing him to go on at length, while cutting her off. She had the help of an "assistant" (*pomoshchnik*), who was a recent law graduate. She met with several more experienced lawyers who specialized in litigating traffic cases, but their price was too steep for her. She did not bring a counterclaim to assert her version of what happened, explaining that she feared the expense of doing so. The decision went against her. Because she lacked the funds to pay the judgment, a portion of her salary was garnished.

In reflecting on the experience, Elvira listed a series of strategic mistakes she had made. Even though she had few assets, her initial instinct had been to give the other driver what he wanted, but her assistant convinced her to stand firm. In her words: "I am sorry that I didn't just give him the money right away because the court hearings were unpleasant. If you go to court, you end up feeling guilty." She did not see the judicial process as being even-handed. She felt that the judge and the plaintiff were part of an insiders' circle to which she was not privy. In her view, "If I had been within this circle, then probably it would have been seen as mutual fault." If she had it to do over, she would make every effort to avoid the courts. If that proved impossible, then she would hire a lawyer, who would "guarantee victory." Put more bluntly, she would find a lawyer who had the backdoor connections needed to bribe the judge. Though not convinced that the judge in her case was bribed, she believed that the law itself was a peripheral issue. In her opinion, the outcome was dictated by connections.

Explaining Russians' Responses to Auto Accidents

On the most prosaic level, the seriousness of the injuries sustained in an accident explains the responses. This is hardly unique to Russia. Regardless of the setting, people tend to have different reactions to minor fender-benders than to crashes in which cars are destroyed and life-threatening injuries are sustained. The evidence from the focus group confirms that Russians are more likely to "lump it" when the damages are insignificant. But there are many other factors at play, both institutional and individual. Many are carryovers from the Soviet past, while some are new to the post-Soviet era.

Thinking more deeply about why some Russians do nothing and others pursue their causes with a Javert-like intensity requires us to return to the theoretical framework of Felstiner et al. (1980-81). They identify a series of possible transformational factors that can have the effect of pushing the problem from one

stage to another. Their analysis focuses on the U.S., but many of the factors are universal. The genius of their approach is that it incorporates both individual and social factors.

Worldviews

Felstiner et al. (1980–81) posit that how one looks at the world will have a profound effect on one's approach to problem-solving. As part of the transition away from state socialism, Russians have come to feel increasingly isolated. For many, the collapse of state services in the 1990s shattered their faith in the ability of the state to protect them. Their social support networks frayed as people scrambled to support their families when the Soviet-era practice of featherbedding disappeared with the imposition of market incentives. Inflation evaporated the pensions of the elderly, forcing many of them back onto the job market and leaving them unavailable for their traditional role of assisting with child care. The shattering of long-time norms after the Soviet era has left many unsure of what is right or wrong. I suspect that this effect is more deeply felt among older generations, though the unrepresentative nature of my focus groups does not allow for the testing of this hypothesis.

Whether post-Soviet Russian society has developed a clear set of norms that govern behavior in the aftermath of an auto accident is unclear. As I noted at the outset of the chapter, the proliferation of cars is a relatively recent phenomenon, which means that those who are unfortunate enough to be in an accident cannot think back on how their parents or grandparents handled it. For most, it is an entirely new experience, and many respondents felt as though that they were on their own. They relied on themselves and on immediate family members: Some were frightened by the idea of contacting law enforcement, fearing that doing so would not end favorably. This sense of isolation, which may have been latent in the Soviet era, has become a powerful motivating force in present-day Russia, especially in large metropolises (Shevchenko, 2009).

Self-reliance is a double-edged sword. It can express itself in a single-minded determination that makes all the difference in dealing with bureaucracies. After her brother was killed by a drunk driver, Anna said that "no one wanted to do anything." Many of the focus group participants felt similarly ignored and marginalized by officialdom. Kira knew no one else would help her get the money she was owed by her insurance company, and pressed forward to the court with her claim. But individualism can also express itself as selfishness. Anton's desperate need for help in recovering was ignored. When the mother of the perpetrator was negotiating with Anton, she stressed her son's student status and his consequent lack of resources, conveniently ignoring that Anton was also a penniless student at the time. Such behavior reflects a hardness of heart that may be a quasi-survivalist response to the economic chaos of the 1990s. Katya's case shows how self-reliance can sometimes result in a stalemate. Ignoring her parents' advice to move on, Katya pursued a scorched-earth strategy, filing a million-ruble lawsuit. The other

driver responded in kind by transferring his assets to his wife and feigning mental illness.

