Chapter 1[1]

THE ABSENT STATE: FAILURES OF THE JUDICIAL SYSTEM, DEPENDENT AND CORRUPT COURTS, POLICE AND SECURITY SERVICES

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In this chapter we are addressing the numerous cases of government failures in countries with transit economies and weak democratic traditions when the state is called upon to provide "pure public goods" (defense, security, and justice). In other words, the subject matter of this chapter involves those institutions which create the very possibility of the existence of real, rather than merely nominal, private property.

The modern understanding of genuine private property includes the assumption of the inviolability of the person of the property owner. Without this, the difference between private property and medieval "conditional tenure" becomes negligible.

The inviolability of the person of the property owner is assured by the state's supplying three classic "pure public goods": defense (protection of the property owner from aggression from abroad); security, and justice (protection of the property owner against arbitrary action and coercion within the country).

The creation and maintenance of a combat ready military, uncorrupted law enforcement government agencies, and an independent court system subject only to

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the law, are duties of primary importance when reforms are under way. These "pure public goods" are extremely important for long term economic growth.

An independent court presumes the independence of judges, their irremovability, and high costs of their dismissal. Court independence is provided and ensured by laws and traditions, and finds its expression in the fact that the state, as represented by high ranking officials and agencies of the government, can lose in court to a private individual in the course of a litigation of some significance to society as a whole. The availability or absence of independent courts is treated as a logical variable.

In Russia, the quality of the court system and the law enforcing agencies of the government continues to remain low, despite an entire series of attempts at reform and disparate achievements here and there. In the early 1990s, reformers' attention was principally focused on economic transformations: their objective was achieving financial stability and privatization. The absence of financial stability posed the imminent threat of social explosion and economic collapse. Privatization was already outfitted with ready-to-use options for implementation, which had been tested by other post-socialist countries.

An understanding of the importance of reforming the court system and law enforcing and judicial government agencies came in the late 1990s. Significant and lasting achievements in the area of creating an atmosphere favorable to the growth of business and the economy turned out to be impossible without such reforms.

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JEL codes: D73, D78, K40, N44, O43, P26

"Will members of the bourgeoisie take their money to the bank now?"
We asked a Russian bourgeois…
He replied, "Immunity of investments?
And where is the immunity of the investors supposed to be? Nobody's going to take anything anywhere."
S. Chlenov, "Economic Politics and Revolutionary Lawfulness"

A fundamental precondition for maintaining the safeguards of private property and a high level of trust is preserving the inviolability of the individual person. Crucial among such guarantees are those rights and institutions which economists have traditionally classified as political. This is not only a conclusion based on the results of research done over the last few years

in a series of countries featuring transit economies.[2] It is also an implicit presupposition of all of classical economic theory, and referred to in connection with the right to legal defense dating as far back as by Adam Smith. This presupposition is so old and so obvious that hardly anybody ever brings it up.

The present chapter deals with the government failures in the post-communist countries with transitional economies and weak democratic traditions which impact the states' ability to furnish pure public goods. Such public goods include defense, security, and justice. In other words, the focus of the present chapter is on those institutions which create—or else, those which fail to create—the very possibility of the existence of real, rather than of nominal private property. That is, we are here concerned with the reality of such safeguards of private property as those involving the person of the private owner and this owner's dignity and belongings. Provided such guarantees are in place, the owner of private property has no need to "hold tight" onto the state. This, in turn, means that the boundaries defining property can be clearly determined.

The Institutions Most Important for Economic Growth

History provides no grounds for assuming that any kind of favorable "initial conditions," "venture capital," or "impulse" can ensure economic growth for centuries[3] (meaning average annual GDP growth rates per capita of 1.5 to 2% or more) in the absence of reasonable legislation. The question, then, largely reduces to what laws should be considered reasonable, and what legislation package may be sufficient, or at least a sine qua non as a precondition for stable growth. Given all this, the acquisition of long-term stability is what plays a decisive role in this case.[4]

No stable growth in per capita GDP was to be observed throughout most of human history (Ill. 1.1)

*International Geary-Khamis dollars are agreed upon units calculated on the basis of national GDP data in accord with purchasing power parity and in "average world" prices for 1990.

Ill. 1.1. Dynamics of World per Capita GDP over two thousand years, as per the assessment by M. Maddisson

[2] Some of the principal results of the statistical analysis are shown in Appendix 1.

[3] An annual per capita GDP growth rate of 1.5% for a period of 180 years would be sufficient in order to turn a country assessed as not rich even by the standards of the late 18th century (such as China: $600 per capita in 1990) into a country of medium-level development (such as Czech or Argentina). Provided annual growth rates of 2% for 200 years, an extremely backward African country with a per capita GDP of $400 at the beginning of the 19th century, would turn into a highly developed one with a per capita GDP surpassing that of France, Finland, or Belgium in 2000.

[4] See Yanovskiy, Shulgin 2008.

Source: Maddisson 2001, 2003.

The first to embark upon the road leading to stable growth of the per capita GDP were the Rule of Law Democracies.[5] Considering that they are also the ones making up the overwhelming majority in the group of countries with GDP levels surpassing $10,000 per capita, there are substantial grounds for supposing that long-term stability requires institutions which draw a distinction between Rule of Law Democracies and all other types of state government. Besides, such stability is in itself close to being synonymous with a high level of development.

This presupposition is borne out both by the most recent historical developments in post-Socialist countries,[6] and by other attempts undertaken to date to perform a comparative analysis of institutions over a longer period of time belonging to the economic history of the 19th-20th centuries.[7] Successful catching up in development cannot be vouchsafed by just an influx of capital (savings) or just by the import of knowledge and technologies. Influx of capital and importation of knowledge and technologies turn out to be of little use without the importing and entrenching of effective institutions. Thus, quite a few African countries (Somali is just one vivid example, and far from being the only one) have remained on the level of development corresponding to a time thousands of years ago. The appearance of electricity, telephones, computers, and even the internet in these countries has not begun to change their standard of living for the better. These "accomplishments" are fully "compensated for" by the appearance of automobiles, cell phones, automatic rifles and grenades in the hands of "roving bandits," a fact that allows the bandits to block the effect of stimuli promoting development.

The problem of the impact which institutions have on economic growth is usually approached via a more general sample of countries than just the post-Communist states. The spectrum of participants in the discussion of this problem has been constantly expanding for the past few decades.

A. Shleifer's group should be singled out first from among contemporary researchers studying problems of the impact which the legal system has on business climate. In their research, they provide grounding on both the qualitative and the statistical levels for the advantages featured by the system of the rule of precedent (Common Law) *as a system in which judges maintain a high level of independence*, as compared to the system of Continental law (Civil Law), where judges are a priori servants of the state receiving their monthly pay in a regular state office or ministry. The authors provide a description of the emergence of these advantages.[8] They also stress the connection between independent courts and economic growth.[9]

Studies performed earlier (see Appendix 1) enable us to single out a series of institutions as being basal (see the definition in the Introduction) and pay special attention to them during the later stages of the study. We are talking about the right to life (or the risk of death at the hands of "roving" or "stationary" bandits), the inviolability of the individual person, including both the individual person with unusual views and opinions and the individual person who is critically minded vis-a-vis the authorities, or vis-a-vis the most widely accepted faith, and so on.

Depending on the level of the guarantees of these rights, all countries can be divided into states of the "Rule of Law," governed mostly in accord with the law, and states of discretionary regulation, or "Rule of Force." In addition, a group of transit (intermediate) countries can also be singled out.

The importance of institutions which provide safeguards for the life and inviolability of the individual person is grounded in the fact that in their absence, guarantees of the generally recognized right to private property either disappear entirely, or else lose all meaning. As a rule, someone in prison and/or faced with the threat of death will agree to give up all and any property rights. It is important to understand the lexicographic quality of the demand (the preference) for

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[5] Obviously, these were not universal suffrage democracies. But as far as the defense of basic rights and private property are concerned, they were no less accomplished than any of the modern democracies. Thus, after the election reform of 1832 in England, only a minority could vote, but the voting qualification requirement is a formal one; with persistence, any working adult can meet it. A comparative analysis of the taxpayer's and the modern democracy appears in ch. 13.

[6] Mau, Zhavoronkov, Yanovskiy, et al. 2003.

[7] Olson 2000; Yanovskiy, Shulgin 2008.

[8] Glaeser, Shleifer 2002; La Porta, Lopez-de-Silanes F., Shleifer 2008.

[9] Glaeser, Shleifer et al. 2004.

life and liberty[10]; i.e., without life and liberty, all other goods lose their value for an economic agent.

Example: 19th-Century Egypt.

With the energetic military leader Muhammad Ali and his descendants as heads of state, the 19th century saw the first attempts to achieve modernization in Egypt as per the European model. This came as a result of the growing military and economic pressure exerted by the leading countries in Europe, a pressure dating from the time of the landing of Napoleon's troops in Egypt. At this time, Egypt became de facto independent of the Ottoman Empire.

Reforms continued apace under Ismail Pasha, but they were also marked by the special features of the region. The typical "totalitarian reformer" set up a new court system, limiting the rights of foreigners (i.e., in effect, the pool of persons enjoying real inviolability of the individual person became smaller). He also instituted an "elective assembly," "empowering" it to ratify taxes and the budget. Naturally, in the absence of guarantees of personal safety, the delegates never once dared make any real use of their enormous powers. Ismail Pasha performed confiscations regularly, thus augmenting his property, which was irrigated by a system of canals, from 24,000 to 400,000 hectares. Taxes (primarily levied on the possession of land) were introduced and raised at will, all while "the taxpayer would be beaten and tortured if he did not pay."[11]

The case of Egypt in the 1800s is far from being an exception. Similar methods of confiscating resources were widespread in what today constitutes a symbol of Rule of Law Democracy; that is, in Great Britain. It was precisely the resistance of property owners to such practices (as in the days of John Lackland in the 1200s, so in the days of Charles I in the 17th century) that led to the creation of institutions which made England be the locomotive engine driving world economic growth forward.

Statistical analysis of data by country for the period between 1820-2000 (see Appendix 1) confirms the hypothesis that in the long term, Rule of Law Democracy provides the conditions necessary for considerably higher rates of economic growth. Besides, such regimes demonstrate the ability to export capitals, knowledge, and, in rare cases, even effective institutions, thus stimulating the growth of the world economy as a whole.

Analyzing the data confirms the conclusion dictated by common sense no less than by an analysis of individual stimuli and preferences. The life insurance market (the insurance amount is comparable to the quoted cost of the influx of income over a person's entire lifespan) and the low elasticity of the demand, based on income, for health services confirm the supposition about the lexicographic nature of the demand that economic agents have for such benefits as life and liberty. And that, in turn, means that old-time historic ways of depriving persons of their property by means of depriving the owner of liberty or threatening to deprive him of life remain extremely effective. Without real guarantees against the use of these methods, any formal rules which protect the rights of property owners must fail to meet with the appropriate trust from the majority of economic agents.

These observations support the claim that the basis for the successes of Rule of Law Democracy consists in the due guarantees of the immunity of the individual person, including such persons as belong to a creed different from the faith of the ruler or the majority of their fellow citizens, and those persons who permit themselves to criticize the authorities or the

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[10] We are dealing here with a system of preferences, in which the comparison of the usefulness of different "benefits baskets" proceeds according to a *lexicographic order*, i.e., first, the most important part of the "benefits basket" is compared, and if preferences become evident on the basis of this, then the remaining components of the "benefits basket" are not taken into consideration. If, however, no preferences emerge concerning the most important part, then the next most important part of the "benefits basket" is considered, and so on. For further details on the lexicographic nature of the demand for life, see Yanovskiy, Shulgin 2008.

[11] E. Lavisse and A. Rimbaud, *19th-Century History in 8 Volumes* (Moscow: SOTZEKGIZ, 1938-39, in Rus.), Vol. 8, Part 2, Chapter 1.

majority. Only when such guarantees are in place can there be any discussion of duly protected private property and, correspondingly, of the conditions for flourishing in the long term.

To sum up: we are addressing the question of institutions which, ideally, are expected to furnish pure social goods. That is, we mean courts of law, the means of legal defense, and the military. All while their condition is such that they provide protection and equality before the law for all, without themselves constituting a threat to the person of a property owner. It is precisely such institutions (as per the observation made by Adam Smith, which was cited above) that provided for the success of the British colonies as opposed to the Spanish ones. It now remains only to compare these institutions with those which entrepreneurs must encounter when they conduct business in Russia and other countries with young democracies.

Condition and Sources of the Problems

Below we will devote some attention to a problem common to countries with democracies which are young and in the process of gestation and with economies in transition to market condition. This problem consists in the inability of the power-wielding organizations so much as even to approach the task of state building founded upon radically new basal institutions.

As a rule, during times of revolution which are not reducible to a palace coup or to a correction in the division of power among the branches of government and the more influential social groups, new regimes do not inherit force structures or the court system of former regimes.[12]

The system goes through a renewal as a result of the replacement of groups which had taken shape deep within the overthrown regime with new groups, revolutionary ones not rooted in the former regime. That is, after the revolution, the balance of power changes radically. As M. McFaul has noted, the most successful – meaning, the most stable – democracies were those in which the new balance of power after the revolution turned out to have been shifted in favor of new groups unconnected with the former regime.[13]

As examples, we should consider the experience of our neighbors in Central and Eastern Europe (Czech, Slovakia, the Baltics, Poland, Hungary, the new German lands). Far reaching court reforms, which altered the situation fundamentally, had been introduced in the US (where the accusation leveled at the British Crown of doing away with the independence of the courts is even reflected in the Declaration of American Independence), as well as in post-war Italy. Even so, the new requirements, which surfaced in connection with radical changes in the rules of the game, are possibly not of primary importance here. Albeit it is precisely at the stage of the creation and beginning implementation of new laws that law enforcement practice and provisions for the execution of court decisions are extremely important. This is because no rule whatsoever becomes entrenched in practice if the consequences of its legal violation are not made clear.

