

VARIETIES OF LEGAL DUALISM: MAKING SENSE OF THE ROLE OF LAW IN CONTEMPORARY RUSSIA

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ABSTRACT

Dualism is a reality of most legal systems. Few legal systems are able to live up to the letter of the law consistently. During the Soviet era, the dualistic nature of the legal system was particularly evident. While courts enforced the law in mundane cases, judges routinely sidestepped the law when it proved politically inconvenient. In recent decades, the Russian political leadership has adopted rhetoric that endorses the “rule of law,” but has proven incapable of weaning itself from dualism.

This article explores two different types of dualism. The first type of dualism is grounded in the political manipulation of the courts by the powerful. The second type of dualism is grounded in informal connections that act to give some advantages over others. By listening carefully to how ordinary Russians talk about law, the article argues that these connections or *blat* have a more profound effect on their behavior than do the occasional case in which powerful actors intervene to dictate the outcome. The analysis suggests that Russians prefer to resolve their problems informally and that they do not shy away from quasi-legal methods. The simplicity of informal methods is understandably appealing. At a deeper level, Russians’ reluctance to engage with the formal legal system is driven by their recognition that Russian officialdom continues to regard law as malleable and capable of being trumped by politics. At the same time, the research reveals that some Russians are willing to challenge officialdom to live up to its legal obligations. Whether such behavior will prove to be quixotic or the beginning of a change in legal culture remains to be seen.

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“Мы не законослушные граждане...” “We aren’t law-abiding citizens”

—Polina, age twenty-five, Moscow social worker¹

“Теперь мы можем рассчитывать на какие-то права. Раньше не удалось... Теперь люди как-то борются за свои права.” “Now we can count on some rights. Previously this wasn’t possible. But now people are somehow fighting for their rights.”

—Karina, age forty-two, Saratov doctor

INTRODUCTION

Nowhere does law work perfectly. The goal of even-handed law applied equally to all, irrespective of their station in life, is not realistic, though it can be useful as an ideal to which societies aspire. To paraphrase Tolstoy, however, all dysfunctional legal systems are dysfunctional in their own ways. In this paper, I reflect on the Russian legal system with the goal of identifying themes that may resonate in other countries that struggle with authoritarian legacies. My goal is to unravel the varieties of legal dualism that permeate the Russian legal system and assess

¹ All excerpts from the focus groups and interviews have been translated by the author. Respondents were promised anonymity, so pseudonyms have been used.

how they impact the willingness of ordinary Russians to use law to solve their problems.²

Law in Russia is generally characterized as unusable.³ The reasons are many. At the top of most lists is the politicization of law. Much has been made of the ability of wealthy and politically well-connected Russians to have laws tailored to their needs. This is, of course, not a practice that is unique to Russia or to regimes with authoritarian predilections. More troubling is the tendency of the Russian state to enforce the law instrumentally. Those in favor with the Kremlin routinely disregard the law, while those who have provoked the ire of the Kremlin are pursued with Javert-like doggedness. The manipulability of law on view in high-profile contexts has given rise to a belief that Russian law is unreliable.⁴ In the judicial setting, many presume that decisions in politically charged cases are ordered by political elites and, thus, are dictated by “telephone law” rather than by the law on the books.⁵ Elsewhere I have argued that the impact of “telephone law” on mundane cases is less profound than had previously been assumed.⁶ My research suggests that, when deciding whether or not to pursue claims in court, Russians are more motivated by fears of high costs and long delays than by fears of political interference. They implicitly recognize the duality of the system and act accordingly.

In this article, I focus on the role of law outside the judicial arena with an emphasis on the attitudes and behavior of ordinary Russians. I am interested in the extent to which Russians are willing to rely on law to

² The “dual state” concept was laid out by Fraenkel in his work on Nazi Germany. HEINRICH FRAENKEL, *FAREWELL TO GERMANY* (1959). Others have applied his framework of prerogative and normative states to more modern states. See, e.g., JENS MEIERHENRICH, *THE LEGACIES OF LAW: LONG-RUN CONSEQUENCES OF LEGAL DEVELOPMENT IN SOUTH AFRICA, 1652–2000* (2008); Kanishka Jayasuriya, *The Exception Becomes the Norm: Law and Regimes of Exception in East Asia*, 2 *ASIAN-PAC. L. & POL’Y J.* 108 (2001). My approach owes more to Sharlet’s 1977 work on the Stalinist legal system. Robert Sharlet, *Stalinism and Soviet Legal Culture, in STALINISM: ESSAYS IN HISTORICAL INTERPRETATION* 155 (Robert C. Tucker ed., 1977). He argued that, notwithstanding the horrors of the purges, the multitude of mundane cases were handled by the law. *Id.*

³ E.g., HENRY E. HALE, *WHY NOT PARTIES IN RUSSIA? DEMOCRACY, FEDERALISM, AND THE STATE* (2006); FEDERICO VARESE, *THE RUSSIAN MAFIA: PRIVATE PROTECTION IN A NEW MARKET ECONOMY* (2001); Jonathan R. Hay & Andrei Shleifer, *Private Enforcement of Public Laws: A Theory of Legal Reform*, 88 *AM. ECON. REV.*, May 1998, at 398.

⁴ See e.g., JANE BURBANK, *RUSSIAN PEASANTS GO TO COURT: LEGAL CULTURE IN THE COUNTRYSIDE, 1905–1917* (2004); GEORGE FEIFER, *JUSTICE IN MOSCOW* (1964).

⁵ Alena V. Ledeneva, *Telephone Justice in Russia*, 24 *POST-SOVIET AFF.* 324, 325 (2008).

⁶ Kathryn Hendley, *Assessing the Rule of Law in Russia*, 14 *CARDOZO J. INT’L & COMP. L.*, 347, 352 (2006).

help them solve their problems. Like people elsewhere, Russians face choices when they encounter difficulties. The first choice is whether to engage with the problem or to ignore it. If they opt to engage, then they have to decide whether to pursue a solution through formal or informal channels. Their trust in the law will inevitably color their choices. Soviet history provides ample grounds for ongoing societal skepticism, as does the uneven track record of Gorbachev and his post-Soviet successors in living up to the goal of a “rule-of-law-based state” (*pravovoe gosudarstvo*).⁷

The reality is that the corrosive influence of connections is not limited to courtroom settings. Connections can come into play in a variety of problem-solving settings. During the Soviet period, the practice of relying on friends or workplace colleagues to maneuver through the system was known as *blat*.⁸ It was distinctive from such practices elsewhere in that, due to the overall de-monetization of the Soviet economy, monetary payments were not the norm. Instead, *blat* was grounded in an elaborate set of unwritten rules that operated on a quid pro quo basis. With the introduction of market incentives in the 1990s, money became more valuable and bribery has begun to replace *blat* as a way of achieving goals. *Blat* has not entirely disappeared, both because it represents an ingrained behavioral pattern and because many Russians lack the financial resources to make monetary payments.

This article begins with a brief overview of the tsarist and Soviet legacy on the interplay between law and connections. It continues with findings from a series of focus groups and interviews conducted with ordinary Russians during the summers of 2007 and 2008. I first report on their discussions about the relative power of law and connections. I then lay out a series of examples drawn from these discussions where the respondents explain their behavioral choices. I conclude by drawing out the

⁷ Mikhail Gorbachev, *On Progress in Implementing the Decisions of the 27th CPSU Congress and the Tasks of Promoting Perestroika*, in 19TH ALL-UNION CONFERENCE OF THE CPSU: DOCUMENTS AND MATERIALS 5, 65 (1988). A quote from Lazar Kaganovich, one of Stalin's henchmen, gives a sense of the hostility to the “rule of law” concept: “If anyone talks serious about *pravovoe gosudarstvo*, or, worse still, applies the notion ‘*pravovoe gosudarstvo*’ to the Soviet state, it means he deviates from Marxist-Leninist teachings on the state.” Gianmaria Ajani, *The Rise and Fall of the Law-Based State in the Experience of Russian Legal Scholarship*, in TOWARD THE “RULE OF LAW” IN RUSSIA?: POLITICAL AND LEGAL REFORM IN THE TRANSITION PERIOD 3, 16 (Donald D. Barry ed., 1992).

