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The Persuasive Power of Russian Courts

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Given the centralization of power in contemporary Russia, can nonexecutive institutions exercise some power, especially institutions such as high courts, which are critical to establishing the rule of law? In particular, can high courts influence the Russian public through their power to persuade? Using experiments embedded in three surveys of more than 6,000 Russians each, the authors find that the Supreme and Constitutional Courts, as well as the Duma, have persuasive power but greater potential to persuade tolerant Russians to be intolerant than vice versa. The findings have powerful implications for understanding the judicial role in protecting the rights and liberties of minorities.

Keywords: *persuasion; law and society; judicial politics; courts; political psychology; Russia; postcommunism*

The establishment of the rule of law depends on the creation and maintenance of an effective judicial system. One measure of an effective judicial system is whether the highest court in the land has the power of moral suasion, or the ability to persuade the public to accept judicial opinions. We seek to understand whether the high courts in Russia have this power to persuade and, if so, whether the courts' power is more influential when judicial opinions reflect tolerant ideals or intolerant ideals.

Our question has theoretical and practical implications. Understanding the influence of high courts on a non-American population can contribute significantly to our more general understanding of courts and public opinion, which to date is heavily skewed by case studies of U.S. Supreme Court decisions. Understanding the influence of Russian high courts in particular can speak to the growing debate about the future of the Russian political system and whether its increasing centralization of executive power leaves room for other institutions to influence the public and thereby exercise power. Public persuasion by courts may be the first of many long steps necessary for Russian institutions to feel public pressure to address current problems implementing court decisions (Kahn 2002; Trochev 2002; Hendley 2004; Solomon 2004).

Using experimental designs embedded in three surveys conducted in 2003, 2004, and 2005 of more than 6,000 urban Russians each year, we investigate the potential persuasive power of Russian high courts. We measure initial baseline attitudes toward a widely disliked group in Russia, Jehovah's Witnesses, and then

measure acceptance of contrary decisions by three different institutional source cues: the Russian Supreme Court, the Russian Constitutional Court, and as a basis for institutional comparison, the lower house of the Russian legislature, the Duma. Our experiments allow us to test whether opinions can be changed and how strongly, whether tolerant court decisions are more or less persuasive than intolerant court decisions, whether one court is more persuasive than another, and whether the court's potential role as persuader is unique or shared by other institutions such as the Duma.

We find that high courts in Russia do have the potential to persuade at least some urban Russians. The Russian Supreme Court and Russian Constitutional Court have roughly equal potential to persuade, and consistent with prior research, persuasion is easier for each court when the decision reflects intolerance than when it reflects tolerance.

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The Russian legislature, the Duma, has similar potential to persuade and similarly stronger potential with intolerant decisions, suggesting that some urban Russians may be persuadable not just by courts but by any authoritative institution.

The Persuasive Power of Courts

The persuasive power of courts is considered so integral for judicial effectiveness because persuasion is the only leverage courts have. Famously possessed of neither the purse nor the sword (Hamilton 1787), courts must rest their authority instead on public acceptance of judicial decisions. This authority, derived from persuasive power, in turn encourages implementation of judicial decisions. Devoid of persuasive power and thus authority, courts can make decisions, but their decisions may not be obeyed or enforced, in which case attempts to establish or sustain the rule of law face serious if not insurmountable obstacles.

Previous research on the persuasive power of courts has largely focused on the U.S. Supreme Court. That research has generated ongoing debates about the possible effects of Court decisions on public opinion. Some imply that the U.S. Supreme Court is persuasive by claiming that its decisions lend legitimacy to policies (Dahl 1957; Canon and Johnson 1998). Others claim that the U.S. Supreme Court is not persuasive and has no meaningful impact on public opinion (Marshall 1989). Still others claim that the U.S. Supreme Court is influential though not always persuasive. Rather, the Court is a polarizing body and has encouraged members of the public to dig in and solidify their preexisting opinions (Franklin and Kosaki 1989). More recent work shows that the U.S. Supreme Court is persuasive for certain individuals but not others or at certain times but not others. Those who receive a lot of information about a moderately salient issue will be persuaded more than those who receive little information or for whom the issue is highly salient (Mondak 1990, 1992; Hoekstra and Segal 1996; Hoekstra 2003). The American public as a whole is more susceptible to persuasion when the Supreme Court decides an issue for the first time but less susceptible when the Court returns to the issue and hands down further rulings (Johnson and Martin 1998).

We question whether some of the findings in the U.S. context transfer to postcommunist countries. In particular, do high courts have the power to persuade in countries such as Russia that are “between dictatorship

and democracy” (McFaul, Petrov, and Ryabov 2004)? Scholars have recently addressed this question in the context of South Africa (Gibson and Gouws 2003), but to date, very little has been written on this topic in the context of Russia or other postcommunist judicial systems. Studies of Russian courts mention related issues such as the public image of the courts and the courts’ need for better public relations (Solomon and Foglesong 2000, 82–84), but scholars have yet to consider and test the Russian courts’ persuasive power. Given concerns about the increasing concentration of executive power in Russia and the decreasing prospects for liberal democracy, understanding the courts’ potential powers is critical to evaluating what role institutions outside the executive may play in contemporary Russian politics.

Can Russian high courts persuade Russian citizens? A reasonable case could be made for expectations in either direction. On one hand, a lack of trust in elites has been shown to compromise elites’ ability to persuade citizens (Hibbing and Alford 2004; Darmofal 2005). The Russian high courts’ potential to persuade might be limited by the public’s low opinion of them (Gibson, Caldeira, and Baird 1998). Russian courts inherited a poor reputation from their Soviet predecessors and continue to face reputation challenges due to poor implementation of court decisions, difficulty maintaining judicial independence, and insufficient funding (Reisinger, Miller, and Hesli 1997; Solomon and Foglesong 2000).