Although they felt isolated, in fact many of the focus group participants drew on their membership in communities to help them through the experience. These ranged from the family at the micro-level to the community of believers at a more cosmic level. Turning again to Anton's experience, the other driver benefited from being part of a family that was determined to preserve his options in life. Anton's family was no less concerned with his future, but his precarious physical condition took up all their energy. Along similar lines, Ida's identity as a mother led her to do whatever was necessary, including bribing medical personnel, to ensure that her young daughter did not become an invalid. Her priority was her daughter's recovery rather than seeking out and punishing the Azerbaijani couple who were to blame. Some Russians have turned to religion as a way of making sense of their feelings of isolation.²³ In ordering their behavior, these believers are mindful of the Golden Rule of doing to others as you would have them do unto you. Fatima, who grew up as a secular Muslim but embraced Christianity in the form of the Russian Orthodox Church after injuring a teenager with her car, is a good example of how genuine religiosity can lead to remarkably unselfish behavior.

Being an outsider also influenced behavior. For the focus group members, such feelings mostly served as a deterrent to disputing. A number of them did nothing in the wake of their accidents because they felt the other drivers were better connected and that pursuing them would come to naught. Elvira is a cautionary tale. Though she tried to keep her head down when she learned that the other driver was part of the local economic elite, she would not let it go. Once she ended up in court, she believed that her outsider status sealed her fate.

How a person sees herself in relation to her community was important. In the wake of two accidents described in the Shumerlia focus group, the victims decided not to sue because they saw themselves as part of a relatively small and tight-knit community and worried about how an effort to recover damages would be viewed by friends and neighbors. The victims spoke of how everyone knew each other's business in Shumerlia. Recognizing that claiming was not a socially acceptable response, they signed away their rights. Such attitudes are reminiscent of the rural residents Engel studied in Sander County in the United States (1984), who saw injuries as a part of daily life on farms to be endured. He found that newcomers were more likely to pursue damages than were longtime residents and to be ostracized for their behavior. Like their counterparts in Sander County, the Shumerlia feared that pursuing a claim would make them appear petty in the eyes of the community, but were not worried about rupturing its social cohesion. This stands in contrast to the more communitarian motivations of Thai villagers in the wake of accidents. Engel (2001) found that Thai villagers saw compensation, particularly in the form of elaborate and costly funeral ceremonies, as a way to return harmony to the community. His work reminds us of the ways in which different conceptions of community or "reality frames" can play out in terms of post-accident claiming (p. 9).

Rather than worrying about how neighbors and others close will view their behavior, the common thread among the respondents from these larger cities was a concern over what sort of clout the other party to the accident might have. In this we see the lingering effect of the web of personal connections that determined one's ability to survive and thrive in the Soviet era. As the scholarly, literary, and memoir literature remind us, the perennial shortages made coping on one's own impossible (Baranskaya, 1990; Ledeneva, 1998; Young, 1989; Smith, 1977; Voinovich, 1976). The abundance of consumer goods and the beginnings of a service economy has lessened the need to build and maintain personal networks. But all bets are off in the case of unexpected events like auto accidents. Many Russians still believe that law takes a back seat to connections when it comes to getting out of trouble. It is no surprise that the focus group participants preferred informal solutions to litigation. Nor is this attitude unique to Russians. Nelken (2009, pp. 36–37) notes that, in the aftermath of car accidents in Sicily,

The key question after an accident . . . is not who is to blame but with whom you have to deal. It is important to find out as much as possible about the personal and social background of the person you have been in an accident with, getting information about the reputation of his or her insurance company, the lawyer, garage mechanic, medical expert available to him or her, and in general the person's larger network.

Adversarial legalism relies on individuals to mobilize the law, and so the resources of both plaintiffs and defendants—social, financial, even psychological—profoundly shape the way adversarial legal policies like auto injury tort are implemented.

Corruption

The dividing line between connections and corruption is fuzzy at best. Corruption—both real and perceived—had a significant influence on the focus group participants' behavior at every stage of the post-accident process. There was literally no element of Russian institutional life that they did not view as being susceptible to corruption.

The resignation felt by those who did nothing was often prompted by a sense that any effort to engage the system would be futile due to the willingness of officials to be swayed by bribes. For those who made claims, their efforts to settle reflect their lack of faith in the integrity of the state and private officials who were charged with protecting them. Repeatedly I was told that anyone could be bought. Some experienced this sad reality for themselves. Most acted preemptively based on common wisdom. Teasing out how much faith is placed in such rumors is an impossible task. For my purposes, what is more important is the extent to which my respondents were convinced of the futility of using the formal system and reacted by opting out, either by doing nothing or settling.

