

Contempt for Court in Russia: The Impact of Litigation Experience

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Abstract

This article explores how Russians think about their courts and whether court veterans are distinguishable from those who have never used the courts. The analysis is based on data generated by a nationally representative survey fielded in 2010. The analysis clearly shows that users and nonusers think differently about courts and law. Users are both more positive and more negative about the courts, depending on the context. Although they praise the work of judges and other courthouse personnel in their own cases, they seem to emerge with lingering negative views of the courts that come into focus when asked more general questions. Nonusers tend to be more optimistic about the potential of courts to achieve justice.

Keywords

Russia – law – procedural justice – courts – judges

1 Introduction

Russian courts have an unsavory reputation. The media and much of the scholarly literature routinely questions their competence and portrays them as under the thumb of political and economic elites. This reputation is primarily grounded in high-profile cases, which have given rise to show trials in which

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the outcome is never in doubt thanks to the power of “telephone law,” a practice by which decisions flow not from law but from the interests of political or economic elites.¹ There is a tendency to assume that the law on the books is equally unimportant in more mundane cases. As a result, many assume that Russian courts are rarely used or are simply unusable. The reality is more complicated. When faced with problems, few Russians see the courts as the immediate solution, preferring instead to use informal avenues to find a common language with their sparring partners. But most Russians are willing to contemplate using the courts if such efforts fail.² This sort of reluctance is not unique to Russia. The hassles associated with courts everywhere, particularly the costs as measured in terms of time, money, and emotional energy, tend to make them a last resort for most.³

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- 1 Sometimes these elites communicate formally with judges, hence the moniker of telephone law. But instructions can also be conveyed via text message or more informally through a sense of what the powerful want or need. For a discussion of the operation of telephone law in Russia, see Alena V. Ledeneva, *Can Russia Modernise? Sistema, Power Networks and Informal Governance* (Cambridge University Press, Cambridge, 2013); Alena V. Ledeneva, “Telephone Justice in Russia”, 24(4) *Post-Soviet Affairs* (2008), 324–350. Prominent examples of recent cases in which the outcome was dictated by politics rather than law include the multiple trial of Khodorkovsky, the trial of the members of Pussy Riot, and the trial of Navalny. See Richard Sakwa, *Putin and the Oligarch: The Khodorkovsky-Yukos Affair* (I.B. Tauris, London, 2014); Masha Gessen, *Words Will Break Cement: The Passion of Pussy Riot* (Riverhead Books, New York, 2014). The latter case, in which the blogger and opposition activist, Alexei Navalny, received a suspended sentence in his 2014 trial for fraud, may suggest that the willingness of the Kremlin to imprison its enemies is waning. Navalny’s co-defendants were not so fortunate. His brother was sentenced to a three and a half year prison term. See David M. Herszenhorn, “Aleksei Navalny, Putin Critic, Is Spared Prison in a Fraud Case, but his Brother is Jailed”, *N.Y. Times* (31 December 2014), at A₉; “Putin Critic’s Final Speech at Trial”, *N.Y. Times* (22 December 2014), available at <<http://www.nytimes.com/video/world/europe/10000003413522/putin-critics-final-speech-at-trial.html>> (in his speech to the court, Navalny accused the government of taking his brother as a hostage to keep him in line).
 - 2 This willingness to use the courts is reflected in the increase in the doubling of the number of cases filed over the past decades in the courts of general jurisdiction. See Kathryn Hendley, “Too Much of a Good Thing? Assessing Access to Civil Justice in Russia”, 72(4) *Slavic Review* (2013), 802–827. As the “pyramid of disputing” framework reminds us, these cases represent only the tip of the iceberg of the total number of disputes. See William L.F. Felstiner, Richard L. Abel, & Austin Sarat, “The Emergence and Transformation of Disputes: Naming, Blaming, Claiming ...”, 15(3–4) *Law & Society Review* (1980–81), 631–54.
 - 3 Herbert M. Kritzer and John Voelker, “Familiarity Breeds Respect: How Wisconsin Citizens View Their Courts”, 82(2) *Judicature* (1998), 59–64, at 59 (writing about the U.S., Kritzer and Voelker note that) (“[M]any, perhaps most, people are probably as likely to choose voluntarily to go to court as they are to have their wisdom teeth extracted. Furthermore, the

In this article, I use data collected in a 2010 survey to explore how Russians' experience with the courts impacts their confidence in the courts. Many scholars have explored this question in the U.S. context.⁴ An early study concluded that court users had less confidence in the courts than nonusers. This fits a stereotype of court veterans emerging from their experience as frustrated enemies of the judicial process. Subsequent research has come to different and not always consistent conclusions, but the stereotype has proven to be remarkably sticky.⁵ Kritzer and Voelker conducted a survey in Wisconsin and found that "[t]hose who have been to court recently have more favorable opinions about the courts than those who have not."⁶ They also re-analyzed the earlier study and found that its findings were overstated.⁷ After analyzing data from a survey conducted in Louisiana, Benesh and Howell concluded "that court users are both more positive *and* more negative about the courts; *i.e.*, their opinions are more polarized" (emphasis in original).⁸

Such comparisons of court users and nonusers are less common in the scholarship on other countries. A notable exception is Gallagher and Wang's qualitative study of labor disputes in China.⁹ They found that users tended to have less confidence in the courts than nonusers.¹⁰ They attribute this to the hopefulness with which Chinese claimants approach the courts.¹¹ When the reality of the judicial process does not live up to their expectations, they become disenchanted.¹² Nonusers, by contrast, have yet to be disabused of their illusions.¹³

nature of news reporting serves to feature not the positive and routine but the negative and exceptional.").

4 See *Ibid.*; See also David B. Rottman, Randall Hansen, Nicole Mott, and Lynn Grimes, "Perceptions of the Courts in Your Community: The Influence of Experience, Race and Ethnicity, Final Report," National Center for State Courts (2003), available at <<https://www.ncjrs.gov/pdffiles1/nij/grants/201302.pdf>>.

5 *Ibid.*

6 An analogous study in Virginia produced similar results. Kritzer and Voelker, *op.cit.* note 3, 53–9.

7 *Ibid.*

8 Sara C. Benesh and Susan E. Howell, "Confidence in the Courts: A Comparison of Users and Non-users," 19(2) *Behavioral Sciences and the Law* (2001), 199–214, at 204.

9 Mary E. Gallagher and Yuhua Wang, "Users and Non-Users: Legal Experience and Its Effect on Legal Consciousness," in Margaret Y.K. Woo and Mary E. Gallagher (eds.), *Chinese Justice: Civil Dispute Resolution in China* (Cambridge University Press, New York, 2011).

10 *Ibid.*

11 *Ibid.*

12 *Ibid.*

13 *Ibid.*

To date, the differences (if any) between users and nonusers in Russia have not been studied systematically.¹⁴ Precisely how experience affects users' confidence in the courts is unclear. The media tend to focus on horror stories. This sort of evidence, albeit anecdotal, suggests that users emerge with an unfavorable view and with little interest in going to court in the future. This would be consistent with the non-specialist literature, which routinely portrays courts as unusable.¹⁵ On the other hand, the handful of surveys of users reveal that most were satisfied with the decision in their cases as well as their treatment by the court.¹⁶ The U.S.-based literature indicates that when litigants feel that the judge has paid attention to their arguments and has otherwise treated them fairly and courteously, they are more likely to emerge with a positive attitude towards the courts more generally.¹⁷ As applied to the Russian context, this procedural justice argument suggests that users might come away from their experience more favorably disposed toward the courts than nonusers.

Just as interesting are the views of nonusers. Unsullied by actual experience, but captives of the unrelenting negativity of the media when it comes to the courts, they may reflect that pessimism. But like their Chinese counterparts, the lack of experience may leave them more willing to give the courts the benefit of the doubt and, hence, they may be more optimistic about the courts' capacity than are users.

By delving into the data, we see that the truth lies somewhere in-between these two extremes. While nonusers are consistently more upbeat about the courts than are users, this should not be taken as confirmation of the stereotype that Russian courts are unusable. When questioned about their own

14 A previous analysis of these same data presents several tables with descriptive statistics that divide the sample between users and nonusers, but it does not probe further. Lev Gudkov, Boris Dubin and Nataliia Zorkaia, "Rossiiskaia sudebnaia sistema v mneniakh obshchestva," No. 7 *Vestnik Obshchestvennogo Mneniia* (2010), 35–40.

15 Karen Dawisha, *Putin's Kleptocracy: Who Owns Russia?* (Simon & Schuster, New York, 2014); Stefan Hedlund, *Russian Path Dependence* (Routledge, New York, 2005); Jonathan Hay & Andrei Shleifer, "Private Enforcement of Public Laws: A Theory of Legal Reform," 88(2) *American Economic Review* (1998), 398–403.

16 In this, they diverge from the Chinese litigants studied by Gallagher and Wang, most of whose dissatisfaction with the results of their cases contributed to their negative views of the courts. See Sergei Kriuchkov, *Otnoshenie grazhdan k mirovym sudam* (Americanskaia assotsiatsiia iuristov, Moscow, 2010); e.g., Gallagher and Wang, *op.cit.* note 9, 211.