On the other hand, some evidence suggests that the potential for public persuasion by Russian courts exists. Studies of persuasion to tolerate show that the initial judgments of many people are pliable (Marcus et al. 1995; Sniderman et al. 1996; Gibson 1998b; Peffley, Knigge, and Hurwitz 2001) and that people often respond to elite cues (McGuire 1969; Zaller 1992; Lupia and McCubbins 1998). If the decisions of Russian high courts were known to Russians—a big “if” that we will discuss below—their decisions may act as such elite cues. Despite the aforementioned reputation challenges, the post-Soviet Russian public has made increasing use of courts and has by some indicators increased its respect for them (Solomon and Foglesong 2000; Machura 2003; Popova 2006; Javeline and Baird 2007). Moreover, the Russian public has been said to favor a “strong hand,” to dislike excessive freedom that threatens order, and to respect authority (Fleron and Ahl 1998; Bahry 1999). To the extent that courts are perceived as strong and authoritative, these perceptions might

be advantageous in facilitating the courts' persuasive power and ultimately judicial effectiveness and the rule of law.

Persuading in a Tolerant or Intolerant Direction

The normative assumption underlying much of the research on the U.S. Supreme Court is that the Court's persuasive power can be a good thing. In an established democracy, judicial decisions should reflect liberal democratic ideals and therefore encourage the public to hold increasingly liberal democratic attitudes. Courts, after all, were originally intended to be not only checks on executive and legislative power but "republican schoolmasters," teaching the public to support the rights and liberties of their fellow citizens (Franklin and Kosaki 1989). The message of the U.S. Supreme Court should be tolerance, defined as the willingness to permit or put up with that which one opposes (Gibson and Bingham 1982; Sullivan, Piereson, and Marcus 1982; Gibson 1992, 2006).

We make no assumption that Russian high courts will be tolerant. It is possible and even desirable for Russian courts to be republican schoolmasters, but because judicial decisions in Russia have not always protected civil liberties,¹ any persuasive power of courts may not encourage tolerance as it encourages the rule of law. Indeed, cross-national research on constitutionalism shows that recent increases in judicial power have not always led to increased rights protections (Hirschl 2004). Throughout history, the persuasive power of elite institutions and individuals such as Hitler and Milosevic has encouraged the public to deny civil liberties to certain groups.² For our inquiry, then, rather than assume that any persuasive power of Russian courts necessarily means those courts play the role of republican schoolmasters, we treat the content of court decisions as part of our question: Do Russian courts have persuasive power, and if so, does this persuasive power depend on whether the potentially persuasive message favors tolerance or intolerance?

Prior research suggests that the Russian high courts will have greater success encouraging intolerance among Russians than tolerance. First and foremost, research on political tolerance in Russia and elsewhere consistently shows that, courts aside, it is easier to persuade the tolerant to be intolerant than vice versa (Kuklinski et al. 1991; Marcus et al. 1995; Sniderman et al. 1996; Gibson 1998b, 2006; Peffley, Knigge, and Hurwitz 2001). Tolerant individuals presumably hold other

values that often trump tolerance, and with a little argumentation that plays on these other values, they will more readily abandon their initially tolerant instincts. Second, more general research on political persuasion in the United States shows that "con" arguments, or arguments against a policy, are more persuasive than "pro" arguments, or arguments for a policy (Cobb and Kuklinski 1997). Because decisions that involve denying rights to a disliked group more closely resemble con arguments, whereas decisions that grant rights more closely resemble pro arguments, it is again reasonable to expect the persuasive power of Russian high courts will be stronger when court decisions promote intolerance.

The Test Case: Granting Rights to Jehovah's Witnesses

Our full question is whether the Russian high courts have the power to persuade and, if the Russian high courts do have the power to persuade and choose to exercise that power, whether they are potentially more effective in encouraging tolerance or intolerance among the Russian public. A good test case for the Russian high courts' persuasive power would be one that involves granting or denying rights to some widely disliked group.

In our experiments, the reference group that Russians could tolerate or not tolerate is Jehovah's Witnesses.³ Jehovah's Witnesses experienced a hostile reception in Russia upon their arrival in 1887 and were repressed and exiled throughout Soviet rule, leaving only a few thousand followers in the country by the time the Soviet Union collapsed. With the 1991 passage of the law "On Freedom of Religion," Jehovah's Witnesses were officially registered as a religious organization and experienced a resurgence (Ivanenko 1997; Alekseyeva 2001; Borisov 2004; Edwards 2004). Estimates put the current number of Jehovah's Witnesses in Russia between 133,000 and 250,000, with about 10,000 of these in Moscow, another 10,000 in St. Petersburg, and the remaining mostly in other urban areas (Bekker 1999; Dolgov 1999; Borisov 2004; Edwards 2004). Although these numbers are relatively small, Jehovah's Witnesses may be the fastest growing religion in Russia, attracting converts often from disillusioned members of the Russian Orthodox Church (Edwards 2004).

Jehovah's Witnesses are a visible group in the cities where they reside. As missionaries, they distribute their literature on the streets and door to door.

They also hold conventions, large gatherings, and small Bible study groups (Ivanenko 1997).