Perceptions of corruption were not limited to the legal system. Corruption of the medical establishment, for example, was also taken for granted (Rivkin-Fish, 2015). This explains why those close to victims with severe injuries were rarely able to focus on claiming and, instead, had to devote themselves to advocating for their loved ones in the medical system. Ordinary Russian hospitals provide few creature comforts to their patients. When Fatima brought food to hospital for the teenager she had accidentally injured, she endeared herself to the teen's mother, who otherwise would have had to do this. Many respondents told of having to make side payments to get access to needed treatments and rehabilitation facilities. No one disagreed with these sad realities. Rather, they chimed in with their own examples.

Russian Tort Law

Russia is a late developer of torts, and this colors Russians' understanding of the law. In the West, torts came into their own in the late 19th century as an antidote to the Industrial Revolution and the growth of the railroads (Baker, 2009). As Friedman (1987, p. 53) cogently points out, "For efficiency in mangling people, en masse, there is nothing like the modern machine." Though industrialization was a signature accomplishment of the Stalin period, tort law did not grow apace, but was supplanted by the state as the insurer of last resort. Many were doubtless dissatisfied with the compensation provided, but political constraints (both formal and informal) prevented them from taking further legal action.

The post-Soviet changes to tort law would seem to make it easier for injured parties to recover damages. The Soviet-era approach of imposing strict liability on drivers has been abandoned in favor of comparative negligence. Yet comparative negligence remains poorly understood by the Russian public, especially when it comes to accidents involving pedestrians. As I noted earlier, many who were injured while jaywalking assume that their malfeasance makes them ineligible for damages. Determinations of contributory negligence are made on a case-by-case basis. Whether the victim was in a *zebra* would be relevant to the analysis. Although it is theoretically possible that a pedestrian-victim could be barred from recovering damages, it is highly unlikely. As a general rule, drivers are held strictly liable when they hit pedestrians. A good example is the teenage victim of Fatima. She was darting through traffic at a busy Moscow intersection as cars were inching through. She must have known that she was not visible as she ran out of the shadow of a large truck into Fatima's path. Yet because she was in a *zebra*, her mother felt justified in pursuing legal remedies. By contrast, those whose children were injured when crossing the road without the protection of a designated crosswalk felt they had no recourse. Worse, they blamed themselves and felt embarrassed by their foolishness. This confirms the role of law as a gatekeeper. A belief that the law is receptive to their situation is a necessary, but not sufficient, condition for Russians to make the leap from naming one's injury to blaming and claiming.

Lawyers

Confusion about the substance of the law is hardly unique to Russia. Lawyers might be expected to pick up some of the slack. But this assumes that people are comfortable bringing their problems to lawyers. Few of my respondents bothered to consult with a lawyer to learn their rights before deciding how to proceed. The focus group participants assumed the cost of legal services would be beyond their means. Few had friends or acquaintances who were lawyers and so they did not know how to assess the qualifications or integrity of lawyers. Fatima initially ended up with a lawyer she described as a “bandit.” She was horrified by his matter-of-fact advice to cover up her involvement. Others were less squeamish. In the aftermath of an accident on an icy road that injured an elderly woman, Zinaida, a 30-year-old Saratov doctor, did not hesitate to hire a lawyer who had worked for many years as a *gaishchnik* (traffic police officer) to help her and her husband through the system. He gave them advice about how to minimize their potential liability and helped them recognize that the seemingly helpless elderly woman was a scam artist who supplemented her income by putting herself in harm’s way and bilking unsuspecting drivers.

