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Legal Contract Enforcement in the Soviet Economy[1]

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In present-day Russia, the *arbitrazh* courts appear to be a respectable and successful institution of contract enforcement. The Soviet state arbitration system was typically viewed as a purely administrative organisation that impeded the development of a contemporary system for legal contract enforcement. The analysis, however, suggests that the Soviet arbitration system was relatively well equipped to assist relationships between decentralised economic agents and had accumulated valuable experience that was the key for its successful performance in the 1990s. The system's activity increased in periods of liberalisation when state enterprises gained greater independence, and diminished during periods of revenant centralisation.
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INTRODUCTION

The literature offers conflicting interpretations of the relationship between the Soviet state arbitration system, *Gosarbitrazh*, and the modern *arbitrazh* courts.[2] Some scholars maintain that a wide gap separates the old system,

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[2] For a description of arbitrazh courts, *Gosarbitrazh,* under Soviet rule see, for example, the volume *Assessing the Value of Law in Transition Economies* edited by Peter Murrell, 2001.

that operated in the command economy, and the new pro-market *arbitrazh* courts (Greif and Kandel, 1995; Hendrix, 2001; Lee and Meagher, 2001). According to Berman (1963), *Gosarbitrazh* was a system of economic courts with judicial and administrative powers.[3] It existed separately from the regular courts, was closely linked to the government, and was immediately subordinated to the supreme administrative bodies of the regions in which they operated.[4] Similarly, departmental courts of arbitration were subordinate to the industrial ministries. While economic plans provided the guidelines for judges, regional and/or state leaders reserved the right to intervene through arbiters' appointments, supervision of their activity, reversal or modification of arbiters' decisions, and retrials. These characteristics are partly responsible for shaping an image of *Gosarbitrazh* as a highly dependent and largely insignificant institution whose practice had nothing to do with the new market-oriented economy. An alternative view is that the success of the modern-day *arbitrazh* courts is due to the reforms that transformed an old institution, rather than creating an entirely new one. Hendley *et al*. (2001) argues that the reforms were 'much more driven by the concern of professionals within the legal system than politicians.' According to Hendrix's (2000) estimate, roughly 30 percent of judges working in the first tier courts in contemporary Russia are former arbiters in *Gosarbitrazh*.

Recent studies of legal contract enforcement in Russia provide an optimistic prognosis of the impact of legal institutions on economic performance. (Pistor, 1996; Johnson *et al.*, 1999; Hendley *et al.*, 1999, 2001). The trend toward the rule of law in post-Soviet Russia is supported by evidence that law and legal institutions are widely used when disputes are hard to resolve. The caseload of *arbitrazh* courts is increasing over time, from some 200,000 cases in 1994 to nearly 400,000 cases in 1998 reaching 70 percent of the mid-1980s level (Hendrix, 2001).[5]

Is *Gosarbitrazh* so distant from the contemporary *arbitrazh* courts that we should view them as an entirely new institution? To what extent did *Gosarbitrazh* provide the contemporary *arbitrazh* courts with essential expertise that has allowed them to develop into a well-regarded institution? This paper attempts to answer these questions. Contract enforcement in

[3] Territorial courts of arbitration, affiliated with the central and local governments, settled disputes between the enterprises subordinated to different ministries. Disputes between enterprises within a single ministry were handled by departmental courts (Pomorski, 1977).

[4] Jurisdiction of regular civil courts was restricted to cases, where one or both parties were individuals, or when both parties were cooperative enterprises and the claims were small.

[5] Although informal solutions through personal relationships are are less prevalent (Hendley *et al.*, 2001), the contemporary *arbitrazh* courts are viewed as superior to private methods in terms of competence, cost, and confidentiality.

highly regulated economies is not a well-studied theme and studying it should shed some light on the institutions that facilitated exchange in the past and under different political-economic regimes, of which we still know very little (Greif, 2000).

The Soviet economic system was not immune to fundamental problems of agency and exchange (Belova and Gregory, 2002) and enforcement of government decisions was one of the top issues. However, against the backdrop of other Soviet institutions, *Gosarbitrazh* may give an impression of being insignificant and subordinate. Traditionally, plans and direct descending orders were viewed as governing resource allocation in a Soviet-type economy; therefore, there was no need for institutionalised inter-enterprise relations. Since the State Planning Committee *(Gosplan)* allegedly produced contracts between state enterprises, *Gosarbitrazh* should be a relatively unimportant executive agency.