Despite their growing attractiveness to some Russians, or because of it, Jehovah's Witnesses have been the target of official harassment. They have been denied permission to hold conventions, had their conventions cancelled after receiving permission, been detained while disseminating literature, had rental contracts cancelled for their buildings and facilities, been obstructed in their plans to build places of worship or use public space, had their religious assemblies disrupted, and even found their literature the target of arson and their worshippers beaten and poisoned by nerve gas. These rights violations have occurred not only in Moscow, but also in Stavropol, Sakhalin, Chelyabinsk, Krasnoyarsk, Yekaterinburg, Khabarovsk, Ufa, Tolyatti, St. Petersburg, Volgograd, and elsewhere.⁴ The religious group has been labeled a "cult" and "totalitarian sect."

Pressure against Jehovah's Witnesses has been administered indirectly at the highest levels of Russia's government. In 1997, the Duma passed and Yeltsin signed the 1997 law "On Freedom of Conscience and Religious Associations" (OFCRA), which declared Christianity, Islam, Judaism, and Buddhism to be Russia's established religions and required other religions to register with the government in order to rent property, disseminate literature, and otherwise operate in Russia (Wines 2001). The law allowed for the banning of religious groups, which would mean forbidding all the group's activities (Wallace 2001–2).

With the new law, Russia's judicial system came to play an active role in determining the fate of Jehovah's Witnesses. Although lawsuits had been filed against Jehovah's Witnesses since the mid-1990s, several of these early lawsuits were thrown out because their cases had no grounds (Weir 1999; Wallace 2001–2; Borisov 2004). The passage of OFCRA, however, gave lawsuits greater promise for banning Jehovah's Witness activity and otherwise denying them rights. The most well-known trial against Jehovah's Witnesses began on September 29, 1998, in the Golovino Intermunicipal Court in Moscow. The case dragged on for years, and in the interim, Moscow's Jehovah's Witnesses were barred from renting buildings, and many other regional branches were denied registration (Ivanov 1998; Dolgov 1999; Alekseyeva 2001; Wallace 2001–2). Although Jehovah's Witnesses won some early round victories in the Golovino Court, the prosecutor appealed to the Moscow City Court, where the case again dragged on for years until it was finally resolved on March 26, 2004, against the group. The

court liquidated the Jehovah's Witnesses' legal status and banned their activities in Moscow, including renting buildings for religious services and disseminating literature. Jehovah's Witnesses who gathered to discuss their beliefs could now be fined or arrested (Mydans 2004; Myers 2004; Weir 2004). Under OFCRA, cases were also brought against Jehovah's Witnesses in Chelyabinsk, Oryol, Stavropol, Tatarstan, Luchegorsk, and elsewhere.

Most cases involving Jehovah's Witnesses in Russia have occurred at the local, district, city, and regional court levels. However, on a few occasions, the group has appealed to higher courts or threatened such appeals. For example, after the November 1999 expulsion from Russia of one of its missionaries, the Yaroslavl congregation filed a lawsuit with the Constitutional Court (Kramer 1999). In response to various adverse rulings, Jehovah's Witnesses have filed applications with the European Court of Human Rights and have planned other appeals to Russia's Constitutional Court and Russia's Supreme Court. The latter has ruled in the case of a custody battle between a father and a Jehovah's Witness mother (Jehovah's Witnesses Office of Public Information 1999).

Many court decisions have gone against Jehovah's Witnesses, but some have gone in their favor. For example, in October 2004, the Supreme Court of Tatarstan and the Primorskii Krai court ruled in favor of Jehovah's Witnesses by overturning local court decisions to dissolve the organization (U.S. Department of State 2005). Even more noteworthy, in regard to the Yaroslavl case, the Constitutional Court sided with the Jehovah's Witnesses.

When we began our surveys in 2003, the Moscow City Court was retrying the case that would ultimately lead to the 2004 ban of Jehovah's Witness activity in Moscow. The group, as well as the issue of granting or denying rights, therefore received a reasonable amount of media coverage. Moreover, because Jehovah's Witnesses emerged victorious in some cases throughout Russia and were defeated in others, the outcome of any particular court decision was far from certain. Victory and defeat were both plausible. This combination of reasonably widespread exposure and multiple plausible outcomes made the Jehovah's Witnesses' situation an excellent case study of the potential for court persuasion.

Method

Our findings are based on the results of experiments embedded in three surveys conducted in 2003,

2004, and 2005 in Russian cities with populations greater than 350,000. The surveys were designed by us, commissioned by the U.S. Agency for International Development, and conducted by a Moscow-based research firm, the Institute for Comparative Social Research (CESSI). The resulting sample sizes were 6,074 in 2003, 6,043 in 2004, and 6,044 in 2005.⁵

Respondents were asked a survey question to determine their baseline policy position on granting or denying rights to Jehovah's Witnesses. Respondents were then presented with a follow-up survey question that first describes a Court decision counter to the respondent's initial policy preference and then asks the respondents their opinions on that Court decision. We measure persuasion by how much the respondent's initial position moves in the direction of the Court's decision. A slightly persuaded individual might move from a strongly held position to a weaker one, still contrary to the Court's decision but less conclusively so, or a slightly persuaded individual might lose conviction even further and find herself unsure of her position. A strongly persuaded individual might switch positions altogether and agree with the Court.

The initial question reads as follows:

Some people think Jehovah's Witnesses are a religious cult that presents a danger to Russian society and should be forbidden from distributing literature on the street. Other people think that, regardless of whether they present a danger to Russian society, Jehovah's Witnesses should have the right to distribute literature on the street. Which view is closer to your own? Do you feel this way strongly or only somewhat?

Unlike conventional tolerance questions, this question does not distinguish Russians who like (or are indifferent to) Jehovah's Witnesses from Russians who dislike Jehovah's Witnesses but are nevertheless willing to grant the group rights. Only the latter could be labeled "tolerant," whereas the former's level of tolerance is not revealed by the question. This lack of distinction makes our test of persuasion to forbid rights, described below, especially difficult. Presumably, Russians who like Jehovah's Witnesses would be more impervious to court persuasion to forbid rights than tolerant Russians who at heart dislike the group. By including pro-Jehovah's Witnesses in our study, we bias our experiment against the ability of Russian high courts to persuade in the direction of intolerance.