17 Tom R. Tyler, "What is Procedural Justice? Criteria Used by Citizens to Assess the Fairness of Legal Procedures," 22(1) *Law & Society Review* (1988), 103–35; Benesh and Howell, *op.cit.* note 8, 199–214; Susan M. Olson and David A. Huth, "Explaining Public Attitudes Toward Local Courts," 20(1) *Justice System Journal* (1998), 41–61.

lawsuits, users generally gave good marks to judges and courthouse personnel. Most felt that they were treated fairly and that the decision was grounded in the law. Indeed, their belief in the capacity of the courts for procedural justice serves as a robust predictor of their confidence in the courts. But just as important is the outcome of their case. Winning leaves users more positively disposed towards the courts than does losing. By contrast, procedural justice matters less when predicting nonusers' confidence in the courts.

The analysis proceeds in three steps. After a review of the methodology, I begin by exploring what qualities are associated with court use in Russia. I then examine the extent to which law- and court-related attitudes differ as between users and nonusers. The final step is to investigate the sources of confidence in the courts, comparing users and nonusers.

2 Methodology

The analysis draws on the results of a nationally representative survey of Russians conducted by the Levada Center, a well-respected Moscow public polling agency.¹⁸ Fielded in 2010 with funding from the World Bank, the survey focused on behavior and attitudes regarding the courts and the ability to use the courts to protect rights and interests. The survey was administered through in-person interviews. The total number of respondents was 2309, which included an over-sample of 300 court users. Users are then differentiated based on the extent of their involvement with the courts. 944 respondents (41 percent) were parties to a case. A smaller subset of 638 had been involved in a case that culminated in a decision and responded to a series of detailed questions about their experiences in court.

The article focuses on the differences between those who have litigated (“users”) and those who have never been to court (“nonusers”). Of course, this is likely only one of many factors that differentiate these two groups, complicating any effort to draw clear causal connections. My goals are more modest. I seek to contrast their attitudes towards law and the courts and to explore what factors tend to predict their confidence in the courts.

18 For background on the Levada Center, see *generally* <<http://www.levada.ru/>>. In September 2016, the Levada Center was labeled as a foreign agent. This happened well after the survey I am using was fielded. See Ivan Nechepurenko, “Russian Polling Center Is Declared a ‘Foreign Agent’ Before Elections,” *N.Y. Times* (5 September 2016), available at <<https://www.nytimes.com/2016/09/06/world/europe/russia-vladimir-v-putin-levada-center-polling-duma-united-russia.html>>.

3 Who Uses the Courts in Russia?

Before investigating the differences between users and nonusers, a brief exploration of who tends to use courts in Russia is needed. The variable that isolated respondents who had been a party to a court case serves as the dependent variable for this analysis.

Russia has several types of courts.¹⁹ Simple cases of all stripes are heard at the justice of the peace courts (JP courts or *miroye sudy*).²⁰ More complicated cases, which include civil disputes in which the amount at issue is greater than 50,000 rubles (about \$1000) and criminal cases which could bring three or more years in prison, are heard in the district courts (*raionnye sudy*).²¹ Economic disputes are heard by the *arbitrazh* courts.²² Appeals from all these courts culminate in the Russian Supreme Court.²³ In addition, like many of her European neighbors, Russia has a constitutional court.²⁴

About half (48.1 percent) of users had only been to court once. An additional third had two or three court experiences, and about 20 percent reported being involved in four or more lawsuits. Not surprisingly, the bulk (90 percent) of respondents reported having been to either the JP or district courts or both. Only a handful (24 respondents) pursued appeals to the Supreme Court. Even fewer (12 respondents) had experience with the constitutional court. Involvement in *arbitrazh* cases was also rare (31 respondents), which follows from the fact that the jurisdiction of *arbitrazh* courts is generally limited to legal entities. Individuals can be parties only if they are registered as individual entrepreneurs or are participating in their capacity as a shareholder. Of course, they may be involved as representatives of the companies where they are employed.

19 See generally Peter B. Maggs, Olga Schwartz, and William Burnham, *Law and Legal System of the Russian Federation* (Juris Publishing, Inc., New York, 6th ed., 2015), 62–98.

20 Kathryn Hendley, “The Unsung Heroes of the Russian Judicial System: The Justice-of-the-Peace Courts,” 5(3) *Journal of Eurasian Law* (2012), 337–66.

21 Peter H. Solomon Jr., and Todd Foglesong, *Courts and Transition in Russia: The Challenge of Judicial Reform* (Boulder, Westview Press, 2000).

22 Kathryn Hendley, “Remaking an Institution: The Transition in Russia from State Arbitrazh to Arbitrazh Courts,” 46(1) *American Journal of Comparative Law* (1998), 93–127.

23 Prior to August 2014, the *arbitrazh* courts were a separate hierarchy with the Higher *Arbitrazh* Court at the apex, but spurred on by a proposal from Putin, this court was consolidated with the Supreme Court. Peter H. Solomon Jr., “The Unexpected Demise of Russia’s High Arbitrazh Court and the Politicization of Judicial Reform,” *Russian Analytical Digest* (2014), No. 147, 2–4.

24 Alexei Trochev, *Judging Russia: Constitutional Court in Russian Politics, 1990–2006* (Cambridge, Cambridge University Press, 2008).

Respondents were asked to identify the types of case in which they participated as well as their roles in these cases. Because many had multiple experiences, the percentages exceed 100. About two-thirds (64.1) took part in a civil case, and most of them (81 percent) initiated these cases. In terms of subject-matter, family law was the most frequent type of case. Many problems that fall under this umbrella, such as divorce and child support, can only be resolved through the courts. Also fairly common were housing and personal injury claims, which can be handled informally; they do not require the imprimatur of the courts. Almost 40 percent of users were involved in a criminal case. Their roles in these criminal cases were more varied. 38 percent of participants in criminal cases were defendants. Almost as common was being a victim (31 percent) or a witness (34 percent). Less than 20 percent had experience with cases involving the state, which in Russia are labeled as administrative. They include traffic violations and tax arrears. Slightly more than half (51.5 percent) who were part of administrative cases described themselves as the initiators; the remainder were targeted by the state.

Although I am primarily interested in explaining the use of courts, a few words about why nonusers chose to bypass the courts are useful as background. Respondents were asked to imagine that they had a problem that could best be resolved in court, and were then asked whether they would take such a problem to court. Most (71.5 percent) said they would, but a significant minority (28.5 percent) said they would not. This group was asked why. They were given 16 possible reasons and were allowed to pick up to five answers. There was some overlap between the reasons, which allowed me to divide them into four basic categories. The most commonly expressed concern, voiced by 58.6 percent of this group, related to the costs associated with litigation, measured in time, money, and emotional energy. This set of concerns would become even more dominant if we added in the 28.7 percent whose antipathy towards the court is linked to their belief that the procedural rules are too complicated for laymen. Confirming my previous qualitative studies of Russians' court-related anxieties, practical concerns trump fears of politicized justice.²⁵ But such fears were present. About 34 percent identified the dependence of courts on political and economic elites as a reason for avoiding them. Almost as vexing were reputational concerns, such as fear of drawing attention to oneself

25 See Kathryn Hendley, "Varieties of Legal Dualism: Making Sense of the Role of Law in Contemporary Russia," 29(2) *Wisconsin International Law Journal* (2011), 233–59; Kathryn Hendley, "Mobilizing Law in Contemporary Russia: The Evolution of Disputes Over Home Repair Projects," 58(4) *American Journal of Comparative Law* (2010), 631–73.

or somehow bringing dishonor onto one's family, which were mentioned by about 33 percent of this group.

I have elsewhere explored the factors that motivate Russians' use of the courts²⁶ albeit utilizing the Russian Longitudinal Monitoring Survey (RLMS) rather than the Levada survey.²⁷ My prior work argues that pragmatism consistently trumps ideology. It confounds the common wisdom that the widespread distrust of courts documented by public opinion polls tends to discourage the use of courts. Instead, Russians view the courts as a viable, if distasteful, option and turn to the courts when their problems resist informal resolution. The Levada survey confirms this finding.

In contrast to the RLMS, which is a broad-based survey aimed at understanding general demographic trends, which included only a few law-related questions, the Levada survey concentrates exclusively on law and courts. While this narrower focus means that some of the explanatory variables that proved useful are lacking, such as political orientation and support for democratic ideals,²⁸ it opens up a wide range of more subtle law-related explanations. The results of my analysis paint an intriguing, if somewhat inconsistent, picture of court users.

Using a dummy variable that isolates court users as my dependent variable, I used logistic regression to identify the factors associated with such behavior. The results, which are reported as odds ratios, are reported in Table 1. The most powerful predictor is the existence of a problem that could benefit from legal expertise. Those who admitted to a need for legal assistance (about 35 percent) were almost five times more likely to have gone to court than those who had no such needs. Along similar lines, given that under Russian law most divorces are available only through the courts, divorced respondents were over twice as likely to be users. These two variables document the important role of need in predicting use.²⁹

On the other hand, respondents' attitudes towards the courts were not relevant. To capture them, I used a question that asked respondents to assess the extent to which they believed that the courts were prepared to protect their

26 Kathryn Hendley, "The Puzzling Non-Consequences of Societal Distrust of Courts: Explaining the Use of Russian Courts," 56(3) *Cornell International Law Journal* (2012), 517–67.

27 For more on the RLMS, see "Russia Longitudinal Monitoring Survey of HSE," available at <<http://www.cpc.unc.edu/projects/rlms-hse>>.

28 Olson and Huth, *op.cit.* note 17, at 46 (found confidence in the government, as measured by trust in key state institutions, to be a powerful predictor of support for courts among the Utah residents they surveyed).