This line of argument has several flaws and is at odds with the literature and archival evidence. In his study of Soviet enterprises, Joseph Berliner (1957) emphasises the importance of inter-enterprise contracts. Janos Kornai (1980, p. 66) underlines the continuing role of contracts in the planned economy where 'official rationing [plan] determines only relatively aggregate quotas. Rationing is anyway completed by the 'business contract' between buyer and seller in which they agree on the specific quantity, price, time of delivery.' The Soviet archival records provide numerous indications of bilateral relations between enterprises that were regulated by contracts. Each year the government issued decrees on 'the contracting campaign' for the year. While *Gosplan* did allocate resources at the aggregate level, it had no intention of being involved in the actual implementation of transactions at the microlevel. The latter remained, to a great extent, at the discretion of enterprise managers (Belova and Gregory, 2002).

Comparisons of the dynamics of the number of cases filed with *Gosarbitrazh* (the caseload) and economic policy changes allow us to define the role of *Gosarbitrazh.* Had *Gosarbitrazh* simply been an extension of administrative enforcement, periods of taut planning and tight governmental control over enterprises should coincide with increases in *Gosarbitrazh*'s caseloads. Concurrently, decreasing caseloads should match the periods of liberalisation associated with lower administrative pressures. Our analysis shows the exact opposite: *Gosarbitrazh*'s caseload activity grew during periods of liberalisation (mid-1930s, the late-1950s, mid-1960s, and mid-1980s), while it clearly shrank as the government tightened the screws (the early and late 1930s, the late 1940s – early 1950s, and the 1970s).

The rest of the paper proceeds in three steps. The next section outlines the creation of *Gosarbitrazh* in the context of institutional change in the 1920s

and the 1930s. The subsequent section examines the interplay between administrative and legal contract enforcement throughout the 1930s – the 1980s. A conclusion follows.

THE CREATION OF *GOSARBITRAZH*

Russia was not a stranger to arbitration procedures prior to the creation of the Soviet state. The first regulation on arbitration tribunals for conflict resolution among business firms was approved in 1831 (Yaresh, 1954, p. 139). According to an 1864 law, an arbitration procedure required a written agreement prior to the submission of a commercial dispute. In the beginning of the 20th century, arbitration commissions worked at all commodity exchanges and had a permanent staff of arbiters. Yaresh (1954) argues that 'the rulings of those commissions had binding force, wherever the contesting parties, when submitting a case to arbitration, had given their written consent to that effect.'[6]

The development of legal institutions was subject to much controversy during the first 20 years of the Soviet regime. Periods of legal nihilism alternated with periods of legal revival, but by mid-1930s, the political leadership recognized law as an important instrument of authority (Huskey, 1992). The history and development of *Gosarbitrazh* reflects both the fate of the Soviet legal system and the history of contractual relations in the Soviet economy.

The period of naiveté, the 1920s – the early 1930s

Nationalisation of all industrial enterprises during War Communism (1918–21) left virtually no room for direct 'horizontal' relations between producers and consumers. Governmental decrees were supposed to regulate all the production in the economy. As the New Economic Policy replaced the disastrous War Communism in 1921, sales representatives for production enterprises (*syndicates*) took over industrial distribution. Syndicates were organised on a voluntary basis so that participating enterprises and trusts were free to market their output through other organisations, if they felt syndicate prices were too high. Normally, syndicates and trusts sought dispute resolution in the Arbitration Commissions, the predecessor of *Gosarbitrazh*, while government contracts were enforced by administrative means.

[6] Yaresh (1954) refers to a pre-revolutionary publication on commercial arbitration courts by Volkov, A. (1913) *Torgovye Tretieskye Sudy*, p. 134.

The first years of central planning (1928–30) were marked by the Soviet government's naive presumption that no agent in a socialist economy would act opportunistically and that state plans would be automatically fulfilled. Thus contracts would no longer be necessary. This vision led to the abolition of Arbitration Commissions, routinely accused in the official press of 'misunderstanding the guidelines of centralised planning.'

