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The Puzzling Non-Consequences of Societal Distrust of Courts: Explaining the Use of Russian Courts

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The Puzzling Non-Consequences of Societal Distrust of Courts: Explaining the Use of Russian Courts

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Russians' lack of trust in courts as an institution has been repeatedly documented through public opinion polling. Yet the caseload data show a steady increase in the use of courts by both individuals and firms in Russia. But these data cannot explain why Russians choose to use the courts. The Article makes use of two publicly available datasets grounded in representative surveys of Russian citizens and firms to investigate this puzzle. The existing literature assumes that the lack of legitimacy of courts in Russia forestalls use. While confirming the societal disdain for courts, the analysis reveals that this attitude has little effect on behavior. Instead, a complicated mixture of need and capacity drives the use of the courts. Two publicly available datasets were used: the EBRD-World Bank Business Environment and Enterprise Performance Survey and the Russian Longitudinal Monitoring Survey, RLMS-HSE.

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Introduction

Why do individuals and firms go to court? Litigation is rarely the easiest way to resolve a dispute.[1] As compared to informal dispute-resolution mechanisms, the courts typically cost more,[2] take longer,[3] and risk fracturing any pre-existing relationship between the parties.[4] Yet judicial decisions can be preferable because they provide clarity as to which party prevailed, which is often obscure in negotiated settlements. Judicial decisions also carry with them the power of state enforcement. Each possible approach to resolving disputes, whether informal or formal, has its pluses and minuses. Further complicating the calculation of how to proceed are the inevitable quirks within various national systems. Courts exist within a complex institutional environment.[5] The reasons prompting litigation in

1. *See, e.g.*, HAZEL GENN, PATHS TO JUSTICE: WHAT PEOPLE DO AND THINK ABOUT GOING TO LAW (1999).

2. *See* Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95, 146 (1974); Joseph A. Grundfest & Peter H. Huang, *The Unexpected Value of Litigation: A Real Options Perspective*, 58 STAN. L. REV. 1267, 1275 (2005); George L. Priest & Benjamin Klein, *The Selection of Disputes for Litigation*, 13 J. LEGAL STUD. 1, 6 (1984); Charles Silver, *Does Civil Justice Cost Too Much?*, 80 TEX. L. REV. 2073, 2073-74 (2002).

3. On the impact of delays on the propensity to litigate, see Michael Heise, *Justice Delayed?: An Empirical Analysis of Civil Case Disposition Time*, 50 CASE W. RES. L. REV. 813, 814-16 (2000).

4. Parties in long-term relationships, whether business or personal, are reluctant to take their disputes to court for fear of rupturing their relationships—a fact well documented in the context of the United States. *See* SALLY ENGLE MERRY, GETTING JUSTICE AND GETTING EVEN: LEGAL CONSCIOUSNESS AMONG WORKING-CLASS AMERICANS 2-3 (1990); Stewart Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 AM. SOC. REV. 55, 64 (1963). Whether this reluctance is present in less adversarial systems is unclear. *See* Kathryn Hendley, *Business Litigation in the Transition: A Portrait of Debt Collection in Russia*, 38 LAW & SOC'Y REV. 305, 305 (2004) ("[T]hose who have long-term, trust-based relationships avoid the courts . . . [due in part to] fear of disrupting ongoing relationships . . . ."). *See generally* SALLY ENGLE MERRY, HUMAN RIGHTS & GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE (2006).

5. *See generally* MARTIN SHAPIRO, COURTS: A COMPARATIVE AND POLITICAL ANALYSIS (1981).

one socio-political context might play out very differently in another.[6] Even so, the basic motivations for using (or not using) the courts can be best assessed in terms of need, capacity, and belief. This Article is devoted to exploring these three hypotheses. The existence of a dispute is certainly a necessary condition for litigation. But is it sufficient? The relationship between need and use is far from automatic. Courts everywhere tend to be a last resort. Most litigants, whether firms or individuals, prefer to resolve disputes privately.[7] This suggests that need alone is insufficient to compel use, though the extent to which it explains use is worth exploring. The second hypothesis focuses on the capacity of the litigants. The socio-legal literature has established that the level of experience and knowledge that litigants have of the courts can affect use.[8] Yet Galanter's seminal article, *Why the "Haves" Come Out Ahead*, reminds us that being a "have" does not necessarily translate into more use. Rather, the "haves" are able to make more informed choices about when to litigate.[9] The third hypothesis posits that litigants' attitudes regarding law and courts will determine their use of the courts. This hypothesis is grounded in the unstated assumptions of the literature. Policy makers and scholars alike seem to assume that a disaffection or disdain for law translates into an unwillingness to use the courts.[10] The lack of legitimacy of courts in countries making the transition away from state socialism is frequently assumed to explain low levels of use.[11] This reasoning is intuitively appealing. After all, why would a firm or individual turn to an institution they do not trust for help? The strength of this relationship between distrust and non-use deserves further

6. For example, Blankenberg's comparative study of debt collection in Germany and the Netherlands illustrates how the same mechanism has resulted in different litigation patterns due to a few key differences between the two legal systems. Erhard Blankenburg, *The Infrastructure for Avoiding Civil Litigation: Comparing Cultures of Legal Behavior in the Netherlands and West Germany*, 28 LAW & SOC'Y REV. 789, 789 (1994). The availability of legal expertise can also affect demand. *See, e.g.*, Gillian K. Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans*, 37 FORDHAM URB. L.J. 129, 134-36, 139-40 (2010); Herbert M. Kritzer, *Examining the Real Demand for Legal Services*, 37 FORDHAM URB. L.J. 255, 256 (2010).

7. *See* William L.F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 LAW & SOC'Y REV. 631, 636 (1981).

8. *See, e.g.*, Kathryn Hendley, *Beyond the Tip of the Iceberg: Business Disputes in Russia*, *in* ASSESSING THE VALUE OF LAW IN TRANSITION ECONOMIES 20-55 (Peter Murrell ed., 2001); SALLY ENGLE MERRY, GETTING JUSTICE AND GETTING EVEN: LEGAL CONSCIOUSNESS AMONG WORKING-CLASS AMERICANS (1990); Kelley E. Cormier, *Grievance Practices in Post-Soviet Kyrgyz Agriculture*, 32 LAW & SOC. INQUIRY 435 (2007); David M. Engel, *Globalization and the Decline of Legal Consciousness: Torts, Ghosts, and Karma in Thailand*, 30 LAW & SOC. INQUIRY 469 (2005).

9. *See* Galanter, *supra* note 2, at 103.

10. *See generally* GENN, *supra* note 1; TOM R. TYLER, WHY PEOPLE OBEY THE LAW (1990); Kristina Murphy, *The Role of Trust in Nurturing Compliance: A Study of Accused Tax Avoiders*, 28 LAW & HUM. BEHAV. 187 (2004); Sheilagh Ogilvie, *The Use and Abuse of Trust: Social Capital and its Deployment by Early Modern Guilds* (CESifo Grp., Working Paper No. 1302, 2004), 1 JAHRBUCH FÜR WIRTSCHAFTSGESCHICHTE 15 (2005).

11. *See, e.g.*, Jonathan R. Hay & Andrei Shleifer, *Private Enforcement of Public Laws: A Theory of Legal Reform*, 88 AM. ECON. REV. 398, 401 (1998).

investigation. Perhaps need or capacity trumps any lack of legitimacy of the courts.

In this Article, I investigate these three hypotheses in the context of contemporary Russia. The well-documented imperfections of Russia's judicial system make it a hard case.[12] The legitimacy of the courts within Russian civil society is minimal at best. Skepticism about Russian courts is nothing new. Russians have long bemoaned the lack of independence of their courts. Such complaints date back to the Tsarist period, continued through the Soviet period, and persist to the present day.[13] Evidence supporting these complaints is abundant. In all these eras, the record documents the courts' willingness to follow the lead of the political elites in resolving disputes when faced with cases that have political implications. Although the prevalence of such cases is almost impossible to determine due to the difficulty of knowing whether a case has political overtones,[14]

12. For an overview of the legal system of Tsarist Russia and the Soviet Union, see generally HAROLD J. BERMAN, JUSTICE IN THE U.S.S.R.: AN INTERPRETATION OF SOVIET LAW (1966). For an intellectual history that examines the roots of the 1853 reforms to the Russian judicial system, see RICHARD S. WORTMAN, THE DEVELOPMENT OF A RUSSIAN LEGAL CONSCIOUSNESS 5 (1976). Critiques of the Soviet system are legion. *See, e.g.*, YURI FEOFANOV & DONALD D. BARRY, POLITICS AND JUSTICE IN RUSSIA: MAJOR TRIALS OF THE POST-STALIN ERA 3-7 (1996); DINA KAMINSKAYA, FINAL JUDGMENT: MY LIFE AS A SOVIET DEFENSE ATTORNEY 14 (Michael Glenny trans., 1982); KONSTANTIN M. SIMIS, USSR: THE CORRUPT SOCIETY 24-25 (Jacqueline Edwards & Mitchell Schneider trans., 1982); Peter H. Solomon, Jr., *Judicial Power in Russia: Through the Prism of Administrative Justice*, 38 LAW & SOC'Y REV. 549, 563 (2004). Critiques of the Soviet system by Russians became possible in the late 1980s, as the parameters of public discourse expanded under Gorbachev's *perestroika* policy. *See, e.g.*, *Kakim dolzhen byt' pravovoe gosudarstvo*, LITERATURNAIA GAZETA, June 8, 1988, at 11. Since the collapse of the Soviet Union, critical assessments of the system have become commonplace among both Russian and Western scholars. *See generally* E.B. ABRASIMOVA, OCHERKI ROSSIISKOGO SUDOSTROISTVA: REFORMY I REZUL'TATY (2009); PETER H. SOLOMON, JR., SOVIET CRIMINAL JUSTICE UNDER STALIN (1996).

13. Western and Russian scholars frequently reference Aleksandr Herzen's comment from the nineteenth century about the role of law:

> Legal insecurity that has hung over our people from time immemorial has been a kind of school for them. The scandalous injustice of one half of the law has taught them to hate the other half; they submit only to force . . . . Whatever his station, the Russian evades or violates the law wherever he can do so with impunity; the government does exactly the same thing.

Eugene Huskey, *A Framework for the Analysis of Soviet Law*, 50 RUSS. REV. 53, 68 (1991) (citing Aleksandr Herzen, *Du Développement des Idées Revolutionnaires en Russie* (1851), *in* 7 COLLECTED WORKS IN THIRTY VOLUMES 121 (1954-61)); V.A. Tumanov, *O pravovom nigilzme*, 10 SOVETSKOE GOSUDARSTVO I PRAVO 20, 24 (1989) (citing Aleksandr Herzen, *Du Développement des Idées Revolutionnaires en Russie* (1851), *in* 7 COLLECTED WORKS IN THIRTY VOLUMES 121 (1954-61)).

14. The well-publicized show trials of the Soviet era present obvious examples of politicized cases. *See, e.g.*, FEOFANOV AND BARRY, *supra* note 12, at 314; VALERYII CHALIDZE, TO DEFEND THESE RIGHTS: HUMAN RIGHTS AND THE SOVIET UNION 24 (Guy Daniels trans., 1975); KAMINSKAYA, *supra* note 12, at 174; ANDREI SINIAVSKII, ON TRIAL: THE SOVIET STATE VERSUS "ABRAM TERTZ" AND "NIKOLAI ARZHAK" (Max Hayward trans. and ed., 1967). For insight into how these trials were conducted, see JULIE A. CASSIDAY, THE ENEMY ON TRIAL: EARLY SOVIET COURTS ON STAGE AND SCREEN 28-29 (2000); ELIZABETH A. WOOD, PERFORMING JUSTICE: AGITATION TRIALS IN EARLY SOVIET RUSSIA 2-7 (2005). Soviet history is replete with examples of criminal prosecutions that could be seen as politically motivated, but these were so common that few saw them in this light. Pomorski documented the practice of padding reports (*ochkovtiratel'stvo* or "eye washing") to adminis-

this practice reached its apex under Stalin.[15] The number of politicized cases decreased dramatically under Khrushchev and Brezhnev,[16] though the memoir literature reveals the persisting practice of handling politicized cases in a qualitatively different way from non-politicized cases, which inevitably compromised the ability of those involved to realize their legal rights.[17] In an effort to enhance judicial independence, Soviet legislators began a series of institutional reforms of the judicial system in the late 1980s.[18] Since the collapse of the Soviet Union, Russian legislators have continued to tinker with the courts' institutional structure and the rules governing judicial selection, compensation, retention, and discipline.[19] Yet, the Yukos case vividly demonstrates that in politically sensitive cases, judicial independence remains elusive.[20] Corruption within the judicial corps continues to pose a serious problem.[21] At the same time, few would question that the present-day Russian courts do a better job of living up to the ideals of independence and competence than did their Soviet counterparts. Fewer still would dispute that much work remains to be done.

Much of the literature dealing with Russian courts, both scholarly and mass media, assumes that these glaring shortcomings make the Russian courts unappealing to Russian citizens and firms. In a March 2011 speech in Moscow, U.S. Vice President Joseph Biden challenged Russia to improve the independence of its courts, referencing the Khodorkovsky case among others.[22] Prime Minister Dmitry Medvedev's public statements indicate that he is supportive of greater judicial integrity, though whether he has the political will or power to effect change is unclear. As President, he implicitly criticized the process surrounding Khodorkovsky by conceding that releasing Khodorkovsky would provide no public danger.[23] Along

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trative superiors—a technically illegal practice in which most state-owned enterprises engaged regardless. The practice was mostly overlooked, but was occasionally prosecuted to send a signal that it was being overused. *See* Stanislaw Pomorski, *Crimes Against the Central Planner: "Ochkovtiratel'stvo," in* SOVIET LAW AFTER STALIN: PART II: SOCIAL ENGINEERING THROUGH LAW 273, 291-312 (Donald D. Barry et al. eds., 1978).

15. *See* Solomon, *supra* note 12, at 563.

16. 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, 5 (James R. Millar ed., 1992).

17. *See* KAMINSKAYA, *supra* note 12, at 174.

18. *See* PETER H. SOLOMON, JR. & TODD S. FOGLESONG, COURTS AND TRANSITION IN RUSSIA: THE CHALLENGE OF JUDICIAL REFORM 8-9 (2000).

19. *See id.* at 10-15; Alexei Trochev, *Judicial Selection in Russia: Towards Accountability and Centralization, in* APPOINTING JUDGES IN AN AGE OF JUDICIAL POWER: CRITICAL PERSPECTIVES FROM AROUND THE WORLD 375-76 (Kate Malleson & Peter H. Russell eds., 2006).

20. *See* RICHARD SAKWA, THE QUALITY OF FREEDOM: KHODORKOVSKY, PUTIN, AND THE YUKOS AFFAIR 30-70 (2009). *See generally* MARTIN SIXSMITH, PUTIN'S OIL: THE YUKOS AFFAIR AND THE STRUGGLE FOR RUSSIA (2010).

21. Ass'n of Russian Lawyers for Human Rights, *Russia: Corruption in the Courts*, RUSADVOCAT, http://rusadvocat.com/node/130 (last visited June 17, 2012).

22. Ellen Barry, *Plain Speaking from Biden in Moscow Speech*, N.Y. TIMES (Mar. 11, 2011), http://www.nytimes.com/2011/03/11/world/europe/11biden.html.

23. For a video of Medvedev's statement, which he made during a public question-and-answer session in mid-May 2011, see *Medvedev: Khodorkovsky No Danger*, YOUTUBE

similar lines, Prime Minister Medvedev has made stamping out corruption in the legal system one of his signature issues, linking this to the goal of improving the investment climate in Russia.[24] He has also frequently lamented the persistence of legal nihilism among Russians.[25]

This complaint about Russians' disaffection for law is nothing new.[26] The widespread perception that the Russian legal system is flawed beyond repair has contributed to Russia's unenviable position near the bottom of most comparative indexes that purport to measure various aspects of the rule of law.[27] In an analysis of the twenty largest countries by population by the World Bank's indicator for rule of law, Russia is ranked in the lowest quartile, along with Ethiopia, Iran, Pakistan, and Nigeria. It ranks below countries such as Bangladesh, Mexico, Egypt, and China.[28]

The Russian courts' blatant manipulation of a series of high-profile cases has led many scholars and policy-makers to believe that the courts are untrustworthy and unusable.[29] This analysis assumes that these cases

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(May 18, 2011), www.youtube.com/watch?v=Kwoy1zJcLr0. Medvedev was reacting to the decision of the appellate court to affirm Khodorkovsky's conviction in his second trial. His statement represents a break with Prime Minister Putin. The relationship between Medvedev and Putin, which has often been referred to as a "tandemocracy," has been the subject of much speculation, both in Russia and the West. Why Medvedev spoke more favorably about Khodorkovsky than did most Kremlin officials is unclear. It is worth noting that an even-handed documentary on the Khodorkovsky case aired on the state-controlled NTV channel in May 2011. *See* Yulia Latynina, *When Making a Profit Is a Crime*, MOSCOW TIMES (June 1, 2011), http://www.themoscowtimes.com/opinion/article/when-making-a-profit-is-a-crime/437915.html.