29 My analysis of court use based on the RLMS data likewise found that need drove use. See Hendley, *op.cit.* note 26, 534–35.

TABLE 1 *Logistic regression estimated odds ratios for use of courts.*

Variables	Use of Courts
Women	0.727*** (0.0803)
Divorced	1.986*** (0.292)
University graduate	0.940 (0.116)
Village resident	0.890 (0.107)
Poor	1.405* (0.261)
Employed	0.917 (0.121)
Confidence in the courts	0.978 (0.0349)
Existence of problem that could benefit from legal assistance	4.830*** (0.527)
Impossible to live in Russia without violating the law	1.365*** (0.149)
Open to possibility of suing state officials	1.562*** (0.169)
Knowledge of JP & district courts	1.167*** (0.0472)
Evenhandedness of courts	1.214* (0.139)
Geographic access to courts	0.704*** (0.0907)
Stalin generation (born before 1940)	4.562*** (1.250)
Khrushchev generation (born 1941–1950)	4.393*** (1.139)
Brezhnev generation (born 1951–1969)	3.677*** (0.866)
Gorbachev generation (born 1970–1976)	2.751*** (0.740)
Yeltsin generation (born 1977–1987)	2.458*** (0.607)

Variables	Use of Courts
Reference group: Putin generation (born after 1988)	
Constant	0.0664*** (0.0275)
Observations	1,968
pseudo r2	0.1576

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

interests, using a seven point scale.³⁰ This question captures respondents' belief in the capacity of the courts to mete out justice. As Table 1 shows, respondents' confidence in the courts was not statistically significant, documenting its lack of power as a predictor of use.³¹ It upends the premise that confidence and/or trust³² is a *sina qua non* for use. Relying on the low scores earned by courts in public opinion polling, particularly when compared to other institutions,³³ many social scientists assume that Russians avoid their courts.³⁴ This narrative

30 This question serves as the dependent variable for the analysis of confidence in the courts below.

31 My analysis of Russians' court use based on the RLMS data came to an even stronger conclusion. I found that those who had high levels of trust in governmental institutions (including courts) were over 25 percent less likely to use the courts. See Hendley, *op.cit.* note 26, at 560.

32 Whether confidence can be disentangled from trust is unclear. Some studies treat the two concepts as virtually interchangeable. Benesh and Howell, *op.cit.* note 8. Others treat them as distinct phenomena, arguing that trust captures citizens' emotional view of the courts, whereas confidence is a more rational calculation of the capacity of the courts to deliver justice. The high correlation rates of 0.5 or more between the various measures of trust and confidence suggest that the Levada respondents saw them as indistinguishable. See George W. Dougherty, Stefanie A. Lindquist, and Mark D. Bradbury, "Evaluating Performance in State Judicial Institutions: Trust and Confidence in the Georgia Judiciary," 38(3) *State and Local Government Review* (2006), 176–190, at 177–78.

33 For example, in a 2014 poll conducted by the Levada Center, only 26 percent of those surveyed expressed complete trust in the courts, as compared to 79 percent for the president and 54 percent for the church. Levada Center, "Doverie institutam vlasti" (13 November 2014), available at <<https://www.levada.ru/2014/11/13/doverie-institutam-vlasti-3/>>.

34 See, e.g., Bill Browder, *Red Notice: A True Story of High Finance, Murder, and One Man's Fight for Justice* (Simon and Schuster, New York, 2015); Dawisha, *op.cit.* note 15; Hay and

would make more sense if Russians were turning to the courts out of principle, but they are not. Instead, need drives use. As a result, trust and/or confidence play a more peripheral role.

But knowledge does matter. It makes sense that respondents who report greater knowledge of the JP courts and the courts of general jurisdiction (the entry points to the judicial system for ordinary Russians) are more likely to be users. This is consistent with Marc Galanter's insight that "haves" tend to be more successful in courts than "have nots" if we remember that a key feature of "haves" is their knowledge of the formal rules and informal customs of the courts gleaned through practical experience.³⁵ This assurance spills over into their openness to suing state officials, an endeavor that many Russians view as a fools' errand due to the heavy hand of the Kremlin.³⁶ The odds of being willing to challenge state officials in court were 50 percent greater for users. Perhaps having seen the inside of a courtroom, users are less daunted.

The Levada survey includes a battery of questions about how Russian courts treat litigants with the goal of assessing whether respondents saw any of the issues raised as constraining the impartiality and fairness of courts. These include many of the qualities typically associated with procedural justice, such as access to justice, judicial competence, evenhandedness, judicial courtesy, corruption, and delays. Scholars who have compared users and nonusers elsewhere have found that these sorts of indicators tend to drive use.³⁷ The story

Shleifer, *op.cit.* note 15; Bernard Black and Reinier Kraakman, "A Self-Enforcing Model of Corporate Law," 109(8) *Harvard Law Review* (1996), 1911–82.

35 Galanter developed his theory in the U.S. context. Marc Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," 9(1) *Law & Society Review* (1974), 95–160. Its applicability to countries like Russia with a very different institutional structure and historical legacy is uneven. Although helpful in explaining what prompts ordinary Russians to use the courts, an earlier study focusing on the behavior of Russian industrial enterprises as they sought to collect overdue debts from their customers confounded Galanter's predictions. Firms with prior experience and knowledge of the courts were "not particularly aggressive or innovative in their use of legal strategies," despite the fact that most were "struggling for their very survival." Kathryn Hendley, Peter Murrell, and Randi Ryterman, "Do Repeat Players Behave Differently in Russia? Contractual and Litigation Behavior of Russian Enterprises," 33(4) *Law & Society Review* (1999), 833–67.

36 Empirical research disproves this common wisdom, documenting that Russians are not at a disadvantage when suing the state in non-politicized cases. See Alexei Trochev, "Suing Russia at Home," 59(5) *Problems of Post-Communism* (2012), 18–34; Yet when interviewing Russians, they are typically more apprehensive about turning to the courts for problems that involve the state. Kathryn Hendley, "Suing the State in Russia," 18(2) *Post-Soviet Affairs* (2002), 122–47; Hendley, *op.cit.* note 26.

37 E.g., Benesh and Howell, *op.cit.* note 8.

emerging from the Levada data is mixed. Most of these variables were not statistically significant, and so have not been included in Table 1. Two emerged as good predictors: access to justice and evenhandedness. It makes sense that those who see the courts as inaccessible and geographically remote are less likely to use them. The fact that respondents who live in Moscow were less likely to use the courts may indicate that when answering this question about access, they were driven by fears of mastering the procedural rules rather than the proximity of courts. After all, courts are relatively easy to find and access via public transportation in Moscow as compared to smaller towns and rural areas where courts can be far flung. The fact that relatively few (14 percent) users had to travel from their hometowns for court hearings blunted this factor. Logic suggests that concerns over unequal treatment in court, specifically preferential treatment for state officials, would shy away from bringing their problems to court. Yet the odds of being a user are over 20 percent greater for those who fear this sort of partiality. When we take this together with the willingness to sue officials, a picture of users as somewhat fearless starts to take shape.

Yet this optimism deserts them when asked whether it is possible to live in Russia without violating the law. Doubters (52 percent) outnumber believers (48 percent).³⁸ The odds of answering that question in the negative are over 35 percent greater for users. This combination of openness to going to court and profound skepticism about the power of law seems incongruous, but it captures what I have found when interviewing Russians (which is confirmed in Table 1).³⁹ Their attitudes towards law and courts tend to be fundamentally

38 The remaining 7 percent did not commit to either position. The memoir literature provides examples of the thinking underlying the pessimistic view of law. Peter Pomerantsev, *Nothing is True and Everything is Possible: The Surreal Heart of the New Russia* (Public Affairs, New York, 2014), 48. Pomerantsev shares a conversation with a friend about tax law. His friend, Ivan, tells of how managers bring out a fake set of books whenever the tax police show up. Although the police realize the ersatz nature of the books, they go along. "It was a ritual played out every day in every medium-sized businesses, every restaurant, modeling agency, and PR firm across the country. ... I once asked Ivan whether all this was necessary. Couldn't he just pay his taxes? If he did that, he said, there would be no profit at all. No entrepreneurs paid their taxes in full; it wouldn't occur to them. It wasn't about morality; Ivan was a religious man and paid a tithe in voluntary charity. But no one thought taxes would ever be spent on schools or roads. And the tax police were much happier taking bribes than going to the trouble of stealing money that had been paid in the orthodox fashion." See also David Greene, *Midnight in Siberia: A Train Journey into the Heart of Russia* (W.W. Norton, New York, 2014), 227; Gregory Feifer, *Russians: The People Behind the Power* (Twelve, New York, 2014), 286–89; Ben Judah, *Fragile Empire: How Russia Fell In and Out of Love with Vladimir Putin* (New Haven, Yale University Press, 2013).