Lawyers mostly came into the picture for the focus group participants when they were seriously contemplating litigation. Though my sample is small and unrepresentative, it is nonetheless interesting to note that those who had professional assistance did better than those who eschewed help.²⁴ Recall Anna, who fought to recover damages from the driver who killed her brother and left her

TABLE 5.1 Information About Cases Involving Traffic Accidents Brought to the Russian Courts, 2008–2011

	<i>All cases related to traffic accidents</i>	<i>Traffic accident cases as % of all civil cases</i>	<i>Win rate for traffic accident cases</i>	<i>Win rate for all civil cases</i>	<i>Delay rate for traffic accident cases</i>	<i>Delay rate for all civil cases</i>
2008						
All courts	96208	0.9	70.6	90.4	15.2	3.5
JP courts*	52065	0.6	72.4	91.5	14	2.8
2009						
All courts	126525	0.95	76.3	88.8	10.4	1.9
JP courts	81915	0.8	78.6	93.4	8.6	1.2
2010						
All courts	155043	1.1	80.1	88.3	7.7	1.6
JP courts	84221	0.8	83	94	6.9	0.8
2011						
All courts	190340	1.7	82.6	86.1	6.2	1.6
JP courts	98683	1.1	86	92.2	4.9	0.8

Sources: Otchet (2008, 2009, 2010, 2011); Otchet—JP Courts (2008, 2009, 2010, 2011).

*Justice-of-the peace courts.

badly injured. Despite having a law degree and having previously worked in the administrative structure of the courts, she was all thumbs when it came to assembling the requisite evidence. She devoted a great deal of time to the case but ended up with a pittance. Yet she had no regrets. She told me of friends who had hired expensive lawyers and had come away empty-handed. By contrast, Elvira, who economized by hiring a recent law school graduate whom she referred to as her "assistant," felt she would have stood a better chance had she retained one of the expensive lawyers she met with. Though she did not use Galanter's (1974) language, she was making his point about the advantages shared by courtroom veterans in terms of their understanding of the formal and informal rules of the litigation game. As a first-time litigant—Galanter's proverbial "one-shotter"—she felt out of her element against the general director who was a "repeat player," someone who was at home in the courtroom and traveled in the same social circles as the judge.

Judges

Table 5.1 highlights several notable features of cases dealing with traffic accidents that help explain injured parties' distaste for going to court. These cases tend to take longer than the average case and petitioners are less likely to prevail. This simply reveals that these are cases that require full-fledged hearings on the merits; they do not lend themselves to expedited procedural mechanisms. Over the four-year period, only nine cases were resolved using a summary procedure that avoids a hearing on the merits of judicial orders.²⁵ The higher-than-average delay rate along with the lower-than-average win rate makes it tempting to conclude that these cases are deeply contentious and that parties fight to the bitter end. No doubt this describes some cases, but conversations with Russian judges, buttressed by my observations in the courts, lead me to believe it is not the norm. Judges report that the results in most traffic-related cases are foregone conclusions. They grumble about the tendency of insurance companies to use every trick in the book to drag out the proceedings in order to avoid having to pay, indicating that the tactics associated with adversarial legalism are beginning to emerge in Russia.

The lower-than-average win rates are more of a puzzle. The focus group participants complain about the difficulty of assembling the requisite documents.²⁶ Some are overwhelmed by the task and abandon any plans to pursue a claim. It may be that those who do go forward tend to fall short. The positivism reflected in the procedural codes and the expectations of judges lead them to be unforgiving about missing documentary evidence. This may contribute to petitioners' losses. Unlike individual claimants, insurance companies are generally represented by legal professionals in court. Whether this gives them an edge is unclear. Judges complain about the poor quality of lawyering for insurance companies, attributing it to the low wages paid and the consequent high turnover rate in their legal

departments. Unfortunately, the way the data have been collected do not allow me to determine whether individuals or insurance companies are more successful.²⁷

This penchant for documentary evidence helps explain why the reports (*protokoly*) of the traffic police take on such importance. All understand that the determination of fault in the *protokol* usually dictates the outcome in any court case. At a minimum, it establishes a presumption of liability that must be overcome by the other side. It also casts a heavy shadow in any negotiations between the parties, whether conducted on the side of the road or when the dust has settled. Insurance companies rely on it, as Kira learned to her detriment. If the police report does not identify a culprit, then insurance companies generally refuse to pay absent a court decision. Those dissatisfied with the substance of a *protokol* rarely succeed in disproving the substantive account of what happened. Judges are predisposed to believe the police. Savvy courthouse players (whether lawyers or litigants) understand that the key to undermining a police report is to show that some element of procedure was violated in completing the report.

Protokoly and other documentary evidence may be sufficient to educate judges as to what happened in simple fender-benders, but do a poor job of capturing the details of the more serious accidents that tend to end up in court. Witnesses are needed to flesh out the story. Sadly, those involved in the accident are not always able to fill in the gaps. As the stories shared above indicate, concussions and loss of consciousness are not uncommon. This leaves bystanders. Tracking them down can prove arduous.²⁸ The skepticism of judges towards witnesses makes it unclear whether it is worth the trouble. A number of focus group participants abandoned the fight at the outset due to fears of being unable to find eyewitnesses.