The question intentionally includes the phrase "should be forbidden," rather than the softer "should not be allowed." Research has shown that people are

much more comfortable not allowing something than forbidding something, even though the two actions have substantively identical outcomes (Rugg 1941; Schuman and Presser 1981).⁶ Because prior evidence shows that Jehovah's Witnesses are unpopular in Russia and that Russians are often averse to granting rights to unpopular minorities, we anticipated that the softer language would be chosen by a disproportionately high percentage of respondents and lead to insufficient variance for our experiment. We included the harsher language, "should be forbidden," to make it more difficult for respondents to choose this option and thus to distinguish clearly the "forbidders" from everyone else. Presumably, the middling group who are comfortable not allowing something but uncomfortable forbidding the very same action would answer "don't know" to the question.

Table 1 shows that more Russians are willing to deny rights to Jehovah's Witnesses than to grant them. For each year, more than half of urban Russians agree with the first option and would forbid Jehovah's Witnesses from distributing literature on the street. Only about 20 percent of Russians think Jehovah's Witnesses should have the right to distribute literature, with less than half of them feeling strongly about it. The remaining Russians either do not know where they stand or have not heard of Jehovah's Witnesses. These results are consistent with other studies that show Russians generally are unwilling to grant rights to disliked groups (Bahry, Boaz, and Gordon 1997; Gibson 1998a, 1998b). The results are remarkably consistent across all three surveys, suggesting that Russian attitudes are stable and that our measures are reliable.

A follow-up survey question stated a Court decision counter to the respondent's initial stated policy position:⁷

Suppose the Supreme Court rules that Jehovah's Witnesses [do not] have the right to distribute literature on the street. To what extent would you agree with the Court's decision? strongly agree, somewhat agree, somewhat disagree, or strongly disagree⁸

As noted above, court decisions in contemporary Russia sometimes grant civil liberties and sometimes deny them, so both scenarios in our experiment are realistic and could ring true for the Russian public. Especially for our 2003 survey, the Moscow City Court had not yet handed down its March 2004 verdict that banned Jehovah's Witnesses in Moscow, so the perspective of this court, let alone the Supreme Court,

Table 1
Baseline Attitudes Toward Rights of Jehovah's
Witnesses to Distribute Literature (%)

	2003	2004	2005
Should be forbidden, very strongly	41.9	43.4	46.2
Should be forbidden, rather strongly	13.2	12.2	13.7
Don't know	14.5	14.5	13.3
Should have the right, rather strongly	11.2	11.8	9.9
Should have the right, very strongly	8.6	7.4	6.1
Never heard of them	10.6	10.7	10.7
<i>N</i>	6,074	6,043	6,044

was still not publicized or even formed. For our 2004 and 2005 surveys, it is reasonable to question whether respondents were influenced by the March 2004 decision because most interviews occurred in June and July. Still, even in 2004 and 2005, the Russian high courts had not yet weighed in on this particular case and many other cases. It was plausible that the high courts might soon do so, and it was also plausible to anticipate that their decision could go either way.

Note that we intentionally did not provide information on the arguments the Court used when making its hypothetical decision. The respondent considers only that the Court made the decision. Our experiment thus more closely resembles a test of the effects of source credibility (Mondak 1990) than the effects of "sober second thought" arguments (Gibson 1998b). In the latter case, the goal is to expose people to opposing arguments to see if the exposure convinces people to change their minds. We seek to answer a slightly different question: Can the Russian public be persuaded by the high courts without exposure to the courts' countervailing ideas? That is, can the public be persuaded simply because the courts are authoritative institutions said to hold countervailing ideas?

This question is a realistic one. The outcomes of court cases usually receive far more publicity than the intricacies and nuances of the debates and written decisions. For example, although 56 percent of Russians heard in 2002 that a Moscow Higher Court of Arbitration shut down the private television station TV-6, only 31 percent followed the case in court (Public Opinion Foundation Database 2002). Although 44 percent of Russians knew in 2005 that a court sentenced the former head of Yukos Oil Company, Mikhail Khodorkovsky, to nine years in prison, only 28 percent followed Khodorkovsky's trial (Public Opinion Foundation Database 2005). The question of whether courts can be persuasive without regard for the rationale behind

their decisions is thus a fitting question in many real-world scenarios.

In this sense, we are testing whether the courts have persuasive power as a source cue or credibility heuristic—that is, whether the courts themselves serve as persuasive evidence (Petty and Cacioppo 1986; Carmines and Kuklinski 1990). Prior research suggests that when people have limited access to the arguments supporting a point of view, or when the arguments are particularly complex, the credibility of the source is the dominant persuasive cue (Sternthal, Phillips, and Dholakia 1978, 296). Prior research further suggests that this general relationship between source credibility and persuasion is true for persuasion by courts. In the United States, the Supreme Court serves as a heuristic or shortcut in guiding the opinions of some Americans, not necessarily because of the content of its decisions but because the decisions are attributed to the Court, a presumably credible source (Mondak 1990). We are investigating whether the Russian high courts can serve as a similar heuristic for Russians.