39 Hendley, *op.cit.* note 26.

inconsistent. They bristle at the idea that law could ever constrain power, which is not surprising given the tortured legacy of law inherited from the Soviet era. At the same time, they see the courts as a way to resolve problems. Courts are almost never the first or even the second option tried. They go to court grudgingly as a last resort.⁴⁰

With the exception of marital status (discussed above), the demographic characteristics of respondents do not have much predictive power.⁴¹ These factors account for only about 3 percent of the variation in court use. Nonetheless, the role of gender is worth noting. Much as I found in my analysis of the RLMS data, men emerge as more enthusiastic litigators.⁴² The odds for women using the courts are almost 30 percent less than for men among the Levada respondents.⁴³ The trend as to age is also consistent with my prior work, which showed that the propensity to use the courts increased with age. I divided the sample into generational cohorts, labeling them for the political leader in power when they came of age. I used the youngest group as my reference category. As Table 1 indicates, the odds ratios increase with each successive generation, revealing that the propensity to use the courts increases with age.⁴⁴ This mirrors trends elsewhere and arguably makes sense in the Russian context because pensioners have more time to pursue lawsuits. On the other hand, we might expect those who lived through the blatantly instrumental use of courts to achieve political goals under Stalin to be categorically opposed to exposing themselves to such treatment. The continuation of politicized justice, admittedly to a lesser extent, in later eras would arguably have the same effect. Yet much like the RLMS data, the Levada data tell a different story. As I have argued elsewhere, the impact of Soviet socialization, which lauded the capacity of law to preserve order, somehow blunted the harsher reality.⁴⁵

40 In her ethnography of an inner-city neighborhood, Merry comes to much the same conclusion about Americans. Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working Class Americans* (University of Chicago Press, Chicago, 1990).

41 The pseudo r^2 for a model that includes only the demographic indicators is 0.0328.

42 See Hendley, *op.cit.* note 26, 531.

43 Women are, by contrast, more likely to be law abiding, despite being more amenable to legal nihilism, men turn to the courts in greater numbers, providing further confirmation of the disconnect between attitudes and behavior. See Kathryn Hendley, "Who Are the Legal Nihilists in Russia?", 28(2) *Post-Soviet Affairs* (2012), 149–86.

44 For the Levada respondents, the effect is linear, whereas for the RLMS respondents, it was curvilinear, with the highest use reported among the youngest and oldest cohorts. See Hendley, *op.cit.* note 26, 530–31.

45 Hendley, *op.cit.* note 43, 171–79.

4 Differences between Users and Nonusers

The regression analysis provides some insight into what qualities are associated with users, and helps differentiate users from nonusers. To probe more deeply, I explored the responses of these two groups to a series of key variables, focusing on the difference between the mean responses. Table 2 reports the results.

The Levada survey included several questions that asked about respondents' confidence and trust in the courts. Regardless of how the question was asked, the pattern is remarkably consistent.⁴⁶ Nonusers are more open (or perhaps more forgiving) when it comes to the courts. For example, for the scaled variable used in the earlier regression, which asked respondents to assess the extent to which they believed the courts were prepared to protect their interests, the mean for nonusers (3.82) is higher than for users (3.57), and the difference is statistically significant.⁴⁷ The result is the same when the question is reframed in less personal terms, asking whether ordinary Russian citizens can count on the courts to handle their cases in a fair and impartial manner. For both, higher scores reflect greater confidence, documenting that nonusers are more likely to believe that citizens can count on the courts to handle their cases in a fair and impartial manner. In an even more antiseptic version of the question in which the institutional capacity of the courts is stressed, nonusers again emerge as having a higher opinion of the work of the courts.

Respondents' levels of trust in courts were sought in two different ways. They were first asked a question about their trust in the courts in general. Later, they were asked more specifically about their level of trust in the various types of courts. I created a scale for the two courts that serve as the entry portals for ordinary cases, namely the JP courts and the courts of general jurisdiction.⁴⁸ For both, the mean score for nonusers exceeded that for users, but the statistical significance was greater for the former than for the latter. Those who expressed distrust were asked why. Over 40 percent of users pointed to their own experience, saying that either they or someone close to them was unable to get a fair trial. While this certainly fits the stereotype of Russian justice, it contradicts

46 The correlation rates among these various measures of trust and confidence is over 0.5. Because each question had a different set of responses, this high correlation rate cannot be dismissed as an example of rote responses to a battery of similar questions. In addition, the three questions were not asked in succession.

47 This variable serves as the dependent variable for the comparative analysis of users' and nonusers' confidence in the courts in the following section.

48 Factor analysis confirmed my instinct to isolate these two courts.

TABLE 2 *Comparison of means for users and nonusers for court-related variables (higher scores indicate positive responses to the questions).*

Variable	Index	Mean for Users	Mean for Nonusers	p-value test
Confidence				
Are courts prepared to protect your interests?	1–7	3.57	3.82	0.0001
Can citizens count on courts to handle cases fairly & impartially?	1–4	2.31	2.44	0
How do you evaluate the work of the courts?	1–4	2.17	2.37	0
Trust				
Do you trust the courts?	1–4	2.38	2.59	0
Do you trust the JP courts & the courts of general jurisdiction?	0–10	5.71	5.91	0.09
Is it acceptable to use the courts to get rid of political dissidents?	1–4	3.02	2.89	0.0027
Procedural Justice				
Judges' attention to litigants	1–4	2.24	2.35	0.002
Lack of equal treatment of parties as an obstacle to use of courts	0–1	0.31	0.24	0.0004
Corruption as an obstacle to use of courts	0–1	0.59	0.54	0.0067
Judicial Independence				
Independence of judges	1–4	2.22	2.29	0.0543
How independent are the courts?	1–4	2.22	2.31	0.0114
Should courts be independent from the executive branch (1) or should they be controlled by the executive branch (2)?	1–2	1.33	1.35	0.3336
Knowledge				
Level of general knowledge about courts?	1–4	2.4	2.1	0
Level of knowledge about JP courts & courts of general jurisdiction?	0–8	6.06	5.53	0

Variable	Index	Mean for Users	Mean for Nonusers	p-value test
Interest				
Level of interest in courts?	1–4	2.57	2.2	0
Level of interest in high-profile economic cases?	1–4	2.4	2.1	0
Level of interest in high-profile political cases?	1–4	2.38	2.16	0
Level of interest in high-profile criminal cases?	1–4	2.51	2.24	0
Do you feel protected by law?	1–4	2.23	2.43	0

the generally positive marks users give when asked about their most recent experience. Well over two-thirds (71 percent) describe the judge's decision in their case as fair.⁴⁹ Yet a significant minority of this group (42 percent) said that they distrusted the courts and cited their own experience as a key reason. This illustrates the multilayered nature of Russians' attitudes.⁵⁰ For many, their satisfaction with the outcome of their case cannot overcome doubts sown by larger issues, such as their perceptions of corruption and judges' lack of independence. Interestingly, the number of respondents who cited these reasons was approximately the same among users and nonusers.

These results confirm that the trust and/or confidence is not a prerequisite for the use of the courts in Russia. After all, the survey did not (and probably could not) assess the enthusiasm with which respondents went to court. As I noted earlier, many court users may have had no other way out. For those for whom court use was discretionary, it is entirely possible and even likely that they turned to the courts reluctantly; that court represented a last ditch effort to solve a problem. It follows that court users self-identify as more knowledgeable and interested in the courts. Indeed, the very lack of knowledge and interest among nonusers may, in a perverse way, contribute to their trust and confidence in the courts. Table 2 documents users' greater interest in information

49 This makes the higher level of trust in judges among nonusers as compared to users puzzling.

50 See *generally* Kathryn Hendley, "Resisting Multiple Narratives of Law in Transition Countries: Russia and Beyond," 40(2) *Law & Social Inquiry* (2015), 531–52.

about the courts, as well as the strong statistical significance of the difference between the means for the two groups. When those who professed a lack of interest were asked why, many (47 percent) said that the work of the courts were too remote from their everyday lives. Court users are also more likely to follow the twists and turns of high profile cases. The results of such cases tend to be driven more by telephone law than by the law on the books. Users' focus on them may have the effect of corroding their respect for the courts.

Reflecting users' more pragmatic or, perhaps, cynical view of the courts is their higher comfort level with the use of the courts to serve political ends. Respondents were asked whether it was acceptable to use the courts "for political purposes in order to get rid of political dissidents or for the persecution of political dissidents." As Table 2 shows, the mean response for users is higher than for nonusers, and the difference is statistically significant. This bolsters my argument that users see the courts not as an arena for defending high-minded political ideals, but as a rough-and-tumble place to impose one's will on another.⁵¹

As we turn our attention to the nuts and bolts of judicial hearings, the results are somewhat confounding. I had expected that users' generally upbeat assessments of their experiences would inform their views; that they would be more positive than nonusers. But the results are just the opposite. For example, when asked to assess judges' attention to litigants, an intriguing measure that combines their willingness to listen to both parties carefully and overall courtesy, the mean response for nonusers is higher than for users. On this key element of procedural justice, nonusers outpace users. I returned to the battery of questions about perceived obstacles to the effective functioning of the courts (also utilized in the earlier regression) for additional proxies. For most (including timeliness, judicial competence, and access to the courts), the difference between the means for the two groups was not significant. Two variables stood out. The first was a concern over judges' evenhanded treatment of the parties (which stood out as a predictor of use in the regression analysis). The second focused on judicial corruption. The pattern is the same for both. The consistently higher mean scores for users reveal a greater anxiety about the quotidian operations of courts, despite the fact that most of them were quite satisfied with how their own cases were handled. Because these questions honed in on judges' behavior, I wondered if there might be a disconnect between users'

51 Although I suspected that acquiescence to political use of the court would be correlated with support for control of the courts by the executive branch, this relationship was not present.

view of the judge and of the decision in their cases. But the results were similar. About 68 percent felt that the court personnel (including the judge) had done everything required in their case, as compared to 71 percent who viewed their decisions as fair.⁵² Of course, even if users are content with how their cases were handled and the outcome, they may still be troubled by the process itself.⁵³ Nonusers, by contrast, not having had to watch the judicial sausage being made, may be less judgmental.

