
Do Repeat Players Behave Differently in Russia? Contractual and Litigation Behavior of Russian Enterprises

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We examine whether Galanter's repeat player (RP) concept helps in deciphering the law-related behavior of Russian enterprises. We adapt the RP concept to the Russian context defining the Russian repeat player (RRP). Using data from 328 enterprises, we examine whether RRP-ness explains the use of *protokols* of disagreement, petitioning to freeze assets, contractual prepayment, and litigation activity. RRP's are very different from Galanter's RPs, generally exhibiting less aggression and innovativeness, but suing other RRP's frequently. Examination of factors other than RRP-ness suggests the presence of lawyers is important in determining law-related activity, a result not necessarily expected in Russia.

Adapting the Repeat Player Concept to Russia

In his seminal article, Galanter (1974) argued that repeat players (RPs) are particularly well equipped to use law and the legal system to their advantage. His analysis is based on the U.S. experience, both in terms of the nature of the parties and the institutional environment. This article examines whether Galanter's RP concept smoothly crosses borders, helping to decipher the law-related behavior of enterprises in the new Russian market economy. In doing so, the article offers contributions on two levels. First, it is a case study that examines whether theories and concepts developed in one political, institutional, and social

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milieu are applicable in another, quite different, context. Second, it provides what is, to our knowledge, the first statistical study examining the determinants of law-related activity in post-Soviet Russia.

For Galanter, the ideal typical RP is an individual or entity that participates or contemplates participating actively in the legal system, "has low stakes in the outcome of any one case, and . . . has the resources to pursue its long-run interests" (*ibid.*, p. 98). He juxtaposes the RP against the one shotter (OS) and outlines the advantages that the RP typically has over the OS. Some of these advantages are related to experience and resources. RPs learn through repeated experiences what works, and they have legal specialists readily available to help in translating experience into improved strategies. They are generally able to exert control over transactions, and they enjoy a reputation within their community for bargaining in good faith that facilitates settlements, when desired by the RP. In contrast to OSs, RPs focus on the long run. Often, their goal is to change the rules—both substantive and procedural—to their benefit. To that end, RPs build and maintain close working relationships with officials at key institutions.

Not surprisingly, Galanter's concept of an RP, which is grounded in U.S. experience, cannot be applied in a whole cloth fashion to Russia. The differences in the institutional landscape and the expectations of the parties have to be taken into account, but the basic components can be replicated. We therefore follow Galanter's RP concept closely in developing and operationalizing the concept of a Russian repeat player (RRP). We do so by breaking down Galanter's RP concept into its four constituent parts: (1) degree of control over the structure and terms of the transaction, (2) access to legal specialists, (3) availability of resources, and (4) strength of relationship with political authorities. Our data on Russian enterprises allow us to construct measures that operationalize each of these four elements separately, leading to the construction of four variables that can be used in statistical tests.

Galanter argues that variations along each of these four dimensions give rise to different types of behavior when parties are confronted with legal disputes. By testing three hypotheses that stem from Galanter's analysis, this article analyzes whether similar relationships are present in Russia. The first hypothesis is that RRPs tend to be more aggressive and innovative in their interactions with trading partners. The second is that RRPs are concerned principally with altering the "rules of the game" to their long-term advantage, rather than focusing on the short-term goal of the outcome of individual cases. The third is that RRPs rarely litigate their disputes with other RRPs.

In all these analyses, the results confound the predictions that would arise by transplanting Galanter's theories to Russia. Being an RRP does not give rise to the same sorts of behavioral patterns as Galanter found among RPs in the U.S. context. Stopping the analysis at this step, however, would obviously be discomfiting because it might leave the reader wondering what factors can explain law-related behavior in Russia and indeed whether our results on RPs reflect some extreme randomness in either the Russian environment or our data, so that no theories would work. Thus, the empirical analyses presented here go a step beyond the parameters of Galanter's original framework examining additional explanatory variables.

For each of the three hypotheses—aggressiveness and innovativeness in interactions, playing for the rules, and intensity of litigation—we examine a series of additional explanatory variables. The choice of variables to examine is driven by common sense and the prevailing assumptions within the scholarly literature. For example, we investigate whether bigger and older enterprises enjoy a comparative advantage in legal matters; whether there is a regional effect, with Moscow showing the first signs of the effect of globalization; and how the nature of the enterprise's transactions affects its later interactions with the legal system. In all instances, we emphasize the approach of Galanter in looking at how the nature of the parties affects the operation of the legal system. Finally, we explore why business litigation has a very different quality in Russia than it does in the United States in that RRP's are suing one another with regularity, whereas Galanter found RP versus RP litigation to be relatively unusual. Our inquiry suggests that this dissimilarity might stem from differences in the structure of the legal profession and the courts.

The analysis draws on the results of a survey of 328 Russian industrial enterprises conducted between May and August of 1997. In each enterprise, Russian surveyors administered different survey instruments to four top managers: the general director and the heads of the sales, purchasing (supply), and legal departments. The sample included enterprises from six regions or oblasts (Moscow, Barnaul, Novosibirsk, Ekaterinburg, Voronezh, Saratov), with each oblast represented roughly equally. The enterprises were concentrated among 10 industrial sectors.¹ Their size ranges from 30 to 17,000 employees, with a median of 300 and a mean of 980. Most of the enterprises were established during the Soviet era, and about three-fourths (77%) are privatized. In virtually all those privatized, some stock is in the hands of insiders, and nearly a third were entirely owned by insiders.

¹ The industrial sectors are (number of enterprises in parentheses) food processing (67); textiles, clothing and leather (60); fabricated metal (34); machinery and transport equipment (23); electronics (34); chemicals and petroleum (33); construction (18); wood products (8); paper and printing (5); and other (46).

Outsiders (nonemployees of the enterprise) held some stock in 60% of the enterprises.

A road map to this article is the following. In the ensuing section, we operationalize the concept of the RRP, making clear how this concept ties to Galanter's notions as well as detailing its implementation using our Russian survey data. This process leads to the construction of four variables, each measuring a separate aspect of RRP-ness. The following section, the principal one in this article, examines in turn the three hypotheses on the law-related behavior of Russian enterprises. For each of these three analyses, we show how the particular hypothesis relates to Galanter's original work, we cast the hypothesis in a framework conducive to statistical testing using our survey data, we consider alternative theories that bear upon the constructs being examined, and we present the results of statistical analyses of both Galanter-type RRP theories and of alternatives. The concluding section of the paper draws together the lessons derived from testing each of the three hypotheses. There are two appendixes. Appendix A provides details on the construction of our four RRP variables and examines which types of enterprises are most likely to be RRP, and Appendix B details which types of enterprises fall into the RRP category.

Operationalizing the Russian Repeat Player

The basic elements of Galanter's definition of RPs are universal and are applicable in present-day Russia. According to his definition, all our surveyed enterprises would be RPs. They are all actively engaged in business; they regularly conclude contracts with a variety of partners and may expect some of these relationships to sour, leading to conflict and perhaps litigation. Given the serious nature of the nonpayments problem in Russia, disputes are rife. More important is that our enterprises are likely to be "engaged in many similar litigations over time" (*ibid.*, p. 97).

The RP and OS concepts are not absolutes; they are best understood "as a continuum rather than as a dichotomous pair" (*ibid.*, pp. 97–98). This aspect of the analysis is no different when applied to Russia. Our task is to determine the placement of our surveyed enterprises on the spectrum from high-end RP to low-end RP, the latter with characteristics closer to those of Galanter's OSs. We can, for example, categorize enterprises on the basis of their control over the terms of transactions as well as the resources they have available. We can also determine their relative levels of access to legal specialists.

The principal difficulty in applying Galanter's analysis to Russia stems from the importance he places on "playing for the rules." In a common-law system, such as the United States, we would expect RPs to look beyond any single case and to try to

change the rules to their advantage. As participants in a civil law system, Russian litigants look to the language of the codes. They would regard efforts to change the law through judicial action as pointless.²

Keeping in mind this critical difference between the two legal systems, we define four variables characterizing separate properties of the RRP. To some extent, the definitions of these variables are constrained by the type of information obtainable from surveys, but collectively the four variables capture the essence of Galanter's notion of a repeat player. Breaking down the RRP definition into its component parts allows for greater subtlety in the subsequent analysis of behavioral effects. The following paragraphs describe the four variables, whereas Appendix B provides the details of their construction. Table 1 gives summary statistics.

Control over Transactions

Galanter contends that "it is the RP who writes the form contract" (ibid., p. 98). Our survey asked sales and procurement directors about the source of the documents that served as the foundation for one example transaction.³ The possible responses were the form contract of the respondent enterprise, the form contract of the partner enterprise, a specially created contract, a commercially available form contract, and a form contract provided by the state industrial ministry.⁴ On the assumption that behavior on this specific transaction was indicative of enterprise policy in general, the responses can be used to construct a scale indicating the degree of control that the respondent enterprise had over the structure of transactions.