24. Olga Skabeeva, *Prezident pogovoril s chelnami Obschchestvennoi palaty o vziatkakh, sudakh i kul'turntykh kodakh*, VESTI (Jan. 20, 2011), http://www.vesti.ru/doc.html?id=422022; *Medvedev o korrupcii v sudah*, NAGAYCEV, http://nagaycev.ru/vazhnoe/medvedev-o-korrupcii-v-sudax/ (last visited June 17, 2012). Corruption is not just a post-Soviet phenomenon, but was also a reality of life in the Soviet era. *See, e.g.*, WILLIAM A. CLARK, CRIME AND PUNISHMENT IN SOVIET OFFICIALDOM: COMBATING CORRUPTION IN THE POLITICAL ELITE 1965-1990 10-11 (1993); SIMIS, *supra* note 12, at 24-25.

25. *Polnyi tekst vystupleniia Dmitriia Medvedeva na II Grazhdanskom forume v Moskve 22 ianvaria 2008 goda*, ROSSIYSKAIA GAZETA (Jan. 24, 2008), http://www.rg.ru/2008/01/24/tekst.html.

26. Huskey, *supra* note 13, at 53-54; Tumanov, *supra* note 13, at 24.

27. In an analysis of the twenty largest countries by population by the World Bank's indicator for rule of law, Russia is ranked in the lowest quartile, along with Ethiopia, Iran, Pakistan, and Nigeria. It ranks below countries such as Bangladesh, Mexico, Egypt, and China. *See* Transparency Int'l, *Corruption Perceptions Index 2010*, TRANSPARENCY, http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results (Russia is tied at 154 of 176 countries with, among others, Tajikistan, Kenya, Laos, and Cambodia) (last visited Sept. 29, 2012); *see also* World Bank, *World Wide Governance Indicators*, http://info.worldbank.org/governance/wgi/pdf/wgidataset.xls (last visited Sept. 29, 2012).

28. World Bank, *supra* note 27.

29. The most notorious example is, of course, the series of cases involving Yukos and its top managers. *See supra* note 20. Other examples from recent years include the criminal prosecution of Sergei Magnitsky, whose death in November 2009 while in pretrial detention continues to be a cause célèbre. Magnitsky's former employer, William F. Browder, the executive director of Hermitage Capital, characterized the decision not to prosecute the prison officials who refused medical treatment to Magnitsky as evidence of "the incredible lack of justice in Russia." Michael Schwirtz, *In Russia, Charges are Dropped in Jail Death*, N.Y. TIMES, Apr. 9, 2012, at A4. Russian officials who were

reveal the essence of the Russian judicial system. In a series of papers, I have argued that the truth is more complicated. Building on the pioneering fieldwork of scholars such as Jane Burbank and George Feifer from the Tsarist and Soviet periods, respectively, I have characterized the Russian legal system as dualistic.[30] The instrumentalism that politicized cases evidence exists in uneasy harmony with the vast majority of mundane cases that courts resolve in accord with the written law. My research, which is based on focus groups and interviews with ordinary Russians, suggests that these Russians are sufficiently savvy to appreciate the unspoken differences between these various categories of cases.[31] They also have a culturally derived understanding of when corruption is likely to play a role in a case. Quite understandably, they avoid the courts in such circumstances. But the incidence of such cases, as compared with the overall number of cases brought to the courts, is relatively small.

The caseload data support this position. Individuals and firms are flocking to the courts in ever-greater numbers. Cases involving individuals are heard by the courts of general jurisdiction. The number of civil cases that the courts of general jurisdiction decided more than doubled between 2000 and 2010.[32] The Russian judicial system segregates cases involving firms in a separate hierarchy of specialized courts, known as *arbitrazh* courts. The number of claims brought to the *arbitrazh* courts between 2000 and 2010 has risen by approximately 70%.[33] These data give rise to a puzzle. Given the official view of courts as lapdogs to the Kremlin, why do Russians continue to use them?[34] What explains this willingness to use

involved in this case have been denied U.S. visas. Andrew E. Kramer, *Russians Tied to Jail Death are Barred from the U.S.*, N.Y. TIMES, July 27, 2011, at A7. Russian authorities have responded by pushing forward with a posthumous prosecution. Andrew E. Kramer, *Russia Plans to Prosecute Dead Lawyer in Tax Case*, N.Y. TIMES, Feb. 8, 2012, at A4. Less well-known in the West, but well-publicized in Russia, is the death of Vera Trifonova in pre-trial detention due to the authorities' refusal to allow her medical treatment. Ol'ga Romanova, *Kto ubil Trifonovu*, FORBES (Apr. 30, 2010), http://www.forbes.ru/column/49063-kto-ubil-veru-trifonovu. The most well-known of these high-profile, politically-inspired cases of the Yeltsin era was brought against Vladimir Gusinsky. David Hoffman, *Russia Hits Tycoon With a New Lawsuit; Gusinsky's Empire Faces Tax Assault*, WASH. POST, Dec. 16, 2000, at A23. The editorial writers for the *Washington Post* described the case as "pure pretense." Editorial, *An Unwarranted Arrest*, WASH. POST, Dec. 13, 2000, at A46.

30. JANE BURBANK, RUSSIAN PEASANTS GO TO COURT: LEGAL CULTURE IN THE COUNTRYSIDE, 1905-1917 2-5 (2004); GEORGE FEIFER, JUSTICE IN MOSCOW 256-57 (1964).

31. Kathryn Hendley, *'Telephone Law' and the 'Rule of Law': The Russian Case*, 1 HAGUE J. RULE L. 241, 258 (2009).

32. For an overview of caseload trends in the Russian courts of general jurisdiction, see data available at *Judicial Statistics*, JUD. DEPARTMENT SUP. CT. RUSS. FED'N, http://www.cdep.ru/index.php?id=5 (last visited June 17, 2012).

33. For an overview of caseload trends in the Russian *arbitrazh* courts, see Higher *Arbitrazh* Ct. Russ. Fed'n, http://www.arbitr.ru/press-centr/news/totals/ (last visited June 17, 2012).

34. Rose and Mishler pose an analogous question with regard to elections, concluding that there is no linear relationship between elections that are procedurally flawed (due to corruption or other problems) and lack of regime support. *See generally* Richard Rose & William Mishler, *How Do Electors Respond to an "Unfair" Election? The Experience of Russians*, 25 POST-SOVIET AFF. 118 (2009).

an obviously flawed institution? Are Russians motivated by material or ideological concerns in deciding whether to bring their claims to the courts? To what extent is their use of the courts driven by their prior experience with the courts and/or their ability to hire legal professionals to help them navigate the courts? Exploring these questions will reveal the extent to which the Russian antipathy for judicial institutions, which has ostensibly been documented in countless public opinion polls, affects court use.

Making use of data from national surveys of Russian firms and individuals, I explore these questions. I draw on the 2005 Round of the European Bank for Reconstruction and Development (EBRD)-World Bank Business Environment and Enterprise Performance Survey (BEEPS) and the 2006 Round of the Russia Longitudinal Monitoring Survey (RLMS).[35] In both surveys, respondents were asked about their contact with the courts. The question posed to firms asked about their use of either the courts of general jurisdiction or the *arbitrazh* courts.[36] Approximately 27% of the surveyed firms had been to one or the other court between 2002 and 2005. Individuals were asked about their involvement with the courts of general jurisdiction. Approximately 13% of the respondents had had contact with these courts between 2000 and 2005. These surveys are not linked to the official caseload data. They simply document the incidence of contact between the respondents and the courts and, consequently, shed light on the motivations for going to court in Russia.

Part I begins with a discussion of the underlying data and explains the construction of the dependent variable for each dataset. Part II investigates the frequency with which key demographic populations within each set of respondents had contact with the courts. After working through these control variables, Parts III-V turn to the three hypotheses respectively.

The analysis strongly suggests that material concerns, rather than ideology, drive Russians' decision to use (or avoid) the courts: the deeply intertwined rationales of need and capacity are a great deal more powerful in explaining court use than are the litigants' attitudes about law and legal institutions. This helps us understand why court use has been increasing even though public opinion polls repeatedly confirm the lack of trust in the courts.[37] Russians continue to litigate because the need presents itself and the cost of doing so is relatively low. Put more bluntly, a belief in the legitimacy of the court is not a prerequisite to utilizing it. My analysis only

35. EUROPEAN BANK FOR RECONSTRUCTION & DEV., BUSINESS ENVIRONMENT AND ENTERPRISE PERFORMANCE SURVEY (BEEPS) (2005), *available at* http://www.ebrd.com/pages/research/economics/data/beeps.shtml; UNIV. N.C., CAROLINA POPULATION CTR., RUSSIA LONGITUDINAL MONITORING SURVEY - HIGHER SCHOOL OF ECONOMICS (2006), *available at* http://www.cpc.unc.edu/projects/rlms-hse/data. All statistical data cited herein reflects my independent analysis of these data sets.

36. In Russia, the nature of the parties determines jurisdiction. As a rule, legal entities use the *arbitrazh* courts when suing other companies or the state. When individuals are involved, whether in lawsuits against other individuals or against companies, the courts of general jurisdiction hear cases. *See generally* M.I. KLEANDROV, STATUS SUD'I (2000).

37. *See* Hendley, *supra* note 31, at 244.

begins to scratch the surface of the link between legitimacy and willingness to litigate. Much more work is needed. At the same time, these preliminary results suggest that the assumption that a lack of legitimacy for the judiciary discourages court use, an assumption that drives much of law and development policy-makers' decision making, is mistaken.

I. The Data: RLMS and BEEPS

The RLMS is a nationally representative, household-based panel survey of Russians that uses a stratified cluster sample.[38] Since 1992, it has been fielded on a regular basis through collaboration between the Institute of Sociology of the Russian Academy of Sciences (working through ZAO "Demoscope") and the Carolina Population Center at the University of North Carolina, Chapel Hill.[39] The RLMS includes a standard battery of questions designed to uncover the living standards and health of Russians as well as basic demographic questions, including age, sex, marital status, economic activity, educational level, and ethnicity.[40] From time to time, the RLMS includes modules of questions on other topics. I included a set of questions pertaining to attitudes and behavior vis-à-vis the law in Rounds 13 (2004) and 15 (2006) of the RLMS.[41] Round 15 incorporated a series of questions on political participation and political attitudes that proved useful. Though I occasionally draw on earlier Rounds to trace the change in respondents' attitudes and well-being over time, my research is centered on Round 15. This Round is most comparable in timing to the 2005 BEEPS data. The statistical analysis made use of the survey commands in Stata 11, which are designed to take into account cluster sampling in the sample design.

In contrast to the RLMS, which surveys individuals, BEEPS targets firms. It has been carried out four times between 1998 and 2008 as a joint project of the World Bank Group and the European Bank for Reconstruction and Development.[42] BEEPS was fielded throughout Eastern Europe, Turkey, and the former Soviet Union, including Russia. It uses a stratified sample of firms, chosen on the basis of age, sector, size, and location. The goal of the survey is to understand how firms are coping with the ongoing

38. *See Russia Longitudinal Monitoring Survey - Higher School of Economics*, U.N.C., CAROLINA POPULATION CENTER, http://www.cpc.unc.edu/projects/rlms-hse/project/sampling (last visited Sept. 29, 2012) [hereinafter RLMS-HSE].

39. In 2010, the Higher School of Economics in Moscow became a collaborator on the survey, resulting in a revised name for the project: RLMS-HSE. *See id.*

40. *Id.*

41. *See* ADULT QUESTIONNAIRE, ROUND 13, RUSSIA LONGITUDINAL MONITORING SURVEY 39.J-40.J (2004), *available at* http://www.cpc.unc.edu/projects/rlms-hse/data/questionnaires/rmadult.pdf; QUESTIONNAIRE FOR ADULTS, ROUND 15, RUSSIA LONGITUDINAL MONITORING SURVEY 38-40 (2006), *available at* http://www.cpc.unc.edu/projects/rlms-hse/data/questionnaires/roadult.pdf.

42. For more information on BEEPS as well as access to the data, see *Business Environment and Enterprise Performance Survey*, EUR. BANK RECONSTRUCTION & DEV., http://www.ebrd.com/pages/research/economics/data/beeps.shtml (last visited Sept. 29, 2012); BEEPS DATA PORTAL, http://beeps.prognoz.com/beeps/Home.ashx (last visited Sept. 29, 2012).

transition to more democratic governments, to learn more about how firms interact with the state in all its forms, and to track changes in the business environment over time. Fortunately for my purposes, the legal system was one aspect of the institutional environment on which the survey focused. In all Rounds of BEEPS, firms were asked a battery of questions about their attitudes toward law and the legal system. The survey also included basic questions about the age, size, structure, sector, and location of the firm, as well as basic performance indicators.

II. The Incidence of Contact with the Courts Among Russian Individuals and Firms

The literature on Russian courts is voluminous.[43] The popular media, both in Russia and elsewhere, has catalogued the courts' flaws in excruciating detail. Such stories are endemic to the Russian press, and the Western press does not lag far behind. Beginning in May 2010 and continuing through the end of 2010, *The New York Times* ran a series entitled "Above the Law" exploring what its Moscow bureau chief, Clifford Levy, describes as Russia's "culture of impunity."[44] These articles provide a parade of horribles about the dysfunctional aspects of the Russian judicial system. The series was awarded a Pulitzer Prize in 2011, confirming the widespread acceptance of this view of the Russian courts. The more scholarly literature has documented the twists and turns of the efforts to reform the Russian courts over the past two decades.[45] This research has tended to be more objective than the mass media's snapshot articles, but has devoted more energy to the top-down story of institutional reform than to how Russian society has received these reforms.

The question of who actually uses the courts and why has been less fully investigated, especially as to the courts of general jurisdiction. Obtaining the data necessary to explore patterns of litigation has proven difficult. As social scientists in Russia have turned their attention to legal behavior, this has begun to change. In particular, the INDEM Foundation's project on judicial reform has yielded some provocative results.[46] With funding from the World Bank, the Levada Center has fielded a national representative survey, which explores these questions.[47] Along similar lines, that the American Bar Association organized to investigate the use of

43. *See, e.g.*, *supra* note 12.

44. *Above the Law*, N.Y. TIMES, http://topics.nytimes.com/top/news/world/series/abovethelaw/index.html?scp=1&sq=russia%20above%20the%20law&st=cse (last visited Sept. 29, 2012).

45. *See, e.g.*, SOLOMON & FOGLESONG, *supra* note 18; Jeffrey Kahn, *Vladimir Putin and the Rule of Law in Russia*, 36 GA. J. INT'L & COMP. L. 511, 514-20 (2008); Solomon, *supra* note 12.

46. A.K. GORBUZ ET AL., TRANSFORMATSIIA ROSSIISKOI SUDEBNOI VLASTI: OPYT KOMPLEKSNOGO ANALIZA (2010).

47. *See generally* L.D. GUDKOV, OTNOSHENIE PREDPRIIATII K SUDEBNOI SISTEME: PERVAIA VOLNA VYBOROCHNOGO OBSLEDOVANIIA PREDPRIIATII/ORGANIZATSII (2010).

the justice of the peace courts in several regions has great promise.[48] To date, however, the findings from these projects have limited themselves to descriptive statistics that, while intriguing, represent only a first step.[49] In this Article, my goal is to take the next step.