Users' gloominess regarding courts led me to expect that they would be notably less forgiving as to judicial independence. The Levada survey asked several questions on this critical issue, going at it from different directions. Respondents were asked to assess the dependence of the judiciary and, later, to assess the independence of the courts. The first question was aimed at judges; the second at the courts as an institution. As Table 2 reveals, the means for users and nonusers were substantially the same for both questions. Respondents were also asked about the ideal relationship between the executive and judicial branches, *i.e.*, whether courts should be independent or controlled by the executive branch. Users' greater comfort with the use of courts to persecute political dissidents would seem to be consistent with support for courts kowtowing to the president. But again, users' views were indistinguishable from nonusers. Interestingly, when asked what state actor should take responsibility for protecting citizens' rights, over 70 percent of both groups chose the president.⁵⁴ In response to the more concrete query about what institution is actually capable of protecting rights, a solid majority of both groups picked the president. The Levada respondents are not naive; they realize that this will result in extralegal pressure on judges from that quarter. Over 40 percent of both groups identified "representatives of power" (*predstaviteli vlasti*), a euphemism for the executive branch, as the most likely source of such

52 These two variables were highly correlated (0.597).

53 This might suggest that users would be loathe to return to the courts. When asked about this, only 13 percent of users were categorically opposed. The remainder responded either that they would go to court whenever necessary (47 percent) or that they would go only as a last resort (40 percent). Users also expressed a greater openness to serving as jurors than did nonusers.

54 The fact that users were more likely (46 percent) to look to courts to protect rights than nonusers (39 percent) provides a glimmer of support for the (mostly unfulfilled) hypothesis that their positive experiences in court would reflect itself in their overall views. The fact that the difference is not statistically significant dims hope. Respondents could identify up to three institutions, explaining why the percentages exceed 100.

pressure.⁵⁵ The lack of differentiation between users and nonusers on these various measures of judicial independence speaks to the consistency of opinion within Russian society.

Cynicism likewise infects users' view of law. Having taken their problem to court might, at first glance, seem to be a strong indicator of users' faith in law. When asked whether they feel protected by law, users turn out to be less confident in the shielding power of law than nonusers. The difference in the mean values for their responses is statistically significant. The reasons for the lack of confidence are similar for both groups. The most commonly cited cause (by over 45 percent of both groups) is a sense that too many groups in Russian society see themselves to be above the law. Close behind (with over 35 percent of both groups) is a concern over the manipulability of law to serve the interests of the powerful. Along similar lines, as the earlier regression analysis predicted, when asked whether it is possible to live in Russia without violating the law, users emerge as doubters, while nonusers are more sanguine. Table 3 sets forth the responses for users and nonusers as well as the result of a standard difference of proportions test, which documents that the differences between the two groups is statistically significant.

Notwithstanding their common distaste for law, fueled by perceptions of its troubling particularistic nature, the comparison of users and nonusers reconfirms their different attitudes towards courts. Despite (or maybe because of)

TABLE 3 *Difference of proportions test for whether it is possible to live in Russia without violating the law – Comparison of users and nonusers.*

Is it possible to live in Russia without violating the law?	Users	Nonusers	Sig. Level*
Yes	41%	52.6%	0.0003
No	59%	47.4%	0.0001

* Level at which the difference is statistically significant.

55 Nor were concerns limited to the executive branch. Other sources of extralegal pressure on judges cited by more than a quarter of both groups include "criminal structures" (a euphemism for the mafia), big business, people who bribe judges (using money or services), and court chairmen. The percentage identifying court chairmen is higher among users (32 percent) than among nonusers (28 percent), reflecting their deeper knowledge of how the courts operate. For more on the role of court chairman, see *also* Ledeneva, *op.cit.* note 1.

knowing more about the ins and outs of how the courts operate, users are more skeptical of being able to get a fair shake. While this undoubtedly troubles them in their own cases, they are less troubled than are nonusers when it happens to the regime's political opponents. Once again, we see evidence of multiple, sometimes, contradictory narratives regarding the legal system.

5 Confidence in the Courts: Users vs. Nonusers

What impact does the use or nonuse of courts have on Russians' confidence in their courts? To explore this question, I ran parallel linear regressions for users and nonusers using the now familiar question that asked respondents to evaluate the extent to which they believe that the courts are prepared to protect their interests along a seven-point scale as the dependent variable. Higher scores indicate more confidence. The mean response for the entire population was 3.72. For users the mean was 3.57, and for nonusers it was 3.82. The fact that the difference in the means is statistically significant (see Table 2) suggests that, as a group, nonusers place more confidence in the courts than users. The results of the regression analysis are set forth in Table 4. The population of users is the 638 respondents who participated in a case that proceeded to judgment.

For my dependent variable, I deliberately chose a question that forced respondents to think about the courts in a deeply personal way. Other questions asked them to appraise the work of the courts in a more clinical fashion. Such questions have been used by some scholars to assess support for courts in the U.S.⁵⁶ But in the Russian context, asking about courts in the abstract can bring up images of politicized show trials in which law takes a back seat to politics. The quotidian approach of question I used for the dependent variable requires respondents to predict the court's ability to handle their problems.

Running separate and parallel regressions allowed me to explore and compare the sources of this confidence for users and nonusers. My analysis of the possible sources concentrated on three relationships. The role of knowledge about the courts and need for their services was the first. The second was the interplay between respondents' attitudes towards law and their confidence in the courts. The final issue is the extent to which respondents' faith in the procedural protections that courts are supposed to offer predicts their confidence (as many U.S.-based studies have shown). For users, I was keen to compare the

56 Olson and Huff, *op.cit.* note 17, 44.

TABLE 4 *OLS regression model for confidence in the courts comparing users and nonusers.*

Variables	Nonusers	Users
Year of birth	0.00361 (0.00252)	0.00982** (0.00445)
Women	0.104 (0.0888)	-0.0312 (0.128)
Divorced	0.106 (0.134)	-0.0462 (0.140)
University graduate	-0.00170 (0.100)	0.135 (0.130)
Residents of Moscow	-0.0165 (0.153)	-0.623*** (0.234)
Poor	-0.0134 (0.159)	-0.594*** (0.208)
Employed	-0.186** (0.0902)	-0.287** (0.138)
Existence of problem that could benefit from legal assistance	0.415*** (0.0994)	-0.152 (0.123)
Impossible to live in Russia without violating the law	0.556*** (0.0852)	-0.548*** (0.120)
Open to possibility of suing state officials	0.277*** (0.0879)	0.226* (0.118)
High level of general knowledge about courts	0.314*** (0.119)	0.0856 (0.134)
Low assessment of judicial courtesy	0.622*** (0.131)	
Evenhandedness of courts	-0.0909 (0.0928)	
Geographic access to courts	0.0691 (0.0975)	
Law does not protect citizens' interests	1.084*** (0.119)	-1.427*** (0.141)
Lost case		-0.548*** (0.138)
High assessment of procedural justice		0.664*** (0.145)

Variables	Nonusers	Users
Constant	-2.930 (4.932)	-14.92* (8.718)
Observations	1,088	543
R-squared	0.225	0.332

Standard errors in parentheses

*** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$.

power of these procedural justice measures with their elation or disappointment at the outcome of their case.

Before turning to these relationships, the relative lack of importance of respondents' demographic characteristics is worth noting. In an odd twist, having a job emerges as a disincentive for confidence among both groups. Precisely why is obscure and surprising. In my prior work, I have found that feelings of powerlessness tended to be associated with disdain for law and courts.⁵⁷ The unemployed, by definition, lack power and control over their lives. Yet among the Levada respondents, this group has more confidence in the courts than do their gainfully employed counterparts. For nonusers, this is the only control variable that is significant. The story is different for users. The fact that those who struggle to make ends meet (defined in Table 4 as poor) are less confident may reflect a broader sense of being put upon, which fits with my earlier findings. Public opinion polling shows that less well-off Russians are less willing to believe that millionaires could have accumulated their wealth legally.⁵⁸ This sort of paranoia fits with a lack of confidence in the courts. Also relevant for this group are age and location. Confidence increases with age, though there is no generational cohort effect as there was for use.⁵⁹ Muscovites, a group who tend to look askance at all state institutions, are more skeptical than their fellow countrymen from the hinterlands.

57 Hendley, *op.cit.* note 26, 535; Hendley, *op.cit.* note 43, 164–66.

58 In a July 2015 nationally representative survey, conducted by the Levada Center, 86 percent of poor respondents said that millions could not be earned legally in Russia, as compared to 73 percent of middle-class respondents and 57 percent of richer respondents. See Levada Center, "Neravenstvo i dokhody," (14 July 2015), available at <<http://www.levada.ru/14-07-2015/neravenstvo-i-dokhody>>.

59 For each increase in the year of birth, there is an upward movement in the dependent variable of 0.128. When included in the regression, none of the dummy variables that capture generational cohorts was statistically significant.

Also worth noting are the factors that fell flat. Confirming the relative unimportance of politics, none of the many variables that captured various aspects of respondents' attitudes toward the relationship between the courts and other branches of government were relevant. These included questions delving into judicial independence as well as the question about whether courts should be used to pursue political vendettas (see Table 2).