In devising the scale, we were mindful of the historical legacy as well as the obvious indicators of control. In response to persistent shortages in the Soviet period, informal rules developed to

² Judicial decisions (even appellate decisions) are typically short and are geared to the facts of the case, not to interpreting underlying law. Moreover, decisions are not routinely published and, even when published, lack the force of binding law for future cases. Consequently, litigants rely almost completely on the codes (both procedural and substantive). Although it may be possible to observe incremental shifts in how some statutes are used by the courts as a result of practice, that remains very much the exception. Practice has influenced the interpretation of a statutory rule in the arena of contractual remedies. Russian law allows penalties for nonperformance. During recent years, penalties of 0.5% per day of the amount owed have become common in sales contracts. As a result, penalties often exceed the actual debt. Debtors complained and repeatedly asked the *arbitrazh* (commercial) courts to apply article 333 of the Civil Code, which gives judges the discretion to reduce penalties found to be "disproportional." Beginning in 1997, *arbitrazh* judges began to do so. Russia has a dual court system. The *arbitrazh* courts have jurisdiction over most economic disputes. See, generally, Hendley (1998a) and articles 330-33 (GK).

³ In 15% of cases, the example transaction did not have a written contract and therefore our variable has missing observations for these cases.

⁴ The latter two options were almost never chosen.

Table 1. Definitions and Summary Statistics for the Explanatory Variables Used in the Regression Analyses

Name	Definition	Observations Available	Mean	Standard Deviation
<i>FORM</i>	See Appendix A	276	5.93	1.93
<i>LAWYER</i>	See Appendix A	328	2.77	1.40
<i>RESOURCE</i>	See Appendix A	325	2.44	1.15
<i>CONTACTS</i>	See Appendix A	328	0.97	0.83
<i>AGE</i>	Age of enterprise in 1997	328	48.45	28.16
<i>SIZE</i>	Number of enterprise employees in thousands	328	0.977	2.15
<i>BARTER</i>	Percentage of enterprise revenues obtained by barter	326	38.79	35.79
<i>NEWCUST</i>	Percentage of customers that are new to the enterprise since 1992	327	48.91	29.53
<i>ARREARS</i>	Index of severity of enterprise arrears on wages, payments to suppliers, and payments to energy companies	327	8.85	7.38
<i>PLAINTIFF</i>	Dummy variable = 1, if enterprise has been to court 6 or more times as plaintiff in the previous 2 years; 0 otherwise	328	0.40	0.49
<i>CONPAY</i>	Contractually stipulated amount of customer prepayment (amount in example enterprise agreement)	325	54.38	42.26
<i>ACTPAY</i>	Actual amount of customer prepayment (amount in example enterprise agreement)	325	47.62	41.88

govern contractual partners' interactions. Because the customer was usually desperate to obtain goods and had few bargaining tools, the supplier was always able to insist that its form contract be used. Although this power may not have been terribly meaningful during the Soviet era because of the planned nature of the economy, it set a pattern that has outlasted the Soviet system, even though there are no longer shortages in Russia and enterprises now have complete freedom in choosing their trading partners. It remains the suppliers—not the customers—that typically set the structure of the transaction. Our scale incorporates the assumption that a movement away from the old pattern is an important indicator of the relative power of the parties.

For our variable *FORM*, higher scores represent greater control over transactions. Like Galanter, we assume that the use of an enterprise's form contract reflects control. Thus, the enterprise that uses its form for both sales and procurement has the most power. An enterprise that uses its partners' forms for both transactions is the weakest. In between, our ranking of the options is grounded on the assumption that a supplier's loss of control over transactions is a stronger indicator than a customer's continuation of the old pattern of not having control. Also, we assume that using one's own form demonstrates greater power than does compromising on a specially negotiated contract.

Access to Legal Specialists

The second component of the RRP is access to legal specialists. Commenting on the United States, Galanter notes that repeat players gain expertise and lower their start-up costs through such access. In Russia, the assistance of lawyers does provide an advantage but does not tip the scale as heavily as in the United States, due to differences in the structure of legal institutions. Lawyers are less essential, particularly for litigation among economic entities. Judges in the commercial (or *arbitrazh*) courts that have jurisdiction over disputes between enterprises report that about half the parties who appear before them are unrepresented by counsel.⁵ The procedural rules are straightforward, and judges are accustomed to helping nonlawyers through the process (Hendley 1998b). Russia does not have complicated evidentiary rules or prolonged discovery, so the costs associated with litigation are less than in the United States. That does not mean that enterprises necessarily regard the costs as trivial, and lawyers can help in lowering them.⁶ Moreover, *arbitrazh* judges freely admit that litigants who have legal representation are better off than others. The lawyers understand both the formal rules and the informal norms and can lessen the confusion and uncertainty that litigation often inspires in laypersons. Thus, although the expertise to be provided by Russian lawyers is of a somewhat lower order than in the United States, access to such expertise is still beneficial.

The survey provided data on whether the enterprise had a legal department and whether it had any kind of relationship with outside counsel. These data are combined to construct the variable *LAWYER*, which has higher scores for enterprises with greater access to legal specialists. Construction of this variable proceeds from the assumption that having lawyers on staff was always better than having outside counsel, because in-house lawyers are inevitably more familiar with the circumstances of the enterprise than outside counsel. Also, an ongoing relationship with outside lawyers is presumed more beneficial than an intermittent relationship.

⁵ The analysis would likely be different if we were discussing the courts of general jurisdiction. In these courts, lawyers are more common. The difference in attitudes toward legal professionals is reflected in the respective procedural codes. Compare article 44, GPK, with article 48, 1995 APK.

⁶ A prerequisite for initiating a complaint in the *arbitrazh* courts is the payment of a filing fee, calculated as a percentage of the amount demanded. Some enterprises regard this fee as an insurmountable barrier to using the courts. Legal professionals know that an informal procedure now exists for delaying payment until the case is decided. If the plaintiff enterprise prevails, then it is relieved of liability for these fees. If it loses, then it must pay, but at least the payment has been delayed. (See Hendley 1998a.)

Resources

The third component of the RRP is the availability of resources. Resources are important because they allow greater flexibility in short-run decisions. Resource-rich enterprises can forgo short-term opportunities to build a reputation as firm bargainers. Resource-rich parties need not pursue every claim, but may wait for the cases that promise to yield long-term benefits. Galanter cautions, however, that although his RPs are often wealthy, the link is far from automatic: those with significant resources are not necessarily RPs and those who are less well-off cannot be assumed to be OSs. Not all resource-rich parties act strategically, and not all impoverished parties are incapable of doing so.

The basic logic of this argument is not geographically specific. It applies to Russia, just as to the United States. Resources can help RRP's advance their interests, but the assumption that possession of resources automatically translates into a strategy for using them to advance legal interests, which Galanter concedes is tenuous, is even more strained in the Russian context. For example, the politicization of the courts and their consequent lack of independence during the Soviet period made most people understandably skeptical of their neutrality. Despite the profound institutional reforms of the past decade (Solomon 1995), this skepticism persists. As a result, some may view going to court as pointless and even dangerous, because it may draw unwanted attention to the petitioner.⁷ Thus, we regard availability of resources as a helpful indicator, but perhaps only loosely related to being a RRP.

We constructed the variable *RESOURCE* to measure this dimension of the RRP. Determining the relative levels of our enterprises' resources is not straightforward; concealing income so as to escape tax obligations and other debts has reached epidemic proportions in Russia, and most enterprises maintain several sets of books. For this reason, we did not rely on the financial data (balance sheet, income statement, etc.), but rather used a set of qualitative indicators: the seriousness of wage arrears, the percentage of the employees on a reduced work week,⁸ the general director's response to whether or not the plant had after-tax profits in 1996, and the response to a question on whether the enterprise had recently purchased new production equipment. Each of these four indicators reflects whether the enterprise has

⁷ Close observers of the U.S. legal system identify similar attitudes in the United States and, although the Soviet authorities' manipulation of the courts to achieve their political ends may have been particularly extreme, analogies can be found in virtually every country.

⁸ Over the past few years, many Russian enterprises have been unable to pay their workers on time. Wage payments are frequently delayed for months. Some enterprises have responded by limiting the work week to two or three days, thereby reducing their wage obligations.

any degree of flexibility in the use of current revenues, such flexibility being one characteristic of an entity that can focus on long-term goals in short-term decisions.

Relationship with Political Authorities

Galanter's analysis suggests that there should be a fourth component to our RRP definition. His RPs "have opportunities to develop facilitative informal relations with institutional incumbents" (Galanter 1974:99). As an illustration, he mentions the "routine relationships" that grow up between those who regularly petitioned for garnishment of wages and the clerks for small claims courts (*ibid.*, 99n. 9) In this instance, familiarity breeds credibility. Clerks are more likely to believe the version of the story told by the person they know (the RP) than a stranger's version. The clerks also make a RP's work easier by consolidating all a RP's cases, thereby speeding up the judicial process. Thus, through repeated use of legal institutions, RPs develop and sustain informal networks that they call upon from time to time.