Russian judges' expectations as to documentary evidence can be problematic. Requiring receipts for any payments for which compensatory damages are sought would seem to be uncontroversial. Yet in a society in which side-payments are routine, demanding written evidence of such outlays is unrealistic. Anna's lawsuit is a good example. She was unable to recover the amounts that she paid to medical personnel to get access to newer medications recommended by her doctor that were otherwise unavailable to the public. The judge was not bothered by the bribe-like character of the payments. Instead, Anna's efforts to recover were torpedoed by the lack of written substantiation.

This sort of formalism can lead judges to give a cold shoulder to claims for services from private clinics. Once again, Anna's experience is instructive. Like many Russians, she was skeptical of the quality of the medical care provided free of charge and opted to go to a private clinic for rehabilitation. The court refused to countenance these charges, telling Anna that she could have obtained treatment at no charge. Even though Anna had been educated as a lawyer and understood the inherent positivism of the system, she came away from the experience frustrated by the court's unwillingness to deal with the real-life challenges she faced. Others in the focus groups echoed her concerns. Demanding the impossible marks the courts as out of touch with reality. Judges take no responsibility; they point to the

codes and say their hands are tied. In reality, however, the codes—both procedural and substantive—provide a considerable amount of wiggle room. The risk-averse nature of Russian judges makes them wary of exercising discretion.

The Traffic Police

Russia is far from unique in treating police reports as determinative. In his study of the Japanese system, Tanase (1990, p. 673) notes that “the police report is accorded such weight that the facts as recorded are hardly ever challenged later in court.” It is not just the authority and integrity of the police that give their reports such weight, it is also that the police work with those involved in the accident to “hammer out a consensual story as to what happened to which the parties agree and formally endorse by signing” (p. 674). This approach limits their ability to come to court and put forward alternative narratives.

What makes the Russian courts’ practice of giving credence to the reports of traffic police problematic is the low esteem in which the public holds this branch of law enforcement. Despite its questionable integrity, the courts accept its reports at face value, much as in Japan. In essence, the *protokol* creates a rebuttable presumption of accuracy. In the justice-of-the-peace court hearings I observed, although those who had been cited for traffic violations often quibbled with the version of events laid out, I witnessed no successful efforts to rewrite history. To do so would require a credible witness to buttress the self-serving claims of the driver. A personal friend of mine succeeded in challenging his ticket for reckless driving thanks to his wife’s testimony, which the judge believed. It helped that the traffic officer who issued the ticket had only a vague recollection of the incident. An easier route to overturning a traffic violation is to harp on technical shortcomings in the report.

The experiences of the focus group participants with the traffic police help us understand why this institution is widely distrusted. Arkadii, a 29-year-old psychologist from Kushchevskaya, captured the feelings of many when he said: “I don’t bother going to the police anymore. It is a waste of time. Forgive me for saying this, but they work as prostitutes. Whoever pays them more makes out.” Concrete illustrations were plentiful. The involvement of those with political sway was routinely hushed up. Unlike the courts, where mundane cases are typically processed according to the law, the malfeasance of the traffic police spilled over into their everyday activities. Respondents readily admitted to making side payments to the traffic police when threatened with the loss of their license. As in the Japanese case, the Russian police negotiate the content of the report with those involved in the accident. But rather than working towards a narrative that reflects what happened, *gaishchniki* are thought to be willing to skew the *protokoly* to whoever pays them more. Such stories were told in every focus group. Some told of draft reports that were written to fudge fault in an effort to solicit a bribe. When the initial report downplayed the icy conditions that led her husband to

lose control of their car on a Saratov street, Zinaida hired a second expert, who supported her position that her husband was not to blame. She was advised to do this by the former traffic policeman turned lawyer whom she hired to help them. He knew how to beat his former colleagues at their own game. Respondents felt that their lack of respect for the *gaishchniki* was reciprocated. They reported waiting hours for someone to show up. When they did, victims described their attitude as "boorish" (*khamskoe*), and said that they were left feeling as if they were criminals rather than hapless victims.

Every once in a while, the traffic police rose to the occasion. Timofei, a 25-year-old Moscow lawyer for the tax inspectorate, told of an incident from his adolescence when several drivers, including his father, were spooked by a horse and crashed into one another. The traffic police officer determined that all involved had been negligent and brokered an amicable settlement. Several others related similar stories, but these were the exception rather than the rule.