Knowledge and Need. Knowledge about the courts was strongly associated with use (see Table 1). Logic suggests that knowledge could lead to greater confidence. The fact that users reported higher levels of knowledge than nonusers lends credence to this idea. Of course, untangling knowledge and use is difficult; their greater knowledge may stem from their use. On the other hand, users' self-reported levels of knowledge about the courts play no role in their confidence in the courts (see Table 4).⁶⁰ This reminds us that knowing more about an institution does not always produce greater respect; it may reveal unpleasant truths. Or, as in the case of the Levada respondents, it may give rise to ambivalence.

Like knowledge, need was a robust predictor of court use (see Table 1). But also like knowledge, it turns out that need, measured in terms of having recently confronted a serious legal problem, does not enhance confidence among users. This suggests that users may have invoked the court reluctantly. Even so, most users are open to turning to the courts in the future, though their enthusiasm level varies. A plurality (44 percent) confirmed that they would go to court whenever necessary, while 38 percent regarded court as a last resort to be used only if all other options failed. Only 12 percent categorically ruled out future use of the courts.⁶¹

For nonusers, however, having recently faced a legal problem substantially decreases the odds of confidence. This makes sense. After all, had these respondents been imbued with confidence, they would have pursued the matter to court.

Confidence in the Law. On the other hand, respondents' confidence in the law turns out to be a powerful predictor of their confidence in the courts. As I noted earlier, respondents were asked if they felt protected by law. They were

60 Relying on the finding that attentiveness has a strong positive association with support for the U.S. Supreme Court, Olson and Huth, hypothesized the same connection would exist at the state level. But they found that attentiveness mattered little to the Utah court users they studied. Knowledge of the court was similarly irrelevant. Olson and Huth, *op.cit.* note 17, 47–8. In my analysis, I also explored attentiveness as a possible source of confidence, but found that it had no predictive power when it came to the Levada users. See also Dougherty, Lindquist, and Bradbury, *op.cit.* note 32.

61 The remaining six percent took no position.

fairly evenly divided between those who felt protected (45 percent) and those who did not (55 percent), though doubters dominated.⁶² I created a dummy variable to capture the 17 percent of those surveyed who were vehement about the impotence of law. As Table 4 shows, among users, the odds of having confidence in courts is significantly lower for this group than for those who feel shielded by law. By contrast, for nonusers, doubts about the power of law were positively associated with confidence in the courts.

Whether respondents believe that it is possible to live in Russia without violating the law provides a second measure of confidence in the law.⁶³ The same pattern emerges. Users who have this pessimistic view are more likely to lack confidence in the courts whereas nonusers with such views are more likely to believe in the courts. Because both these questions are framed in the negative, a simpler restatement of the finding is useful. The upshot is that, for users, confidence in the law is strongly associated with confidence in the courts. And for nonusers, the flip is true: a lack of belief in law is one of the keys to confidence in the courts.

At first glance, these results seem to make sense for users. After all, law is the lifeblood of the courts (or is supposed to be). Confidence in the law would seem to be a prerequisite for using the courts. Yet the analysis of what prompts Russians to use the courts shows just the opposite. Those who doubt the protective power of law lack confidence, who believe that coping with daily life in Russia makes violating the law inevitable, are significantly more likely to have gone to court (see Table 1).⁶⁴ The disconnect between confidence in the law and a willingness to mobilize it may have its roots in the utilitarian view of courts. Russians go to court not to tilt at windmills, but to solve concrete problems. Court is almost always a last resort. This may help explain why positive views of law are unrelated to behavior. This disconnect between attitudes and behavior is consistent with the earlier finding that respondents' views of the

62 Data from other surveys conducted by the Levada show that doubt has receded over time. In 2006, 68 percent of those surveyed were dubious, as compared to 55 percent in the 2010 survey I am analyzing. In a 2015 survey, the percentage of doubters dropped to 47. Levada Center, "Zakonodatel'naia zashchita," (13 April 2015), available at <<http://www.levada.ru/13-04-2015/zakonodatelnaya-zashchita>>.

63 The sample was more evenly divided on this question. About 48 percent believed it is possible to live in Russia and be law abiding, while the remainder (52 percent) were doubters.

64 Preliminary regressions, which included the other measure of confidence in law (whether respondents feel protected by law), revealed the same pattern. Those who did not feel protected were significantly more likely to use the courts. This variable was left out of the model because its statistical significance waned as other explanatory variables were included.

courts were irrelevant when it came to predicting behavior. On the other hand, the link between confidence in law and courts suggests that attitudes cannot be entirely disregarded.

Procedural Justice. The scholarship on confidence in courts in the U.S. consistently emphasizes the treatment of litigants as critical.⁶⁵ For both users and nonusers, measures that capture the day-to-day realities of the judicial process, such as timely results, evenhandedness, and judicial courtesy are powerful predictors of confidence.⁶⁶ They trump demographic characteristics, including race.⁶⁷ In an intriguing twist, these factors turn out to be more important than satisfaction with the outcome of the case.⁶⁸ Whether these patterns would be replicated in the Russian case was unclear. In the U.S., citizens tend to idealize their justice system and are prepared to write off cases in which the courts get it wrong as exceptions. Russian attitudes are almost the mirror image. They approach their courts with trepidation, and are likely to view a patently fair verdict as an exception. As Marina Kurkchian has cogently argued, Russia is dominated by the “negative myth of the rule of law.”⁶⁹

The analysis of the two populations diverges with the inclusion of procedural justice variables. Users’ responses are grounded in their own experiences, which tend to be colored by their treatment by judges and courthouse staff and by the success of their lawsuits. By contrast, the source of nonusers’ responses is more opaque. It may be based on what they have heard from friends

65 This literature also operationalizes the respondents’ level of control of the case, distinguishing between those who were parties to cases and those who were jurors. See *e.g.*, Benesh and Howell, *op.cit.* note 8; Tyler, *op.cit.* note 17; John Thibault and Laurens Walker, *Procedural Justice: A Psychological Analysis* (L. Erlbaum Associates, Hillsdale, N.J., 1975). Benesh and Howell found that “those with less stake in the decision and more control over the outcome are more confident in Louisiana courts than are those with high stakes in the decision and low control over the outcome,” *op.cit.* note 8, at 212. All of the court users among the Levada respondents had been parties to their cases, eliminating any variation in their stakes. Jury trials in Russia are a post-Soviet phenomenon and are limited to serious criminal cases. Stephen C. Thaman, “The Nullification of the Russian Jury: Lessons for Jury-Inspired Reform in Eurasia and Beyond,” 40(2) *Cornell International Law Journal* (2007), 355–428. In my dataset, only six of the users had served as a juror.

66 *E.g.*, Kritzer and Voelker, *op.cit.* note 3; Olson and Huth, *op.cit.* note 17; Benesh and Howell, *op.cit.* note 8, 82; *Cf.*, Dougherty, et al. *op.cit.* note 32, 187.

67 Darlene Walker, “Citizen Contact and Legal System Support,” 58(1) *Social Science Quarterly* (1977), 3–14, at 11–12.

68 Benesh and Howell, *op.cit.* note 8, 210.

69 Marina Kurkchian, “The Illegitimacy of Law in Post-Soviet Societies”, in Denis J. Galligan and Marina Kurkchian (eds.), *Law and Informal Practices: The Post-Communist Experience* (Oxford University Press, New York, 2003), 25–47, at 34.

and family about their lawsuits or it may be driven by what they have learned about courtroom practices from the media (both fact-based and fictionalized stories).

Measuring Procedural Justice for Users. I used different variables to capture users' and nonusers' views on procedural justice. The Levada survey included a section that queried users about their experiences. One set of questions sought out their satisfaction with work of judges and courthouse personnel as to ten aspects of the process. Respondents were asked to indicate their level of satisfaction on a four-point scale, ranging from completely unsatisfied to completely satisfied. The means for each of these variables hover around three (see Table 5), indicating a sense of contentment that belies the common wisdom. I combined these ten variables into a single scale of users' assessment of the presence or absence of procedural justice in their cases.⁷⁰ Scores ranged from 1 to 38, with a mean of 21.3. A few words of explanation about each of them provide useful background on how cases proceed in Russia.

The first two questions asked about pretrial issues. Respondents were first asked about the procedure for preparing the complaint. Initiating a lawsuit in Russia is simpler than in the U.S. As a civil law country where judicial

TABLE 5 *Mean scores for variables measuring users' satisfaction with various elements of procedural justice (scale from 1 to 4, with higher scores reflecting greater satisfaction).*

Satisfaction with ...	Mean Response
the procedure for preparing a complaint	3.05
the procedure for filing a complaint	3.06
ensuring both parties had equal opportunities to present arguments, provide testimony, and make motions	2.87
ensuring the objectivity and lack of bias of the judge (adversarialism)	2.79
the opportunity to review the case file	2.94
the accuracy of the <i>protokol</i> y	2.97
the substance of the decision (based on law)	2.83
the timing of the receipt of the decision	3.06
the timing of hearings and the decision (avoid delays)	2.83
the enforcement of the decision	2.82

70 Factor analysis confirmed the wisdom of creating this scale ($\alpha=0.949$).

precedent plays a relatively minor role, complaints do not require elaborate citations to prior cases.⁷¹ Yet the uninitiated and unrepresented can find the requirements confusing. Litigants often turn to the websites of courts to find form documents and then fill in the blanks with the particulars of their case.⁷² Alternatively, others seek assistance from court clerks and secretaries. Some go directly to judges for help during their “office hours” (*priemnye chasy*), which are open to all.⁷³ Respondents were then asked about their satisfaction with the filing procedure. These rules, which can be found in the relevant procedural code,⁷⁴ are laid out in simpler language on the court websites. As a rule, for the JP courts and the courts of general jurisdiction, complaints can either be filed in person or by mail.⁷⁵

An additional five questions addressed various aspects of the hearings. Two of the questions focused on evenhandedness. Respondents were first whether both parties were given equal opportunities to present their arguments. This was followed by a related question about their level of satisfaction with the judge's objectivity. This latter question was framed in terms of “ensuring

71 On the changing role of precedent in the Russian legal system, see William Pomeranz and Max Grutbrod, “The Push for Precedent in Russia’s Judicial System,” 37(1) *Review of Central and East European Law* (2012), 447–78. For background on the differences between common law and civil law systems, see John Henry Merryman and Rogelio Perez-Perdomo, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America* (Stanford University Press, Stanford, CA, 3rd ed., 2007).

