The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government

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Abstract

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What role do courts play in the establishment and maintenance of constitutional democracies? To address this question, we elaborate a model that draws on existing substantive literature and on theories that assume strategic behavior on the part of the relevant actors (including judges, executives, and legislatures). Specifically, we argue that actors prefer policy that is as close as possible to their ideal points, but they are not unfettered in their ability to achieve that goal. Because elected politicians may incur costs associated with challenging a court decision, they may be willing to tolerate policy that is not on their ideal points. That is to say, an interval—what we call a tolerance interval—exists around each of their ideal points such that they would be unwilling to challenge a court decision placed within that interval. And because courts may pay both short- and long-term costs when elected actors attack their decisions, they are in turn constrained by the existing tolerance intervals of those politicians.

This model leads to several behavioral predictions about the interactions among courts, executives, and legislatures. While they could be assessed in many distinct contexts, we focus on Russia. In particular, we provide a demonstration of how the model helps make sense of the behavior of the Constitutional Court (*Konstitucjonnyj sud*) in light of the difficult political situation it confronted. We conclude with some thoughts on the broader implications of our theory for the study of courts throughout Eastern Europe and how it may well illuminate constitutional politics in other parts of the world.

The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government

Over the past decade or so, observers of the judicial process have commented on the increasingly marginal role played by the U.S. Supreme Court in the American governmental system (see, *e.g.*, Shapiro 1995).[1] To support this claim, analysts have taken note of the Court's declining plenary docket (*e.g.*, Hellman 1996), its increasing inclination to reject especially salient cases (*e.g.*, Epstein and Segal 2000; Sunstein 1999), its use of various gatekeeping devices to dispose of controversial cases that it has accepted (*e.g.*, Entin 1997), and its inability to generate social change (*e.g.*, Rosenberg 1991).

What makes these claims especially intriguing is that they come at the very same time scholars are taking note of the increasingly important role played by courts in European democracies. As Schwartz (1992, 741) puts it, "Before World War II, few European States had constitutional courts, and virtually none exercised any significant judicial review over legislation. After 1945 all that changed. West Germany, Italy, Austria, Cyprus, Turkey, Yugoslavia, Greece, Spain, Portugal and even France…created tribunals with power to annul legislative enactments inconsistent with constitutional requirements. Many of these courts have become significant—even powerful—actors." Henckaerts and Van der Jeught (1998) agree, asserting that courts in both Western and Eastern Europe "have played an active role in ensuring the supremacy of constitutional principles."[2]

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[1]Material in this and the next paragraph draws on draws on Epstein (1999, 1).

[2]It is not difficult to summons examples, for in the last few years alone: (1) The Constitutional Review Chamber of the Estonian National Court considered President Meri's hotly-debated claim that procedures for enforcing laws on Estonian language requirements infringe on the separation of powers; (2) The Federal Constitutional Court in Germany ruled that a former East German Communist leader must serve his jail term for issuing a shoot-to-kill order against people who tried to flee to the West; (3) The Slovakian Constitutional Court held that the Minister of the Interior had violated the constitution by interfering with a referendum on direct elections; (4) The Spanish Constitutional Court overturned the prison sentences of 22 leaders of the Basque separtist movement; and, (5) The Constitutional Court of Ukraine held that certain provisions of an electoral law—challenged as granting parties too many rights and individuals too few—were unconstitutional.

The phenomenon of which Henckaerts and Van der Jeught speak has not been missed by policy makers—many of whom have a vested interest in learning about the role of courts and law in establishing and maintaining democracies. Perhaps the best evidence of this claim comes from the World Bank, which has commissioned various reports and put together study groups for the purpose of exploring the role courts play in the democratization process.[3] Such a concerted effort on the part of the World Bank and other policy-making groups reflects a recognition that "Without judicial independence, there is no rule of law, and without rule of law the conditions are not in place for the efficient operation of an open economy, so as to ensure conditions of legal and political security and foreseeability" (Jarquín and Carrillo 1998, vii). This is, of course, the same sort of sentiment Mikhail Gorbachev (1987) expressed over a decade ago, when he argued that *perestroika* required commitment to *pravovoe gosudarstvo* (a state based on the rule of law).[4]

Political scientists, on the other hand, have been less attentive. More to the point, if Henckaerts and Van der Jeught's comment is to be believed, then we must confront an essential irony: Judicial specialists continue to focus on the U.S. Supreme Court, despite its (potentially) decreasing importance, and continue (with limited exceptions[5]) to ignore courts elsewhere, despite their increasing prominence. Of the 249 Ph.D. dissertations on the subject of courts produced over the last five years, 85.9% (n=214) centered on American courts; only 14.1%

[3]For a list of these, navigate to: www.worldbank.org

[4]As Gorbachev wrote (1987, 107): "It is especially important to enhance the role of courts as an elective body very close to the population, to guarantee the independence of judges, and to observe most strictly democratic principles in legal proceedings, objectiveness, contested election, and openness." But whether Gorbachev used the term "the independence of judges" in the same way as do politicians in evolved democracies is debatable (see note 18).

[5]Examples of recent studies are Barzilai and Sened (1997), Flemming (1997), Haynie (1992), Holland (1991), Melone (1997), Stone (1994), Sweet (2000), Vanberg (1998a, 1999), and Volcansek (1992); and chapters in Jackson and Tate (1992), Jacob et al. (1996), Tate and Vallinder (1995a); and, articles in Shapiro and Stone (1994b) and Volcansek (1991a).

considered courts elsewhere (with nearly 25% of those focusing on Canada).[6] Scholars of comparative politics have been equally inattentive. Of the 727 articles published in that field between 1982 and 1997, less than 1% were on courts (Hull 1999). And, of the hundreds of comparative panels convened at the 2000 annual meeting of the American Political Science Association, but a handful dealt with the subject of courts. It is thus easy to understand to why Gibson and his colleagues (1998) recently lamented:

> [We] know precious little about the judicial and legal systems in countries outside the United States. We understand little or nothing about the degree to which various judiciaries are politicized; how judges make decisions; how, whether, and to what extent those decisions are implemented; how ordinary citizens influence courts, if at all; or what effect courts have on institutions and cultures. The degree which [we have] ignored courts and law [elsewhere] is as remarkable as it is regrettable.

Shapiro and Stone (1994a, 398-399) are downright blunt: "a comparative politics that leaves out law and courts is incomplete."

We and many others (*e.g.*, Jacob et al. 1996; Melone 1996; Volcansek 1992) agree. While we appreciate why social scientists emphasized the U.S. judiciary in previous decades[7]—the emergence of courts as key actors in Western and, especially, Eastern European systems is a fairly recent phenomenon—it is nothing short of extraordinary that this strange state persists. After all, we, as citizens, are bombarded with press reports of constitutional courts generating major policies.[8] And, as scholars, we acknowledge the expansion of judicial power throughout the world or what some call the "judicialization of politics" (Tate and Vallinder 1995a) and,

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[6]The data are from a search of Dissertation Abstracts On-Line. The search was for Ph.D. theses, written in English and containing the keywords court or courts in the title.

[7]Actually, it is interesting to note, in the 1960s and 1970s prominent political scientists began to study systematically courts abroad (e.g. Becker 1970; Kommers 1976; Murphy and Tanenhaus 1977; Schubert and Danelski 1969; Tate 1972). But this of line of inquiry failed to take hold either in the judicial or comparative field. Recently, there has been something of a resurgence of research but the great bulk has focused on courts in mature democracies. For a relatively comprehensive bibliography, navigate to: artsci.wustl.edu/~polisci/epstein/compbib.html

[8]In the last year alone, the *New York Times* published an article roughly every four days on courts outside the United States. A NEXIS search of news articles published during the last two years, using the term constitutional court (library=news; file=curnws), produced an astounding 11,149 stories.

concomitantly, the part many courts (but especially those in Eastern Europe) are playing in democratization efforts.[9]

Certainly no single research endeavor can fill the enormous vacuum that has been created from years, even decades, of neglect of these courts. What we hope to do instead is tackle one question, albeit one that is of core concern to scholars of courts and of comparative politics, as well to policy makers: What role do courts play in the establishment and maintenance of constitutional democracies? For legal scholars, this question is of obvious significance, having served as a focal point for studies on the U.S. Supreme Court for over four decades (*e.g.*, Casper 1976; Dahl 1957; Gates 1992; Rosenberg 1991). For comparativists, it provides a mechanism for integrating courts into the larger governmental process—the importance of which we cannot stress enough. As analysts have speculated (Jacob et al. 1996; Shapiro and Stone 1994a), at least some of the persistent neglect of courts by this field may reflect a belief that judiciaries are separate from or "above" ordinary political processes and, as such, must be studied as independent entities.[10] By incorporating courts into the larger governmental process, just as scholars have done fruitfully in the U.S. context (Eskridge 1991a,

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[9]Tate (1995, 28) defines the judicialization of politics as (1) the process by which courts and judges come to make or increasingly to dominate the making of public policies that had previously been made (or, it is widely believed, ought to be made) by other governmental agencies, especially legislatures and executives and (2) the process by which nonjudicial negotiating and decision making forums come to be dominated by quasi-judicial (legalistic) rules and procedures."

[10]Jacob (1996) points to another reason for the neglect: the lack of "a widely accepted paradigm…which models the relationship between law, courts, and politics in a cross-national context" and (2) technical knowledge about courts. The first may no longer hold: As many scholars both of law and courts and comparative politics converge over theories that assume strategic rationality on the part of all political actors (Bates 1997; Epstein and Knight 2000), we now have a tool to bridge comparative and judicial politics and, thus, surmount the problem of the lack of a "widely accepted paradigm."

Since we adopt a strategic framework to address our research question, we have much more to say about this approach in the text. Suffice it to note here that a debate has already ensued, between Vanberg (1998a; 1998b) and Sweet (1998), over whether approaches grounded in assumptions of rationality are fruitfully applied to courts. While we believe Sweet makes some important points, evidence from recent work (e.g. Barzilai and Sened 1997; Helmke 1999; Knight and Epstein 1996; Vanberg 1999) tends to supports Vanberg's claims. More broadly, both comparative and judicial specialists agree, in ever increasing numbers, that approaches grounded in assumptions of rationality— especially the strategic account, which belongs to a class of non-parametric rational choice models as it assumes that goal-directed actors operate in *strategic* or *interdependent* decision-making context—hold promise for the analysis of politics

1991b; Ferejohn and Weingast 1992a; Spiller and Gely 1992), not only do we wish to dispel this notion but we also hope to make a compelling case for our belief—shared by many others (*e.g.*, Cappelletti 1989; Jacob et al. 1996; Vanberg 1999)—that explanations of politics are incomplete unless they incorporate courts.

To address the primary research question, we proceed in five steps. We begin, in Section 1, with some preliminaries regarding distinctions that exist between types of constitutional courts and how those distinctions might affect theory building. Section 2 uses these preliminary considerations to elaborate a model that locates courts within their governmental systems. That model, which also draws on existing substantive literature and on theories that assume strategic behavior on the part of political actors, in turn, enables us to construct behavioral predictions about the interactions among courts, executives, and legislatures. While those predictions, which we lay out in Section 3, could be assessed in many distinct contexts we focus on Russia. In particular, Section 4 provides a demonstration of how the model helps make sense of the behavior of the Constitutional Court of the Russian Federation (*Konstitucjonnyj sud*) in light of the difficult political situation it confronted. We conclude, in Section 5, with some thoughts on the broader implications of our theory for the study of courts throughout Eastern Europe and how it may well illuminate constitutional politics in other parts of the world.

I Preliminary Considerations

As noted above, we start with a brief overview of the two basic models of constitutional courts (Section 1.1) and explore whether differences between them are meaningful for our research (Section 1.2) . Section 1.1 is important for two reasons. First, because we share Jacob's (1996) concern—"Many students remain unaware that the American legal system is an exception to what prevails in most of the rest of the world"— some introduction may be

appropriate. Second, because we later make the claim that we can generalize to other Eastern European systems (at the very least) by focusing on the Russian case, this discussion enables us to provide a preliminary justification for that claim. The material in Section 1.2 is equally important: It provides the primitives necessary to begin the model-building process.

1.1 Constitutional Courts: The Basics

As even our brief introduction shores up, we are long way from paying serious heed to the admonitions of Gibson et al. (1998), Henckaerts and Van der Jeught (1998), Schwartz (1992), Stone (1992) and others; namely, that we ought take seriously the role constitutional courts are playing in establishing and maintaining democratic systems of government. Indeed, we dare say that many scholars—comparativists and judicial specialists alike— fail to realize that when nations go about the task of designing constitutional courts, they do not always or even often merely mimic the United States. Rather, they generally adapt one of two basic models, the American or European—with Table 1 pointing out the key differences.[11]

[Table 1 about here]

For many reasons (see, *e.g.*, Henckaerts and Jeught 1998; Ludwikowski 1996; Sheive 1995; Utter and Lundsgaard 1994), the vast majority of Eastern and Central European countries, including Russia, opted for the European model (Ludwikowski 1996; Smith 1996; Thomas 1995), and created centralized constitutional courts. In fact, these courts are so close in design that Wishensky (1993) has suggested that the nations apparently patterned some of their specific institutional features "on that of Russia, and the fate of one of them may give some

[11]We stress "basic" because, as Table 1 suggests, variants exist (see Harutyunyan and Mavcic 1999 for examples). Nonetheless, perhaps because the similarities among courts within each classification may be greater than their differences (Stone 1992), the vast majority of scholars classify courts on the basis of these two models (see, *e.g.*, Finer, Bogdanor, and Rudden 1995; Schwartz 1993; Tate and Vallinder 1995b; Utter and Lundsgaard 1994; Vallinder 1995).

indication of what could happen to such institutions in Russia and elsewhere."[12] This last clause may reflect the fact that these courts are not only linked by structure but by purpose as well. The various provisions and laws establishing them express the general aim of "safeguarding the foundations of the Constitutional system," as Russia's 1994 law on the Constitutional Court states or of "providing equilibrium between the separated powers," as an Armenian justice (Harutiunian 1996, 3) declares—an aim at least some courts have not been hesitant to attain by invoking the power of judicial review to strike down acts of government (*e.g.*, Ahdieh 1997; Hausmaninger 1995; Reid 1995; Schwartz 1992, 1998, 2000; Sheive 1995)

1.2 Theoretical Implications

Do differences between these two systems have implications for our investigation into the role courts play in the establishment and maintenance of constitutional democracies? Our inspection of relevant literature suggests as much, with at least some scholars of the Western European model *tending* to characterize courts as relatively *unconstrained* actors (*e.g.*, Blankenburg 1996; Provine 1996; Stone 1994; Stone 1995; Utter and Lundsgaard 1994)[13] and those of the American type (whether the U.S. Supreme Court or high courts abroad), viewing them as *constrained* by their political environment (*e.g.*, Barzilai and Sened 1997; Epstein and Knight 1998; Eskridge 1991a, 1991b; Helmke 1999; Parikh and Adler 1999; Smithey 1998; Spiller and Gely 1992).