Unlike the United States and other countries with a single high court, Russia has three high courts, the Supreme Court, the Constitutional Court, and the Supreme Arbitrazh Court, and each serves a different function (Solomon and Foglesong 2000). The Supreme Court is the court of final instance for most civil, criminal, and administrative justice cases, whereas the Constitutional Court considers cases relating to the compliance of laws and regulations with the Russian Constitution. The Supreme Arbitrazh Court is the highest Russian court for commercial disputes.⁹

When designing our experiments, we did not have a theoretical reason to expect any one Russian high court to have greater potential to persuade than another, particularly because we did not know whether any high court enjoyed greater familiarity or respect among the Russian public than the others. We thus treat as an empirical question whether the persuasive power of courts depends on which court is doing the persuading. In our 2003 survey, we conducted a split ballot experiment, asking random halves of our samples about the Supreme Court or the Constitutional Court, respectively.¹⁰

As we discuss below, the results show that it in fact does not matter which high court is doing the persuading. The Supreme Court and Constitutional Court are virtually interchangeable in terms of their potential to persuade. This 2003 result prompted a further question: Does the persuader even have to be a court? Perhaps any authoritative Russian institution

Table 2
Degree of Persuasion by Supreme Court (%)

	Persuasion from Allowing Rights to Forbidding			Persuasion from Forbidding Rights to Allowing		
	2003	2004	2005	2003	2004	2005
Strengthened initial position	4.1	6.6	2.6	8.5	7.4	7.6
No change	42.5	42.1	41.9	66.1	67.8	70.5
Persuaded one step in direction of Court decision	27.2	24.7	26.5	14.6	15.8	15.9
Persuaded two steps in direction of Court decision	16.1	15.4	21.0	6.4	5.7	2.7
Persuaded three steps in direction of Court decision	5.8	8.9	6.3	1.9	1.9	1.8
Persuaded four steps in direction of Court decision	4.3	2.2	1.6	2.4	1.4	1.5
<i>N</i>	592	562	486	2,023	2,158	2,228

could serve as a source cue or credibility heuristic and potentially persuade the public to accept its decisions. Such a finding would not detract from the important role high courts could play in persuading the public but rather would place that important role in context. To test this possibility, in 2004 and 2005 we conducted another split ballot experiment, this time asking random halves of our samples about the Supreme Court or the Russian legislature, the Duma, respectively. Our experiments thus contribute to the limited research comparing institutions such as courts and legislatures (Hibbing and Theiss-Morse 1995; Baird and Gangl 2006)

Findings

Our initial baseline question on policy preferences toward Jehovah's Witnesses yielded a five-point response distribution, ranging from those who felt very strongly that Jehovah's Witnesses should be forbidden to distribute literature to those who felt very strongly that Jehovah's Witnesses should have the right to distribute literature, with more moderate opinions and "don't know" falling in between. Our follow-up question that stated a Court decision counter to the respondent's initial policy preference also yielded a five-point response distribution, this time ranging from those who very strongly agreed with the Court decision to those who very strongly disagreed, with more moderate opinions and "don't know" again falling in between.

As one way to measure persuasion, we note the difference between the two survey questions. Six options are possible: (1) The respondent might strengthen his or her initial policy position. For example, the respondent might initially feel only somewhat strongly that Jehovah's Witnesses should have the right to distribute

literature but then very strongly disagree with a Court decision to forbid this right. (2) The respondent might not change position at all. For example, the respondent might initially feel very strongly that Jehovah's Witnesses should be forbidden from distributing literature and then, consistent with this initial position, very strongly disagree with a Court decision to grant rights. (3) The respondent might be persuaded one step in the direction of the Court's decision. For example, although initially feeling somewhat strongly that Jehovah's Witnesses should be forbidden from distributing literature, the respondent then answers "don't know" after considering the Court's counter decision. (4) The respondent might be persuaded two steps in the direction of the Court's decision. For example, the respondent might move from a somewhat strong position to forbid to a somewhat strong position to allow rights, or vice versa; from a very strong position to uncertainty; or from uncertainty to a very strong position. (5) The respondent might be persuaded three steps in the direction of the Court's decision, starting from an initially very strong position on one side and being persuaded to hold a moderate position on the opposite side or starting from an initially moderate position on one side and being persuaded to hold a very strong position on the opposite side. (6) Finally, the respondent might be persuaded four steps in the direction of the Court's decision, from initially taking a very strong policy position in either direction but then agreeing very strongly with the Court's counter decision.

Table 2 looks at only those respondents who answered in reference to the Supreme Court. It shows that this Court does have the power to persuade at least some urban Russians. The most common outcome is for Russians to retain their initial policy preferences, with anywhere from 42 to 68 percent of respondents answering the follow-up question in a manner consistent with their baseline policy preferences expressed in the initial

Table 3
Persuasion by Supreme Court to Change Preferences (%)

	Persuasion from Allowing Rights to Forbidding			Persuasion from Forbidding Rights to Allowing		
	2003	2004	2005	2003	2004	2005
Strengthened initial position	4.1	6.6	2.6	8.6 ^a	7.5 ^a	7.5 ^a
No change	42.5	42.1	41.9	66.1	67.8	70.5
Retained initial position but persuaded to be less fervent	13.0	15.4	15.9	12.5	12.7	12.6
Persuaded to abandon initial position but not to agree with Court decision (unsure)	22.2	14.1	20.7	6.0	3.8	2.0
Persuaded to agree with Court decision	18.2	21.8	18.9	6.8^a	8.3^a	7.4^a
<i>N</i>	592	562	486	2,023	2,158	2,228

a. Includes those who initially expressed uncertainty about their baseline policy preference toward Jehovah's Witnesses.

survey question. Still, with any Court decision in any year, at least a quarter of Russians can be persuaded at least one step in the direction of a Court decision.