By 1931, it became clear that the attempt to create an 'ideal' planned economy had failed. Several important changes were introduced to mitigate the disastrous consequences of the period of naiveté, of which the following three are the most important: First, banks started to require officially approved contracts in order to authorise credits (SZ, 1931). The banking system therefore became an important asset in *Gosarbitrazh*'s contract enforcement tools. The State Bank transferred funds to the wronged party, or more importantly, or froze the accounts of a contract violator. Second, the distinction between 'planned' and 'extra-plan' contracts was introduced. Planned contracts were subject to price regulation by state agencies, while extra-plan contracts allowed negotiated prices. Third, all plans were to be broken down into actual contracts during contract campaigns at the beginning of each year. *Gosarbitrazh* facilitated these campaigns and sought resolution in cases of breaches of contract.

Further development of *Gosarbitrazh*, the 1930s

After the failure of idealistic planning, contracts became an integral part of the Soviet economy, although contract law and practice changed frequently. *Gosplan,* when confronted with distribution problems, sought to avoid detail in allocating even the most basic products (Lazarev and Gregory, 2002; Belova and Gregory, 2002). Actual distribution was left to buyers and sellers working through supply agencies and direct contracts. Bilateral transactions remained below the radar screen of central authorities, which could influence transactions only by indirect regulation and by direct interventions. The high cost of collecting and processing information in a single centre ultimately forced the Soviet government to delegate certain decision-making rights to the legal system (Kroll, 1986).

The *contract campaign* constituted the final stage of planning. Its main objective was to match buyers and sellers and thus transform planned quotas into actual transactions. Administrative decrees set general rules and deadlines for contract campaigns, while economic agents engaged in peer-to-peer negotiations. Often Soviet enterprises entered negotiations with a predetermined 'target' constraint. They could not simply walk out if the potential partner offered unacceptable terms but had to file a precontract complaint with *Gosarbitrazh*. Precontract disputes could arise due to

insufficient information and uncertainty about targets (quotas, funds, time of delivery, etc) at the time of the contract campaign. One of *Gosarbitrazh*'s responsibilities was to expedite precontract negotiations between buyers and sellers so that the contract campaign would end on time, and the risk of breach of contracts would be minimised in the future.[7]

The formation of the multilevel system of arbitration courts had been completed by mid-1930s, and a hierarchy of *general, local,* and *direct* contracts had been established. Higher-level courts considered larger and more important contracts. Departmental courts within industrial ministries specialised in inter-enterprise disputes to speed up contract campaigns and handle dispute resolution between the enterprises of common affiliation. The 1934–36 period marks *Gosarbitrazh*'s peak prewar caseload. Arbitration courts of different levels of jurisdiction resolved some 95 percent of cases submitted annually at all levels. In particular, the 1933 numbers demonstrate that *Gosarbitrazh* was able to resolve about 80 percent of non-payments and price-related disputes within 1 year (GARF 8424.1.5:71), while administrative enforcement had evidently failed to deal with the problem.[8]

The state had two major objectives in creating the arbitration system. The first was to provide economic agents with incentives to follow a well-defined

[7] Often contract campaigns evolved into a near chaotic process that appeared to have little correspondence to the aggregate plan on which they were supposedly based. This is illustrated by a 1935 *Gosarbitrazh* report: '…the organs of supply and distribution are set up in such a fashion that we have a significant impediment to product exchange and an extremely incorrect regulation of our material wealth. Sometimes, due to the mistakes [of distribution organizations], a whole series of factories are closed while suppliers and distributors bear no responsibility to their customers…' (GARF 8424.1.1,8).

