

**Bargaining with Strangers:
Explaining the Behavior of Russians in the Aftermath of Auto Accidents**
by Kathryn Hendley

The paper that follows is not intended as a stand-alone piece. It was written as a chapter in a monograph on everyday law in Russia. I have made an effort to add notes to clear up issues that are discussed in other chapters.

The monograph, tentatively titled *Everyday Law in Russia*, will begin with an introduction that lays out the overarching basic argument that the narrative of law in Russia has been monopolized by high-profiled politicized cases. These cases, such as the well-known prosecutions of Aleksei Naval'nyi, Mikhail Khodorkovskii and the members of Pussy Riot, create an image of the courts as handmaidens to the Kremlin. While not denying the capacity of the political elite to manipulate case outcomes when it suits their purposes, my research focuses on the more numerous mundane cases. I argue that the role of law is quite different in such cases. More specifically, I argue that judges do feel themselves bound by the law in these cases and that the ordinary Russians who bring these cases to the courts generally feel like they have been treated fairly by the courts and are satisfied with their experience. My goal is to enrich our understanding of the role of law in Russia by threading in these other narratives of everyday law. I draw a parallel between the present-day tendency to focus solely on politicized justice and the debate among historians of the 19th century as to whether peasants made use of the courts or relied on self-help (such as *samosud*).

Following the introduction will be a chapter in which I analyze survey data on Russians' attitudes and behavior regarding the law. I plan to make use of the Russian Longitudinal Monitoring Survey (RLMS), on which I have been able to include a battery of questions about law in 2005 and 2012.

(<http://www.cpc.unc.edu/projects/rlms-hse>)

The material based on my field research is divided into two sections. In one section, I explore the role of the justice-of-the-peace courts, which are a relatively recent institutional innovation in Russia that have an intriguing historical precedent. These chapters are grounded in my observational research in JP courts in Ekaterinburg, Moscow, Petrozavodsk, Pskov, St. Petersburg, Velikie luki, and Voronezh over the past few years. They are buttressed by my access to unpublished statistical data on the flow of cases in these courts. One chapter looks at the JP courts from the point of view of the judges and the other chapter looks at the courts from litigants' point of view. Drafts of these chapters are on my UW website:

<http://law.wisc.edu/profiles/pubs.php?iEmployeeID=143>

The attached paper will be paired with a chapter that investigates how Russians deal with water leaks in their apartments. That study has been published in *Law & Social Inquiry* (vol. 36, no. 2, pp. 388-418), as "Resolving Problems Among Neighbors in Post-Soviet Russia: Uncovering the Law of the Pod"ezd." A copy is posted on my UW website.

The book will conclude with a reflection on the state of the rule of law in Russia and the usefulness of the concept in the Russian context.

Bargaining with Strangers: Explaining the Behavior of Russians in the Aftermath of Auto Accidents

One of the most striking changes in daily life in Russia over the past two decades has been the drastic increase in car ownership (see Table 1). This process began in the latter decades of Soviet power, but accelerated after the Soviet Union broke apart.¹ In 1970, owning a car was extremely rare, with only 5.5 cars per 1000 individuals. This number had increased to 30.2 by 1980 and to 58.5 by 1990. By the turn of the century, it had grown to 130.5. In 2010, there were 228.3 cars per 1000 individuals. The rapid increase in auto ownership is unsurprising. Cars, like most big-ticket consumer goods, were in short supply during the Soviet era (Siegelbaum 2008). Obtaining one had less to do with scrimping and saving than with finding the right connection or simply waiting for one's turn, which often took many years and was not always successful. With the collapse of state socialism, the Russian market was flung open, ending the deficit of cars. The only obstacle to acquisition was money. For those Russians fortunate enough to get good-paying jobs, cars quickly became indispensable. Although residents of Moscow and St. Petersburg continue to be more likely to be car owners than those who live in the hinterlands, the gap is tightening. Russia still lags far behind Western countries in terms of the density of car ownership but, like China, the pace of growth in ownership is much greater than in the West (see Table 2). The gender gap among drivers and owners of cars has decreased dramatically. Although prejudice against women drivers persists, they are no longer an aberration on the Russian roads (Kuhr-Korolev 2011).

The increase in the number of cars in Russia has facilitated greater mobility for its population, but has also led to an increase in traffic accidents. Though there are fewer accidents per capita in Russia than in many Western countries, including the U.S., Germany, and Japan, Russia has emerged as a world leader in fatal accidents. On a per capita basis, Russia has almost five times more fatalities than in Japan, about three times more than in Germany, and about 60 percent more than in the U.S. (Belova 2010). Recent years have witnessed a downward trend, but the sheer numbers of people injured and killed on the road is deeply troubling. In 2005, there were 23.7 deaths per 100,000 population; by 2010, this number had dropped to 18.6 deaths (see Table 3). There has been much speculation in the popular and scholarly press as to the reasons for the high incidence of injuries and fatalities on Russian roads. Among those asserted are the increase in the number of cars on the road, which has contributed to paralyzing traffic jams in urban settings and makes it difficult for ambulances to reach the scene of accidents, the poor quality of many roads, and the relative lack of roads which causes overcrowding on the available

¹See Siegelbaum (2008) for a history of the role of cars in the Soviet Union, dating back to the 1917 Revolution.

roads.² The human factor is inescapable, most notably the reckless disregard of many drivers for the basic rules of the road. Indeed, anecdotal evidence suggests that neophyte drivers often bypass the official exam which is difficult even for experienced drivers by bribing a traffic inspector to obtain a driver's license. This sort of behavior fuels the general lack of respect for the traffic police (Belova 2010; need more). The role of alcohol cannot be discounted, given that 9.4 percent of fatal accidents in 2011 involved drunk drivers.³

In this chapter, I explore the aftermath of Russian traffic accidents with an eye to what it reveals about Russian legal culture. The analysis is grounded in the 29 focus groups and 79 follow-up interviews I conducted in Kushchevskaiia, Moscow, Tomsk, Saratov, and Shumerlia during the summers of 2007 and 2008. These conversations yielded 70 stories about various types of traffic accidents. In contrast to the incidents involving water leaks discussed in the preceding chapter which called upon those victimized to find common ground with their neighbors, traffic accidents typically bring strangers together. I am interested in how they respond to the unexpected, in both personal and institutional terms, and in the role of law, if any.

I begin by sketching out the institutional support available for those who have the misfortune to be involved in auto accidents, with an emphasis on how this has changed over the years. I then turn to the data, looking at how the focus group participants responded in the wake of accidents. The analysis confirms the distaste of Russians for engaging with formal institutions, both state and private. My respondents exhibited a strong preference for working out solutions on their own. In the final section of the paper, I reflect on the reasons for their behavioral choices. The relative newness of auto accidents as a common occurrence means that behavioral norms establishing what is acceptable and what is beyond the pale are still being worked out. Without question, my respondents' lack of confidence in the integrity of the available institutions and their sense of being left on their own were critical. But precisely how to draw the causal arrow is unclear.

Institutional Environment

In Russia, as elsewhere, traffic accidents can either be played by the book or can be handled privately. Going by the book generally means involving the traffic police and insurance

²In terms of the density of roads per 1000 square kilometers, Russia lags far behind others in the Group of 8. As of 2007, it had 43.7, compared to 68.8 for the U.S., 3169 for Japan, and 1838 for France. There is considerable regional variation within Russia. The central okrug, where Moscow is located, has the greatest density of roads. The pace of road building is fairly even across Russia (Belova 2010).

³In 2011, drunk drivers were involved in 7.8 percent of all traffic accidents, and 8.4 percent of accidents in which someone was injured (Table 2.84, *Transport i zhizn'*, 2012).

companies. Both institutions suffer from a checkered reputation. The traffic police⁴ are seen as deeply corrupt.⁵ Russian websites publish city-specific price lists of the amounts that need to be paid based on the alleged offense.⁶ As we will see, many of the participants in the focus groups were convinced that the officers skewed the report on their accidents to favor whoever paid more, irrespective of who was actually at fault. In an effort to curtail bribes, the rules about how traffic tickets were to be paid were changed. Violators no longer pay the traffic police directly, but are now given a ticket and asked to pay via bank transfer. This reform did little to stem the tide. A system has evolved where alleged violators are offered two prices. If they hand over cash to the officer, then the amount is reduced. But there is no documentary record of the transaction and, not surprisingly, this money goes directly into the officer's pocket.⁷ Those who want to abide by the law can insist on getting a ticket and paying it at their bank. Few bother. Not only do they

⁴Institutionally, the traffic police is part of the Ministry of Internal Affairs. Russians often refer to it as GAI, which is an acronym for the former name of the agency, the State Automobile Inspectorate (*Gosudarstvennaia avtomobil'naia inspeksiia*). Officers are usually called "gai-shchniki." The official name of the agency is now the State Inspectorate for Road Safety or *Gosudarstvennaia inspeksiia bezopasnosti dorozhnogo dvizheniia* or GIBDD (<http://www.gibdd.ru/>), an acronym that does not roll off the tongue as easily as GAI, which helps explain why the old name has stuck.

⁵When asked about corruption within law enforcement agencies, Russians consistently identify the traffic police as highly problematic. In a December 2010 survey by the Levada Center, the traffic police came in first, with 56.8 percent of respondents listing it as the most corrupt. A similar survey fielded by the Foundation for Public Opinion in 2008 also put the traffic police in first place in terms of corruption (Rimskii 2012). Russians are skeptical about efforts to rein in the traffic police. When asked about the likely impact of the plan to increase oversight over the traffic police in a March 2007 poll by the Levada Center, only 30 percent felt it would decrease bribery. A solid majority (58 percent) was sure it would have no impact. About the same number believed that increasing fines for traffic violations would lead to bigger bribes for traffic policemen (Gorkaia 2007: 72). The polling results on the police more generally paint a dismal picture. In surveys carried out regularly from 2004 through 2012, over 80 percent of respondents saw lawlessness and arbitrariness within the police as a serious problem (Gorkaia 2012: 104). The efforts to remake the police by renaming them as *politsia* rather than *militsia*, along with a series of deeper institutional changes, was dismissed by respondents as ineffective (Gorkaia 2012: 106). As part of this reform, salaries for policemen were tripled in an effort to de-incentivize the practice of taking bribes (Robertson 2013: 170).

⁶<http://www.vashamashina.ru/bill.php#g1>

⁷When surveyed in 2006 and 2007 by the Levada Center, only 20 percent of respondents said that the efforts of Russian police are mainly devoted to protecting citizens. Over 60 percent viewed police as being mostly interested in protecting their own interests. The remainder of the sample declined to respond (Gorkaia 2007: 72).

see little value in upholding laws that the police themselves are openly flouting, but doing so requires them to stand in line at their bank (Zernova 2012: 481).

Private insurance companies are a post-Soviet phenomenon. Indeed, Soviet officials were openly hostile to the very idea of liability insurance. Tay argues that they believed “it would be entirely destructive of the moral functions of civil liability and that a man who insured beforehand his carelessness was either half-intending it or, at least, not trying strenuously to avoid it” (1969: 15). The elaborate social safety net left the Soviet state as the primary insurer.⁸ With the legalization of private property as part of the transition to the market, however, the role of the state has changed. It continues to provide basic medical insurance, but private insurance companies have stepped in to protect property interests. As to motorists, insurance became mandatory in 2003 (Ob obiazatel’nom 2002). Drivers are required to have a minimal policy for collisions, for which the rates are set by the state, but are free to buy supplemental insurance. Russians’ concern about the high incidence of traffic accidents led them to be generally supportive of the move to mandatory insurance.⁹ Initially the fine for driving without insurance was 100 rubles (about \$3). It was increased to 500 rubles (about \$15) at the beginning of 2013 (art. 12.3, part 3 KoAP). Neither sum is likely to drive behavioral choices. Data collected by the National Agency for Financial Research show that the percentage of Russians who have the mandatory automobile insurance has risen from 20 in 2005 to 26 in 2012. Over the same period, the percent who opted for supplemental car insurance has grown from 3 to 8 (Strakhovanie postepenno 2012).

Despite their relatively short lives, Russian insurance companies have already managed to earn the disdain of their clients. The focus group discussions are reflective of public opinion more generally in that people find insurance companies unresponsive at best, and manipulative at worst. Initially, victims of traffic accidents had to seek compensation from the insurance companies of the driver at fault, which had little interest in whether these victims were satisfied with their services. In 2009, the rules were changed to allow those involved in accidents to work directly with their own insurance companies.¹⁰ Tales of foot dragging by insurance companies

⁸For a thorough analysis of Soviet insurance law, see Rudden (1966). For a primer on contemporary Russian insurance law, see Belykh (2009); Moudrykh (2002).

⁹In a survey conducted by the Independent Research Center ROMIR in the spring of 2004, 85 percent agreed that something needed to be done to protect victims of traffic accidents. 48 percent of respondents viewed the law requiring insurance for drivers as necessary (Nuzhno n.d.). A survey carried out in the spring of 2005 by the All-Russian Center for the Study of Public Opinion (VTsIOM) documented the support of two-thirds of those polled for having the rates for mandatory insurance set by the state (VTsIOM 2005).