This aspect of Galanter's analysis translates very poorly into Russian reality. One reason is the profound difference in how legal institutions operate. In contrast to the United States, where clerks wield considerable power in docketing cases, *arbitrazh* judges themselves schedule their cases. Cases are channeled to judges through a two-step process. First, the chairman of the court divides the pending cases according to the subject matter, such as bankruptcy, tax, securities, or contracts. Then the presiding judge of the panel that considers a particular type of case assigns the case to a particular judge. At neither stage do the decisionmakers take note of the identity of the parties or the specifics of the dispute. In fact, the process has a rote quality, rendering personal contacts ineffective. This conclusion is supported by interviews with enterprise lawyers and observations at *arbitrazh* courts in Moscow, Saratov, and Ekaterinburg. Lawyers occasionally gripe about the bias or corruptibility of individual judges, but have never suggested that ingratiating themselves with court personnel would make much difference, because there is no way to predict or control which judge will be assigned to their case.⁹ Most *arbitrazh* courts have many judges, so the chances of encountering the same judge again are minimal.¹⁰

Despite such doubts about the viability of this element of Galanter's analysis for Russia, we nonetheless constructed a variable, *CONTACTS*, that measured the relative levels of political contacts of our enterprises, with higher scores indicating better contacts.

⁹ Judges who have some personal or material interest in a case can be recused, either by their own motion or by petition of the parties. Articles 16, 19, 1995 APK; Yakovlev and Iukov 1996:38-42.

¹⁰ The Moscow City *Arbitrazh* Court, for example, has over 130 judges.

To construct this variable, we use the frequency of meetings between enterprise management and officials, on the assumption that such meetings indicate whether the enterprise has constructed a network of institutional relationships. We also use information on whether enterprises have an expectation that the government will step in to help them if they experience financial difficulties and whether the enterprises have received subsidies from the state, because such assistance is likely to be reflective of close relationships with officials.

Given these four constituent variables describing RRP-ness, a natural question is how they are related to each other. We conducted an analysis of this question and found that the degree of intercorrelatedness is not high. This finding reinforces our decision to examine the effects of each of the four variables rather than combine them in one composite index. Discussion of the relationships between the four variables is presented in Appendix B.

How Do Russian Repeat Players Behave?

The critical question remains, Does it make any difference if an enterprise is an RRP? Galanter's analysis has stood the test of time because it was such a compelling explanation of how the parties' status and experience may affect the operation of the legal system in the United States. We now examine whether his theories are helpful in understanding law-related behavior in Russia.

Hypothesis 1: An increase in an enterprise's RRP-ness leads to more aggressive and innovative relations with their trading partners.

Galanter argues that RPs are likely to be aggressive and innovative in defending and advancing their interests. RPs not only adapt themselves to existing rules (both substantive and procedural), but also are quick to perceive when changed circumstances render existing rules more relevant and quick to take advantage of the new situation. In the U.S. context, RPs are willing to sacrifice victories in the short run to change the rules over the long run.

Although the civil-law tradition makes it almost impossible to modify rules iteratively through case law, we might hypothesize that RRP's exhibit the same underlying qualities of aggression and innovation exhibited by RPs in the United States. Do these qualities manifest themselves in the Russian context? We answer this question by examining the use of two legal tools at the disposal of Russian enterprises in their relations with one another: *protokols* of disagreement (*protokoly raznoglasiia*) and petitions to freeze the assets of defendants in contractual disputes.

Why Do Enterprises Use *Protokols* of Disagreement?

As the name suggests, a *protokol* of disagreement is used to indicate disagreement with the terms proposed by a contractual partner. For example, if a seller (S) sends its form contract to a potential buyer (B), then B might respond by sending back a *protokol* of disagreement in which B proposes alternative wording to the sections of the contract it finds objectionable. The *protokol* is not a full-fledged contract, but only a list of sections that are problematic, indicating B's preferences. B sends the signed *protokol* to S, inviting S to sign as well. If they both sign, then the *protokol* operates as an addendum to the contract, modifying its terms. Alternatively, S may respond with its own *protokol*, accepting some of B's suggestions and rejecting others. The process can go on indefinitely, but usually stops after each side has laid out its position. The final terms of the agreement can be determined only by winding through the original contract and the *protokols* to see which terms enjoy the support of both S and B. Sometimes the parties fail to sign the *protokol*, but proceed with the transaction.¹¹ If problems arise later, determining the substance of the contract is difficult.¹²

Protokols of disagreement were created during the Soviet period as a means of enabling individual enterprises to adapt the form contracts mandated by industrial ministries. Under current Russian law, enterprises have almost complete contractual freedom: a government-approved form is no longer required. Instead, they can develop their own form and adapt it to particular situations. See articles 1 and 5, GK (1994). The increased availability of computers provides the means to tailor contracts. Yet *protokols* of disagreement remain the preferred method of revising contracts.

To an outsider, the continued use of *protokols* might appear to be an indicator of lethargy, rather than of aggressiveness. The use of *protokols* almost invariably gives rise to uncertainty over the substance of contracts. A better approach would seem to be to revise the contract itself. Perhaps Russian legal practice will gradually evolve toward this approach.¹³ For now, however, Russian enterprise lawyers seem firmly committed to the use of *protokols*. Our interviews reveal that the lawyers view *protokols* as the best and only means of countering perceived unfairness or lack of bal-

¹¹ For example, in a review of 21 contracts with *protokols* at a Moscow factory (drawn randomly from contracts over the past 3 years), none of them had been signed by both parties.

¹² The parallel with the Western "battle of the forms" is obvious. The difference in Russia is that the parties typically do not exchange entire contracts, but rather *protokols* indicating the points of disagreement.

¹³ Such embedded patterns of behavior tend to change slowly. The current generation of Russian law students is being trained by professors who take *protokols* to be a matter of course, and these students behave accordingly when they begin to work as lawyers.

ance in the terms of a proposed contract. Thus, the use of *protokols* is a good measure of aggressiveness.

The percentage of contracts of an enterprise that use *protokols* of disagreement is our dependent variable. The mean of this variable is 20.6% of contracts.¹⁴ In examining the enterprise characteristics that are related to the use of *protokols*, we focus on the variables characterizing RRP.¹⁵

Because 23% of enterprises reported no use of *protokols*, a value of zero for the dependent variable, we used tobit procedures to implement the regression analysis. The results are presented in Table 2. We examined not only the four RRP measures but also other variables that are plausibly related to the use of *protokols*, in line with the view expressed in the introduction that it is important to consider alternative explanations of the dependent variable. Such a procedure also lessens any omitted-variable bias in the estimates for the RRP variables. Column (1) of Table 2 contains the basic regression for the RRP variables alone. Column (2) adds four non-RRP explanatory variables. We also tested the importance of regions and of sectors in the same manner, using dummy variables, but the details of the results are omitted from the table to economize on space. Definitions of the non-RRP variables are contained in Table 1.

Here, we must confront an issue that might trouble some readers as they examine this and the subsequent statistical analyses of this article. Might our results be biased because of the endogeneity of the explanatory variables in our regressions? In the present context, for example, could it not be the case that there is a causal relation from *protokols* to resources, in which the optimal use of *protokols* leads to better economic outcomes and therefore the enterprise has more resources?¹⁶ We cannot dismiss such possibilities, of course, but the context in which our data were collected leads us to downplay the importance of such problems.

We interpret the four RRP variables as indicators of fairly permanent characteristics of enterprises. These characteristics are determined well before decisions on the legal-related behaviors that we are endeavoring to explain. For example, the variable measuring access to legal specialists (*LAWYER*) mostly reflects whether the enterprise inherited a legal department from the So-

¹⁴ The standard deviation was 28.21. For most enterprises (46.3%), use has not changed since the Soviet period, with the remainder of the enterprises split roughly equally between increased and decreased use of *protokols*.

¹⁵ Despite our misgivings concerning the validity of the variable measuring the enterprises' relationship with political authorities (*CONTACTS*) as an indicator of RRP-ness, we include it in this article's remaining analyses because there is little cost to including an extra explanatory variable in a regression and some readers might find the results for this variable interesting.

¹⁶ There are even better examples of this problem later. See, for example, the later discussion on the relationship between court activities and the presence of lawyers.

Table 2. Tobit Regressions for the Percentage of Enterprise Contracts Using *Protokols*

Variable	(1)	(2)
Intercept	17.432* (1.88)	24.295** (2.11)
<i>FORM</i>	-1.172 (-1.06)	-0.843 (-0.81)
<i>LAWYER</i>	4.758*** (3.15)	3.084** (1.98)
<i>RESOURCE</i>	-4.179** (-2.15)	-1.407 (-0.69)
<i>CONTACTS</i>	3.126 (1.24)	2.154 (0.85)
<i>AGE</i>		-0.041 (-0.56)
<i>SIZE</i>		0.525 (0.57)
<i>NEWCUST</i>		-0.154** (-2.14)
<i>BARTER</i>		0.153** (2.28)
Sectoral dummies		Yes
No. of observations	264	262
Log-likelihood	-1,054.1	-1,025.2

NOTE: *t*-statistics in parentheses.

* Significant at the 10% level.