Insurance Companies

In contrast to the traffic police, whose presence in Russians' lives dates back to the Soviet era, insurance companies are a new institutional player. Before liability insurance was mandated in 2002, few drivers bothered with it. Despite its now compulsory character, over a third of Russian drivers remain uninsured. As I noted earlier, Russians are skeptical of the commitment of insurance companies to their clients' interests. These attitudes were reflected in the focus groups. In all locales, I heard complaints about the tendency of insurance companies to use loopholes to avoid paying claims. They were described as "greedy" (*zhadnye*). There was a consensus that suing them was an uphill battle.

In Russia, as elsewhere, insurance companies are more experienced than most of their clients in dealing with auto accidents. To put it in the language of Galanter's seminal 1974 article, they are "repeat players," who understand how to maneuver through the system, whereas their clients are "one-shotters," who have no previous experience and tend to treat any accident as a one-time event rather than as a learning opportunity. They take advantage of the fact that those who were injured (or whose family members suffered injuries) are preoccupied with recuperation and the universal desire of those involved to put these mishaps behind them. They make it easy to get an estimate of property damage through appraisers of their choosing. Without exception, the focus group participants saw these mechanics as in the pocket of the insurance companies despite their claims to be independent. No doubt the mechanics understood that continued cooperation was contingent on lowballing their estimates. Though clients have the right to get their own estimate, this takes time and insurance companies drag their feet in reviewing such estimates. Indeed, some found that bribes were required to get mechanics to provide a realistic estimate. The reputation of mechanics has been sullied as a result of these practices. In my time at the justice-of-the-peace courts,

I saw countless cases in which an individual or her insurance company was seeking to recover the difference between the original estimate and the actual cost of repairing the car.

Some countries have introduced alternatives to court for resolving disputes with insurance companies. Japan, for example, has both private and state-sponsored alternatives (Tanase, 1990). As to the latter, court-annexed mediation has proved to be a popular option. Though the amounts received through mediation tend to be lower than court awards, mediation is quicker. As to the former, a network of traffic accident dispute resolution centers was established in the 1970s as a nonprofit corporation and was financed by profits from compulsory insurance. These centers offer private adjudication services. As to both, disputes that prove resistant to solution are forwarded to the courts. When writing about the Japanese system, Tanase pointed to these managerial solutions as a key element of the reason why only one in 100 disputes arising from auto accidents ended up in court, as compared to 21.5 out of 100 in the United States (p. 651). Russia has not followed this example, though the experiences of the focus group participants suggest that the Japanese solutions might be helpful. But these institutional innovations in Japan arose in an environment in which the traffic police are beyond reproach and public corruption is minimal. Lacking these starting conditions, any new tribunal might quickly “go native” and be driven by bribes rather than the law. Moreover, the tentative steps Russia has taken towards encouraging mediation have been met with public indifference (Hendley, 2013b).

Conclusion

Victims everywhere are reluctant to go to court, preferring to negotiate settlements informally. This gives adversarial legalism its characteristic irony: While in theory it promises everyone a mechanism for vindicating their rights, in practice few proceed to the top of the disputing pyramid. Fundamental to the politics of adversarial legalism, then, is the attitudinal and institutional factors that induce some individuals to mobilize the law.

In Russia, the disinclination to press claims stems from a general skittishness about officialdom, both private and public. Bilateral negotiations between those involved in accidents allowed victims to bypass insurance companies as well as the traffic police and the courts. This distaste for formal channels among Russians is well known. This study of behavior following auto accidents simply provides yet another illustration.

Those who have the misfortune to crash—literally—into people who they perceive as being more powerful are equally as likely to “lump it.” Power is a fluid term. It extends to those who hold political office or have immense wealth as well as those who have strong connections to such individuals. When they stumble into this world, many ordinary Russians view themselves as outsiders who cannot penetrate these networks of power and influence where a quiet word may

be determinative. Others worry that decision-makers will be bribed to look the other way. At the heart of these fears is a lack of power of law to trump connections and corruption.