[8] Even when all conditions were set in a contract, a seller could still neglect regulations. For example, in violation of a governmental decree, the Union-Wool trust gave the order to its supply bases to increase contract prices on average by 60 percent. (GARF 5446.16.4308: 19; April, 1935). The deadlines for contract completion were often missed because of the late release of 'funds' by central organisations, the late distribution of general contracts, disagreements between production programs and supply plans, and insufficient information on direct contracts. Producers/suppliers often refused to enter contract negotiations at all in the early stages of the contract campaign when plan targets were not yet known. Confusion about prices and non-payments caused over 60 percent of all disputes in 1932–34 (GARF 8424.1.2:2; 1933 GARF 8424.1.5:71; 1934 GARF 8424.1.8:1-2). Such disputes were particularly common because price monitoring was too burdensome, even if the government made specific pricing-policy provisions. Most prices could not be found in pricing catalogs; and if they were, the actual product could be claimed to have different qualities from the one found in the catalog. Mark Harrison (1998, 2000) argues that plan prices were inflated due to the producer's desire to achieve a planned gross value of output with less effort. In many cases producers managed to conceal these inflated prices from the government. For instance, in the Soviet defense industry prices were often set 'provisionally' and subject to review 'in the light of actual costs' (Harrison and Simonov, 2000). Even when a supplier received a direct order to make a planned delivery, there was no assurance of actual delivery. Suppliers were inventive in finding legal ways to avoid contract fulfillment, for example, by dredging up ambiguous state decrees.

procedure for in-court dispute resolution instead of breaking or renegotiating contracts in a disorderly fashion. The second objective was to relieve the administrative hierarchy of the burden of petty decision-making, while reserving the superiors' right to use discretionary power when needed. To facilitate low-cost dispute resolution, ministries and regions subsidised arbitration courts from their budgets (*BFKhZ*, 1936, p. 2). In many cases, disputing parties did not bear any litigation costs except for submission fees, which in the 1930s, constituted on average less than 1 percent of claimed amounts.[9]

According to Ramney and Watson (1999), low costs of legal enforcement may cause two consecutive effects. In the first phase, an exchange-improving outcome may be attained since sufficiently low costs stimulate in-court dispute resolution. Second, in-court dispute resolution may become preferable to a renegotiating process, given that verification of information is costly and individual costs do not rise. This line of argument can be applied to the Soviet arbitration system in the 1930s. The ability of *Gosarbitrazh* to resolve cases expeditiously, combined with subsidised costs of litigation, ensured that agents would seek in-court dispute resolution. That led to crowding-out of peer settlements and overloading of the *Gosarbitrazh*. The latter problem was recognised as early as the mid-1930s, when every contracting campaign guideline included a warning against needless suits. In January 1937, the minister of heavy industry ordered enterprises to refrain from 'redundant' disputes and negotiate mutually acceptable solutions without filing lawsuits. Arbitration courts were asked to report the participants in nuisance disputes to the minister (*BFKhZ*, 1937, No. 4). Such policies resulted in a slight reduction in caseloads, but, clearly, suboptimal costs of arbitration could not eliminate rent-seeking by agents filing ungrounded claims or claims for minuscule damages.

Despite its relative success – or, perhaps, as a result of it, – top managers and administrators started to criticise *Gosarbitrazh* for its 'unchecked authority' and exclusive decision-making powers. Although experts and managers might be invited to hearings, customarily disputing parties were not represented by attorneys or mediators and had little influence over judges. Top managers supported the idea of transferring *Gosarbitrazh*'s

[9] For example, in 1933, the standard fee in all arbitration courts in the USSR was 2 percent for small clams (100,000 rubles and less), and 0.1 percent for claims exceeding 10 million rubles (Panferov, 1941). In 1935, the arbitration court of the timber industry charged 40 rubles for filing claims under 25,000 rubles and 125 rubles for claims over 100,000 rubles. In 1938, the fee in the same arbitration court was lowered to only 35 rubles irrespective of the size of the claim. Starting in the late 1930s, practically all departmental courts used flat rates (*BFKhZ* 1936, 1937, 1938; Panferov, 1941).

functions to regular courts, where they could exert a greater control over the process.[10] Such proposals did not find much support in the central government, which had a vested interest in 'quick justice.'

Gosarbitrazh had little power to oppose governmental interventions in the dispute resolution procedure since the dictatorial government was, naturally, above the law. Nonetheless, *Gosarbitrazh* initiated several reforms that produced a visible effect on the ability of enterprises to establish direct bilateral relations. These reforms addressed the division of responsibilities between 'general contractors' (typically, ministries) and 'local contractors' (mid-level economic administrators) and thus shifted the emphasis to short-term contracts to allow for more precise contract term specification. Starting with the 1936 contract campaign, contracting guidelines routinely called for increasing the role of *direct short-term* contracts between enterprises (*BFKhZ*, 1936, 7).[11]

Gosarbitrazh's boldest reform initiative was aimed at creating a level field for all state enterprises regardless of their affiliation. In 1934, *Gosarbitrazh* attempted to align the rights of 'general contractors' and 'local contractors' and tighten the deadlines for completing contract negotiations. Essentially, these steps would allow a lower-rank enterprise to sue higher-rank organisations, such as trusts or ministries. Evidently, *Gosarbitrazh* was committed to the idea of establishing the rule of law within its jurisdiction. The proposed change, however, was at odds with the logic of a hierarchical command system and was never implemented in practice.