** Significant at the 5% level.

*** Significant at the 1% level.

viet era. Similarly, in the Russian reform context, where the determinants of success have radically changed in a few short years, the variable measuring the availability of resources (*RESOURCE*) mostly reflects fortuitous aspects of the enterprise's characteristics, such as sector, region, and inherited market position, rather than the details of its present legal-related behavior. Thus, we feel justified in treating our four RRP variables as exogenous determinants of the varieties of legal behavior that we examine.¹⁷

The hypothesis that RRP's tend to use *protokols* more often receives only limited support. The *LAWYER* variable is the only one of the four RRP variables that has a significant positive coefficient. We find no connection between use of *protokols* and the level of control exercised over the transaction (*FORM*) or the extent of contacts with local authorities (*CONTACTS*). Of course, the results for *FORM* could indicate that powerful enterprises brook no disagreement with their initial contract proposals and therefore exhibit a lower-level of *protokols*. If this is a correct interpretation of the results, however, one would expect *RESOURCE* to have a positive coefficient, *ceteris paribus*, because more powerful enterprises are more likely to challenge the form

¹⁷ Testing this assumption would require specifying a theory of how some enterprises come to be RRP's and others do not. Such a theory is beyond the scope of this article, as it is beyond the purview of Galanter (1974). Indeed, Galanter is as susceptible to this same endogeneity-of-RP-ness criticism as we are, given that the empirical regularities he observes are analogous to our regressions.

contracts of partners. The coefficients for *RESOURCE* are, in fact, negative. Therefore, these results indicate that high-end RRP are not inherently more likely to use *protokols* than low-end RRP. Consequently, RRP are not by nature particularly aggressive in pursuing their interests in this first stage of the contractual relationship.

The strong positive correlation between the use of *protokols* of disagreement and the availability of legal expertise (*LAWYER*) is somewhat unexpected in the Russian context. No special legal training is required to draft these *protokols*. Given that *protokols* propose new contractual language, having a lawyer involved might be considered prudent, but many of the issues that commonly arise are straightforward business points and require no legal finesse. During the Soviet period, enterprise lawyers were segregated from the sales and procurement departments and were not usually involved in contract formulation. Our results suggest that this practice might be changing and that Russian lawyers are increasingly becoming part of the contract negotiation process.

If being an RRP is not a compelling explanation for the use of *protokols*, then what factors do emerge as important? Levels of barter (*BARTER*), the percentage of customers that are new since 1992 (*NEWCUST*), and the sector of production emerge as significant. Enterprises that engage in high levels of barter are more likely to use *protokols* actively than are other enterprises. This practice makes sense given the inherently idiosyncratic nature of barter transactions. At a minimum, the parties have to revise the payment terms of the form contract, which typically call for some type of monetary transfer.¹⁸ Thus, the strong relationship between barter and *protokols* simply indicates coping with reality.

Less obvious is why enterprises with higher levels of new customers are less likely to use *protokols*. We might expect parties to be wary of one another in their first transaction, which would encourage more *protokols*, yet we found the opposite. An alternative explanation is that new customers have more power to resist the *protokols* than older customers entrenched in specific relationships. This explanation is consistent with our results for sectors: two of the 10 sectors, food processing and textiles/apparel, have significantly lower levels of *protokols*, whereas the heavy machinery sector has significantly higher levels. Certainly, in the current Russian setting, customers of light industrial sectors are less likely to be entrenched in old historical relationships than are the customers of heavy industry.

A number of causal links that are strongly suggested by the literature turn out to be specious. For example, it might be as-

¹⁸ Some enterprises now have separate form contracts for cash and barter transactions, but that is still the exception rather than the rule.

sumed that bigger and older enterprises enjoy a comparative advantage in experience and market power, which could be exercised via these *protokols*. (Alternatively, newer enterprises that are unburdened by longstanding ties with customers or suppliers might be more aggressive in pursuing their interests and therefore more likely to use *protokols*.) Along similar lines, the logic of globalization gives rise to an expectation of regional differences, with enterprises from regions that have been more exposed to Western-style legal adversarial styles (such as Moscow) assuming a more aggressive stance vis-à-vis their contractual partners than do enterprises in more isolated regions. None of these posited relationships is borne out by the data. (See the results for *AGE* and *SIZE* in Table 2. The results for the regional dummies are not reported.)

Why Do Enterprises File Petitions to Freeze Assets?

Petitions to freeze a defendant's assets are an obvious indicator of aggressiveness given that they are the first step in seizing property in satisfaction of a judgment.¹⁹ In the Russian context, they may also be considered innovative. During the Soviet period, the law did not allow for this procedure. All industrial enterprises were state-owned and judgments tended to be small and easily collected, making the seizure of assets superfluous. Petitions to freeze a defendants' assets were introduced in the first post-Soviet procedural code for the *arbitrazh* courts in 1992 (Articles 92 and 151, 1992 APK). The law now allows plaintiffs to make such a petition at any point during a case (Articles 75 and 76, 1995 APK). The law leaves the decision as to whether or not to grant a petition largely to the judge's discretion.²⁰ Consequently, obtaining such an order requires an understanding of the informal norms of the *arbitrazh* courts and an ability to convince the judge that the defendant is likely to abscond with its assets if the order is not issued. Therefore, taking advantage of this right to petition for a defendant's assets to be frozen is an indicator of both aggressiveness and innovativeness.

At first, litigants were reluctant to make use of this new instrument. Interviews with court and enterprise personnel suggest

¹⁹ A 1996 informational letter from the Presidium of the Higher *Arbitrazh* Court clarifies that such claims are given the same priority as the final judgment. The order of payment is established by article 855 of the Civil Code (see GK), which means that preexisting claims by the state or other private creditors will be paid first (*Vestnik Vysshego Arbitrazhnogo Suda Rossiiskoi Federatsii*, no. 10, pp. 126–28, 1996). A petition to freeze assets represents a low-cost mechanism of preventing the defendant from absconding with the assets in the bank account.

²⁰ Unpublished statistics on the activities of the regional *arbitrazh* court reveal that, among the regions included in our survey, judges were generally sympathetic to petitioners who asked that the defendant's assets be frozen in cases heard during 1997. The success rate ranged from a high of 58% in Novosibirsk and Saratov to a low of 38.5% in the Moscow City court. (See Hendley 1998c.)

that such petitions were regarded as somehow rude. As difficulties with implementing court decisions mounted, however, the willingness to file such petitions rose. They are still not routine. Statistics collected by the *arbitrazh* courts for 1997 show that the use ranges from a high of 7.9% of all cases heard in the Moscow City courts to a low of 2% in Voronezh, among the regions included in our survey.²¹

We asked enterprises how often they filed petitions to freeze the assets of defendants in cases of nonpayments of contracted amounts. The enterprises were offered four options: routinely at the beginning of the case, routinely if and when the enterprise received an award of damages, occasionally, and never. Of the 209 enterprises (67% of the sample) who had been involved in nonpayments cases during 1995 to 1996, 12% filed petitions routinely at the beginning of the case, 9% after an award of damages, 36% occasionally, and 43% never. The enterprises that routinely tried to get orders to freeze defendants' assets were generally more successful in having their petitions granted than were other enterprises.

The survey question on the frequency of attempts to freeze assets provides the dependent variable for the present analysis. Because this is an ordered categorical variable, we use ordered probit regressions to obtain our results, which are presented in Table 3. As before, we examined not only the four RRP variables but also other variables that are plausibly related to the attempts to freeze assets. Column (1) of Table 3 contains the regression that uses only the four RRP variables. Column (2) adds other explanatory variables that are plausibly related to the propensity to petition to freeze assets. We also tested the importance of regions and sectors, using dummy variables, but the results are omitted from the table to economize on space.

We have hypothesized that filing petitions indicates both aggressiveness and innovativeness and that this behavior should be correlated with being an RRP. The propensity to file these petitions is strongly related to the access to legal professionals (*LAWYER*). Although the coefficients on the other three RRP-related variables are all positive, none are significant. The strength of the *LAWYER* variable is to be expected. In contrast to *protokols* of disagreement, legal training or experience is necessary to file and obtain an order to freeze assets. The law sets forth the right to petition, but provides no details on how to exercise it. In view of the nonsignificance of the other RRP-related variables, the strength of this result is best seen as simply reflecting the critical importance of lawyers when filing these petitions. Thus, these findings suggest that RRP status is not a good predictor of

²¹ These data are drawn from the same unpublished statistical forms referred to in note 20, which were made available to us by the Higher *Arbitrazh* Court in Moscow.

Table 3. Ordered Probit Regressions for the Frequency of Petitions to Freeze Assets

Variable	(1)	(2)
<i>FORM</i>	0.007 (0.18)	-0.001 (-0.02)
<i>LAWYER</i>	0.128** (2.23)	0.136** (2.08)
<i>RESOURCE</i>	0.053 (0.71)	-0.009 (-0.11)
<i>CONTACTS</i>	0.059 (0.62)	0.141 (1.34)
<i>AGE</i>		-0.007** (-2.34)
<i>SIZE</i>		-0.0003 (-0.95)
<i>NEWCUST</i>		-0.007 (-2.31)
<i>BARTER</i>		-0.003 (-0.95)
<i>ARREARS</i>		-0.027** (-2.07)
<i>PLAINTIFF</i>		0.402** (2.13)
Regional dummies		Yes
Log-likelihood	-226.733	-205.980
No. of observations	190	190

NOTE: Intercept estimates omitted; *t*-statistics in parentheses.