¹⁰Russian insurance companies lobbied vigorously against the new rules, and managed to delay their introduction for a year. Critics argue that insurance companies continue to exploit loopholes to avoid paying claims or to minimize them (Zinenko 2009). Industry spokesmen

persist in the Russian press and on web forums, on which people share their experiences and offer advice. More troubling are claims of systematic efforts to minimize claims by coopting supposedly independent appraisers. When asked in 2012 by the National Agency for Financial Research why they had switched insurance companies, concerns with service were a close second behind increases in premiums.¹¹

My interest is less in the twists and turns in the institutional evolution of the traffic police and insurance companies, but in how ordinary Russians understand and operate in this institutional environment. As with the water leaks, the choices available to those involved in traffic accidents fall into four basic categories: doing nothing, negotiating with the other driver, calling upon a trusted third party (other than a court) to assist in reaching a settlement, and going to court. Informal mechanisms emerge as most popular. Only a handful of people resorted to the courts, and did so as a last resort after efforts to negotiate a settlement had failed.

By listening to the focus group participants, the factors that influence their behavioral choices become clear. Not surprisingly, practical considerations are at the forefront. The severity of the accident inevitably colors the choices available. While the aggressor in a fender-bender can opt to pay off the victim on the spot, someone who sustains life-threatening injuries is in no position to bargain for compensation with the other driver. The speed with which the traffic police arrive can make a difference. More interesting is the role of Russians' attitudes toward one another and their willingness to trust in the viability of state institutions in shaping their choices.

Before delving into the experiences of my respondents, a few words about the formal law governing traffic accidents is in order. Tort law was a mostly unwanted stepchild within the Soviet legal system. In the heady years following the October Revolution, Communist Party officials saw tort law as a vestige of the past (Hazard 1952). They believed that comprehensive social insurance would obviate the need for private causes of action.¹² By 1922, cooler heads prevailed and a chapter on tort law was included in the civil code (chap. 13, 1922 GK). It was

defend their record (Nikoforov 2009).

¹¹Respondents were allowed to check multiple reasons. The most common response was increase in premiums at 36 percent. The several responses related to service (dissatisfaction with the amount paid out for a claim, poor response to a claim) attracted a quarter of the respondents (Pochemu 2012).

¹²Tay (1969: 8) quotes P.I. Stuchka from the 1922 meeting of the All-Union Central Executive Committee of the Bolsheviks: "It is undignified for the Worker-Peasant Government to initiate disputes in court to determine whether a man was injured on the railway track intentionally or by accident." Reflecting on this, she concludes that "a socialist government should be concerned with social harm, an objective social concept, and not with fault, a subjective individual one."

drawn from a never-enacted tsarist draft which, in turn, had been based on German law. The 1964 civil code made few changes in the area of tort law. Compensatory damages were available when a petitioner could demonstrate harm caused by another. Punitive damages were not allowed; they were seen as a “bourgeois legal institution” that amounted to unjust enrichment (Barry 1996: 183). Traffic accidents were fewer than in contemporary Russia. Driving a car was deemed to be an inherently dangerous activity that triggered strict liability (art. 454, GK 1964). Liability attached to the driver of the car rather than the owner, which was a clever way for the state to avoid liability, given that most cars were the property of Soviet state-owned enterprises (Barry 1967: 76). But tort claims of any stripe were not numerous (Barry 1979: 237).

The post-Soviet civil code made few textual changes in tort law (chap. 59, GK 1996). One notable exception is the elimination of strict liability for auto accidents (art. 1079, GK 1996), which opened the door to liability insurance.¹³ The obligation of insurance companies to pay is limited to those deemed to be victims. As a result, admissions of fault have profound legal consequences. Where neither or both sides acknowledge responsibility, insurance companies often refuse to pay (Arakcheev 2008). Situations where the traffic police are unwilling or unable to determine fault are particularly vexing.

The Soviet-era ban on punitive damages has also disappeared. Though the chapter on torts is silent on this issue, the general provisions of the post-Soviet civil code are amenable to so-called “moral” damages (art. 151, GK pt 1 RF). Judges have considerable discretion in setting the amount. They are directed to take into account the nature of the suffering of the plaintiff and the nature of the defendant’s actions. The amounts available are trivial compared to the huge sums awarded by U.S. juries in egregious torts claims.¹⁴

As I have argued in the preceding chapters, Russians’ use of the courts has increased markedly in the post-Soviet era. Tort claims, especially those related to traffic accidents, are no exception. Table 4 lays out the data for 2008 through 2011. Though the raw numbers have almost doubled over this four-year period, they remain a relatively minor part of the civil docket,

¹³The list of inherently dangerous activities, set forth in article 1079 of the 1996 Civil Code, is not exhaustive. Means of transportation are explicitly included, but the last sentence of the article clarifies that liability for harm caused by the collision of two or more cars is not covered by strict liability. On the other hand, the Russian Supreme Court, in a 2010 decree, clarified that drivers who hit pedestrians can be held strictly liable (Postanovlenie 2010).

¹⁴For example, in a 2004 case decided by a Saratov district court, the victim of a car accident initially sought 155,000 rubles in moral damages, but was awarded only 18,000. By contrast, the court awarded the full amount requested for compensatory damages, which were grounded in documentary evidence (Iliasov v. Lapin 2004).

accounting for about one percent of all civil cases.¹⁵ The data do not speak to the question of how often victims of accidents bring claims against those at fault or their insurance companies. The comments of my respondents strongly suggest that suing is very much the exception rather than the rule. Much as Engel (2009: 260) found in his research on the propensity to litigate tort claims in the U.S. and Thailand, lawsuits tend to arise when efforts to negotiate a settlement have broken down.

Table 4 highlights several notable features of cases dealing with traffic accidents. These cases tend to take longer than the prototypical case and petitioners are less likely to prevail. This simply reveals that these are cases that require full-fledged hearings on the merits; they do not lend themselves to expedited procedural mechanisms. Over the four-year period, only 9 cases were resolved using judicial orders (*sudebnye prikazy*).¹⁶ The higher-than-average delay rate along with the lower-than-average win rate makes it tempting to conclude that these cases are deeply contentious and that parties fight to the bitter end. No doubt this describes some cases. But conversations with Russian judges, buttressed by my observations in the courts, lead me to believe it is not the norm. Judges report that the results in most traffic-related cases are foregone conclusions. They grumble about the tendency of insurance companies to use every trick in the book to drag out the proceedings in order to avoid having to pay, a practice which is hardly unique to Russia.

The lower-than-average win rates are more of a puzzle. The focus group participants complain about the difficulty of assembling the requisite documents.¹⁷ Some are overwhelmed by the task and abandon any plans to pursue a claim. It may be that those who do go forward tend to fall short. The positivism reflected in the procedural codes and the expectations of judges lead them to be unforgiving about missing documentary evidence. This may contribute to petitioners' losses. Unlike individual claimants, insurance companies are generally represented by legal professionals in court. Whether this gives them an edge is unclear. Judges complain about the poor quality of lawyering for insurance companies, attributing it to the low wages paid

¹⁵The amount at issue determines where the case is brought. Before 2010, the justice-of-the-peace courts (JP court) handled all claims under 100,000 rubles. This jurisdictional limit is now set at 50,000 rubles (Federal'nyi 2010).

¹⁶As discussed in the earlier chapters on the justice-of-the-peace courts, judicial orders are used to expedite decisions in straightforward cases. Judges decide such cases on the basis of the pleadings, without a hearing on the merits. Disgruntled defendants can force a hearing on the merits simply by notifying the court of their dissatisfaction. They need not submit any proof of their position. Relatively few defendants (less than 10 percent) challenge judicial orders aimed at them. For more on judicial orders, see Hendley (forthcoming).

¹⁷The rules governing what documents must be presented to an insurance company are set forth in densely worded government regulations, which are difficult for laymen to parse (Postanovlenie 2003).

and the consequent high turnover rate within their legal departments. Unfortunately, the way the data have been collected do not allow me to determine whether individuals or insurance companies are more successful.¹⁸

Analytic Framework: The Pyramid of Disputing

Having sketched out the institutional landscape, I can now turn to the experiences of the focus group participants. In analyzing them, I make use of the conceptual framework of the “disputing pyramid” laid out by Felstiner, Abel, and Sarat (1980-81). It provides a language and structure for making sense of the process by which everyday disagreements evolve or fall by the wayside. The first hurdle is “naming,” a process of determining whether to recognize an experience as injurious (Kritzer, Bogart, and Vidmar 1991).¹⁹ The second hurdle is “blaming,” a process of deciding whether there is a third party who is responsible. The final hurdle is “claiming,” a process of deciding whether to seek a remedy from whoever is to blame. This final stage of claiming can be broken into a variety of types of claims. Injured parties may seek out recompense informally in lieu of, or as a prelude to, litigation. The pyramidal image is useful. The working assumption is that a significant number of disagreements will fall away at each stage. The value of the model lies in its focus on the reasons why disagreements do or do not grow into full-fledged grievances. While not losing site of the role played by the nature of the disagreement and the relationship between the parties, Felstiner, Abel, and Sarat identify a number of factors that act as transformational agents by facilitating or discouraging the transition of disputes from one stage to another. Key among these is the world view of the injured parties which, in turn, is influenced by their religion, class, prior experiences with the legal system, and the underlying legal culture. From an institutional perspective, lawyers, who act as gatekeepers, emerge as especially important at the final stage of claiming.

The model of the disputing pyramid was developed with the U.S. in mind, and socio-legal

¹⁸As a general rule, plaintiffs tend to win their cases in the JP courts. Regardless of whether individuals are suing legal entities or vice versa, plaintiff win rates are well over 90 percent. Somewhat incongruously the only group that has a poor track record is the state, which wins about two-thirds of the cases it initiates against individuals (Otchet 2011).

¹⁹In their comparative study of the tendency to seek out compensation for various types of injuries in Canada and the U.S., Kritzer, Bogart, and Vidmar (1991: 501) develop a slightly different vocabulary. They identify the barriers to moving from one stage to another. Initially, victims must overcome a recognition barrier. They argue that some view what happened as part of daily life and not as an injury. Victims then face an attribution barrier. Blaming someone else “requires a combination of information and a willingness to externalize the cause of an injury.” Seeking out the person at fault requires them to triumph over a confrontation barrier. At the final stage, victims must confront a litigation barrier. Following the lead of Felstiner, Abel, and Sarat, much of their analysis is devoted to the role of lawyers.

scholarship on the U.S. has used it to good effect (*e.g.*, Calavita and Jenness 2013; Albiston 2005; Engel and Munger 2003; Ewick and Silbey 1998; Merry 1990). The basic logic, however, transcends the U.S. experience, as the fact that it has been used to elucidate disputing behavior in Canada (Kritzer, Bogart, and Vidmar 1991), China (Michelson 2007), and Thailand (Engel 2005) demonstrates. I have previously employed it in the Russian context to explore disputing behavior regarding overdue payments between industrial enterprises during the 1990s (Hendley 2001), and the decision-making process of homeowners who were left dissatisfied by home repair projects (Hendley 2010). Though the basic pyramidal structure of disputing is universal, the motivations for moving forward or abandoning a dispute are deeply contextual. Variation in the structure of legal institutions and in legal culture leads to differences in the identity and potency of transitional agents.

Responses to Involvement in Auto Accidents

Russians, like people everywhere, confront a variety of challenges over the course of their lives. Many (perhaps most) are dismissed as the annoyances of daily life (Kritzer, Bogart, and Vidmar 1991: 501). Traffic accidents are different. They are, by definition, jarring. It is not surprising that all of the focus group participants who reported accidents recognized the experience as injurious. They have “named” the injury. This stands to reason, given that being in an auto accident is by its very nature upsetting and unpleasant at best and life-threatening at worst. As we will see, this consensus quickly evaporates once we turn to the question of what to do about the injury.

Doing Nothing or “Lumping It”

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

One subset was stymied because they believed they were partially to blame for the accident, giving rise to a sense of embarrassment about the incident. As a result, they did not feel entitled to blame the driver. The basic fact pattern was the same for all these cases. The victim was hit while crossing the road in an unofficial crosswalk, sustaining serious injuries. A Saratov woman told of an elderly relative with failing eyesight who was killed after being struck by a car in St. Petersburg. Miroslava, a 40-year-old seamstress from Shumerlia, who had been struck when she was in the 3rd grade, still walked with a limp. Neither the focus group members nor the victim-participants themselves felt much empathy. The fact that the victims were mostly

children and the elderly who are universally seen as among the most vulnerable in any society made their lack of compassion striking. For the most part, the victim-participants took responsibility for their fates.

Intertwined with the shame felt by these victims at their stupidity was a belief that the law offered no remedy. As a result, they did not allow themselves to ponder who to blame or how to claim. The other members of the focus groups shared this understanding of the law. The most extreme example was provided by Regina, a 55-year old cleaning woman from Shumerlia. Some years ago, her 8 year-old daughter had been hit while crossing the road by two soldiers driving a Moskvich.²⁰ The soldiers brought her home. They offered to take her to the hospital and to provide monetary compensation for the young girl's injuries. Regina declined, explaining that her daughter had probably not been paying sufficient attention. She understood that the soldiers felt badly, but did not believe they were responsible. As Regina told this story, others around the table nodded in agreement.