Russian firms' use of law has been more fully studied. Beginning in the 1990s, social scientists carried out large-scale surveys of enterprises in an effort to document their evolution from state-owned entities to market actors. A number of these surveys queried firms about their use of the courts. For example, a 1997 survey in which I collaborated found that almost 80% of the 328 firms surveyed had been parties in a case in the *arbitrazh* courts in the preceding two years.[50] Our finding confounded the prevailing common wisdom that the *arbitrazh* courts were unusable due to corruption, incompetence, and delays.[51] Others have followed up on our work and have likewise found use of the courts among Russian firms to be surprisingly high.[52] More recently, the World Bank-funded project queried Russian firms about their strategies for resolving disputes and found that 65% of the respondent firms had used the *arbitrazh* courts.[53] In prior articles, I have explored the reasons for this phenomenon using insights from case studies and courthouse interviews.[54] In this Article, I tackle the question using survey data following up on hypotheses generated from my earlier research.

As to the willingness of ordinary Russian citizens to become involved with the courts, my analysis concentrates on a question posed in both Round 13 and Round 15 of the RLMS. Respondents were asked about their contact with the courts over the preceding five years.[55] The question was designed to capture any sort of involvement with the courts, whether as a party, juror, or witness. Respondents were given three options: 1) whether they had had personal contact with the courts, 2) whether their friends or family had had some involvement with the courts, or 3) whether they and those close to them had had no contact whatsoever with the courts. As Table 1 shows, the results for Round 13 and Round 15 were remarkably

48. *See generally* S. KRIUCHKOV & M. U. SHYEVIAKOV, OTNOSHENIE GRAZHDAN K DEIATEL'NOS TI MIROVYH SUDOV (2010).

49. *See supra* notes 46-48.

50. *See* Kathryn Hendley et al., *Agents of Change or Unchanging Agents? The Role of Lawyers Within Russian Industrial Enterprises*, 26 LAW & SOC. INQUIRY 685, 688, 707 (2001).

51. Hay & Shleifer, *supra* note 11, at 401.

52. *See* Simon Johnson et al., *Courts and Relational Contracts*, 18 J.L. ECON. & ORG. 221, 226 (2002).

53. L.D. GUDKOV, OTNOSHENIE ROSSIIAN K SUDEBNOI SISTEME: PERVAIA VOLNA VSEROSSIIS-KOGO REPREZENTATIVNOGO OPROSA NASELENIIA (2010).

54. Hendley, *supra* note 8, at 38-39; Hendley, *supra* note 4, at 305.

55. The text of the question in Russian was as follows: "Иногда приходилось иметь дело с судами, неважно в каком качестве: истца или подсудимого, свидителя или народного заседателя, присяжного заседателя или просто зрителя. Приходилось ли в течение пять дет иметь дело с судами . . . ?"

similar.[56] In both rounds, about 12%-13% of the respondents had had some sort of involvement with the courts. For Round 13, the sample size was 10,527. In Round 15, it increased to 12,216.[57]

The dependent variable for the RLMS analysis was drawn from the results for Round 15. Its timing was more closely comparable to that of BEEPS. Given that I am interested in understanding why Russians are willing to resort to a flawed institution, my focus is on those who have had personal contact with the courts. In constructing the dependent variable, I therefore included those who self-identified as having been involved with the courts themselves. To be sure I had found all those who fit into this category, I compared the results to those for a question about use of the courts posed as part of a set of questions about the use of state institutions more generally. Though the results of the two questions were almost identical, this second question identified a few additional court users. My dependent variable for the analysis within the RLMS brought together those identified as having had personal contact with the courts and those who said they had used the courts. The breadth of the question is helpful in that it draws in all respondents who have had any sort of experience with the courts. On the other hand, its indiscriminateness limits my ability to distinguish between the types of experiences. It is reasonable that those who have been defendants in criminal cases might nurse grudges that are absent among those who were plaintiffs in a civil action. In this Article, my goal is an overview of attitudes and behaviors of Russians toward their courts and to generate hypotheses that can be tested with more detailed data sets.

As to Russian firms' use of the courts, my analysis centers on a question from BEEPS that asked whether the respondent firm had been to the courts of general jurisdiction or to the *arbitrazh* courts as a plaintiff or defendant in the preceding three years. This question was not included in the first round in 1999-2000, but has been posed in each of the three subsequent rounds carried out in Russia since 2002.[58] In 2002, 28.2% of the 489 firms surveyed had used the courts. In 2005, the incidence of use decreased slightly to 26.8% of the 585 firms surveyed.[59] By 2008, it had increased to 42.2% of the 1,004 firms surveyed. The number of firms

56. The most significant difference is in the category of those whose friends and family had been involved with the courts. An analysis of this change is beyond the scope of the Article.

57. I excluded those who were unwilling to respond to the question or who found the question too difficult to respond to. In both rounds, this was less than 3% of the total sample.

58. *Compare* EUROPEAN BANK FOR RECONSTRUCTION & DEV., BUSINESS ENVIRONMENT AND ENTERPRISE PERFORMANCE SURVEY QUESTIONNAIRE 10 (2002), *available at* http://www.ebrd.com/downloads/research/economics/beeps02q.pdf *with* EUROPEAN BANK FOR RECONSTRUCTION & DEV., BUSINESS ENVIRONMENT SURVEY MAIN QUESTIONNAIRE—PRIVATE SECTOR (1999), *available at* http://www.ebrd.com/downloads/research/economics/beepsq99.pdf.

59. The total number of firms that participated in 2005 was 601. Of these, 16 failed to respond to the questions about court use. These firms have been excluded from my analysis.

included in the sample has changed and increased over the years, which may explain some of the variation. Though the organizers of the BEEPS project endeavor to create a panel, at present there are only a handful of firms that have participated in multiple rounds of the survey, complicating the task of explaining the variations over time.

In order to have some basic comparability with the RLMS results, my analysis is limited to the 2005 round of BEEPS. The question about court use is more straightforward in the BEEPS questionnaire than is the question in the RLMS questionnaire. In the 2005 round, firms were asked to provide two pieces of information about their use of the courts. First, they were asked to indicate the number of times they went to court as a plaintiff. Then, they were prompted for the number of times they went to court as a defendant. Though it would have been possible to explore the behavior of firms as plaintiffs and defendants separately, I constructed my dependent variable for the firms by creating a dummy variable for all those who had been to court in either capacity. This allows basic comparability to the dependent variable for the RLMS data set. Ancillary analysis demonstrates that the basic trends are the same for these two subgroups, perhaps because there is significant overlap between them.[60]

A. Basic Traits of Russian Individuals Who Have Had Contact with the Courts

Because we know so little about the profile of Russians who have contact with the courts, I began my analysis by looking at basic demographic traits, including gender, marital status, age, income, location, education, ethnicity, and employment status. Table 2 lays out the descriptive statistics. Model 1, set forth in Table 3, investigates their explanatory power by laying out the results of a logistic regression. Many of these variables will be explored in greater detail below as I work through the substantive hypotheses. A brief overview of the findings will help set the stage.

Ethnicity is not a strong predictor of the use of courts. The RLMS sample included representation from over forty different ethnic groups. Given that 80% of the sample self-identified as Russian,[61] I divided the sample into Russians and non-Russians and found that Russians were no more or less inclined to be involved with the courts than were non-Russians.

Income is likewise not significant,[62] but having a job does matter.

60. Almost two-thirds of the firms who had been sued had also initiated lawsuits. Of the firms who had been plaintiffs, about half also reported having been defendants.

61. No other ethnic group made up more than 5% of the surveyed population.

62. Due to the difficulties of capturing income levels of respondents, I used ownership of big-ticket consumer goods as a proxy for social class or income. I adopted the method that Bollen, Glanville, and Stecklov pioneered by constructing a scale based on ownership of televisions, computers, video-cassette recorders, refrigerators, and cars. I then added one to the number of items owned and took the natural log of the score. *See* Kenneth A. Bollen et al., *Economic Status Proxies in Studies of Fertility in Developing Countries: Does the Measure Matter?*, 56 POPULATION STUD. 81, 85-86 (2002). Barrett and Buckley previously used this method to good effect when analyzing RLMS data. *See*

Table 1 suggests that those with steady incomes are more likely to have had contact with the courts. As I add more explanatory variables to the regression, the significance of this variable wanes, indicating that its initial significance may be overstated. I will return to the role of economic well being in the discussion of whether need drives the use of courts.

The other demographic variables—age, marital status, education, location—appear to be important ingredients in explaining who has contact with the courts in Russia. For the most part, the effects are not surprising. For example, those with more education emerge as more likely to have been to court in some capacity. This makes sense. Individuals' education would make them more aware of the value of mobilizing their rights and the societal importance of stepping forward as a witness or juror, if necessary. As the analysis proceeds and variables that are aimed at testing my substantive hypotheses are added, the significance of education as a predictor recedes. Along similar lines, the odds of having had contact with courts are greater for urban residents, who have greater access to courts, than for their country cousins. Again the significance of this variable dissipates when the non-demographic variables are added.

By contrast, marital status has a more robust relationship with court contact. The role of the courts in the divorce process helps explain why those who have never been divorced were less likely to end up in court. Though couples who have no children and no disagreement over the division of property can dissolve their marriages in the same registry offices where they were married, couples who do not fall into this category must go through the courts to obtain divorces.[63]

Explaining the effect of gender is more difficult. Table 2 shows that men are slightly more likely to have been involved with the courts. The regression analysis documents that when controls for other socio-demographic effects and key independent variables are included, gender is revealed as having a modest, but highly significant, effect.[64] This is likely driven by the large sample size.

Table 2 documents that the oldest and youngest Russians are the least likely to be involved with the courts. Table 3 confirms this finding. The robustness of these generational variables stands up in Models 1, 2, and 3. The oldest age cohort is used as the reference group in the regression. It shows that the odds of having had contact with the courts are much greater for middle-aged Russians than for their parents or children. My earlier work with focus groups had suggested that pensioners might be frequent

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Jennifer B. Barrett & Cynthia Buckley, *Gender and Perceived Control in the Russian Federation*, 61 EUR.-ASIA STUD. 29, 36-37 (2009).

63. *See* SEMEINYI KODEKS ROSSIISKOI FEDERATSII, [SK RF] [Family Code] art. 21 (Russ.). For an overview of the evolution of divorce practices, see generally Maria V. Antokolskaia, *The New Aspects of Russian Family Law*, 31 CAL. W. INT'L L. J. 23 (2001).

64. Initially I hypothesized that the significance of gender was driven by the interaction between this variable and others. However, further analysis showed that there were no significant interaction effects.

litigators,[65] but the survey data do not bear that out. Age is, of course, a part of any explanation grounded in the need to use the courts and/or the capacity to do so.

The low pseudo-r2 value for Model 1 indicates that these demographic traits are not the key to explaining court contact. They account for only about 4% of the outcome.

B. Basic Traits of Russian Firms that Have Used the Courts

As with individuals, I began my analysis of firms' use of courts by looking at the extent to which their basic characteristics explained their behavior. My earlier work had suggested that larger firms that were founded during the Soviet period tended to be more active litigants.[66] The reasons are practical. Due to their size, they engage in more transactions than smaller firms, which means that the chances of having a dysfunctional transaction increase.[67] The institutional legacy is also relevant. As a matter of course, these firms would have had internal legal departments (*iuridicheskii otdel'* or *iur-otdel'*). Notwithstanding the general consensus among observers that these *iur-otdel'* were of peripheral importance during the Soviet era,[68] the tendency toward institutional inertia meant that they were likely to survive privatization. Although the centrality of their role in post-Soviet firms is debatable, my prior work suggests that firms with legal departments are more likely to pursue their claims in court.[69] Because BEEPS did not include any questions about the legal expertise that the respondent firms relied upon, I cannot test this specific hypothesis. However, the role of size and age are apparent from Table 4. Smaller firms are less likely to go to court, as are newly formed firms. I will return to the reasons why in the discussion of the capacity hypothesis below.

Table 4 documents that state-owned firms go to court more often than do private firms. This variable is highly correlated with age and any significance dissipates when the two variables are included in the same regression.

The industry-based story is much the same. I divided the surveyed firms into three groups: construction, manufacturing/mining, and services. The descriptive statistics show that construction firms are the most likely to have been to court and that firms in the service sector are the least likely to have gone to court. Manufacturing and mining firms fall somewhere in-between. Making sense of the reasons why would require a more

65. Kathryn Hendley, *Mobilizing Law in Contemporary Russia: The Evolution of Disputes Over Home Repair Projects*, 58 AM. J. COMP. L. 631, 669 (2010).

66. *See* Hendley et al., *supra* note 50, at 706-07, tbl.5.

67. For the entire sample, about 44% of firms had experienced non-payments problems. The incidence was lower (39%) among small firms, and higher among medium (56%) and large (57%) firms. The results were statistically significant at the $p<0.001$ level.

68. *See generally* LOUISE I. SHELLEY, LAWYERS IN SOVIET WORK LIFE (1984).

69. *See* Kathryn Hendley, *The Role of In-House Counsel in Post-Soviet Russia in the Wake of Privatization*, 17 INT'L J. LEGAL PROF. 5 (2010); Hendley et al., *supra* note 50, at 685, 688, 707.

nuanced, industry-based analysis than is possible for this Article. When put into a regression, the sign is as would be predicted based on the descriptive statistics, but the marginal significance present in the bivariate analyses disappears when other firm traits are added.

The results for firm location are surprising. I had expected Moscow firms to be the most litigious because Moscow firms have a reputation as being more sophisticated.[70] The Moscow *arbitrazh* courts enjoy a reputation of being highly capable that is well deserved according to my observational research. I reasoned that this competence might encourage local firms to turn to these courts. Indeed, when firms include forum clauses in their form contracts, these are the courts that are most often chosen.[71] Yet Table 4 reveals that Moscow firms are actually the least litigious. The strength of these basic firm features is tested in a logistic regression (Model 4 in Table 5), which confirms this odd result. The composition of the sample drives the explanation for this finding. Upon closer examination, it turns out that the Moscow firms included were skewed toward privately owned firms that had been founded in the past decade.[72] As I have already outlined, these characteristics are disproportionately associated with court avoidance.[73] Therefore, whether Moscow firms, on the whole, are more or less litigious cannot fairly be determined through examining this sample. Indeed, the skewed nature of the sample led me to discard location as a control as I worked through the substantive hypotheses in Models 6 and 7 (Table 5).[74] As with the analysis of individuals, the power of these basic features as an explanation for firms' use of courts is relatively weak, as the pseudo-r2 value of 0.1072 reveals.

III. Hypothesis One: Russian Citizens and Firms Resort to the Courts When Necessary

Logic dictates that need is an important component in explaining why people use courts. Few relish the prospect of going to court. As a rule, it is expensive, time-consuming, and emotionally draining.[75] Whenever possible, efforts are made to resolve problems without resorting to the courts. Sometimes the specter of litigation can prompt mutually satisfactory settle-

70. *See* Kathryn Hendley, *Effectiveness of Legal Institutions in the Transition Economy in Post-Soviet Russia*, *in* GOVERNANCE, DECENTRALIZATION AND REFORM IN CHINA, INDIA AND RUSSIA 419, 425 (Jean-Jacques Dethier ed., 2000).

71. *See id.* at 425-26.

72. Though about 30% of the firms in the sample were founded after 1999, over 40% of the Moscow firms fell into this category. The oversampling for private firms was less extreme. While 10.3% of the firms surveyed were state-owned, only 7.6% of Moscow firms were state-owned.

73. *See supra* notes 66-69 and accompanying text.

74. For more information on the challenges that the organizers of BEEPS faced in recruiting firms, see *Russia Enterprise Surveys Data Set Implementation Note 2009*, *available at* https://www.enterprisesurveys.org/Portal/elibrary.aspx?libid=14 (last visited Mar. 12, 2011).

75. *See, e.g.*, Hendley, *supra* note 65, at 655 (illustrating the emotional drain of going to court).

ments. Yet certain circumstances make going to court unavoidable. As previously discussed, most couples getting divorced in Russia have to go to court. Likewise, those involved in criminal proceedings typically find themselves in court. The dynamics for firms are analogous. For the most part, going to court is a voluntary choice. Firms can choose whether to pursue a recalcitrant customer in court or find another route to settlement. Like individuals, however, Russian firms can sometimes end up in court against their will, as with bankruptcy and defense in actions brought against them by another firm, a shareholder, or the state.