* Significant at the 10% level.

** Significant at the 5% level.

*** Significant at the 1% level.

whether an enterprise will file a petition to freeze assets and therefore is not associated with this sort of aggressive and innovative behavior in litigation.

If RRP-ness is not a good predictor of aggressiveness and innovativeness among Russian enterprises, then what factors seem to have more explanatory power? We examined the link between litigiousness and the use of these petitions. This hypothesis is suggested by Galanter's analysis, because enterprises that go to court frequently will likely have developed a set routine. Indeed, we found that enterprises that litigated regularly were significantly more likely to file petitions to freeze assets than were other enterprises.²² Note also that when this variable measuring litigiousness is included in the regression, the significance of *LAWYER* weakens considerably, suggesting that these two variables are partially capturing the same underlying phenomenon. The most plausible common element of these two variables is the presence of skills needed to deal with the courts, suggesting again that our results for *LAWYER* do not reflect the aggressiveness element of being an RRP, but rather the presence of a specific type of human capital in the enterprise.

²² In carrying out this analysis, we used a dummy variable, *PLAINTIFF*, which equals 1 when the enterprise has been a plaintiff in more than five cases in the previous 2 years and 0 otherwise. This variable is highly significant with the expected sign.

Common sense suggests that financial desperation stemming from the profound economic depression in Russia might cause enterprises to be more aggressive and, consequently, to file more petitions to freeze assets. To examine this hypothesis, we created a variable (*ARREARS*) that measures the severity of the enterprise's arrears to suppliers, banks, and energy companies. This variable is significantly related to the propensity to petition to freeze assets, but it has the opposite sign to that expected: companies with large arrears are less likely to attempt to freeze assets. Thus, although it may be true that the arrears crisis among enterprises has prompted some enterprises to engage in new types of behavior, a high level of financial desperation does not lead to aggressive litigation behavior.²³

Finally, we examined the extent to which the basic characteristics of the enterprise affected its tendency to engage in this sort of new-style behavior. Not surprisingly, newer firms are more likely to file petitions to freeze assets than are older enterprises, which seems logical because new firms might be less burdened by historical relationships and more willing to risk rupturing the relationship by moving to seize assets. Also, newer firms might have fewer capital reserves and may be less able to wait for payment. There are no effects of the size of the firm on propensity to file petitions, nor of the firm's sector, nor of the presence of barter. Regional effects are small, with only one region, Barnaul, exhibiting a significant difference from other regions, with a higher propensity for such petitions.²⁴

Hypothesis 2: The higher the enterprise's degree of RRP-ness, the more likely that it will establish bilateral "rules of the game" to govern relations with trading partners.

Another key aspect of Galanter's RPs is their willingness to play for the rules, which can manifest itself through efforts to change either formal or informal rules. Depending on the circumstances, RPs may work to effect change in the judicial interpretation of existing laws or they may use their knowledge, skill, and bargaining power to establish informal norms that operate on a bilateral or industrywide basis. In all cases, the goal is to reshape the rules in the interests of the RP.

Given the Romanist legal tradition of Russia, we should not expect parties (whether or not RRP) to be actively engaged in shaping law through court decisions. For the most part, judicial

²³ Some might argue that high filing fees preclude illiquid enterprises from pursuing contractual remedies through the courts. In reality, however, that is not true. As we discuss elsewhere, *arbitrazh* courts have become increasingly amenable to delays in the payment of filing fees for cash-poor enterprises.

²⁴ The aggregate oblast-level statistics for 1996, which report that 5.6% of contractual disputes in Barnaul involve a petition to freeze assets, do not reflect a higher level of filings for Barnaul, indicating that the enterprises in our sample may be more active in this regard than the typical Barnaul enterprise.

decisions are binding only on the participants.²⁵ Although there is a well-established tradition of seeking exemptions to various aspects of the law through executive decree and of lobbying the legislature to change the law to benefit a particular plant or industry, this practice is more common in areas that touch on state regulation (such as tax or environmental law) than in laws that regulate private commercial transactions. Contract law is fixed in federal codes and is not subject to change through executive decree or judicial decision.

In the wake of the end of the planned economy, Russian enterprises now have great leeway in setting the norms that govern their private business transactions. We can hypothesize that RRP's will take advantage of this newfound freedom to impose bilateral norms that work to their advantage. For example, we might expect RRP's routinely to require high levels of prepayment in their sales contracts and to insist that such payment actually be made. In the chaotic world of the post-Soviet market economy, in which nonpayment of contractual debts has become common, payment in advance of shipment might be the only way to ensure that the customer does not default. One might therefore expect that RRP's would be successful in establishing new informal rules in which prepayment was an essential element of a transaction.

Our general hypothesis is that high-end RRP's are able to demand and obtain higher levels of prepayment. We thus analyze two aspects of prepayment, the amount agreed upon in the contract and the amount actually paid. Both aspects are indicators of whether or not RRP's are able to establish bilateral norms that benefit themselves. At the very least, the customers of RRP's ought to be more likely to pay the amount set forth in the contract, indicating that RRP's are able to enforce their contracts. In fact, the correlation between contractual and actual prepayment is so high (the correlation coefficient is 0.89) that there is little difference between the results for these two variables.

For this analysis, the data for the dependent variables are derived from the responses of the sales directors to a series of questions about a specific sales transaction. These questions included detailed queries about the terms of payment, the responses to which reveal that 74% of the enterprises contracted for some form of prepayment and that 41% contracted for full prepayment. The average amount of contracted prepayment was 54% of the total contractual bill. Seventy percent of enterprises actually received prepayment and the average amount of prepayment received was equal to 48% of the total contractual bill.

²⁵ As in all civil-law countries, there is some room for maneuver at the margins (Merryman 1985). For example, the top Russian appellate courts issue decrees and instructions that are not tied to specific cases and that are binding on future litigants. See Hazard (1994) and Hendley (1996).

We analyzed the determinants of the contractual and actual prepayments using standard tobit regression techniques.²⁶ In the two regressions relating the two prepayment variables (contractual and actual) to the four RRP explanatory variables, there is only one significant coefficient. The variable measuring the strength of the relationship with political authorities (*CONTACTS*) is significantly related to actual prepayment, but not contractual prepayment. Given the loose connection between *CONTACTS* and Galanter's original RP concept (see the discussion above in the section defining this variable), these results strongly indicate that RRP-ness is not related to the amount of prepayment. These results are robust to the inclusion in the equation of the other variables that we discuss below. Thus, we conclude that RRP-ness is not taking advantage of their position to impose and enforce bilateral norms on their trading partners. (Because the central variables of interest, the RRP variables, are insignificant, and in view of the need to conserve space, we omit a detailed presentation of these results.)

Rather than RRP-ness, the variables that are most strongly related to levels of prepayment, both contractual and actual, are whether the customer is new and whether the transaction involved barter. New customers face higher contractual and actual amounts of prepayment, suggesting that the trust arising from previous interactions can substitute for prepayment. The amount of barter is negatively related to prepayment, because barter transactions do not lend themselves to prepayment. They do not contemplate cash but are "mutually beneficial exchanges" (*vzaimozachety*) of goods. Prepayment is unnecessary: if either party fails to supply the goods as provided in the contract, the transaction will not go forward.

Other explanations for the levels of prepayment that might seem theoretically plausible are not supported by the data. Enterprise size, despite its likely correlation with bargaining power, has no effect on the level of prepayment. Although enterprises with high levels of debt would probably be more desperate for cash and benefit more from prepayment, this does not evidence itself in a relationship between arrears and prepayment.

Hypothesis 3: RRP-ness is unlikely to litigate against other RRP-ness.

Galanter argues that OSs and RPs behave differently in the litigation arena. He contends that the "great bulk of litigation" is RP versus OS and that these cases represent "routine processing of claims for parties for whom the making of such claims is a regular business activity" (Galanter 1974:108). These cases are most likely to involve relative strangers, that is, parties without a continuing relationship. By contrast, he sees RP versus RP litiga-

²⁶ The data were censored below at 0 and above at 100.

tion as more likely to involve parties who know one another well. He believes such litigation is considerably rarer, because RPs who deal with one another on a continuing basis will work out mutually beneficial informal norms that obviate the need for litigation.²⁷ Lawsuits are avoided because they tend to undermine the relationship, making it difficult to pick up the pieces and go on afterward. Under such circumstances, "litigation appears when the relationship loses its future value" (*ibid.*, p. 114).