In reality, however, the situation was not as straightforward as they believed. Russian law embraces comparative negligence (art. 1083, 1996 GK). In theory, this means that the liability of the driver could be reduced if the pedestrian is found to be at fault. Though the focus group participants were not conversant with the legal niceties, they saw the victims as to blame. Put in legal terms, the fact that they were not in crosswalks established them as grossly negligent and excused any negligence on the part of the drivers. But the courts are generally unforgiving when dealing with drivers who hit pedestrians. In such situations, the law reverts back to the Soviet rule for strict liability. Though several of the focus groups included people with legal education, no one spoke up to correct this mis-impression. None of them had bothered to consult the law on this question. Yet their confidence in the unavailability of a legal remedy was complete, illustrating that sometimes what people believe the law to be can take on a life of its own (Hendley 2010; Ellickson 1991).

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

A power differential between drivers with no official government connections can play out in the same way. In the wake of the transition to the market, private firms and their leaders have gained great clout (Kryshtanovskaya and White 2005). Several focus group members

²⁰The Moskvich was a compact passenger car manufactured during the Soviet era.

shared their difficulties in this regard. Vladimir, a 51 year-old Moscow mechanic, sustained a concussion and was on bed rest for over a month after a 3 am collision with a ZIL 130 truck that belonged to the powerful Mikoyan machine-building factory.²¹ He admitted to speeding at the time of the accident. Unlike the pedestrian-victims who felt their negligence barred them from seeking a remedy, Vladimir's failure to take action was due to his belief that fighting the factory was "useless." The behavior of the traffic police at the scene only confirmed his sense of the political reality. Their report favored the truck driver. When the other focus group participants said that the driver from the Mikoyan factory had probably paid off the police, Vladimir did not disagree. Indeed, no one in the group faulted Vladimir for not pursuing the case. Several shared their own feelings of impotency. Ida, a 40 year-old Muscovite who worked as a chief accountant for a private firm, spoke for many when she said that Russians "have nowhere to go that guarantees a positive result." A few held out hope that the introduction of mandatory insurance would cure the sorts of difficulties faced by Vladimir, whose accident occurred before the law requiring all drivers to be insured had been passed.

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

In some ways, Sandefur's third category of frustrated resignation is a catch-all. These feelings animated also those who talked themselves out of pursuing a claim out of fear of the possible backlash from more powerful counterparts. Though resignation can sometimes mask deeper anger, this was not the sense conveyed. Neither those directly affected nor others in the focus groups lashed out against the injustice of the system. Rather there was a collective shrug and a rhetorical "what can be done" question.

There were several categories of people who simply threw up their hands in resignation even though they had identified who was to blame. Some felt that the damage to their car or to themselves wasn't serious enough to warrant further action. In other words, the costs, typically measured in terms of wear and tear on their psyche, outweighed the potential benefits. Others

²¹A ZIL 130 is a large dump truck. The Mikoyan factory assembled MIG fighter jets. For a history of ZIL (*Zavod imeni Likhacheva*), see Siegelbaum (2008: 10-35).

were reluctant to go to war with adversaries that had greater resources, such as municipal authorities or insurance companies.²² Even when they felt they had been gypped by their insurance companies, few relished the prospect of suing them. The most common refrain was that to do so would be “useless.” Some felt stymied due to the boilerplate language buried in their insurance policies. Anatolii, a 51 year-old mid-level manager from Tomsk, told of the aftermath of an accident involving a mini-van owned by his wife. The van was used in her business; it was intended to be driven primarily by her employees, one of whom was driving it at the time of the accident. The traffic police found her employee to be at fault. Anatolii and his wife did not dispute this finding. Initially they thought the damage to the van would be covered by insurance. His wife had purchased comprehensive insurance with an eye to just this sort of situation, but learned to her chagrin that her policy did not include other drivers. When they purchased the insurance, no one pointed this out to them. Anatolii attributed this to the negligence of the insurance agent, but admitted that neither he nor his wife had read the policy carefully. They felt they had no recourse. The other members of the group commiserated. Some had gone through similar experiences. All agreed that they routinely signed contracts without reading them.²³ The bottom line was that the insurance company had no obligation to compensate them. Anatolii and his wife were left holding the bag. He was resigned to his fate, saying “such is life.”

A general theme within the focus groups was the low level of legal literacy of Russians. Among those who decided to lump it, this attitude was particularly pronounced. Intertwined was the reality that many had sustained devastating injuries and preferred to focus on recovery rather than revenge. When Vavara, a 27-year old graduate student, was 18, she broke her leg after being struck in a Saratov intersection while in a “zebra” (an official cross-walk). She and her parents did not follow up when the prosecutor declined to bring criminal charges against the driver. At the time, they were primarily concerned with getting her back on her feet, literally. She commented that “I understood little about my legal rights and the relevant laws, and so I failed [to take action].” It was noteworthy, however, that as she reflected on the incident, she said that she would not behave any differently if the same thing happened to her today. Her skepticism about the integrity of the system colored her thinking. She shared her suspicion that the driver had provided some “financial influence” to law enforcement organs.

²²Those who were injured by buses or other means of public transportation uniformly did nothing. Not only were they confused about what entity would bear responsibility, but they were convinced they would be unable to gather the necessary evidence. These accidents often happened during rush hour when witnesses were hustling to and from work. Tracking them down to corroborate what had happened seemed overwhelming, especially given their injuries. Some thought about hiring a lawyer, but did not follow through because they assumed it would be prohibitively expensive. As a rule, those who fell into this category received medical care at no charge which may have dimmed their ardor for seeking damages.

²³This was a common theme in all the focus groups (Hendley 2010). It mirrors what socio-legal scholars have observed about the U.S. (Macaulay 1963).

An exception to the Sandefur typology is provided by two similar stories. Both incidents involved groups of people traveling from Shumerlia to the nearby republic capital of Cheboksari. In one case, the passengers were friends and co-workers. In the other, they were not previously acquainted but had been thrown together by happenstance. In both cases, the driver erred by trying to pass in a no-pass zone, and ended up crashing and causing serious injuries to the passengers. Both cars were totaled. Yet in neither case did the passengers make a claim against the driver, even though there was general agreement that he had been at fault. Much as in the examples of powerlessness and frustration, the injured parties were prepared to blame but not to claim. They were not motivated by fear or resignation, but by a sense of what was right. When telling their stories, both narrators stressed that Shumerlia was a small town. As a result, whether they had been friends or acquaintances before they set out did not matter. Even if they did not know each other personally, they still felt a sense of connection that was noticeably absent in larger urban centers. They did not want to be known as someone who had shafted other Shumerlia residents. Whether this somewhat romantic view of the inter-connectedness of small towns is shared more widely is unclear. Other group members commended this behavior as *po-chelovecheski* or civilized,²⁴ but several expressed surprise that the passengers did not ask the drivers to help them with their out-of-pocket medical expenses. Along these lines, it is worth noting that the driver of the car with random passengers asked them to sign written releases, which is potent evidence that he was not willing to rely on small town good will. The person driving his friends took their word.

Bilateral Negotiation with the Other Driver

A most common response to accidents in Russia is to talk to the other driver to work out an informal accommodation. It proved popular among the focus group participants. Over half of them took this route. Because the parties were almost always strangers, establishing trust was more difficult than with neighbors in the wake of water leaks, as discussed in the previous chapter. Indeed, it often proved elusive. What all those who sought to negotiate a settlement shared – regardless of whether their efforts were successful or not – was a firm internal recognition of who was to blame and a desire for a remedy. Put in terms of the Felstiner et al. typology, they were “claiming.” As we will see, the remedies were not always monetary. Sometimes victims simply wanted an apology or an acknowledgment of fault. When money was at issue, the amounts were not exorbitant, especially viewed in light of the massive punitive damages available in U.S. tort cases.

Negotiations suggest a willingness to forego punishment. A bilateral agreement could be limited to monetary damages, leaving open the possibility of pursuing criminal charges against the driver at fault. But the stories elicited from the focus group participants suggest that the purpose of releases – whether written or oral – is to settle all claims. This, of course, raises a moral dilemma as to whether a driver should be able to escape criminal liability. When the injuries are minor, moral compunctions tend to be ignored. But when they are life-threatening,

²⁴See the preceding chapter for a discussion of this Russian phrase.

some are troubled by allowing the driver to sidestep criminal responsibility.

The discussion in one of the Saratov focus groups is instructive. Filipp, a 22 year-old salesman, told of a recent incident in which several of his friends were badly injured. In the revelry following their university graduation, several of his friends got into a car driven by a young man they did not know. All of them were drunk. The driver wrapped his car around a telephone pole. He was not injured, but his passengers were. One girl was in a coma for 8 days. The other had a fractured hip and a variety of other internal injuries. According to Filipp, the driver approached the families of the victims with a generous settlement offer. Representatives from the prosecutor's office encouraged settlement, hinting that the girls' drunkenness could complicate any prosecution. Some focus group participants were pragmatic. They said that, were they in the unfortunate shoes of the families, they would take the money, noting that it could be helpful in paying for treatment. More generally, they argued that pursuing criminal sanctions should take a back seat to restoring those injured to full health and that they would prefer to spend their time and energy focused on their own recovery or advocating for loved ones rather than badgering the police to go after the other driver. Filipp reported that the parents of these young women were preoccupied with their medical care. On the other hand, despite criticizing his friends for getting into the car, Filipp was unforgiving when it came to the driver: "It seems to me that he's done something horrible – he's endangered the lives of others. One girl may be an invalid for her entire life, if she survives. He's a grown-up and needs to answer for his behavior."

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

A good illustration is provided by the aftermath of an accident involving Nikolai, a 42 year-old retail store manager. While sitting in a traffic jam in the city center of Saratov, he was hit by a jeep that did not notice him when turning into the street. In his words: "I started to dial the number to report the accident. Then [the other driver] says, 'What are you doing? Let's resolve this here and now.'" Even though the sum offered was less than the likely amount needed to repair his car, Nikolai went along because he understood that this was how things worked. He commented that pursuing the matter to court would inevitably have been more expensive for him. He was skittish about judicial procedure, describing it as "difficult and cumbersome." The other members of the focus group shared his distaste for the courts. When Nikolai said that he would go to court "only in an extreme situation – only if there is no other option," the group chimed in in support. They agreed that settling on the spot was the right choice.

In a Tomsk focus group, this same scenario was presented from the other side. Gennadi, who works as a department head in an industrial enterprise, was traveling in a Volga with several

colleagues, one of whom was driving.²⁵ When they tried to overtake a Moskvich at high speed, the driver lost control and smashed into the other car. The Volga landed in a ditch. According to Gennadi, no one involved had any interest in going the official route due to the inevitable paperwork involved. Neither side called the traffic police, though they showed up, as did a local tv news crew. In order to put a stop to any potential claims, one of Gennadi's colleagues simply bought the damaged Moskvich from the other driver. No receipts were exchanged. It was an oral agreement, but everyone left satisfied. The other driver was badly hurt; the payment for his car was presumably intended to cover any incidental medical expenses as well. Gennadi implies that the traffic police and the camera crew were paid to hush up the accident. He stresses that the accident was never registered. Much like the Saratov focus group, the other members of this Tomsk group were entirely supportive of how the situation had been handled.

Money was the primary way of dealing with the aftermath of accidents. Few payoffs were as generous as Gennadi's. This led to some grumbling among some focus group members who, upon reflection, felt they could have done better.²⁶ But most were relieved to have bypassed the bureaucracy of the traffic police, insurance companies, and courts.

Sometimes money was only part of the solution negotiated between the parties. Though there is no precise equivalent to the practice of one neighbor rolling up his sleeves and repairing the damage caused by a water leak that we saw in the preceding chapter, the experience of Stella, a 35-year old Moscow economist, provides an intriguing counterpoint. After a late-night accident on her way home from her parents in the outskirts of Moscow, the other driver proposed that she take her car for repairs to the shop of his relative. He offered to cover any costs. She took him up on his offer and was pleased with the service received.²⁷ The other members of the focus group were surprised she had trusted a stranger. Stella said that her suspicions had been raised because the license plate on the other car indicated he was not from Moscow. The very fact that he had stuck around after the accident helped his credibility.²⁸ Even so, if she had been

²⁵See Siegelbaum (2008: 37-79) for a history of the Gor'kii Automobile Factory (GAZ), which produces Volgas.

²⁶One Moscow woman described the 5000 rubles she received as "laughable." She took it because she realized the other driver had no more money, and she had no taste for litigation. She was more annoyed by the fact that the culprit got off with a 100 ruble fine, despite admitting her responsibility.

²⁷After the car was repaired, Stella sold it. The service center helped her by turning back the odometer, which she described as a customary practice.

²⁸Stella's cynicism about human nature revealed itself when she said that perhaps the other driver had stuck around to wait for the traffic police because he assumed they would side with him over a woman. She too worried that the traffic police would blame her, which is why she called her husband immediately after the incident and asked him to come to the scene.

on her own, she might have rebuffed him, but her husband had arrived on the scene soon after the accident and he supported her decision. Also pushing her towards going along was her disinclination to go to court.

In situations where physical injuries were more profound, the assistance provided by the driver at fault sometimes took a more practical form. As with monetary payments, it is useful to look at the practices from both sides. Fatima, a 25-year old student who worked at charitable organization, saw her life turned upside down when she accidentally hit a teenager crossing a busy street in Moscow. She was stuck in traffic. Next to her was a large truck. As she was inching along in a crosswalk, she failed to see the teen darting through the maze of traffic. The girl sustained a compound fracture of her leg. During the months she spent in the hospital, Fatima was a constant presence, bringing food to sustain the teen and her mother (who was single with another child to support as well). She also provided over \$3000 to ensure that the girl received first-rate treatment and to cover her tuition for higher education, money that she raised by selling her car. At first, the family refused to talk to Fatima. As she put it, “the mother wanted to strangle me.” After four months of apologies and material support, she wore the mother down, but the teenager never waived. During the frosty period, the family filed a civil suit against Fatima and supported the police in pursuing criminal charges. By the time these lawsuits were set for trial, relations had thawed and the family withdrew its civil claim and asked the court for lenience in the criminal case.