In part, discontinuity in succession may be explained by a conflict of group interests, a point we will consider in greater detail in Chapter 3.

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[12] English courts form a partial exception. In England, beginning back during the period of the One Hundred Years Civil War (1337-1453), a strong and independent corporation of judges began to take shape. It was relatively autonomous even during the Middle Ages.

[13] McFaul, Stoner-Weiss 2004, pp. 72-73. See the essay by McFaul, «Four Waves of Democracy and Dictatorship: Noncooperative Transition in the Postcommunist world.» McFaul's Table 1 shows the evaluation of the distribution of countries across the plane of "democratic – nondemocratic"; "balance of power in favor of new groups – in favor of representatives of the old regime." The only relatively stable transitional democracy cited which has a balance of power in favor of old groups is Rumania. By contrast, all the other countries in the list of stable democracies – Croatia, Czech, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia, Bulgaria, Mongolia – are relegated to the group of countries which belong with the obviously victorious new groups as far as the "balance of power" column is concerned. Other than the rather audacious inclusion of Mongolia, everything in this list is indubitable and definite. But the mistake vis-à-vis Mongolia is compensated for by the case of Rumania, which has already been mentioned, and which involved the physical destruction of the nucleus of the old groups at the time of the revolution of December 1989.

Creating a new hierarchy, new organizations, institutions, and supervisory management agencies is often less costly than ensuring the sustained loyalty of the old ones, even if these last are subjected to a thorough "purge" and are filled with people loyal to the new power.

During the early stages of the reforms in Russia, no systematic attention was given to issues of setting up courts, legal defense authorities, or the army.[14] This may be explained by lack of experience which could provide a source of support (a point first of all bearing upon court reforms), as well as stiff political limitations and inability of the reformers to use their political activism to widen the window of opportunity for the reforms.

Among political limitations, two principal ones in particular stand out.

The first is the short-term period of political support for the reforms both from "above" and from the civil population.

The second consists in that during the initial functioning period, a de facto undocumented agreement was in effect between the authorities and the coercive power structures. It involved refraining from interference in each other's affairs. Law enforcement agencies and the military continued to operate as if nothing were actually going on, confining themselves to purely "cosmetic" metamorphoses. At the same time, they maintained all the outer signs of fidelity to the civil authorities (and their leader President B. N. Yeltsin), except for a modest number of incidents (V. P. Barannikov, A. F. Dunayev in 1993, A. V. Korzhakov in 1996).

The leaders of the first reformed government in Russia preferred to concentrate their efforts on a series of crucial economic reforms in the narrowest sense of the term: on liberalizing prices and trade, on privatization, and on achieving financial stabilization. These problems were being solved with a greater or lesser degree of success. Despite their crucial importance, during the first months and even years of the reforms' being in effect, they not only did not touch the core of the old system of institutions, but with time themselves ran up against limitations. These last had to do with the state's fiascoes at key junctures in its activities: in the areas of justice, security, and defense. Practically all hopes for the irreversibility of the reforms had been put in fortifying financial stability along with privatization. Privatization was supposed to create groups of strongly motivated property owners, thus generating a stable demand for protecting private property. However, in the absence of the least bit effective guarantees for the protection of property owners (caused by the failures of the reforms of the court system and the law enforcement agencies), interest in rapid appropriation of a competitor's weakly protected property often outweighed the interest in securing long-term protection for property of one's own.[15]

The country for a long time was caught in the peculiar predicament of "falling productivity" in economic legislation and economic reform: given an operative court system, every new improvement in the economic legislation yields, and will continue to yield, less and less of an effect. This is what makes up the difference between the first decade of the 20th century and the early 1990s: in the early '90s, the principal problems lay in the macroeconomic sphere. I.e., the most general political action taken in the sphere of legislation would have sufficed for their resolution.[16]

And indeed, all the new institutional decisions work precisely until the first conflict ripens, at which point it turns out that no normal mechanisms exist for its resolution. In this kind of situation, standard reference to a due process of law mechanism for the resolution of conflicts,

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[14] See Mau 1995, 2000; *The Program for Entrenching Economic Reform* (Moscow: *Respublika*, 1992, in Rus.).

[15] From the presentation by S. G. Nedoroslev at the round table discussion of "Business and Power" at the Higher School for Economics on December 13, 2000:

Similar things are taking place at the present time, impinging on our means of competitive struggle. We train prosecutors, policemen, and taxation officials, we support them with funds, and we tell them that they can penetrate into business. But in the end it turns out that we ourselves have spawned the very thing that outrages us: the growing might of the coercive power structures. Look, this happened not because new people have come in, and not because they have become smarter. We ourselves have nurtured their desire and their ability to fight against business. I won't even mention the fact that we by our own behavior have corrupted the institutions of state power to such an extent, that they are no longer state institutions. We ourselves create and support the connections between officials and business. That is, we bring up our own gravediggers. (Liberal Mission, 2001)

[16] However, law enforcement practices reflecting the resolve of the authorities to apply new legislation also played a significant role in a series of areas. Thus the implementation of bankruptcy procedure after the 1998 crisis, including applying it to raw material enterprises ("Sidanko"), had a considerable and effective impact on reducing the debt margin to other enterprises.

something that forms a natural appurtenance for any legislation in cases of disputes related to the implementation of the law, blocks possibilities of implementing the new rules. This is accounted for less by the high costs involved for private individuals who seek the aid of the courts, than by the inability of the court system to obtain and maintain trust toward itself. This inability is explained by the corruption of the court system, as well as by "telephoning right," and the dishearteningly low level of education and competence of the judges.

The upshot is a drastic drop in the effectiveness of all kinds of pre-litigation or court procedures, as well as of searching for a compromise as a part of arbitration by private means. But such procedures net savings of both time and money, provided that decisions reached by a strong, authoritative, independent, but also law-abiding court are more or less predictable. Then both sides have a sense of the gains and the costs to be anticipated at the end of the entire court procedure. That means that in the majority of cases there is a decision space which improves the conflict participants' position by comparison with the condition they would have expected to be in at a future point. Thus, provided that the anticipations of both sides are in sufficient proximity to each other, compromise is a real possibility; while if each of the sides counts on a considerable future gain at the other side's expense, the basis for a compromise may disappear.

The impossibility of inheriting the state apparatus from the old authorities (especially its law enforcement and court components) comes to the fore even in situations of much less fundamental changes than those which took place in Russia. Thus, in Communist China, the reforms introduced by Deng Xiaoping required an across the board replacing of working officials with new ones.[17] Not on as large a scale, but still notable were the shifts necessary for M. Thatcher in order to quell the sabotaging of her reforms by the state apparatus.[18]

Yet the anti-totalitarian revolution in Russia did not evince great rates of renewal, and, what's most important, leaders of the revolution did not so much as specify any such objectives for themselves. As a result, if there was any renewal, then it was primarily on account of the organizations created anew (State Committee on Property, Anti-Monopoly Committee, Presidential Administration, and others). It is telling that in the court system, the armed forces, and the law enforcement agencies, there were no essentially new organizations set up[19] which were beefed up with fresh cadres, even though some attempts to do this were, in fact, undertaken.[20] It is precisely to these agencies, which have been the best preserved from totalitarian times, that both the general public and entrepreneurs turn the most with claims and complaints.[21]

The only step not lining up with the overall tendency was the Order of the President of the Russian Federation, dated September 21, 1993, and titled "Concerning Step-by-Step Constitutional Reforms," which caused a deceleration in the work of the Constitutional Court, by then become thoroughly entangled in political games. In its composition, the group of judges in the Constitutional Court was still drastically different (with the difference working in their favor) from the Russian community of judges as a whole, whose authority was not for a single moment interfered with.

It should be noted that the highest level of achievement in advancing economic reform was to be observed in those countries of Eastern Europe, where following the democratic revolution, the

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[17] According to D. Lee, 15 years of reform in China saw the replacement of 90% of the officials, beginning with the level of neighborhood leadership and up. D. Lee, "Changing Incentives of Chinese Bureaucracy," *American Economic Review*, March 1998.

[18] Peregudov 1996.

[19] New ones based on the stimuli, as well as discipline and training for the army; compactness and professionalism for the Ministry of Internal Affairs, independence for the court system, and so on.

[20] Attempts to unite the KGB and the Ministry of Internal Affairs; in the army – the creation of rapid reaction troops; in the MIA – UBOP (Administration for Fighting against Crime), OMON (Special Purpose Police Unit). The creation of the EMERCOM (Ministry of Emergency Situations). The transfer of the penitentiary system to the Ministry of Justice, the creation of peace courts and the Court Department at the Supreme Court, services of court officers or officers of justice, agencies of the court union in the early 1990s: conferences, qualifications collegiums.

[21] See VTsIOM (the All-Russian Center for the Study of Public Opinion) as per the order of IEPP (Transition Period Economics Institute), 2008; Appendices 2 and 3.

authorities resolutely "purged" the coercive power structures and court system of old cadres; this was the case in the former GDR, Czech,[22] Poland, and Estonia.

Opportunities for Gradual Reform of the Legal System: The Reforms of 1990-2000

It cannot be said that nothing was done in the 1990s to establish institutions which provide civil security, observance of law and order, and justice.

But in all cases, the aim was to bring change about gradually based on the agreement of the superiors of those organizations which were being reformed. Such attempts can easily be blocked by the growing costs of their implementation. Given such a setup, introducing new cadres or manpower becomes a challenge. And then it becomes the case that guarantees of judges' independence, which have proven such a sine-qua-non, as world experience and the experience of Russian court reforms introduced under Alexander II have shown, can be taken advantage of by judges who only discredit the reforms, not letting the prestige or the social status of the courts rise.

The court system left over from Communist days served merely as a decorative add-on to the party-and-state machinery. Because of the organization, as well as the composition of the judges' corps, the system was thoroughly unfit to serve as a means for the real defense of the rights and legal interests of citizens, or for the delimitation of rights and conflicting interests.

The court system reform of the early 1990s drastically raised the level of judges' protection against the influence of the executive and legislative power, by making judges not subject to replacement. Besides, a corporate structure appeared which decided questions of removing judges from their posts. Judges' salaries also rose to a considerable level, though the pay of other court employees remained low.

But this reform did not affect the other problems the system suffers from. As dictated by the choice of reform strategy, opportunity for renewal of the judge corps had to be given up. This is one reason why a judge's social status remains relatively low in complex situations; another reason is the rather "limited competence" of the court, which continues to obtain in complex cases. The court suffers from corruption; however, it should be noted that a corrupt but independent court is not the worst of all possible alternatives.

As V. Osyatynsky, an expert working for the UNDP (UN Development Program), on the basis of the Polish experience (and in discussing the reforms in Kirgizia in 2005) has stressed that even an independent but corrupt court with a low level of qualifications in Poland turned out to be better than the court system in its original condition, when it was both dependent and corrupt.

From experience, including that of Russian history, it is evident that the option of a dependent uncorrupted court is available for only a brief stretch of time historically, while the price of such a court involves large-scale repression. But even if such an option were to be available, we could with the utmost confidence claim that in order to create the conditions for long-term economic growth, this version of the sequence of events would be the worst as compared with any alternatives involving corruption.

Judges who tried to use newly obtained independence and authorization for the defense of civil rights, in the 1990s were often rejected by the community of judges itself; i.e., they were dismissed from their posts, insofar as the judicial community in the course of the introduction of reforms had been endowed with the right to do this.

In the early 21st century, the court had still not been rid of the corruption which had been dominant in the 1990s, even though its independence had been drastically curtailed. We are dealing here with judges' dependence not only on clerks and officials (both federal and regional), but also on the "court vertical axis," a key element of which consists in the right of the qualifications collegium to dismiss a judge from his post (put an end to his authorization or empowerment[23]). Judges removed from their posts testify that judges' superiors often reproach

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[22] See the Law of the Czech and Slovak Federal Republic "Concerning Lustrations" of 1991 in *The Natural Rights of Man* (Moscow, 1993, in Rus.); interview with the chairman of the Czech Police Presidium Irji Kolar (Caparini, Marenin 2004).

[23] Part 2, Article 15, of the Federal Constitutional Law of December 31, 1996, № 1-FCL, "Concerning the Court System of the Russian Federation." All this while Article 16 of the same Law leaves the

them with the large number of justificatory sentences (even though, all in all, justificatory sentences make up less than 10% of the total).

The safeguards for a judge's independence are thus provided only by the "court corporation," rather than by the law itself, or by the complexity and transparence of court procedure from the point of view of society. The "court corporation" was relatively strong during the period of the struggle between the executive and the legislative authorities in the second half of the 1990s. But in the 2000s, the situation changed drastically. In the end, those judges who had not succeeded in achieving an authoritative position in society turned out to be quite vulnerable to the pressure exerted by the executive branch of government, which commands a wide spectrum of both formal and informal ways of applying pressure.

The legal dissatisfaction and well-grounded irritation in society and the state, provoked by the ineffectiveness and the corruption of the court system, led to a second wave of reforms in the early 21st century. But this largely reduced to limiting the guarantees of the independence of the court and the judges, a development which, given the low level of authority enjoyed by the courts, did not provoke any outcry in society; as well as to a process of improvement in the financial condition of courts and judges.