Testing my hypothesis that need drives the use of Russian courts is complicated by the reality that not all problems that are capable of being solved through litigation are taken to court. Indeed, no court system could possibly handle the deluge of cases that would greet them if individuals and firms turned over all justiciable problems to judges. Going to court is almost always a last resort. There is a filtering system at play that, through formal and informal incentives, discourages certain cases and diverts others to alternative methods of dispute resolution.[76] Social scientists of varying stripes have devoted considerable energy to explaining the reasons why those who have a pressing claim go to court, resolve their claim outside the courts (either through legal or extra-legal methods), or decide not to pursue their claim.[77] For my purposes, the point here is that, while few parties without compelling claims end up in court, many who have unresolved compelling claims never go to court.

The Foundation for Public Opinion fielded national surveys in 2004 and 2008 that asked Russians whether they would go to court if faced with a "conflictual situation."[78] Need would logically be present in such circumstances. The percentage of those surveyed who were prepared to pursue a claim to court fell from 39% to 34% over this period, but so too did the number who felt that going to court was not a viable option for resolving their issues.[79] In 2004, 44% took this position, while only 39% expressed this position four years later.[80] As this suggests, the percentage of the surveyed population who took the position that this question was too difficult to answer increased dramatically (from 17% to 27%).[81]

The INDEM Foundation survey on Russian courts took a more

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76. *See generally* Marc Galanter & Mia Cahill, *"Most Cases Settle": Judicial Promotion and Regulation of Settlements*, 46 STAN. L. REV. 1339 (1994); Felstiner et al., *supra* note 7, at 636.

77. *See generally, e.g.*, ROBERT C. ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1991); GENN, *supra* note 1; ERIC A. POSNER, LAW AND SOCIAL NORMS (2002); PATRICIA EWICK & SUSAN S. SILBEY, THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE (1998); TYLER, *supra* note 10; William L.F. Felstiner, *Avoidance as Dispute Processing: An Elaboration*, 9 LAW & SOC'Y REV. 695 (1975).

78. *Sudy i sud'i*, FOM (Oct. 14, 2004), http://bd.fom.ru/report/map/dominant/dominant2004/dom0441/dd044114; *Otnoshenie k sudebnoi sisteme*, FOM (June 12, 2008), http://bd.fom.ru/report/cat/pow_jus/d082322.

79. *See supra* note 78.

80. *See id.*

81. *See id.*

nuanced approach.[82] Respondents were presented with four hypothetical situations and asked whether they would be prepared to go to court. The results show a greater willingness to contemplate litigation than is usually assumed.[83] In particular, it suggests that Russians are not cowed by the prospect of taking on the state. For example, when asked how they would respond to a decree of the Russian government that infringed upon their housing rights, 44% were open to pursuing the matter in court.[84] Along similar lines, 40% indicated that they would be prepared to go to court if the legislature passed a law that authorized setting a lower temperature in residential buildings during winter.[85] Yet when asked what they would do if they were unfairly punished at work, only 20% said they would go to court.[86] Further analysis indicates that respondents would prefer to either resolve this latter type of dispute informally (making use of connections or finding a compromise) or endure it passively.[87]

A. Need as an Explanation for Why Russian Individuals Interact with the Courts

The reasons why individuals might need to go to the courts are almost infinite. The questions included as a standard part of the RLMS questionnaires allow us to explore two of these, namely whether family dysfunction or economic difficulties predict contact with the courts.

As noted above, couples divorcing in Russia must go to court if they have children or if they cannot agree on the division of their property.[88] This makes divorce a natural area to investigate. Respondents were asked about their current marital status. They were given six options: never married, in a registered marriage, living together and not registered, widowed, divorced and not remarried, and separated.[89] The disadvantage of relying on this question is that it is limited to a snapshot of the marital status of respondents in 2005. Many of those who were then married or living together may have had prior divorces. In order to capture the full population of respondents who had been through a divorce, I took advantage of the panel nature of the data. I constructed a variable that captured everyone who had been divorced over the course of the survey. While 8.2% described themselves as divorced as part of the Round 15 survey, looking back at the earlier Rounds revealed an additional 6.5% who had gone through a divorce. As Model 1 indicates, marital strife is a strong predictor of court contact. The odds of court contact are about 80% higher for those having experienced divorce than for others. The strong significance of

82. GORBUZ ET AL., *supra* note 46, at 368.
83. *Id.*
84. *Id.*
85. *Id.*
86. *Id.*
87. *Id.* at 369.
88. *Id.*
89. The distribution of respondents among these categories was as follows: Never married (21%); in a registered marriage (48.5%); cohabitating (9.9%); widowed (11.6%); divorced (8.2%); and separated (0.8%).

these results stands up as I add other possible explanatory variables, testifying to the role of legal requirements as part of the explanation for contact with the courts.

Individuals and families who are experiencing economic difficulties may find themselves in court more often than those who are not. More specifically, they may not be able to pay their bills regularly, whether taxes, rent, utilities, or installment payments due on consumer goods. As this suggests, their contact with the courts may have been involuntary.[90] Two of the basic demographic indicators referenced earlier are worth returning to. Being unemployed and being poorly paid are both indicative of economic hard times. Being in the bottom income quartile has no predictive power. Employment status is trickier to interpret. The descriptive statistics reported in Table 2 suggest that people without jobs are less likely to have had contact with the courts. This goes against my reasoning that those experiencing hard times may be the target of lawsuits. On the other hand, it stands to reason that having a steady income would be helpful if one were the instigator of the litigation. In any event, the regression analysis indicates that this variable has limited predictive value.

In addition to these objective measures of respondents' economic well-being, I also explored the effect of their perceptions of their situation. The panel nature of the RLMS allowed me to compare how these perceptions changed over time and whether these changes are related to contact with the courts. In many rounds of the RLMS, respondents were asked a series of questions that required them to place themselves on a "ladder" of well-being. One of these focused on wealth. I compared respondents' answers between Rounds 11 (2002) and 15 (2006). Interestingly, those who felt poorer were no more likely to have been to court than those whose situations had remained stable or had improved. This variable therefore turned out to be a bad predictor of court use. Round 15 also included a question in which respondents were asked to compare their families' current financial situations with their situations a year earlier. They were asked to peg their responses along a five-point scale, ranging from much worse to much better. I created a dummy variable that isolated those who viewed their financial positions as worse or much worse than it had been a year before. As Table 6, which contains descriptive statistics for the non-demographic variables used in the regression analysis, indicates, this group made up 16% of the sample. The regression analysis shows that misfortune is a strong predictor of court use, with the odds for having had court contact being substantially greater for this group than for those whose financial situations had remained stable or had improved over the past year. Taken together with the result for the comparison of the ladder variables, this suggests that short-term reversals are more potent as a predictor of court use than is a longer-term, downward spiral.

90. Because the question about court use was framed in general terms, I cannot segregate those who were defendants from those who were plaintiffs or jurors.

B. Need as an Explanation for Why Russian Firms Resort to the Courts

As with individuals, firms go to court for a myriad of reasons. Studies of U.S. firms have shown that litigation is generally a last resort. The cost, measured in both time and money, discourages firm management from pursuing claims to the courts.[91] Additionally, the confrontational nature of the adversarial process means that few trading relationships survive a lawsuit, creating yet another disincentive for litigation.[92]

The situation is different for Russian firms. Most of their litigation is with other firms in the *arbitrazh* courts. The procedural rules governing these courts provide few advantages for skilled oral advocates. Rather, the process focuses on the documents that form the transaction at issue.[93] Few firms hire outside counsel to represent them in court, thereby eliminating much of the expense of litigating.[94] To this end, when asked about the cost of going to court, almost two-thirds of the firms surveyed in BEEPS replied that this was not a frequent obstacle for them. As to delays, the procedural code lays out clear timetables for the various types of cases.[95] The ability of judges to meet these deadlines largely determines their salaries and eligibility for promotion.[96] The official caseload data for 2010 indicate that less than 7% of cases take longer than statutorily prescribed.[97] Not surprisingly, the speed of the judicial process was not a serious concern for the firms surveyed as part of BEEPS. Less than 10% found it to be a persistent obstacle. Even more interesting is the lower relational cost for Russian businesses of going to court. Because the process is not confrontational, it does not necessarily lead to ruptures. In a study of the enforcement of *arbitrazh* court judgments, the participating firms clearly indicated that they were willing to continue working together after litigation.[98]

The lower costs, measured in terms of financial outlays, time lost, and damage to relationships, result in a greater willingness to use the courts. Indeed, during the chaotic years of the 1990s, many firms used the *arbitrazh* courts as a debt collection agency, bringing claims for which the out-

91. Heise, *supra* note 3, at 814-16; Priest & Klein, *supra* note 2, at 6; Silver, *supra* note 2, at 2073-74.

92. *See* Ross E. Cheit & Jacob E. Gersen, *When Businesses Sue Each Other: An Empirical Study of State Court Litigation*, 25 LAW & SOC. INQUIRY 789, 792-93 (2000); Lane Kenworthy et al., *"The More Things Change . . .": Business Litigation and Governance in the American Automobile Industry*, 21 LAW & SOC. INQUIRY 631, 651 (1996); Macaulay, *supra* note 4, at 61.

93. Hendley, *supra* note 4, at 310.

94. *Id.* at 328.

95. *Id.* at 329.

96. Kathryn Hendley, *Handling Economic Disputes in Russia: The Impact of the 2002 Arbitrazh Procedure Code* 5 (Nat'l Council for Eurasian & E. European Research), *available at* http://www.ucis.pitt.edu/nceeer/2005_819-08g_Hendley.pdf.

97. Over the past five years, the percent of cases not heard within the statutorily prescribed deadlines has ranged from a low of 5.1% in 2006 to 7.4% in 2008. *Tablitsa osnovnykh pokazatelei raboty arbitrazhnykh sudov Rossiiskoi Federatsii v 2006-2010*, *available at* http://www.arbitr.ru/_upimg/1CAE82600C78C54F27FA3828F16E5E00_4.pdf.

98. *See* Hendley, *supra* note 4, at 315.

come was never in doubt for the sole purpose of receiving a court order entitling them to repayment of the overdue debt.[99] The problem of inter-enterprise arrears has receded in recent years, but the habit of turning to the court may have persisted.[100]

Seeking help with non-payments is an excellent illustration of a need-based motivation for using the courts. The firms that BEEPS surveyed were asked whether they had had to resolve any overdue payments in the preceding thirty-six months. As Table 7, which contains descriptive statistics for the non-demographic variables from BEEPS used in the regression analysis, indicates, 44% responded positively. Such firms were much more likely to have been to court. Almost half of this group (48.7%) had done so, in contrast to the less than 20% of the firms who had not had payment problems with their customers. Model 5, shown in Table 5, confirms that the existence of overdue payments is the single most important predictor of court use for Russian firms, providing confirmation of the need-driven hypothesis.

Given that the surveyed firms reported that customers' failure to pay their bills on time constituted a serious problem for them, it stands to reason that a significant portion of them were also guilty of the same lapse. The firms were asked whether they currently owed money for taxes, utilities, wages, or material inputs. Because this question simply took a snapshot, rather than asking for their experiences over a sustained period, the number of firms affected should be lower, and it is. Table 7 shows that slightly less than 10% of the surveyed firms admitted to being debtors themselves. The fact that the vast majority of these firms (84%) had also experienced difficulty with getting paid by their suppliers stands to reason. Nor is it surprising that these firms were more likely to have gone to court. Initially, I thought they would be natural defendants. To be sure, they were sued more frequently than their more financially secure counterparts. But they also emerge as more likely to instigate lawsuits themselves. The descriptive statistics show that debtor firms were twice as likely as other firms to have been a plaintiff rather than a defendant. Desperation can be a powerful motivator. The regression analysis corroborates the power of debtor status as a predictor of court use.

Following up on the role of desperation in litigation, I explored payment methods. In a series of case studies carried out in early 1998, I found that firms that operated on a cash basis were less prone to go to court because they simply refused to provide services if they were not

99. *Id.* at 336.

100. During my interviews with *arbitrazh* judges in Moscow, Ekaterinburg, Voronezh, and St. Petersburg during the 2011-12 academic year, they consistently told me that the economic crisis of 2008 had contributed to an increase in debt collection cases. The statistical data provide support for their claim. The number of cases involving two businesses (as opposed to cases involving the state or bankruptcy cases) increased by 76%. That trend continued through 2010. Though the number of cases dropped off slightly for 2011, it has not returned to pre-crisis levels. *Tablitsa osnovnyh pokazatelei raboty arbitrazhnyh sudov Rossiiskoi Federatsii v 2007-2011*, *available at* http://www.arbitr.ru/press-centr/news/totals/index_ar.htm.

paid.[101] This was a period when barter was prevalent and the banking system was largely dysfunctional.[102] Fortunately for the respondent firms, times have changed. Over 90% of the sample engaged in no in-kind exchanges. About two-thirds of the firms occasionally pay their suppliers with cash, but the majority do so less than 20% of the time. Though there remain a subset of firms that always use cash (23.9% of the sample), these firms are not significantly more likely to go to court. Indeed, the regression analysis indicates just the opposite. Using firms that eschew cash as the reference group, the odds of going to court are greater for firms that embrace credit. Somewhat unexpectedly, firms that rely on a mixture of cash and credit emerge as the group with the greatest odds of litigating. Their odds of having been to court are twice those of firms who stick with cash. Although firms that never use cash have an odds ratio greater than one, indicating that they are in court more than firms who rely solely on cash, the relationship is not significant. In contrast to the situation in the late 1990s, cash now seems to be a marker for sector and size. Firms in the service sector tend to rely more on cash, as do smaller firms.

This earlier work also generated a hypothesis about the relationship between competition and propensity to litigate. My case studies indicated that firms that had robust competition were less likely to sue their customers, even if they were slow in paying, out of fear that they would turn to another supplier for the goods.[103] Put differently, in my 1998 study, firms that had a fungible customer base were the most aggressive in their debt collection and did not shy away from taking their customers to court. The BEEPS data suggest that this may have been an artifact of the unusual conditions of the 1990s. The level of competitiveness (measured by the number of competitors in the local market) had no effect on the odds of having gone to court.[104] Need is clearly an important part of the explanation of why Russian firms use the courts. The increase in the pseudo-r2 value as between Models 5 and 6 tells the story. It shot up to 0.2441, vividly demonstrating the impact of adding these need-driven variables.

IV. Hypothesis Two: Russian Citizens' and Firms' Interactions with the Courts is Linked to Their Capacity.

Like need, capacity is a quality that is usually a prerequisite for use of the courts, but its presence does not always translate into use. Capacity refers to any sort of preexisting knowledge of, or experience with, state institutions that would give the user a greater comfort level with the courts. It need not be located within the individual or firm. As socio-legal scholars

101. *See* Hendley, *supra* note 8, at 20-55.

102. *See* JULIET JOHNSON, A FISTFUL OF RUBLES: THE RISE AND FALL OF THE RUSSIAN BANKING SYSTEM (2000).

103. *See* Hendley, *supra* note 8, at 20-55.

104. The survey asked separately about competitors in the local and national markets. Only about a quarter of the firms characterized themselves as national firms. Hence I used the question about local market conditions to test the role of competitiveness.

have argued, those without personal experience can gain capacity by affiliating themselves with others who have it.[105] Typically this involves hiring lawyers, but the same effect can come through a connection with a business association or non-governmental organization that has a proven track record in dealing with the problem at hand. Michelson's work on disputing patterns in China reminds us of the importance of political connections in facilitating the use of state institutions.[106] Such connections are also relevant to Russians as they decide whether or not to make use of the courts.[107]

Procedural rules govern the use of courts. The complexity of these rules varies. Simpler rules facilitate ordinary citizens or firms having greater direct access to the courts. As rules grow increasingly complex, litigants become less capable of fully understanding them. They may become discouraged and adopt court-avoidance strategies.[108] In countries in which the courts are overloaded, making the procedural rules technical can be a strategy for limiting the use of the courts to those with non-frivolous claims.[109] When encountering dense rules, litigants tend to rely more on lawyers and other legal professionals.[110] In such circumstances, those who are unable to work through these intermediaries can be disadvantaged in judicial proceedings. Though trials are idealized as a search for the truth, in reality a facility with procedural rules allows parties to present their evidence to maximum advantage.[111] A variety of factors can cause the inability to gain representation, including a lack of resources to pay for this expertise, a dearth of legal professionals, or a lack of appreciation on the part of a neophyte litigant for the importance of being represented.