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

In the discussion of cases like Viktorija’s, the focus groups were openly suspicious of the motives of the do-gooders. The groups doubted their sincerity and believed that their help was cynically motivated to ensure that the victims forego legal action against them. The analysis of failed efforts at negotiation shows that Russia has its share of unscrupulous con men who promise the world only to disappear into thin air. Fatima provides some insight into how this

Several times she noted that many Russian men harbor prejudice regarding female drivers. She admits that when the police arrived they “jumped all over him,” probably because he was a bit tipsy.

happens. After her accident, she sought out a lawyer to help her sort through her options. He offered to help her create an alibi to avoid liability that would stand up in court. He counseled her against going to see the teen-aged victim in the hospital and assured her that the girl would be helped with a generous “gift” in due course. The combination of the accident and her encounter with this lawyer, whom she later referred to as a “bandit,” gave rise to a road to Damascus conversion for Fatima. Raised as a secular Muslim, she converted to Christianity and thereafter devoted her life to charitable work. She fired the lawyer and resolved to do right by the girl.²⁹ She explicitly linked her choices to her faith, saying that Christians do not bribe their way out of problems. “If a person has forgotten about God, he lives however he wants. If a person is a believer, then he does not budge; he is like stone. Of course, there can be exceptions. But I know of many people who will not betray their beliefs for any amount of money.” She had the moral fiber to stand up to temptation, but not everyone does.

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

Sometimes it is the victims themselves who are the scam artists. The Russian media is replete with stories of people who make a good living by jumping in front of cars and pretending to be more seriously injured than they are. Examples of ham-handed practitioners of this art can be found on the internet. One goal of introducing mandatory insurance was to discourage this practice. Whether it has succeeded is difficult to know. The desire of many to avoid interacting with their insurance companies leaves them vulnerable. Liubov, a 56 year-old Muscovite who works as the chief accountant at a small factory, was with her husband when they hit an elderly man with their new car. He had been in his own car, but jumped out. He injured his head; blood was everywhere. They felt badly. When the old man and his daughter called to ask for money

²⁹Fatima reported that when she refused the services of this lawyer, her tires were slashed.

and help, they initially gave them money. Her husband also brought food to the man. But as the demands became more frequent and the amounts increased, they grew suspicious. They began to tape his calls. When he asked for \$10,000, they played the tape for the police. The investigation was terminated and the requests stopped. No doubt many people lack the common sense and courage exhibited by Liubov and her husband, and so are held hostage to the demands of pseudo-victims. It is likely not coincidental that they were driving a new car when this happened. These con artists target the rich, assuming they have greater access to money and a strong desire to avoid the criminal courts.

Bribery can color the options available to the parties. When Ida's daughter was hit on New Year's Day in 2006, she sustained an open fracture of her right hip and leg. Ida spoke openly of how the doctors and nurses told her that they would provide aggressive treatment only if Ida paid them under the table. Not only did she have to navigate a corrupt medical system, she also felt the consequences of corruption in her treatment by the legal system.³⁰ Her daughter had been in a *zebra* when she was hit. The driver, who was from Azerbaijan, was speeding and made little effort to brake for her. When Ida met him, his wife offered to pay her \$1000 to hush the incident up. It was Ida's understanding that the driver himself did not speak Russian. She did not take the money – not because she was squeamish about accepting a payoff – but because she was not yet sure how much her daughter's treatment would cost. In fairly quick order, the Azerbaijani couple vanished along with their offer. The indifferent attitude of the traffic police left Ida convinced that the money had gone to them. Some months later, she coincidentally got a job working for a procurator. He insisted that she hire an *advokat* to pursue the case. Proving what happened has not been easy. At the time of the focus group she was discouraged, saying that she had probably wasted her money on the lawyer. As this suggests, not all failed negotiations end with the victim doing nothing, like Anton. Sometimes such failures are merely a way station on the path to litigation.

Seeking Third-Party Assistance for Settlement

For those who are able to find a resolution short of litigation, but for whom bilateral negotiations proved ineffective, there are several third-parties that have proven useful in resolving differences. Most notable among these are insurance companies and the traffic police. The former is to be expected. After all, one of the purposes of making insurance mandatory was to make it easier to deal with accidents. On the other hand, the low reputation enjoyed by the traffic police makes it surprising that anyone would turn to them in times of trouble. The

³⁰Paying medical staff for ostensibly free treatment is not a post-Soviet phenomenon, but reflects a continuation of practices from the Soviet era. Heinzen (draft: 118-122) draws on the Soviet interview project with emigres to flesh out the choices, which ranged from bringing flowers or candy to large cash payments. Doctor-respondents justified them on the grounds that it was a longstanding custom and claimed that refusing such offerings would have insulted their patients. Whether either side viewed them as bribes or, rather, saw them as *blat*, is unclear. See also Ledeneva (1998).

analysis thus far has mostly documented their receptivity to bribery.

The incidents recounted during the focus groups spanned the time period before and after the imposition of compulsory insurance. There is no question that few Russians bothered by obtain insurance before they were required to do so. As I noted earlier, 38 percent of drivers continue to flout the law. But for those who did have insurance, most were able to get paid. Not all came away satisfied by the experience, but only one of the focus group participants was sufficiently disgruntled to pursue her claim to the courts.

Not surprisingly, those who had purchased comprehensive insurance (rather than the minimal compulsory policy), were more likely to be content.³¹ They still complained about the endless red tape. Illustrating Felstiner et al.'s point about how the same event can be experienced differently, two Muscovites who were paid within three months after gathering all the documents (*spravki*) came away with polar impressions. Dmitrii, a 25-year old student who worked part-time at a travel agency, who sideswiped another car when he was unable to control his own car due to speeding, was satisfied. Vladislava was less sanguine. She grumbled about being forced to do the legwork for the insurance company, and was insulted when her agent left her with the impression that she was somehow to blame for the damage to her car, even though she had been hit by a drunk driver. She was also dissatisfied with the amount she received. In her words, "I tried to complain within the insurance company. ... But it was to no avail – I was stuck with their procedures. They didn't help me. I came away disappointed in insurance companies generally." The idea of suing the insurance company was unappealing. "I understood that my health was more valuable and decided not to initiate a lawsuit." As a mother with several small children, Vladislava had less time than Dmitrii (who was single) to devote to pulling together the evidence her insurance company required before it would pay the claim. No doubt the fact that she was the victim rather than the culprit colored her view.

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

As a group, the traffic police were even more unpopular among the focus group participants than insurance companies. Even so, several examples in which the traffic police acted as honest brokers show the danger of stereotypes. The most telling involves Oksana, a 52-year old factory worker from Kushchevskaiia, who was knocked off her bicycle by a hit-and-run driver. She had to stay home from work for two weeks to recover from her injuries. Two months later, she recognized the car at a farmer's market. The paint from her bicycle was still

³¹Many Russian banks require comprehensive insurance as a condition of providing a loan. This explains why both Dmitrii and Vladislava had this type of policy. Few opt for it voluntarily.

visible on the headlights. She called her husband and son, who alerted the traffic police. The officers confronted the driver, who admitted his involvement. They encouraged him to buy her a new bike. As Oksana explains: “The officer told him, if you don’t want to lose your license, then pay this woman right now. If you don’t, she will take you to court and, in that event, you’ll both lose your licence and you’ll have to pay her.” He agreed, but said he has did not have that much money on him. The officers held his passport while he went home to fetch more money. Oksana was able to buy a new bike with the money.

This story is unusual in several ways. Not only does it put the traffic police in a good light, it also shows that occasionally Russian officialdom is able to put aside its byzantine bureaucratic rules and do what is right for an individual who has been wronged. Oksana harbored no illusions about the traffic police. She had to be convinced to involve them, both at the time of the accident and when she came upon the car. She was not a sophisticated operator – her formal education had ceased at the 8th grade – but against all odds her innate sense of what was right was rewarded.

Litigation

Going to court was no one’s first choice. It represents a grudging response to an inability to resolve problems through negotiation. Russians’ distaste for litigation lends potency to the threat to file a lawsuit, and can stimulate parties to negotiate and help their victims. Fatima’s solicitude toward the teenager she hit was may have initially been stimulated by her desire to avoid criminal liability, though she did not acknowledge as much. The wariness of the victim’s family is demonstrated by its unwillingness to withdraw the complaint until the last minute. Anton’s experience acts as a cautionary tale. He signed the release before receiving anything from the perpetrator’s family and lacked the energy to pursue them when they vanished.

Initiating Litigation. Taking on a lawsuit requires a strong commitment, regardless of whether the target is an individual or an entity. Most of those who took this route were motivated more by principle than by material interests. Many hired lawyers to help them. Even so, they took on much of the responsibility for assembling the bits and pieces of evidence needed to prevail. Proof problems were the most commonly cited obstacle to going to court – it was a much bigger concern than telephone justice.

Not surprisingly, stubbornness is a trait shared by those who took this route. Petitioners typically describe themselves as being driven by principle more than money, which makes sense given that the amounts recoverable are rather modest, at least by the standards of U.S. awards of punitive damages. Likewise, the targets of these lawsuits use every trick in the book to escape liability. After all, if the parties were open to amicable settlement, the case would not have gotten to court. A somewhat extreme example is the behavior of the driver who hit Katya, a 20-year old Saratov university student. He plowed into her, sending her car flying across several lanes of traffic where it was stopped by a tree. He and his family walked away from the incident, but Katya was knocked unconscious and spent several months recovering in the hospital. The

traffic police report declared him to be at fault, but he refused to acknowledge responsibility and made no effort to contact her. She tried to get criminal charges brought against him, but because he had not been drunk and she had survived the accident, the police were uninterested. She then resolved “to beat him up financially.” For Katya, this was a matter of principle. In her words, “my parents told me to let it go ... but I have such strong resentment and pain that I had to pursue it.”

The lawsuit turned into a soap opera. Acting on the recommendation of friends, she located an *advokat* to whom she paid a 20,000 ruble retainer. They agreed that the lawyer would also get 15 percent of any amount recovered. The complaint sought 1 million rubles in moral damages. It is doubtful that she had any realistic expectations of recovering anything close to that amount. Not only are Russian courts disinclined to award such large amounts, but the driver was a schoolteacher with a monthly salary of 4000 rubles. In addition, anticipating a lawsuit, he had transferred all his assets (including his apartment) into his wife’s name. When he received the complaint, he made an abortive suicide attempt and checked himself into a psychiatric facility, where he was beyond the reach of the courts. When we spoke, eighteen months had elapsed since the incident, but he was still there. Katya’s lawyers had tried to convince the judge of his bad faith. She had been sympathetic but told them that the case could not go forward until the defendant was declared legally competent. The court had ordered an independent psychiatric evaluation, but it was carried out by the same doctor who had been treating the defendant who stuck to his guns. Over the months of waiting, Katya’s ardor dimmed, but she was reluctant to abandon the case due to sunk costs. Her belief in the ability of courts to right wrongs – which made her a bit of an outlier among the focus group participants – also kept her in the game.³² But she did not view herself as an exception. As she said, “I think I am not the only person who believes in the law.”

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

No one questioned the responsibility of the other driver. He was prosecuted and received a 3-year sentence for drunk driving. Seeing the other driver in jail was not enough for Anna. She

³²Skeptics might assume that she was new to the judicial system. In reality, however, she had been involved in a Dickensian case brought by her father’s ex-wife to get title to an apartment that was owned by Katya and her father. Perhaps her faith was stoked by the fact that the court shared her view of her former step-mother’s claims as bogus.

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

Though Anna won the lawsuit, she received no emotional closure from the experience. It only seemed to intensify her grief over her brother's death. She recovered 5000 rubles, which was a small fraction of her actual medical expenses. The court took the formalistic position that medical care in Russia is free, thereby placing the burden on her to prove her financial outlays. She found the demands of the court for documentary evidence of her side payments to medical personnel to be unrealistic and humiliating. She felt pressured by the judge to drop the case and believed that the other side had bribed the judge. In contrast to Katya, Anna did not trust in the integrity of the legal system, arguing that "any judge can be bought." She concluded: "it is sad to live in a state where we are completely unprotected, where we have no hope ..."

Suing entities tends to be less driven by emotion. The rare instance of a lawsuit brought against an insurance company is a good example. Kira and her husband resorted to litigation when their insurance company refused to pay their claim. Its stubbornness was driven by an odd glitch in the law, which it exploited to its full advantage. Kira, a 52-year old bookkeeper from Tomsk, was a passenger in the family car being driven to their dacha by her husband. When they were going through a green light at a traffic intersection, they were hit by a foreign-made car that came out of nowhere. Their car was totaled. There were 4 people in the other car, all of whom had been drinking. They sped off after the accident, but were quickly apprehended. In an odd twist, the traffic police were unable to determine who had been driving. Kira believes that this was a subterfuge designed to protect an influential local military official. In any event, Russian law requires a determination of who was driving before an insurance companies is required to pay.