The results also show that intolerant decisions are more persuasive than tolerant decisions: Among Russians who expressed initial willingness to grant rights to Jehovah's Witnesses, a majority could be persuaded by a Supreme Court decision either to forbid rights or to be less committed to their initial willingness to grant rights. Conversely, among Russians who expressed initial preference for forbidding rights, only about 25 percent could be persuaded to grant rights or at least be less committed to their initial preference to forbid rights. That is, intolerant decisions are twice as persuasive as tolerant decisions: Twice as many Russians could be persuaded by a decision to forbid rights as by a decision to grant rights. The results are again consistent with previous studies that show it is easier to persuade tolerant Russians to be intolerant than vice versa (Gibson 1998b, 2006).

Some Russians who changed their initial position were persuaded only to be less fervent in their conviction, whereas others abandoned their conviction entirely and switched positions. Another measure of persuasion takes this distinction into account (Table 3). Among Russians who were initially willing to grant rights to Jehovah's Witnesses and then heard about a contrary Court decision, 13 to 16 percent still preferred to grant rights but felt less strongly about it, and 14 to 22 percent answered "don't know," suggesting they were persuaded to abandon their initial position but not to agree with the Court decision. A consistent fifth (18 to 22 percent) of Russians each year were fully persuaded and changed their preference to agree with the Court's decision to forbid rights.

Among Russians who initially preferred to forbid rights to Jehovah's Witnesses and then heard about a

contrary Court decision, a consistent 13 percent still preferred to forbid rights but felt less strongly, about the same percentage losing fervor as those who initially preferred to grant rights. However, major differences are seen in the next two categories: Only 2 to 6 percent answered "don't know," suggesting they were persuaded to abandon their initial position but not to agree with the Court, and only 7 to 8 percent were fully persuaded and changed their preference to agree with the Court's decision to grant rights. Looking at the data in this way, with 18 to 22 percent fully persuaded to forbid rights and only 7 to 8 percent fully persuaded to grant rights, intolerant decisions are even more than twice as persuasive as tolerant decisions.

Taken together, the results show that the Russian Supreme Court does have the potential to persuade a meaningful percentage of the urban public to accept its decisions. The Court's potential is greatest when its decisions are intolerant or favor denying rights to disliked groups. The potential to persuade also exists when Court decisions are tolerant, but among a smaller audience.

These results are highly consistent across all three surveys. The finding that Russian high courts have the potential to persuade thus seems reasonably reliable, as does the finding that persuasion will be more successful when court decisions are intolerant.

Does it matter which high court is the source of the potentially persuasive decision? Does the Russian Supreme Court act as a greater credibility heuristic than the Russian Constitutional Court, or vice versa? Table 4 shows that both high courts have essentially the same potential to persuade the Russian public to accept their decisions. For both the Supreme Court and the Constitutional Court, urban Russians most commonly respond to a Court decision counter to their initial policy preferences by retaining those preferences.

Table 4
Persuasion by Supreme versus Constitutional Court, 2003 (%)

	Persuasion from Allowing Rights to Forbidding		Persuasion from Forbidding Rights to Allowing	
	Supreme Court	Constitutional Court	Supreme Court	Constitutional Court
Strengthened initial position	4.1	5.7	8.5	9.0
No change	42.5	43.9	66.1	64.8
Persuaded one step in direction of Court decision	27.2	27.2	14.6	15.9
Persuaded two steps in direction of Court decision	16.1	16.7	6.4	6.4
Persuaded three steps in direction of Court decision	5.8	5.5	1.9	1.4
Persuaded four steps in direction of Court decision	4.3	1.0	2.4	2.5
<i>N</i>	592	604	2,023	2,173

Table 5
Persuasion by Supreme Court versus Duma (%)

	Persuasion from Allowing Rights to Forbidding				Persuasion from Forbidding Rights to Allowing			
	Supreme Court		Duma		Supreme Court		Duma	
	2004	2005	2004	2005	2004	2005	2004	2005
Strengthened initial position	6.6	2.6	8.4	3.0	7.4	7.6	8.2	10.4
No change	42.1	41.9	38.3	45.4	67.8	70.5	68.1	66.9
Persuaded one step in direction of Court decision	24.7	26.5	25.8	28.2	15.8	15.9	16.8	15.7
Persuaded two steps in direction of Court decision	15.4	21.0	16.9	15.9	5.7	2.7	4.4	3.4
Persuaded three steps in direction of Court decision	8.9	6.3	8.1	2.7	1.9	1.8	1.4	2.1
Persuaded four steps in direction of Court decision	2.2	1.6	2.4	4.7	1.4	1.5	1.1	1.5
<i>N</i>	562	486	593	467	2,158	2,228	2,027	2,151

However, a sizeable percentage—anywhere from a quarter to half—can be persuaded in the direction of the Court decision. Also for both courts, an intolerant decision to deny rights is more persuasive than a tolerant decision to grant rights.

Because awareness of courts is relatively low in Russia, the lack of differentiation between the persuasive powers of the two high courts is not surprising (see the later discussion of awareness of courts and familiarity with court decisions under Limitations). Still, the lack of differentiation begs the question of whether the important finding is that courts can persuade some urban Russians or that any authoritative institution in Russia could do so. Are Russian courts especially persuasive or especially unpersuasive relative to other Russian institutions? Research suggests that this question is a critical one for understanding policy legitimacy because “legitimacy is inherently comparative” (Mondak 1990, 365). In our second and third rounds of the survey, we therefore conducted another split ballot experiment, this time asking alternately about the Supreme Court and the Russian legislature, the Duma.