How much of an advantage the mastery of procedural rules provides to Russian litigants is unclear. During the Soviet period, the procedural codes were fairly straightforward.[112] Judges tended to err on the side of accepting complaints and admitting evidence, even if litigants had failed to fully observe the procedural rules. Judges would often help inexperienced

105. *See* Felstiner et al., *supra* note 7, at 636; Galanter, *supra* note 2, at 146.

106. Ethan Michelson, *Climbing the Dispute Pagoda: Grievances and Appeals to the Official Justice System in Rural China*, 72 AM. SOC. REV. 459, 464-65 (2007).

107. There is a large literature on the critical role that connections (*sviazy*) played in the Soviet period and their continuing influence in the post-Soviet era. *See generally* JOSEPH S. BERLINER, FACTORY AND MANAGER IN THE USSR (1957); ALENA V. LEDENEVA, RUSSIA'S ECONOMY OF FAVOURS: BLAT, NETWORKING AND INFORMAL EXCHANGE (Stephen White et al. eds., 1998); SIMIS, *supra* note 12. The role of connections in the legal arena raises the specter of "telephone law," which is the practice of deciding cases based on phone calls from the political elite rather than the written law. *See generally* Hendley, *supra* note 31; Alena V. Ledeneva, *Telephone Justice in Russia*, 24 POST-SOVIET AFF. 324 (2008). A full discussion of the role of connections in Russian life is beyond the scope of this Article.

108. *See* Felstiner et al., *supra* note 7, at 636.

109. *See* DEBORAH L. RHODE, ACCESS TO JUSTICE (2004).

110. *Id.*

111. *Id.*

112. Kathryn Hendley, *Assessing the Rule of Law in Russia*, 14 CARDOZO J. INT'L & COMP. L. 347, 364 (2006).

parties through the process.[113] Naturally, this made it easier for individuals to represent themselves in the courts of general jurisdiction. As a corollary, it also had the effect of muting the need for legal expertise, especially in non-criminal cases.[114] As the *arbitrazh* courts got on their feet in the 1990s, their procedural rules were fairly simple. The procedural code contemplated dismissing cases when litigants showed up unprepared, but judges rarely did so, preferring to resolve disputes on their merits rather than dismissing them on technicalities.[115] They reasoned that most firms were inexperienced in the legal arena and that it would be unfair to expect overnight mastery of these procedural rules. This rationale became less persuasive as the transition continued, but was still voiced by many judges.[116] Once again, this permissive attitude had the effect of diminishing the effect of, and the need for, legal expertise.

Recent years have witnessed a wholesale rewriting of the Russian procedural codes. Without exception, they have become more complicated. In part, this increased complexity represents an effort to enhance the efficiency of the courts and to give judges additional tools to help them cope with the deluge of cases. Whether judges in the courts of general jurisdiction and the *arbitrazh* courts have availed themselves of these tools is unclear. If the rules have been enforced strictly, then we would expect to see greater use of lawyers. The limited evidence paints a mixed picture. In the 2008 survey that INDEM conducted, Russian individuals and businessmen were asked whether court workers helped them prepare their complaints. Of the individuals surveyed, 37.7% reported that they had received help with their pleadings. By contrast, only 10% of businesses had received help. Given that many businesses have in-house lawyers, they are less likely to have requested help.

Having gone to court in the past may allay fears of the judicial process. It may also enhance capacity in that it educates participants about the process. Of course, it could have just the opposite effect. If their experiences have been unsatisfying, then prior litigants may avoid the courts. The INDEM survey explored this question in the Russian context. Its respondents were divided into three categories: those who had been to court many times, those who had been to court once, and those who had no prior experience with the courts. Those who were most experienced were the

113. Berman and Feifer detail the educational function of Soviet judges. *See* BERMAN, *supra* note 12; FEIFER, *supra* note 30. Berman comments, "Soviet law treats the individual as a child or youth, as a dependent." BERMAN, *supra* note 12, at 380. Work on East Germany shows that this was a standard feature of legal systems under state socialism. Inga Markovits, *Pursuing One's Rights Under Socialism*, 38 STAN. L. REV. 689, 761 (1986).

114. Kaminskaya's memoir documents the critical role of *advokaty* in the criminal process. *See* KAMINSKAYA, *supra* note 12. There is a large literature on *advokaty* in the Soviet and post-Soviet eras that documents its critical role in the criminal process. *See, e.g.*, EUGENE HUSKEY, RUSSIAN LAWYERS AND THE SOVIET STATE: THE ORIGINS AND DEVELOPMENT OF THE SOVIET BAR, 1917-1939 (1986); PAMELA A. JORDAN, DEFENDING RIGHTS IN RUSSIA: LAWYERS, THE STATE, AND LEGAL REFORM IN THE POST-SOVIET ERA (2006).

115. *See* Kathryn Hendley, *Are Russian Judges Still Soviet?*, 23 POST-SOVIET AFF. 240, 258-59 (2007); *supra* note 114.

116. *Id.*

most prepared to go to court again, and those who had no experience were the least prepared to litigate.[117] This suggests that for Russians, much as for Americans,[118] prior experience facilitates, rather than discourages, contact with the courts.

A. Capacity as an Explanation for Why Russian Individuals Interact with the Courts

There are two categories of variables that are worth exploring as to the extent to which capacity explains Russians' contact with the court. The first category includes variables that might be linked to a generalized ability or willingness to make use of state institutions, including courts. Once again, this mandates a return to the basic demographic traits. Location, age, and education are almost certainly related to capacity to use state institutions. Whether they are robust predictors of contact with the courts is less clear. Those with a history of using state institutions other than courts may be more open to getting involved with the courts.

The second category of variables is more specifically tied to the capability to use courts. Access to lawyers or other types of legal assistance in navigating the intricacies of the judicial system is likely to be helpful, given that such professionals can make up for deficiencies in the abilities of individuals.

Primary among the first category of explanatory variables is education. The descriptive statistics tell us that those with university degrees are more likely to have had contact with the courts. The effect is not as profound as might have been expected. Those with advanced education are surely better positioned to interpret both substantive and procedural rules, but this advantage can be blunted by hiring lawyers. Model 1 indicates some considerable predictive power, but the significance of education fades as additional capacity-related variables are added. The odds ratio hovers around 1 in Models 2 and 3, reflecting that its impact has been muted by the other variables.[119]

Proximity to courts might also lead to contact. Population determines the locations of courts of general jurisdiction. Though they are scattered throughout Russia, respondents who live in more densely populated areas would have had easier access to courts. Table 2 indicates that urban dwell-

117. INDEM's respondents were asked whether they were prepared to go to court. Table 6.3.5 shows that 26.5% of those who had gone to court repeatedly said they would do so if it was necessary. By contrast, 18.1% of those who had been to court once responded positively. The percentage dropped to 10.1% for those who had never been to court. The results as to whether they were unwilling to entertain the idea of going to court are less stark, but the same dynamic is at work. Among those who were repeat users, 8.5% were unwilling to try again, whereas 10.2% and 11.6% of the single users and non-users, respectively, were unreceptive. *See* GORBUZ ET AL., *supra* note 46, tbl. 6.3.5.

118. *See* Herbert M. Kritzer & John Voelker, *Familiarity Breeds Respect: How Wisconsin Citizens View Their Courts*, 82 JUDICATURE 58 (1998).

119. As with gender, I suspected that this result might be due to an interaction effect, but further analysis showed this to be untrue.

ers are slightly more likely to have been to court than are those from rural areas. When this dichotomous variable is put into the regression with other demographic characteristics, it is significant. But a more detailed analysis reveals that the odds of contact with the courts are much lower for those who live in villages than for those who live in small towns, cities, or regional capital cities. Village dwellers would have to travel further distances to get to a court. As with education, the significance of location wanes when the model is expanded.

Age is a different story. Here the descriptive statistics and the regression analysis buttress one another. Table 2 clearly shows that older Russians (born before 1940) are less likely than middle-aged Russians (born between 1940 and 1987) to have had contact with the courts. It also tells us that teenage respondents are the least litigious group. I used the oldest age cohort as the reference group for my regression analysis. It confirms the predictive power of age, which persists even as I include additional variables. Indeed, the odds of court contact are almost two times greater for those born between 1951 and 1977 as compared to those over 65. Only the youngest age cohort (born after 1988) have odds that are lower than this elderly set of respondents. The minimal contact of teenagers with courts makes sense. Few would expect them to be active litigants, nor would they be likely to be pressed into service as a witness or juror.

Explaining the other age cohorts' contact with the courts is more challenging. My prior interview-based research revealed the lack of free time as one of the biggest obstacles to going to court.[120] Those in my oldest age cohort would seem to have more time to pursue their claims to court or to serve as jurors. They have long since passed the standard retirement age (60 for men; 55 for women). Virtually all of them receive a pension.[121] Though many Russian pensioners have been forced back into the job market to make ends meet, less than 8% of this group admits to having a paid job. The luxury of time arguably creates capacity for using the courts, but may be yet another necessary but insufficient condition. My interview subjects may have exaggerated the time commitment required. Or they may have overstated the propensity of Russian judges to indulge parties who seek to drag out cases by allowing multiple continuances. Perhaps the seriousness of the claim trumps any scheduling problems. This takes us back to need.[122] Those in their 40s and 50s emerge as the most likely to have had contact with the courts. This is certainly a time when people might have problems in many areas of their lives.

Looking at non-demographic factors, it stands to reason that respondents who feel disempowered might be less willing to use the courts and vice versa. In addition to asking respondents to place themselves on a ladder of economic well-being, most rounds of the RLMS also asked them to

120. *See* Hendley, *supra* note 65, at 669.

121. Of the almost two thousand respondents in this category, only three do not receive a pension.

122. Ideology might also be part of the explanation. I will return to age in the discussion of the third hypothesis.

place themselves on a spectrum of power. The question asked them to imagine a nine-step ladder where people who are completely without rights stand on the bottom rung and those who have a great deal of power stand on the highest rung. I compared the results from Rounds 11 (2002) and 15 (2006). Using those who reported no change as a reference category, the regression results show that the odds of contact with the courts are significantly less for people who feel less powerful. As elsewhere, Russians who believe their rights to be meaningless are more likely to "lump" their claims. Going to court is probably not seen as a viable option for them. Interestingly, the reverse is not true. Feelings of greater empowerment do not lead to greater use of the courts as compared to those whose situations remain unchanged. Perhaps those with greater power have alternatives unavailable to the powerless, such as informal networks and a willingness to exert their power over others to force settlements.

Respondents who have had contact with state institutions other than courts may be more open to the courts. This willingness may reflect a capacity to handle interactions with the state. In Russia, many people shy away from any sort of involvement with the state, whether out of a distaste for bureaucracy or because they fear the state. In Round 15 of the RLMS, respondents were asked whether they had applied to certain state agencies, including suppliers of municipal services, housing registration, passport offices, the police, the courts, and the traffic police. Leaving aside the courts (which is part of my dependent variable), I created dummy variables to isolate respondents who had repeatedly used state institutions. Not surprisingly, these represented a minority of those surveyed. Less than 12% have used two agencies, and less than 4% have used three agencies. These variables proved to be potent predictors of contact with the courts. Model 2 incorporates the variable that brings together those who have used at least two agencies. The probability of having had contact with the courts was almost 70% greater for this group. The odds ratio is even higher (1.92) for those who have used three state agencies.

Lawyers provide an avenue to gaining an understanding of the intricacies of the judicial process and building capacity for those who lack prior experience or knowledge of the courts. In both Rounds 13 and 15, respondents were asked whether they had consulted with a lawyer in the preceding two years.[123] I created a variable that isolated those who admitted to having met with lawyers in either survey. This amounted to almost 20% of the sample. While only 13.2% of those surveyed have had contact with the courts, among those who had consulted with a lawyer, this percent skyrocketed to 41.5%. The regression analysis substantiates this relationship, indicating that the odds of having had contact with the courts is a staggering eight times greater for those who have been to a lawyer. This result is surprising only in its power. A lawyer's job is to ease the path to

123. Like many European countries, Russia's bar is divided between those who primarily litigate (*advokaty*) and those who focus more on transactional work (*iuristy*). In contrast to the United Kingdom, the dividing line between the two is rather porous in Russia. In an effort to be inclusive, the question included both terms for lawyers.

court for lay people. It is to be expected that many of those who consulted with lawyers soldiered on to court. This reflects not only an enhanced capacity but also an indication of the seriousness of the underlying claim. Consulting a lawyer, like going to court, can be expensive.[124] Few do so without having a genuine problem that has resisted resolution through informal means.

This discussion of factors related to capacity, along with the pseudo-r2 value of 0.191 for Model 2, might lead one to conclude that capacity is a better predictor of Russians' contact with courts than mere need. There is no question that several of the factors, including prior use of state institutions and consulting with lawyers, are powerful predictors of contact. But disentangling capacity from need with respect to these capacity-related factors is difficult. Moreover, the questions posed as part of the RLMS provide more opportunity to test the hypothesis that contact with courts is driven by capacity.

B. Capacity as an Explanation for Why Russian Firms Resort to the Courts

Assessing the role of capacity in explaining Russian firms' use of the courts requires us to return to the fundamental traits of these firms. Logically, location, age, and size ought to be part of the explanation. At first glance, the size of firms seems to be a powerful predictor of receptivity to courts. In Model 4, mid-sized and large firms emerge as more active litigators than do small firms. As the variables more specifically related to my substantive hypotheses are included, the strong significance persists for medium firms with 50 to 249 employees. Their odds of having litigated are twice that of small firms. Though the odds ratios for large firms with over 250 employees remain well above 1, indicating that these firms are more likely to have been to court than small firms, the significance disappears once variables related to need are included (such as debtor status and existence of non-payment problems with customers). Likewise the use of auditors by firms initially seemed intriguing. These firms are consistently more involved with the courts than are firms that eschew auditors. But upon closer examination, the use of auditors turned out to be yet another variable that was highly correlated with size, with larger firms being more likely to use them.

The role of age is more complicated than is initially apparent from Table 5. These results suggest that older firms are more likely to go to court. While true, when the dependant variable is disaggregated between plaintiffs and defendants, it turns out that Soviet-era firms are much more likely to be defendants than plaintiffs, whereas firms created in the early 1990s are the most likely to be plaintiffs. Many firms founded during the Soviet period struggled to find their way during the transition to the market. These difficulties may have persisted and may explain why these older

124. Over half of those surveyed in Round 15 identified the high cost of lawyers' services as an obstacle to bringing claims to court.

firms are more likely to be defendants. When the dependent variable is limited to participation in the judicial system as a defendant, the odds ratios for Soviet-era firms are consistently greater than 2 for all of the BEEPS models and remain highly significant ($p<0.01$). As I noted at the outset, the founding date of a firm reveals a great deal about the likely internal structure. Legal departments were a standard feature of firms created during the Soviet period. Whether these Soviet-era firms retained their legal departments is unknowable from the data. If they did, this would provide an enhanced capacity to respond to lawsuits. Capacity would be a more persuasive explanation if these older firms with established internal legal departments were the most frequent instigators of litigation. But they are not. While their odds of being plaintiffs are greater than that of newly created firms, these results are not significant. Instead, firms created between 1992 and 1995 emerge as the most energetic litigators. When the analysis focuses solely on plaintiffs, this group is twice as likely to have initiated lawsuits as compared with firms founded after 2000.[125] For Models 4 and 5, these results are significant at the $p>0.05$ level, though it tapers off to the $p>0.1$ level for Model 6. Capacity-driven explanations cannot help us understand why this particular set of firms is the most litigious. Firms created during this period were not known for insisting on internal legal departments. In fact, my prior research suggests just the opposite.[126]

Through BEEPS, firms were queried about their membership in business associations. About a quarter of the sampled firms were members. Much like hiring lawyers, joining a business association is a way to enhance capacity, not just in terms of the courts, but with regard to business transactions more generally. Precisely what the effect would be was unclear. On the one hand, members might litigate less due to the connections gained and the resulting ability to negotiate advantageous settlements. On the other hand, members might gain insider knowledge about the courts from more experienced colleagues and be more open to taking their disputes to court. Model 5 indicates that the odds of having litigated were greater for firms who had opted to join business associations than for their unaffiliated brethren. Although the power of this variable as an explanation for litigious behavior is marginal, when the behavior of plaintiffs and defendants is analyzed separately the potent role of business associations comes into clearer focus. Among plaintiff firms, the chances of initiating a lawsuit are two times greater for members of business associations than for non-members.[127] This suggests that members may be sharing knowledge and experiences, whether formally or informally.