It is not surprising that, if in the 1990s, the courts often permitted themselves to challenge the highest executive authority when they found this necessary or conducive to achieving their goals, then in the 2000s, no such practices are to be observed any longer.

Meanwhile, the notion which has become widespread of the excessive nature of the guarantees of the independence of the courts, which had been in effect earlier, is not in any way corroborated overall by court practice.[24]

Despite the positive processes of raising the work pay of judges, providing the courts with appropriate facilities and equipment and maintaining the courts' prestige in society continue to remain on a very low level.

The federal authorities' recognition of the dependence of the courts on governors led to support for the idea of federal districts. These were supposed to liberate the law enforcement agencies and the courts from de facto management by the governors. Regrettably, after becoming an independent political structure and limiting themselves to a partial solution of the problem of bringing regional legislation into accord with the federal, the plenipotentiary envoys were unable so much as to approach solving this problem. The inadequacy of the guarantees of the independence of judges and their low professional qualifications predetermined the responsiveness of the courts to pressure from the coercive power agencies and the prosecution. These agencies are taken by the court to be, if not its elder brother, then at least a close relative. The manpower for all these agencies is provided by the same learning institutions, while their careers are often intertwined.

This state of affairs is confirmed by the nil percentage of justificatory sentences while litigation rates remain high for cases sent out for continued investigation on the basis of insufficient basis for proof (something which in a normal court and the overwhelming majority of cases means "doubt concerning guilt," and, accordingly, innocence and acquittal).

The June 13, 1996, ratification of the first post-Soviet Criminal Code[25] became an important step on the way to the creation of what for Russia was a radically new legal system. This was

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definition of the guarantees of judges' immunity to be regulated by standard federal law, instead of defining them on its own. In accord with the Regulations Concerning the Work of Qualifications Collegiums, the minimum number of persons making up a collegium is 11. The decision to put an end to an authorization's effectiveness must be reached by two thirds of the member quorum present at the meeting, i.e., the minimum number is two thirds of six.

[24] Consider the disqualification of the governor from running in the elections by the regional court. The "strong governors" acquainted with this practices took this step as a clear indication of their former colleague's incompetence. "What do you mean: our own judge and disqualified him?!" was the response from M. Shaymiev, President of Tatarstan, when the court disqualified from elections in the Kursk Region a favorite, who was the acting governor, A. Rutskoy.

[25] The Criminal Code had been prepared in principle by the first assembly of the State Duma. The capacity of formal rules to improve the situation despite informal ones, and even to change thoroughly stable informal rules, is often underestimated. Thus, a sociological study conducted among the inmates of Russian prisons has shown that the new criminal legislation together with the Criminal-Correctional

primarily due to the structure and the set of components making up the crimes spelled out in a separate part of the Code. This set includes, inter alia, crimes against the constitutional rights and freedoms of humanity (Chapter 19) and against justice (Chapter 31).

The ratification of the new Criminal-Process Code summed up a decade of evolution of this section of the law, perfected by the decision of the Constitutional Court which had purged the old Criminal-Process Code of many a birthmark of the old repressive "justice." But even the new CPC provokes well-founded criticism from the leading rights defenders and right-defending organizations, because of its insufficiently rigid establishment of the principle of the assumption of innocence and its insufficient guarantees of the equality of the parties in a criminal investigation process.

Regrettably enough, the new legislation was left without the requisite institutions for implementation: a new court system and new law enforcement agencies.

A jury court, as provided for by the Constitution, never began to operate at full capacity level, but, in a quid pro quo of sorts, judges are learning "to cope" with this by obtaining convictions from juries little experienced in working with the law.

Jury collegiums can be disbanded arbitrarily (as in the case of the physicist V. Danilov[26]), and a sentence pronounced by a jury can just as arbitrarily be annulled by higher courts (as in the case of the military servicemen S. Arakcheev and Ye. Khudyakov). The accusers and the defense have no equal right to candidacy rejection, nor are there any strict limits to the option of disbanding the collegium. The option which has been brought up of restricting the consideration of certain case categories (those connected with terrorist activity[27]) is reminiscent of the experiment in turning the prohibition against extremist propaganda into an instrument for use against the mainstay organizations of civil society.

It is important to note that the presence of a strong jury collegium well protected from pressure does not in the least restrict the role played by the judge. Work with a collegium renders the judge's actions more transparent for the general public, while making the judge more independent (from pressure applied either by the executive authority, or by senior colleagues). This is because in a series of significant cases, jury members assume a large share of the formal responsibility for the sentence.

Many lawyers and entrepreneurs note that the system of arbitrating courts is distinguished by greater effectiveness than the general jurisdiction courts. This is possibly to be explained by a better quality normative base: arbitrating courts work on the basis of the Arbitrating-Procedural Code, which has been well sharpened by practice (and numbering already the second such APC since the beginning of the reforms). This may have to do with the greater degree of this system's saturation with new cadres, as well as with that arbitrating courts work by district, where each one's boundaries do not necessarily coincide with the boundaries of the regions, a feature leading to a lesser dependence on the governors. This relative effectiveness is "compensated" for by something approaching greater corruption. But even the burden of corruption creates fewer problems for entrepreneurs than an unpredictable and dependent general jurisdiction court.

The hope is sometimes voiced that Russia should for the time being somehow be able to do without independent courts, or that an effective decision should be available to be gleaned from the experience of the successfully developing authoritarian countries. As a number of studies have shown,[28] these countries' experience in making use of investor countries' institutions is evidently inapplicable in the conditions prevalent in Russia today.

Singapore is often referred to as an example of the feasibility of successful authoritarian modernization without due guarantees of human rights. The example is not quite a fortunate one. It disregards the experience and the history of the country.

Until 1989, the country had a powerful and independent court authority headed by the Special Court of the House of Lords in London (i.e., these last could not be influenced by the Singapore

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Code of 1997 facilitated a "considerable liberalization of the informal rules" even in this milieu. See Oleynik 1998.

[26] http://www.hro.org/actions/danilov/2004/11/05.php.

[27] See, for instance, http://www.svobodanews.ru/archive/ru_news_zone/20090819/17/17.html?id=1803204.

[28] Mau, Yanovskiy, et al. 2003; see also Chapter 9 in the present book on the situation in the People's Republic of China.

rulers in any way). Limiting its power was something the authoritarian rulers of Singapore managed to do only by accepting the Amendments to the Constitution of 1989.[29]

Given that, it is also telling that the country, after having started out in 1965 with a $2,600 per capita GDP (in 1990 dollar value terms; that is, it was not a poor, but quite up to par as a medium-level developed country), up until 1989 grew at a rate of over 7% per annum. Thereafter, the rate fell to 4.6%.

Of course, taken alone, this does not prove the importance of independent courts. But there is no way that a "counterproof" on the basis of the case of Singapore can be made acceptable.

Old Venues for New Reform

Studying international experience shows indisputably that the best guarantees both of the court system as a whole[30] and, most importantly, of each and every judge taken individually, is provided by Anglo-Saxon law.

Excuses about the foreignness of the experience of precedents to Russia cannot bear serious criticism. The only significant experience of independent and effective courts in Russia (from the time of the court reform under Alexander II and until the Bolshevik coup) was largely based on borrowing from the system of Anglo-Saxon law (jury, high status of the judge).

All the rest of the "Russian legal tradition" and deliberations concerning its closeness to this or another legal tradition are about as justified and well-founded as are the arguments that Syria is a state governed by Continental law, and Nigeria – by rule of precedent. The problem consists in that the offices referred to as the "courts" in Nigeria or in Syria have no relation whatsoever to a legal tradition, because of the absence of any independent or significant court respected by society in these countries. With certain reservations concerning certain periods, the same applies, regrettably, to most of Russian history. From this point of view, and considering the chief problem facing Russian justice – the combination of dependence and corruption – it is evident that the Continental system in the Netherlands is much closer to the English or the American than to the Syrian, simply because both in England and in Holland, courts are available, while in Syria and in Nigeria, they are not.

Principles of Reforming the Court System

The essence of the problem is in changing the motivation of the judge. To bring about a change in motivation, it is perfectly inadequate to take measures to ensure an increase in the judges' income, or to outfit court buildings with a presentable look. The chief thing that needs to be provided is institutional changes, i.e., the creation of new rules of the game in which the judge operates and which impact the judge's interests and preferences.

Transformation needs to begin in the top echelons of the court corporation: in the supreme and regional courts. The honesty and the effectiveness of the highest offices, their adherence to professional ethics will permit the gradual transformation of the lower-level courts, as well. Unfortunately, no other approach is possible, due to the fact that it is impossible to bring about the reform by means of finding the right number of judges with a level of education corresponding to the new requirements.

A key moment consists in ensuring the independence of the judge, and not only of the court (as a system) or of judges (as a corporation).

The duration of the policy of transformation of the court system: the reform will require a long time. In the long run, it should provide the replacement for a whole generation of judges.

Sources of Risks for the Contemporary Court System

[29] See Sukharev 2003.

[30] In cases of a long break in the tradition of the operation of an independent and competent court, it is particularly important to guarantee the independence not only of the court as an institution and of the judges as a corporation, but also of the judge as a person invested with authority and responsibility, including those invested by the corporation and by "higher-level" judges. Should this not be the case, the requirement specified in Art. 120 of the Russian Constitution concerning the exclusive subordination of judges to the law cannot be put into effect.

Political authorities having an influence on the decisions being taken, primarily via the appointment and removal of judges;

Regional authorities, which have an influence on the judges and material stimuli for making use of this influence;

Business which tends to "buy" court decisions;

Higher courts and especially the court chairman. In a series of cases, the source of such a risk lies with the community of judges itself, which has more than once demonstrated a tendency to opt for the "unfavorable (worsening) selection"[31];

Threat of reprisals and physically making short shrift of the judges (this has not up to the present yet become typical of Russia, except for the Northern Caucasus);

Allowances for actual incompetence and extremely limited intellectual abilities of formally competent citizens, a borrowing from unsuccessful innovations and the worst practices in modern judicial states (see Chapters 3, 13, for more detail); and

Judges' activism, supplanting and displacement of individual independence of the judges by that of the corporation.

N. Seeman notes the connection between the growing problems of the quality of justice in Canada[32] and judges' activism. One of the indicators of the attempts by the court to review its place as a part of the system of power and dislodge some of the other branches of power is in the number of tries made to make use of the least clearly defined constitutional norms. Such attempts are de facto equal in their power to legislative activity. In some cases, which involve court requirements for increasing redistributive activity by providing special privileges and discounts for certain groups, interference takes place even in spheres reserved for the executive authority. The Canadian Charter of Rights and Freedoms became the object of a multitude of interpretations in Canada. Content-wise, in Seeman's opinion, many of the interpretations of the Charter increase the protection of Canadian citizens' rights. At the same time, the growing determination of Supreme Court judges to interpret some rules and regulations in their own way clears the road for unlimited expansion of the power of judges at the expense of the Parliament's and the government's prerogatives.

The most dangerous venue taken is interpreting the points set forth in Article 15 concerning equal treatment before the law.[33] The idea of "equal right to special discounts" brandishes a near explicit threat to the rights of those citizens who turn out to have been endowed with such talents and abilities as give them the income and the status which provoke the acute desire in others to redistribute the special privileges and discounts and to compensate the less fortunate co-citizens for their objectively obvious retardation.

The specifications of the constitutional Act concerning the equal right to special privileges and discounts were something the Chairman of the Supreme Court called the "Leviathan of rights," i.e., that element of the law which leaves extremely wide opportunities for arbitrary decision-making by the judge.[34]

Another indicator of that the role of the Supreme Court is changing, in Seeman's view, consists in the public speeches made by members of the Supreme Court. That is, the Supreme Court is attempting to foist itself on society as a meta-authority standing above authority.

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[31] This lends particular significance to the requirement of personal independence for the judge, and not only independence for the court as a whole. Such a circumscribed independence pushes toward the recreation of an oligarchical, extremely politicized court system with an inexorably dropping effectiveness. (On the problems of "closed democracies" see Mau, Yanovskiy, Zhavoronkov, et al. 2007, 107).

[32] Seeman 2003. The problem of the quality of justice is testified to by the increase in complaints (from a few dozen per annum in the 1980s to hundreds by the end of the 1990s) to the Canadian Judicial Council. This agency, which receives complaints concerning the behavior of federal judges, is supposed to provide greater transparence of the court system and responsibility of judges. The Council is made up of senior judges, including court chairmen and their deputies, and is headed by the Supreme Court Chairman. It was instituted in accord with the law of 1971.

[33] "Equal treatment before and under the law, and equal protection and benefit of the law without discrimination."

[34] LeRoy 2003.

Seeman makes a note of the developments accompanying the flourishing of judges' activism in Canada: the struggle of judges against increasing the transparence of the appointment procedure (needed for the purpose of defending candidates' rights) and against the very possibility of criticism of the court system (specifically, for its goal of crushing under itself the other branches of governmental power). According to some of the senior judges, criticism restricts the power of the law (with which the persons of the judges being criticized are naturally identified), and causes damage to the authority of the court system.

As Seeman sees it, judges' activism undermines the foundations of democracy, carrying within itself the threat of usurpation of power by the senior judges.

The division of power is one of the most important guarantees of property rights. It is weakened by any kind of imbalance, whether one of hyper, exaggerated growth of the executive authority, which foists upon the court system and the citizens an arbitrary (selective) interpretation of the law, or the foisting by the court system of its understanding of equality of civil rights (for example, certain requirements of the anti-discrimination legislation in the USA turn the "right to defense against discrimination" into an obligation for the property owner to rent living quarters to someone other than whom he or she wishes).