1.2.1 European-Type Courts as Unconstrained Actors

Previous research on European constitutional courts advances—sometimes explicitly

[12]Of course, variations exist in the individual court systems (just as they do in Western Europe) in terms of their structure, jurisdiction, and case-processing procedures (see Harutyunyan and Mavcic 1999 for examples). But, again, most opted for the general Western European system, with specific modifications patterned on Russia's adaptation of it (Sheive 1995).

[13]While this sequence conforms to the balance of scholarly descriptions, we emphasize "tending" to indicate that some analysts now suggest that it does not fully capture key strategic dimensions of the policy-making process (*e.g.*, Smithey 1999; Vanberg 1999). We return to this general point later, in Section 1.2.3.

(*e.g.*, Vanberg 1998a), sometimes implicitly (*e.g.*, Provine 1996; Stone 1994, 1995)— a distinct sequence of policy making: (1) the Government (*i.e.*, an executive and legislature) acts;[14] (2) a Party (who may be a member[s] of the Government) challenges the constitutionality of the governmental action, and (3) the Constitutional Court (a) decides whether to hear the dispute[15] and, if so, (b) issues a decision, which includes a holding on the constitutionality of the Government's action. Because decisions of the Court are final and formally binding, the Court is a parametric actor in this sequence to the extent that it need not hinge its decisions on its beliefs about the preferences and likely actions of the Government; it can place policy wherever it sees fit. The other branches of government, however, must be attentive to the Court if they wish to see their preferred positions become the law of the land. In other words, given a sequence in which the Government moves first and the Court last, the justices may constrain the legislature and executive but the legislature and executive do not constrain the justices.

To see why, consider Figure 1 below in which we depict a hypothetical set of preferences over a particular policy, say, the question of whether to outlaw all communist political parties.[16] Assume: (1) the sequence of policy making enfolds as we suggest above; (2) the actors possess complete and perfect information about the preferences of all other actors;[17]

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[14]In countries where the court has a priori review power, the government need not act prior to court review. Though many constitutional courts can review abstract cases, relatively few—both in Eastern and Western Europe—possess a priori review power over a full range of disputes. Accordingly, we outline the more typical case.

[15]Many studies neglect the fact that, despite the wording of various laws and provisions, most constitutional courts have discretion over their agendas—discretion that goes beyond simply determining whether they have jurisdiction to hear a particular dispute. So, for example, between 1994 and 1996, the Russian Constitutional Court received about 15,000 petitions. The Secretariat of Court notes that 98 percent did not meet the "requirements of the [1994] law and for that reason were declined" by him (Kudriavtsev 1996). The remaining 2% (n=300) were considered by the justices; they voted to decide 39 of the 300 on the merits. Comments from members of the Court reinforce the implication from these data; namely, the justices enjoy a considerable degree of discretion in case selection (see, *e.g.*, Nikitinsky 1997 and Section 4.2.3 of this essay). Along the same lines, actions the justices have taken in various cases, such as "ducking" hard issues, reveal that they can evade controversies they agreed to but, for various reasons, no longer wish to resolve (see, *e.g.*, Schwartz 2000 and note 43).

[16]We realize that the this example is stylized. We use it here only to make a point about the role of constitutional courts in their governmental systems.

[17]Here and throughout, we represent the institutions of government as unitary actors. Their most preferred points, thus, are those held by the median members of each.

(3) the actors prefer an outcome that is as close as possible to their most preferred point to one that is further away in either direction.

[Figure 1 about here]

Under these assumptions and this preference distribution, should the President or Parliament try to enact its preferred policy? And, if so, should the other attempt a Court challenge? The answer to the first question is simple enough: The President should attempt to enact her preferred policy (perhaps via a decree). That is because she knows the Court shares her preferences. Hence, if her policy is challenged, the Court will uphold it, thereby giving it even greater weight. The answer to the second is equally transparent: Parliament should not attempt a challenge. That is because it too realizes that the Court will rule in favor of the President, which militates against undertaking a litigation effort that would not only fail but actually worsen the situation by giving the President's action legal affirmation.

We could, of course, alter the preferences, the details of the governmental process, the number of players, and so forth. But it is the more general point that should not be missed: Under this sequence of policy making, elected officials, if they wish to see their favored policy effectuated, must take into account the preferences and likely actions of the Court because a possibility for a successful challenge exists (Stone 1994). The Court, on the other hand, because it has "last licks" (Ferejohn and Weingast 1992b; Segal 1997), need not worry about the government's preferences. It is free to set policy as it so desires.

1.2.2 American-Type Courts as Constrained Actors

The basic contours of the above account will be familiar to students of Western European politics. Stone (1995), for example, depicts constitutional courts as nearly third chambers of government, as bodies that have the power to "recast policy-making environments, to encourage certain legislative solutions while undermining others, and to have the precise

terms of their decisions written directly into legislative provisions." Provine (1996) shares the general sentiment: "the Constitutional Council [in France] is a forum of last resort for minority voting bloc in the Parliament." Most students of the U.S. Supreme Court (and of tribunals elsewhere patterned after the American system), in contrast, have adopted quite a different version of this basic account. They reverse the policy making sequence such that the Court moves first by interpreting a federal law and Congress and the President must decide whether to override the Court's interpretation (Barzilai and Sened 1997; Eskridge 1991a, 1991b; Parikh and Adler 1999). So it is the justices who are constrained by the other actors: If they reach a decision that lays outside an acceptable range, Congress/the President may attempt to reverse it.

Specialists justify this approach by noting that many American-styled Supreme Courts can engage in statutory interpretation and that, when they do, legislatures and executives can override their interpretation of laws (Eskridge 1991a, 1991b; Ferejohn and Weingast 1992a). Thus, if courts hope to establish efficacious policy (*i.e.*, policy that other actors will respect and with which they will comply) as close as possible to their ideal point, they must be attentive to the preferences of relevant external actors because it is the other actors, not courts, who have "last licks." To return to the figure above, if we substitute "Congress" for the Parliament and assume that "Congress" represents the pivotal veto player in that institution, then the Court would be unable to place policy where it sees fit; it would need to move policy closer to a point that the veto player would deem acceptable.

1.2.3 Constitutional Courts as Constrained Actors?

Given that European-type constitutional courts decide only constitutional disputes and make decisions that are formally binding, is there any reason to believe that the constrained account may be applicable? Certainly some scholars have answered in the affirmative; Vanberg

(1999), for example, argues that all constitutional courts, even those in advanced democracies such as Germany, must be attentive to the preferences of external actors if they wish to advance their goals because justices are "dependent on the cooperation of governing majorities…to lend force to their decisions" (see also Smithey 1999).

While Vanberg presents intriguing theoretical and empirical support for his position with regard to the German *Bundesverfassungsgericht*, we believe his general claims about the constraints facing constitutional courts may be even more compelling for those in emerging democracies, especially in Eastern European. Unlike courts in evolved democracies, those in Eastern Europe have yet to establish their own independence, legitimacy, or authority (or, for that matter, the authority of their constitutional systems) (Melone 1997; O'Connor 1996; Reid 1995; Utter and Lundsgaard 1994; Vlashin 1993), which in turn limits their ability, again to a greater extent than their counterparts in mature democracies, to issue rulings that other actors will respect and implement even when it is not in their self interest to do so. What this means, in practical terms, is, first, that elected officials have not been hesitant to suspend their courts, fail to comply with their decisions, threaten impeachment against particular justices, or take other steps designed to punish justices or render their decisions inefficacious (Boylan 1998; Melone 1997; Schwartz 1998; Solomon 1997a). And, second, that when these threats occur the courts are often unable or unwilling to mount defenses at least in part because they toil in countries where, under previous regimes, "it had been unthinkable that an independent institution should exist which could exert constitutional control over the processes of government and law enforcement" (Reid 1995); such was bourgeois and simply incompatible with their systems of government (Ludwikowski 1996; Smith and Danilenko 1993; Utter and

Lundsgaard 1994).[18] Hence, it is not surprising that when the Russian Constitutional Court, in its first decision, struck down a presidential decree as unconstitutional, Yeltsin did not quite know what to make of the Court's holding; in fact, he complied only after "some coaxing" on the part of the Court's Chair (Ahdieh 1997). Nor is it stunning that when members of the Russian Constitutional Court asked their U.S. counterparts about how they ensured compliance with their decisions, they were taken aback with the Americans justices' response: "They simply did not understand us," the Russians lamented. "It simply had not entered their heads that the decisions of the Court would not be implemented" (Reid 1995)

The dearth of any tradition or culture of an independent judiciary is but one reason for the legitimacy problems confronting justices on these new courts. Another, albeit related, centers on the fact that they (again in contrast to their Western colleagues) have yet to build up reservoirs of public and political support from which to draw when confronted with threats (Gibson, Caldeira, and Baird 1998). Certainly some of this stems from their comparative youth. But the relative lack of legitimacy and support may also be a function of a general and long-held suspicion of judges existing among the populace (Berman 1963; Boylan 1998), which will take time for courts in new democracies to dispel (Boylan 1998; Hausmaninger 1995). And, while there is evidence that this is now in fact occurring in Russia and throughout Eastern Europe (Nikitinsky 1997; Remington, Smith, and Haspel 1998; Savitsky 1995; Sharlet 1993b; Smith 1996)—as one justice puts it, "People have stopped asking the usual Russian question,

[18]Along these lines, it never occurred, even to Gorbachev, who had argued that *perestroika* required commitment to *pravovoe gosudarstvo* (a state based on the rule of law), "that judicial power should hold a co-equal position with the other branches, let alone be above them" (Feofanov 1993). This was so, despite the fact that, prior to the collapse of the former Soviet Union, "brief experiments in what could be termed judicialization of politics did occur" (Thomas 1995). For the most part, these were limited and unsuccessful (Hartwig 1992). The one exception may have been the Committee on Constitutional Supervision, devised by the USSR Supreme Soviet as part of its reform of the Brezhnev Constitution. But the Committee was shortlived and its effectiveness, a matter of some debate (Hausmaninger 1995; Kitchin 1995; Remington 1998; Schwartz 2000; Shartlet 1993b; Thomas 1995). Finally, we should note that some Socialist constitutions provided for constitutional courts; *e.g.*, the Yugoslavian Constitution of 1963 and the Czech/Slovak Constitution of 1965. Yet the Court in Yugoslavia "failed to gain great influence within the legal structure" and the Czech Court was not created during this period (Hartwig 1992).

'Where are the police?' and instead started to ask 'Where is the Constitutional Court?" (Nikitinsky 1997) or as one scholar of the Russian Court writes, "that [government actors,] an increasing number of groups and literally thousands of individuals are turning to it to solve problems is a testimony to the Court's growing credibility"(Sharlet 1993b)— it is a task that many of their Western counterparts have already completed (Gibson, Caldeira, and Baird 1998; Grosskopf 1999). Such has not been lost on those counterparts who, in fact, have told Eastern European justices that they must build up sufficient public and "political capital"—mostly by avoiding serious confrontations with elected actors— if they hope to become efficacious actors in their governments (Sharlet 1993b, 1996).

Other factors may exist as well but, from a theoretical vantage point, they all lead to the same conclusion: To model constitutional courts, at least in Eastern Europe, as completely unconstrained by their political environments would be akin to modeling the early U.S. Supreme Court, even when it engaged in constitutional interpretation, as similarly unconstrained: in both cases such would fail to capture the political realities confronting the justices (Graber 1998; Knight and Epstein 1996).

2 A Model for the Study of Constitutional Courts

With these theoretical insights in mind, we now sketch a model that we believe captures the role of courts in democratic societies and that we can invoke to generate testable propositions. That model takes the form of a strategic interaction between a Constitutional Court (CC) and three elected actors, a President (P), an Upper Chamber (UC) of Parliament, with representatives from each region within the society; and a Lower Chamber of Parliament (LC), which is drawn nationwide.[19] The interaction between the Court and these other actors

[19]We, thus, assume the existence of a bi-cameral legislature but the model could be adapted to the uni-cameral case.

begins with CC deciding whether to take a case involving a particular policy issue, and, if it accepts the case, where to place the policy. After CC moves, the other actors must decide whether to modify, override, evade or otherwise disregard CC's decision or harm CC in some other way. These sorts of "attacks," we assume, may have short- and long-term effects on the Court. In the short term, they may nullify or render inefficacious particular decisions (Eskridge 1991a, 1991b; Vanberg 1999). In the longer term, they may chip away at the Court's legitimacy, that is, their impact may accumulate over time such that CC itself becomes an inefficacious political institution (Ahdieh 1997; Gibson, Caldeira, and Baird 1998; Knight and Epstein 1996).

We further assume that all actors involved in this interaction have positions, what we call "most preferred positions," over a given policy space, that is, the position where they would ideally like to see government policy placed. Figure 2 depicts these points over a two-dimensional space in an environment in which the actors' preferences are separable and utility functions are linear. As illustrated, the President (P) and the Upper Chamber (UC) and Lower Chamber (LC) hold distinct positions on the separation of powers dimension, with P favoring a strong executive system and the chambers preferring one that endows significant authority to the parliament. CC is between the two on this dimension; it also takes a middle position, somewhat between P and the LC on the one side and UC on the other, on the federalism dimension, which taps the extent to which actors desire a government that is centralized (at one extreme) or decentralized (at the other).[20]

[Figure 2 about here]

All actors prefer policy that is as close as possible to their ideal points but they are not unfettered in their ability to achieve that goal. Beginning with the elected actors, because they may incur costs associated with challenging a decision produced by the Court (Eskridge 1991b;

Rodriguez 1994), they may be willing to tolerate policy that is not on their ideal points. Specifically, an interval—what we call a tolerance interval—exists around each of their ideal points such that they would be unwilling to challenge a Court decision placed within that interval.