We asked the surveyed enterprises how many *arbitrazh* court cases they had participated in during the preceding 2 years. Almost 80% of the surveyed enterprises had been to court in some capacity. (See Table 4 for detailed information on the number of cases in which the surveyed enterprises participated as plaintiff or defendant.) In addition, a significant proportion of enterprises had been to court a large number of times; over 30% of the enterprises had been to court more than 10 times, either as plaintiff or defendant. This figure in itself is significant evidence against the applicability of Galanter's thesis to Russia. The litigation reported in our survey would mostly be RP versus RP because the typical case in *arbitrazh* court is supplier versus purchaser, a standard RP versus RP pattern (*ibid.*, p. 107). We observe high levels of litigation exactly where Galanter predicts low levels.

Table 4. Number of Cases in *Arbitrazh* Court from July 1995 through June 1997: Frequency among 328 Russian Enterprises (Percentage of Sample of 328 Enterprises in Parentheses)

No. of Cases as Defendant	No. of Cases as Plaintiff				
	None	1-5	6-19	20-49	50 or more
None	68 (20.7%)	49 (14.9%)	10 (3.1%)	5 (1.5%)	4 (1.2%)
1-5	20 (6.1%)	51 (15.6%)	25 (7.6%)	10 (3.1%)	8 (2.4%)
6-19	4 (1.2%)	4 (1.2%)	21 (6.4%)	9 (2.7%)	5 (1.5%)
20-49	0 (0.0%)	1 (0.3%)	5 (1.5%)	11 (3.4%)	4 (1.2%)
50 or more	0 (0.0%)	1 (0.3%)	1 (0.3%)	2 (0.6%)	10 (3.1%)

By exploiting the differences between the enterprises in our data set, we can further examine Galanter's argument. He predicts that RP versus OS litigation is numerically dominant. Given the absence of the archetypal OSs in our sample, our low-end RRs can take the place of OSs in this prediction in view of the relative nature of the OS/RP labels. This substitution immediately implies that the frequency of going to court as a plaintiff

²⁷ There are certain exceptions to this general rule regarding RP versus RP litigation (Galanter 1974: 111-12).

should be positively related to the RRP variables and that the frequency of going to court as a defendant should be negatively related to the RRP variables, if Galanter's analysis applies to Russia.

To test these predictions, we use the survey responses that are summarized in Table 4. In two separate analyses, we examine the factors associated with the frequency of being a plaintiff and the frequency of being a defendant. The dependent variables are ordered categorical (see the categories in Table 4), and we therefore use ordered probit regression techniques. The results appear in Tables 5 and 6. The structure of these tables is the same as that of Tables 2 and 3: column (1) contains the basic regression for the RRP variables alone, and column (2) adds non-RRP explanatory variables. We also tested the importance of regions and of sectors in the same manner, using dummy variables, but the details of the results are omitted from the table to economize on space. Definitions of the non-RRP variables are contained in Table 1.

Table 5. Ordered Probit Regressions for the Number of Cases as Plaintiff in *Arbitrazh* Court from July 1995 through June 1997

Variable	(1)	(2)
<i>FORM</i>	0.050 (1.48)	0.038 (1.05)
<i>LAWYER</i>	0.301*** (6.36)	0.248*** (4.65)
<i>RESOURCE</i>	0.042 (0.71)	-0.027 (-0.35)
<i>CONTACTS</i>	0.216*** (2.78)	0.171* (1.97)
<i>SIZE</i>		0.00006* (1.91)
<i>BARTER</i>		0.002 (0.87)
<i>AGE</i>		0.006** (2.39)
<i>ARREARS</i>		-0.006 (-0.55)
<i>NEWCUST</i>		-0.002 (-1.10)
<i>CONPAY</i>		0.003 (0.82)
<i>ACTPAY</i>		-0.006 (-0.60)
Sectoral dummies		Yes
Log-likelihood	-387.601	-366.994
No. of observations	274	271

NOTE: Intercept estimates omitted; *t*-statistics in parentheses.

* Significant at the 10% level.

** Significant at the 5% level.

*** Significant at the 1% level.

Table 6. Ordered Probit Regressions for the Number of Cases as Defendant in *Arbitrazh* Court from July 1995 through June 1997

Variable	(1)	(9)
<i>FORM</i>	-0.009 (-0.27)	-0.016 (-0.43)
<i>LAWYER</i>	0.390*** (7.67)	0.316*** (5.57)
<i>RESOURCE</i>	-0.227*** (-3.66)	-0.145* (-1.79)
<i>CONTACTS</i>	0.264*** (3.29)	0.152* (1.69)
<i>SIZE</i>		0.000*** (3.33)
<i>BARTER</i>		0.005** (2.07)
<i>AGE</i>		0.004 (1.44)
<i>ARREARS</i>		0.018* (1.69)
<i>NEWCUST</i>		-0.000 (-0.08)
<i>CONPAY</i>		0.001 (0.39)
<i>ACTPAY</i>		-0.003 (-0.94)
Regional and sectoral dummies		Yes
Log-likelihood	-321.593	-294.950
No. of observations	274	271

NOTE: *t*-statistics in parentheses.

* Significant at the 10% level.

** Significant at the 5% level.

*** Significant at the 1% level.

Initiating Lawsuits

Looking first at plaintiff activity, we find that all the RRP variables are positively related to court filings, thus supporting the Galanter hypothesis. Of these, the variable measuring access to legal specialists (*LAWYER*) stands out as being particularly important. A strong relationship between filing lawsuits and access to legal expertise might seem self-evident, but not in Russia. The prerequisites for complaints are clearly spelled out in the law, and the courthouse personnel are accustomed to helping laypersons with procedural questions. Cases need not be argued by lawyers: *arbitrazh* judges estimate that management represents itself in about half of the cases. Our data suggest that the role of lawyers in Russian enterprises should not be underestimated. Although they may not always be on the front lines of litigation, as they are in the U.S. context, their presence matters. Perhaps they play a gadfly role, pushing for the litigation of claims that might have gone uncollected in their absence.

The extent of control over the transaction (*FORM*) is also positively related to plaintiff activity, although only at marginal levels of significance. This linkage is less surprising. Enterprises that were able to exert control over the substance of the contract would be more willing to risk litigation, because the terms of a

contract usually favor the drafter. Somewhat more surprising is the unimportance of the level of resources available (*RE-SOURCE*). Because the *arbitrazh* courts require filing fees equal to about 5% of the value of the claim,²⁸ we had expected that enterprises with more resources would have a greater capacity to initiate lawsuits. The gatekeeping effect of these rather high filing fees may have been mitigated by the recent willingness of *arbitrazh* courts to postpone payment when the plaintiff has no liquid assets. This rule, however, is not statutory. Rather, it has emerged through practice and consequently might not be well-known to enterprises without legal counsel. (See Hendley 1998a, 1998c.)

Looking beyond the variables associated with RRP, we find that large enterprises are more likely to be plaintiffs. This result might simply reflect the prosaic phenomenon that larger enterprises have more transactions and therefore present more potential for problems and lawsuits. Also, to some extent, we may be observing a legacy from the past being played out in the present, because large enterprises are usually privatized state enterprises, which is certainly backed up by the age of the enterprise (*AGE*) being highly significant. On the other hand, *arbitrazh* courts did not exist in their current form during the Soviet period, so the behavior is new. These large, older enterprises are more likely to have long-standing trading relationships—also inherited—which Galanter suggests should militate against litigation. Thus, the reasons for the strong positive correlation between size and plaintiff activity are not entirely clear from the data we have available.

Some sectoral variations emerge. For example, enterprises in the food processing industry are more likely to initiate litigation. Such enterprises tend to have large numbers of customers and relatively high turnover. They may experience more difficulty in collecting payment and feel more urgency in pursuing customers. Although an analogous argument would seem to apply to the enterprises with high levels of new customers, in fact we find that having high numbers of customers that are new since 1992 (*NEWCUST*) has no significant effect on plaintiff activity. Similarly, the level of arrears (*ARREARS*) has no effect on the propensity to sue. Financial desperation does not lead enterprises to become more aggressive in their litigation strategy.

Along similar lines, we might hypothesize that enterprises that require (*CONPAY*) and/or receive high levels of prepayment (*ACTPAY*) from their customers would go to court less often than other enterprises. Most interenterprise litigation involves non-payment (Hendley 1998a, 1998c), and prepayment takes that out of the picture. Yet prepayment levels—both contractual and actual—are not significantly related to plaintiff activity.

²⁸ The law establishes a sliding scale with the percentage decreasing as the amount of the complaint increases. For the precise amounts, see "O vnesenii izmenenii" (1996).

Although we find that high-end RRP's do tend to be plaintiffs more often than low-end RRP's, the results from the non-RRP variables seem to have little connection to Galanter's theses on relational distance. If these assumptions were correct, plaintiff activity would be higher among enterprises with high levels of new customers, because the level of trust is lower with these newer trading partners, particularly in post-Soviet Russia, where one can never truly be sure of the bona fides of an unknown party. Yet there is not such connection. If Galanter's theses on relational distance held for Russia, it would also have been the case that older enterprises would have less litigation, given that a larger proportion of their relationships would be long-standing ones. The significant relationship between size and plaintiff activity might also undermine the Galanter thesis, because large enterprises are very likely to be embedded in a network of long-term mutually beneficial relationships.