⁸ ALENA LEDENEVA, RUSSIA'S ECONOMY OF FAVOURS: BLAT, NETWORKING AND INFORMAL EXCHANGE 1 (1998).

ways in which legal dualism has constrained the mobilization of law in Russia.

Before delving into the substance of the article, a few words of explanation about the underlying methodology are needed. In order to understand how Russians think about law, I wanted to listen to how they talk about law when able to express themselves freely. More importantly, I wanted to learn more about their problem-solving strategies and the extent to which they see law as relevant. To that end, I convened a series of twenty-nine focus groups during the summers of 2007 (Moscow and Saratov) and 2008 (Tomsk, Shumerlia, and Kushchevskaia).⁹ The selection of these locations for the research was designed to provide a contrast, as Table 1 documents. Each focus group included six to twelve individuals. In addition, I conducted follow-up interviews with seventy-nine of the focus group participants, with the goal of probing more deeply into their attitudes toward law and their motivations for using and/or avoiding the legal system. The conversations ranged from one to two hours and were recorded. Table 2 provides background on the respondents referenced in the article.

In organizing both the focus groups and the interviews, the goal was to include a diverse set of Russians. We sought variation in terms of age, gender, educational background, and work experience. Participants were given modest honorariums to compensate them for their time. Though these qualitative methods sacrifice the breadth of topics possible in surveys, they allow for a depth that often proves elusive in surveys. More to the point, they facilitate greater spontaneity and flexibility in that the questioner can pursue topics that the respondent raises but were initially unanticipated by the questioner. While I make no claims to have created a random sample, the insights and the larger themes that emerge from these conversations give rise to a number of hypotheses that deserve more systematic exploration.

⁹ I worked with Polina Kozyreva and Mikhail Kosolapov of the Institute of Sociology in Moscow, which is part of the Russian Academy of Sciences, on the logistical side of the project. Since 1992, they have coordinated the Russian Longitudinal Monitoring Survey (RLMS), a series of nationally representative surveys designed to monitor the effects of Russian reforms on the health and economic welfare of households and individuals in the Russia. See *Russia Longitudinal Monitoring Survey*, CAROLINA POPULATION CTR., UNIV. OF N.C. AT CHAPEL HILL, <http://www.cpc.unc.edu/projects/rfms-hse> (last visited May 9, 2011). Thanks to this work, Kozyreva and Kosolapov have developed a strong network of social scientists throughout Russia. We worked with their colleagues in each of the focus group sites to organize the focus groups. These local contacts recruited the participants based on the agreed-upon criteria.

I. HISTORICAL LEGACY OF LEGAL DUALISM

Law has had a tortured history in Russia. At least two types of dualism have been at play. Though they sometimes combined to form an unholy alliance, the ideas behind them were distinct and, thus, are deserving of separate discussion.

The first type of dualism is grounded in a concept of law as an instrument of power. Put simply for the sake of illustration, law was seen primarily as a means to an end for both the tsars and their Communist successors. When the interests of the state were challenged, law was mobilized in defense of state interests. This was most visible when those who were perceived to be threatening to the regime were put on trial. After a few false starts, both the tsarist¹⁰ and the Communist regimes perfected the scripted political trial. During the tsarist period, the defendants in such trials tended to be those who had attempted high-level assassinations. These defendants' activities were clearly aimed at destabilizing the government. During the early decades of Communist power, the lines between activities that genuinely threatened the state and activities that simply challenged the authority of certain leaders were blurred. Even worse, often there were no overt acts underlying the charges; merely an unfounded accusation by someone tortured into naming additional names. The Stalinist repressions were justified on the grounds of protecting Soviet society from so-called "enemies of the people." The absence of any sort of due process protections for those accused turned the courts into star chambers and, in the process, stripped the law of any moral authority.¹¹

The second type of legal dualism derives from *blat*. Defining it for those unfamiliar with Russian culture is difficult. In her monograph on *blat*, Ledeneva struggles to define the term. She notes that "everybody [in Russia] knows what *blat* is about but few grasp its essence. One rea-

¹⁰ Historians view the trial of Vera Zasulich in 1878 as the moment when the tsarist regime committed itself to an instrumental approach. Zasulich was acquitted of charges of attempting to assassinate the governor of St. Petersburg, Theodore Trepov, despite having been witnessed shooting him by a large crowd. For more on the reaction to her trial, see RICHARD S. WORTMAN, THE DEVELOPMENT OF A RUSSIAN LEGAL CONSCIOUSNESS 283–84 (1976).

¹¹ There is a huge and varied literature on the purges. For example, Figes tells the stories of the victims in their own words through their letters and memoirs, while Conquest relies on statistics and documentary evidence. Compare ORLANDO FIGES, THE WHISPERERS: PRIVATE LIFE IN STALIN'S RUSSIA (2007), with ROBERT CONQUEST, THE GREAT TERROR: A REASSESSMENT (2007).

son is that the term means different things in different contexts.”¹² When pressed, she defines *blat* as “an exchange of ‘favours of access’ in conditions of shortages and a state system of privileges,” that “was often mediated and covered by the rhetoric of friendship or acquaintance.”¹³ She likens it to a dense set of patron-client networks. Acknowledging that *blat* bears some resemblance to bribery, Ledeneva draws on Crankshaw¹⁴ to clarify the difference. He emphasizes that the motive for the exchange of favors under *blat* is self-defense and notes that “the most incorruptible individuals deal in it freely.”¹⁵ Ledeneva concludes that “[b]ribery implies a conflict of interest where one is to be ‘compensated’ for doing something one would not do otherwise, while *blat* is a form of cooperation and mutual support with a long-term perspective, implying trust rather than compensation for risk.”¹⁶ Her illustrations of *blat* focus on its use by Soviet citizens as a way to compensate for the shortages that were endemic to the planned economy.¹⁷ Smith describes it as an “essential lubricant” of Soviet life.¹⁸

Underlying the widespread use of *blat* was a societal recognition that rules were malleable, and that one’s ability to skirt the rules was correlated with one’s connections.¹⁹ The persistence of the system of nested privileges for Communist Party members arguably signaled to society that the rules were not for everyone. By combining the prefix for “circling” (*ob*) with the verb “to go” (*idti*), a succinct verb is created that captures this practice of going around the rules (*obiti*). This verb was used not only when jumping the queue for a car or apartment, but also when going around the law. When people got into trouble, their first instinct was to search through their friends and acquaintances to see who could “fix” the problem for them.

Sometimes these two strains of legal dualism combined. The clearest examples of this arose in the economy. Soviet industrial enterprise managers struggled to meet the production targets of the national economic plan, which had the force of law. The practice of padding re-

¹² LEDENEVA, *supra* note 8, at 33.

¹³ *Id.* at 37.

¹⁴ EDWARD CRANKSHAW, *RUSSIA WITHOUT STALIN: THE EMERGING PATTERN* (1956).

¹⁵ LEDENEVA, *supra* note 8, at 40.