Those intervals, which the figure depicts for the President, and the Upper and Lower Chambers and are common knowledge among them and the Constitutional Court, represent the elected actors' ex ante assessment of the relative costs and benefits of attempting an "attack" on the Court. To make that assessment, as previous literature suggests, these actors take into account four factors, some of which speak to the particular case at hand and others, to the Court itself: (1) case salience—the degree to which the case under consideration by the Court is especially relevant or important to them (*e.g.*, Canon and Johnson 1998; Epstein and Knight 1998; Vanberg 1999); (2) case authoritativeness—the ability of the justices to produce a clear, consensual ruling in the general legal area at issue in the dispute (*e.g.*, Eskridge 1991a; Kluger 1976; Murphy 1964); (3) public (specific) policy preferences—the position of the public, in policy space, with regard to particular matter under review (*e.g.*, Barzilai and Sened 1997; Vanberg 1999); and (4) public (diffuse) support for the Court—the confidence that the public has in the Court (*e.g.*, Caldeira 1987; Gibson 1989, 1991; Holland 1991; Vanberg 1999). Each, in turn, serves to define the breadth (*i.e.*, lengthen or shorten) of tolerance intervals over a particular Court decision, such that (1) the less salient the case, (2) the more authoritative past decisions within the general issue area, (3) the closer the Court's policy is to the public's preferences, and (4) the more confidence the public has in the Court, the longer the tolerance interval (and vice versa).

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[20]For purposes of presentation we depict only two policy dimensions while it is clear, at least in the Russian case, that a third dimension (Individual Rights) exists. In Section 4 we take into account all three dimensions.

For policies falling within their tolerance interval, the actors have calculated that the benefits of acquiescing to the Court's decision override the cost of an attack; for policies falling outside the interval, they have determined that the benefits of an attack outweigh the costs of acquiescence; and for policies at the extreme ends of the interval, they are indifferent between attacking and not so doing. Note, though, that the inclusion of the confidence dimension ensures that the Court can contribute to its own well being and, thus, incorporates the intuition American judges have shared with their Eastern European counterparts: If their court is attentive to the preferences of relevant actors, then their institution's legitimacy should increase over time assuming that it reaches decisions within the intersection of tolerance intervals or avoids disputes for which no intersection exists. What this, in turn, suggests is that tolerance intervals can increase (or decrease) over time, quite apart from the particulars of a dispute (Ahdieh 1997; Caldeira 1987).

Finally, given that attacks on the Court (CC) may have both short- and long-term effects on its ability to establish efficacious decisions and, more generally, its legitimacy in society, the Court itself is constrained by the existing tolerance intervals of the elected actors. If, for example, CC places a case on its agenda and decides that dispute outside a range acceptable to these actors, it runs the risk of producing a decision that President, Lower Chamber, and Upper Chamber will attempt to overturn or ignore; if such decisions accumulate, they may work to undermine CC in the eyes of, say, the public, thereby shortening the elected actors' tolerance intervals over the long term. That is because, to reiterate, the elected actors construct their tolerance intervals with some attention to the public's overall (or diffuse) support for the Court, and not just on the basis of those factors relevant to a particular dispute (Caldeira 1987; Smith 1996). On the other hand, if the Court over time accepts and decides case within the overlap of the tolerance ranges, not only will the elected actors implement those

decisions but there also will be a cumulative effect on the Court's legitimacy and its ability to maximize its policy preferences: in the long run, the tolerance intervals will expand, thereby giving CC a good deal more leeway, both in terms of case selection (Epp 1998) and decision making (Caldeira 1987; Volcansek 1991b).

The figure above enables us to explore these conditions. Consider, first, the separation of powers dimension. As we can see, the intersection of the tolerance ranges is empty, meaning that the Court is maximally constrained: Any decision may be subject to attack by one or more elected actors. Because, under such circumstances, CC cannot safely issue any ruling on the merits, we would expect to see it avoiding such disputes—that is, not accepting them for review, much less resolving them on their merits. Federalism presents a different story: On this dimension, the intersection of the tolerance ranges is non empty (represented by the gray area in the figure), suggesting that the CC could place policy anywhere in this set. Even more to the point, since the Court's ideal point falls within the intersection, it is able to act as if it were an unconstrained actor—not only accepting federalism cases but deciding them as it so desired.

3 Developing Conceptual Predictions

From this relatively simple model emerge several rather intriguing conceptual predictions about the ability of constitutional courts to establish legitimacy and credibility within their societies. The first set centers on the short term: If courts wish to issue efficacious decisions, then they will not accept petitions for review that involve policy dimensions for which an intersection of tolerance ranges does not exist; so doing would lead elected actors to challenge them or their decisions. Rather they will accept cases involving policies for which the

tolerance set is non empty and will reach decisions, within that set, that are as close as possible to their ideal points.[21]

The second set of predictions focuses on the longer term: If courts agree to resolve disputes that involve policy dimensions for which an intersection of tolerance ranges does not exist and do so repeatedly over time, then they shorten those tolerance ranges. This, in turn, makes it more difficult for them to exercise discretion over case selection (as well as to issue decisions in line with their policy preferences) and to establish their legitimacy. Alternatively, if courts accept cases involving policies for which the tolerance set is non empty and reach decisions, within that set, then they lengthen the tolerance intervals. Such has the effect of making it easier for them to exercise discretion over case selection and, in turn, to issue decisions in line with their policy preferences and establish their legitimacy.

Taken collectively, these hypotheses have direct bearing on case-level decisions but they also implicate the aggregate level: If our model captures a slice of political reality, then we should see particular kinds of disputes dominating courts' agendas (in our example, federalism), with others (in our example, separation of powers) remaining unresolved—at least until the actors' preferences change or the tolerance intervals alter in length. While some portion of these changes may be beyond the control of the justices (such as, turnovers in the parliament or presidency), they can affect the other by taking into account the preferences of the relevant actors.

4 Application

Three of the most compelling features of the predictions generated by our model are,

[21]We understand that, under certain conditions, the Court might place policy on the ideal point of one actor or in a gap between non-overlapping tolerance intervals. Given space limitations, we do not explore these conditions here but plan to do so in future research. Here we only wish to note that for a broad range of parameter values, the model's equilibria correspond to the heuristics presented above.

first, we could assess them in various contexts. That is because the predictions (1) are not, in the main, bound to any particular society—be it an established democracy or democratizing society—and (2) seek to capture the process by which judicial tribunals establish and maintain legitimacy—a process with which all courts grapple (Goebel 1971; Knight and Epstein 1996).

Second, the predictions sit comfortably with existing literature, that is, they square with the insights generated by a range of studies—from those that focus on public opinion (Gibson, Caldeira, and Baird 1998) to formal (Barzilai and Sened 1997; Eskridge 1991a, 1991b; Knight and Epstein 1996; Vanberg 1999), statistical (Spiller and Gely 1992; Vanberg 1999), and jurisprudential (Ahdieh 1997; Smithey 1999) treatments of judicial decision making.

Third and related, a good deal of anecdotal evidence exists to support them. Some of this comes from the U.S. context, specifically from studies of early Supreme Court eras, which show that the justices, even when they engaged in constitutional interpretation, would have been unable to establish efficacious policy had they failed to take into account the desires of other key actors and the nature of the political environment under which they were operating (Alfange 1994; Epstein and Walker 1995; Graber 1998; Knight and Epstein 1996). Other evidence emanates from the comments of various contemporary constitutional court justices, both in emerging and established democracies, which lend credence to the notion that they do, in fact, take into account external political actors when they set their agendas and reach their decisions, as well as acknowledge the importance of cultivating the public's confidence (*e.g.*, Ahdieh 1997; Attanasio 1994; Nikitinsky 1997; Reid 1995; Vanberg 1999). There also is scattered support for the idea that elected officials may be willing to tolerate court decisions that do not fall on their ideal points. Vanberg's (1999) interviews with members of the *Bundestag* provide some (*e.g.*, "There is not a single deputy here who thinks it would be advisable to move against the Court. A serious confrontation would just create a public

discussion in which one could easily get a bloody nose"), as does commentary offered by observers of the Eastern European political scene (*e.g.*, Savitsky 1995; Waggoner 1997). Further, and most promising of all, we have amassed some evidence of our own. That evidence, which we develop in the next section, pertains to the Russian Constitutional Court

4.1 The Russian Case

Of all the new Eastern and Central European constitutional courts, the *Konstitucjonnyj sud* has (arguably) garnered the most attention from political, legal, and policy-making communities (*e.g.*, Ahdieh 1997; Attanasio 1994; Blankenagel 1994; Bowring 1993; Boylan 1998; Brzezinski 1993; Chetvernin 1994; Cooper 1996; Feofanov 1993; Hausmaninger 1992, 1995; Henderson 1998a, 1998b; Kitchin 1992, 1995; Maggs 1997; Morshchakova 1998; Ovsepian 1996; Pashin 1994; Pomeranz 1997; Reid 1995; Schwartz 2000, chapter 5; Sharlet 1993a, 1993b; Smith and Danilenko 1993; Smith 1996; Solomon 1997a, 1997b; Thomas 1995; Tracy 1993; van den Berg 1999; Waggoner 1997; Weisman 1995; Wishnevsky 1993). There are probably many explanations for this, at least one of which centers on the Russian Court's location—in the capital of the what was one of the world's great superpowers. But others implicate its rocky history and its controversial legal and political activities.

Given the amount of writing on the Court, we need not say too much about that history or those activities, save for a few essentials. The first is simple enough: As we suggest above (see also note 18), it is probably safe to say that prior to the Constitutional Court's creation in 1991,[22] Russians had very little experience with an independent judiciary. This was certainly

[22]The Russians began planning for their Court as early as 1989. In that year, the Supreme Soviet created the Committee on Constitutional Supervision (see note 18), and authorized the republics to create similar apparatus. Russia did so, establishing (in 1989) its own committee, but by constitutional amendment (in December of 1990) it decided to create a full-fledged Constitutional Court. That Court's powers were defined in a constitutional amendment of May 1991 and later fleshed out in the (July) 1991 law discussed in the text.

the case during the pre-Gorbachev years (Berman 1963; Boylan 1998; Butler 1988; Ludwikowski 1983; Plank 1996; Reid 1995; Thomas 1995; Utter and Lundsgaard 1994; Weisman 1995), and it remained so through the late 1980s (Feofanov 1993, 628; but see Sharlet 1993b).

Second, despite their lack of experience the Russians designed a European-styled Constitutional Court that represented a substantial break from the past to say the least (Thomas 1995), for they endowed it with features typically thought to induce judicial independence. So, for example, under the 1991 "Law on Constitutional Court of the RSFSR" (which gave effect to the 1991 constitutional amendment creating the Court; see note 22), the justices were provided with life tenure (until the age of 65) and a vast array of powers including the ability to:

(1) adjudicate a wide range of constitutional complaints, including those brought by citizens (alleging infringements of their rights) and by the President, members of the Parliament or both (challenging the constitutionality of enactments);
(2) expose individual views in the form of dissents and concurrences;
(3) review the constitutionality of all state actions (in the absence of a concrete dispute) on the request of various executive and legislative bodies;
(4) issue advisory opinions on the impeachment of the President;
(5) assess, at the request of the President, the Parliament, or various other executive and legislative bodies, the constitutionality of treaties that have not gone into effect; and
(6) take up cases, on its own initiative, involving the constitutionality of decisions made by the President and other high officials.

At least formally, then, the Russians gave their new Court broad powers, "while imposing few constraints" (Sharlet 1993b, 4). Or, as one constitutional court judge later put it, "the authors of

the law…gathered all the possible prerogatives from every existing [court] model and assigned them to Russia's constitutional court" (Schwartz 2000, 116).

Third, it is important to know that the new Court ran into trouble in rather short order.[23] To be sure, it successfully asserted its independence (at least from the President) in one of its earliest rulings,[24] but it faced a far bumpier road from that point on. The first sign of trouble came in Tatarstan Case, decided in March 1992, in which the justices struck down as unconstitutional a question in a referendum Tatar hoped to put to its citizens.[25] When the Tatar government decided to ignore the ruling, the justices requested that their Chair, Valerii Zor'kin, convince Parliament to seek compliance with their decision. Parliament acceded, issuing a resolution that supported the Court's ruling and requesting the President to enforce it. That was insufficient, however, to deter Tatarstan from going ahead with its referendum about a week later.[26]

Even in the face of such defiance, the justices could not have predicted the fate that

[23]Actually, how quickly the Court ran into trouble is a matter of some debate. Some argue that during the Court's first year of existence it had accrued a degree of "legitimacy and judicial authority" (Shartlet 1993b, 11) and was, in general, "more successful than many expected" (Brzezinski 1993, 687); others disagree, noting that "after slightly more than a year of existence, the Russian Constitutional Court does not seem to have become a bastion of legality" (Wishnevsky 1993). But almost all commentators concur that by its second year, the Court was skating on thin ice.

[24]This came in the Internal Security Case (1992) in which the Court struck down a presidential decree—merging the police and internal security forces into one ministry—on the ground that the Constitution gave the Supreme Soviet the authority to create ministries. Yeltsin eventually accepted the ruling but, as we noted above, only after some "coaxing" by the Court's Chair (see Ahdieh 1997, 80; Utter and Lundsgaard 1994, 242). That Yeltsin complied is important because it "truly altered both elite and mass consciousness of the law and of the bounds it places on political authority. Suddenly the law was no longer a toothless tiger" (Ahdieh 1997, 80). Moreover, the decision was "appreciated by the Russian media of all political hues" because it indicated to them that the Court was not in Yeltsin's "pocket" (Wishnevsky 1993, 2-3). On the other hand, Yeltsin's initial reaction—sincere puzzlement that the Court's invalidation of a decree "was actually binding upon [his] government—indicates the degree to which Russia and other Eastern European countries were unprepared for judicial review" (Utter and Lundsgaard 1994, 242).