72 At the urging of the European Court of Human Rights, a law was passed requiring all Russian courts to maintain websites. Federal’nyi zakon ot 22 dekabria 2008 g. No. 262-FZ, “Ob obespechenii dostupa k informatsii o deiatel’nosti sudov v Rossiiskoi Federatsii,” *Rossiiskaia gazeta* (26 December 2008), available at <<http://www.rg.ru/2008/12/26/sud-internet-dok.html>>. Many courts have form documents on their sites, for example, the portal to the JP courts for Moscow has over 30 different forms. See, “Tipovye formy zaiavlenii,” available at <<http://www.mos-sud.ru/services/forms/>>.

73 Popova criticized this practice as encouraging ex parte communication, and noted that Russian judges defend it as a way of discouraging baseless claims and seeking information about pending claims with the aim of uncovering the truth. Maria Popova, *Politicized Justice in Emerging Democracies: A Study of Courts in Russia and Ukraine* (Cambridge University Press, New York, 2012), 129.

74 Many court websites list these office hours. E.g., Izmailovskii raionnyi sud goroda Moskvy, <<http://izmailovsky.mos-gorsud.ru/about/grafik/>>.

75 Electronic filing is available in the *arbitrazh* courts that handle business disputes, where jurisdiction is generally limited to legal entities, but not in the courts to which the Levada respondents appealed. Elena Georgievna Avakian, “Opyt sozdaniia sistema elektronnoogo pravosudiia v arbitrazhnykh sudakh RF,” *Vestnik Vysshego Arbitrazhnogo Suda* (2011) No. 6, 68–74. For more on the *arbitrazh* courts, see also Hendley, *op.cit.* note 22.

adversarialism” (*obespechenie sostiazatel’nosti*), an odd choice by the survey’s drafters in light of the nascent and tentative nature of adversarialism in Russia. The 1993 Russian Constitution embraced adversarialism, using this somewhat arcane word – *sostiazatel’nost’* – which is not part of the everyday vocabulary of ordinary Russians.⁷⁶ It was subsequently threaded into the procedural codes. But my observation of hundreds of cases over the past two decades leaves me skeptical as to its meaningfulness. Harkening back to their civil law roots, most Russian judges keep tight control over the proceedings. Belying the shift of the burden of proof to the parties, judges often dictate the evidence that parties need to present and do the bulk of questioning in hearings.⁷⁷

Russia has nothing akin to U.S.-style discovery. Nor are verbatim transcripts of hearings prepared. Instead, a court secretary prepares a summary, known as a *protokol*. The quality of these *protokoly* vary widely. Court secretaries are woefully underpaid. Many have only a high-school education and, while some see their job as a stepping stone and seek to make a good impression, others take little pride in their work. With respect to both of these issues, litigants have the right to probe for more information. They are entitled to review the court’s file, though sometimes practical obstacles are put in their way. The times during which these materials are accessible can be made deliberately inconvenient or the premises for reviewing them can be inhospitable. When this happens, the goal of the court staff is rarely to block access, but rather to minimize the inconvenience to themselves by such demands. As to the *protokoly*, litigants are entitled to review them and, if inaccuracies are found, to request corrections. The Levada survey asked whether respondents had been given a satisfactory opportunity to review the materials of their cases and about the accuracy of the *protokoly*.

Respondents were also asked about delays. Keeping in mind the truism that justice delayed is justice denied, timeliness is a traditional element of procedural justice. Russian judges have less latitude than their U.S. counterparts on this score. The procedural codes incorporate clear deadlines for resolving cases, which tend to be expressed in terms of weeks or months.⁷⁸ Judges’ ability

76 Konstitutsiia Rossiiskoi Federatsii (Art. 123).

77 Hendley, “Are Russian Judges Still Soviet?”, 23(3) *Post-Soviet Affairs* (2007), 240–74, at 256–257.

78 *E.g.*, Chapter 9, *Grazhdanskii protsessual’nyi kodeks* [Civil Procedure Code], available at <<http://base.garant.ru/12128809/>>; Chapter 10, *Arbitrazhnyi protsessual’nyi kodeks* [*Arbitrazh* Procedure Code], available at <<http://base.garant.ru/12127526/>>; Chapter 17, *Ugolovnyi protsessual’nyi kodeks* [Criminal Procedure Code], available at <<http://base.garant.ru/12125178/>>.

to meet these deadlines are a key indicator of success.⁷⁹ As a result, violations are rare.⁸⁰ But time is relative. For someone desperate for help, waiting several weeks or months can feel like an eternity, which explains why two-thirds of those surveyed as part of the RLMS in 2012 identified delays as a significant constraint on the usability of Russian courts. As common wisdom would predict, users were more critical; three-fourths of them assailed delays as compared to two-thirds of nonusers. But the results were different for the Levada respondents, perhaps because they were asked about their own case. 69 percent of users were satisfied that their case was handled in a timely fashion.

The final three measures of procedural justice focused on the decision itself. Respondents were asked about delays in receiving a copy of the decision.⁸¹ More tellingly, they were asked about the substance of the decision, namely whether they found it to be well-grounded. The Russian word used – *obosnovannost'* – captures a sense that the judge was guided by law in writing the decision. Finally, they were asked to assess their satisfaction with the enforcement of the decision. Enforcement has been a perennial sore point for the Russian courts, at least according to the media.⁸² The Levada respondents were, however, more sanguine; over two-thirds were satisfied with the implementation of their decision.

Measuring Procedural Justice for Nonusers. The ten questions that were combined for the scale were grounded in experience. As a result, only users responded to them. To test nonusers' views on procedural justice, I returned to three questions discussed earlier. The first sought nonusers' assessment of judges' attention to litigants. This focus on judicial courtesy and openness captures an essential element of procedural justice. Of course, nonusers' responses are based on their perceptions of what goes on in court which, as Table 2

79 Hendley, *op.cit.* note 2, at 825.

80 Hendley, *op.cit.* note 20, at 346.

81 As a rule, Russian judges make their decisions immediately after the parties finish presenting their arguments. At that time, they present a summary that clarifies who won, known as the "resolution part" (*rezoljutiivnaia chast'*). They are given a grace period of five days to prepare a full decision on the merits (*'motivirovochnaia chast'*). In an effort to relieve the relentless pressure on the lower courts, the requirement to write full-fledged 'motivated' decisions was eliminated in 2013 for the simplest cases. See Federal'nyi zakon ot 4 marta 2013 No. 20-FZ, "O vnesenii izmenenii v otdel'nye zakonodatel'nye akty Rossiiskoi Federatsii", *Rossiiskaia Gazeta* (6 March 2013), available at <<http://www.rg.ru/2013/03/06/sudju-dok.html>>.

82 Kathryn Hendley, "Business Litigation in the Transition: A Portrait of Debt Collection in Russia", 38(2) *Law & Society Review* (2004), 305–47.

reminds us, produce more positive results than the real-life experiences of users.⁸³

I drew the second two variables from the set of questions about potential obstacles to the effective functioning of the courts. Fifteen potential constraints were listed.⁸⁴ Respondents were asked to tick off up to five that were of particular concern. As proxies for procedural justice, I used the two that proved relevant in predicting the use (or nonuse) of courts (see Table 1). Each focuses on a keystone element of procedural justice. The first is equal treatment of parties. More specifically respondents were asked if they feared that officials would be favored over ordinary citizens. The second highlighted problems with access to courts, asking whether they found courts to be too remote (*otdalennost'*).

Many of the remaining constraints touched on central components of procedural justice, including delays, corruption, political interference, and weak judicial ethics. Nonusers were troubled by a number of them. Over half of nonusers (54 percent) worried about the propensity of judges and other courthouse personnel to be swayed by bribes. Over 40 percent cited the dependence of judges on political and economic elites as a constraint on the ability of courts to deliver justice. And concerns over red tape (*volokita*), giving rise to unwarranted delays, were raised by more than a quarter of nonusers.⁸⁵ I explored the relevance of each of these to explaining nonusers' confidence in courts, but none turned out to be a meaningful predictor.

The Role of Procedural Justice for Users and Nonusers. A comparison of the results set forth in Table 4 documents that procedural justice concerns are more important to users than to nonusers. Neither of the proxies for procedural justice that I drew from the set of possible procedural concerns is a statistically significant predictor of confidence in courts for nonusers. But perceptions of judicial courtesy are not entirely irrelevant for nonusers. Those who give judges low marks for attentiveness emerge as significantly less likely to believe the courts are capable of protecting their interests.