125. In a regression analysis where being a plaintiff is the dependent variable, the odds ratios for Models 4, 5, and 6 are 1.934, 2.003, and 1.942, respectively.

126. Kathryn Hendley, *The Role of In-House Counsel in Post-Soviet Russia in the Wake of Privatization*, 17 INT'L J. LEGAL PROF. 5 (2010); Hendley et al., *supra* note 50.

127. When Model 5 is run with the dependent variable limited to firms that have gone to court as plaintiffs, the odds ratio for membership in a business association is 2.032 and is highly significant ($p<0.01$). As would be expected, the odds ratio decreases slightly in Model 6 (1.848), as does the significance ($p<0.05$).

Location is a more complicated story. The vagaries of sampling (especially in Moscow) undermined the usefulness of the size of the town where the firm is located. In reality, however, the size of the town would simply be a proxy for distance from a court. Unlike courts of general jurisdiction, which are spread throughout the Russian Federation, there is only one trial-level *arbitrazh* court for each region, which is located in the oblast capital.[128] I recoded the cities in which the survey was carried out to distinguish between locales with *arbitrazh* courts and those without such courts. *Arbitrazh* courts can be found in twelve of the sixty cities included in the survey. The firms from these twelve cities comprised about two-thirds of the sample. I reasoned that being in close proximity to these courts would enhance the odds of using them. The analysis did not bear this out. Nearness to an *arbitrazh* court has no effect on court use. Of course, the somewhat unrepresentative nature of the Moscow sample, which makes up about 40% of the set of firms near *arbitrazh* courts, may be affecting this result. But taking Moscow out of the analysis changed nothing. This outcome may be a reflection of the procedural rules governing *arbitrazh* courts, which do not require litigants to argue their cases in person. The document-centric nature of *arbitrazh* procedure may mute the importance of showing up, which would naturally limit the significance of being located near an *arbitrazh* court.

V. Hypothesis Three: Russian Citizens' and Firms' Use of the Courts is Linked to Attitudes Regarding Law and the Legal System in Russia

The link between attitude and behavior when it comes to court has been difficult to establish. Tyler's work has sought to establish a causal connection between citizens' beliefs in the legitimacy of law and their compliance with the law and engagement with the legal system.[129] His work is grounded in the experience of the United States, where few would question the basic legitimacy of the legal system. Instead, his work focuses on the extent of procedural protections and the protection of litigants' right to dignity. Without questioning the importance of the work of Tyler and others who have come in his stead,[130] my question is qualitatively different.

Russia has a very different legal culture from the United States. Neither the legitimacy of the legal system nor the basic law-abiding character of its citizens can be assumed (as Tyler is able to do with the United States).[131] In addition, I am looking not solely at compliance with the law (which is Tyler's primary concern), but am exploring this as part of a strategy to mobilize the law to advance or defend one's interests in court. In

128. *See* Hendley, *supra* note 4, at 305.

129. *See generally* Tom R. Tyler, *Procedural Justice, Identity and Deference to the Law: What Shapes Rule-Following in a Period of Transition?*, 61 AUSTL. J. PSYCHOL. 1 (2009); Tom R. Tyler, *Trust and Law Abidingness: A Proactive Model of Social Regulation*, 81 B.U. L. REV. 361 (2001); TYLER, *supra* note 10.

130. *See, e.g.*, GENN, *supra* note 1.

131. Kahn, *supra* note 45, at 514-20; Ledeneva, *supra* note 107.

this section, I explore the extent to which my respondents' beliefs about the integrity of the Russian political and legal systems drive their willingness to be involved with the courts.

Public opinion polling has presented a mixed picture on Russians' attitudes towards their courts. Several reputable survey centers have sought to assess the level of trust in this institution. The results from a series of nationally representative surveys that the Levada Center conducted from 2001 to 2007 paint a rather dismal picture. Less than 20% of those surveyed expressed complete trust in courts. Over a quarter of those surveyed had no trust whatsoever and the remainder was ambivalent.[132] INDEM's 2008 survey also queried Russian individuals and businessmen about their trust in the courts.[133] Fewer of their respondents expressed ambivalence, which affected the levels of trust and distrust. The INDEM survey found that well over 40% of both groups expressed trust, though for most it was a weak endorsement. Among individuals, only 5.7% had complete trust (*polnost'iu doveriaiu*). For the remaining 39.8%, their trust was decidedly lukewarm (*skoree doveriaiu*). The same dynamic was at play for businessmen, with 3.7% expressing complete trust, while the rest (39.5%) were less enthusiastic. The same pattern is present, albeit in a less striking form, among those who are distrustful of the courts. Among the 37.7% of individuals who professed their lack of trust, 10.8% expressed complete distrust (*polnost'iu nedoveriaiu*), whereas of the 45.3% of businessmen who indicated a lack of trust, 9.3% fell into this extreme category. The rest were less definitive in their expressions of distrust (*skoree nedoveriaiu*). Each of these polls has its flaws. In particular, the tendency to ask about trust in courts without specifying what type of court is problematic for a judicial system with three distinctly different types of courts.

For most Russians, the lack of public trust in the courts is taken as an article of faith.[134] Indeed, it is this bedrock belief in the lack of societal

132. The trend was hopeful. The results from 2001 and 2007 showed an increase in trust from 13% to 17%. At the other end of the spectrum, during the same period, the distrust fell from 30% to 26%. Russians were even more distrustful of police and prosecutors, the other key institutions within the Russian legal system. On the other hand, almost two-thirds of those surveyed expressed complete trust in the President. *Doveria institutam vlasti*, LEVADA-CENTER (Apr. 9, 2007), http://old.levada.ru/press/2007040901.html. Putting such data in comparative context is difficult due to the fact that each survey poses its question in a slightly different way. Yet it is worth noting that surveys of attitudes towards courts in some advanced industrialized countries also reflected low levels of trust. Only 25% of those surveyed expressed "a great deal" of confidence in their courts. *See* GREENBERG QUINLAN POSNER RESEARCH, INC., JUSTICE AT STAKE: FREQUENCY QUESTIONNAIRE 3 (2001), *available at* http://www.justiceatstake.org/media/cms/JASNationalSurveyResults_6F537F99272D4.pdf. At the other end of the scale, however, only 5% expressed a complete lack of trust. Russians believe that trust in the courts in the United States is deep. An article reporting on survey results for Russia claimed that 60%-80% of Americans had confidence in their courts. *See Nedoverie k rossiiskim sudam neprekronno rastyot*, ZASUDILI (Feb. 20, 2011), http://zasudili.ru/news/index.php?ID=940.

133. The INDEM survey went on to investigate the underlying causes of trust (or distrust). This is certainly an important question, but is beyond the scope of this Article. GORBUZ ET AL., *supra* note 46, at 386-87.

134. *See* Lilia Mirza, *Krizis doveriia v sudu*, 12 CHELOVEK I ZAKON 51, 51-58 (2008).

legitimacy of the courts that makes the increase in the number of cases so puzzling.[135] Although a full discussion of the reasons why Russians consistently express a lack of trust in their courts is beyond the scope of this Article, it is worth noting that some Russian judicial leaders have attributed the public's lack of confidence in the courts to the lack of transparency that has traditionally characterized the courts.[136] Others have dismissed it as a reflection of the general lack of trust in state institutions.[137]

A. Law-Related Attitudes as an Explanation for Why Russian Individuals Interact with the Courts

In exploring the role of attitudes in explaining Russians' contact with the courts, the RLMS survey included two sets of variables of potential interest. The first goes to respondents' attitudes towards state institutions generally and their commitment to progressive ideals. Just as with capacity, which looked to behavior *vis-à-vis* state institutions, the level of trust in basic state institutions is worth exploring. I am looking to see whether trust in the state affects the willingness to become involved with the courts. We might also assume that those who are more receptive to progressive

135. In a March 2010 interview, Veniamin Iakovlev, the former Chief Justice of the Higher Arbitrazh Court argued that the increase in case filings reflects a greater confidence in the courts. He expressed skepticism about the validity of public opinion polling, noting that those unsuccessful litigants prefer to attribute their results to judicial corruption or incompetence rather than problems in their own cases. *See* Aleksandr Pilipchuk, *Veniamin Iakovlev ob urovne doveriia k sudam i MVD dlia "Pravo.Ru": "Zachem sledstviiu nuzhny aresty*, PRAVO (Mar. 29, 2010), http://pravo.ru/news/view/27117/. Of course, the flaw in his reasoning is that, even with the increased number of cases, the vast majority of Russians have never had any personal experience with the courts.

136. In a September 2011 interview, Valeria Adamova, Chief Judge of the cassation court for the region of Moscow, commented that, "In Russia, there is an ingrained bad habit to indiscriminately criticize our judicial system. I think our consciousness is just set up that way. Perhaps the reason is that the judiciary is not yet fully transparent." Mikhail Barshchevskii, *Arbitrazhnyi sud otkryvaetsia*, ROSSIYSKAIA GAZETA (Sept. 15, 2011), http://www.rg.ru/2011/09/15/adamova.html. On the challenges of improving transparency in the courts, see N.V. Alekseeva & V.V. Efimova, *Dostupnost' pravosudiia v usloviiakh razvitiia informatsinnogo obshchestva Rossiikoi Federatsii*, 2 ROSSIISKOE PRAVOSUDIE 70-73 (2010); L.A. Chastilova & E.S. Burmistrova, *Otkrytnost' sudebnoi sistemy. Problema balansa interesov*, 6 ROSSIISKOE PRAVOSUDIE 49 (2010); Lilia Mirza, *Sud okazalsia zakrytym ot naroda*, 1 CHELOVEK I ZAKON 25 (2009). As of July 1, 2010, a law requiring courts to post their decisions on the internet went into effect. *See* Ob obespechenii dostupa k informatsii o deiatel'nosti sudov v Rossiiskoi Federatsii [Sobranie zakonodatel'stva RF] [Civil Code] no. 52, ch. 1, art. 6217. Most observers believe that the *arbitrazh* courts have done a better job of providing full access to their activities than have the courts of general jurisdiction. *See generally* V.I. Reshetniak, *K voprosu ob elektronnom pravosudii v arbitrazhnom i grazhdansk om sudoproizvodstve*, 9 IURIST 33-38 (2011); *"Otkrytost'" sudebnoi sistemy kak uslovie ee nezavisimosti*, 10 ZAKON 26-37 (2009); N.N. Fedoseeva, *Dostup k informatsii o deiatel'nosti sudov v Rossiiskoi Federatsii*, ADMINISTRATOR SUDA (Sept. 15, 2011), http://justicemaker.ru/view-article.php?id=15&art=2160.

137. The Chief Justice of the Russian Constitutional Court, Valerii Zor'kin, took this position in an undated interview published on the website of the press service "Evropeiski-Aziatskii novosti." *See Nedoverie k rossiiskim sudam neprekronno rastyot*, *supra* note 132.

ideals would be more willing to use the courts. While most social scientists accept that attitudes color behavior, whether I have identified the attitudes that unlock the use of courts remains to be seen.

The second set of variables goes more directly to attitudes regarding law and legal institutions. Social scientists who study the use of courts generally assume that prospective litigants are greatly influenced by their beliefs related to courts and law.[138] This stands to reason. Those who doubt the integrity of judges or the legitimacy of law are unlikely to rely on these very institutions when resolving disputes.

As to the first set of variables, respondents were asked about their trust in various state institutions.[139] These included the government of the Russian Federation, the state duma (legislature), the courts, the army, and the police. Though there is some danger that respondents personalized the institutions and that their responses go more to support for the central government (discussed below), the questions were framed in general terms. I pulled the responses together in a scale of support. Fearing that I would stack the deck by including attitudes specifically about courts, I excluded responses about the courts. (The impact of trust in courts is discussed below). I then created a dummy variable for those in the top 15% of the scale. Model 3 shows high levels of trust in state institutions to be a robust predictor of court contact, but the causal arrow runs in an unexpected direction. The odds of court involvement are about 27% less for those who trust state institutions than for those who are openly distrustful of the state.

Respondents were also asked a series of questions about how important it was to them personally that various democratic principles exist in Russia. The list encompassed free elections, law and order, freedom of speech, an independent press, political opposition, fair courts, and the protection of civil rights. I created a scale of their support for these progressive ideals, once again leaving aside the question that was specifically related to courts.[140] When I included a variable in Model 3 that isolated the top quartile, as those who are most supportive of these progressive ideals, we see that such beliefs are significantly related to court contact. As might be expected, those who endorse these ideas are more likely to turn to the courts.

At first glance, it would seem that these two scales ought to be complementary. Taken together, they would seem to provide a rough index for respondents' support of democracy. The first scale measures their trust in the three branches of government, and the second assesses their support for citizens' civil liberties. These are two central components of democracy. How can we make sense of the divergent results for the two variables within the regression analysis? Perhaps the assumption that trust in the

138. *See, e.g.*, TYLER, *supra* note 10.

139. Using trust in state institutions as a measure of legitimacy is standard. *See id.*; Stefan Machura, *Fairness, Justice, and Legitimacy: Experiences of People's Judges in Southern Russia*, 25 LAW & POL'Y 123 (2003).

140. Over 90% of those surveyed supported the importance of fair courts.

three branches of government comes with a support for the existence of the sort of checks and balances between them that make democracy work is unfounded. It may be that respondents are comfortable with a more authoritarian vision, in which power is concentrated in the executive branch. The fact that there is only an 8% correlation between the two indexes suggests this may be true. But linking the "trust" variable to the current Putin/Medvedev institutional structure, which is generally acknowledged to have slipped towards authoritarianism,[141] is problematic. The several variables in the survey that could be used as proxies for support for the current regime are not significantly related to court use.[142]

Turning now to factors that are more directly related to the legal system itself, I asked several questions aimed at revealing respondents' attitudes toward law. They were asked to express their opinion on the following statements on a five-point scale ranging from completely agree to completely disagree:

1. If a person considers a law to be unfair, he has the right to "evade" (*oboiti*) it.
2. Judges in Russia are "for sale" (*prodazhny*).
3. In Russia, it is impossible to live without violating the law.
4. If a high state or political official does not obey the law, then ordinary people are entitled to disregard the law as well.

Not surprisingly, the answers to these questions were highly correlated. Even so, their predictive power as to contact with the courts was not uniform. The first question, which can be seen as a proxy for legal nihilism, turns out to be unrelated to court use. This is unexpected: logic dictates that those who are disdainful of the law would be unlikely to turn to the courts.[143] I used the third statement as emblematic of the others and created dummy variables for agreement, ambivalence, and disagreement. Using those who disagreed as the reference category, the results show that the odds of having been to court are about 33% greater for those who agree that living in Russia without violating the law is impossible than for those who think it is possible to live a law-abiding life in Russia (see Model 3 in Table 3). Again, this is perplexing at first glance. Why would those who believe in the legitimacy of the legal system be less willing to go to court? More pointedly, why are those who are contemptuous of the legal system be willing to trust the courts to resolve their disputes? This is a finding that deserves more study. Perhaps need trumps ideology.

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141. *See, e.g.*, Andrew Osborn, *Dmitry Medvedev's Russia Still Feels the Cold Hand of Vladimir Putin*, TELEGRAPH (Mar. 7, 2010), http://www.telegraph.co.uk/news/worldnews/europe/russia/7386448/Dmitry-Medvedevs-Russia-still-feels-the-cold-hand-of-Vladimir-Putin.html.

142. Respondents were asked to agree or disagree with two statements that go to the essence of Putin's reforms, namely limiting elected officials to two consecutive terms and appointing (rather than electing) regional governors. Supporters of these Putin policies were not more or less likely to have had contact with the courts.

143. Kathryn Hendley, Comments at the American Political Science Association: Legal Nihilism in Russia (Sept. 2, 2010).

A second set of questions were aimed at uncovering the practical obstacles to the use of courts. The possible obstacles were: cost, delays, inability to enforce decisions, judges' biases, and judges' incompetence. These factors naturally divide into two categories. The first three possible obstacles go to the institutional integrity of the courts, whereas the last two go to the quality of the judicial corps. Because the answers to each subset of questions were highly correlated, I focus on just one result from each as an exemplar. Respondents were asked to state whether each factor interfered (*meshaet*), either seriously or not, or did not interfere (*ne meshaet*), either seriously or not, with their willingness to appeal (*obrashchat'sia*) to the courts.[144] They were also given the opportunity to opt out of answering due to the difficulty of the question. This choice (as well as the choice to refuse to answer) was available for all questions within the RLMS. Respondents took advantage of it to a greater extent with regard to this question.[145] With regard to each of my exemplars, I created dummy variables that captured those who saw the factor as an obstacle, those who did not view it as an obstacle, and those who found it too difficult to answer. The regression analysis takes the optimists—those who did not see it as an obstacle—as the reference category.