An important advantage of the division of power consists in the high degree of transparence, predictability, and condition of being worked through of legislative decisions. The procedures of reading in parliament, to the press and all citizens, preceded by the publication of the law projects, ensure the opportunity for those individuals and groups whose interests may be impinged upon, to appeal to the legislators with their suggestions before they run into the need of demanding changes in a rule already rendered functional. The complexity of the procedure makes frequent alterations of the law difficult, a condition which is, in itself, beneficial for the public, insofar as it raises the level of legal determinacy.

The system of the division of power includes codification by parliament of effective court practices, just as it does the revision of those proven ineffective.[35] Such decisions are reached as a part of standard parliamentary procedure, based on the results of extensive discussions in both Houses of Parliament and the press. This is an old and reliable mechanism; it works. Replacing it with decision-making by a small group of people who work independently of the interests of the overwhelming majority of the economic agents and the press, is likely to lead to more frequent and, what is considerable, hardly predictable alterations in the law. This appears to be a risky experiment.

We should make note of the fact that, for a decade after the Charter's ratification, lawsuits in defense of "equal rights to privileges" as per Article 15 of the Charter[36] were deliberated upon by the Supreme Court in Canada with great caution. Despite the hundreds of lawsuits submitted, the first decision was reached only in 1989. But later, the temptation of the "almighty interpreter" has tended more and more to outweigh common sense and prudence.

This experience is important for the construction of an independent, impartial, and responsible court system in Russia, considering the presence of comparable articles in the Constitution of the Russian Federation. This is primarily Article 19 concerning the "equality of rights and freedoms independently…" This article does not directly spell out privileges, but there is the requirement in Part 3 of Article 15 concerning "the equality of opportunity to exercise rights" by men and women, which prepares the ground for state experiments in the free labor market "in defense of the rights" of women. Potential comparable in its portent is embedded in Item 4 of Article 32 concerning equal access to state service, as well as in Articles 37-44 and the overall direction followed by the Constitution, hinted at in Item 1 of Article 7, along with the entire tradition of reception of the very concept of "law" and "fairness" in Russia.

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[35] The case of Kelo vs. the City of New London is a good example. Court authorities were unable to protect the private property of citizens when they agreed to apply the principle of eminent domain (the right of alienating property for public purposes) in the more inclusive sense of the term. Insofar as an obviously unfair decision, which violated the right of private property, became generally known throughout the land and extremely unpopular, legislators interfered in the case. The principle of eminent domain was verified and narrowed in such a way as to prevent the recurrence of similar situations in the future. (Benedict 2009)

[36] I.e., the Canadian Charter of Rights and Freedoms.

A possible solution of the problem which would not involve revising the Constitution[37] would be a legislative definition of concepts set forth in the Constitution, concretizing and as much as possible narrowing down the opportunities for court interpretation of Article 55 (on the limitations affecting the provision of "rights and legal interests of other persons") for purposes of providing guarantees. Among such rights of other persons, we should note the various aspects of the right to private property, protected by Art. 34-37 and Art. 10 (on the division of powers, for the purpose of which it is advisable directly in the preamble to the appropriate law to specify the existence of the threat of judges' activism while implementing "social rights" – i.e., the threat of special privileges – and to indicate the fundamental illegality of pursuing such ambitions).

The following indicators could be used in a comparative inter-country study of judges' activism[38]:

Existence of cases of interference by senior judges into political processes (the example of the Constitutional Court of the Russian Federation in 1993, or the Italian court system at the time of "*Mani pulite*," or Operation "Clean Hands");

the number (or the simple existence) of cases extensively discussed in the press, which have a political import and create new norms based on a reference to the Constitution;

existence of cases of political motivation of decisions (i.e., along the lines of "crime against the authority of the law," or "crime against democracy," and so on);

the number (or the simple existence) of cases which annul the decisions reached by other branches of power, especially branches of power with a political orientation distinct from the political orientation of the government[39]; and

ratification of decisions which limit the possibilities (and raise the costs) of supplying pure social goods.[40]

The crucial objective of court reforms is to neutralize (and to prevent the growth) of the risks enumerated above. The measures considered below aim to solve this problem.

As has already been noted above, it is advisable to begin with federal judges at the regional and supreme levels. Raising the effectiveness of this stratum of the judicial community will have a positive impact on the system of justice as a whole. Besides, achieving manpower renewal on a due level in all lower courts at the same time will be extremely difficult.

Possible Venues for Conducting Court Reforms

Perfecting the Procedure of Appointing Judges

When considering candidates for the post of federal judge, the following points must be taken into account:

fulfillment of certain formal criteria (see Table 1.1);

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[37] Revision is undesirable first of all on the grounds of preserving the Constitution's stability and its priority legal status.

[38] Alongside the instances cited by our Canadian colleagues of cases of foisting redistributive practices upon the state under the guise of defending constitutional rights, as well as along with the media activity of senior judges.

[39] Strictly speaking, the absence of such decisions does not mean absence of "judges' activism," but their existence testifies to the likelihood of politicization which usually accompanies "activism." This is especially true if pressure is put upon the government which upholds the notion of the "compact state" as the supplier of pure social goods, while support is given to those governments which uphold the notion of the "caring government" as the supplier predominantly of mixed social goods.

[40] The issue here is a problem, not overly pressing as yet in Russia, but one which afflicts old democracies that foist upon the state the must of defending the life, property, liberty, and dignity of not only the state's own citizens (or legally dwelling residents upon their own territory, or legally arrived visitors), but of some extended, or simply unlimited group of persons. As based on the view of the court, these persons may have the right to such protection equally with, or even to the detriment of the fundamental rights of taxpaying citizens. For more detail, see Chapter 11, on the problems of the struggle against terror under conditions of obligation to supply a foreign civil population controlled by an armed enemy with guarantees equal to those of the state's own citizens, and at times even with priority guarantees.

qualifying exam: this can be taken by anyone satisfying the formal criteria and wishing to obtain the post of judge;

citizens who have passed the qualifying exam make up a reserve force of substitutes for court positions. The list of the reserve force members must be open and accessible to the general public.

Table 1.1

Conditions for Eligibility for Nomination for Post of Federal Judge

№ п/п ?? ??	**Type of Requirement**	**Content, Requirement, Criteria**	**Comments**
1	*2*	*3*	*4*
1	Education	Legal, focusing here on graduates of institutions of higher learning from the closed list developed by the judiciary community and ratified by the President of the Russian Federation. The list may be revised once every few years (for instance, once every seven years); only on-site on-campus education (Master's courses); graduates of leading foreign universities, as per the lists, are admitted (with their diplomas automatically converted); graduates of any other institutions of higher learning or departments of law are admitted, provided they have defended a Candidate's or Doctoral dissertation in jurisprudence at institutions of higher learning which appear in a ratified list.	To ensure the success of the court reform, including the possibility of cadre renewal, which alters the situation vis-à-vis quality, it is crucial first to create an initial stock of candidacies, and then later, while the reform is in progress, to assure the renewal of candidates who satisfy the principal requirements. The level of requirements needs to be raised significantly. The same applies to lawyers, since most of the candidates for judges' posts will be recruited from their number.
2	Practical Experience	Legal experience (10 years; initially, possibly 5 years) of practice in the following areas: work as a lawyer; teaching in an institution of higher learning of law (as per the same list, and including foreign ones); experience of participation in law enforcement activities in organizations independent of the authorities, which have been operating in Russia for no less than 20 years; legal practical experience in a major business.	Selection of accomplished, experienced workers in the law enjoying a sound reputation and who have demonstrated their professionalism.
3	Eligibility Age Requirement	40 years. For lower courts, 35 years.	
4	Property Eligibility Requirement	The sum total of income tax paid in 5 years devoted to previous type of work or activity must equal no less than 1 million rubles (a tentative figure; the amount must in any case be considerable). This does not apply to judges advancing in their career. Ownership of real estate (possibly specifying the assessed worth or area of land and living quarters owned), including the package of financial assets.	Material wellbeing is an important component of a judge's independence, and a safeguard against corruption.
5	Additional Requirements for	Experience in work in business; possibly, a higher property eligibility requirement.	

	Arbitrating Judges		

The appointment of federal judges is a political act. That is, it is performed by the President of the Russian Federation based on the conclusion drawn by the representatives of the judiciary community. This conclusion is not decisive, but it must be accessible and known to both the President and the general public. In order to increase the transparency of the process, it is advisable to have parliamentary hearings precede an appointment (for justices of the peace, this should take place at the legislative assembly of a subject of the Federation).

One of the outcomes of the reform should be the achievement of such a status for judges – both state and public ones – which would make occupying the post of a judge be seen as the apex of a successful legal career. Judges in the Anglo-Saxon court systems are a model to orient ourselves by in this respect.

Conditions for the Performance of a Judge's Functions: Personal Guarantees of Independence

Lifelong appointment of federal judges according to the new procedure (term in office for judges of lower courts should be limited to 10-15 years).

Federal judges remain in office up to the age of 70, then changing to the status of consulting judge with a salary not subject to lowering.

Complex procedure of removing a federal judge from his or her post (impeachment); for instance, removal by a qualified majority of the Upper House of the Federal Assembly (for supreme and regional courts) on the basis of appropriate conclusions drawn by the Supreme Court concerning the solid grounding of the accusation.

Restricting the powers of the court chairman. This person should be not the administrative counselor of the court, but only its coordinator.[41] All functions currently being discharged by the court chairman must be automatized, if not literally, then on the level of bureaucratic procedure.

Restrictions on the possibility of disbanding the jury collegiums. Raising their operational effectiveness.

When these conditions are met for federal judges, justices of the peace could be nonprofessionals elected by the populace. And then their work should probably not be paid. But all the outer display of privileged status (title, mantle) should be the same as for federal judges. Life experience and a compact training course would provide the wherewithal necessary for the resolution of petty disputes. The possession of property and the social position of a judge, along with prestige as one of the main motives for nomination for advancement jointly with the insignificance of the disputes would take care of the problem of corruption. Non-inclusion in the corporation of judges would fortify the independence of such a judge. This last is indirectly confirmed by the irritation evinced by supporters of creating a rigid judiciary vertical (that is, maintaining only the corporative, but not the personal independence of judges) belonging to the "liberals" in the US. Local statists are in the process of lobbying for a complex and non-transparent system of appointments "in accord with merit and ability" to replace elections.[42]

Openness of Court Procedure

Online publication of court decisions in the internet by determined deadlines.

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[41] The institution of court chairman as a supervising judge fits quite well into the Italian system of corporate independence. But there is no room for it in the Anglo-Saxon system, where the level of guarantees of the independence for each and every judge is such that no opportunities remain for such a "supervisor" to have an impact.

[42] http://judgesonmerit.org/. For the response of the defenders of the tradition of American freedom to such initiatives, see, inter alia: http://www.heritage.org/events/2010/09/the-assault-on-the-elected-judiciary.

Issuance of a legally valid electronic document (audio file and decoding officially agreed upon by the different sides) to the parties representing the different sides on the day when the court decision is made public.

Obligatory issuance of printed decisions duly drawn up (acceptable by the court and other governmental agencies) to the parties representing the different sides. This is unlimited in time (from the beginning of the reforms) and in number of paid for copies.

The right to be present in the court hall of public organizations.

Subordination of Court Executives to the Court

At the end of 5 years, judges of "the new type" are entrusted with special subunits for guarding judges in special situations, as well as for the purpose of implementing decisions in cases determined by law (by a judge's order, issued as per the accepted order of proceeding).

Judge Corps Size

The proposed measures for rigidifying the requirements which judges must meet cannot be realized unless the very notion of the construction of the entire court system is revised. Specifically, these measures will remain nil if the principle is not given up of solving the problem of the judges' overload by increasing their number (Table 1.2).

Table 1.2

Judge Corps Size (general jurisdiction courts) in 1998-2009 and Suggestions about Increasing the Numbers (as grounds for applying for financing)

Year	Number of Judges[a]	Number of Judges Required	Size of Judge Apparatus[b]	Required Size of Judge Apparatus
1998[c]	15 732	35 734	31 815	225 188
2000[d]	16 742	35 734	38 379	—
2007[e]	23 172	—	61 161	—
2009[f]	23 172	—	63 793	—

[a] General jurisdiction court judges (not counting justices of the peace).
[b] Not counting guards, transportation workers, or building service employees.
[c] See the Resolution of the Council of Judges of the Russian Federation, dated October 30, 1998, Moscow.
[d] See the Supreme Court of the Russian Federation Plenum Resolution of April 11, 2000, № 17: Explanatory Note to the Law Project "Concerning Bringing the Staff Numbers of Judges and General Jurisdiction Federal Court Apparatus Workers into Accord with Work Load Norms."
[e] According to Federal Law of December 19, 2006, № 238-FL "Concerning the 2007 Federal Budget."
[f] According to Federal Law of April 28, 2009, № 76-FL "Concerning the 2009 Federal Budget."

As Table 1.2 makes evident, over 10 years, judge numbers grew significantly. Moreover, expanding the numbers of justices of the peace (6,273 as of January 1, 2008, with 7,367 slots available)[43] brought the total numbers almost to the same level as the one which had seemed sufficient to the judges themselves at the end of the 1990s. It should be noted that, growth notwithstanding, the numbers of auxiliary personnel is far from optimal (as this appeared from the point of view of the judges in 1998[44]).