The insurance company clung to the letter of the law and refused to pay. Kira and her husband found a *iurist* to represent them who was a co-worker of their daughter's. The *iurist* explained what sort of evidence would be needed. Her husband then tracked it down, wooing witnesses to come forward with traditional Russian gifts of wine and candy. Thanks to the help of the lawyer, they prevailed at trial, only to face an appeal, which they also won. In the end, they had to resort to the bailiffs (*sudebnye pristavy*) to recover the judgment of 32,000 rubles. This amount was not sufficient to buy a new car outright. They used a third of it as a down-payment on a loan. They used another third to pay the *iurist*.³³ She made no financial demands

³³They put the remainder aside as a rainy day fund. Both Kira and her husband had latent health issues that they worried could flair up at any time.

on them, but they were convinced that they never would have succeeded without her help, and so insisted that she take the money.

Though the experience was not pleasant – the litigation dragged on for 18 months and required them to persist through “terrible red tape” – Kira felt the insurance company had left them with no choice. She insisted they were motivated by justice and not by a desire to punish. In her words, they pressed forward because “we decided that the law was on our side. Plus we weren’t to blame.” In terms of her trust in the legal system, she falls somewhere between the extremes of Katya and Anna. She felt that they got justice from the courts, and did not see their experience as an aberration.³⁴ The other members of her focus group were generally supportive of her choices. Several chimed in to say that the only way to get an insurance company to pay was to sue. Others said that they too would have sued in Kira’s situation, but might have refrained if the amount at stake were less significant. Everyone – including Kira – was bothered by the fact that the identity of the driver was never established.

The distaste for paying may not be limited to insurance companies. When Irina, a 51-year old Saratov doctor was hit by a minivan owned by the Russian Pension Fund, her experience had some interesting parallels to that of Kira. The incident occurred in 2002, before insurance was made mandatory, so insurance was a non-issue. The traffic police established that the other driver’s poor eyesight had caused the accident. Estimates of the cost to fix Irina’s car hovered around 60,000 rubles. Realizing that they could not absorb this loss, her husband went to the offices of the Pension Fund to negotiate a settlement. The bureaucrats quickly showed him the door. They told him that he would have to sue to get anything from them.

Irina and her husband resolved to take a “completely legal approach.” Neither they nor their friends had previously had occasion to go to court, so they got no advice as to how to proceed. They simply went to their local “legal consultation” office and hired an *advokat*.³⁵ He explained that they needed to arrange for an independent appraisal of the damages to the car and drafted a complaint which was filed in the justice-of-the-peace courts. After several hearings, the parties reached a settlement (*mirovoe soglasenie*).³⁶ In contrast to the insurance company, the Pension Fund paid the amount of the judgment immediately. Irina had been concerned that the

³⁴Kira had very different reactions to the trial and appellate courts. She felt validated by the trial court, where she and her husband were allowed to share their stories. By contrast, she found the appellate hearing off-putting because the three-judge panel had no interest in them, but only wanted to query their lawyer about technical details.

³⁵They gave him a small retainer and agreed to pay him 5 percent of any amount recovered.

³⁶The Pension Fund did not lay down. They initiated a counter-claim that sought to place blame on Irina’s husband. But neither the witnesses nor the report of the traffic police substantiated its position, leading to the settlement.

case would drag on forever, but it was over within two months. Her fears of corruption also turned out to be unfounded. In her words, “I was very satisfied [with the court]. I was satisfied with our *advokat*; I was satisfied with the judicial process – how it was conducted – it was very competent (*gramotno*) with no red tape.”

Being the Target of Litigation. Getting sued is no fun. As I’ve discussed, those who were involved in accidents in which serious damage, whether material or physical, was sustained, often took action to ensure they would not find themselves in court. Sometimes they did so right away, as with the driver from Shumerlia who had his passengers sign a release. Other times the request comes only after the culprit has proved himself by helping the victim with her recovery. The genuineness of the solicitude varies, as does human nature. Anton was left with only a piece of paper when the other driver disappeared after getting what he wanted. By contrast, the driver who hit Viktoria stuck around until she was back on her feet. Fatima never asked for a release. By the time the civil and criminal cases came to trial, she had won the trust of her victim’s family (if not the victim herself) and they asked the court to spare her. No doubt behavior is driven largely by the internal moral compass of the individuals involved.

Of the participants in the focus groups, only Elvira ended up having to go through the full process as a defendant. As I noted earlier, she believed herself to have been the victim and had resolved not to pursue her claim. The status differential was a key factor in her decision. The other driver was the general director of a local furniture factory, whereas she saw herself as a lowly state bureaucrat. Unfortunately, the other driver saw himself as the aggrieved party and pursued her as a matter of principle. They met several times. She made him aware that her husband had connections to the local procurator’s office in an effort to equalize their status, but he paid no attention.³⁷ When he would not budge from his initial demand, she said they would have to leave it to the court. Sure enough, he brought a lawsuit against her in the justice-of-the-peace courts.

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

In reflecting on the experience, Elvira listed a series of strategic mistakes she had made. Even though she had few assets, her initial instinct had been to give the other driver what he wanted, but her assistant convinced her to stand firm. In her words: “I am sorry that I didn’t just

³⁷This was an empty threat. Her husband had no legal training; he was not a prosecutor himself. He had previously worked as an assistant in the section of the procurator’s office that handles environmental claims. He was unable to help her once the case ended up in court.

give him the money right away because the court hearings were unpleasant. If you go to court, you end up feeling guilty.” She did not see the judicial process as being even-handed. She felt that the judge and the plaintiff were part of an insiders’ circle to which she was not privy. In her view, “if I had been within this circle, then probably it would have been seen as mutual fault.” If she had it to do over, she would make every effort to avoid the courts. If that proved impossible, then she would hire an *advokat*, who would “guarantee victory.” Put more bluntly, she would find a lawyer who had the backdoor connections needed to bribe the judge. Though not convinced that the judge in her case was bribed, she believed that the law itself was a peripheral issue. In her opinion, the outcome was dictated by connections.

Explaining Russians’ Responses to Auto Accidents

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

Thinking more deeply about why some Russians do nothing and others pursue their causes with a Javert-like intensity requires us to return to the theoretical framework of Felstiner et al. (1980-81). They identify a series of possible transformational agents which, as the label suggests, have the effect of pushing the problem from one stage to another. Their analysis focuses on the U.S., but many of the factors are universal. The genius of their approach is that it incorporates an interior perspective with societal factors. Each can be important on its own or they can be combined to make a kaleidoscope of patterns.

The Worldview(s) of Respondents

Felstiner et al. posit that how one looks at the world will have a profound effect on her approach to problem-solving. This insight plays out in an interesting way in the Russian case. As part of the transition away from state socialism, Russians have come to feel increasingly isolated. For many, the collapse of state services in the 1990s shattered their faith in the ability of the state to protect them. Their social support networks have become frayed as people scrambled to support their families as the Soviet-era practice of feather-bedding disappeared with the imposition of market incentives. Inflation has made mincemeat of the pensions of the elderly, forcing many of them back onto the job market and leaving them unavailable for their traditional role of assisting with child care. The shattering of long-time norms into which they were socialized during the Soviet era has left many unsure of what is right or wrong. I suspect that this effect is more deeply felt among older generations, though the unrepresentative nature of my focus groups does not allow for the testing of this hypothesis.

The effect of this sense of social isolation is more evident in interactions among strangers. Thus, the analysis of the focus group participants' behavior in the wake of auto accidents provides a fascinating contrast to their responses to water leaks in their apartments. In the latter case, they were mostly dealing with people they had known for a long time, whereas their roadside difficulties uniformly forced them to interact with strangers. Even when they formed a bond with the other driver, as in the cases of Fatima and Viktoria, it was temporary and dissipated when the person injured was able to cope with daily life for herself. Thus, in their responses to these unexpected events, the focus group participants were guided not by the localized norms of their *pod"ezd* (or residential entryway) but by a combination of their internal moral compass and more general societal norms.

Whether post-Soviet Russian society has developed a clear set of norms that govern behavior in the aftermath of an auto accident is unclear. As I noted at the outset of the chapter, the proliferation of cars is a relatively recent phenomenon. In contrast to water leaks, those who are unfortunate enough to be in an accident cannot think back on how their parents or grandparents handled it. For most, it is an entirely new experience. Although there was an occasional nod to the need to behave in a civilized (*po-chelovecheski*) manner, the lack of concern with how one's behavior in the wake of an auto accident appeared to others was striking, especially when compared to the obsession with maintaining appearances that was exhibited in the preceding chapter. Instead, many respondents felt as though that they were on their own. They relied on themselves and on immediate family members. Some were frightened to contact law enforcement organs, fearing that doing so would rebound to their detriment.

This sense of isolation, which may have been latent in the Soviet era, has become a powerful motivating force in present-day Russia, especially in large metropolises (Shevchenko 2009). Self-reliance can be a double-edged sword. It can express itself in a single-minded determination that makes all the difference in dealing with bureaucracies. After her brother was killed by a drunk driver, Anna said that "no one wanted to do anything." Many of the focus group participants felt similarly ignored and marginalized by officialdom. Kira knew no one else would help her get the money she was owed by her insurance company, and pressed forward to the court with her claim. As did Irina in her battle with the Pension Fund. But it can also express itself as selfishness as in the case of Anton whose desperate need for help in recovering was ignored in the eagerness of the driver at fault to escape responsibility. When the mother of the perpetrator was negotiating with Anton, she stressed her son's student status and his consequent lack of resources, conveniently ignoring that Anton was also a penniless student at the time. Such behavior reflects a hardness to difficulties of others that may be a quasi-survivalist response to the economic chaos of the 1990s. Katya's case shows how self-reliance can sometimes result in a stalemate. Ignoring her parents' advice to move on, Katya pursued a scorched earth strategy, filing a million-ruble lawsuit. The other driver responded in kind by transferring his assets to his wife and feigning mental illness.

Despite their complaints about being left to their own devices, many of the focus group participants drew on their membership in communities to help them through the experience.

These ranged from the family at the micro-level to the community of believers at a more cosmic level. Turning again to Anton's experience, the other driver benefitted from being part of a family that was determined to preserve his options in life. Anton's family was no less concerned with his future, but his precarious physical condition took up all their energy. Along similar lines, Ida's identity as a mother led her to whatever was necessary, including bribing medical personnel, to ensure that her young daughter did not become an invalid. Her priority was her daughter's recovery rather than seeking out and punishing the Azerbaijani couple who were to blame. Some Russians have turned to religion as a way of making sense of their feelings of isolation.³⁸ In ordering their behavior, these believers are mindful of the Golden Rule of doing to others as you would them do unto you. Fatima, who grew up as a secular Muslim but embraced Christianity in the form of the Russian Orthodox Church after injuring a teenager with her car, is a good example of how genuine religiosity can lead to remarkably unselfish behavior.

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

How a person sees herself as fitting in has a profound impact on her response. The Shumerlia respondents saw themselves as part of a relatively small and tight-knit community and worried about how an effort to recover damages after an accident would be viewed by friends and neighbors. They spoke of how everyone knew each other's business in Shumerlia. Recognizing that claiming was not a socially acceptable response, they signed away their rights. Such attitudes are reminiscent of the rural residents Engel studied in Sander County in the United States (1984), who saw injuries as a part of daily life on farms to be endured. He found that newcomers were more likely to pursue damages than longtime residents and to be ostracized for their behavior. Like their counterparts from Sander County, the Shumerlia respondents' concerns were individual not collective. They feared that pursuing a claim would make them appear petty in the eyes of the community, but were not worried about rupturing its social cohesion. This stands in contrast to the more communitarian motivations of Thai villagers in the wake of

³⁸According to periodic polling by the Levada Center, the segment of Russian society that identifies itself as Russian Orthodox grew from less than 20 percent in 1989 to about 80 percent in 2012. The percentage of non-believers took a precipitous nosedive during this period, dropping from over 70 percent to about 12 percent (Figure 16.1, Zorkaia:165). These same data suggest that, for some, declaring oneself as a believer was more a matter of fashion than a life-changing conversion. About three-fourths of those polled in September 2012 felt that many Russians are keen to show their involvement with the faith but are not true believers (Table 16.15 Zorkaia: 163). Further evidence comes from a November 2012 survey that reveals that over 60 percent of respondents had never read the Bible or any other fundamental religious text (Table 16.26 Zorkaia:167).

accidents. Engel (2001) found that Thai villagers saw compensation, particularly in the form of elaborate and costly funeral ceremonies, as a way to return harmony to the community. His work reminds us of the ways in which different conceptions of community or “reality frames” can play out in terms of post-accident claiming (2001: 9).

Rather than worrying about how neighbors and others close will view their behavior, the common thread among the respondents from these larger cities was a concern over what sort of clout the other party to the accident might have. In this, we see the lingering effect of the web of personal connections that determined one’s ability to survive and thrive in the Soviet era. As the scholarly, literary, and memoir literature remind us, the perennial shortages made coping on one’s own impossible (Baranskaya 1990; Ledeneva 1998; Young 1989; Smith 1977; Voinovich 1976). The abundance of consumer goods and the beginnings of a service economy has lessened the need to build and maintain personal networks. But all bets are off in the case of unexpected events like auto accidents. Many Russians still believe that law takes a back seat to connections when it comes to getting out of trouble. It is no surprise that the focus group participants preferred informal solutions to litigation. Nor is it unique to Russians. Nelken (2009: 36-37) notes that, in the aftermath of car accidents in Sicily, “the key question after an accident is not who is to blame but with whom you have to deal. It is important to find out as much as possible about the personal and social background of the person you have been in an accident with, getting information about the reputation of his or her insurance company, the lawyer, garage mechanic, medical expert available to him or her, and in general the person’s larger network.”