Defending Lawsuits

If Galanter's argument that RP versus OS litigation is the largest single category applies in the Russian context, then we ought to find higher levels of defendant activity among low-level RRP's than among high-level RRP's. Our data do not support such a proposition. We find that the frequency with which an enterprise is sued is significantly positively related to its access to legal professionals (*LAWYER*) and to its relations with political authorities (*CONTACT*), and there is no significant relation to its control over the transaction (*FORM*). The availability of resources (*RESOURCE*) is the only variable with the significant negative coefficient that is predicted by Galanter's theories. The logic of the use of the resources variable in the U.S. case would be that enterprises with larger amounts of resources are more likely to be RPs and are not likely to be subject to suits from the most common plaintiffs, other RPs. Given the results for the *LAWYER* variable, this logic is probably not the explanation for the sign of the *RESOURCE* variable in Russia. Rather, enterprises that are in trouble in present-day Russia make a practice of not paying their bills and therefore generate constant targets for lawsuits.

The results come into clearer focus when we examine the variables measuring size and arrears. We find that larger enterprises are more likely to end up in court as defendants. The *ARREARS* variable²⁹ is significantly positively related to defendant activity. When we put together these characteristics—large, resource-poor, indebted enterprises with legal departments—they point to the old heavy industrial enterprises inherited from the Soviet system that have now been mostly privatized.

²⁹ The variable *ARREARS* measures the severity of the enterprise's arrears to suppliers, banks, and energy companies.

The Specific Character of Russian Contractual Litigation

In Russia, high-end RRP's sue high-end RRP's with a fair amount of regularity. This fact, of course, contradicts Galanter's thesis that RPs are loathe to sue RPs. How can one explain the high level of RP versus RP litigation?

Although the litigation at issue in our survey is supplier versus purchaser, a classic RP versus RP category, it is qualitatively different from the sort of case typically found in this category in the United States. This is not high-stakes litigation, but rather routine debt collection of the sort Galanter associates with RP versus OS cases. The desired outcome is not to reshape the rules to the plaintiff's advantage, but mere survival. The evidence of the routine nature of the litigation is overwhelming. Over three-fourths of the surveyed enterprises that initiated lawsuits in the *arbitrazh* court had a decision within a month of the first hearing, and 12.5% of these cases were resolved at the initial hearing. Complaints tend to be short and confined to the basic facts (with a detailed accounting of the amount owed). Defendants often do not bother to participate because the outcome is so obvious. (See Hendley 1998a.)

Why has RP versus RP litigation in Russia taken on such a routine character? The explanation stems from the institutional landscape and the crisis mentality that pervades present-day Russian industry. In contrast to the United States, where the barriers to entry are relatively high and the judges are generally passive, it is remarkably easy to file a case in the Russian *arbitrazh* courts. As we have repeatedly noted, no legal assistance is required. Moreover, once filed, cases proceed quickly to decision. The judge usually tells the parties what evidence to present, thereby reducing uncertainties and leveling the playing field between enterprises with highly experienced lawyers and those with lay representatives.

Our data strongly suggest that the most frequent litigants (both as plaintiffs and defendants) are the larger enterprises that have deeply embedded supplier networks dating back to the Soviet era. Why are these long-standing partners suing one another? Part of the answer lies in the debt crisis that has enveloped virtually all Russian industry. In a world in which it has become acceptable not to pay debts and in which enterprises are fighting for their very survival, there might be more willingness to risk the rupture of a relationship with old partners. Moreover, in this heightened crisis atmosphere, litigation does not automatically lead inevitably to the termination of the trading relationship. Interviews reveal that enterprise managers are highly sympathetic to the problems of their trading partners and do not begrudge them any way out.

Conclusions

Our data indicate that RRPs behave differently than do Galanter's RPs. The differences go well beyond what might be expected when comparing common- and civil-law systems. Naturally, the RRPs show little inclination to play for the official rules, because that is a mostly futile pursuit. More interesting is the absence of the qualities that are integral to RP-ness in Galanter's analysis. RRPs are not particularly aggressive or innovative in their use of legal strategies. Nor do they use their advantages—whether reputational or resource based—to impose new informal norms on less well endowed trading partners. Moreover, RRPs use the courts routinely against other RRPs, not sparingly as a means of last resort as do Galanter's RPs.

The failure of RRPs to exhibit the standard RP qualities under current economic conditions is particularly telling given that most Russian enterprises are struggling for their very survival. Because the future payoff of long-run relationships and established business routines is less important when survival is at issue, one might expect to see more aggression and innovation in present-day Russia than would be present under calmer circumstances. Yet even the present exigencies have not led to the patterns of behavior that, according to Galanter, are to be expected in market economies. The RRPs are as conservative as other enterprises in their problem-solving strategies, at least in terms of the legal aspects of contractual relations, preferring to resort to routine use of the courts when negotiations collapse rather than designing transactions that would be self-enforcing.³⁰

Why do we not observe the innovation in legal aspects of contractual relations in the very sector where it might be most expected, among the RRPs? Is it simply a lack of innovation in Russian enterprises? This answer is hardly plausible given the extraordinary ingenuity of many Russian enterprises in devising nonmonetary exchanges (using both barter and various forms of commercial paper) as a means of staying in business while avoiding the use of liquid assets.³¹ These innovative nonmonetary transactions, however, are based on skills and behaviors acquired under the old system. In contrast, innovation in legal aspects of contractual relations would push many Russian enterprises into truly virgin territory. Because change is constrained by experience (Nelson & Winter 1982) and because the RRPs in our sample, and Russian manufacturing enterprises in general, are of Soviet vintage, the innovation in the legal sphere that is natural for RPs is absent in our results for Russia. In the Russian context,

³⁰ The continued use of *protokols* of disagreement, even after their *raison d'être* has disappeared, further buttresses this conclusion.

³¹ See Hendley et al. (1997) for a description of the arcane transactions used by Russian enterprises to avoid the use of liquid assets.

given the history of enterprises and the role of law in the old system, legal innovation is as much to be expected of the new and the weak as the old and the powerful.³²

Equally intriguing is our finding that access to legal specialists is important in pursuing legal strategies (with the notable exception of prepayment). In contrast to the United States, lawyers have never been anywhere near the center of Russia economic life. The institutional structure reflects this reality. Courts are accessible to laypersons, and cases are resolved expeditiously.³³ Lawyers are typically regarded as technicians. Enterprise management solicits their opinion on whether draft contracts are "legal," but sees little value in including lawyers in broader discussions of the reasons for transaction. Lawyers are not expected to offer general business advice. In interviews, enterprise lawyers are often startled to be asked about the purpose of one or another contract and typically respond that this is not their concern.³⁴ Galanter suggests that these sorts of legalistic lawyers are less likely to accentuate the advantages of RPs than are lawyers with a more problem-solving approach. The question of how and why the role of lawyers is evolving in post-Soviet Russia deserves further exploration.

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³² See Murrell (1992) for this view of the nature of enterprise behavior during radical reforms.

³³ Complaints about delays are legion. The Russian media delights in uncovering Dickensian tales of cases that have dragged through the courts for years with no resolution, but the official statistics indicate that such cases are the exception rather than the rule. More than 95% of 1996 and 1997 contractual disputes were decided by the *arbitrazh* courts within two months of filing, the statutory deadline.

³⁴ In terms of Galanter's model of legal professionals, Russian enterprise lawyers have more characteristics of Type A than Type B (Galanter 1974: 115n. 48).

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Appendix A

Constructing the Variables That Measure an Enterprise's Degree of RRP-ness

The information used to construct the four variables came from a survey whose questions usually asked respondents to choose answers from several categories provided by the questionnaire. The multiple-choice form of response was dictated by the qualitative nature of the information being sought. When creating variables to reflect the different aspects of RRP-ness, however, we combined the information from several questions and constructed quantitative variables. The decision to do so was motivated by simple pragmatic concerns: to simplify the analysis and the presentation of results. Without the use of quantitative variables, our analysis would have required the use of a multiplicity of dummy variables, with accompanying difficulties of interpretation, even in the simplest statistical exercises. Thus, our decision is one to sacrifice some rigor so as to use a simple framework in examining the importance of RRP-ness. In the following paragraphs, we detail the construction of the variables.

FORM

The survey asked about the details of one sales agreement and one purchase agreement for each enterprise. We take these agreements to be indicative of the enterprises' usual relationships with customers and suppliers. The questions on form contracts were not addressed to the small group of enterprises that relied on oral rather than written agreements. Only 11 enterprises used oral agreements for their sales transaction, and 27 did so for their purchasing transaction. We constructed the variable *FORM* in the following way:

FORM = 8 if the enterprise's form contract is used for both sales and purchases.

FORM = 7 if the enterprise's form contract is used for sales and neither the enterprise's or the supplier's form contract is used for purchases.

FORM = 6 if the enterprise's form contract is used for sales and the supplier's form contract is used for purchases.

FORM = 5 if neither the enterprise's nor the customer's form contract is used for sales and the enterprise's form contract is used for purchases.