¹⁶ *Id.*

¹⁷ *Id.*; see also HEDRICK SMITH, *THE RUSSIANS* (1976); KONSTANTIN M. SIMIS, *USSR: THE CORRUPT SOCIETY* (Jacqueline Edwards & Mitchell Schneider trans., 1982).

¹⁸ SMITH, *supra* note 17, at 88.

¹⁹ *Id.* at 8, 88; SIMIS, *supra* note 17, at 146–48.

ports (*ochkovtiratel'stvo* or, literally, "eye washing") to make them more palatable to bureaucratic superiors (both in the Communist Party and in the industrial ministries) was commonplace.²⁰ Though doing so blatantly violated the law, it was rarely prosecuted. The justification for looking the other way was twofold. First, keeping industry on an even keel was in the national self interest. Viewed more cynically, the general directors of these plants were sufficiently well-connected to avoid close scrutiny. Put more bluntly, they were able to *oboiti* the law flagrantly so long as they stayed within the good graces of the Party by continuing to meet plan targets.²¹ At the same time, the Party kept scrupulous records and whenever a top manager became inconvenient, the evidence that had previously been overlooked was used to justify his dismissal and, during the Stalinist period, his prosecution.²²

Following Stalin's death in 1953, an effort was made to scale back the privileges available to Party members.²³ But the plan to make law more even-handed lost steam with Khrushchev's ouster in 1964. The role of law in Soviet society did not rise to the fore until decades later when Gorbachev made it part of his reform platform at the Nineteenth Party Conference in 1988. A round-table discussion in *Literaturnaia gazeta* published before the Party Conference and reflecting on the "theses" to be discussed at the Conference broached the once-taboo subject of "telephone law" and acknowledged the difficulty of rooting it out.²⁴ M.P. Vyshinskii, the then-deputy minister of justice, spoke of his delight at the inclusion of law in the theses:

At last we are talking about what we ought to have been talking about for a long time. Until recently law [*pravo*] was an instrument of coercion in the hands of the state. Stalin "showed" [*pokazal*] us what it is possible to accomplish in the country with the help of this instrument. Due to this in our so-

²⁰ Stanislaw Pomorski, *Crimes Against the Central Planner: 'Ochkovtiratel'stvo'*, in 2 *SOVIET LAW AFTER STALIN* 291, 300 (Donald D. Barry et al. eds., 1978).

²¹ For background on the informal mechanisms used by Soviet managers to meet their production targets under the plan, see JOSEPH S. BERLINER, *FACTORY AND MANAGER IN THE USSR* 114–19 (1957); DAVID GRANICK, *THE RED EXECUTIVE: A STUDY OF THE ORGANIZATION MAN IN RUSSIAN INDUSTRY* 267–70 (1960).

²² On the Party's practice of suspended punishment, see LEDENEVA, *supra* note 8, at 77–79.

²³ Peter H. Solomon Jr., *Soviet Politicians and Criminal Prosecutions: The Logic of Party Intervention*, in *CRACKS IN THE MONOLITH: PARTY POWER IN THE BREZHNEV ERA* 3, 3–5 (James R. Miller, ed., 1992).

²⁴ *Kakim Dolzno Byt' Pravovoe Gosudarstvo?*, *LITERATURNAIA GAZETA*, June 8, 1988, at 11.

cial consciousness arose a paradox. Law was either completely ignored or understood in a truncated fashion only as a means in the battle with crime. But law's primary function is the protection of the rights and freedoms of citizens.²⁵

In his speech to the Conference, Gorbachev himself advocated a democratization of the USSR and argued that this would require:

the establishment of a socialist rule-of-law state [*sotsialisticheskoe pravovoe gosudarstvo*]. To put it briefly, the foremost salient feature of a state committed to rule of law is that it effectively ensures the primacy of law. Not a single government body, official, collective, Party organisation, public association or individual can be exempt from abiding by the law.²⁶

Gorbachev was pushing for an end to being able to go around the law for those who are well-connected. His call for change was echoed in influential Party journals,²⁷ as well as in more scholarly law reviews.²⁸

Gorbachev's speech embracing a rule-of-law based state marked a turning point in Kremlin rhetoric. Subsequent leaders have followed his lead.²⁹ However, their flowery rhetoric has not always been matched by their actions. Interestingly, Gorbachev warned of this in his 1988 speech. He cautioned: "[w]hat is needed today more than ever are deeds, actions, not talk . . ."³⁰ The decades since the Nineteenth Party Conference have witnessed institutional reforms that have furthered Gorbachev's vision.³¹ At the same time, Gorbachev and his successors have slipped into Soviet-era behavior from time to time. They reverted to the age-old practice of achieving policy change through executive order (*ukaz*) when fru-

²⁵ *Id.*

²⁶ Gorbachev, *supra* note 7, at 65.

²⁷ See, e.g., V.N. Kudriavtsev & E.A. Lukasheva, *Sotsialisticheskoe pravovoe gosudarstvo*, *KOMMUNIST* (Russ.), no. 11, July 1988, at 44.

²⁸ See, e.g., G.N. Manov, *Sotsialisticheskoe pravovoe gosudarstvo: Problemy i perspektivy*, *SOVIETSKOE GOSUDARSTVO I PRAVO* (Russ.), no. 6, June 1989, at 3.

²⁹ The rhetoric is not always the same. Putin, for example, speaks more often about the "supremacy of law" (using the phrases *gospodstvo zakona* or *verkhovnost' zakona*). Like many languages, Russian has two words for law. *Pravo* is a broad concept of rights, whereas *zakon* is a narrower concept of positive law. It is worth noting that Gorbachev's concept of "rule of law" state is grounded in "pravo," while Putin prefers the narrower concept.

³⁰ Gorbachev, *supra* note 7, at 44.

³¹ Hendley, *supra* note 6, at 351.

strated by their inability to convince their legislative opponents of the desired approach. As Russia devolved into a quasi-one-party state under Putin, such maneuvers became unnecessary. But Putin, like his predecessors, has taken a page from the Soviet playbook in dealing with his enemies. He has used the full power of the state, including the courts, to break his adversaries.³²

Even if the state and its leaders had followed through perfectly, such top-down reforms would not have been sufficient to transform Russia into a *pravovoe gosudarstvo*. Societal change was also necessary, and Gorbachev recognized this. Breaking from the longstanding tradition of pushing reform in an exclusively top-down fashion,³³ he called upon citizens to join Party and government officials in working to achieve change. He warned that “perestroika is not manna from the heavens.”³⁴ Changes in both the attitudes and behavior vis-à-vis law would be required on the part of ordinary citizens.

II. ATTITUDES TOWARD LAW IN CONTEMPORARY RUSSIA

Before participating in the focus groups, few of my respondents had thought systematically about law. During the course of the conversations, it became clear that, even so, they informally distinguished between the two types of legal dualism outlined above. They were well-aware of the capacity of the state to use law instrumentally to punish its enemies. I used the ongoing case against Mikhail Khodorkovskii, his colleagues, and his company (*Iukos*) to start the conversation about such dangers.³⁵ A few respondents were unaware of the case, but most knew of it.³⁶ Much like the rest of the world, they were of different minds as to why Khodorkovskii had been targeted. Some pointed to his enormous

³² As noted earlier, the prosecution of Khodorkovskii and his colleagues from *Iukos* is the most vivid example of this proclivity. Russians are not blind to what is happening. When surveyed in February 2010, 41 percent of those surveyed believed that pressure had been put on the court to obtain the desired outcome in the case. *Rossiiane o dele Iukos i protsesse nad Khodorkovskim i Lebedevym*, LEVADA CTR. (Mar. 10, 2010), <http://www.levada.ru/press/2010031001.html>.