[25]The question was: Do you agree that the Tatarstan Republic is a sovereign state and a party to international law, basing its relations with the Russian Federation as partners? Yes or no?"

[26]For more details on the Tatarstan Case, see Schwartz (2000); Shartlet (1993b); van den Berg (1999); and Wishnevsky (1993).

awaited them only a year and a half later: On October 7, 1993, the President signed a decree suspending the Constitutional Court until the adoption of a new constitution.[27] Yeltsin did not mince words: "The Constitutional Court of the Russian Federation has found itself in a deep state of crisis." Indeed, he was so enraged at the Court that some expected it to be written out of the 1993 Constitution. That did not happen, though the provision on the *Konstitucjonnyj sud* (Article 125) was short and rather vague on all matters other than its competencies, leaving it up to Parliament to enact a federal constitutional law to flesh out the details. That act, which the justices played a role in drafting, was signed by the President on July 21, 1994.

This new Court law, it is important to note, contained provisions that decreased certain aspects of the tribunal's independence and authority, while enhancing others. So, for example, (1) Justices no longer serve for life (they now have 12-year terms) but the retirement age was increased from 65 to 70; [28] (2) the Court may no longer decides cases on its own initiative, nor may it "pass judgment on the constitutional character of political parties,"[29] but it is easier for ordinary citizens to file constitutional complaints; (3) the Court now has "more independence in solving organizational, financial, and personnel questions" but the powers of the Chair have been reduced and she or he may be suspended on the initiative of five justices; and (4) the Court may no longer issue advisory opinions on the impeachment of the President but it is can hand down findings on other procedural matters.[30]

Not only is the Second Constitutional Court different in design from its predecessor, it

[27]Section 4.2 details the events leading up to the Court's suspension and analyzes them via our model.
[28]Interestingly, justices who remained from the first Court era serve under the older provision, that is, for life (until the age of 65).
[29]The Court's initial grant of jurisdiction did not cover political parties; it was amended in December of 1992 to enable the justices to hear the Communist Party Case (discussed in Section 4.2.2).
[30]For more on the differences between the old and new Constitutional Court laws, see Blankenagel (1994); Butler (1998); Hausmaninger (1995); Nikitinsky (1997); Ovsepian (1996); Pashin (1994); van den Berg (1999).

has engendered a higher level of respect as well. As Remington (1998, 219) suggests "the Court, it appears, [is] gradually establishing its status as legitimate source of judicial power which could one day check potential abuses of [governmental] power" (see also Schwartz 2000) Statements from Yeltsin support Remington's observation; in fact, he—the very President who suspended the Court in 1993—claimed just five year later that he "had to comply with [a ruling he disliked] because…the Constitutional Court has ruled and there's nothing more one can do" (Interfax Russian News 1998a, 1998b).

4.2 Analysis

Even from this brief account emerge two very intriguing questions: Why did the first Russian Constitutional Court (1991-93) fail to establish its legitimacy and role in Russian society? Why is the Second Court (1994-) faring far better? Our model, which is geared toward exactly these kinds of questions, provides some answers.

Recall that on our account—a dynamic model of sequential decision making by the Court and other institutional players— the Court exists as a player in the game and collects payoffs for more than one period, while other players collect payoffs in one period only. Then the other players are replaced by their institutional equivalents with, possibly, different policy preferences. We model the idea of legitimacy through the concept of tolerance intervals, which serve as constraints on the Court's decisions. And we capture the idea of changes in legitimacy by allowing the length of the tolerance intervals to change over time. Finally, in our model we analyze the effects of changes in these intervals by changing the parameter values that define interval length. By so doing, we capture the various political contexts in which the Court makes its decisions.

For a broad range of parameter values, equilibria correspond to the heuristics presented

earlier (see Section 2 and note 21). So, for example, a new Court avoids reaching decisions outside the tolerance intervals of other institutional players, preferring instead to promote its legitimacy and adjust the status-quo policy slowly. This follows from the fact that any decision would result in a challenge to the Court— with possible consequences including a loss of legitimacy and reversal of its policy. Our prediction is that the Court continues to avoid "unsafe" cases and proceeds to accumulate legitimacy (thus raising the cost of challenges by other actors) until such time when players' tolerance intervals begin to lengthen and overlap.

Do such predictions hold for the *Konstitucjonnyj sud*? Addressing this question vis-à-vis our model requires us to: (1) identify policy spaces relevant to Russian Court cases, (2) characterize the cases on those dimensions, and (3) develop *estimates* of (a) the most preferred positions of all relevant Russian actors—including the Constitutional Court, the President, the Supreme Soviet (through 1993), the Duma (Lower Chamber) (after 1993), and the Federation Council (Upper Chamber) (after 1995);[31] and (b) the tolerance intervals of the elected branches—the President, Supreme Soviet, Duma, and Federation Council—over each of the dimensions.[32] The first is easy enough. Based on our reading of the relevant literature (*e.g.*, Reid

[31]1995 was the final year of the term of the 1993 parliament, whose members had been elected simultaneously with constitutional reform. The members of the upper and lower chambers of that 1993 parliament were selected by the same rules. By 1996, however, the lower chamber was reelected and the upper chamber became an assembly of elected regional executives and legislative heads. For this reason, we include the upper chamber (the Federation Council) as a separate actor during the Second Court era.

[32]We stress "estimate" because our placement of the actors' most preferred positions and our development of their tolerance intervals are indeed based on estimates—and, to the extent that we base them on expert judgments, historical evidence, statements of the actors, and like, "subjective" ones at that. This measurement scheme does not particularly trouble us since, for this investigation of our model, we are simply attempting to determine whether the Court perceived that an (approximate) overlap of tolerance intervals existed. Moreover, we believe that the more "objective" indicators scholars have devised—mostly based on analyses of the votes of actors (*e.g.*, Segal 1997) or the manifestos of political parties (*e.g.*, Budge and Laver 1992; Budge, Robertson, and Hearl. 1987)—are fraught with problems. Of special concern to us, along with others working in a comparative context (Laver and Schofield 1990) are, first, that these votes or party statements may be the products of sophisticated behavior designed to maximize policy or electoral goals, rather than reflections of sincere preferences (Epstein and Mershon 1996). And, second, that these approaches, when used to assess the preferences of political actors relative to one another, often invoke different underlying scales to measure positions along the same policy space (Segal 1997). Nonetheless, in the interest of being thorough, we checked our placements against patterns of roll-call voting and other more "objective" indicators contained in Hough (1997); Remington (1994); Remington (1996); Smyth (1990); Sobyanin (1994).

1995; Remington, Smith, and Haspel 1998; Schwartz 2000) we learn that policies with which the Court deals tend to cluster along three dimensions: the two we mentioned above, Separation of Powers (the distribution of power between the executive and legislature) and Federalism (the distribution of power between the central government and the regional authorities), as well as Individual (Human) Rights and Freedoms. The second task also is relatively simple. Following the competencies laid out in the laws on the Constitutional Court, along with (adaptations of) standard classification systems used in the judicial politics field (*e.g.*, Spaeth 1999), we group all cases decided during the first Court era (1992-93) and the first two years of the second one (1995-96)[33] into one of these three categories.[34] Figure 3 depicts the results of these procedures.

[Figure 3 about here]

Let us now turn to the task of estimating the most preferred positions and tolerance intervals of the relevant actors over each of the three dimensions. Beginning with the Separation of Powers dimension, we place—as Figure 4a depicts—the ideal points of the President and the Supreme Soviet at opposite extremes, with the Court positioned between them (albeit closer to the constitutionally-empowered legislature) for the years 1992-93. These placements reflect the politics of this early period in Russia's development—a period characterized by an on-going and ever-intensifying struggle between the President and the legislature over the division of the their constitutional prerogatives (Hahn 1996; Rahr 1993; Remington 1994).[35] The preferred positions

[33]The first Court era began in 1991 but the Court did not hand down a decision until 1992; the second Court era started in March 1995 when the justices held their first session.

[34]To test fully the predictions generated by our model we require data on all petitions coming to the Court, not just those the Court accepted and decided. For the possibility exists that the justices issue opinions, say, only in Separation of Powers cases because those are the only kind they receive. Militating this possibility, however, is the sheer number of petitions that come to the Court: Before it was suspended in 1993, the Court received approximately 30,000 petitions; the Secretariat of the Court referred 600 to the justices for serious consideration (the balance did not meet various Court requirements; see note 15). Since the Court's reconstitution in 1995, it has received 40,000 petitions, with the justices considering 1,500.

[35]To be more specific, in 1991 (while still in the USSR) a majority in the Parliament, desiring to expand Russia's sovereignty, opted for a strong presidency and granted that office extensive (though temporary) emergency

of the actors for the 1995-96 period, also illustrated in Figure 4a, over the Separation of Powers dimension did not change much. For, even after the adoption of the Constitution in December 1993 and the primary prerogative issues resolved (mostly in the President's favor), the clash between Parliament and the President persisted.[36] So too the Court, now composed of two sets of justices—members of the old Court (many of whom opposed Yeltsin in the previous period) and those who were added after the adoption of the new Constitution as part of Yeltsin's reform—remained between the President and chambers of Parliament, though (owing to the preferences of the new justices) somewhat closer to Yeltsin than its 1991-93 counterpart.

[Figure 4 about here]

Also constant, at least on the Separation of Powers dimension during the 1992-93 and 1995-96 periods, were the tolerance intervals of the elected actors: they are (1) relatively short and (2) do not overlap. The length reflects the four components we articulated in Section 2: (1) cases in this area were particularly salient to the relevant actors (see, *e.g.*, Vitruk 1998) (2) the justices were unable to produce clear, consensual rulings,[37] (3) the position of the public over

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powers. But, with Russia's independence in early 1992, the Parliament attempted to recapture the leading constitutional role that it surrendered. It did so by taking advantage of the fact that the then-functioning 1978 constitution allowed it to pass amendments without presidential interference. Each time Parliament made an effort to amass prerogatives in this fashion (that is, draw power away from the president), however, the President responded with an attempt to dissolve it (see, *e.g.*, Shevtsova 1996); indeed, before the violent confrontation in October 1993, Yeltsin already had twice (in December 1992 and March 1993) tried to dismiss the Parliament and impose a strong presidential rule.

While (eventually) both the President and Parliament admitted the necessity of reforming the institutional system and agreed to work on a new Constitution, the approaches they took simply mirrored their earlier positions. For example, the draft constitution proposed by Yeltsin (officially published in April 29 1993) called for an executive branch with practically unlimited authority; the last legislative draft (published in May 1993), in direct contrast, called for a parliamentary system, with the president little more than a diplomatic head of state.

Throughout this presidential-parliamentary conflict over the relative distribution of powers, the position of the Court was a position of (relative) compromise: With the sides to the conflict standing at opposite extremes, the Court found itself removed from both. To be sure, the Court opposed the President on the matter of dissolving the Parliament but the Court's chair publicly voiced the view that Russia's future lay in a presidential—and not parliamentary —republic (see, *e.g.*, Russian Information Agency 1993).

[36]The clash was largely over the legislative powers versus the president's decree authority—with the conflict over the Chechen war but one example.

[37]Of the nine separation of powers decided by the Court between 1992 and 1993, six contained at least one dissenting vote; in only two of the eleven Individual Rights cases decided during the same period was there dissensus.

Separation of Powers issues was closer to the political actors (at least to the President) than to the Court,[38] and (4) public (diffuse) support for the Court, by every indicator, was quite low.

Turning to the dimension of Federalism, at least for the 1992-93 period (see Figure 4b) we once again place the President and the Supreme Soviet at opposite ends of the spectrum. That the President preferred decentralization is only natural: Knowing that the constitutional basis for his authority was relatively weak and that Russia was the only republic in the USSR without its own executive organization, he cast about for mechanisms to build his authority. An important one came in the form of alliances with regional elites, who Yeltsin invited to "take as much sovereignty as [they] can stomach." In contrast, hardliners in the Supreme Soviet—even though they occasionally conceded to regional demand in an effort to counter Yeltsin's power play—espoused an ideology of central planning. The Court remained between the two, much as it had over Separation of Powers issues.[39] By 1996, owing largely to the introduction of the Federation Council (see note 31), the alignment over Federalism altered. As Figure 4b shows, the Council—consisting of the region's governors and legislative heads—came to occupy the decentralization extreme, while both the 1993 and 1995 Dumas—governed by PR-elected parties and dominated by nationalists and the left—were closer to the centralism end (Paretskaya 1996). The President, however, actively cooperated with the regions, working out bi-lateral terms of union membership and, more generally, reiterating his "take as much sovereignty as you can stomach" offer. Accordingly, we place him closer to the middle than the Duma and, actually, quite near the Court, which continued to occupy a near-center position.

[38]Evidence for this claim abounds but perhaps the clinching pieces are: (1) the Court was on the losing side over the constitutional struggle and (2) Zorkin acknowledged publicly the popular support the President enjoyed for his position.

[39]For more on the positions of the key actors over Federalism, see Sharlet (1994); Walker (1993, 1995).

Note, though, the difference between the 1992-93 and 1995-96 tolerance intervals over Federalism. As was the case for Separation of Powers (and for the same reasons[40]), they were short and did not overlap during the first period. During the second period, however, we observe a marked change. Because the new constitution brought about an end to the constitutional struggle between the branches of the national government, the President and the legislature ceased using federative matters as an arena to assert their respective influence and draw in political allies in the regions. This had the effect of decreasing the salience of federalism for the main institutional players (see, *e.g.*, Dowley 1999; Lapidus 1999; Lynn and Novikov 1997; Solnick 1995; Stoner-Weiss 1999), which in turn led to a lengthening of their tolerance intervals and, even more important, the emergence of an intersection (see Figure 4b).