Users, on the other hand, are deeply affected by procedural justice. To crystallize the importance of such concerns, I created a dummy variable that

83 This variable was not included in Table 1 because it is not a statistically significant predictor of court use.

84 I explored creating a scale for these 15 variables, but they were not sufficiently correlated, as factor analysis confirmed.

85 Given the pattern revealed in Table 2, it is not surprising to learn that the extent of concern was greater for users. Corruption was cited by 59 percent of users; judicial dependence by 49 percent; and red tape by 31 percent.

isolated respondents who were most content with their treatment by the courts, namely the top 20 percent of the scale built from the ten questions.⁸⁶ Table 4 shows that high levels of satisfaction with procedural justice is a robust predictor of users' confidence in the courts. This tends to confirm the larger hypothesis of the literature, namely a belief that one will be listened to and treated fairly that is grounded in actual experience will give rise to confidence.

The literature goes on to predict that for users, procedural justice concerns will trump the outcome of their cases. To test this, I included a dummy variable that captures those (84.5 percent) who won their court cases in the regression along with the proxy variable for procedural justice. Both are statistically significant, with coefficients that hover around 0.4. This similarity suggests that users are equally motivated by case outcome and their treatment by the judicial system. Whether they win or lose appears to be more an important factor in explaining their confidence in the courts for Russians than for Americans. The reasons why are unclear. Perhaps the more streamlined process in Russia – as measured in terms of time, money, and emotional energy – leaves users comparatively less appreciative of the value of kind and fair treatment, though they do not discount it. On the other hand, logic would predict that the widespread rumors of telephone law in Russia would make users more grateful if they were treated fairly. This assumes that Russians expect such extra-legal behavior by judges in all cases. But my conversations with Russians reveal that they are quick to distinguish their mundane disputes from show trials involving prominent businessmen and politicians, where the heavy hand of the Kremlin is obvious to all.⁸⁷ Their sophistication may blunt the predicted effect of politicized justice.

Confirming this is the surprising lack of relevance for the type of case. If users were motivated by fears of telephone law, then we would expect participation in criminal cases or other litigation that involved the state to emerge as a strong predictor of lack of confidence in courts. These are, after all, the categories in which judges are most likely to be pressured to decide according to the interests of political elites rather than to follow the law. Whether a user's case was civil or criminal played no role. Likewise, having sued or been sued by the state was not a significant predictor. Nor did involvement in a family dispute matter, even though the heavy emotional burden of these types of

86 When included in the regression in its original form, the scaled variable was also positive and statistically significant at the highest level. A one-unit increase in this scale resulted in an upward movement of 0.287 in users' assessment of confidence in the courts.

87 Kathryn Hendley, *Everyday Law in Russia* (Cornell University Press, Ithaca, 2017).

cases can produce dissatisfaction across the board. If users emerged from their divorces or child custody hearings with such negative feelings, they were not transferred onto the courts more generally.

6 Preliminary Conclusions

Use versus Confidence. It is tempting to think that the same factors that motivate use of the courts would also contribute to confidence. A comparison of the results for the two analyses (see Tables 1 and 4) document the similarities and differences. Need for legal assistance and knowledge of the courts, while strong predictors of use, are irrelevant when it comes to predicting confidence in the courts. The contrast is more striking when it comes to the role of respondents' belief in law. Both analyses utilized a variable that captured those who believed that it is impossible to live in Russia without violating the law. This group was simultaneously less likely to express confidence in the courts and more likely to use the courts. The link between confidence in law and confidence in the courts is intuitively appealing. The rationale behind low esteem for law and a willingness to use the courts is less obvious. It speaks to the power of need as a driver of use, and reminds us that many Russians go to court grudgingly (like their counterparts elsewhere), unsure of what will happen.

Their likely treatment by the courts matters more to users than to nonusers. Those who fear judicial bias are less likely to turn to the courts. Being treated well by the courts tends to enhance confidence. For nonusers, however, procedural justice concerns play a more marginal role in predicting confidence in the courts. Not having personal experience with the courts, the extent to which being treated courteously by the judge and other courthouse personnel as well as having one's case handled efficiently and fairly can make the litigation experience more bearable may escape them.

Users versus Nonusers. Yet when the attitudes of users and nonusers towards procedural justice and other aspects of law and courts are compared, nonusers emerge as more sanguine. This mirrors what Gallagher and Wang⁸⁸ found in their study of Chinese labor disputes. They found that "legal experience leads to higher levels of disillusionment and more negative perceptions of the legal system's effectiveness and fairness."⁸⁹ Whereas non-users tend to

88 Gallagher and Wang, *op.cit.* note 9, at 204.

89 *Ibid.*

have vague but benevolent notions of the legal system and its effectiveness, actual disputants have less confidence in the effectiveness of the legal system.”⁹⁰ They go on to argue that the assessments of court experience are driven by political identity, which is a combination of an individual’s citizenship status and his political socialization (both the substance and timing).⁹¹ They also found that the role of the state in the dispute as well as demographic factors, such as age and locale (urban or rural) mattered.⁹² Although this China-specific explanation cannot be applied in a whole cloth fashion to the Russian context, there is a kernel of universal truth embedded in it. The absence of personal experience may allow nonusers to be more hopeful.

The Levada users also differ from Gallagher and Wang’s disputants in their assessments of their experience. The Chinese users are characterized as “disenchanted.” Gallagher and Wang report that, when presented with a hypothetical dispute, they are less open to litigation than are nonusers.⁹³ By contrast, the Levada users were more upbeat about their experiences. Over 70 percent described the judge’s decision as fair. A similar percentage reported that the judge listened carefully to both parties’ arguments, dealt with them politely, and convincingly explained her decision. This does not paint a picture of disenchanted litigants. How, then, do we explain the consistently lower marks given to the courts by users as compared to nonusers? Perhaps it reflects the inevitable emotional toll of litigating.

In any event, the divergence between the views of Russian court users when asked about courts in the abstract and about their specific cases makes it difficult to compare them to U.S. court users. This sort of disconnect is not reported by those who have contrasted users and nonusers in the U.S. But the stronger power of procedural justice concerns for Russian users as compared to nonusers in predicting confidence in the courts is similar to what Benesh and Howell found in their study of court users in Louisiana.⁹⁴ In contrast to this study, which found that such concerns were also more important than the outcome of the respondents’ cases, these two factors have approximately the same level of explanatory power in Russia. Put more bluntly, winning has a more powerful effect on Russian users’ confidence in the courts than on U.S. users.

90 *Ibid.*

91 *Ibid.*

92 *Ibid.* at 223.

93 *Ibid.* at 217.

94 Benesh and Howell, *op.cit.* note 8.

Politics. Russian courts are often assumed to be politicized. Many Russian specialists dismiss out of hand the idea that courts could be useable.⁹⁵ But fears of judicial dependence, though present,⁹⁶ play no role in predicting either use or confidence. This serves to remind us that most disputes are mundane. Unlike the show trials in which law takes a back seat to the interests of the politically powerful, these cases have no political overtones; they are straightforward disagreements between two parties. Russians are capable of distinguishing between the two. They recognize that their cases fall into the category of the routine, in which judges pay attention to the law in making their decisions.

The U.S.-based literature also explores the role of politics, but it is conceptualized very differently. Telephone law is not on the table. Instead, the concerns are drawn from the U.S. political context. Some scholars look to ideological and partisan factors. They might ask whether respondents' party affiliation or their sympathy for liberal or conservative causes matters.⁹⁷ Others take a different tack and look at respondents' views on whether courts bear responsibility for crime.⁹⁸ Such factors are less relevant in the Russian context. The suppression of political competition under Putin renders party affiliation uninteresting. Moreover, as a result of Russia's civil law heritage, courts and judges are less likely to be viewed as political actors. Illustrating this, when the Levada respondents were asked who in Russia should be responsible for protecting citizens' political and economic rights, the courts came in third place behind the President and the legislature. When the question was reframed to ask who is actually capable of protecting such rights, the pattern was the same, although the percentage of those who expressed confidence in the courts fell from 20 percent to 16 percent.

95 See e.g., Browder, *op.cit.* note 34; Henry Hale, *Patronal Politics: Eurasian Regime Dynamics in Comparative Perspective* (Cambridge University Press, New York, 2015); Dawisha, *op.cit.* note 15.

96 The Levada respondents have a mix of views. Although 70 percent believe that separation of powers is important, many (56 percent) doubt the independence of Russian courts. A significant minority (31 percent), believe that courts should be controlled by the executive branch.

97 Olson and Huth included these variables in their model, but found that none were robust predictors of support for Utah courts. Olson and Huth, *op.cit.* note 17, 47–51.

98 Benesh and Howell included this variable in their comparative analysis of users and non-users in Louisiana. They found that a strong belief that courts were responsible for crime tended to undermine confidence in the courts. The effect was slightly stronger for users. Benesh and Howell, *op.cit.* note 8, 210.

This article represents a first effort to explore the differences between users and nonusers. The analysis clearly documents the importance of distinguishing between these two categories. Experience makes a difference in Russians' attitudes towards the courts. Users are both more positive and more negative about the courts, depending on the context. Although they praise the work of judges and other courthouse personnel in their own cases, they seem to emerge with lingering negative views of the courts that come into focus when asked more general questions. This creates a fascinating puzzle that the available data are not capable of solving.