The problem of work overload has no quantitative solution, but it does have a qualitative one. Given a sharp improvement in court work quality level and the position of the judges, when the lawyer corps is replaced, citizens will be faced with the problem of prolonged waits and high costs (primarily of lawyers' services). But the predictability of court decisions will make taking disputes

[43] Data from the Court Department at the Supreme Council of the Russian Federation, 2008; http://www.cdep.ru/material.asp?material_id=330.
[44] See the Resolution of the Council of Judges of the Russian Federation of October 30, 1998, Moscow.

to court a meaningless affair in most cases, thus providing additional stimuli for pre-court resolution of civil disputes.

A sharp rigidifying of the requirements which courts of the new kind will address to the investigators, along with a considerable reduction in the number of crimes punishable by loss of liberty, will lighten the burden on the courts with respect to criminal cases, as well.

The Meaning of Law Enforcement Practices

As the public's trust toward courts and judges grows, as the prestige of the judiciary corporation increases, as the education level and the decision quality of the judges continue to rise, it will become feasible to address the question of expanding the sphere of applicability of the rule of precedent and decisions of the Supreme Court plenums. Following the rule of precedent can promote the unification of court decisions, achieving equality of all market agents in court and raising the predictability of such decisions.

Clearly, a court precedent established by a court decision, including the Supreme and the Constitutional Courts, can be overcome by the decision of the legislator in order to prevent the development of "judges' activism."

Legislation and law enforcement practices must be based on the presupposition that the different sides possess common sense, and respect for traditions and customs which are not in opposition to morality and common sense. Accordingly, legislation concerning the rights of consumers must include rules limiting its applicability to facilitate demands for excessive payments from entrepreneurs. Operative legislation concerning the rights of consumers in Russia, the US, and Europe is based on the allowance not only of the consumer's lack of common sense, but of his or her near imbecility or limited ability to act.[45]

Law Enforcement Agencies

My Police Force[46] – Our Heritage

Gigantic in size, which is comparable to that of the military, the law enforcement agencies are unable to fulfill the tasks set before them. But they are obviously invested with authority beyond what is due. Their principal tasks consist, first of all, in conducting the investigation (for the prosecution) and "warning and putting an end to crimes and administrative violations of the law" (for the police). The police are faced with the choice: to use their rights and authority to obtain revenue and administrative markup payments, or to expend their own scant resources on the protection of citizens and their property. The aggregate preference structure for police employees is well enough known, and has been duly appreciated by the public.

Prior to the time when Law № 3-FL of February 7, 2011, went into effect, the authority of the police was controlled by Law № 1026-1 of April 18, 1991, "Concerning the Police," which had gone into effect under Soviet state rule. In its 15 years of validity, this law saw some 30 versions. In addition, policing forces were subordinate to a number of specifying laws (the Law "Concerning Search Operations" and others).

The police had the right to demand of any physical or legal agent to present a license for conducting activities of certain kinds; they had the right to obtain any confirmation notes, copies, or documents, confiscate valuables, seal cash registers, and even, extra-judicially, to put a halt to the operation of a business on the grounds of mere suspicions of a violation.[47] The time period,

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[45] Consider litigation against tobacco companies or against McDonald's in connection with the high temperature of the coffee spilled upon oneself, and the like.

[46] On March 1, 2011, the Law "Concerning the Police" of February 7, 2011, № 3-FL, went into effect in Russia. The term "police" was hence to be used instead of the term "militia force." In this book we continue to use the Russian term "militia force" (but with both terms rendered as the "police" in English; *translator's note*). The Law "Concerning the Police" is discussed in more detail below.

[47] In effect until 2005, the redacted version of Item 25, Art. 11, of the Law spoke for itself: "In the face of existing information with regard to a violation involving criminal or administrative liability of legislation concerning financial, economic, entrepreneurial, and commercial activity," employees of the police have the right to

enter without hindrance the facilities… conduct an examination of the production, storage, commercial, and other service facilities, means of transportation, other locations of storage and use of property… confiscate the

for the duration of which the valuables could be confiscated and the cash register or facilities sealed, was, until recently, not controlled by any means. In perfect accord with the law, police employees would perform searches of any enterprise. Among the rights of the police, some of the most exotic things were listed, such as making an inventory of copying machines. Thus, a policeman could, upon all legal grounds, perform a check or an arrest causing damage so extensive that entrepreneurs had more than the stimulus they needed to reach an agreement at any price. A considerable number of these entrepreneurs operate in retail trade, where expiry dates for product usability are always imminent. This, in turn, could not avoid leading to the growth of the appetite of the personnel performing the checks.

A discussion unfolded in expert and official circles in the mid-2000s concerning the obviously excessive rights granted to the police. This catapulted a series of corrections of the legislation and standard regulations, a development that brought police deportment somewhat under control. A policeman could no longer check an enterprise simply by walking in from the street. In order to perform a check, now instructions in writing from superiors were required, as well as information concerning legal violations and witnesses at the time when the checks would be performed, and so on. Some secondary authorization of the police was annulled. At the same time, the further expansion of the legal authorities took place; thus, in 2003, some corrections were added to the Law "Concerning the Police Force," which provided for involving the police in tax verification proceedings, as well.

In 2008, as part of the drive proclaimed by Russian President D. Medvedev which aimed at defending businesses against clerk and official despotism, revolutionary corrections were integrated into the existing legislation. Thus, the Law "Concerning the Police Force" finally saw the elimination of something extremely handy for corrupt employees: Item 25, Art. 11, pertaining to checks of any objects on the grounds of the suspicion that criminal or administrative legal violations had been committed, and Item 35, dealing with participation in tax verification proceedings (though Art. 33, formulated somewhat differently, maintains the tax verification proceedings, adding the words, "in accord with existing law.") In addition, the duration of the checks became limited. Even though the regulations are not simple to abide by for the entrepreneur and complex for the executive authorities, a check may be halted for up to two months, then for another month, while a check in process may take up to four weeks. As per the draft legislation, unplanned checks requested by a sudden call may be performed only in case of life-threatening situations or threaты to physical health and wellbeing, and only when a particular declarant is in evidence.

But even this revolutionary legislation bill reiterates most of the shortcomings of legislation currently in effect, taking beyond the limits of its effect the tax authorities and the offices in control of currency, budget, and customs. Besides, limiting unplanned checks is not that simple to accomplish, considering that legislation bills do not include requirements for disclosing any information about the "signal" to the object of that "signal." That is, the person or enterprise being reported upon may be told that a claim has been received from a certain individual who identity is known to the authorities, but disclosing this identity information is something the authorities are not required to do. Now, the informant may signal in his or her claims every single day, and the control office personnel will show up at the enterprise every single day. Most importantly, nobody will penalize them in any way should the "signals" never be authenticated. The terms of compensation for damages caused by steps illegally (as well as legally) taken by the control offices are not clearly spelled out. This is especially true with respect to putting a halt to the activities of an enterprise.

Independently of the shape which the proposed legislation for the protection of business may ultimately assume, the instances cited indicate that empowerment granted in excess does not disappear all that simply, while its defenders do not give up.

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documents necessary which pertain to the possession of material valuables, monetary means, credit and financial operations, as well as specimens of raw materials and production, seal cash registers, facilities, and locations of storage of documents, moneys, and merchandise- and material-related valuables… to demand an obligatory conducting of checks, compilation of inventories, and reviews of production and financial-economic activity of organizations, as well as conduct these, and halt the activity of commercial enterprises until the violations of the law which are taking place are eliminated in case the enterprises do not comply with the legal demand of the employee of the police concerning the legal violation.

This is why, as far as defending the rights of legal persons and individual entrepreneurs in general is concerned, when state control and supervision are being conducted, their principles must be extended not only to secondary control offices, but also to such key varieties of checks as the ones which threaten the activities of entrepreneurs (checks by tax services or by services of the licensing control authorities). The wily contrivances resorted to by the tax authorities must be taken into consideration and excluded, such as conducting repeat checks under the guise of "counterchecks," as if to say, it's not you we are checking, it's our own employees, and the like.

Obviously, there is no way to foresee all possible situations. Even so, the sanction for conducting extra-planned steps should be exclusively reserved as the prerogative of only one special task force, provided all conditions are met (soundly motivated suspicions, compensation for any damages and loss of profit caused, and so on).

The fall of 2008 saw the beginning of discussions about providing at least partial immunity for the person of the entrepreneur, and not only of his business enterprise. The parliament sat through hearings concerning the question of imposing a moratorium on the arrest of persons suspected of legal violations with regard to a series of economic articles of the Criminal Code. The articles are most often abused, including their being taken advantage of in the process of appropriative raids on businesses. This is the case where accusations of tax crimes, cheating, and stealing are concerned. These situations require that the practice, accepted the world over, of monetary pledges and bail be actively taken advantage of.

Federal Law № 60-FL, "Concerning Changes in Certain Legislative Enactments of the Russian Federation," dated April 7, 2010, after it was finally passed, does correspond, all in all, to the declared intentions of its authors. But, passed with a view to well-known political limitations, so far it is but an initial declaration made by the authorities of their intentions to solve the problem, rather than the problem's real solution. And in fact, the courts were initially unable on their own to come up with a definition of "entrepreneurial activity."[48] The Supreme Court gave judges a more than reasonable definition, provided their common sense is in evidence.[49] In discussing the problem with journalists, Supreme Court Chairman V. Lebedev elucidated his understanding of the law: "There is an entrepreneur, his work is registered, with the objective being to derive profit. The individual has committed one of the crimes specified in the Criminal Code, and then the new regulations concerning the choice of means of cessation are applicable to the case."[50]

Taking into consideration the long-term problems of our court system and its accusatory tendencies, criminal-process investigatory legislation should be maximally simplified and made less severe with respect to individuals who are not accused of violent crimes or crimes classified as belonging to the category of "severe" violations. For instance, amounts of monetary pledges could be regulated by legislation and be the same for all persons accused of economic crimes. Given the conditions in Russia today, it is undesirable to leave this decision to the judge, since that is a practice which enhances the stimuli for corruption. This is all the more true given that, instead of a clear reference to the group of articles or chapters of the Criminal Code, the new Law limits applicability to crimes "committed in the sphere of entrepreneurial activity," a point which leaves some space free for interpretation and, thereby, for arbitrary and despotic invention.

A further block to prevent the abuse of legal punishment for tax crimes could be a prohibition against deprivation of liberty for tax crimes unless both *criminal intention and a conspiracy among a group of individuals* have been proven. That is, there must be a revision of Art. 194, 198, and 199 of the Criminal Code of the Russian Federation, and a prohibition must be introduced into the Criminal Process Code against choosing arrest or imprisonment under guard as a means of putting an end to such crimes.

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[48] This situation once more confirms the advantages of the system of common law, in which the judge has no fear of being guided by common sense and, when necessary, on his or her own to conduct small-scale investigations in the area of his or her native tongue.

[49] To explain to the courts that the crimes specified in Art. 159, 160, and 165 of the Criminal Code of the Russian Federation should be considered as having been committed in the entrepreneurial sphere if they were committed by persons involved in entrepreneurial activity or participating in entrepreneurial activity, and if the crimes are immediately connected to such activity.

[50] http://www.gzt.ru/topnews/accidents/-pisjmo-hodorkovskogo-doshlo-do-vseh-rossiiskih-/309852.html.

The principal barrier preventing the abuse of tax legislation and its being taken advantage of to confiscate property can only consist in an independent and respected court system as a whole. Attempts to solve the problem of the absence of guarantees for the immunity of the individual person for certain isolated categories of citizens under certain circumstances without giving up discretionary controls in favor of the authority of the law appear to be a priori ineffective. They complicate the construction of the law, requiring greater responsibility and resolve on the part of the judges, while in practice they expand the field of "administrative bargaining" surrounding what according to the Constitution should be an inalienable right of every human being in Russia (both Russian citizens and nationals of other states).

Federal Law № 3-FL "Concerning the Police"[51] of February 7, 2011, contains some regulations which testify to the reasonableness and the good intentions of the authors. Even so, it does not solve the principal problems of the law enforcement agencies which we are here considering. The police force remains massive and only lightly or superficially controlled. The introduction of regional and municipal forces is not specified. Correspondingly, police capacities remain general, and nearly unlimited.

There is no "division of labor" built into them, such as would provide for dealing with the particularly onerous problems which require a concerted expert investigation by means of the federal structure, while order in the streets is maintained by the local authority. Federal police are responsible for covering everything, including the lost-and-found (Item 38, Part 1, Art. 12). Actually, Part 1, Art. 12, which includes a list of the obligations of the police, impresses by the sheer size, the all-encompassing nature, and the mutual incomparability in importance of the functions it enumerates.

Collaboration with private guarding organizations is undermined by the near-unlimited authority over them, which is assigned to the police by the Law (Item 24, Part 1, Art. 13).

Many of the Law's provisions would be quite reasonable under conditions of a balanced state – if an independent and powerful court would obtain, along with influential forces of the opposition, including the mass media, and so on. But under conditions other than these, they cannot but inspire anxiety, since a policeman can quite freely enter private premises or use private means of communication and transportation if he secures the agreement of his superiors. For this purpose, he can rely on the standard and, overall, thoroughly reasonable pretexts provided by the articles of the Law concerning extraordinary circumstances,[52] all of whose details can really hardly be reproduced in writing.

Article 22 concerning limiting the use of special means makes a favorable impression on the reader. Overall, however, on the one hand, the regulations concerning the means of state coercion and the use of force (Chapters 4 and 5) do a poor job of protecting citizens from arbitrary use of force by the police. This is due to reasons which have just been mentioned. On the other hand, statements about "conditions of necessary defense" or "cases of extreme need" can easily be taken advantage of against a policeman who has used force in a perfectly sensible and legal way. That is, these lines do a poor job of protecting policemen, and thus of protecting the police as a whole.