Table 5 shows that the results are essentially the same no matter which institution, the Supreme Court or the Duma, is doing the persuading. As in our first experiment with two different Russian high courts, here both institutions have some power of persuasion and both persuade more effectively with intolerant decisions than tolerant decisions. The response distributions for both years of the experiment (2004 and 2005) and for both directions (forbid to allow and allow to forbid) are nearly identical for the two institutions. This finding suggests that the power to persuade may be rooted in the authoritativeness of an institution—any institution, not just courts. At least in Russia and perhaps in other countries that are “between dictatorship and democracy” (McFaul, Petrov, and Ryabov 2004), the Court’s power of persuasion may not derive from its unique institutional position.

Nevertheless, the fact that the Court can persuade is important. The findings suggest the potential for judicial effectiveness in Russia. Unfortunately, the findings also suggest that a less than tolerant high court can have a greater impact on Russian opinion than a more tolerant high court.

Limitations

The results of our survey experiments are suggestive and have certain limitations. First, we have tested whether the Russian Supreme Court, Constitutional Court, and Duma can influence public policy preferences, not whether they actually do. In the real world, for these institutions to persuade, Russians first need to know about Court decisions and legislation (Hoekstra and Segal 1996, 1084). People cannot be persuaded by an outcome they have not heard.

This is a valid concern: Most Russians are relatively unfamiliar with Court decisions. In all three years of our survey, only 50 to 60 percent of urban Russians claimed they even heard of the Russian Supreme Court, and of those who have heard of the Court, only 15 to 20 percent claimed they were somewhat familiar or very familiar with any decision the Court made in recent years.¹¹ Such numbers are consistent with the public's unfamiliarity with court decisions in many countries. For example, in the United States, the Supreme Court has a long history and enjoys a reasonable amount of media coverage, and Court rulings are often transmitted to the public through the media and public discussion (Mondak 1994, 378; Franklin and Kosaki 1995). Still, the American public is poorly informed about U.S. Supreme Court decisions (Tanenhaus and Murphy 1981; Franklin and Kosaki 1995). In the 1980s, only half the American public could recall even a single Court decision (Adamany and Grossman 1983). If the Russian public fails to learn about particular high court rulings, then persuasion by these Courts is obviously unlikely.

We fully acknowledge that our survey experiments are not a test of whether the Russian high courts have been persuasive in actuality but whether they have the potential to be. This approach has been used effectively in research on other high courts. For example, Mondak (1990, 380) explains that his "results are best seen as demonstrating how a Supreme Court endorsement can affect policy legitimacy rather than revealing what effects actually do occur." Moreover, the Russian government and judiciary are well aware of the low public knowledge of their courts and have developed plans to improve that knowledge via the establishment of court Web sites and media attachés at regional courts.¹² If these plans succeed, the courts' potential persuasive powers could be realized.

A further seeming limitation of our findings is that they are derived from experiments embedded in surveys, and attitudes revealed by such experiments may not reflect true attitudes in the real world. Challenges to detecting persuasion in surveys include the use of

a hypothetical rather than an actual case before the Court with a pretest/posttest design, possible lags between the survey and Court decisions, and the uninteresting nature of the issue being debated, at least in the eyes of the surveyed public (Caldeira 1991, 305; Hoekstra and Segal 1996, 1084).

These challenges are probably not very problematic for our results. First, the hypothetical Court case in our experiment is very similar to many real cases that were and are being tried in Russian lower courts, and any differences are unlikely to make a persuadable Russian unpersuadable, or vice versa, especially because, as previously discussed, most Russians are not even familiar with the real Court decisions. For our test of the potential for public persuasion, the real or hypothetical character of a high court case is less crucial than the ability to measure acceptance of the court's decision, despite an initial predisposition to the contrary.

Second, a concern with lags between the survey experiment and real-world court decisions again mistakenly assumes that Russians currently follow court decisions enough to know and be influenced by them. Our data cast doubt on any meaningful contamination by real-world events. The 2003 survey was conducted before the most infamous ruling on Jehovah's Witnesses, the Moscow City Court ruling, and the 2004 and 2005 surveys were conducted afterward, and the results of our experiments in those years are virtually identical. Again, the biggest challenge for Russian high courts to realize their potential as persuasive institutions is to make their decisions known.

Third, many if not most court cases are remote from the interests of the majority of the public (Hoekstra and Segal 1996; Hoekstra 2000, 2003). Cases involving Jehovah's Witnesses are probably no more and no less so. Whether a very salient issue would increase or decrease the potential for Russian courts to persuade awaits further research.

Another seeming limitation of our results is that we conflate two types of individuals, those who dislike Jehovah's Witnesses but are politically tolerant and those who like Jehovah's Witnesses and therefore feel no conflict in granting the group rights. By not opposing Jehovah's Witnesses in the first place, the latter group could not by definition be persuaded to tolerate. As discussed above, this seeming limitation actually serves to buttress our findings because presumably those who like Jehovah's Witnesses would be especially disinclined to deny them rights. We thus set up a hard test for court persuasion in the direction of intolerance, and we nevertheless find great affirmative evidence.

Conclusion

Notes

Our experiments show that Russian high courts have the potential to persuade some urban Russians to accept their decisions. Our experiments also show that the courts' potential to persuade is at least twice as great when court decisions are intolerant as when they are tolerant. The results are virtually the same whether the persuasive institution in question is the Supreme Court, the Constitutional Court, or not a court at all, but the Russian legislature, suggesting that persuasive powers are not the exclusive preserve of courts.

The normative ramifications of these findings are mixed. On one hand, those who believe that an effective judiciary depends on the persuasive powers of courts can take comfort in evidence showing the potential for courts to persuade in Russia and, consequently, for judicial effectiveness in the country. If the question is whether nonexecutive institutions such as high courts can exercise some power in contemporary Russia, the answer seems to be yes.