As to the institutional viability of the courts, I focused on delays. The Russian procedural codes contain strict deadlines for resolving disputes. They vary depending on the type of dispute.[146] The ability of judges to meet these deadlines is a critical factor in determining salaries and promotions.[147] Not surprisingly, judges in both the *arbitrazh* courts and the courts of general jurisdiction are preoccupied with meeting these deadlines.[148] Despite the best efforts of judges, cases often take longer than the designated period, leading to frustration for some because foot-dragging tactics are occasionally employed to dodge responsibility and/or encourage settlement.[149] Thus, assigning the ultimate responsibility for delays in

144. *See* ADULT QUESTIONNAIRE, ROUND 8, RUSSIA LONGITUDINAL MONITORING SURVEY, at 39.J, *available at* http://www.cpc.unc.edu/projects/rlms-hse/data/questionnaires/r8adult.pdf.

145. An analysis of what this response means more generally is outside the scope of this Article. The reasons why the "difficult to answer" option was more popular for this set of questions are unclear. Unlike the battery of questions about attitudes towards law, respondents were not given any other response that allowed them to express ambivalence. *See* Ellen Carnaghan, *Alienation, Apathy, or Ambivalence? "Don't Knows" and Democracy in Russia*, 55 SLAVIC REV. 325 (1996). The organizers of BEEPS chose not to give their respondents this option.

146. *See* Hendley, *supra* note 4, at 4-5.

147. *See id.* at 5.

148. In my interviews with Russian judges, these deadlines (*sroky*) were a constant topic of discussion. Hendley, *supra* note 115. Russian judges are always amazed to learn that their U.S. counterparts do not have analogous temporal constraints. The official caseload statistics paint a generally positive picture. In both hierarchies of courts, violations of the deadlines are the exception rather than the rule. But these data sets are misleading. Judges have numerous tools for tolling the clock. As a result, a case that has ostensibly been decided within the statutory period has often taken longer than the prescribed several weeks or months.

149. *See* Hendley, *supra* note 4, at 13-14.

individual cases can be difficult. Without question, however, society places the blame for delays squarely on the shoulders of judges.[150] Table 6 indicates that whether one views delays as an obstacle or not has no discernable impact on contact with the court. Instead, it is those who found the question too difficult to respond to who are staying away from the courts in droves. Though I did not include this variable in the regression analysis in the Article, the results were entirely consistent with the descriptive statistics. Only the results for those in the ambiguous category of "too difficult to respond" were significant.

The same dynamic, albeit in a slightly weaker form, is at play when it comes to the incompetence of judges as an obstacle to using the courts. It stands to reason that incompetent judges would serve as a disincentive to going to court, and they do. The strength of the predictive relationship is not as strong as for delays, but is present. The odds of having had contact with the court are about 17% lower for those who identify the low professional level of judges as a serious obstacle as compared to those who had no worries on this front. Once again, respondents who found the question too difficult to answer were the group least likely to have had contact with the courts. This pattern suggests that an unwillingness to answer these questions does not reflect ambivalence. Rather, it may be an indicator of hostility to state institutions.

Given the power of generational differences in explaining court contact, I wondered whether age might lie at the heart of the results for these attitudinal variables. I explored this by reviewing the mean values for the attitudinal variables for each of the age cohorts. The differences between the generations is not meaningful, suggesting that age is not terribly relevant.

Despite the fascination of social scientists and policy makers with explanations for the use or non-use of courts that flow from litigants' underlying attitudes,[151] this set of variables is rather disappointing. They add little to the power of the model. The pseudo-r2 value increases from 0.191 to 0.198.[152] There is no question that respondents' beliefs about law and legal institutions are part of the story, but it appears that they take a back seat to the more material interests that need and capacity represent.

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150. *Id.* at 8.

151. Such assumptions are often reflected in comments that bemoan the lack of the "rule of law" in Russia and blame the failure of various reform processes on its supposed absence. *See, e.g.*, ANDERS ASLUND, BUILDING CAPITALISM: THE TRANSFORMATION OF THE FORMER SOVIET BLOC 369-70 (2001); MICHAEL MCFAUL, RUSSIA'S UNFINISHED REVOLUTION: POLITICAL CHANGE FROM GORBACHEV TO PUTIN 326-28 (2002).

152. Fearing that the large number of variables included in Model 3 might be blunting the effect of these attitudinal variables, I re-ran the regression with only the variables I added in this model, the variables that capture the respondents' attitudes. The pseudo-r2 was 0.0140, confirming the limited value of attitudes in explaining contact by Russian individuals with the courts.

B. Law-Related Attitudes as an Explanation for Why Russian Firms Resort to the Courts

A fundamental assumption of the social science literature on the role of law in the post-Soviet economy is that Russian economic actors were distrustful of law and legal institutions, and that this distrust led them to avoid the courts. Several Western scholars—who served as key advisors to the Russian government on the legal reforms attendant to the transition to the market—took the position that the Russian courts were simply unusable.[153] The Russian media never tires of telling stories of how law has failed to protect firms and of sharing the intricacies of sordid lawsuits.[154]

BEEPS sought the opinions of firm management about a wide range of law-related issues. In particular, the respondent firms were asked about the predictability and accessibility of law. These are issues at the heart of the "rule of law" concept.[155] Firms were asked to agree or disagree with two statements and to peg their response along a six-point scale. A response of 1 indicated strong disagreement; a response of 6 indicated strong agreement. Both questions framed the statements in the positive. Thus higher mean scores signify a stronger belief in the integrity of the legal system. As to predictability, firms were asked their views of the following statement: "interpretation of the laws and regulations affecting my firm are consistent and predictable." The mean response of 3.11 indicates that firms were divided about this question. A majority (54%) opted for middle-of-the road answers (tend to agree; tend to disagree). Yet confidence in the stability of law (or the lack thereof) was only weakly tied to firms' propensity to litigate, and the relationship was negative. Firms that found the law to be stable were less likely to have been to court. In a perverse way, this makes sense. If a firm is confident about the outcome of a dispute—if the law is predictable—then there is no need to submit the case to the courts because the outcome is predetermined. Settling such cases is more efficient. This result greatly surprised me.

In my research in the *arbitrazh* courts from 1995 to 2007, I had been struck by the tendency of Russian firms to use the courts as a debt collec-

153. Bernard Black & Reinier Kraakman, *A Self-Enforcing Model of Corporate Law*, 109 HARV. L. REV. 1911 (1996); Hay & Shleifer, *supra* note 11, at 401.

154. In addition to the politically inspired cases referenced earlier, *see supra* note 14, the Russian press also aggressively covers the practice of "raiding" (*reiderstvo*) within the Russian economy. This refers to the propensity of business rivals in Russia to criminalize their disputes. They seek civil damages through the *arbitrazh* courts and also convince the authorities to pursue criminal charges against their rivals in the courts of general jurisdiction. *See, e.g.*, Vladimir Barinov, *'Nochnoi gubenator Peterburga' sel kak reketir*, IZVESTIA, Mar. 7, 2012, at 3; Vladislav Trifonov, *Vladimir Barsukov vosprinial sud boleznenno*, KOMMERSANT DAILY, July 28, 2011, at 5; Vadim Smirnov, *Navernoe, eto reiderstvo*, VREMYA NOVOSTEI, Apr. 27, 2010, at 4. For an overview of "raiding" in Russia, see Thomas Firestone, *Armed Injustice: Abuse of the Law and Complex Crime in Post-Soviet Russia*, 38 DENV. J. INT'L L. & POL'Y 555 (2010).

155. *See* Katie R. Eyer, *Administrative Adjudication and the Rule of Law*, 60 ADMIN. L. REV. 647, 653 (2008); Maurice E. Stucke, *Does the Rule of Reason Violate the Rule of Law?*, 42 U.C. DAVIS L. REV. 1375, 1418 (2009).

tion agency. I witnessed countless cases where the outcome surprised no one, but where the parties wanted a court judgment. In the 1990s, I attributed this predilection to the pervasive uncertainty and the desire to have definitive proof of the validity of outstanding debts for the tax authorities.[156] Kagan's work on the patterns of court use in the United States in the early 1900s suggest that many legal systems go through a period where litigation is over-used (1984).[157] It may be that Russia is now emerging from that stage.

Transparency is a different story. First of all, respondents were more sanguine about access. They were asked to agree or disagree with the following statement: "information on the laws and regulations affecting my firm is easy to obtain." The higher mean of 3.95 points to gains in transparency for the Russian legal system thanks to the advent of multiple computerized databases. In addition, the odds of pursuing a claim to court are about two-thirds greater for firms that are easily able to secure legal information. This result is to be expected. Firms that understand the law are better able to prepare themselves for the judicial process, thereby enhancing their capacity to protect themselves in the courts.

Another frequent refrain in the literature is the inability of Russian courts to protect property rights.[158] My research has argued against this proposition. I have argued that the *arbitrazh* courts' protection of creditors' rights in non-payment cases stacks up well in the comparative context.[159] Most of these cases have relatively low stakes. Others have contended that the courts' adherence to the letter of the law weakens when the interests of powerful economic or political actors are at stake, as in bankruptcy cases.[160] This empirical question of whether property rights are effectively protected is beyond the scope of this Article. Instead, the BEEPS data allow us to explore whether Russian firm managers believe the courts will enforce the law and, more importantly, whether their feelings on this question drive their behavior. Respondents were asked to agree or disagree with the following statement: "I am confident that the legal system will uphold my contract and property rights in business disputes." They were given the now-familiar six-point scale. The mean of 3.02 falls in the zone of weak disagreement (tend to disagree), telling us the surveyed firms are skeptical about the willingness of the *arbitrazh* courts to live up to the strictures of the law. But contrary to the implicit assumption of the social science litera-

156. Hendley, *supra* note 4, at 305.

157. *See* Robert A. Kagan, *The Routinization of Debt Collection: An Essay on Social Change and Conflict in the Courts*, 18 LAW & SOC'Y REV. 323 (1984).

158. *See* Andrei Shleifer, *Establishing Property Rights*, *in* PROCEEDINGS OF THE WORLD BANK ANNUAL CONFERENCE ON DEVELOPMENTAL ECONOMICS 1994 93 (1995); Timothy Frye, *Credible Commitment and Property Rights: Evidence from Russia*, 98 AM. POL. SCI. REV. 453 (2004); Simon Johnson et al., *Entrepreneurs and the Ordering of Institutional Reform: Poland, Slovakia, Romania, Russia and Ukraine Compared*, 8 ECON. TRANSITION 1 (2000).

159. Hendley, *supra* note 4, at 305.

160. Anna Lambert-Mogiliansky et al., *Are Russian Commercial Courts Biased? Evidence from a Bankruptcy Law Transplant*, 35 J. COMP. ECON. 254 (2007).

ture, this agnosticism about the protection of property rights does not drive behavior. I divided the responses to this question into three groups: firms that agreed that courts would protect their property rights; firms that were ambivalent on this score; and firms that did not believe that their rights would be upheld. Both the descriptive statistics and the regression analysis document that firms' attitudes about property rights play no role in predicting their use (or non-use) of the courts. This result deserves further investigation. My instincts tell me that in an institutional context where going to court imposes few costs—either financial or relational—firms are willing to try it even if they harbor doubts about its efficacy.

This takes us to the question of firms' attitudes towards the courts. As part of BEEPS, there were two approaches to this topic. Much as in the RLMS, respondents were asked about possible obstacles to using the courts, but then an effort was made to put their attitudes towards courts into a larger framework. Firms were given a list of twenty-one factors that might affect the growth and operation of their businesses, including the functioning of the judiciary, and were asked to evaluate their impact.

As to the putative obstacles, respondents were given a list of five qualities that might be used to describe the courts and were asked to assess how often they associated the phrase with the courts on a six-point scale, ranging from never to always.[161] As in the RLMS, the qualities break down into factors that determine the institutional integrity of the courts (quick, affordable, and able to enforce its decisions) and those that shape the quality of the judicial corps (fair and impartial, honest, and uncorrupted). My analysis reveals that firms are largely unaffected by concerns over the personal integrity of judges, but that their views about the institutional capability of the courts do play a role in their decisions about how to handle disputes. The means for the questions about judicial character were around 2.6, indicating that they associated the qualities of fairness/impartiality and honesty with judges somewhere between seldom and sometimes. The responses were highly correlated (0.75). For that reason, I included only one of them—honesty—in the regression analysis. It indicates that the apparent lack of trust in decision-makers is not helpful in predicting whether a firm will use the courts.

On the other hand, attitudes about institutional factors were more helpful. The surveyed firms were most concerned about delays. Very few firms saw the judicial process as expeditious. Just the opposite: the mean response of 2.12 tells us that the average firm said that they would seldom describe litigation as quick.[162] I divided the sample into firms that were highly skeptical (responding that they would never or seldom describe the

161. The scale was: never (1), seldom (2), sometimes (3), frequently (4), usually (5), and always (6).

162. The procedural code for the *arbitrazh* courts mandates that most cases be decided within three months of filing. Although this might seem quick to those accustomed to the more leisurely pace of American courts, Russian economic actors are frustrated by having to wait weeks for a resolution to their disputes. This serves to remind us that all questions of time are relative.

process as quick), those that expressed ambivalence (responding that they would sometimes describe the process as quick), and those that were less troubled (responding that they would frequently, usually, or always describe the process as quick). Not surprisingly, the odds of going to court are significantly lower for firms that are skeptical about the efficiency of the courts. Those that are ambivalent are only slightly less discouraged by the prospect of going to court. The results are much the same for firms that are troubled by the cost of litigation. As a group, the surveyed firms are less worried about this factor, as is illustrated by the mean response of 3.04. It indicates that the average firm said it would sometimes describe litigation as affordable. Even so, firms that fell into my categories of being skeptical or ambivalent about the cost were less inclined to use the courts. The strength of the relationship is stronger than that for speed. Both results make sense. Firms that regard the courts as slow or expensive are hardly likely to flock to them.

The final institutional factor is the ability to enforce decisions. The literature assumes *arbitrazh* court decisions are not typically implemented.[163] In an earlier project, I tested this common wisdom empirically by examining what happened in non-payments cases. Although my sample was admittedly not representative, my results suggested that enforcement was not as much of a problem as had been thought.[164] The BEEPS data tend to support my findings. The mean response of 3.3 shows that enforcement was the institutional factor that was least troubling to the surveyed firms. Indeed, when put into the regression, it turns out that the odds of using the courts are actually much greater for firms that view enforcement as a problem than for those who are untroubled. This seems incongruous, until we consider that firms may recognize that implementation is more their responsibility than that of the judicial system. Struggles with enforcement may be regarded as a necessary part of the litigation process. Once again, need may trump other concerns.

How do firms' concerns about the judicial process stack up against other problems? I explored this by comparing the mean scores for the twenty-one potential areas of concern that were included in a question that asked firms to assess how problematic these factors are for the "operation and growth" of their businesses along a four-point scale that ranged from "no obstacle" with a score of 1, to "major obstacle" with a score of 4. According to this scale, higher means indicate greater concern. From this vantage point, the functioning of the judiciary emerges as a mid-level concern. It can be grouped together with six other potential problems that have mean scores between 1.8 and 2.1. These include: customs and trade regulations, business licensing and permits, street crime, contractual breaches by suppliers and customers, access to financing, and the availability of skilled workers. At the other end of spectrum, with lower mean scores, are more prosaic problems, such as electricity, telecommunications,

163. *See, e.g.*, FEDERICO VARESE, THE RUSSIAN MAFIA: PRIVATE PROTECTION IN A NEW MARKET ECONOMY 46-50 (2001).

164. Hendley, *supra* note 4, at 305.

access to land, and titling of land. Oddly enough, concern over organized crime also falls into this group. The surveyed firms are most troubled by uncertainty over regulatory policy, tax policy, and general macroeconomic instability (including inflation). The mean scores for this latter group were over 2.5.