And these problems are not compensated for by such suspect and clearly supererogatory – from our point of view – measures as the right of policemen to unionize.

From a Rule of Force to a Rule of Law

The enormous numbers employed in the law enforcement agencies constitutes a factor which makes it difficult to control or to reform the system in general.

In this connection, it is important to make correct use of the experience of the old Rule of Law Democracies having a powerful tradition of federalism and an effective distribution of responsibility for providing legal order among federal structures, the authority of subjects of the federation (e.g., states of the USA, provinces of Canada) and local sheriffs. This involves both their positive as well as their – by now available – negative experience.

In the US, during the last few decades, a clear tendency has manifested itself to intensify federal control of the struggle against criminal violations and the

[51] Went into effect on March 1, 2011.

[52] Items 36 and 37 of Part 1, Art. 13, of the Federal Law.

responsibility for them. Federal officials probably had a hand in the rise of this tendency. The principal outcome of the legal innovations (which number in the thousands![53]) consisted in the worsening of the state of affairs in those areas in which federal legislation and the FBI interfered. This found its expression in the inability to provide any real management of affairs because of the detachment of even highly qualified workers from the givens of local reality; it is also reflected in the unfounded increase in the severity of penalties, and especially in the overburdening of the criminal legislation itself with inappropriate functions (for example, the attempt to circumvent the First Amendment[54] by means of the legislation concerning "hate crimes"[55]).

The tendency to intensify federal control is reflected in the granting of the authority to define the boundary between the legal and the criminal to executive authority agencies.[56] Particularly worrying, however, is the blurring of a fundamental principle of American law: only consciously undertaken criminal acts are subject to criminal penalties, that is, only acts committed while entertaining criminal intentions. The coincidence of a quantitative bulging of the criminal law regulations, and the concomitantly inevitable drop in the quality of the specifications and the definition of the boundary between the legal and the criminal by executive agencies officials brings the emerging situation close, in essence, to the operation of "secret laws" in accord with the tradition of clandestine legislation in Sino-Japanese law. This last is openly at odds with the principles of the "Rule of Law." Even professional lawyers are incapable of mastering the new codex of criminal laws. For the average law-abiding citizen, no other option remains except for doing his best to stay out of the field of vision of the law enforcement agencies, considering that there is no way to know in advance what may provide grounds for a criminal investigation at any given moment.

Let us note, finally, that many of the new crimes do not a priori presume the availability of objective proof; i.e., sexual harassment involves only complaints and confessions. Neither witnesses' testimony, nor objective pieces of evidence can, in principle, carry any weight. Occasionally, what is relied on is the expert conclusion by an executive agency official, who thus becomes legislator, witness, and expert all rolled into one.

This trend makes the police and the prosecution unaccountable to society, insofar as an incredibly expanded spectrum of responsibility is tantamount to the destruction of all responsibility. No reasonably sized staff can make it possible to keep track, put a halt, and investigate all cases of criminally punishable conduct with the new legislation in force. This means that the really dangerous crimes – murder, rape, burglary – can be replaced with the investigation of other, new "crimes," which make "old-fashioned" proof basis superfluous and which are easy to prepare for court proceedings.

Crowning the state's efforts to inflate the empowerment granted for arbitrary (discretionary) use is the direct attack against the opposition, which makes use of state institutions. We are, for now, dealing with the scandalously famous report of the US Department of Homeland Security concerning the threat of "rightist extremism."[57] Not Islamic terrorists are identified as the potential targets for

[53] Rosenzweig 2003; Walsh, Joslyn 2010.

[54] The First Amendment to the Constitution of the United States of America guarantees freedom of speech, religion, press, and assembly, as well as the freedom to appeal to the government with complaints.

[55] Jacoby 2009; Rosenzweig 2003.

[56] Walsh, Joslyn 2010.

[57] http://www.gordonunleashed.com/HSA%20-%20Rightwing%20Extremism%20-%2009%2004%2007.pdf.

pressure from the federal law enforcement agency, but rather the supporters of the Second Amendment, veterans, opponents of illegal immigration, opponents of excess empowerment of the federal authorities, and so on. That is, citizens confident of the inviolability of their constitutional rights and the changelessness of the no less constitutional principle of the limited power of the state, which is supposed to provide protection against strictly specified threats (rather than a positive, advising, and directing authority).

The timid measures enacted to establish municipal police organizations, which are undertaken here and there in certain regions of Russia, could be usefully radicalized and realized, given the new "window of opportunity."

The highly professional nucleus, including most of the technical experts and operative specialists experienced in the struggle against severe crimes, could be concentrated in a compact federal structure (a few dozen thousand people). Most of the law enforcement agency workers, once their overall numbers are considerably cut, should be delegated to the regional and municipal authorities, after introducing the institution of the elected head of the local subdivision of order preservation. Future career opportunities (both political and professional), grounded in public opinion, lower considerably the alternative value of bribes. Subordination to an official elected by the local population does a great deal to change the stimuli for the behavior of the majority of the new law enforcement agency workers. Instead of representatives of a mass, little respected, but powerful corporation, they become the members of a society with a strong and understandable dependence of prestige upon the steps they themselves personally take.

Clearly enough, no one single policeman's heroic feats are capable of changing the attitude of the Russian population toward the police as a whole. On the contrary, the prestige of a small subdivision to a significant degree depends on each employee's correct and conscientious discharging of his duties. The trust of the local populace and their readiness to cooperate with law enforcement agencies depend, in turn, on the achievement of this.

Gradually introducing access (for instance, based on a certain property and age eligibility requirement) to rifle firearms for the citizens,[58] encouraging private guard and detective agencies and organizations, detailed development of "civil arrest" procedure, and a resolute revision of the notion of "essential defense" along with the measures suggested above, can create a competitive and incomparably higher quality system of protecting citizens' security, their property, and dignity.

The primary obstacle standing in the way of the exercise of the constitutional right of Russian citizens to self-defense (including the right to defend life and property) derives less from the permit-based requirements for allowing citizens to have access to weapons, than from the monopoly on gun use, which the state has assumed. The doubtful civil law tradition concerning "exceeding the limits of necessary defense" is an indelible component of this. The state, claiming a monopoly on defense, requires that the citizen not offer active resistance to the criminal on his or her own, as long as he or she is alive. Then, once the citizen is dead, the state enters the lists. All this in view of the fact that a dead citizen is incontestably preferable, from the point of view of the state, to a live one who is independently resisting. Such a live resister is both a dangerous competitor and an undesirable partner.[59]

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[58] An experiment run in the Republic of Moldova (see the appropriate law at http://www.samooborona.ru/Moldava.html) shows that no splash of everyday weapon-wielding violence took place. More than that, there were no incidents of the sort even during the unrest in Kishinev, in which excited young men were involved. There are not many countries closer to Russia in terms of history and culture, or the level of legal culture and civil habits of the population. "Gun-Free Zones," just like areas where only complicated access to weapons is permitted for the citizens, do not prevent, but rather provoke grave offenses. This is borne out by the deadly incident at the Virginia Polytechnic Institute and State University on April 16, 2007; see http://virginiatech-massacre.com/. The doubtful aspects of distrust toward the military have become the reason for heavy losses at the time of the incident at Fort Hood (strange to tell, but military bases are precisely such zones; in them, it is mostly the military police that move about while carrying loaded weapons). See also http://www.sdgo.org/alertarchive/gunfreezone_background.htm.

[59] Great Britain has long since adopted the notion of the monopoly of the state on armed violence, including practically refusing the individual the right to effective self-defense (something the colonists

Clearly, such a tradition contradicts both the spirit and the letter of Art. 45 of the Constitution of the Russian Federation, which has already been cited above. A citizen cannot use only those means of self-defense, which have been directly prohibited by the law. Technically, the Law "Concerning Weapons" of December 13, 1996, № 150-FL (Art. 24) does not forbid using arms for defending one's life, even without forewarning. But the law enforcement tradition outweighs not only the Constitution and the law, but also common sense (for instance, cf. the 2005 case of Aleksandra Ivannikova[60]).

Article 37 of the Criminal Code of the Russian Federation provides an opportunity for following this tradition by relieving of responsibility the individual who performs acts of self-defense only "if this attack involved violence endangering the life of the person defending him or herself or endangering the life of another person, or was bound up with a threat of using such violence."

The arbitrary specification of what is "endangering life" and what is "not endangering" still makes it possible to sentence an obviously innocent person for "exceeding the limits." Such an option is reaffirmed by Art. 108 of the Criminal Code of the Russian Federation, leaving the judge and the prosecution the choice: to confirm that the individual is perfectly innocent, or else to imprison him or her for two years.

The state is interested in defending its monopoly, and so by means of political leaders and officials it cannot objectively accept or evaluate arguments in favor of civil self-defense, including the option of using rifle firearms.

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exported once to America, later reflecting it in the US Constitution). The consequences of such a choice resemble a tasteless joke, or the Russian case of A. Ivannikova (see below). On January 9, 2010, a young woman, home alone with her two-year-old daughter in Herefordshire, England, discovered two teenagers in her yard. Frightened, she snatched a kitchen knife and threatened the trespassers. Fortunately, they ran away. The police arrived on the scene of the incident confirmed the violation of limits of private property, and issued a warning… to the victim about the illegality of her action. It should be acknowledged that the steps taken by the police have a logic of their own. A logic precisely of the kind which we are describing. See http://www.telegraph.co.uk/news/newstopics/celebritynews/6957682/Myleene-Klass-warned-by-police-after-scaring-off-intruders-with-knife.html.

> Tellingly enough, even the conservatives siding with the opposition at the time of the writing of the present chapter – those who, following a series of such incidents, initiated a campaign sporting a call for the "Right to Defend Yourself" – are not demanding any intelligibly articulated restoration of the right of the English to bear arms or to effective self-defense. Their demands go only as far as replacing the current formulation. They demand eliminating the words "reasonable force," which refer to a reasonably grounded use of force that simply "invites" the judge and the police to penalize the homeowner for any kind of self-defense, insofar as any use of force must be tested for "reasonableness." Instead, a slightly more clearly enunciated wording is proposed, which demands the same police and court to prove their right to penalize the courageous homeowner for a priori disproportionate use of force: "grossly disproportionate force." The thought that defense against intrusion cannot be weighed on scales and that no use of force against uninvited visitors cannot, as such, be "grossly disproportionate," does not occur even to the conservatives of today. See

http://www.telegraph.co.uk/news/newstopics/politics/lawandorder/6844682/Tories-back-new-rights-to-help-home-owners-protect-themselves-from-burglars.html. Similarly, no one in Great Britain so much as broaches the question of people's often being in need of defense from attack not only while in their own homes, but also while in the street, a fact which implies that people must have the right to carry weapons with them. This shows that a summary rejection of the rights of individuals in favor of state workers' comfort leads to the entrenchment of a priori unreasonable regulations, ones which it is very difficult to rescind at a later time.

[60] While defending herself against a rapist (Sergey Bagdasaryan), Aleksandra Ivannikova killed him when she plunged a knife into his hip, by accident hitting an artery. The Lublinsky Court of Moscow, which investigated the case, sentenced Ivannikova to two years' imprisonment, but later the sentence was annulled based on a protest by the prosecution. The response of the human rights society of Russia to this trial process was telling. On the one hand, the case of an obvious violation of the most basic of rights inspired the human rights activists to stand up in Ivannikova's defense. On the other hand, the national subtext of the incident (the attacker was Armenian) and, thus, considerations of political correctness and an uncritical attitude to the European legal tradition practically made their support for the real victim unnoticeable. See the comments by defenders of human rights on the "Svoboda" radio channel: http://www.svobodanews.ru/content/article/109891.html.

In conclusion of the matter, let us quote A. I. Solzhenitsyn, so respected by the current Russian authorities:

> The Criminal Code (CC – 1926) contains the most absurd of articles, number 139, "Concerning the Limits of Necessary Defense." You have the right to bare your knife not before the criminal raises his knife over you, and stab him not before he stabs you. Otherwise, *you* will be the one judged in court! (While there is no article in our legislation to the effect that the greatest criminal is he who attacks the weak…) This fear of exceeding the limit of essential defense lead to the complete relaxation of the national character…

Let us interrupt Aleksandr Issayevich. We need to augment his list of examples by adding the memorable, long since accessible to readers, tragedy on Utoya Island in Norway. States vary, the stimuli provided by similar approaches to legislation and similar law enforcement yielded dishearteningly similar results. "Relaxation of the national character"[61]; thus again Solzhenitsyn on the state that penalizes the law-abiding and thereby encourages banditry:

> The state by means of the criminal code forbids citizens to possess firearms or cold weapons, but also *does not take* their protection upon itself! The state commits its citizens to the authority of bandits, and via the press dares call for "public resistance" to these bandits! Resistance – by means of what? Umbrellas? Rolling pins? ... thus anybody standing up for fairness will thrice, will sevenfold repent having done it. And always, for everything, there is all-sanctifying lofty theory.[62]

Army Reforms in None Too Great of a Rush: New Business Opportunities Instead of Defense

> Ye. Gaydar has shown not only the growing costs of maintaining a draft military in contemporary Russia, but also, most importantly, the inability of today's army to provide defense.[63] This inability is an outgrowth of certain social-economic conditions typical not only of Russia, but also for the majority of European countries (for instance, France). M. Thatcher addresses the same issue by pointing out that the old principles of consolidating and manning units a priori make a failure of the European Union's ambitious plans of creating armed forces of its own.[64]

The draft army in Russia becomes unfit for battle in the absence of an obvious external threat to the country. The same cannot be said of the Russian army in its entirety: the presence in it of separate parts formed on a professional basis guarantees a minimal level of competence in battle.