Yet in disputes between ordinary citizens there is reason to believe that Russian courts operate relatively well. Judges in such cases are able to apply the law without fear of political repercussions. This finding would likely come as a surprise to ordinary Russians themselves. Judging by the focus-groups, few of them see the courts as inviting. Indeed, they mostly see the entire system as stacked against them, from the unresponsive and insolent attitudes of the traffic police in the immediate aftermath of accidents to the bureaucratic maze required to recover through insurance companies to the courts. They complain bitterly about the time required to assemble the evidence required to substantiate their claim and about the emotional energy needed. The outsiders' assessment of the several months needed to complete a case as speedy is not shared widely among Russians, who regularly vent on the internet and in the press about the slow pace of justice in the justice-of-the-peace courts. As a result, their hesitancy to take their claims to the courts is entirely understandable.

Notes

- 1 In their comparative study of the tendency to seek out compensation for various types of injuries in Canada and the U.S., Kritzer et al. (1991, p. 501) develop a slightly different vocabulary. They identify the barriers to moving from one stage to another. Initially, victims must overcome a recognition barrier. They argue that some view what happened as part of daily life and not as an injury. Victims then face an attribution barrier. Blaming someone else "requires a combination of information and a willingness to externalize the cause of an injury." Seeking out the person at fault requires them to triumph over a confrontation barrier. At the final stage, victims must confront a litigation barrier. Following the lead of Felstiner et al., much of their analysis is devoted to the role of lawyers.
- 2 When asked about corruption within law enforcement agencies, Russians consistently identify the traffic police as highly problematic. A survey fielded by the Foundation for Public Opinion in 2008 put the traffic police in first place in terms of corruption (Rimskii, 2012). In a December 2010 survey by the Levada Center, the traffic police also came in first, with 56.8 percent of respondents listing it as the most corrupt. Russians are skeptical about efforts to rein in the traffic police. When asked about the likely impact of the plan to increase oversight over the traffic police in a March 2007 poll by the Levada Center, only 30 percent felt it would decrease bribery. A solid majority (58 percent) was sure it would have no impact. About the same number believed that increasing fines for traffic violations would lead to bigger bribes for traffic policemen (Levada, 2008, p. 72). The polling results on the police more generally paint a dismal picture. In surveys carried out regularly from 2004 through 2012, over 80 percent of respondents saw lawlessness and arbitrariness within the police as a serious problem (Zorkaia, 2012, p. 104). The efforts to remake the police by renaming them as *politsia* rather than *militzia*, along with a series of deeper institutional changes, was dismissed by respondents as ineffective (p. 106). As part of this reform, salaries for policemen were tripled in an effort to de-incentivize the practice of taking bribes (Robertson, 2013, p. 170).

- 3 www.vashamashina.ru/bill.php#g1
- 4 When surveyed in 2006 and 2007 by the Levada Center, only 20 percent of respondents said that the efforts of Russian police are mainly devoted to protecting citizens. Over 60 percent viewed police as being mostly interested in protecting their own interests. The remainder of the sample declined to respond (Levada, 2008, p. 72).
- 5 For a thorough analysis of Soviet insurance law, see Rudden (1966). For a primer on contemporary Russian insurance law, see Belykh (2009); Moudrykh (2002).
- 6 In a survey conducted by the Independent Research Center ROMIR in the spring of 2004, 85 percent agreed that something needed to be done to protect victims of traffic accidents. Nearly half, or 48 percent, of respondents viewed the law requiring insurance for drivers as necessary (Nuzhno, n.d.). A survey carried out in the spring of 2005 by the All-Russian Center for the Study of Public Opinion documented the support of two-thirds of those polled for having the rates for mandatory insurance set by the state (VTsIOM, 2005).
- 7 Russian insurance companies lobbied vigorously against the new rules, and managed to delay their introduction for a year. Critics argue that insurance companies continue to exploit loopholes to avoid paying claims or to minimize them (Zinenko, 2009). Industry spokesmen defend their record (Nikoforov, 2009).
- 8 Respondents were allowed to check multiple reasons. The most common response was increase in premiums at 36 percent. The several responses related to service (dissatisfaction with the amount paid out for a claim, poor response to a claim) attracted a quarter of the respondents (Pochemu, 2012).
- 9 While the raw numbers have almost doubled over this four-year period, they remain a relatively minor part of the civil docket, accounting for about 1 percent of all civil cases. The amount at issue determines where the case is brought. Before 2010, the justice-of-the-peace courts handled all claims under 100,000 rubles. This jurisdictional limit is now set at 50,000 rubles (Federal'nyi, 2010).
- 10 Tay (1969, p. 8) quotes P.I. Stuchka from the 1922 meeting of the All-Union Central Executive Committee of the Bolsheviks: "It is undignified for the Worker-Peasant Government to initiate disputes in court to determine whether a man was injured on the railway track intentionally or by accident." Reflecting on this, she concludes that "a socialist government should be concerned with social harm, an objective social concept, and not with fault, a subjective individual one."
- 11 The list of inherently dangerous activities, set forth in article 1079 of the 1996 Civil Code, is not exhaustive. Means of transportation are explicitly included, but the last sentence of the article clarifies that liability for harm caused by the collision of two or more cars is not covered by strict liability. On the other hand, the Russian Supreme Court, in a 2010 decree, clarified that drivers who hit pedestrians can be held strictly liable (Postanovlenie, 2010).
- 12 For example, in a 2004 case decided by a Saratov district court, the victim of a car accident initially sought 155,000 rubles in moral damages, but was awarded only 18,000. By contrast, the court awarded the full amount requested for compensatory damages, which were grounded in documentary evidence (*Iliasov v. Lapin*, 2004).
- 13 The Moskvich was a compact passenger car manufactured during the Soviet era.
- 14 A ZIL 130 is a large dump truck. The Mikoyan factory assembled MIG fighter jets. For a history of ZIL (*Zavod imeni Likhacheva*) see Siegelbaum (2008, pp. 10–35).
- 15 Those who were injured by buses or other means of public transportation uniformly did nothing. Not only were they confused about what entity would bear responsibility, but they were convinced they would be unable to gather the necessary evidence. These accidents often happened during rush hour when witnesses were hustling to and from work. Tracking them down to corroborate what had happened seemed overwhelming, especially given their injuries. Some thought about hiring a lawyer, but did not follow through because they assumed it would be prohibitively expensive. As a rule, those who