Finally, Figure 4c displays the most preferred positions and tolerance intervals over Individual Rights. For both periods, the Court was to the left of the elected actors, followed by the President who took a position closer to the Court than to the rather hardliner majority in the Supreme Soviet and the medians in the Duma and Federation Council. The periods were similar in yet another way: During both an intersection of tolerance intervals emerged. This overlap (and the longer tolerance intervals over Individual Rights) came about because, even though diffuse support for the Court remained low (factor 4), (1) the battle in which the relevant actors were engaged was over constitutional prerogatives, not individual rights, making this dimension far less salient to them; (2) the justices were generally able to reach unanimous decisions over these kinds of disputes (see note 37), and (3) the Court enjoyed public support for its position favoring the expansion of rights.

[40]First, federalism cases were particularly salient to the relevant actors (see, *e.g.*, Ebzeev 1997); second, the justices were unable to produce clear, consensual rulings (of the nine Federalism cases decided between 1992 and 1993, five contained at least one dissenting vote); third, the position of the public over Federalism was closer to the political actors than to the Court (see note 38); and, finally, public (diffuse) support for the Court, by every indication, was quite low.

4.2.1 Behavioral Predictions

With the estimates depicted in Figure 4 now in hand, we can incorporate them into our general model to reach the following behavioral predictions:

(1) To the extent that no intersection of tolerance intervals existed over the dimensions of Federalism and Separation of Powers, the 1992-93 Court—to begin to establish itself as a credible and legitimate force in Russian society—needed to avoid those areas. In contrast, the Court could safely hear and decide disputes involving Individual Rights: an overlap of intervals existed.

(2) To the extent that no intersection of tolerance intervals existed over the Separation of Powers dimension, the 1995-96 Court also should have avoided that area. But, given the overlap over the Individual Rights and Federalism dimensions, the justices could safely decide cases implicating those issues.

These propositions, of course, reflect "ideal" Court behavior—that is, behavior our model suggests the Court ought to have engaged if it desired to establish its authority. Since we know, however, that the First Court—insofar as it was suspended— failed at that task, we do not expect the data to reveal conformance with the first proposition; data on the 1995-96, on the other hand—insofar as that Court is achieving some measure of success—should reflect the pattern suggested in the second proposition.

4.2.2 Results: The First Court Era

Do the data support these expectations? The answer, as Figure 5 depicts, is yes. Beginning with the 1991-93 Court, we observe that it issued 29 decisions. Of those only 11 (37.9%) were in the "safe" area of Individual Rights— "safe" to the extent that an intersections of tolerance ranges existed; the remaining 62% (n=18) were in the two areas (Federalism and Separation of Power) that our model suggests the Court ought have avoided.

[Figure 5 about here]

Not only did the Court *not* avoid these sorts of disputes; it decided them in ways, at least according to the preference distributions illustrated in Figure 4, that were bound to lead to trouble. So, for example, coming on the heels of the Court's "highly visible public setback" (Sharlet 1993b) in the Tatarstan Case, was its (in)famous decision in Communist Party litigation (1992). This case began in Fall 1991, when Yeltsin issued a series of decrees that had the effect of suspending the Communist Party and nationalizing its assets. The President's action, in turn, immediately led to charges, including those leveled by Court Chair Zor'kin in a 1991 interview,[41] that the President had exceeded his authority.

The Court's official involvement in the litigation began in February 1992, after it agreed to determine—upon the request a group of a Communist Party deputies—whether the decrees were constitutional. During this "Trial of the Century," the Court held a total of 52 sessions on the case, at least some of which were "more like public demonstrations than legal proceedings" and heard testimony from 62 witnesses. Controversies abound; indeed, the Court itself set off one when it tried to compel Gobachev to testify and fined him when he did not.[42] Finally, on November 20, 1992 the Court announced its decision. In "a carefully constructed compromise" (Smith 1996, 136), it voted to uphold Yeltsin's ban on the Communist Party but only as it pertained to national bodies; he could not bar local parties and regional party cells, nor could he confiscate property. Accompanying the Court's opinion was a rather strong dissent arguing that the Court decided the case on the basis of "expediency rather than law."

Immediate reaction to the ruling seemed to bode well for the Court's future. As Remington (1998, 217) puts it:

[41]That Zor'kin took a stand on this and other "political" matters is hardly behavior in which (most) American judges would engage but he did it regularly (Dean 1995; Shartlet 1993a; Slater 1993).
[42]For more on the proceedings, see Ahdieh (1997); Brzezinski (1993); Feofanov (1993); Schwartz (2000); Wishnevsky (1993).

[the] decision was widely regarded as judicially sound and politically shrewd in that in allowed the communists and the president's side to claim victory. The court also, perhaps wisely, avoided taking sides on the president's assertion that the CPSU was itself unconstitutional. The Court thus positioned itself as a politically neutral institution. This was no mean achievement in the tense, polarized environment of the time.

Wishnevsky (1993, 5) agrees, claiming that Russian observers termed it a "Solomonic judgment" (see also Schwartz 2000, 130). This may have been true at the time but the decision eventually took a toll on the Court. As Sharlet (1993b) suggests, the case was not resolved "to anyone's complete satisfaction. The costs were considerable…The Court emerged from the case battered, riddled by division and increasingly politicized." There is some truth to this. The ruling did, in fact, "create sharp rifts among the justices," some of whom were upset that Zor'kin had commented on the case before the Court decided it (Smith 1996, 136-137). Several justices (and lawyers) also began grumbling that the Court's "forced involvement in sensitive political controversies, together with political disagreements among its members, could in the near future tempt the other branches of government either to limit [its] plenary powers or merge it wit the Russian Supreme Court" (Wishnevsky 1993).[43] These justices "consistently proposed that the Court curb its political activism and instead give priority to civil rights matters" (Hausmaninger 1995, 354-355).

This is exactly the course of action our model commends—the Court ought have heard and decided cases in the "safe" area of Individual Rights—but it is not the one Zor'kin (and his allies on the Court) took. Quite the opposite: He (and by implication, the Court) became

[43]Several scholars voiced the same concerns. Shartlet (1993b), for example, argued that, especially with regard to the Communist Party Case, the Russian Court should have taken the step its U.S. counterpart occasional does when it wants to avoid controversial issues—"duck" them on technical grounds (*e.g.*, assert that they do not have jurisdiction over the dispute; see Epstein and Knight 1998). In contrast, Schwartz (2000, 129) claims that this course of action would have been untenable in the Communist Party Case as well as in many others because the Court must hear cases properly referred to it. But data and comments of the justices themselves suggest otherwise (see note 15 and Section 4.2.3). Moreover, Schwartz (2000, 149) himself states that the Russian Court did just that in the Chechnya Case (described in note 48); namely, it decided to "avoid the hard issues." Schwartz (2000, 154) also notes that the Second Court has tried to limit its involvement in disputes involving the other political organizations—a course of action that it could not take without some discretion over its docket, much less the ability to evade cases it had agreed to decide.

increasingly involved in the emerging constitutional crisis in Russia—and not by taking politically neutral positions (as some have characterized his decision in the Communist Party Case). Rather and even though he continued to support a "strong presidential republic" (Russian Information Agency 1993; see also note 35), the Chair began regularly to side with those who sought to curtail Yeltsin's efforts to expand presidential power at the expense of legislative authority. Between March and June of 1993, Yeltsin and Zor'kin (and his supporters on the Court) clashed repeatedly in public and over various judicial decisions. And internal divisions on the Court continued to increase, with some of the justices calling for Zor'kin's resignation because of his overtly "political activities"[44]

Perhaps because he came to see that abolition of the Court was a real possibility, or perhaps because he realized that he had backed the losing side, or perhaps because the President began to take away some of his perks (*e.g.*, his car and the Court's security guards), by June of 1993 Zor'kin softened his opposition to Yeltsin's desire to augment presidential power. But this did not stop the Court, on September 21, 1993, from taking its largest leap yet into separation-of-powers matters. After the President issued his famous Decree on Step-by-Step Constitutional Reform in the Russian Federation, which dismissed the Parliament and called for new elections, the Supreme Soviet immediately passed a resolution terminating Yeltsin's powers and requested the Constitutional Court to rule on the decree. Despite wording in the President's document that "instructed" the Court not to meet, Zor'kin called an emergency session for that very day. After a three-hour discussion, the Chair announced the Court's decision to the Supreme Soviet: The decree constituted grounds for the President's impeachment or automatic termination.[45] The next day, Zor'kin issued an "Announcement of

[44]For more on this period, see, *e.g.*, Ahdieh (1997); Hausmaninger (1995); Reid (1995); Remington (1998, 217); Slater (1993); Smith (1996); van den Berg (1999).
[45]It later came out that four justices had voted against Zor'kin's position.

the Chairman of the Constitutional Court," which proposed early presidential and parliamentary elections to restore the governmental system.

Such behavior—deciding highly-charged political disputes before building up a reservoir of good will among political actors and the public alike (which the Russian Court may have been able to accomplish by accepting petitions in the "safe" area of Individual Rights)—according to our model, would lead elected actors to challenge the Court or its decisions. Yeltsin, as we know, did just that, suspending the Court two days after Zor'kin's "Announcement" appeared.[46]

4.2.3 Results: The Second Court Era

Let us now consider the Second Court era. As we noted earlier, it is apparent to many observers that this Court is on its way toward establishing credibility in Russian society; at the very least, it has not faced serious challenges from other relevant governmental actors. Accordingly, we anticipate that Court behaved in ways consistent with our predictions; namely, it accepted and decided cases involving either Individual Rights or Federalism and avoided Separation of Powers disputes.

As Figure 5 depicts, the data support this expectation. During the 1995-96 period, nearly 90% of its 34 decisions fell into the two "safe" areas of Individual Rights (n=24) and Federalism

[46]The specific events leading to the suspension were as follows: Between September 29 and October 4, 1993 a constitutional crises ensued, with Yeltsin retaining his power. On October 5, the Court announced that "in the existing legal situation [four pro-Yeltsin justices would no longer participate in much of the Court's work], it is unable to hear cases involving rulings on the constitutionality of international treaties and normative acts of the Russian Federation"; it would now only hear petitions from citizens and organizations. The next day, Zor'kin—under pressure from Yeltsin—resigned as the Court's Chair but stayed on as a justice. (The President's Chief of Staff had phoned Zor'kin, telling him that if he did not resign the administration may bring criminal charges against him. After the conversation, Zor'kin met with twelve of his colleagues, four of whom told him to resign. One, who went public with his vote, said unless Zor'kin resigns "the Constitutional Court will simply be unable to function because it will lack sufficient authority in the eyes of the public.") On the following day, October 7, Yeltsin suspended the Court.

(n=6). By contrast, Separation of Powers cases accounted for only 11.8 (n=4)%. This represents a wholesale departure from the first Court era, which devoted over 60% of its docket to the "unsafe" areas of Separation of Powers and Federalism.

Do these results reflect purposive behavior on the part of the justices—that is, behavior designed to restore their credibility and begin the process of developing legitimacy in Russian society—or are they mere artifacts? For obvious reasons, this is a difficult question to answer but several pieces of evidence are suggestive. One is that Court members, by many accounts, deliberately sought to avoid "acute political questions" (Smith 1996), both in and outside of Court.[47] As one justice noted, during the first Court era "we looked to the division of powers as a sort of panacea, able to solve all our problems." But now the

> Court must avoid getting involved in current political affairs, such as partisan struggles. When in December 1995, before the Duma elections and in the very heat of the electoral campaign, we received a petition signed by a group of deputies concerning the constitutional validity of the five percent barrier for party lists. We refused to consider it. I opposed considering this request, because I believe that the Court should not be itching for a political fight….
>
> [We must revive] our prestige and status. We must find a stable niche in the state machinery (Nikitinsky 1997, 84, 85, 87).

In fact, the Court has not seriously challenged the President's power, even though it has had several opportunities to do so;[48] rather, it has limited his authority only in cases in which the issues were less visible and less "highly charged."[49] Another piece of evidence comes in the form of statements from justices suggesting that the Court's deepened involvement in Individual Rights also was no accident. "Whereas the [Second] Court has tried to limit the cases it take

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[47]Exceptions do exist. For example, after the Court agreed to hear the Chechnya Case (see note 48), the "Chief Justice improperly made extrajudicial comment on [it]. He clearly signaled his own preference, and his reading of the courts mood to be in support of the executive's case." After the Court announced its decision, he gave numerous interviews explaining it (Smith 1996, 519-520).

[48]The most prominent example came in the Chechnya Case, in which a group of communist members of parliament challenged Yeltsin's decrees initiating the war there. The Court avoided ruling on some of the issues but generally found in favor of the President. For more on the case, including public reaction, see Cooper (1996); Morshchakova (1998); Schwartz (2000); Smith (1996); Waggoner (1997).

[49]An example is its 1998 decision, holding that President Yeltsin was in his second term of office and, thus, could not run for reelection in 2000. Since it seemed clear that Yeltsin did not plan to run again (at least he said as much), this was a less risky decision than it might have seemed on its face.

from political entities," one justice observed, "it tries to ensure maximum review of human rights cases." (paraphrased in Schwartz 2000). As Ahdieh (1997, 85) points out, this shift seems to stem directly from the Court's belief that by neglecting individual rights petitions during its developmental period it failed to capitalize on a "unique opportunity" to convince Russians that it was "a forum where there rights might be defended." Given our data, the Second Court does not appear to be making this same "mistake."

To be sure, a few justices (mostly holdovers from the First Court) resent these trends, claiming that the Court is now "too cautious, too much self-restraint, and tries to hard to abstain from politics and concentrate on routine questions" (van den Berg 1999). Some members of the Duma apparently agree—or at least enough to have attempted to convince their colleagues to consider an amendment to the 1994 Law on the Constitutional Court that would have made it more difficult for the justices to refuse certain kinds of appeals.

That this measure did not pass, that the more activist justices are no longer prevailing may reflect a recognition on the part of many Russians that, for the Court to evolve as an independent and legitimate institution, it had to make strategic adjustments in its behavior—the very adjustments that are model suggests: hearing and deciding "safe" cases, especially those in the area of Individual Rights through which it can build up a reservoir of public support. Making this adjustment should, in turn, lead to a broadening (and eventual overlap) of tolerance intervals over other legal issues, thereby ensuring the Court's legitimacy in the long run.