Corruption

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

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

Much of the analysis thus far has focused on perceived corruption in the legal system. But corruption within both insurance companies (discussed below) and the medical establishment was also taken for granted. This explains why those close to victims with severe injuries were rarely able to focus on claiming and, instead, had to devote themselves to

advocating for their loved ones within the medical system. Ordinary Russian hospitals provide few creature comforts to their patients. When Fatima brought food to hospital for the teenager she had accidentally injured, she endeared herself to the teen's mother, who otherwise would have had to do this. Many respondents told of having to make side payments to get access to needed treatments and rehabilitation facilities. No one disagreed with these sad realities. Rather they chimed in with their own examples. Perhaps the most egregious example came from Ariadna, an 58 year-old insurance agent from Shumerlia, who spent a month in the hospital after surviving a head-on collision. Her husband had been driving within the speed limit when a car came into his lane in an effort to pass a bus. He swerved to avoid the brunt of this car and they ended up in a ditch along with their three neighbors-passengers, all of whom were badly injured. Despite the obvious fault of this driver and the availability of the bus passengers as witnesses to what happened, no criminal case was ever brought. The medical records substantiating their injuries mysteriously disappeared. She believed that the doctors had been bribed to destroy them by the other driver. The other members of the focus group agreed. The traffic police told her that the fix was in; they had been pressured to go easy. In the end, Ariadna did nothing. She said that her friends and family convinced her that pursuing the case was not worth the effort.

Institutional Infrastructure

Felstiner et al. point to a number of institutional factors that can encourage or discourage people to pursue their disagreements up the pyramid of disputing. Among these are the law itself and the receptivity of the courts to various types of disputes. They also identify lawyers as important gatekeepers. In the U.S. context, few contemplate litigation without consulting lawyers. A lawyer's willingness to take a case hinges less on his client's sense of injury than on whether he will be able to win. This is particularly true in tort claims, for which are compensated by contingent fees that depend on the damages paid by the other side. More often than not these damages are the results of settlement negotiations rather than court judgments, though threats of litigation can be potent weapons in stimulating such settlements.

An examination of the Russian context shows how these institutional factors can have a very different impact. It is a case study in the chasm that can exist between how institutions are supposed to work and how they actually perform in daily life. All too often, the goals of institutional design fall short in practice.

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

At first glance, it appears that the substantive law governing torts changed little in response to the transition away from state socialism. The chapter of the Russian civil code dealing with torts is largely identical to its Soviet predecessor. In practice, however, the law been adapted to reflect the contemporary reality of private property and an exploding population of car owners. The Soviet-era approach of imposing strict liability on drivers has been largely abandoned. In its place has come a renewed reliance on comparative negligence. The relevant article in the Civil Code provides that, in the presence of “gross negligence” (*grubaia neostorozhnost’*) on the part of the victim, damages will be reduced to reflect the respective degrees of fault of the parties (art. 1083 GK, pt 2). Soviet judges took the requirement for “gross negligence” seriously, reflecting the preference for strict liability (Barry 1978: 322). Contemporary Russian judges, by contrast, have informally lowered their expectations. Any negligence on the part of the victim is likely to trigger this section. It will not be presumed; the burden is on the petitioner to prove the negligence of the defendant. This same section of the Civil Code continues on to give judges the discretion to adjust damages in light of the economic wherewithal of the parties. Barry reports that Soviet judges made occasional use of this provision. As a result, a defendant “might ... be compelled by a court to compensate, based on a consideration of the financial situation of the parties to the suit” (ibid.: 330). Post-Soviet Russian judges have ignored this provision, though it remains on the books.

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

Lawyers. Confusion about the substance of the law is hardly unique to Russia. Lawyers might be expected to pick up some of the slack. But this assumes that people are comfortable bringing their problems to lawyers. Throughout the book I have documented the peripheral role of lawyers in Russian daily life. Dealing with auto accidents is no exception. Few bothered to consult with a lawyer to learn their rights before deciding how to proceed. The reasons why are by now familiar. The focus group participants assumed the cost of legal services would be beyond their means. Few had friends or acquaintances who were lawyers and so they did not

know how to assess the qualifications or integrity of lawyers. Fatima initially ended up with a lawyer she described as a “bandit.” She was horrified by his matter-of-fact advice to cover up her involvement. Others were less squeamish. In the aftermath of an accident on an icy road that injured an elderly woman, Zinaida, a 30-year old Saratov doctor, did not hesitate to hire an *advokat* who had worked for many years as a *gaishchnik* (traffic police officer) to help her and her husband through the system. He gave them advice about how to minimize their potential liability and helped them recognize that the seemingly helpless elderly woman was a scam artist who supplemented her income by putting herself in harm’s way and bilking unsuspecting drivers.

Lawyers mostly came into the picture for the focus group participants when they were seriously contemplating litigation. As the chapters on the JP courts demonstrated, consulting a lawyer in connection with a court case is not typical in Russia. But unlike the divorces, tax disputes, and traffic petitions, tort claims do not follow a standard text. They cannot be reduced to a fill-in-the-blank formula. Context matters. The greater willingness of those involved in auto accidents to seek legal counsel is understandable. Though my sample is small and unrepresentative, it is nonetheless interesting to note that those who had professional assistance did better than those who eschewed help.³⁹ Recall Anna who fought to recover damages from the driver who killed her brother and left her badly injured. Despite having a law degree and having previously worked in the administrative structure of the courts, she was all thumbs when it came to assembling the requisite evidence. She ended up in the unenviable position of having devoted a great deal of time to the case but coming away with a pittance. Yet she had no regrets on this score. She told me of friends who had hired expensive lawyers and had come away empty handed. By contrast, Elvira, who economized by hiring a recent law school graduate that she referred to as her “assistant,” felt she would have stood a better chance had she retained one of the expensive *advokaty* she met with. Though she did not use Galanter’s (1974) language, she was making his point about the advantages shared by courtroom veterans in terms of their understanding of the formal and informal rules of the litigation game. As a first-time litigant – Galanter’s proverbial “one-shotter” – she felt out of her element against the general director who was a “repeat player” who was at home in the courtroom and traveled in the same social circles as the judge.

Courts. The messiness of tort claims arising from auto accidents make them an uneasy fit for Russian courts. As I argued in Chapter xx, Russian judges prefer to decide cases on the basis of documentary evidence. Relying on witnesses to recount what happened makes them uncomfortable. Even worse are cases with two viable narratives of events that require them to assess witness credibility. On a more practical level, they dislike witnesses because hearing testimony takes more time than reviewing documents. Calling witnesses can lead to delays due to the vicissitudes of their schedules. The procedural codes validate the judicial preference for documentary evidence. When they want to call a witness, parties are required to submit a motion in which they justify the need for the witness. Merely requiring a motion is a way of discouraging the practice. Judges’ openness to allowing witnesses varies. Their rulings are

³⁹Several (*e.g.*, Katya, Kira, and Irina) even praised their lawyers.

always grounded in assessments of potential relevance, but often this is a convenient subterfuge for a lack of patience with long-winded witnesses and a desire to comply with the statutory deadline.

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

Protokoly and other documentary evidence may be sufficient to educate judges as to what happened in simple fender-benders, but do a poor job of capturing the details of the more serious accidents that tend to end up in court. Witnesses are needed to flesh out the story. Sadly, those involved in the accident are not always able to fill in the gaps. As the stories shared above indicate, concussions and loss of consciousness is not uncommon. This leaves bystanders. Tracking them down can prove arduous.⁴⁰ The skepticism of judges towards witnesses makes it unclear whether it is worth the trouble. A number of focus group participants abandoned the fight at the outset due to fears of being unable to find eye-witnesses.

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

This sort of formalism can lead judges to give a cold shoulder to claims for services from private clinics. Once again, Anna's experience is instructive. Like many Russians, she was skeptical of the quality of the medical care provided free of charge and opted to go to a private clinic for rehabilitation. The court refused to countenance these charges, telling Anna that she could have obtained treatment at no charge. Even though Anna had been educated as a lawyer

⁴⁰A number of forums exist on the internet in Russia in which people involved in accidents seek out eye-witnesses to their misfortune.

and understood the inherent positivism of the system, she came away from the experience frustrated by the court's unwillingness to deal with the real-life challenges she faced. Others in the focus groups echoed her concerns. Demanding the impossible marks the courts as out of touch with reality. Judges take no responsibility; they point to the codes and say their hands are tied. In reality, however, the codes – both procedural and substantive – provide a considerable amount of wiggle room. The risk-averse nature of Russian judges makes them wary of exercising discretion.

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

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

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

blame. She was advised to do this by the former traffic policeman turned lawyer that she hired to help them. He knew how to beat his former colleagues at their own game. Respondents felt that their lack of respect for the *gaishchniki* was reciprocated. They reported waiting hours for someone to show up. When they did, victims described their attitude as “boorish” (*khamskoe*), and said that they were left feeling as if they were criminals rather than hapless victims.

Every once in awhile the traffic police rose to the occasion. Recall the experience of Oksana who was able to replace the bike destroyed by a hit-and-run accident when the Kushchevskaya *gaishchniki* put pressure on the driver to do the right thing. Along similar lines, Timofei, a 25-year old Moscow lawyer for the tax inspectorate, told of an incident from his adolescence when several drivers, including his father, were spooked by a horse and crashed into one another. The traffic police officer determined that all involved had been negligent and brokered an amicable settlement. Several others related similar stories, but these were the exception rather than the rule.

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

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

Some countries have introduced alternatives to court for resolving disputes with insurance companies. Japan, for example, has both private and state-sponsored alternatives (Tanase 1990). As to the latter, court-annexed mediation has proved to be a popular option. Though the amounts received through mediation tend to be lower than court awards, it is quicker. As to the former, a network of traffic accident dispute resolution centers was established in the 1970s as a nonprofit corporation and was financed by profits from compulsory insurance. These centers offer private adjudication services. As to both, disputes that prove resistant to solution are forwarded to the courts. When writing in 1990 about the Japanese system, Tanase pointed to these managerial solutions as a key element of the reason why only 1 in 100 disputes arising from auto accident ended up in court, as compared to 21.5 out of 100 in the United States. Russia has not followed this example, though the experiences of the focus group participants suggest that the Japanese solutions might be helpful. But these institutional innovations in Japan arose in an environment in which the traffic police are beyond reproach and public corruption is minimal. Lacking these starting conditions, any new tribunal might quickly “go native” and be driven by bribes rather than the law. Moreover, the tentative steps Russia has taken towards encouraging mediation have been met with public indifference (Hendley 2013).

Apologies. Much has been made of the role of apologies in the comparative literature on tort law. Often the U.S., with its tendency to discourage apologies as an admission of liability (Cohen 1999), is compared to Japan, where a failure to apologize is seen as a lack of sincerity and can upend settlement negotiations (Wagatsuma and Rosett 1986). Comparing across geographic borders can be problematic (Haley 1986). Wagatsuma and Rosett (1986: 463) caution that “[a]pology is an objective act that can be observed and measured, but its primary significance is in the social context. ... Members of different societies attribute different to social behavior because their assumptions about the world and themselves are different.”

This debate has little resonance in Russia. Notwithstanding the critical role that admission of responsibility plays in the system, the narratives of the focus group participants put little emphasis on whether they had received an apology. Rather, they spoke about whether the other side had “acknowledged its responsibility.” The phrase used – *priznat’ otvetstvennost’* – is bereft of emotion. It is legalistic. Indeed, it is the phrase used in criminal trials. Russian has other linguistic options that vividly convey regret and sorrow (*e.g., proshchu proshchenie*). My respondents seemed to judge their injurers more by their actions than by their words. As the experiences of Fatima and Viktoria suggest, when a person’s behavior conveys genuine regret, victims tend to lose their taste for vengeance. Vice versa when the driver who caused the death of Anna’s brother made no effort to approach her, it fueled her desire to pursue her civil claim against him. For my purposes, what is more important is that apologizing carries no meaning in Russian judicial proceedings. It does not constitute an admission.

Russian Legal Culture

Much ink has been spilt in an effort to define legal culture. I agree with Friedman’s (1969: 31) definition of legal culture as “the ideas, attitudes, values, and opinions about law held

by people in a society. The assumption is that these ideas and attitudes influence legal behavior, especially the level of demands places on the legal system.” Though originally intended to explicate legal culture in the U.S., it is not geographically bounded and is entirely appropriate to the Russian context.

As I embarked on this study of Russians’ behavior in the aftermath of auto accidents, I had expected it to be revelatory of legal culture more generally. Such claims are routinely made by socio-legal scholars of torts (Engel and McCann 2009; Nelken 2009). Mostly writing about the U.S. system, they argue that the “reasonable person” standard that is central to this body of law requires decision-makers – whether judges or juries – to incorporate societal norms into their calculations of liability. The acceptance of judicial precedent as a source of law makes every decision relevant as tort law is patched together. Just as informal norms influence the formal law, the incremental changes in the formal law also color informal norms. As Engel (2001: 17) notes “[t]he judge is a mythmaker. The court projects a version of reality back on the social setting from which the case emerges, and this refashioned version of local truths inevitably redefines them.” Thus, tort law helps us understand larger societal attitudes towards risk and accountability.