- fell into this category received medical care at no charge which may have dimmed their ardor for seeking damages.
- 16 This was a common theme in all the focus groups (Hendley, 2010). It mirrors what sociological scholars have observed about the U.S. (Macaulay, 1963).
 - 17 Fatima reported that when she refused the services of this lawyer, her tires were slashed.
 - 18 Many Russian banks require comprehensive insurance as a condition of providing a loan. This explains why both Dmitrii and Vladislava had this type of policy. Few opt for it voluntarily.
 - 19 Skeptics might assume that she was new to the judicial system. In reality, however, she had been involved in a Dickensian case brought by her father's ex-wife to get the title to an apartment that was owned by Katya and her father. Perhaps her faith was stoked by the fact that the court shared her view of her former stepmother's claims as bogus.
 - 20 They put the remainder aside as a rainy day fund. Both Kira and her husband had latent health issues that they worried could flare up at any time.
 - 21 Kira had very different reactions to the trial and appellate courts. She felt validated by the trial court, where she and her husband were allowed to share their stories. By contrast, she found the appellate hearing off-putting because the three-judge panel had no interest in them, but only wanted to query their lawyer about technical details.
 - 22 This was an empty threat. Her husband had no legal training; he was not a procurator himself. He had previously worked as an assistant in the section of the procurator's office that handles environmental claims. He was unable to help her once the case ended up in court.
 - 23 According to periodic polling by the Levada Center, the segment of Russian society that identifies itself as Russian Orthodox grew from less than 20 percent in 1989 to about 80 percent in 2012. The percentage of nonbelievers took a precipitous nosedive during this period, dropping from over 70 percent to about 12 percent (Zorkaia, 2012; Figure 16.1, p. 165).
 - 24 Several (e.g., Katya, Kira, and Irina) even praised their lawyers.
 - 25 In straightforward cases, judicial orders (*sudebnye prikazy*) are used to expedite decisions. Judges decide such cases on the basis of the pleadings, without a hearing on the merits. Disgruntled defendants can force a hearing on the merits simply by notifying the court of their dissatisfaction. They need not submit any proof of their position. Relatively few defendants (less than 10 percent) challenge judicial orders aimed at them. For more on judicial orders, see Hendley (2013a).
 - 26 The rules governing what documents must be presented to an insurance company are set forth in densely worded government regulations, which are difficult for laymen to parse (Postanovlenie, 2003).
 - 27 As a general rule, plaintiffs tend to win their cases in the justice-of-the-peace courts. Regardless of whether individuals are suing legal entities or vice versa, plaintiff win rates are well over 90 percent. Somewhat incongruously, the only group that has a poor track record is the state, which wins about two-thirds of the cases it initiates against individuals (Otchet, 2011).
 - 28 A number of Russian forums exist on the internet in which people involved in accidents seek out eyewitnesses to their misfortune.

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