5 Discussion

Certainly, the application of our model to the Russian case is not without its share of Achilles' heels: To test fully its predictions, it may be desirable to collect data on the full range of petitions that come to the Court (but see note 34) and to develop an alternative scheme for

developing the most preferred positions and tolerance intervals of the relevant actors (but see note 32). Nonetheless, the data drawn from the Russian case are certainly consistent with our model and, thus, provide room for optimism: If it is able to explain features of the Russian system, as we believe it is, then it may be able to do the same for the many Eastern European systems that come out of similar traditions and, not so surprisingly, have constructed comparable courts. Moreover, as we implied earlier, we see no reason why our model would not be equally applicable to the American Court (and those modeled after it); indeed, research invoking variants of the strategic account to study both American and European-styled tribunals suggests as much (Helmke 1999; Knight and Epstein 1996; Parikh and Adler 1999; Vanberg 1999), though we believe the addition of the notion of tolerance intervals has the potential to enhance even further this line of inquiry. That is because as these intervals increase, so too does the latitude afforded to justices. Accordingly, they may help to explain why courts in evolving democracies appear so fettered, while those in mature democracies—whether of the American or European model—seem less constrained, seem more able to reach decisions disliked by elected officials and the public; the latter have built up such reservoirs of public support that legislators and executives are loathe (though not unwilling) to challenge them (*e.g.*, Caldeira 1987; Grosskopf 1999; Segal 1997; Vanberg 1999; Volcansek 1991b).

Whether the same will eventually occur in the emerging democracies in Eastern Europe is, at least according to our model, largely up to the courts themselves. If they behave as did the first Russian Constitutional Court, their futures are dim indeed; but if they view the quest for legitimacy as a long-term process—one that occasionally requires them to tradeoff short-term policy victories for long-term credibility (and, eventually, policy) gains—as does, apparently, the second Constitutional Court, then their future place in their governments may be assured.

Either way, it is incumbent on scholars to study the processes as they enfold. Of course, we recognize that so doing presents many challenges—not the least of which involve locating and collecting data and other information necessary to animate the framework we offer. But we believe the hunt will be worthwhile; at the very least, it will go some distance toward filling the vast voids, of which so many scholars have spoken, in our knowledge of courts and, more generally, of political processes.

6 References

Ahdieh, Robert B. 1997. *Russia's Constitutional Revolution: Legal Consciousness and the Transition to Democracy, 1985-1995*. University Park: Pennsylvania State University Press.

Alfange, Dean, Jr. 1994. "Marbury v. Madison and Original Understandings of Judicial Review: In Defense of Traditional Wisdom." *Supreme Court Review* 1993:329-446.

Attanasio, John B. 1994. "The Russian Constitutional Court and the State of Constitutionalism." *St. Louis Law Journal* 38:889.

Barzilai, Gad, and Itai Sened. 1997. "How do Courts Establish Political Status, and How do they Lose it? An Institutional Perspective of Judicial Strategies." Paper delivered at the annual meeting of the American Political Science Association, at Washington, D.C.

Bates, Robert H. 1997. "Comparative Politics and Rational Choice: A Review Essay." *American Political Science Review* 91:699-704.

Becker, Theodore L. 1970. *Comparative Judicial Politics*. Chicago: Rand McNally.

Berman, Harold J. 1963. *Justice in the USSR: An Introduction*. Cambridge, MA: Harvard University Press.

Blankenagel, Alexander. 1994. "The Court Writes Its Own Law." *Eastern European Constitutional Review* Summer/Fall:74-79.

Blankenburg, Erhard. 1996. "Changes in Political Regimes and Continuity of the Rule of Law." In *Courts, Law, and Politics in Comparative Perspective*, ed. Herbert Jacob, Erhard Blankenburg, Herbert Kritzer, Doris Marie Provine and Joseph Sanders. New Haven, CT: Yale University Press.

Bowring, Bill. 1993. "The Russian Constitutional Court." *New Law Journal* 143:682.

Boylan, Scott P. 1998. "The Status of Judicial Reform in Russia." *American University International Law Review* 13:1327.

Brzezinski, Mark. 1993. "Toward Constitutionalism in Russia: The Russian Constitutional Court." *International and Comparative Law Quarterly* 42:673-690.

Budge, Ian, and Michael Laver. 1992. "The Relationship between Party and Coalition Policy in Europe: An Empirical Synthesis." In *Party Policy and Government Coalitions*, ed. Ian Budge and Michael Laver. New York: St. Martin's.

Budge, Ian, David Robertson, and Derek Hearl. 1987. *Ideology, Strategy, and Party Change*. Cambridge: Cambridge University Press.

Butler, W.E. 1988. *Soviet Law*. London: Butterworths.

Butler, William E., and Jane E. Henderson. 1998. *Russian Legal Texts*. The Hague: Kluwer Law International.

Caldeira, Gregory A. 1987. "Public Opinion and The U.S. Supreme Court: FDR's Court-Packing Plan." *American Political Science Review* 81:1139-1153.
Canon, Bradley C., and Charles A. Johnson. 1998. *Judicial Policies: Implementation and Impact.* 2nd ed. Washington, D.C.: CQ Press.
Cappelletti, Mauro. 1989. *The Judicial Process in Comparative Perspective.* Oxford: Clarendon.
Casper, Jonathan D. 1976. "The Supreme Court and National Policy Making." *American Political Science Review* 70:50-63.
Chetvernin, Vladimir. 1994. "Three Questions to the Authors of the Act." *Eastern European Constitutional Review* Summer/Fall:80-82.
Cooper, Elizabeth K. 1996. "Comment on 'Transitional Constitutionalism: Politics and Law in Russia Since 1993." *Wisconsin International Law Journal* 14:531.
Dahl, Robert A. 1957. "Decision-making in a Democracy: The Supreme Court as a National Policymaker." *Journal of Public Law* 6:279-295.
Dean, Laurence R. 1995. The Judicial Statescraft of the Zorkin Court during the "Separation of Powers" Crisis of the First Russian Republic. M.A., University of Guelph.
Dowley, K.M. 1999. "Striking the Federal Bargain in Russia: Comparative Regional Government Strategies." *Communist and Post-Communist Studies* 31:359.
Ebzeev, Boris S. 1997. "Rossiiskii Federalism."
Entin, Jonathan L. 1997. "War Powers and Foreign Affairs." *Case Western Law Review* 47:1305.
Epp, Charles R. 1998. *The Rights Revolution.* Chicago: University of Chicago Press.
Epstein, Lee. 1999. "The Comparative Advantage." *Law and Courts* 9:4-9.
Epstein, Lee , and Thomas G. Walker. 1995. "The Role of the Court in American Society: Playing the Reconstruction Game." In *Contemplating Courts*, ed. Lee Epstein. Washington, D.C.: CQ Press.
Epstein, Lee, and Jack Knight. 1998. *The Choices Justices Make.* Washington, D.C.: CQ Press.
Epstein, Lee, and Jack Knight. 2000. "Towards a Strategic Revolution in Judicial Politics: A Look Back, A Look Ahead." *Political Research Quarterly.*
Epstein, Lee, and Carol Mershon. 1996. "Measuring Political Preferences." *American Journal of Political Science* 40:260-294.
Epstein, Lee, and Jeffrey A. Segal. 2000. "Measuring Issue Salience." *American Journal of Political Science* 44:66-83.
Eskridge, William N. Jr. 1991a. "Overriding Supreme Court Statutory Interpretation Decisions." *Yale Law Journal* 101:331-417.
Eskridge, William N. Jr. 1991b. "Reneging on History?: Playing the Court/Congress/President Civil Rights Game." *California Law Review* 79:613-684.
Feofanov, Yuri. 1993. "The Establishment of the Constitutional Court in Russia and the Communist Party Case." *Review of Central and Eastern European Law* 19:623-637.
Ferejohn, John, and Barry Weingast. 1992a. "Limitation of Statutes: Strategic Statutory Interpretation." *Georgetown Law Review* 80:565-582.
Ferejohn, John, and Barry Weingast. 1992b. "A Positive Theory of Statutory Interpretation." *International Review of Law and Economics* 12:263-279.
Finer, S.E., Vernon Bogdanor, and Bernard Rudden. 1995. *Comparing Constitutions.* Oxford: Oxford University Press.
Flemming, Roy B. 1997. "Deciding to Decide in Canada's Supreme Court." Paper delivered at the annual meeting of the Conference Group on the Scientific Study of Judicial Politics, at Atlanta, GA.
Gates, John B. 1992. *The Supreme Court and Partisan Realignment : A Macro- and Microlevel Perspective.* Boulder, CO: Westview Press.

Gibson, James L. 1989. "Understandings of Justice: Institutional Legitimacy, Procedural Justice and Political Tolerance." *Law & Society Review* 23:469-496.
Gibson, James L. 1991. "Institutional Legitimacy, Procedural Justice and Compliance with Supreme Court Decisions: A Question of Causality." *Law & Society Review* 25:631-635.
Gibson, James L., Gregory A. Caldeira, and Vanessa A. Baird. 1998. "On the Legitimacy of High Courts." *American Political Science Review* 92:343-358.
Goebel, Julius. 1971. *Antecedents and Beginnings to 1801.* Vol. I, *History of the Supreme Court of the United States.* New York: Macmillan.
Gorbachev, Mikhail. 1987. *Perestroika: New Thinking for our Country and the World.* London: Collins.
Graber, Mark A. 1998. "Establishing Judicial Review? *Schooner Peggy* and the Early Marshall Court." *Political Research Quarterly* 51:221-239.
Grosskopf, Anke. 1999. "The Development of Public Support for the Federal Constitutional Court in Post-Unification Germany." Paper delivered at the annual meeting of theMidwest Political Science Association, at Chicago, IL.
Hahn, Jeffrey, ed. 1996. *Democratization in Russia: The Development of Legislative Institutions.* Armonk, NY: M.E. Sharpe.
Hartwig, Matthias. 1992. "The Institutionalization of the Rule of Law: The Establishment of Constitutional Courts in Eastern European Countries." *American University Journal of International Law and Policy* 7:449-470.
Harutiunian, Gagik. 1996. The Role of the Constitutional Court in Aremenia. *CIS Law Notes*, October 23.
Harutyunyan, Gagik, and Arne Mavcic. 1999. *Constitutional Reviews and Its Development in the Modern World*: Yerevan-Ljubljana.
Hausmaninger, Herbert. 1992. "From the Soviet Committee on Constitutional Supervision to the Russian Constitutional Court." *Cornell International Law Journal* 25:305.
Hausmaninger, Herbert. 1995. "Towards a 'New' Russian Constitutional Court." *Cornell International Law Journal* 28:349.
Haynie, Stacia L. 1992. "Resource Inequalities and Litigation Outcomes in the Philippine Supreme Court." *Journal of Politics* 56:752-772.
Hellman, Arthur D. 1996. "The Shrunken Docket of the Rehnquist Court." *Supreme Court Review* 1996:403.
Helmke, Gretchen. 1999. Ruling Against the Rulers: Insecure Tenure and Judicial Independence in Argentina, 1976-1995. Department of Political Science, University of Chicago.
Henckaerts, Jean-Marie, and Stefaan Van der Jeught. 1998. "Human Rights Protection Under the New Constitutions of Eastern Europe." *Loyola L.A. International and Comparative Law Journal* 20:475.
Henderson, Jane. 1998a. "The First Russian Constitutional Court: Hopes and Aspirations." In *Constitutional Reform and International Law in Central and Eastern Europe*, ed. Rein Müllerson, Malgosia Fitzmaurice and Mads Andenas. The Hague: Kluwer Law International.
Henderson, Jane. 1998b. "Reference to International Law in Decided Cases of the First Russian Constitutional Court." In *Constitutional Reform and International Law in Central and Eastern Europe*, ed. Rein Müllerson, Malgosia Fitzmaurice and Mads Andenas. The Hague: Kluwer Law International.
Holland, Kenneth M., ed. 1991. *Judicial Activism in Comparative Perspective.* New York: St. Martin's.

Hough, Jerry F. 1997. *Democratization and Revolution in the USSR, 1985-1991.* Washington, D.C.: Brookings.
Hull, Adrian Prentice. 1999. "Comparative Political Science: An Inventory and Assessment Since the 1980s." *PS* 32:117-124.
Interfax Russian News. 1998a. Government Crisis Resolved in Compliance with Law, April 17, 1998.
Interfax Russian News. 1998b. Yeltsin Calls Ruling on Trophy Art Slap in the Face, April 9.
Jackson, Donald W., and C. Neal Tate, eds. 1992. *Comparative Judicial Review and Public Policy.* Westport, CT: Greenwood Press.
Jacob, Herbert, Erhard Blankenburg, Herbert Kritzer, Doris Marie Provine, and Joseph Sanders. 1996. *Courts, Law, and Politics in Comparative Perspective*: New Haven, CT: Yale University Press.
Jarquín, Edmundo, and Fernando Carrillo, eds. 1998. *Justice Delayed.* Washington, D.C.: Inter-American Development Bank.
Kitchin, William. 1992. "Establishing and Exercising Judicial Review in the Soviet Union: The Beginnings." In *Comparative Judicial Review and Public Policy*, ed. Donald W. Jackson and C. Neal Tate. Westport: Greenwood Press.
Kitchin, William. 1995. "Legal Reform and the Expansion of Judicial Power in Russia." In *The Global Expansion of Judicial Power*, ed. C. Neal Tate and Torbjörn Vallinder. New York: New York University Press.
Kluger, Richard. 1976. *Simple Justice.* New York: Random House.
Knight, Jack, and Lee Epstein. 1996. "On the Struggle for Judicial Supremacy." *Law and Society Review* 30:87-130.
Kommers, Donald P. 1976. *Judicial Politics in West Germany.* Beverly Hills: Sage.
Kudriavtsev, Yu. 1996. Preface to the Federal Constitutional Law "On the Constitutional Court of the Russian Federation".
Lapidus, G.W. 1999. "Asymmetrical Federalism and State Breakdown in Russia." *Post-Soviet Affairs* 15:74.
Laver, Michael , and Norman Schofield. 1990. *Multiparty Government: The Politics of Coalition in Europe.* Oxford and New York: Oxford University Press.
Ludwikowski, R.R. 1983. "Judicial Review in the Socialist Legal System: Current Developments." *International and Comparative Law Quarterly.*
Ludwikowski, Rett R. 1996. *Constitution-Making in the Region of Former Soviet Dominance.* Durham, NC: Duke University Press.
Lynn, Nicholas J., and Alexei V. Novikov. 1997. "Refederalizing Russia: Debates on the Idea of Federalism in Russia." *Publius* 27:187-204.
Maggs, Peter B. 1997. "The Russian Courts and the Russian Constitution." *Indiana International and Comparative Law Review* 8:99.
Melone, Albert P. 1996. "The Struggle for Judicial Independence and the Transition Toward Democracy in Bulgaria." *Communist and Post-Communist Studies* 29:231-243.
Melone, Albert P. 1997. "Judicial Independence and Constitutional Politics in Bulgaria." *Judicature* 80:280-285.
Morshchakova, Tamara G. 1998. "The Chechen War Case and Other Recent Jurisprudence of the Russian Constitutional Court." *St. Louis Law Journal* 42:743.
Murphy, Walter F. 1964. *Elements of Judicial Strategy.* Chicago: University of Chicago Press.
Murphy, Walter F., and Joseph Tanenhaus. 1977. *Comparative Constitutional Law : Cases and Commentaries.* New York: St. Martin's Press.