Engel likewise highlights the symbiotic / reciprocal relationship between legal culture and tort law in his Thailand-based research (Engel 2009, 2005, 2001; Engel and Engel 2010). Like me, he studied how people react to accidents. His respondents were markedly less interested in identifying the proximate causes of their injuries than were their American counterparts. Their Buddhism played a role; their willingness to take on all or part of the responsibility for accidents speaks to their preoccupation with karma (their own and that of those around them). “In the end, they maintained, karma will ensure that justice prevails, although it may take some time. If not in this lifetime, then in a future life, the consequence of the injurer’s actions will be apparent” (Engel and Engel 2010: 135) An overly aggressive claim could result in damage to the victim’s karma, whereas failing to follow through on social norms that mandate that the culprit cover certain expenses of the victim could undermine social harmony (Engel 2009: 256-57). In the rare instances where Thais took their grievances to court, judges were impatient with these explanations centered on karma and required parties to stick to demonstrable facts. Engel notes that his respondents were able to “shift easily from one causal framework to another without any apparent sense of inconsistency” (ibid.: 255). He argues when faced with “a choice between legal action and adherence to Buddhist principles of forgiveness and compassion,” most opt for the latter over the former. Rather than shaping the formal law as in the U.S., culture stands apart from it in Thailand.

Russia presents yet another path. Much as in Thailand, the link between societal norms and tort law is tenuous. Unlike their Thai brethren, Russians do not look beyond their present lives when constructing narratives of what happened. They can be quick to blame themselves, but few believe in the concept of past lives, so naturally they do not attribute accidents to bad behavior in prior lives. Nor do they worry that their responses to accidents will lead to bad karma for them or their children. The idea of luck, which might be seen as a very weak corollary

to karma – was rarely raised in the focus group discussions or in the one-on-one interviews that followed. Concerns about restoring societal harmony in the wake of an accident do not motivate Russians. Their explanations look more like those offered by Americans. They tend to be linear and to hone in on a single causal agent. Both settlement negotiations and litigation center on a determination of who caused the accident. Unlike the U.S. case, however, the Russian courts take little notice of community norms when resolving cases. The civil code serves as their touchstone. To some extent, the institutional structure of the Russian legal system explains this approach. On a formal level, the law is less malleable. The decisions of Russian trial courts lack precedential value, and juries are not allowed in civil cases. As a result, each case is taken on its own merits. Little attention is paid to the larger implications, either in terms of the causes of the accident or the repercussions of the decision. Judges do not see themselves as responsible for identifying or solving society's problems. Moreover, their relentless positivism leaves little room for integrating informal customs and practices. Though such evidence could be introduced through testimony, most Russian judges would dismiss it as irrelevant if they allowed it at all. Indeed, it stands at odds with the procedural codes which are open to testimonial evidence. As I argued in the chapters on the JP courts, judges shy away from witness testimony. In a move that is entirely consistent with their positivism, judges have taken full advantage of the statutory language that gives them discretion over whether to allow witnesses by keeping them out whenever possible.

Russian judges are not concerned with how their decisions might affect future cases or society at large. Instead, the judge burrows in on the question presented by the case before her, which is construed narrowly. In contrast to the rhetoric that is common in U.S. cases, Russian litigants do not seek to be made whole. Even when their lives have been shattered, their petitions tend to itemize outlays for car repairs not reimbursed by their insurance companies or for medical treatment. The idea that the court could restore them to their former selves is foreign to them. As a result, the link between identity and tort remedies for injuries posited by Engel in his comparative study of the U.S. and Thailand is not present in the Russian case.⁴¹

In an ironic twist, the basic behavioral patterns of accident victims is similar in the U.S., Russia, and Thailand. Victims everywhere are reluctant to go to court, preferring to negotiate settlements informally. Socio-legal research allows us to unpack their motivations, which is where the diversity among these cases reveals itself. In Russia, victims' trepidation stems from their more general skittishness about officialdom, both private and public. Bilateral negotiations between those involved in accidents allows them to bypass the bureaucratic demands of insurance companies as well as the traffic police and the courts. This distaste for formal channels among Russians is well known. This study of behavior following auto accidents simply provides yet another illustration.

⁴¹Engel (2001:3) writes: "When we speak of remedies that will make the injured person 'whole,' we refer to a condition of 'wholeness,' an imagined self that can be restored through compensation or by other means. Concepts of injury and remedy, therefore, are inseparable from concepts of identity."

Yet law is far from irrelevant to these informal negotiations. Russians operate in the shadow of the law (Mnookin and Kornhauser 1979). Their bargaining positions are grounded in their understanding of the law and what they would likely receive through a formal claim (Ellickson 1991). As the focus group discussions demonstrate, those who believe they have no legal leg to stand on tend to do nothing.

But law is not the only factor that guides Russians. Those who have the misfortune to crash – literally – into people who they perceive as being more powerful are equally as likely to “lump it.” Power is a fluid term. It extends to those who hold political office or have immense wealth as well as those who have strong connections to such individuals. When they stumble into this world, many ordinary Russians view themselves as outsiders who cannot penetrate these networks of power and influence where a quiet word may be determinative. Others worry that decision-makers will be bribed to look the other way. At the heart of these fears is a lack of power of law to trump connections and corruption.

Elsewhere it is often argued that formal legal systems favor the rich because they can hire better lawyers that allow them to maximize their chances. Once again, Russia confounds this common wisdom. Ordinary citizens are more likely to use the courts when dealing with people like them. The combination of the low cost of using Russian courts and the fear that the powerful will manipulate the system through extra-legal mechanisms leads to the unexpected result that ordinary citizens get a better shake in court. It is in their cases where judges are able to apply the law without fear of political repercussions.

This finding would likely come as a surprise to ordinary Russians themselves. Judging by the focus groups, few of them see the courts as inviting. Indeed, they mostly see the entire system as stacked against them, from the unresponsive and insolent attitudes of the traffic police in the immediate aftermath of accidents to the bureaucratic maze required to recover through insurance companies to the courts. They complain bitterly about the time required to assemble the evidence required to substantiate their claim and about the emotional energy needed. The outsiders’ assessment of the several months needed to complete a case as speedy is not shared widely among Russians, who regularly vent on internet websites and in the press about the slow pace of justice in the JP courts. As a result, their hesitancy to take their claims to the courts is entirely understandable.

Bibliography

Albiston, Catherine R. "Bargaining in the Shadow of Social Institutions: Competing Discourses and Social Change in Workplace Mobilization of Civil Rights," *Law & Society Review*, 39:1, pp. 11-49, 2005.

Arakcheev, D.D. "Dogovory OSAGO: slozhnye sluchai." *Zakonodatel'stvo*. No. 10, 2008.

Baker, Tom. "Liability Insurance at the Tort-Crime Boundary," in *Fault Lines: Tort Law as Cultural Practice*, pp. 66-79, edited by David M. Engel and Michael McCann. Stanford: Stanford University Press, 2009.

Baranskaya, Natalya. *A Week Like Any Other: Novellas and Stories*. Translated by Pieta Monks. Emeryville, CA: The Seal Press, 1990.

Barry, Donald D. "The Motor-Car in Soviet Criminal and Civil Law," *International and Comparative Law Quarterly*, 16:1, 56-85, 1967.

_____. "Soviet Tort Law," in *The Unity of Strict Law: A Comparative Study*, pp. 319-39, edited by Ralph A. Newman. Brussels: Établissements Émile Bruylant, 1978.

_____. "Soviet Tort Law and the Development of Public Policy," *Review of Socialist Law*, 5:1, pp. 229-249, 1979.

_____. "Tort Law and the State in Russia," in *The Revival of Private Law in Central and Eastern Europe*, pp. 179-92, edited by George Ginsburgs, Donald D. Barry, and William B. Simons. The Hague: Martinus Mijhoff Publishers, 1996.

Belova, T.N. "Statistika dorozhno-transportnykh proisshestvii v kontekste natsional'noi idei," *Voprosy statistiki*, no. 10, pp. 28-33, 2010.

Belykh, V.C. *Strakhovoe pravo*. Moscow: NORMA, 2009.

Calavita, Kitty, and Valarie Jenness. "Inside the Pyramid of Disputes: Naming Problems and Filing Grievances in California Prisons," *Social Problems*, 60:1, pp. 50-80, 2013.

Jonathan R. Cohen, "Advising Clients to Apologize," *Southern California Law Review*, 72: 4, pp. 1009-1-69. 1999.

Ellickson, Robert C. *Order Without Law: How Neighbors Settle Disputes*. Cambridge: Harvard University Press, 1991.

Engel, David M. "Globalization and the Decline of Legal Consciousness: Torts, Ghosts, and

Karma in Thailand,” *Law & Social Inquiry*, 30:3, pp. 469-514, 2005.

_____. “Injury and Identity: The Damaged Self in Three Cultures.” In *Between Law and Culture*, pp. 3-21, edited by David Theo Goldberb, Michael Musheno, and Lisa C. Bower. Minneapolis: University of Minnesota Press, 2001.

_____. “The Oven Bird’s Song: Insiders, Outsiders, and Personal Injuries in an American Community,” *Law & Society Review*, 18:4, pp. 551-582, 1984.

Engel, David M., and Jaruwat S. Engel. *Tort, Custom, and Karma: Globalization and Legal Consciousness in Thailand*. Stanford: Stanford Law Books, 2010.

Engel, David M., and Michael McCann. “Introduction: Tort Law as Cultural Practice,” in *Fault Lines: Tort Law as Cultural Practice*, pp. 1-17, edited by David M. Engel and Michael McCann. Stanford: Stanford Univ Press, 2009.

Engel, David M., and Frank W. Munger. *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities*. Chicago: University of Chicago Press, 2003.

Ewick, Patricia, and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life*. Chicago: University of Chicago Press, 1998.

Federal’nyi zakon ot 11 fevralia 2010 g. No. 6-FZ “O vnesenii izmenenii v stat’iu 3 Federal’nogo zakona ‘O mirovikh sudakh v Rossiiskoi Federatsii’ i stat’iu 23 Grazhdanskogo protsessual’nogo kodeksa Rossiiskoi Federatsii,” *Rossiiskoi gazeta*, No. 31, February 15, 2010.
<http://www.rg.ru/2010/02/15/miroviye-dok.html>, accessed on July 15, 2012.

Felstiner, William L.F., Richard L. Abel, and Austin Sarat. “The Emergence and Transformation of Disputes: Naming, Blaming, Claiming ...” *Law & Society Review*, 15:3-4, pp. 631-54, 1980-81.

Friedman, Lawrence M. *Total Justice*. Boston: Beacon Press, 1987.

Gerber, Theodore P., and Sarah E. Mendelson, “Public Experiences of Police Violence and Corruption in Contemporary Russia: A Case of Predatory Policing?” *Law & Society Review*, 42:1, pp. 1-43, 2008.

Grazhdanskii kodeks RSFSR 1922 (GK 1922). <http://civil-law.narod.ru/wist/gk22/>

Grazhdanskii kodeks RSFSR 1964 (GK 1964). <http://www.tarasei.narod.ru/kodeks/zx4.txt>

Grazhdanskii kodeks Rossiiskoi Federatsii (chast’ vtoraiia), No. 14-FZ, January 26, 1996, with amendments through June 14, 2012 (GK 1996). <http://www.consultant.ru/popular/gkrf2/>

Haley, John O. "Comment: The Implications of Apology," *Law & Society Review*, 20:4, pp. 499-508, 1986.

Hazard, John. "Personal Injury and Soviet Socialism," *Harvard Law Review*, 65:4, pp. 545-81, 1952.

Heinzen, James. *The Art of the Bribe*. Draft manuscript.

Hendley, Kathryn. "Beyond the Tip of the Iceberg: Business Disputes in Russia," in *Assessing the Value of Law in Transition Economies*, pp. 20-55, edited by Peter Murrell. Ann Arbor: University of Michigan Press, 2001

_____. "Mobilizing Law in Contemporary Russia: The Evolution of Disputes over Home Repair Projects," *American Journal of Comparative Law*, 58:3, pp. 631-678, 2010.

_____. "Too Much of a Good Thing? Assessing Access to Civil Justice in Russia," *Slavic Review*, forthcoming.

Iliasov v. Lapin, Delo No. 2-299, Leninskii raionnyi sud, Saratov, April 15, 2004.
<http://sud-praktika.narod.ru/12.vred/Lapin-Iliasov.doc>

Kryshtanovskaya, Olga, and Stephen White. "The Rise of the Russian Business Elite," *Communist and Post-Communist Studies*, 38:3, pp. 293-307, 2005.

Kuhr-Korolev, Corinna. "Women and Cars in Soviet and Russian Society," in *The Socialist Car: Automobility in the Eastern Bloc*, pp. 186-203, edited by Lewis H. Siegelbaum. Ithaca: Cornell University Press, 2011.

Ledeneva, Alena V. *Russia's Economy of Favours: Blat, Networking and Informal Exchange*. Cambridge: Cambridge University Press, 1998.

Macaulay, Stewart. "Non-Contractual Relations in Business: A Preliminary Study," *American Sociological Review*, 28:1, pp. 55-67, 1963.