³³ Yoram Gorfizki, *Rules, Incentives and Soviet Campaign Justice After World War II*, 51 EUR.-ASIA STUD. 1245, 1245 (1999).

³⁴ Gorbachev, *supra* note 7, at 44.

³⁵ For background on the Khodorkovskii case see MARTIN SIXSMITH, PUTIN'S OIL: THE YUKOS AFFAIR AND THE STRUGGLE FOR RUSSIA 101-07, 181-85 (2010); RICHARD SAKWA, THE QUALITY OF FREEDOM: KHODOKORSKY, PUTIN, AND THE YUKOS AFFAIR 14-16 (2009).

³⁶ In public opinion polls from 2004 to 2008, two-thirds of those surveyed said that they did not follow the case closely. *Naselenie Rossii o dele kompanii "Iukos"*, LEVADA CTR. (OCT. 31, 2008), <http://www.levada.ru/press/2008103103.html>.

wealth, arguing that it could only have been achieved illegally. Those who took this position generally saw the prosecution as justified. Others saw his political challenges to the Kremlin as the catalyst for his arrest. Those in this camp believed the charges had been trumped up. Even those who believed him to be guilty thought the state had exerted influence over the trial, ensuring a conviction. Why the state did so was a more divisive question. The most common refrain I heard was that the outcome “must have been advantageous for someone.” All agreed that it was a “show trial” (*pokazatel’noe delo*) that was decided by “telephone law.” Some felt it was intended to show other oligarchs that they were not immune from prosecution and to discourage them from supporting political opponents of the regime. Others saw society as its target. As Dmitrii, a twenty-one-year-old Moscow student who was working at a travel agency to put himself through school, put it well: “It is easier to frighten all of Russia through one show trial than to earn their trust.” Sara, a forty-five-year-old Saratov manager, put it in starker terms. “If the state grabs up some anonymous Peter Ivanov, who has a small firm and televises how this Peter Ivanov is going to be punished, then no one cares much. But if the state grabs up the most powerful person, then we realize it can happen to anyone.”

Taken on its own, the belief that the state is capable of manufacturing a case against a citizen to serve its purposes is certainly troubling. A significant portion of my respondents subscribed to this view. For my purposes, however, the more important question is its impact on their daily lives. Most believed that political cases were quite rare. Moreover, they saw the Khodorkovskii case and its ilk as being quite remote from their lives. Another comment by Dmitrii is illustrative: “It is the logic of the Russian people. If it doesn’t affect them directly, then they don’t care about it.” Indeed, the results of public opinion polling confirm this attitude. While a majority of those polled feel that Khodorkovskii was unfairly railroaded, only a small minority supports his release from prison. Thus, the widespread recognition that “telephone law” controls political cases does not necessarily translate into a belief that it will affect ordinary citizens on a regular basis.

By contrast, *blat* was a more constant presence in their lives. Reactions to questions about the role of connections were remarkably consistent. When raised in the focus groups, the participants grew noticeably riled up and often interrupted each other in their eagerness to share their experiences. All agreed that it is easier to protect oneself through connections than through law in contemporary Russia. Arkadina, a twen-

ty-seven-year-old office worker from Kushchevskaja, spoke of her frustration when trying to get her mother reinstated after she was dismissed from her job two years shy of her pension. “We are ordinary people. No one is going to help us because we don’t have enough money. We lack the critical connections Everyone has local connections, but anything more is not realistic.” Her comments reveal the increased importance of money in the post-Soviet context. While requests for help are still styled as favors between friends (or friends of friends), money now greases the skids in a way that it did not in the Soviet era. Over and over again, I heard that money equals power. Put more plainly, my respondents believed that whoever had more money would prevail in a dispute. Money now acts as a proxy for connections.

To some extent, this idea of *blat*, now interlaced with money, has become a Russian variant of Galanter’s³⁷ familiar distinction between the “haves” and the “have nots.”³⁸ When talking about consumer complaints, Anatolii, a thirty-eight-year-old chief financial officer of a local utility in Shumerlia, explained that those who have the money to hire experienced lawyers are more likely to prevail. He did not view the attendant advantages as a form of bribery, but rather as a way the petitioner could benefit from his or her lawyer’s knowledge of the formal law and the judge’s predilections. In this way, “have nots” are transformed into “haves.” Of course, not everyone will have the resources to hire competent lawyers, and knowing how to work the system does not always require the skills of lawyers.

Other respondents were more cynical about the influence of money. As Stella, a nineteen-year-old seamstress from Shumerlia, put it: “Whoever has more money will simply pay a bribe and that’s it. . . . It’s now possible to buy anything with money. Absolutely anything.” Such beliefs are not limited to the young. Miroslava, a fifty-eight-year-old Tomsk economist, saw money as a deeply corrupting force:

It seems to me that “telephone law” has become less prevalent because money has appeared. Thus, results are bought. In the past, under the Soviet Union, no one had much money, so there was “telephone law.” Those higher up in the system

³⁷ Marc Galanter, *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC’Y REV. 95 (1974).

³⁸ For a more comparative analysis of *blat*-like practices elsewhere, see BRENDA DANET, PULLING STRINGS: BICULTURALISM IN ISRAELI BUREAUCRACY 50–51 (1989).

called and everything was decided by phone. But now, maybe, due to the free flow of money, people pay bribes. Even so, I don't think "telephone law" has disappeared. But I think it is less common.

Crankshaw's distinction between *blat* and bribery has become impossibly blurred.³⁹ Yet, the focus group discussions revealed that Russians themselves are not yet ready to abandon it. Vassa, a fifty-six-year-old Kushchevskaia cashier, told her group that she sometimes gave someone a box of candy if they did her a good turn, but that she never paid money for favors. Others spoke with pride of family members who, despite having jobs as policemen or doctors that are notorious for side-payments, refused to accept bribes. The very way they told their stories, as well as the skeptical reactions of the other group members, demonstrated that paying bribes had lost any sort of stigma of immorality. Indeed, the majority of group members saw bribery as a necessary coping mechanism.⁴⁰ As such, it is analogous to the role of *blat* during the Soviet period.

As this implies, Russian officialdom is complicit. A full discussion of the reasons why and its consequences are beyond the scope of this paper. The question is whether this morally duplicitous environment has facilitated the sense that law is incapable of protecting citizens. In all of the research sites, I heard comments to the effect that Russians are "without rights" (*bezpravnyye*). Some took it further. For example, Polina, the twenty-five-year-old Moscow social worker quoted at the outset of this paper, told me that "the law works against us." Daria, a fifty-five-year-old Saratov pensioner, put it more bluntly. "In our country, it has never been possible to defend oneself with law." Another pensioner, Ivan, expressed the deep-seated pessimism that permeated the focus groups and interviews with his comment: "We write about the fact that we will have a *pravovoe gosudarstvo*, but we don't. We've never had it and we never will."⁴¹ The question of who is to blame for this state of af-

³⁹ CRANKSHAW, *supra* note 14, at 61.

⁴⁰ An April 2010 public opinion poll conducted by the Levada Center indicates that my respondents reflected the views of society at large. Only 13 percent of those polled said that bribery was limited to criminals. Instead, a majority responded that everyone who comes into contact with officialdom engages in bribery. *Rossiiane o vziatkakh*, LEVADA CTR. (MAY 12, 2010), <http://www.levada.ru/press/2010051201.html>.