Under conditions of weakness of the Russian democratic institutions, crisis of the independent press, and, as a result, the low-level transparence of the state agencies, the army constitutes the source of the most dangerous types of corruption. Such corruption is dangerous not

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[61] This being a point noted by observers on both sides of the Atlantic:
http://www.americanthinker.com/2011/07/mayhem_in_norway.html;
http://www.gazeta.ru/comments/2011/07/29_e_3715045.shtml.
Apathy and cowardice reaching the point of idiocy are both in evidence: based on the report of survivors on the island, the police arrested a young Chechen. This last had aroused suspicion because he did not scream or cry, like everybody else, but tried to resist by throwing stones at the shooting attacker:
http://www.vg.no/nyheter/innenriks/oslobomben/artikkel.php?artid=10097733
Try as they would, the guardians of order themselves could not reach the island: helicopter crew were on leave, the boat was too small, and so on. Evident here is an impressive instance of something we have already touched upon cursorily. The state, not encountering private competition, itself loses the capability of protecting its citizens.

[62] *The GULag Archipelago*, Part III: "Exterminator-Laboring," chapter 16: "Social-Close" in Solzhenitsyn 2006, pp. 346-349 of the Russian edition.

[63] Gaydar 2004.

[64] Thatcher 2003.

only because part of the money is transferred from branches which offer legal goods and services on the market, into the area of illegal services. Corruption linked to circumventing excess control by all kinds of inspectors and supervisors is also illegal and bound up with considerable losses for the economy. But the very permissibility of what amounts to practical hostage taking (for this is precisely how parents capable of payment perceive their own position and that of their children when they attempt in some way or another to save their sons from the army, including going as far as paying ransom) translates the problem of illegal economy onto a qualitatively new level.

It is bad for the economy if the option is available of deriving administrative markup by arbitrarily setting up and removing obstacles on the way to business development. Even so, the greatest losses in such situations are one or another business enterprise, but not human life. When the opportunity becomes available to derive administrative markup by threatening human life, the general level of trust in society is lowered considerably, seeing as this is now a different risk level and thus a different kind of business climate.[65]

The situation is made further acute by the continued fall in discipline, a development which has had an impact not only on the junior commanders' corps, but also on the officers, without whom neither the abuses in the military committees, nor the bulk of criminal business initiatives (soldierly poverty, soldierly prostitution) would have been thinkable.

Unfortunately, the issue of reforming the army came within the purview of the reformatory forces only by the time when no resoluteness was in evidence for making this issue serve as a weapon in the political struggle; nor were any resources available for realizing it independently.

All due respect for the efforts undertaken by the new Ministry of Defense leadership notwithstanding, reforming the army under conditions of the dictated rigid limitations is impossible.

The practical refusal of the authorities to shift the cadre nucleus of the military to a contractual basis confirms these forebodings.[66] The refusal is given grounding by attempts to provide a "planned" solution (involving administrative pressure when contracts are signed) rather than a "market" one.

Given the conditions at present, a transition to a completely professional, contractual military with a competitive selection of candidates is a possibility. But given that, economizing when it comes to army costs will not work. Even so, let us note that the new level of expenses will not be all that significantly different from the current, especially in light of that the impressive bulk of the manpower making up the Russian military (officers, corporals, operating contractors) are already professionals.[67]

Conclusions

The real import of providing inviolability of the individual person and security as key conditions for the protection of rights of private property is often underestimated not only in theory,[68] but also in practice when reforms are put into effect. This last, apparently, may be connected with the general loss of interest on the part of the developed countries – those "models" from the point of view of Eastern and Central European reformers – in supplying pure social goods, the same ones whose provision is not only the key, but the only indisputable sphere of state activity (see Chapter 13 for further detail).

In order to provide an opportunity for healthy long-term economic growth, an independent court system must be in evidence, independent not only as a branch of power and not only as a corporation. We mean here, first of all, the independence of every single judge. Only the personal independence of the judge can put genuine meaning into judges' responsibility before the law, public opinion, the judge's own conscience, and, only in extreme cases, before the special court of the lawgiver.

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[65] See Yanovskiy, Shulgin 2008.

[66] See, for instance, http://www.polit.ru/news/2010/05/26/contracts.popup.html and http://www.polit.ru/news/2010/03/23/contract.html.

[67] Vatolkin et al. 2002.

[68] Glaeser, Shleifer et al. 2004; Barro 1999.

Corrupt, weakly motivated law enforcement agencies can undermine even thoroughly successful efforts put into court system reform. Given that, excess authorization becomes a source of corruption. Opportunities for persecuting law enforcement agencies workers "for excessive use of force" and civilians "for exceeding the limits of necessary defense" constitute a source of fiascoes when so much as minimal guarantees of security are being provided. The nature of such limitations will form the focus of our detailed attention in what follows, in Chapters 4 and 13.

Among the primary problems of the Russian court system and law enforcement agencies we should consider:

Excessive rights granted to law enforcement agencies, coupled with underfinancing;
Absence of due guarantees of judges' independence;
Insufficient process guarantees of principal citizens' rights: protection against unlawful arrest, presumption of innocence, et al.;
Low level of professional preparation of the majority of the judges; and
Inability of the judiciary community to find a way of supporting a high educational, judicial, and moral standard among judges.

Taking into account the negative experience of the old Rule of Law Democracies, it is important to prohibit the state:

the use of such measures of stoppage as imprisonment for most kinds of tax violations;
the establishment of obligatory norms for hiring certain categories of citizens (the prohibition against "positive" or "leveling" discrimination);
coercing property owners to agree to any kind of transactions for the same reasons (for example, concerning the "non-discriminatory" renting out of living quarters);
the coercive financing by a private individual of the presentation of another's point of view (for further detail see Chapter 2).

Contemporary notions of genuine private property include a presupposition concerning the inviolability of the property owner. Without this, the difference between the formal title of ownership and the medieval "conditional holding" becomes hard to appreciate.

Such inviolability is provided for by the state's supplying three classical pure social goods: defense (protecting the property owner from aggression from the outside); security and justice (protecting the property owner from arbitrariness and violence within the country). Creating and maintenance of a combat-ready military, uncorrupt law enforcement agencies and an independent court subordinate exclusively to the law, are objectives of first-grade importance when reforms are being introduced. Their contribution to the very possibility of stable long-term economic growth can hardly be overestimated.

Considerable advances both in economics and in raising the effectiveness of the state overall are impossible without reforms based on experience which has proven its efficacy either at home or abroad. When such reforms are being introduced, it is essential to be prepared to put down special interest groups, which have grown more solid during the last 15-20 years. Problems having to do with such groups' activities, as well as political risks involved in introducing reforms will form the focus of our attention below, in Chapters 2 and 3.

Appendix 1
The key institutional changes in Russia since1985

Period of piecemeal reforms in 1987 - 1991

Law on State Enterprise

Law on Cooperatives

Political reform

Outcome: state-run manageability lost; resources fly from the state enterprises to private businesses ("cooperatives") – informal privatization; price, salaries budget deficit expansion;

Period of radical reforms in 1991 – 1993

The onset of reforms; a new structure of the government devoid of most of the sectoral ministries (Presidential Decree No 172 of 6 November 1991)

Law on Competition, Law on Privatization, Law on Militia (1991)

The prices and food import liberalization; currency exchange legalization

Law on consumer rights (1992)

Privatization decrees (particularly, N$^{o'}$s 66 and 721 of 1992)

Privatization Law June 1992 new version

Decree 1400 of 21 September 1993

The Constitution of 12 December 1993

Onset of stabilization between 1994 and 1996

Approval of codes: Civil Code, Parts One and Two; Criminal Code; Arbitration Procedure Code.

Approval of the federal constitutional laws on the judiciary system and the constitutional court; Basic legislation on State Service

Stabilization of the ruble, deepening budgetary crisis

Law on budgetary classification

False "window of opportunity" (an attempt to continue with radical reforms) in 1996 - August 1998

The onset of reform in the housing and communal utilities sector

Sequestered budget

An attempt at the defense reform

Attempted tax reform, approval of Part One of the Tax Code; approval of the Budgetary Code

Law on Judiciary Department of the Supreme Court

Draft law "On the licensing of certain activities" (approved in September 1998)

Federal Constitutional Law "On Government"

Financial crisis 1998 August (**oil prices fall to $10 per barrel**)

Parliamentary Majority Government, September 1998 - May 1999

Approval of the first zero-deficit budget (for 1999)

Failed attempt of President Yeltsins' impeachment May 1999

Completed political stabilization, May 1999 – 2002

1999 December Election – stable pro-governmental Duma majority formation

Oil prices upsurge after 1996-1998 fall (to 17,97 after 12,72; 16,69 to 22,74 in USd 2007)

Decisions taken on the reform of railroads; debates on the reform in power sector and gas industry

Onset of the judiciary reform

Tax reform: Part Two of the Tax Code (13% flat tax)

The Food security Law January 2000

The first package of laws on deregulation of economy August 2001

Land Code and Agricultural Land Turnover Law

New Criminal Process Code

New stage of Court System reforms: weakening of guaranties of independence (simplification of the judge removal from the office procedure)

Technical Regulation Law (Technical Regulation liberalization) 2002 December

Electric Energy production and trade partial liberalization (started in 2002)

Rising of Authoritarian Regime 2000 - present

TV market monopolization 2000-2001; **1-st year of Oil prices exceeding $25 per barrel**

Steady process of media market monopolization (purchasing of Independent media by the Government-affiliated businesses – Izvestia newspaper, Moscow News etc)

December 2003 Election (the last partly free) – constitutional majority of "Yedinaya Rossia" (United Russia) pro-governmental pseudo-party **4-th year of Oil prices exceeding $25 per barrel**

Governors' direct election cancellation (2004); The Supreme court regularly approves the opposition candidates registration cancellations; **5 years of Oil prices exceeding $25 per barrel; the year average current price exceeded $35 (2007 USd – 40)**

Spy-mania; The court processes against foreign grant financed scientists

The media market monopolization is closing to finalization

2008: formal presidential power transfer without actual chief of the regime's retirement

The Presidential and Duma deputies' term of office prolongation (1-st amendment to the 1993 Constitution adopted for few weeks) (2008 **current price exceeded $100**)

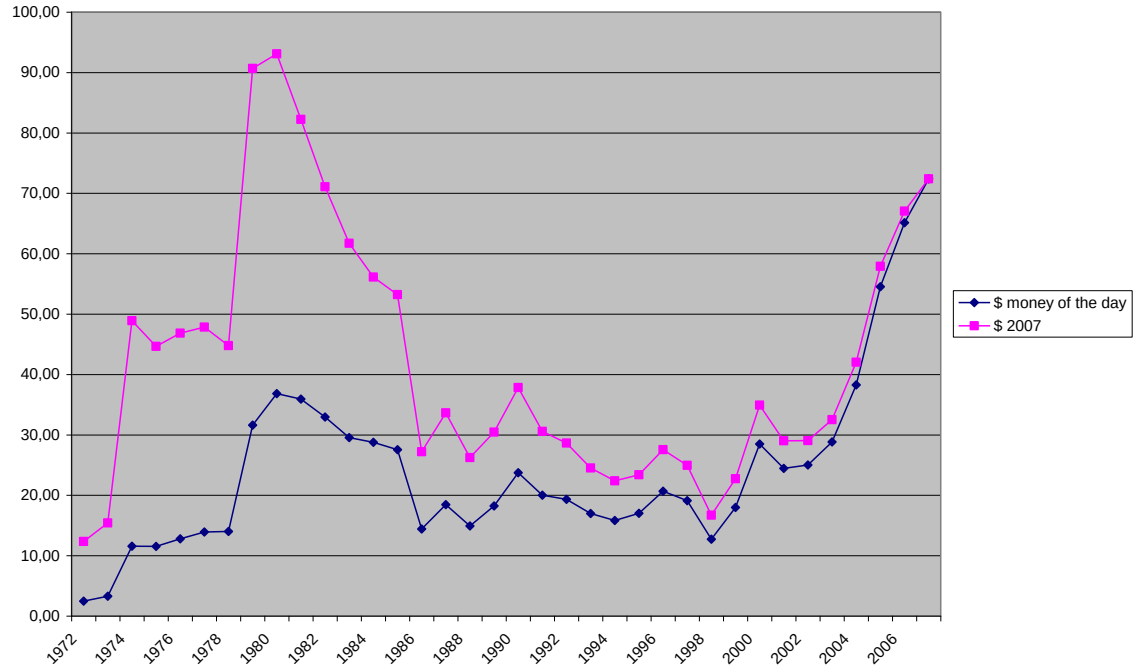


Diagram 2. Oil price History
Source: BP oil price statistical Review 2008
http://www.bp.com/sectiongenericarticle.do?categoryId=9023773&contentId=7044469

Appendix 2

Economic Agents' Trust toward the Court System and Law Enforcement Agencies

The results of reform are measured, inter alia, by the trust of the populace (the economic agents) toward the institutions of the court and law enforcement agencies.