Nikitinsky, Leonid. 1997. "Interview with Boris Ebzeev, Justice of the Constitutional Court of the Russian Federation." *Eastern European Constitutional Review* Winter:83-88.
O'Connor, Sandra Day. 1996. "The Life of the Law: Principles of Logic and Experience from the United States." *Wisconsin Law Review* 1996:1-9.
Ostapchuk, Anna. 1993. Bowing to Government Pressure, Zorkin Resigns as Constitutional Court Chair. *Nezavisimaya gazeta*, October 7, 1.
Ovsepian, Zh I. 1996. "Constitutional Judicial Review in the Russian Federation: Problems of Depoliticization." *Russian Politics and Law* 34:46-61.
Paretskaya, Anna. 1996. "Regional Governors Could Offset 'Red' Duma." *Transition* 2:34-35.
Parikh, Sunita, and E. Scott Adler. 1999. Parliamentary Dominance and Judicial Review: Extending the Congressional Model. Department of Political Science, Washington University in St. Louis.
Pashin, Sergey. 1994. "A Second Edition of the Constitutional Court." *Eastern European Constitutional Review* Summer/Fall:82-85.
Plank, Thomas E. 1996. "The Essential Elements of Judicial Independence and the Experience of Pre-Soviet Russia." *William and Mary Bill of Rights Journal* 5:1-74.
Pomeranz, William E. 1997. "Judicial Review and the Russian Constitutional Court: The Chechen Case." *Review of Central and East European Law* 23:9.
Provine, Doris Marie. 1996. "Courts in the Political Process in France." In *Courts, Law, and Politics in Comparative Perspective*, ed. Herbert Jacob, Erhard Blankenburg, Herbert Kritzer, Doris Marie Provine and Joseph Sanders. New Haven, CT: Yale University Press.
Rahr, Alexander. 1993. The Roots of the Power Struggle. *RFE/RL Research Report*, May 14, 20.
Reid, Elspeth. 1995. "The Russian Constitutional Court, October 1991-October 1993." *Co-existence* 32:277-303.
Remington, Thomas F., ed. 1994. *Parliaments in Transition: The New Legislative Politics in the Former USSR and Eastern Europe*. Boulder, CO: Westview.
Remington, Thomas F. 1996. "Menage a Trois: The End of Soviet Parlimentarism." In *Democratization in Russia: The Development of Legislative Institutions*, ed. Jeffrey Hahn. Armonk, NY: M.E. Sharpe.
Remington, Thomas F. 1998. *Politics in Russia*. New York: Longman.
Remington, Thomas F., Steven Smith, and Moshe Haspel. 1998. "Decrees, Laws, Interbranch Relations in the Russian Federation." *Post Soviet Affairs* 14:287-322.
Rodriguez, Daniel B. 1994. "The Positive Political Dimensions of Regulatory Reform." *Washington University Law Quarterly* 72:1-150.
Rosenberg, Gerald N. 1991. *The Hollow Hope*. Chicago: University of Chicago Press.
Russian Information Agency (ITAR-TASS). 1993. 'I Favour a Strong Presidential Republic,' Zorkin Says. *Russian Information Agency (ITAR-TASS)*, August 18.
Savitsky, Valery. 1995. "Judicial Protection of Personal Rights in Russia." In *Legal Reform in Post-Communist Europe: The View from Within*, ed. Stanislaw Frankowski and Paul B. Stephan II. Dordrecht: Martinus Nijhoff.
Schubert, Glendon, and David J. Danelski, eds. 1969. *Comparative Judicial Behavior*. New York: Oxford University Press.
Schwartz, Herman. 1992. "The New Eastern European Constitutional Courts." *Michigan Journal of International Law* 13:763.
Schwartz, Herman. 1993. "The New Courts: An Overview." *Eastern European Constitutional Review* Spring:28-32.

Schwartz, Herman. 1998. *Defending the Defenders of Democracy*. Available at www.omri.cz/transitions/defend1.html.
Schwartz, Herman. 2000. *The Struggle for Constitutional Justice in Post-Communist Europe*. Chicago: University of Chicago Press.
Segal, Jeffrey A. 1997. "Separation-of-Powers Games in the Positive Theory of Law and Courts." *American Political Science Review* 91:28-44.
Shapiro, Martin. 1995. "The United States." In *The Global Expansion of Judicial Power*, ed. C. Neal Tate and Torbjörn Vallinder. New York: New York University Press.
Shapiro, Martin, and Alec Stone. 1994a. "The New Constitutional Politics of Europe." *Comparative Political Studies* 26:397-420.
Shapiro, Martin, and Alec Stone, eds. 1994b. *Special Issue: The New Constitutional Politics of Europe*. Vol. 26: *Comparative Political Studies*.

Sharlet, Robert. 1993a. "Chief Justice as Politician." *East European Constitutional Review* Spring:32-37.
Sharlet, Robert. 1993b. "The Russian Constitutional Court: The First Term." *Post-Soviet Affairs* 9:1-39.
Sharlet, Robert. 1994. "The Prospects for Federalism in Russian Constitutional Politics." *Publius* 24:115-128.
Sharlet, Robert. 1996. "Transitional Constitutionalism: Politics and Law in the Second Russian Republic." *Wisconsin International Law Journal* 14:495-521.
Sheive, Sarah Wright. 1995. "Central and Eastern European Constitutional Courts and the Antimajoritarian Objection to Judicial Review." *Law and Policy International Business* 26:1201-1233.
Shevtsova, Lilia. 1996. "Parliament and the Political Crisis in Russia." In *Democratization in Russia: The Development of Legislative Institutions*, ed. Jeffrey Hahn. Armonk, NY: M.E. Sharpe.
Slater, Wendy. 1993. "Head of Russian Constitutional Court under Fire." *RFE/RL Research Report* 2:1-5.
Smith, Bruce L., and Gennady M. Danilenko, eds. 1993. *Law and Democracy in the New Russia*. Washington, D.C.: Brookings.
Smith, Gordon B. 1996. *Reforming the Russian Legal System*: Cambridge University Press.
Smithey, Shannon. 1998. "Establishing Judicial Review: Strategic Activism in Canada." Paper delivered at the annual meeting of the Midwest Political Science Association, at Chicago, IL.
Smithey, Shannon. 1999. "Strategic Assertions of Judicial Authority." Paper delivered at the annual meeting of the Midwest Political Science Association, at Chicago, IL.
Smyth, Regina A. 1990. "Ideological vs. Regional Cleavages: Do Radicals Control the RSFSR Parliament?" *Journal of Soviet Nationalities* 1:112-157.
Sobyanin, Alexander. 1994. "Political Cleavages among Russian Deputies." In *Parliaments in Transition: The New Legislative Politics in the Former USSR and Eastern Europe*, ed. Thomas F. Remington. Boulder, CO: Westview.
Solnick, Steven. 1995. "Federal Bargaining in Russia." *East European Constitutional Review* 4:52-56.
Solomon, Peter H. 1997a. "The Persistence of Judicial Reform in Contemporary Russia." *East European Constitutional Review* 6:50-56.
Solomon, Peter H., ed. 1997b. *Reforming Justice in Russia*. New York: Sharpe.

Spaeth, Harold J. 1999. *United States Supreme Court Judicial Database.* Ann Arbor: Inter-university Consortium for Political and Social Research.
Spiller, Pablo T., and Rafael Gely. 1992. "Congressional Control or Judicial Independence: The Determinants of U.S. Supreme Court Labor-Relation Decisions." *RAND Journal of Economics* 23:463-492.
Stone, Alec. 1992. "Abstract Constitutional Review and Policy Making in Western Europe." In *Comparative Judicial Review and Public Policy*, ed. Donald W. Jackson and C. Neal Tate. Westport: Greenwood Press.
Stone, Alec. 1994. *The Birth of Judicial Politics in France*: Oxford University Press.
Stone, Alec. 1995. "Complex Coordinate Construction in France and Germany." In *The Global Expansion of Judicial Power*, ed. C. Neal Tate and Torbjörn Vallinder. New York: New York University Press.
Stoner-Weiss, K. 1999. "Central Weakness and Provincial Autonomy: Observations on the Devolution Process in Russia." *Post-Soviet Affairs* 15:87.
Sunstein, Cass R. 1999. *One Case at a Time.* Cambridge, MA: Harvard University Press.
Sweet, Alec Stone. 1998. "Comment on Vanberg, Rules, Dispute Resolution, and Strategic Behavior." *Journal of Theoretical Politics* 10: 327-338.
Sweet, Alec Stone. 2000. *Governing with Judges: Constitutional Politics in Europe.* New York: Oxford University Press.
Tate, C. Neal. 1972. "Social Background and Voting Behavior in the Philippine Supreme Court, 1901-1968." *Lawasia* 3:317-338.
Tate, C. Neal. 1992. "Comparative Judicial Review and Public Policy: Concepts and Overview." In *Comparative Judicial Review and Public Policy*, ed. Donald W. Jackson and C. Neal Tate. Westport, CT: Greenwood Press.
Tate, C. Neal. 1995. "Why the Expansion of Judicial Power?" In *The Global Expansion of Judicial Power*, ed. C. Neal Tate and Torbjörn Vallinder: New York University Press.
Tate, C. Neal, and Torbjörn Vallinder, eds. 1995a. *The Global Expansion of Judicial Power*: New York University Press.
Tate, C. Neal, and Torbjörn Vallinder. 1995b. "The Global Expansion of Judicial Power: The Judicialization of Politics." In *The Global Expansion of Judicial Power*, ed. C. Neal Tate and Torbjörn Vallinder. New York: New York University Press.
Thomas, Cheryl A. 1995. "The Attempt to Institute Judicial Review in the Former USSR." In *The Global Expansion of Judicial Power*, ed. C. Neal Tate and Torbjörn Vallinder. New York: New York University Press.
Tracy, Lynne M. 1993. "Prospects for an Independent Judiciary: The Russian Constitutional Court." *Akron Law Review* 26:581-608.
Utter, Robert F., and David C. Lundsgaard. 1994. "Comparative Aspects of Judicial Review: Issues Facing the New European States." *Judicature* 77:240-247.
Vallinder, Torbjörn. 1995. "When the Courts Go Marching In." In *The Global Expansion of Judicial Power*, ed. C. Neal Tate and Torbjörn Vallinder. New York: New York University Press.
van den Berg, Gerd. 1999. "The Russian Constitutional Court." Paper delivered at the annual meeting of the AAASS, at St. Louis, MO.
Vanberg, Georg. 1998a. "Abstract Judicial Review, Legislative Bargaining, and Policy Compromise." *Journal of Theoretical Politics* 10:299-326.
Vanberg, Georg. 1998b. "Reply to Sweet Stone." *Journal of Theoretical Politics* 10:339-346.
Vanberg, Georg. 1999. The Politics of Constitutional Review: Constitutional Court and Parliament in Germany. Ph.D., Political Science, University of Rochester, Rochester, NY.

Vitruk, Nikolai. 1998. *Konstitutsionnoe pravosudie*. Moscow: Zakon i Provo.
Vlashin, Vasily A. 1993. "Toward a Rule of Law and a Bill of Rights for Russia." In *Law and Democracy in the New Russia*, ed. Bruce L. Smith and Gennady M. Danilenko. Washington, D.C.: Brookings.
Volcansek, Mary, ed. 1991a. *Special Issue: Judicial Politics and Policy-Making in Western Europe*. Vol. 15: *Western European Politics*.
Volcansek, Mary L. 1991b. "Judicial Activism in Italy." In *Judicial Activism in a Comparative Perspective*, ed. Kenneth M. Holland. New York: St. Martin's.
Volcansek, Mary L. 1992. "Judges, Courts, and Policy Making in Western Europe." *Western European Politics* 15:1-8.
Waggoner, Jeffrey. 1997. "Discretion and Valor at the Russian Constitutional Court: Adjudicating the Russian Constitutions in the Civil Law Tradition." *Indiana International and Comparative Law Review* 8:189.
Walker, E. 1993. "The Neglected Dimension: Russian Federalism and its Implication for Constitution-Making." *East European Constitutional Review* 2.
Walker, E. 1995. "Federalism—Russian Style: The Federation Provision in Russia's New Constitution." *Problems of Post-Communism* July-August:3-12.
Weisman, Amy J. 1995. "Separation of Powers in Post Communist Government: A Constitutional Case Study of the Russian Federation." *American University Journal of International Law and Policy* 10:1365.
Wishnevsky, Julia. 1993. "Russian Constitutional Court: A Third Branch of Government?" *RFE/RL Research Report* 2:1-8.