⁴¹ Hearing his skepticism about the prospects for the "rule of law," most would think that someone like Ivan would shy away from the courts. Yet as my article on mobilizing the law when home repair projects go wrong demonstrates, Ivan was an inveterate plaintiff. Kathryn Hendley, *Mobi-*

fairs is yet another topic deserving of further exploration but is beyond the scope of this paper.⁴²

This sense of alienation on the part of society is not uncommon in modern societies, especially in countries as large as Russia. But what my respondents reported goes beyond the usual disconnect between the needs of society and the priorities of policy-makers. That is part of the story, but the dissatisfaction goes deeper.⁴³ Though they voiced complaints about loopholes in the law and problems with implementation, they were more troubled by the failure of the state to obey its own laws. In their colorful words: “The fish rots from the head.”

For many Russians, this justifies sidestepping the law. Maksim, a twenty-eight-year-old Tomsk manager in the health care sector who was then going to law school in the evenings, captured this sentiment. “If people find the law inconvenient, they don’t use it.” A number of respondents rationalized their behavior, saying that the unreliability of law had taught them self-reliance. Angelina, a twenty-two-year-old hospital attendant from Shumerlia, related how her friends paid bribes to secure spots for their infants in local nurseries. They have learned through experience that “all problems are resolved more quickly with money.” When I asked whether they feared retribution, she spoke candidly. “Young people now spit on the law. For them, law means nothing. In any event, they make their own way. It seems to me that this is never going to change.”

III. MOBILIZING LAW IN CONTEMPORARY RUSSIA

This summary of what I heard in the course of the focus groups and interviews paints a rather dismal picture of the capacity of law to serve the interests of society in Russia. It reflects Kurkchiyan’s finding

lizing Law in Contemporary Russia: The Evolution of Disputes Over Home Repair Projects, 58 AM. J. COMP. L., 631, 658, 660 (2010). He thrived on the conflict.

⁴² For the most part, my respondents put the blame squarely on the state. A number of people complained about the failure of legislators to think through the consequences of bills. They described the resulting legislation as “not fully worked out” (*ne doraboteno*). Only a handful of respondents put any of the blame on society.

⁴³ Liudmila, a 44-year-old Saratov microbiologist, argued that “laws are adopted without the knowledge of the people. Maybe I’m not right, but it seems to me that the terms of the law ought to be put forward for discussion and we ought to consider how the law will work and, further, how people feel about it. What people have said should be taken into account and only then should it be adopted.”

that “the *negative* myth of the rule of law is dominant [in Russia].”⁴⁴ There is no question that the first reaction of almost all of my respondents to a question about the value of law in Russia was a soliloquy on its shortcomings. Both variants of dualism are woven throughout their narratives. This view of the role of law in Russia has been well captured by the surveys fielded on attitudes toward law.

The value of my approach was that I stuck around for a longer conversation. When I asked about what sorts of problems they had faced and how they had solved them, a different picture emerged. I learned that many of those who were quick to dismiss law as irrelevant and/or hopelessly corrupt had, in fact, been able to use it to redress challenges in their daily lives. My emphasis is not on courtroom battles. Elsewhere I have addressed the respondents’ propensity to litigate.⁴⁵ Here I focus on their use (or avoidance) of law in other settings, though the question of whether a distaste for litigation constrained their options cannot be entirely avoided. I purposely take on the “hard” case, examining the extent to which my respondents were willing to use the law to help them when facing more powerful opponents, such as the local or national government or powerful local companies. In such cases, their opponents had the advantage of better funding, staff attorneys, and strong connections.

A. HOUSING LAW

A number of my respondents faced housing-related problems. Ella lived in an apartment block owned by a large defense plant in Shumerlia. She related how the company had attempted to remove her telephone. As a thirty-two-year-old manager of a local insurance company, she would seem to be the underdog when battling with the large defense plant that owned her apartment building. But she was unintimidated, telling me: “If the truth is on my side, then I will assert my rights. I won’t be silenced.” The landlord sent her a notice, saying that telephone service was going to be discontinued. When she contacted the landlord to complain, she was told that the defense plant had been subsidizing the phone

⁴⁴ Marina Kurkchian, *The Illegitimacy of Law in Post-Soviet Societies*, in *LAW AND INFORMAL PRACTICES: THE POST-COMMUNIST EXPERIENCE* 25, 30 (Denis J. Galligan & Marina Kurkchian eds., 2003).

⁴⁵ Kathryn Hendley, ‘Telephone Law’ and the ‘Rule of Law’: *The Russian Case*, 1 *HAGUE J. ON RULE L.* 241, 243 (2009).

service for many years, and was unwilling to continue this practice.⁴⁶ She then explained to the representatives of the plant that she had received no such subsidies. Indeed, six years earlier, when her husband was serving in Chechnya, she had paid six thousand rubles (approximately two hundred dollars) to have a reliable phone line installed in her apartment. She had a small baby and wanted to be sure she could reach him at all times. In addition to these installation charges, she had also been paying a rather substantial monthly phone bill. She did not believe her service could be discontinued arbitrarily. She grounded her argument in the written service contract. I did not have an opportunity to review its terms, but Ella believed they would require the enterprise to return at least half of the initial installation fee if phone service was terminated. Her obstreperousness provoked threats to sue her. She returned the favor. Her husband, who had graduated from the law faculty at a military school, urged her on.

Though Ella had no personal litigation experience, she had confidence in the integrity of the system. This, in turn, gave her the courage to stand firm. When I asked her whether she was nervous about the power of the defense plant to mobilize its financial resources and connections against her, she told me that she believed that, if it came to litigation, the court would base any decision on the law. "I guess money might play a role, but the law is the law, after all. In my view, if the law is on my side, then I will prevail."

Legal dualism played a more central role in the thinking of two of the respondents from Saratov who faced housing issues. Both lived on the second floor of multi-story buildings that had retail establishments on the ground floor. In both cases, the managers of these stores had engaged in substantial renovations without consulting them or complying with building code requirements. Their reactions were different.

When the pharmacy below her built a new entrance, Svetlana, a thirty-eight-year-old Saratov doctor, did nothing, even though the construction limited her ability to use her balcony. She generalized her response, telling me that Russians prefer to brush off (*otmanut'sya*) problems rather than expending energy fighting quixotic battles. In her view, it is "simpler to resign oneself to one's fate and not to seek out the guilty

⁴⁶ Ella explained that this change in policy came when a new general director took over at the defense plant. To be fair, he may have been trying to get rid of any remaining social subsidies that the enterprise was providing to local residents. During the Soviet era, enterprises often maintained the nearby housing and provided municipal services (including phone service) at nominal cost.

and punish them.” She was convinced that any formal rights she might have would be trumped by the money and connections of the pharmacy.

Liudmila, a forty-four-year-old microbiologist, faced a similar problem when the business below her apartment undertook illegal renovations. The impact on her was more profound than that described by Svetlana. The construction resulted in a significant deterioration in her living conditions and raised safety concerns. As it was underway, she complained to the businessmen as well as to the police and fire inspectors. She was able to quote the specifics of the relevant fire regulations to me. The fire marshal sided with her and told the businessmen that they had to restore the staircase they tore out because it compromised the Liudmila’s safety and the safety of other residents. His warning did not spur them to action. She stopped short of initiating a criminal complaint, fearing that if she was found to have made false charges, she could somehow be found liable. When we spoke, she had not yet consulted an attorney. She was still gathering evidence with the goal of reaching a settlement with the businessmen. She told me that threatening them with a lawsuit would be better than actually going to court. She believed that they had been able to undertake the construction by paying bribes or otherwise calling on their connections. Indeed, in a private conversation, one of the businessmen told her “it is easier to murder you than to resolve your apartment question.”