As per an order put in by human rights activists, the "Levada Center," a private sociology institute, monitors the level of trust toward law enforcement agencies and the court system. The

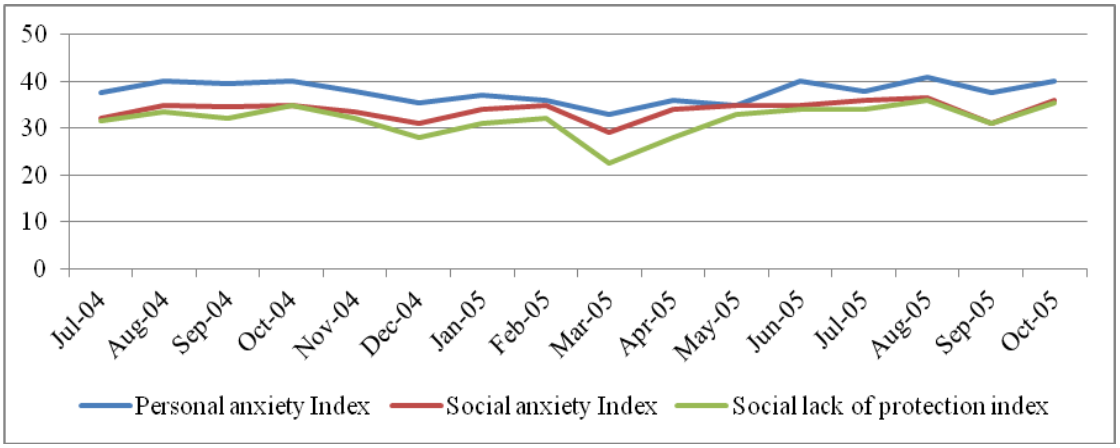
Law Enforcement Agencies Arbitrariness Index (LEAAI) makes a generalized indicator of the dynamic of mass attitudes in society, which reflects the sense of lack of protection against arbitrary steps unsanctioned by law, which are taken by the police, the prosecution, and agencies of the court. "The LEAAI is constructed on the basis of regular surveys of the adult population of Russia, taken based on a standard representative sample: 1,600 persons aged 18 and older in 128 residential areas in the country."[69]

The questions used in constructing the index are aimed at discovering worrisome or, on the contrary, satisfactory assessments of the activities of law enforcement agencies. During index construction, attention is especially paid to the various components of the index, particularly questions of to what an extent people

- are worried about the problem of lawlessness and arbitrary abuses by the law enforcement agencies vis-à-vis events taking place in the country *(index of civil disquiet)*;
- are apprehensive about themselves becoming the victims of lawlessness and arbitrary abuses of the law enforcement agencies *(index of personal disquiet)*; and
- feel themselves unprotected from lawlessness and arbitrary abuses of the law enforcement agencies *(index of personal lack of protection)*.

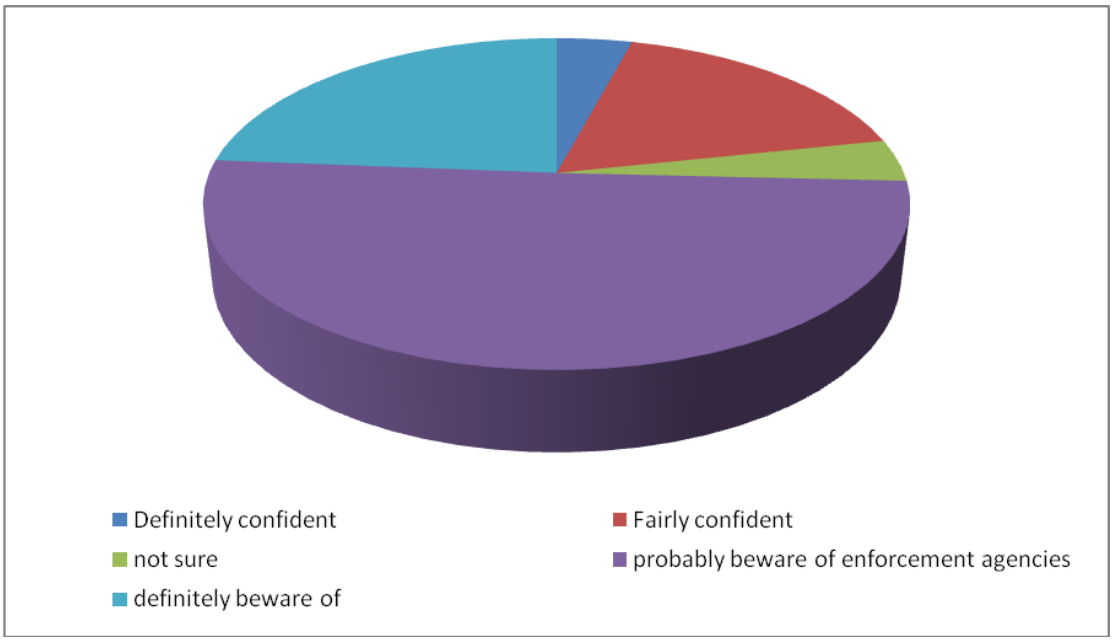
For each question or issue, its value is arrived at as the difference of "worrisome" and "satisfactory" answers, with the extremely "worrisome"/"satisfactory" responses being assigned a value of 1 and the relatively "worrisome"/"satisfactory" responses ascribed a value of 0.5. The components of the LEAAI are calculated as the arithmetical averages of the generalized values of the indicators belonging to a single component (two-three indicators for each component). The total index of the LEAAI is calculated as the arithmetical average of the generalized values of seven indicators. Thus both the total index LEAAI and its components change over the interval from -100 to +100, where index values over "0" indicate the dominance of "worrisome" assessments in public opinion, and values of the index under "0" indicate the predominance of "satisfactory" assessments in public opinion as far as civil protection against arbitrary steps unsanctioned by the law and taken by the police, the prosecution, and the agencies of the court are concerned.

Some of the results obtained by the sociologists are shown in Illustrations 1.2 and 1.3. As is made evident by Ill. 1.2, the predominance of fear in the face of persons required by their work duty to defend civil rights and to protect security, property, and legal order, is quite obvious, as well as that such attitudes are quite stable among the population.



Ill. 1.2. Index values concerning social and personal disquiet and personal lack of protection, July 2004 – October 2005. (data provided by the All-Russian Center for the Study of Public Opinion and the Levada Center http://www.levada.ru/eng/).

[69] See the Levada Center's site.



Ill. 1.3. Distribution of responses to the question, "Do you trust the law enforcement agencies (police, courts, prosecution)?" shown as a share of respondents (data provided by the All-Russian Center for the Study of Public Opinion and the Levada Center http://www.levada.ru/eng/).

Given such a level of trust toward institutions whose significance in everyday life is incomparably greater for civilians than the significance of the institutions of the executive or the legislative branch of power (both federally and regionally), there is no need so much as to broach the question of their ability to secure trust when contracts are concluded or put into effect between private parties.

Trust toward Regional and Municipal Authorities, Law Enforcement and Court Agencies. The dynamics of trust toward regional and municipal authorities features a series of peculiar elements. First of all, as opposed to other institutions under consideration (except for trade unions), they were initially characterized by a low level of trust, which rose for a time, while trust toward federal institutions fell. In June 1994, more than one fifth of those surveyed had difficulty expressing their attitudes toward local and oblast (areal, republic) authorities; more than a third of all respondents were of the opinion that these institutions deserve no trust at all.

Second, changes in indices took place gradually, involving no sharp leaps.

Third, both indices practically coincided throughout the measurement period. Small deviations could be observed after 2000, with the gap reaching a maximum after 2004: attitudes toward city and urban neighborhood authorities became worse than those toward the regional agencies. The supposition is tempting that the reason was the annulment of governor elections, but further proof is required to substantiate such a claim.

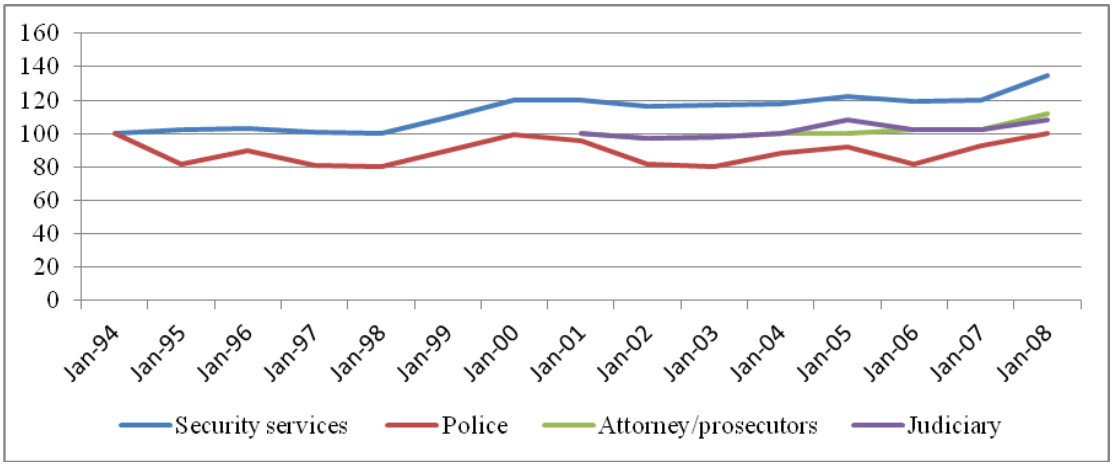
Over a period of 15 years, the populace has been demonstrating a high level of trust toward agencies of state security. After 2000, support for the coercive agencies grew, and fewer oscillations were to be observed. The greatest number of persons putting "complete trust" in this institution is to be found among the young people. Yuriy Levada associated this datum with the romantic appeal of the heroic feats of the reconnaissance, which is inspired by movies, "considering that in reality, few people had the opportunity to take part in any such operations."[70] The growth in the level of trust toward special service agencies during the time of Vladimir Putin's presidency is likely to be connected with the fact that in the eyes of the public, these

[70] Yu. A. Levada, "Mechanisms and Functions of Public Trust" in Yu. A. Levada, *In Search of Humanity: Essays in Sociology 2000-2005* (Moscow: *Novoe izdatel'stvo*, 2006, in Rus.), p. 181.

services were the mainstay of the regime; it was their interests that Putin represented.[71] In February 2008, most of the respondents identified the Federal Security Service as the third most influential state institution after the President and the presidential administration.

Russia's citizens have for a long time been dominated by an apprehensive attitude toward law enforcement agencies; some 70% of the respondents annually make this statement. Up to 80% describe their feelings of "being unprotected from the arbitrary rule of the law enforcement agencies." The police is one of the least popular state institutions. A study conducted by the Levada Center jointly with the Public Verdict Foundation in December 2008 shows that approximately one half of the population is satisfied with the work of the police, while the other half is not. The overwhelming majority of the legal violations, in the view of the populace, have to do specifically with the law enforcement agencies themselves and with the inefficient work of policemen and police offices and branches.

For lack of an alternative, mostly the weaker of the population groups put trust in the police; these are the peripheral demographic groups in the more socially closed types of settlements. They are especially dependent on the state. They also make up the majority of Russians today. The more well-to-do, active, young, and educated of the respondents, who constitute a minority, more often treat policemen with apprehension and somewhat more often count on the agencies exercising possible control over the police. During the past 15 years, the level of trust toward the police has practically not changed at all. Attitudes toward the court and the prosecution have improved somewhat, but not significantly (Ill. 1.4).



Ill. 1.4. Dynamics of trust put in law enforcement agencies, prosecution, and courts in 1994-2008 (data provided by the All-Russian Center for the Study of Public Opinion and the Levada Center http://www.levada.ru/eng/). The March 1994 level for a series of data is taken as the 100% value.

[71] According to public opinion polls, some 40-50% of the population at different points in time believed Putin to be putting forth the interests of the "forcers." See *The President: Public Opinion 2007* (Moscow: Levada Center, 2008, in Rus.), p. 69.

Appendix 3

Comparison of Features of Court Systems in Countries with the Anglo-Saxon and Continental Law Systems

Table 1.3

Comparison of Features of Different Court Systems

Country	Number of Professional Judges per 1000 Residents	Work Experience Requirement for Lawyers at Time of Appointment	Lower Level (Directly) Elected Judges	Professional Judge's Salary in Dollars	Existence of Institution of Jury
USA	Much lower than 1 per 10,000	+	+	More than 100,000	+
Great Britain	Much lower than 1 per 10,000	+	—	More than 100,000	+
Canada	Much lower than 1 per 10,000	+	—	More than 100,000	+
Germany	More than 1 per 4,000 (approx. 21,000 in 1998)	—	—	More than 50,000	—
Italy	1 per 10,000	+ (or Professor of Justice)	—	No data available	+
France	1 per 10,000	—	—	No data available	+
Russia	1 per 7,000	—	—	Under 10,000	+

Sources: sites of the US Ministry of Justice and the US Department of Justice, and the German statistical authority; *Court Systems of Western States* (Moscow: *Nauka*, 1991, in Rus.); "How Appointment to a Judge's Post Takes Place in Different Countries" in *Russian Justice* 14-15 (1993); collected documents on Canadian justice, transmitted as part of the CEPRA project.

Table 1.4

Costs of Appointment and Removal of Judges and the Influence of the Political Factor at the Time of Appointing Judges

Country	Requirements	Order of Appointment	Order of Removal
USA, Canada, Great Britain	10 years of flawless work experience as a lawyer in court	Professional evaluation of qualifications at time of political appointment	Impeachment: decisions taken by a qualified majority in the House of Representatives (high

			costs)
Italy	Lawyer's experience or advanced law degree	Corporate-academic appointment	Corporate removal (moderate costs)
Germany	No data available	Professional evaluation of qualifications at the time of political appointment	Procedure (for a federal judge) is similar to impeachment, with an FCC as per a request of the Bundestag (high costs)
Israel	10 years' flawless experience of work as a court lawyer	Professional evaluation of qualifications; corporate-academic appointment	Corporate removal (moderate costs)
Russia		Political appointment	Decision taken by collegium composed of three higher-order court judges with consideration given to the opinion of the corporation; in the 1990s, corporate removal pure and simple. (low costs)