Merry, Sally Engle. *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans*. Chicago: University of Chicago Press, 1990.

Michelson, Ethan. "Climbing the Dispute Pagoda: Grievances and Appeals to the Official Justice System in Rural China," *American Sociological Review*, 72:3, pp. 459-485, 2007.

Mnookin, Robert H., and Lewis Kornhauser. "Bargaining in the Shadow of the Law: The Case of Divorce," *Yale Law Journal*, 88:5, pp. 950-997, 1979.

Moudrykh, Vladislav. *Russian Insurance Law*. Moscow: RDL, 2002.

Nelken, David. "Law, Liability, and Culture," in *Fault Lines: Tort Law as Cultural Practice*, pp. 21-38, David Engel and Michael McCann, editors, Stanford: Stanford Univ Press, 2009.

Nikoforov, Vladimir. "Novye uslovie vyplaty kompensatsii po OSAGO," February 20, 2009.
<http://www.samru.ru/society/gost/44299.html>

"Nuzhno li OSAGO." <http://prosmibank.ru/marketinsurance-1.html>

"Ob obiazatel'nom strakhovanii grazhdanskoi otvetstvennosti vladel'tsev transportnykh sredstv (OSAGO)," from April 25, 2002, No. 40-FZ, with amendments through December 25, 2012.
<http://www.consultant.ru/popular/osago/>

Otchet o rabote sudov obshchei iurisdiksii po pervoi instantsii o rassmotranii grazhdanskikh del za 12 mesiatsev 2008 g. <http://www.cdep.ru/index.php?id=5>

Otchet o rabote sudov obshchei iurisdiksii po pervoi instantsii o rassmotranii grazhdanskikh del za 12 mesiatsev 2009 g. <http://www.cdep.ru/index.php?id=5>

Otchet o rabote sudov obshchei iurisdiksii po pervoi instantsii o rassmotranii grazhdanskikh del za 12 mesiatsev 2010 g. <http://www.cdep.ru/index.php?id=5>

Otchet o rabote sudov obshchei iurisdiksii po pervoi instantsii o rassmotranii grazhdanskikh del za 12 mesiatsev 2011 g. <http://www.cdep.ru/index.php?id=5>

Otchet o rabote sudov obshchei iurisdiksii po pervoi instantsii o rassmotranii grazhdanskikh del za 12 mesiatsev 2008 g. – Svodnyi otchet po vsem mirovym sud'iam v Rossiiskoi Federatsii (Otchet –JP Courts 2008).

Otchet o rabote sudov obshchei iurisdiksii po pervoi instantsii o rassmotranii grazhdanskikh del za 12 mesiatsev 2009 g. – Svodnyi otchet po vsem mirovym sud'iam v Rossiiskoi Federatsii (Otchet –JP Courts 2009).

Otchet o rabote sudov obshchei iurisdiksii po pervoi instantsii o rassmotranii grazhdanskikh del za 12 mesiatsev 2010 g. – Svodnyi otchet po vsem mirovym sud'iam v Rossiiskoi Federatsii (Otchet –JP Courts 2010).

Otchet o rabote sudov obshchei iurisdiksii po pervoi instantsii o rassmotranii grazhdanskikh del za 12 mesiatsev 2011 g. – Svodnyi otchet po vsem mirovym sud'iam v Rossiiskoi Federatsii (Otchet –JP Courts 2011).

"Pochemu strakhovanie ne rasprostraneno," September 13, 2012.

<http://nacfin.ru/novosti-i-analitika/press/press/single/10599.html>

Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii ot 26 ianvaria 2010, no. 1. "O premenenii sudami grazhdanskogo zakonodatel'stva, reguliruiushchego otnosheniia po obiazatel'stvam vsledstvie prichineniia vreda zhizni ili zdorov'iu grazhdanina." *Rossiiskaia gazeta*, February 5, 2010. <http://www.rg.ru/2010/02/05/sud-dok.html>

Postanovlenie Pravitel'stva RF ot 7 marta 2003 g., No. 263. "Ob utverzhdenii Pravil obiazatol'nogo strakhovaniia grazhdanskoi otvetstvennosti vladeltsev transportnykh sredstv, with amendments through December 1, 2012." *Rossiiskaia gazeta*, March 13, 2003. http://www.rg.ru/oficial/doc/postan_rf/263-03.shtm

Rimskii, V.L. "Rezul'taty sotsiologicheskikh issledovaniia ispolneniia gosudarstvom pravookhranitel'noi funktsii: otsenki grazhdan i neogkhodimye reformy." Komitet grazhdanskikh initsiativ, Fond INDEM. Moscow, 2012.

Robertson, Annette. "Police Reform and Building Justice in Russia: Problems and Prospects," in *Building Justice in Post-Transition Europe? Processes of Criminalisation within Central and East European Societies*, edited by Kay Goodall, Margaret Malloch, and Bill Munro, pp. 158-175. New York: Routledge, 2013.

"Rossiiane zhдут ot OSAGO nevozmozhnogo i vozrazhaiut protiv luchshego," July 20, 2005. <http://www.pravda.ru/economics/rules/lobbyists/20-07-2005/51560-osago-0/#>

Rudden, Bernard. *Soviet Insurance Law*. Leyden: A.W. Sijthoff, 1966.

Sandefur, Rebecca. "The Importance of Doing Nothing: Everyday Problems and Responses of Inaction." In *Transforming Lives: Law and Social Process*, edited by Pascoe Pleasence, Alexy Buck, and Nigel Balmer, pp. 112-132. London: HMS), 2007.

Sarat, Austin, and William L.F. Felstiner. "Law and Strategy in the Divorce Lawyer's Office." *Law and Society Review*, 20:1, pp. 93-132, 1986.

Siegelbaum, Lewis H. *Cars for Comrades: The Life of the Soviet Automobile*. Ithaca: Cornell University Press, 2008.

Smith, Hedrick. *The Russians*. London: Sphere Books Limited, 1977.

"Strakhovanie postepenno vozvrashchaetsia," July 11, 2012. <http://nacfin.ru/novosti-i-analitika/press/press/single/10584.html>

Tay, Alice Ehr-Soon. "The Foundation of Tort Liability in a Socialist Legal System: Fault Versus Social Insurance in Soviet Law," *University of Toronto Law Journal*, 19:1, pp. 1-15, 1969.

“VTsIOM: Rossiane ne khotiat pol’zovat’sia OSAGO,” July 19, 2005.
<http://top.rbc.ru/society/19/07/2005/91417.shtml>

Voinovich, Vladimir. *The Ivankiad*. Translated by David Lapeza. New York: Farrar, Straus and Giroux, 1976.

Young, Cathy. *Growing Up in Moscow: Memoirs of a Soviet Girlhood*. New York: Ticknor & Fields, 1989.

Hiroshi Wagatsuma and Arthur Rosett, “The Implications of Apology: Law and Culture in Japan and the United States,” *Law & Society Review*, 20:4, pp. 461-498, 1986.

Zorkaia, N. “Obshchestvennoe mnenie – 2012. Moscow: Levada-Tsentr, 2012.

Zernova, Margarita. "The public image of the contemporary Russian police: Impact of personal experiences of policing, wider social implications and the potential for change", *Policing: An International Journal of Police Strategies & Management*, Vol. 35 Iss: 2, pp.216 - 230, 2012.

Zinenko, Il’ia. “Novye pravila OSAGO budut rasprostraniat’sia ne po vse, February 25, 2009.
<http://www.rb.ru/article/novye-pravila-osago-budut-rasprostranyatsya-ne-na-vseh/5694787.html>

Table 1: Number of Personal Automobiles per 1000 Individuals, 1970-2010.

	1970	1980	1990	1995	2000	2005	2010
RF	5.5	30.2	58.5	92.3	130.5	169	229.3
Central okrug		28.2	56.1	95.3	150.5	188.8	249.1
City of Moscow	14.3	37.2	69.8	142.3	189.1	232.8	279.2
Moscow oblast	8.6	31.1	57.6	100.1	144.5	232.3	293.3
Voronezhskaia oblast	5.3	34.1	77.8	106.9	166.8	185.1	232.4
North-West okrug		25.9	50.5	97.7	146.4	183.4	254.3
Pskov oblast	3.1	28.6	56.3	84	120.5	148.7	221.7
City of St. Petersburg	10.4	30.3	56.1	118	180.3	219.9	282.8
Leningradskaia oblast	4.5	21.6	44.4	88.4	138.1	179.3	266.5
Republic of Karelia	2.5	24.1	56.4	112.4	155.2	192.7	263.5
Southern okrug		39.7	75.1	103.4	140	173.1	230.1
Krasnodarskaia krai	7.6	43.3	80.6	112.9	162.3	196.5	249.1
Rostovskaia oblast	9.2	40.8	74.7	107	137.7	162.2	227.3
Volga okrug		26.1	51.8	76.8	114.5	149.5	209.3
Saratovskaia oblast	7.5	35.8	71.1	96.2	123.1	150.9	239.7
Chuvashskaia Republic	1.6	13.5	25.5	40.5	65.6	86.5	139
Urals okrug		33.7	60.6	96.9	126.9	173.2	254.1
Sverdlovskaia oblast	6.6	30.6	52.3	76.8	97.8	161.7	275.4
Siberian okrug		32.7	66.4	95.6	117.3	151.8	215.1
Tomaskaia oblast	4	32.7	58.8	104.1	125.4	144.8	220.8
Far Eastern okrug		27	57.2	130	160.6	181.2	235.3
Northern Caucasus okrug		35.5	61.6	61.5	82.2	106.5	153.6

Source: Table 6.36, *Rossiiskii statisticheskii ezhegodnik*. (2011).

Table 2: Density of Automobile Ownership: Number of Cars Owned Per 1000 Population, 2003-2009

Country	2003	2005	2007	2009
Russia	163	169	195	221
Brazil	131	141	157	178
China	10	15	22	44
Germany	541	493	501	510
India	8	9	10	12
Japan	433	447	450	451
Kazakhstan	77	93	141	189
Poland	294	323	383	451
United Kingdom	440	457	463	460
United States	467	462	451	623

Source: Passenger Cars (per 1000 people). World Development Indicators, The World Bank.
<http://data.worldbank.org/indicator/IS.VEH.PCAR.P3/countries?display=default>

Table 3: Automobile Accidents Involving Injuries or Death in Russia (per 100,000 population): 1990-2010

		1990		1995		2000		2005		2010	
		Injuries	Deaths	Injuries	Deaths	Injuries	Deaths	Injuries	Deaths	Injuries	Deaths
Russian Federation		133.4	23.9	112.7	22.1	107.5	20.2	156.1	23.7	139.5	18.6
Central okrug		109.1	22.4	104.8	23.3	103.1	22.8	170.3	25.7	144.4	18.3
	City of Moscow	86.3	12.9	84.7	14.2	70.2	9.8	134.6	10.6	102.1	6.6
	Moscow oblast	109.5	24.1	124.3	35.6	144.4	40.8	215.4	42.4	150.5	26
	Voronezhskaia oblast	130.1	26	108.5	24.5	106.5	22.7	172.4	26.1	167.3	22.9
North-West okrug		136.1	20.5	114.7	20.1	119.9	19.8	170.8	24	168.7	16.6
	Pskov oblast	173.8	33.2	139	31.6	128.1	28.8	196.5	32	228.7	27.1
	City of St. Petersburg	132.3	15.3	109.8	14	124.3	14.1	184.1	15.9	155.3	8.2
	Leningradskaia oblast	163.3	34.1	133.2	32.4	150.5	37.6	181.7	41.6	193.6	33.1
	Republic of Karelia	157.4	20.6	122	18.4	124.8	16.1	172.6	18.8	122.1	16.4
Southern okrug		168.9	29.9	125.5	24.7	116.9	21.5	130.7	23.4	132.5	19.9
	Krasnodarskaia krai	202.7	36	137.7	27.6	143.3	23.7	141.4	25.4	129	22
	Rostovskaia oblast	165	28.9	123.7	24.7	99.6	20.6	120.2	21.5	149	18.6
Volga okrug		122.8	21.8	104.6	21	100.9	18.9	142.5	22.2	135.1	18.7
	Saratovskaia oblast	143.3	21.2	100.2	16	85.1	13.3	90.8	17.3	99.5	16.3

	Chuvashskaia Republic	92.9	18.8	91.3	18	93.5	18.8	131.7	23.8	138.8	23
Urals okrug		142.5	20.5	131	21.1	122.5	19.8	191.9	24	153.5	18.4
	Sverdlovskaja oblast	143.4	17.6	136.7	20	132.4	19.5	212.2	24.2	143.2	16.3
Siberian okrug		156.4	27.3	127.9	23	110.9	18.4	151.8	23.4	137.4	18.9
	Tomaskaia oblast	138.8	21	92.9	17	67.9	11.4	66.1	13.8	85	14.3
Far Eastern okrug		152.4	23.5	130.6	21.8	127.6	20.8	175	26	155.9	19.4
Northern Caucasus okrug		131.8	33.4	73.7	19.6	61.5	15.5	78	18.5	74.3	19.5

Source: Table 18.15, *Regiony Rossii, Sotsial'no-ekonomicheskie pokazateli*. Moscow: Goskomstat, 2011.

Table 4: Information About Cases Involving Traffic Accidents Brought To the Russian Courts, 2008-2011.

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

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