In contrast to both Ella and Svetlana, Liudmila had prior litigation experience. She had weathered a nasty divorce that dragged on for over eighteen months that left her with no confidence in the courts.⁴⁷ Indeed, she was convinced that her husband had “bought” the judge. Even so, she was the only one of the three who was actively planning for a lawsuit. Svetlana had decided to “lump” her claim.⁴⁸ Ella talked a big game, but had not yet taken any concrete action. Though Liudmila held out little hope for prevailing against the businessmen in a Saratov court, describing it as a “game of roulette,” she was confident that she would have better luck on appeal. Thus, her distrust of the courts was grounded

⁴⁷ Her husband concealed his income from a second job in an effort to reduce his child support obligations. The court had to garnish his wages to ensure consistent payments. He made no effort to maintain a relationship with his son after the divorce. In a particularly cruel twist of events, he convinced Liudmila’s lawyer to come over to his side and later married the lawyer. Despite the obvious ethical violations of such behavior, Liudmila was not aware of any sanctions having been imposed on the lawyer. By the latter stages of the case, Liudmila had run out of money for lawyers and was representing herself.

⁴⁸ For more information on “lumping,” see William L.F. Felstiner, *Influences of Social Organization on Dispute Processing*, 9 LAW & SOC’Y REV. 63, 81 (1974).

in her belief that law could be trumped by connections. Once the dispute could be heard in a neutral location where the businessmen's connections would be less potent, then her underlying optimism took over.

These two Saratov respondents clearly believed that connections trumped law. For Svetlana, this dualism within the legal system rendered any effort to use formal legal channels to remedy her situation pointless. Liudmila was less jaded. Ella was not ready to dismiss the potential of law. While conceding that the legal system was far from perfect, she held out hope that she could use it as a cudgel to blunt the economic power of her landlord.

B. ADMINISTRATIVE LAW

1. *Getting Into Kindergarten*

Fighting over housing issues pales in comparison to taking on city hall. Challenging local administrations is particularly difficult in smaller towns like Shumerlia and Kushchevskaja, where I was repeatedly told that everyone knew one another. By contrast, fading into anonymity was possible in metropolises like Moscow, Saratov, and Tomsk. Getting their children or grandchildren into municipal nurseries and kindergartens was an issue that troubled many of the women in the small town focus groups. The shortage of spaces seems to be a relatively recent development. When the older daughter of Klavdia (a thirty-five-year-old inspector) entered a Shumerlia kindergarten in 1996, no special efforts were required. Even though she put her younger daughter on a list for entry when she was born, when the time came for her to enter kindergarten a few years ago, she was told that there was no room. If, however, she was willing to provide "sponsor's help" (*sponsorskaia pomoshch'*), then there would be a place for the girl. Ostensibly the money would fund repairs at the kindergarten, but Klavdia regarded it as a bribe. When we spoke, she had not yet decided whether she would succumb to the demand for a side payment.

Earlier, I referenced a comment by Angelina about how many young Shumerlia parents were paying for spots in nurseries. She herself refused to provide this "sponsor's help" as a matter of principle. Echoing the sentiments of others, she said: "Probably, I have the right to appeal somewhere. I simply don't know all the laws. I don't know what rights I have. Because of that, I didn't appeal." Instead, her grandmother made a personal appeal to the mayor of Shumerlia. The mayor gave an order

(*ukaz*) to find a place for Angelina's daughter. She conceded that few others would have the necessary connections to solve this problem. She suspected that most paid to get a place for their children. Looking to the future, she commented,

I am afraid for my child. If our generation behaves this way, what will things be like when she grows up? I am horrified. . . . I don't think things are going to get better; it's hard to change customs. . . . People are now accustomed to paying money.

Stella, a new mother who spoke earlier of the ubiquitousness of bribes in contemporary Russian culture, saw herself as an exception. She had already put her newborn onto a list for kindergarten and did not anticipate having to pay a bribe. In contrast to Angelina, she was hopeful that the situation would be different by the time her daughter is old enough for kindergarten.

The older generation was able to put the situation into a broader perspective. When Bela's daughter gave birth, they immediately put the child on a list. Because Bela was a student herself, her daughter should have been given preferential treatment. When they were told that all the Shumerlia kindergartens were full, Bela took matters into her own hands. "A friend of mine works in the city government; she has an influential position. I spoke with her and began to look for ways around [this problem] by using envelopes [to pay money]. In the past this was called bribery, but now it's called sponsor's parental help."

Left with no choice, Bela made the requested payment. Notwithstanding the label, she suspected that most of the money went into the pockets of the kindergarten administrators. Her own grandmother had worked as the director of one of Shumerlia's kindergartens in the 1970s, which allowed her to contrast the practices of the present and the past. She admitted that *blat* was widespread in the Soviet era, but said it was qualitatively different from what she experienced with her grandchild. She said that her grandmother might get flowers, nice cards or books from parents, but that paying monetary bribes would have been unthinkable.

Regina, a sixty-year-old Kushchevskaia grandmother, likewise paid money to secure a place for her grandchild. She said that some might characterize the payment as a form of *blat*, but she saw it as a bribe (*vziatka*). Afterwards, her daughter-in-law proposed that they go to the prosecutor (*prokuror*). Her distaste for bribery buttresses that ex-

pressed by some of the younger Shumerlia respondents, and shows the complexity of Russian legal culture. Regina resisted her entreaties, fearing the possible consequences. Her fellow focus group members supported her, saying that if she made trouble, then her grandchild might not be fed or changed regularly.

None of my respondents framed their behavior as a response to the dualistic nature of the legal system. Yet their actions underscored their belief that calling on powerful friends and/or paying bribes were the most effective means of securing child care. In essence, they reordered their behavior in recognition of the power of connections and money. For these women, asserting their legal right to a place for their child was not a viable option. Most parents never considered it. Angelina did, but quickly dismissed it as too much trouble. Several others hinted at the dangers of repercussions. The lack of anonymity in these small towns discouraged parents from openly charging kindergarten administrators with corruption. Parents feared that local officials would be reluctant to pursue such charges, leaving them and their children as pariahs. Indeed, the equanimity with which the small town participants regarded the prospect of side-payments for places in kindergartens signaled that it was a fact of life for them. Such payments were uniformly seen as bribes rather than as a form of *blat*.

2. Fighting Environmental Damage

Claims against local administration were often collective. Complaints about the environmental harm caused by a leather factory dominated several of the Kushchevskaia focus groups. The factory, which is an Italian-Russian joint-venture, spews out noxious fumes. It is located in the middle of a residential zone. Those who live nearby are unable to keep their windows open. Some have suffered hair loss. David, a twenty-four-year-old chemical engineer, explained that the environmental danger stemmed from the factory's use of chromium to treat the leather. Having worked at the plant for several months, he characterized management as "unscrupulous," noting that they paid him less than was promised.

The premises occupied by this factory were the site of an abandoned Soviet-era meat-processing plant. Thus, situating the plant in a residential zone was not the Italians' decision. Having factories in heavily populated areas was not uncommon during the Soviet period. Why it was approved as a leather-works site in the mid-1990s is unclear. Several

participants pointed out that the factory brought much-needed jobs and tax revenues. Valentina, a sixty-one-year-old security guard, took a more cynical view, noting that the investment had been approved by local authorities during the “crazy bandit years” of the 1990s. Others echoed her sentiments, arguing that the decision must have been advantageous for local authorities, hinting at pay-offs for turning a blind eye to the possibility of environmental damage.