On the other hand, an effective judiciary is not necessarily a liberal democratic judiciary. The potential for courts to persuade is strongest when judicial decisions are normatively undesirable to many of us—when the decisions support laws that deny rights to minorities, for example. If the Russian high courts make decisions that are intolerant, then judicial effectiveness as evidenced by public persuasion will not serve democracy. Russia may be better off with an unpersuadable but tolerant public.

Both the normatively positive and negative ramifications of our findings—that Russia could have an effective judiciary and that the judiciary could most easily persuade in an intolerant direction—will not materialize overnight. Our data also confirm the limited public awareness of Russian high courts and even more limited public familiarity with court decisions. As long as Russian high courts continue to fly under the public radar, their persuasive powers remain potential rather than actual.

For those hoping the Russian high courts will ultimately serve as republican schoolmasters, the delayed realization of the courts' persuasive power is probably a good thing if court decisions fail to protect the rights and liberties of minorities. If future court decisions instead grant rights, then the small percentage of Russians who can potentially be persuaded by such decisions may justify some optimism that these decisions will in the long run be supported and enforced. The ball seems to be in the courts' court.

1. For example, in June of 2004 the Supreme Court upheld the verdict of the Bashkortostan Supreme Court that banned the Church of Scientology in Bashkortostan (<http://www.rferl.org/reports/tb-daily-report/2004/06/0-280604.asp>).

2. Gibson and Duch (1991, 206) find that "elites are not always more committed to democratic values than are ordinary citizens. . . . There is some limited evidence that elites in systems with relatively less democratic values are *less* politically tolerant than the mass public."

3. See Gibson and Duch (1991) for a similar strategy of using fascists as the target group for all respondents.

4. The documentation of these cases is vast. See, for example, Zolotov (1999), the Associated Press (1999), Goble (2000), Wallace (2001–2, p. 43), Fagan (2004, 2005), *Congressional Quarterly/CQ Transcriptions* (2005), the U.S. Department of State (2005), and Schreck (2006).

5. Approximately 500 respondents were selected at random for face-to-face interviews in each of the following twelve cities each year: Moscow (adult population of 8.6 million), St. Petersburg (3.8 million), Nizhny Novgorod (1.1 million), Novosibirsk (1.1 million), Samara (946,000), Rostov-na-Donu (867,000), Chelyabinsk (853,000), Perm (796,000), Saratov (712,000), Khabarovsk (469,000), Irkutsk (458,000), and Tomsk (389,000). Cities were stratified into several geographic/administrative units (urban raioni). Primary sampling units and sampling points were electoral districts. Electoral districts were selected at random using the method of probability proportionate to the size of the electorate (adult population 18 years or older). Within each electoral district, households were selected from a total list of households using a random digit procedure, and individuals were selected randomly using Kish grids. The final sample contained 607 sampling points in 2003 and 598 sampling points in 2004 and 2005, with approximately 10 interviews per sampling point. In 2003, the overall response rate was 68 percent of the 8,985 targeted individuals, or 6,074 respondents. In 2004, the overall response rate was 69 percent of the 8,805 targeted individuals, or 6,043 respondents. In 2005, the overall response rate was 67 percent of the 9,000 targeted individuals, or 6,044 respondents. Survey questions were written by Javeline and Baird in consultation with the U.S. Agency for International Development's (USAID's) Moscow branch and the Institute for Comparative Social Research (CESSI). The Russian translation was prepared by CESSI and checked by Javeline and USAID. The resulting data were weighted for city size and regions within a city as well as gender and age to correct for a slight overrepresentation of women and older Russians typical of surveys in Russia.

6. In Rugg's 1941 experiment, 16 percent more people said they would "not allow" public speeches against democracy than would "forbid" such speeches. In Schuman and Presser's later experiment, 27 percent more said "not allow" than "forbid."

7. Respondents who answered "don't know" to the initial question on baseline policy preferences were treated as if they initially denied rights to Jehovah's Witnesses and asked the follow-up question about granting rights. Because intolerance is widespread and well documented in Russia, and because we anticipated that courts face the greatest difficulty persuading Russians to grant rights, it was more logical to place the uncertain respondents in the same category with those who would forbid rights than those who would grant rights. After all, the respondents who were initially uncertain

should be more persuadable to grant rights than those who were certain rights should be forbidden. As the results will show, it is difficult for courts to persuade even this diluted category of Russian forbidders to grant rights.

8. Half the respondents were asked about the Constitutional Court in 2003 and about the Duma in 2004 and 2005. We discuss this part of the experiment later.

9. The Supreme Court and Constitutional Court could thus hear different kinds of cases about Jehovah's Witnesses. The Supreme Court would hear cases about the implementation of the law on freedom of religion, whereas the Constitutional Court would hear cases that challenged the legitimacy of the law. See the Russian Supreme Court's English Web site for further description of the functions of each court and the structure of the Russian judicial system at <http://www.supcourt.ru/EN/supreme.htm>.

10. We omitted the Supreme Arbitrazh Court from our experiment because it is not very plausible that the Supreme Arbitrazh Court would hear a case involving Jehovah's Witnesses.

11. Survey results for each year are available from the authors by request.

12. "Kontseptsiia federal'noi tselevoi programmy 'Razvitie sudebnoi sistemy Rossii' na 2007–2011: utverzhdena raspriazheniem Pravitel'stva Rossiiskoi Federatsii ot 4 avgusta 2006 g. No.1082-r. [The concept of the targeted federal program "Development of the Judicial System of Russia" for 2007–2011: Approved by an order of the Government of the Russian Federation on August 4, 2006, No. 1082-r.] We thank Peter Solomon for alerting us to these developments.

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