This exercise helps put Russian firms' fears about the operation of the courts into a larger context. It reminds us that the post-Soviet economic environment presents firms with a multitude of challenges, of which the judicial system is just one. Moreover, when I examined the role of this variable in predicting the use of courts, I found that it was not relevant. I created a dummy variable to isolate those who regard the functioning of the courts as a moderate or major obstacle (30% of the sample). Somewhat bizarrely, the descriptive statistics indicate that those who see the courts as an obstacle are actually more likely to use them. This variable is not significant in the regression analysis.

Much as with the analysis of Russian individuals, this analysis of the role of attitudes in explaining the litigation behavior of firms is somewhat underwhelming. As between Models 4 and 5, the pseudo-r2 value increases from 0.2441 to 0.2983.[165] The analysis confirms the common wisdom that firms are troubled by the institutional shortcomings of the courts. It also reinforces the belief that Russian economic actors doubt whether courts will enforce their contract and property rights. But it shatters the assumption that this lack of faith leads them to avoid the courts.

VI. Reflections on the Role of Legitimacy in Explaining Contact with the Courts

Going to court requires the parties to place their faith in the judge and in the integrity of the process. Social scientists have assumed that societal distrust would translate into a general unwillingness to use the courts.[166] In the Russian context, public opinion polling has consistently documented the public's lack of trust in courts.[167] Commentators have typically assumed that Russians are avoiding the courts.[168] The caseload data belie this simplistic behavioral assumption. My analysis provides some insight into this puzzle. It suggests that, for both individuals and firms, this upswing in litigation is driven primarily by a complex intersection of factors related to need and capacity. On its own, this finding is not surprising. Both need and capacity are essential prerequisites to litigation. More unexpected is the fact that respondents' general societal aversion to

165. Fearing that the pseudo-r2 might be driven by the large number of variables included in Model 6, I reran the regression with only the variables I added in this model, i.e., the variables that capture the respondent firms' attitudes towards the courts. The pseudo-r2 was 0.0446, confirming the limited value of attitudes in explaining firms' use of courts.

166. *See* Kathryn Hendley, *Growing Pains: Balancing Justice & Efficiency in the Russian Economic Courts*, 12 TEMP. INT'L & COMP. L. J. 301, 304 (1998).

167. *See supra* text accompanying notes 132-133.

168. *See* Hay & Shleifer, *supra* note 11, at 401.

the courts did not deter them from taking their claims to the courts when the need presented itself. This result calls into question the proclivity of policy makers to link the legitimacy of the courts to citizens' willingness to use these institutions. My research is, of course, limited to Russia. Although Russians' disdain for their courts would seem to make it a tough case, whether my results will hold up in a broader comparative context remains to be seen. Further research is certainly warranted.

VII. Tables

Table 1: Contact with the Courts by Respondents in Rounds 13 and 15 of the RLMS

	2004 (Round 13)	2006 (Round 15)
Respondent personally had contact with the courts	11.8	13.3
Friends or family of the respondent had contact with the courts	15.2	18.1
No one close to the respondent had contact with the courts	73	68.5

Source: *Russia Longitudinal Monitoring Survey - Higher School of Economics*, U.N.C., CAROLINA POPULATION CENTER, http://www.cpc.unc.edu/projects/rlms-hse/data.

Table 2: Demographic Characteristics of Respondents in Round 15 of RLMS (2006)

		Personal contact with courts	No personal contact with courts	Full sample	Chi value
Full Sample		13.2	86.8	100	
Gender:					
	Men	13.9	86.1	42.6	
	Women	12.6	87.4	57.4	p>.05
Education					
	No university degree	12	88	80.9	
	University degree	18.1	81.9	19.1	p>.01
Marital Status					
	Divorced at some point	20.2	79.8	14.7	
	Never divorced (married or unmarried)	11.9	88.1	85.3	p>.01
Income					
	Top three quartiles	12.6	87.4	76	
	Bottom quartile	15	85	24	p>.01
Employed					
	Currently employed (or on paid leave)	16.2	83.8	54.6	
	Unemployed	9.5	90.5	45.4	p>.01
Location					
	Urban	14	86	68.3	
	Rural	11.5	88.5	31.7	p>.01
Ethnicity					
	Russian	13.6	86.4	87	
	Not Russian	12.8	87.2	13	n.s.
Age					
	Born before 1940	7.2	92.8	15.8	
	Born 1941-1950	13.2	86.8	10.2	
	Born 1951-1969	17	83	31	
	Born 1970-1976	18.3	81.7	13.1	
	Born 1977-1987	12.8	87.2	21.5	
	Born after 1988	3.2	96.8	8.4	p>.01

Source: *Russia Longitudinal Monitoring Survey - Higher School of Economics*, U.N.C., CAROLINA POPULATION CENTER, http://www.cpc.unc.edu/projects/rlms-hse/data.

Table 3: Logistic Regression Models - Odds Ratios for Contact with Courts by Russian Individuals in Round 15 of RLMS (2006)

VARIABLES	Model 1 pseudo r2=.0437	Model 2 pseudo r2=.1910	Model 3 pseudo r2=.1980
Women	0.845***	0.772***	0.790***
	(0.0437)	(0.0453)	(0.0469)
Ever divorced	1.836***	1.840***	1.808***
	(0.135)	(0.153)	(0.151)
Urban residents	1.159**	0.950	0.946
	(0.0828)	(0.0725)	(0.0735)
Russian	0.909	0.912	0.917
	(0.0844)	(0.0899)	(0.0912)
Born before 1940 (reference category)			
Born 1941-1950	1.802***	1.549***	1.452***
	(0.235)	(0.210)	(0.198)
Born 1951-1969	2.313***	1.812***	1.664***
	(0.268)	(0.218)	(0.203)
Born 1970-1976	2.535***	1.870***	1.704***
	(0.325)	(0.256)	(0.238)
Born 1977-1987	1.902***	1.638***	1.484***
	(0.234)	(0.212)	(0.196)
Born after 1988	0.526***	0.619**	0.605**
	(0.110)	(0.128)	(0.126)
Employed	1.190**	1.026	1.047
	(0.0867)	(0.0802)	(0.0821)
University graduate	1.393***	0.953	0.932
	(0.0957)	(0.0734)	(0.0721)
Family situation worsened over past year	1.451***	1.309***	1.286***
	(0.108)	(0.106)	(0.105)
Consulted lawyer		8.480***	8.224***
		(0.575)	(0.650)
Used two other state institutions		1.644***	1.587***
		(0.141)	(0.137)
Perception of power unchanged since 2002 (R11) (reference category)			
Perception of increased power since 2002 (R11)		0.986	0.961
		(0.0846)	(0.0830)
Perception of decreased power since 2002 (R11)		0.686***	0.675***
		(0.736)	(0.0727)
Trust in government institutions (top 15%)			0.721***
			(0.0805)
Belief in progressive ideals (top 19%)			1.286***
			(0.107)
Low professional level of judges not seen as obstacle (reference category)			
Low professional level of judges seen as obstacle			0.754***
			(0.0575)
Low professional level of judges - ambivalent			0.637***
			(0.0592)

Disagree that living in Russia without violating law is impossible (reference category)			
Agree that living in Russia without violating law is impossible			1.333***
			(0.0981)
Ambivalent as to whether living in Russia without violating law is impossible			1.059
			(0.0940)
Constant	0.0626***	0.0530***	0.0642***
	(0.00896)	(0.00871)	(0.0119)
Observations	12,199	12,138	12,052

*** p<0.01, ** p<0.05, * p<0.1

Source: *Russia Longitudinal Monitoring Survey - Higher School of Economics*, U.N.C., CAROLINA POPULATION CENTER, http://www.cpc.unc.edu/projects/rlms-hse/data.

Table 4: Demographic Characteristics of Russian Firms in 2005 Round of BEEPS

		Firm had been to court as plaintiff or defendant	Firm had not been to court	Full sample	Chi value
Full Sample		26.8	71.2	100	
Size:					
	Large firms (over 250 employees)	39.4	60.6	12.1	
	Medium firms (from 50-249 employees)	44	56	21.4	
	Small firms (less than 50 employees)	19	81	66.5	p<0.01
Founding date of firm					
	Between 1878 and 1991	44.4	55.6	20	
	Between 1992 and 1995	32.6	67.4	24.6	
	Between 1996 and 1999	18.3	81.7	26.2	
	After 1999	17.5	82.5	29.2	p<0.01
Ownership					
	Privately owned	25.1	74.9	89.7	
	State owned	41.7	58.3	10.3	p<0.01
Location					
	Moscow	14	86	25.6	
	City of over 1 million residents	30	70	30.8	
	City of 250,000 to 1 million residents	39.8	60.2	15.9	
	City of 50,000 to 250,000 residents	30.6	69.4	12.3	
	City of less than 50,000 residents	25.6	74.4	15.4	p<0.01
Sector					
	Manufacturing / Mining	29.9	70.1	26.8	
	Construction	34.6	65.4	13.8	
	Services	23.6	76.4	59.3	p<0.1

Source: *Business Environment and Enterprise Performance Survey (BEEPS)*, EUROPEAN BANK FOR RECONSTRUCTION & DEVELOPMENT, http://www.ebrd.com/pages/research/economics/data/beeps.shtml.

Table 5: Logistic Regression Models - Odds Ratios for Use of Courts by Russian Firms in 2005 Round of BEEPS

VARIABLES	Model 4 pseudo r2=.1072	Model 5 pseudo r2=.2441	Model 6 pseudo r2=.2983
Small firms (reference category)			
Mid-sized firms (50-249 employees)	2.846***	2.084***	2.174***
	(0.676)	(0.552)	(0/615)
Large firms (more than 250 employees)	2.406***	1.602	1.564
	(0.742)	(0.552)	(0.570)
Firms founded from 1878 -1991	2.265***	2.350***	1.983**
	(0.678)	(0.771)	(0.677)
Firms founded from 1992-1995	1.819**	1.982**	1.887*
	(0.509)	(0.613)	(0.611)
Firms founded from 1996-1999	0.926	0.912	0.820
	(0.278)	(0.297)	(0.284)
Firms founded after 2000 (reference category)			
Moscow (reference category)			
Cities of over 1 million residents	2.433***		
	(0.734)		
Cities of 250,000 to 1 million residents	4.046***		
	(1.353)		
Cities of 50,000 to 250,000 residents	2.624***		
	(0.970)		
Cities with less than 50,000 residents	2.454**		
	(0.881)		
Firm owes money		2.081**	1.943*
		(0.690)	(0.684)
Firms never use cash (reference category)			
Firms sometimes use cash		2.061**	1.555
		(0.696)	(0.558)
Firms always use cash		1.339	1.125
		(0.472)	(0.414)
Firm has had non-payment problems with customers		7.099***	7.453***
		(1.739)	(1.990)
Member of business association		1.528	1.307
		(0.402)	(0.377)
Law is basically predictable			0.643*
			(0.173)
Finding law is not a problem			1.598*
			(0.405)
Property rights are not protected by courts			1.742
			(0.679)
Ambivalent as to protection of property rights			1.845*
			(0.647)
Property rights are protected by courts (reference category)			
Judges are not honest			1.026
			(0.383)
Ambivalent about honesty of judges			1.301
			(0.507)

Judges are honest (reference category)			
Courts are slow			0.337**
			(0.142)
Ambivalent about speed of courts			0.368**
			(0.178)
Courts are not slow (reference category)			
Courts are expensive			0.430***
			(0.137)
Ambivalent about cost of courts			0.324***
			(0.114)
Courts are not expensive (reference category)			
Court judges are rarely enforced			2.079**
			(0.689)
Ambivalent about enforcement problem			2.463***
			(0.793)
Enforcement of judgments is not a problem (reference category)			
Functioning of courts is obstacle to business			1.210
			(0.324)
Constant	0.0797***	0.0356***	0.0688***
	(0.0246)	(0.0131)	(0.0405)
Observations	585	585	585

seEform in parentheses
*** p<0.01, ** p<0.05, * p<0.1
Source: *Business Environment and Enterprise Performance Survey (BEEPS)*, EUROPEAN BANK FOR RECONSTRUCTION & DEVELOPMENT, http://www.ebrd.com/pages/research/economics/data/beeps.shtml.

Table 6: Descriptive Statistics for Variables Used in Regression Analysis for RLMS

		Personal contact with courts	No personal contact with courts	Full sample	Chi value
Full Sample		13.2	86.8	100	
Family situation over past year					
	Worse	17.3	82.7	16	
	Better or unchanged	12.5	87.5	84	p>.01
Consulted with lawyer					
	Yes	41.5	58.5	18.9	
	No	6.6	93.4	81.1	p>.01
Used two other state institutions					
	Yes	28.2	77.8	13.2	
	No	11.1	88.9	86.8	p>.01
Perception of power over time					
	More	13.1	86.9	42.2	
	Same	11.8	88.2	25.5	
	Less	11.2	88.8	32.3	p>.05
Trust in state institutions					
	High	8.6	91.4	14.8	
	Not High	14.4	85.6	85.2	p>.01
Belief in progressive ideals					
	High	16	84	18.8	
	Not High	13	87	81.2	p>.01
Impossible to live in Russia without violating the law					
	Agree	16.5	83.5	43.7	
	Ambivalent	12.1	87.9	25.1	
	Disagree	11	89	31.2	p>.01
Speed of litigation					
	Obstacle to going to court	14.4	85.6	70	
	Not an obstacle to going to court	14.9	84.1	13.4	
	Too difficult to answer	6.7	93.3	16.6	p>.01
Low professional level of judges					
	Obstacle to going to court	12.9	87.1	52.6	
	Not an obstacle to going to court	17.4	82.6	22	
	Too difficult to answer	10	90	25.4	p>.01

Source: *Russia Longitudinal Monitoring Survey - Higher School of Economics*, U.N.C., CAROLINA POPULATION CENTER, http://www.cpc.unc.edu/projects/rlms-hse/data.

Table 7: Descriptive Statistics for Variables Used in Regression Analysis for BEEPS

		Firm had been to court as plaintiff or defendant	Firm had not been to court	Full sample	Chi value
Full Sample		26.8	71.2	100	
Non-payment					
	Firms that have had non-payment problem with customer in past 3 years	48.7	51.3	44.3	
	Firms with no non-payments problems	9.5	90.5	55.73	p<0.01
Debtor-creditor status					
	Firms that owe money for utilities, taxes, wages, or inputs	57.1	42.9	9.6	
	Firms that do not owe money	23.6	76.3	90.4	p<0.01
Cash vs. credit					
	Firms that always use cash	30.2	69.8	35.4	
	Firms that sometimes use cash	32.3	67.7	39.7	
	Firms that never use cash	11.4	88.6	24.9	p<0.01
Business association					
	Member	42.1	57.9	26.8	
	Non-member	23.1	76.9	73.2	p<0.01
Proximity to *arbitrazh* court					
	In city with *arbitrazh* court	26.4	73.6	67.3	
	Not in city with *arbitrazh* court	27.8	72.2	32.7	n.s.
Concern over predictability of law					
	Not a problem	20.9	79.1	37.3	
	Seen as a problem	30.5	69.5	62.7	p<0.012
Ease of finding information about laws					
	Not a problem	35	65	35.8	
	Seen as a problem	22.8	77.2	64.2	p<0.01
Concern over protection of property rights by the courts					
	Not concerned	22.9	77.1	18.8	
	Ambivalent	28	72	49.4	
	Very concerned	29.6	70.4	31.8	n.s.
Concern over honesty of judges					
	Not concerned	29.4	70.6	20.2	
	Ambivalent	29.8	70.2	24.6	
	Very concerned	27.3	72.7	55.2	n.s.

Concern over court delays					
	Not concerned	37.3	62.7	11.3	
	Ambivalent	25.7	74.3	19.3	
	Very concerned	28.9	71.1	59.4	n.s.
Concern over court costs					
	Not concerned	45.5	54.6	34	
	Ambivalent	20.5	79.5	24.8	
	Very concerned	20.9	79.1	41.2	p<0.01
Concern over ability to enforce judgments					
	Not concerned	27	73	43.3	
	Ambivalent	35.7	64.3	25.1	
	Very concerned	28.4	71.6	31.6	n.s.
Courts as an obstacle					
	No obstacle or minor obstacle	25.7	74.3	70	
	Moderate or major obstacle	37.6	62.4	30	p<0.01

Source: *Russia Longitudinal Monitoring Survey - Higher School of Economics*, U.N.C., CAROLINA POPULATION CENTER, http://www.cpc.unc.edu/projects/rlms-hse/data.