In each group, we asked whether anything could be done to shut down this factory. Without exception, the initial reaction was to tell us how hopeless any such effort would be. When we pushed, we learned that the residents had taken various measures to rein in the factory, but had been stymied at every turn. They had, for example, regularly complained about the noisome smells in the local press in an effort to stir up public pressure on authorities. Several investigations were launched, only to discover that the factory was in compliance with all applicable regulations. Whether this was the result of a lack of comprehensive regulations or corrupt inspectors is unclear. Residents also took the matter to court. None of the respondents had participated in this case, but they knew of it. The court ordered the plant to clean up its operation, but neither the court nor the local officials were willing to shut it down. When we asked why, a number of hypotheses emerged, including a natural disinclination for politicians to destroy jobs and a suspicion that these politicians had been bribed into non-action.

This incident provides some insight into why Russians lack confidence in law. The residents’ efforts to mobilize the law to regain safe living conditions were completely unsuccessful. To my respondents, this proved the power of connections over law. The willingness of local officials to look the other way when presented with clear-cut evidence of environmental damage harkens back to the Soviet-era practices of “eye-washing,” (i.e., the widespread practice of padding reports to the central authorities). As was the case in the past, the Kushchevskaja authorities and their regional superiors had to be aware of the risk to the population of allowing the plan to continue to spew noxious fumes. But the prospect of keeping residents employed and keeping its tax coffers full outweighed such concerns.

C. PENSION LAW

If the prospect of standing up to local officials seems daunting, then imagine the courage required to take on the national bureaucracy.

Two of my respondents faced similar circumstances. Each had been married to military officers. When widowed, they counted on receiving their husband's pension to supplement their income. Neither received it automatically. Remediating the situation required them to mobilize the law to serve their interests. Though they shared the same goal, their problem-solving strategies were remarkably different.

At age fifty-six, Galina was still teaching part-time at a Moscow technical college. Her husband died in 1990. A neighbor had told her about a change to the law that might help her. The law, which had been championed by Putin and adopted at the end of 2006, was an amendment to the basic pension law that allowed those who had been widowed to receive two pensions.⁴⁹ Her daughter printed out the text for her.

I went to the pension department with the law, where it was printed in black and white. The woman told me: "We don't know anything. Leave the text with us." . . . I then went to the military commissariat (*voenkomat*). There I also left a copy. This was in February. The law was passed in December. I learned about it in January and by June, I was receiving a pension. A success! This law was in force, but the bureaucrats weren't aware of it. . . . Imagine, I went there with my highlighted copy of the law and showed them.

Galina then began to spread the word among similarly-situated women. Even after she had her personal triumph, officials at the pension department continued to claim they knew nothing of the law to other petitioners. With her newly acquired knowledge and confidence, she was also able to sort out her own pension status. She had not realized that she had been eligible for a pension since age fifty, and that she was entitled to a series of retirement benefits. She received a lump back payment of forty-two thousand rubles, which she used for renovating her apartment.

Daria, was a year younger than Galina. Like Galina, her husband had made his career in the military. They had moved around the Soviet Union during his career, but had settled in Saratov to be closer to their children. One of Galina's adult children suffers from epilepsy and requires special care. Galina had been an army nurse, but when we spoke

⁴⁹ Federal'nyi zakon ot 21 dekabria 2006 g. N. 239-FZ [Federal Law of 21 December 2006 No. 239-FZ], available at <http://base.garant.ru/12151147.htm#65537>. Galina made my search for the relevant statute very easy by giving me the number of the law. This might seem like an odd detail for a lay-person to remember, but I have been struck by how Russians frequently can quote statute numbers fluently.

she was working for miserly wages at a warehouse. In the eighteen months since her husband's death, she had been given the runaround when she tried to get his pension.

. . . after the death of my husband, I wanted to receive his pension. He used to joke with me: "Dasha, when I die, you'll get my pension . . . it should be sufficient." But for a year and half, I haven't been able to obtain the right certificate for the court. . . . I was dependent on my husband—oh how could I not have been dependent on him if his pension was three times more than mine? He supported the family, plus running a small business on the side. . . . I need more money. Somehow I can't get the certificate. Two weeks ago, I was crying. . . . I feel like I'm beating my head against a wall. . . . What can I rely on? I don't know.

I asked whether she had considered hiring a lawyer to help her through this thicket of bureaucracy. She scoffed at the idea, telling me that she barely had enough money to feed herself and that hiring a lawyer was well beyond her means. Her solution was to cut her expenses to the bone and hope that the problem with her husband's pension would somehow sort itself out.

What explains the difference between the experiences of these two women? With a university education, Galina might have been better situated to research the law. She was clearly more web-literate than Daria. Galina also had a bit more experience with the legal system, having had to resolve an inheritance issue after her father's death.⁵⁰ Daria seemed completely flummoxed by having to pull together the appropriate documents to prove her right to her husband's pension. On a deeper level, however, the real contrast lay in their expectations of the law. Daria saw herself as legally illiterate and lacking in the appropriate connections, and so was not surprised by her inability to mobilize the law to serve her needs. Galina expected the law to work in her favor and did the spadework necessary to ensure a favorable outcome. Though she did not see herself as exceptional in any way, her assumption that the formal rules were meaningful marks her as exceptional among my respondents.

⁵⁰ Galina took her husband's name after her marriage. Her father inadvertently misspelled her last name in his will. After his death in 1999, she had to prove that she was, in fact, his daughter by taking her birth certificate and marriage certificate to court. Though she did not hire a lawyer to navigate this process, she did have to work through a notary.

IV. LEGAL DUALISM AS A CONSTRAINT ON MOBILIZING LAW IN RUSSIA

A. EXPLAINING AVOIDANCE OF LAW

The more typical story is one of avoiding the law. Underlying this choice is a lack of trust in the power of law. Most saw side-payments or appeals to powerful friends as preferable to invoking their legal rights. These were not second-best choices resorted to when disappointed by the legal system. Relying on law was more the exception than the rule. The reliance on connections and bribery reflected a pragmatic approach to problem-solving.

Teasing out the reasons why my respondents shied away from law is difficult. The small sample size makes generalizations problematic. It is tempting to blame the past. As Ledeneva documents, people learned how to use their connections to obtain shortage goods or services in the Soviet era.⁵¹ Such habits die hard. Monetary payments may now have taken the place of the “gifts” that powered the *blat* networks of the past, but the marginal role of law remains unchanged. The fact that the tendency to shy away from law spanned all generations undercuts the power of the Soviet legacy as the key explanation.

Personal experience is also a possible explanation. Perhaps those who have tangled with the legal system in some form are reluctant to repeat the experience, or vice versa. My data is inconclusive. While several of the respondents who were open to relying on law, namely Liudmila and Galina, had been to court, others (like Ella) had no experience with the formal legal system. Likewise, some of those most dismissive of the potential of law, such as Svetlana, Stella, and Bela, had never been to court. Others (like Ivan) who doubted Russia’s chances to become a *pravovoe gosdarstvo* were chronic litigants.

Part of the appeal of avoidance is its simplicity. Paying a bribe or drawing on powerful connections is quicker and easier than working through formal legal channels. Throughout my conversations, respondents repeatedly emphasized that seeking legal remedies would be too much trouble. As I found in my earlier work on Russians’ willingness to use courts, they feared the time, money, and emotional energy required

⁵¹ LEDENEVA, *supra* note 8, at 1.

to pursue legal claims. Part of their calculus, however, was their expectation that the other side would be able to blunt any effort to mobilize law by drawing on its own network of connections. This, in turn, reflects an assumption that law is malleable and that officialdom itself does not respect the law. Such beliefs are reinforced by the Russian media's unremitting negativity toward the legal system. In his 2008 campaign, President Medvedev vowed to battle against this sort of legal nihilism, but it has proven resistant to his efforts.