Table 1. Key Characteristics of Court Systems

	American System	*European System*
Institutional Structure (Who has the power to engage in judicial review?)	**Diffused.** Ordinary courts can engage in judicial review, that is, they can declare an act unconstitutional.	**Centralized.** Only a single court (usually called a "constitutional court") can exercise judicial review; other courts are typically barred from so doing, though they may refer constitutional questions to the constitutional court
Timing (When can judicial review occur?)	**A Posteriori** (sometimes called **Ex Post).** Courts can only exercise judicial review after an act has occurred or taken effect.	**A Priori (sometimes called Ex Ante) and A Posteriori.** Many constitutional courts have a priori review over treaties; some have a priori review over governmental acts; others have both a priori and a posteriori review, while still others have either but not both.
Type (Can judicial review take place in the absence of a real case or controversy?)	**Concrete Review.** Courts can resolve only real cases or controversies.	**Abstract and Concrete Review**. Most constitutional courts can exercise review in the absence of a real case or controversy; many can exercise concrete review as well.
Standing (Who can initiate disputes?)	Litigants, engaged in a real case or controversy, who have a personal and real stake in the outcome, can bring suit.	The range can be large, from governmental actors (including executives and members of the legislature) to individual citizens.

Sources: Finer (1995); Kitchin (1992); Ludwikowski (1996); Schwartz (1993); Stone (1994); Tate (1992, 1995); Utter and Lundsgaard (1994).

Figure 1. Hypothetical Set of Preferences Over Whether to Outlaw All Communist Parties

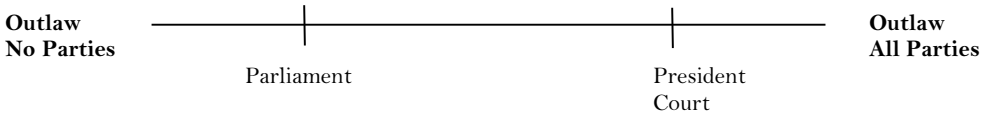


Figure 2. Hypothetical Set of Preferences and Tolerance Intervals of Key Governmental Actors

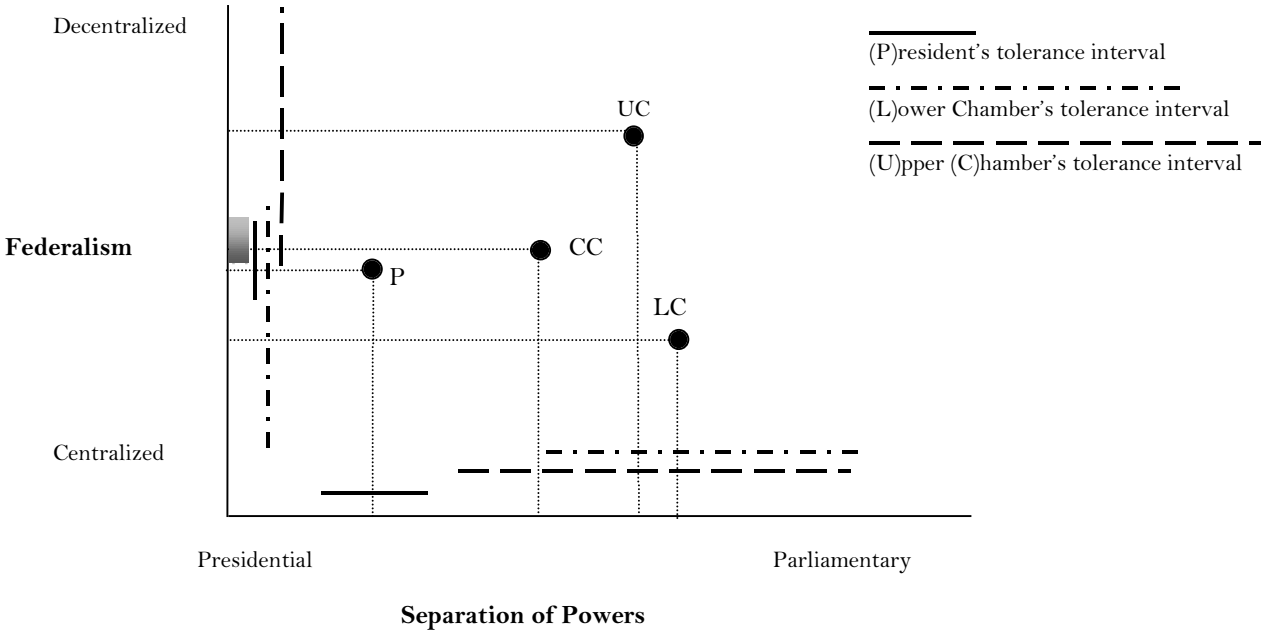
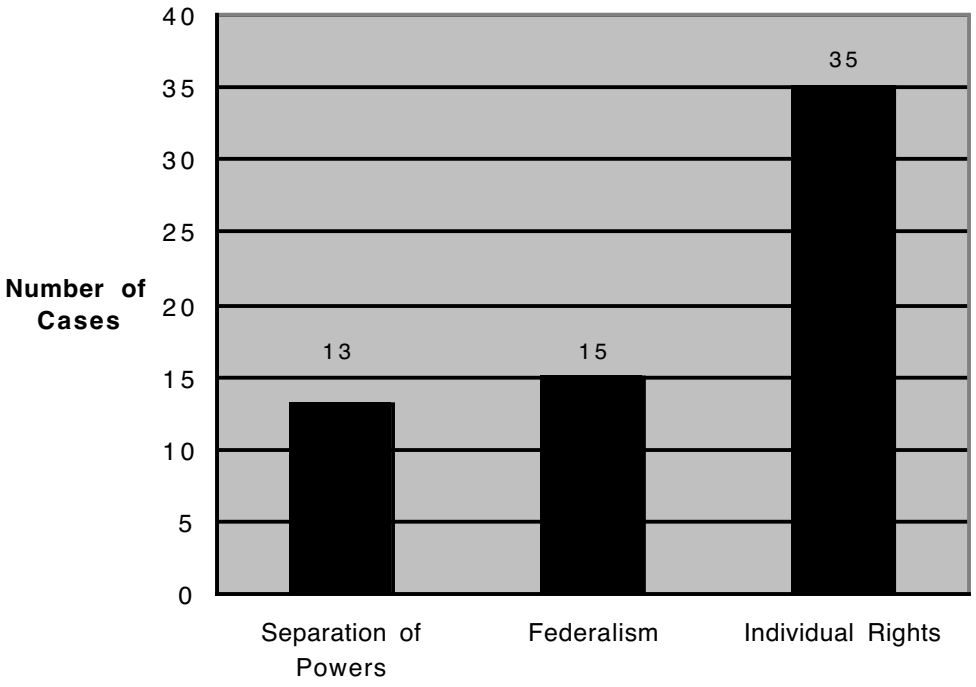


Figure 3. Issues involved in Cases Decided by the Russian Constitutional Court between 1992-93 and 1995-96

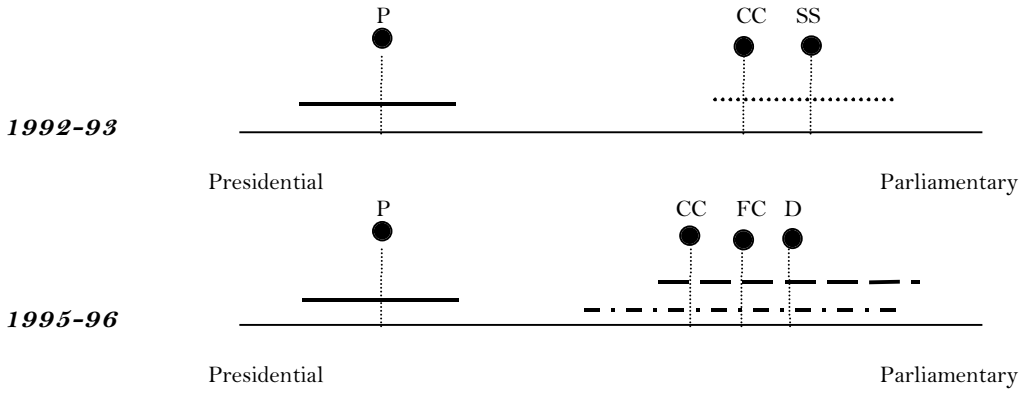


Note: N=63. We exclude 4 decisions that were technically necessary to correct omissions in the Constitution.

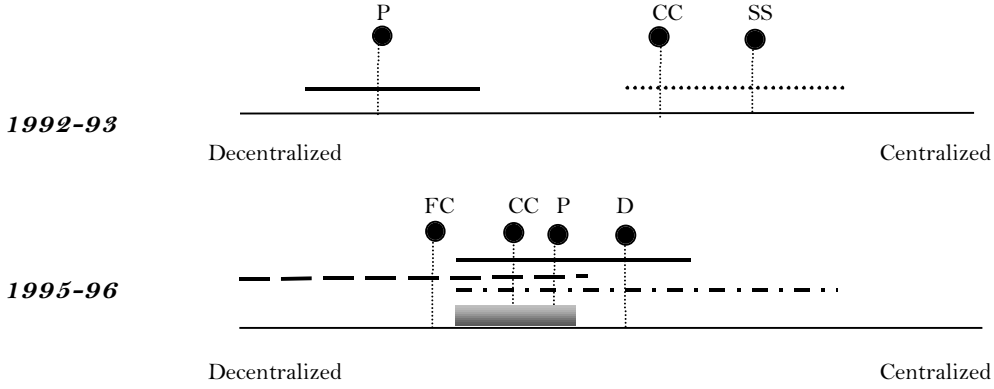
Source: All cases decided by the Russian Constitutional Court are available (in Russian) at: www.cityline.ru/politika/ks/ksbook.html.

Figure 4. Most Preferred Positions and Tolerance Intervals, 1992-93 and 1995-96

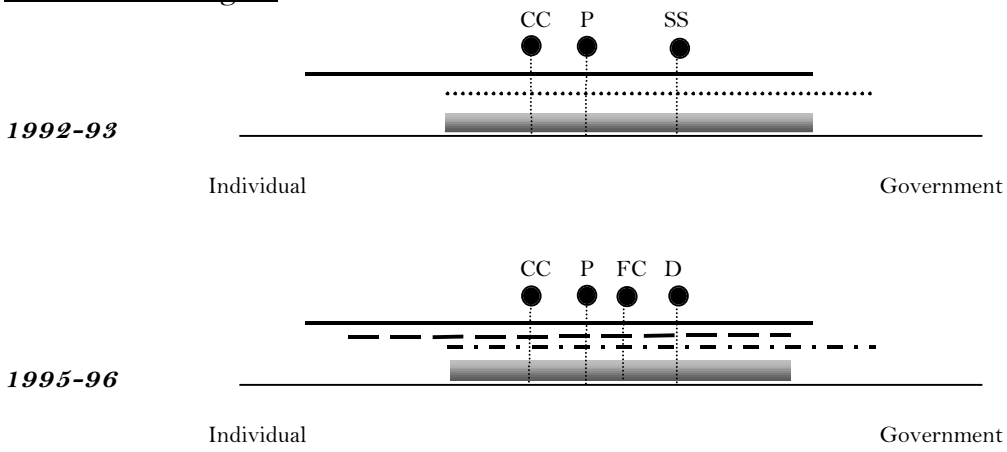
4a. Separation of Powers



4b. Federalism

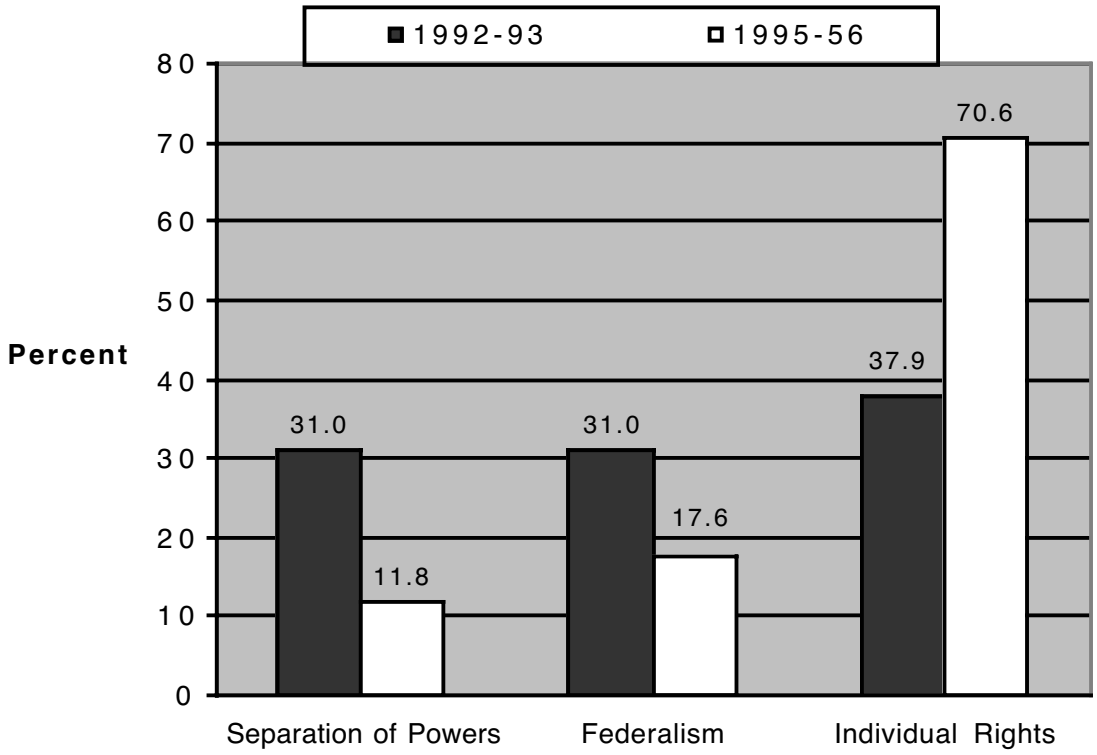


4c. Individual Rights



Legend: ● = most preferred positions of the P(resident), S(upreme) S(oviet), C(onstitutional) C(court), F(ederation) C(ouncil), and D(uma). ——— =P's tolerance interval; — — — =FC's tolerance interval, — · — · — =D's tolerance interval; ····· = SS's tolerance interval; ▒ =intersection of tolerance intervals.

Figure 5. Cases Decided by the Russian Constitutional Court, by Issue Area and Period



Note: The data represent the percentage of case types heard during each period. So, for example, between 1992 and 1993, 31% of the 29 cases the Court decided dealt with Federalism; between 1995-96, that figure was 17.6. Total N for 1995-96=34.