FORM = 4 if the enterprise uses contracts that are specially written for individual sales and purchase agreements.

FORM = 3 if neither the enterprise's nor the customer's form contract is used for sales and the supplier's form contract is used for purchases.

FORM = 2 if the customer's form contract is used for sales and neither the enterprise's nor the supplier's form contract is used for purchases.

FORM = 1 if the customer's form contract is used for sales and the supplier's form contract is used for purchases.

RESOURCE

The variable *RESOURCE* has values in the range of 0 to 4. The base value of *RESOURCE* is 2, with 1 being added if the enterprise earned positive net profits in the previous year and a further 1 added if the enterprise purchased production equipment in the previous year. Enterprises were asked how serious were their wage arrears, on a scale of 1 to 10, and *RESOURCE* was reduced by one-tenth of the response to this question. *RESOURCE* was also reduced by the proportion of the workforce that was working a reduced work week.

LAWYER

LAWYER = 5 if the enterprise has an in-house legal department and uses outside counsel.

LAWYER = 4 if the enterprise has an in-house legal department and does not use outside counsel.

LAWYER = 3 if the enterprise does not have an in-house legal department but has a permanent relationship with outside counsel.

LAWYER = 2 if the enterprise does not have an in-house legal department but has an intermittent relationship with outside counsel.

LAWYER = 1 if the enterprise does not have an in-house legal department and has no relationship with outside counsel.

CONTACTS

The variable *CONTACTS* has values in the range of 0 to 4. The base value of *CONTACTS* is 0, with 1 being added if enterprise management meets with federal government representatives once a month or more, 1 being added if enterprise management meets with local government representatives once a week or more, and 1 being added if the enterprises received direct subsidies from the government during the past year. Also, enterprises were asked to indicate on a scale of 0 to 10 how responsive the government would be if the enterprise were in serious financial difficulties, and we added one-tenth of the score on this scale as a final element of *CONTACTS*. Summary statistics for these variables are presented in Table 1.

Appendix B Who Are the RRP's?

The concept of a RRP (like Galanter's original RP) is a relative one. Thus, RRP's will take on different identities—from high-end to low-end RRP—depending on where they fall on the spectrum. Implicit in Galanter's approach is the notion that an enterprise's degree of RP-ness is captured in the value of a single variable and that other variables measuring specific characteristics of RP-ness are highly correlated with this variable. Therefore, to obtain an unambiguous answer to the question of who the RRP's are, it is necessary to create a single measure of RP-ness. Given the existence of the four constituent variables of RRP's (*FORM*, *LAWYER*, *RESOURCE*, and *CONTACTS*) described in the main body of this article, each of which is related to RP-ness, a natural way to construct the single measure is through the use of factor analysis.³⁵

The application of factor analysis was not a resounding success. One of the variables, *CONTACTS*, is negatively correlated with two of the other three. Because institutional contacts presented the most conceptual problems in adapting Galanter's approach to the Russian setting, we regard these statistical results as underlining our conceptual misgivings. Hence, we omitted this variable when constructing the one-dimensional RP-ness variable.

Moreover, the three remaining variables (*RESOURCE*, *FORM*, and *LAWYER*) do not exhibit high intercorrelations. Hence, the constructed variable does not capture a large part of the variation in these individual variables.³⁶ The correlation coefficients between the composite variable and *RESOURCE*, *FORM*, and *LAWYER* are .73, .73, and .23, respectively. (Confirming the observations of the previous paragraph, the correlation with *CONTACTS* is negative.)

Thus, in contrast to Galanter, who is able to draw sharply focused pictures of the sorts of individuals and entities likely to be found at the high end and low end of his spectrum, our pictures remain much fuzzier. The reasons are twofold.

First, the rapidly changing economic and political environment in Russia makes reality considerably less coherent than in the stable market economy of the United States. Legal, economic, and political power are likely to be weakly related in a turbulent environment because differences in the speed of change of different economic phenomena imply that the system is far from any long-run equilibrium. This reason is probably why

³⁵ We used the method of principal components.

³⁶ The first principal component accounts for only 37% of the variance of the three variables.

the correlations among our four variables are low, or even negative.

Second, we are looking at a narrower segment of the RP spectrum than Galanter did. Our survey sample includes only industrial enterprises. The classic one shotters, such as parents battling over custody or divorcing spouses, which naturally are present in Russia just as in the United States, are absent from our sample. Our focus is on interaction between purchasers and suppliers, which Galanter clearly categorizes as RP versus RP transactions (Galanter 1974:107). Thus, although some of our enterprises are closer to the archetypal RP than are others, the range of variation across our sample is limited. Such a narrowing of the range of variation will obviously increase the noise-to-signal ratio in the data and reduce the strength of interrelationships between variables.

These reservations aside, in the remainder of this appendix, we examine how various enterprise characteristics and management attitudes are related to RP-ness, that is, to scores on this composite variable. We could, of course, have related the characteristics of enterprises to each of the four variables defining an RP, but that would then leave us with highly ambiguous information when, as is often the case, a characteristic was negatively related to one of the four variables and positively related to others.

Basic Characteristics

Larger enterprises (as measured by number of workers) have higher scores on the RRP composite variable than smaller enterprises, but the relationship is weak. Age of the enterprise is unrelated. These two results indicate that the large, older enterprises that would have been regarded as Soviet RPs do not automatically become present-day RRPs. Location matters. The six oblasts divide naturally into three groups, with enterprises in Novosibirsk and Voronezh scoring highest, those in Moscow and Ekaterinburg in second place, and enterprises in Saratov and Barnaul lagging far behind. The explanation for these groupings is not immediately apparent, because the paired regions share few characteristics.

Ownership Structure

State-owned and privatized companies are equally likely to be RRPs, providing no support for the argument that privatization would spark increased recognition and mobilization of legal rights (see Boycko & Shleifer 1995:78). The identity of the shareholder does seem important. Enterprises with employee owners tend to be higher-end RRPs, whereas those with outside ownership are more likely to be at the low end. Indeed, the bigger the

largest outsider-owned ownership block, the lower the score on the RRP composite variable. Once again, these results provide no support for the common wisdom, which is that inside owners tend to be insular, whereas outsiders tend to look to the legal system to protect their rights.³⁷

Business

Enterprises in the food processing and paper and printing sectors receive an above average score, whereas those in the electronics and machinery and equipment sectors rank near the bottom. Enterprises in other sectors are scattered across the spectrum.

The type of customers of the enterprise and the nature of competition faced by the enterprise are associated with the RRP composite score. Enterprises that are closer to the high end of the spectrum are less likely to have other industrial enterprises and the government as customers and more likely to have a customer base composed of wholesale and retail enterprises. These high-end RRP's typically import some of their inputs, indicating sustained contact with foreigners. They are also more likely to face import competition, and they have a lower market share in the Russian Federation than do low-end RRP's. Export behavior is not associated with RRP-ness.

High-end RRP's are slightly more likely than low-end RRP's to be members of business associations or financial industrial groups, although they are less likely to rely on old contacts developed during the Soviet period in business dealings. Somewhat incongruously, the nature of the relationship (whether it is regarded as primarily personal or strictly business) between enterprise sales people and their customers does not correlate in any way with the RRP composite variable.

Attitudes Regarding the Use and Value of Law

The portrait of the RRP's comes into clearer focus when we turn from enterprise attributes to management attitudes. For example, when evaluating the importance of different survival strategies, enterprises with high RRP scores had a higher propensity than low RRP scorers to identify the use of laws and legal institutions as important. In contrast, enterprises with low RRP scores viewed delaying payments as a more important strategy.

Management's evaluation of the commercial (or *arbitrazh*) courts takes on a similar character. These courts have jurisdiction over all disputes between legal entities. They are the institutional successor to a Soviet-era administrative agency, known as "state

³⁷ These results, however, are only suggestive, because they use only simple correlations.

arbitrazh" (or *gosarbitrazh*), which used to resolve disputes between state enterprises (Pomorski 1977). Although superficially similar, the work of *gosarbitrazh* pales in comparison to the challenges now facing the *arbitrazh* courts (Hendley 1998b). When asked to compare the *arbitrazh* courts with *gosarbitrazh*, high-end RRP's are more likely than low-end RRP's to rate the current *arbitrazh* courts high. Although the *arbitrazh* courts have been much criticized for delays and an inability to enforce judgments (Black & Kraakman 1996:1914; Vasil'eva 1996), high-end RRP's are considerably less concerned with these problems than are low-end RRP's. We also asked the general directors to compare the *arbitrazh* courts with "private enforcement," which was meant as a polite euphemism for the mafia in Russia. The high-end RRP's are more likely than other enterprises to rate the *arbitrazh* courts as superior to these extralegal alternatives.

Managers in high-end RRP's are more likely than those in low-end RRP's to view contracts principally as a mechanism for clarifying the rights and duties of the parties at the outset of the transaction, rather than as a means of protecting and advancing their interests afterwards. It follows that these same managers are generally uncomfortable about breaching contracts, believing that the enterprise should live up to its obligations, even when reneging might serve the enterprise's interests.