B. EXPLAINING ENGAGEMENT WITH THE LAW

Russians' propensity to avoid the law is a familiar story. My research suggests that it is far from the whole story. Notwithstanding the societal lack of trust in the capacity of law and those entrusted with its enforcement to stand up to bribery and connections, some are still willing to work through formal channels. Not surprisingly, some who do so are neophytes like Ella, whose optimism has yet to be fully tested. But even within my small sample, several of those who were willing to rely on law, such as Galina and Liudmila, had previously been frustrated by their interactions with the formal legal system.

Particularly surprising was the respondents' use of law to challenge the state and other powerful interests. When I analyzed the transcripts of the focus groups and interviews to understand litigation behavior, the consensus was clear. Many respondents were receptive to the idea of suing those similarly situated, but were skittish about litigating with the state or with those more powerful than them. Interestingly, this study of mobilizing law in non-litigation settings shows a greater willingness to challenge the powerful. Such efforts were not always successful, but the fact that these ordinary citizens were willing to stand up to the powerful was unexpected, especially in the increasingly authoritarian environment of post-Soviet Russia.

Asking my respondents to explain their willingness to rely on law was not terribly helpful. Although I framed their choice as one of law versus legal avoidance, this was not how they saw their behavior. Rather, they told stories of problem-solving and justified their strategies in terms of what felt right or logical to them. Law entered their calculus primarily as a means to an end. They would likely resist any characterization as law-abiders or law-avoiders. They used law when doing so was easier than avoiding law. Few saw this choice as raising any sort of moral dilemma.

The small sample size makes general explanations impossible. Those who invoked law were of many different ages; they had different educational backgrounds, religious preferences, and levels of financial resources. The sorts of situations in which they were willing to challenge officialdom were likewise varied, though most involved little direct risk to themselves or their families. Compare the behavior of those affected by the leather factory in Kushchevskaia with the parents who refused to blow the whistle on kindergarten administrators who were lining their pockets. The Kushchevskaia residents likely felt they had nothing to lose by trying to limit emissions. The collective nature of the protest gave them cover against individual retribution. The parents of pre-schoolers, by contrast, risked the black-balling of their children.

C. THE ABSENCE OF LAWYERS

Viewed in a comparative context, the absence of lawyers from my respondents' stories is striking. Once again, the role of connections helps explain their reticence. Few of them had friends (or friends of friends) who were lawyers. As a result, they were distrustful of lawyers, being unsure of how to assess their competence and fearful of their cost. For my purposes, the lack of lawyers meant that my respondents were making their own choices. They had not been cajoled into mobilizing by lawyers with their own agendas. It also meant that they had to shoulder the burden of learning the relevant rules and that they typically faced opponents who were more experienced.

D. IRRELEVANCE OF "TELEPHONE LAW" FOR ORDINARY RUSSIANS

Notwithstanding the steady drumbeat of the media about the grip of "telephone law" on the Russian legal system, my respondents saw such machinations as remote from their daily lives. As I noted when analyzing their attitudes toward law generally, they are painfully aware of the state's capacity to reach out to punish its enemies. But they saw this as a battle among the powerful within Russian society, to which they were mere spectators. Few worried that the wrath of the state would be brought down on them. This is not to suggest that the Russian legal system is unblemished. "Telephone law" remains a fact of life for those who come within the cross-hairs of the Kremlin or regional leaders. Curtailing such practices is essential if Russia is to make progress towards the "rule

of law.” But the assumption that “telephone law” has made the legal system unusable for ordinary Russians overstates the case.

V. IMPLICATIONS OF THE RUSSIAN CASE

Indeed, doing so obscures the larger challenge for Russian policy-makers. My findings suggest that the preference for solving problems by relying on connections or making side-payments is more likely to cause Russians to avoid law. Trying to stamp out “old-boy networks” or corruption entirely is futile. But when old-boy networks trump the formal legal system, as in Russia and in many other post-authoritarian settings, some effort to bring them to heel is in order. Efforts to curtail corruption have proven remarkably unsuccessful in Russia. Most believe that such campaigns have been half-hearted at best, due to the vested interest of officialdom in perpetuating the existing system. Convincing rent-seeking officials to change their ways is a tall order. It requires a larger commitment on the part of both state and society to enhance the respect for law. Understandably, society is cautious about making that leap before being convinced that its political leaders have put rent-seeking behind them. Few, if any, post-authoritarian countries have succeeded in this sort of remaking of the social compact.

Table 1: Background Information on Research Sites as of the End of 2007(1)

	Population	Average Monthly Wage (2)	Unemployment Rate	Direct Foreign Investment
Moscow	10,470,300	23,623 rubles	0.8%	\$7.4 billion
Saratov (Saratov oblast')	836,100 (2,583,800)	10,601 rubles (9,103 rubles)	1.17% (8%)	(\$25 million)

Tomsk (Tomsk oblast')	496,500 (1,035,000)	16,091 rubles (14,429 rubles)	0.66% (6.9%)	(\$219 million)
Shumerlia (Republic of Chuvashia)	34,100 (1,282,600)	(8,703 rubles)	(6.5%)	(\$30 million)
Kushchevskaia (Krasnodarskii krai)	(5,121,800)	(10,260 rubles)	(8.8%)	(\$251 million)

(1) Data are generally available for the regional sub-units of Russia. These have various names, *e.g.*, oblast', republic, or krai, but all are equal members of the Russian Federation. Where possible, I have provided data for both the city and the surrounding region. Saratov and Tomsk are the capitals of their respective regions and, therefore, more information was available.

(2) The exchange rate at the close of 2007 was 24.55 rubles to the U.S. dollar, according to the Central Bank of Russia.

(3) Because the amounts of investment can fluctuate wildly from year to year, I have taken the average of three years in an effort to provide a more accurate picture.

Sources: *Sem'ia* (2008); *Regiony* (2008a); *Regiony* (2008b); *Regiony* (2008c).

Table 2: Background Information on Respondents Referenced

Name	Age	Residence	Education	Occupation	Court Experience?
Anatolii	38	Shumerlia	University degree	Chief financial officer	Yes
Angelina	22	Shumerlia	High school degree	Hospital attendant	No
Arkadina	27	Kushchevskaia	University degree	Office worker	No
Bela	43	Shumerlia	University degree	Unemployed	No

Daria	55	Saratov	High school degree	Pensioner	No
David	24	Kushchevskaia	University degree	Computer programmer	No
Dmitrii	21	Moscow	University student	Travel Agent	Yes
Ella	32	Shumerlia	University degree	Manager	No
Galina	56	Moscow	University degree	College teacher	Yes
Ivan	61	Moscow	University degree	Pensioner	Yes
Karina	42	Saratov	University degree	Doctor	Yes
Klavdia	35	Shumerlia	High school degree	Inspector	Yes
Liudmila	40	Saratov	University degree	Museum worker	Yes
Maksim	28	Tomsk	University degree	Manager in health care sector	
Miroslava	58	Tomsk	University degree	Economist	Yes
Polina	25	Moscow	University degree	Social worker	No
Regina	60	Kushchevskaia	University degree	Hospital attendant	Yes

Sara	45	Saratov	University degree	Manager	No
Stella	19	Shumerlia	High school degree	Seamstress	No
Svetlana	38	Saratov	University degree	Doctor	No
Valentina	43	Moscow	University degree	Administrator	Yes
Vassa	56	Kushchevskaia	High school degree	Cashier	No