ADMINISTRATIVE AND LEGAL CONTRACT ENFORCEMENT IN THE 1930s – THE 1990s

The history of arbitration courts in the USSR is a reflection of continuous interplay between administrative and legal contract enforcement. The relative importance of legal enforcement increased during periods of liberalisation and diminished during periods of expansion of central power.

The statistical data on *Gosarbitrazh* activity throughout the Soviet period is fragmentary and does not support a thorough statistical analysis. Figure 1

[10] In the late 1930s, the proponents of conventional competitive courts in the Ministry of Justice claimed that the absence of collegial decision-making, freedom in issuing rulings and orders, and independence from the Supreme court were Gosarbitrazh's greatest faults (SOT, 1936, p. 6; 1937, p. 1).

[11] Before this, long-term (typically, annual) general and local contracts played the decisive role. The sphere of direct contracting was restricted to cooperative unions, and short-term contracts were allowed mostly in cases of seasonal goods deliveries.

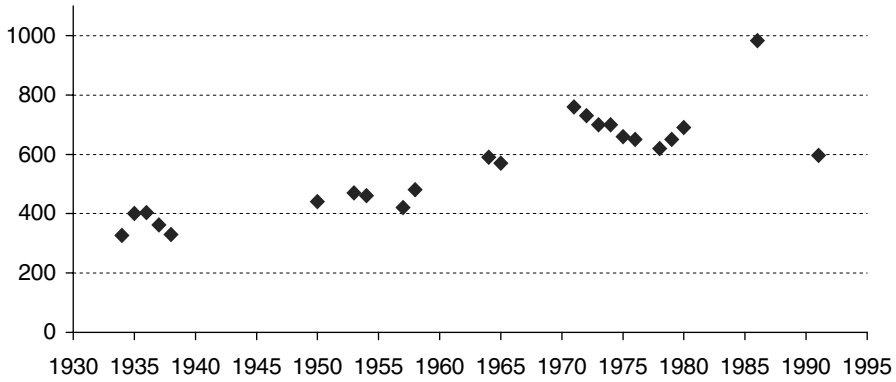

Figure 1: The caseload of *Gosarbitrazh* of the USSR, the 1930s – the 1980s.
Sources: 1932–34: GARF 8424.1.8,11(I); 1935–80: Van der Berg (1985, pp. 170, 238).

presents all the available data on cases filed with *Gosarbitrazh* of the USSR drawn from archival sources and various publications.[12] Despite gaps in data, it is possible to relate changes in *Gosarbitrazh*'s caseload to policy changes. If *Gosarbitrazh*'s main function was to enforce the execution of plans, then it was merely an appendage of the administrative system, technically, a complement to administrative enforcement. Alternatively, if it was in essence an institution for 'normal' contract enforcement, although restricted in its jurisdiction by the administrative hierarchy, then it was a 'substitute' for administrative enforcement (from the perspectives of both the government and enterprises).

We can test these hypotheses by examining variations in the activity of enterprises in filing cases with arbitration courts, recorded as *Gosarbitrazh's* caseload, in connection with policy changes that affected the degree of centralisation. If the 'substitute' hypothesis is valid, then moves towards liberalisation should be accompanied by increases in *Gosarbitrazh*'s caseloads. The relative importance of legal contract enforcement would increase as enterprises gained greater freedom in establishing business relationships. This, in turn, should have formed *Gosarbitrazh*'s experience in handling a greater variety of disputes. At the same time, increasing centralisation and tighter control should bring administrative enforcement to the foreground causing the numbers of cases filed with *Gosarbitrazh* to decrease. The degree

[12] The State Archive of the Russian Federation (GARF). Fond 5446, Council of Ministers of the USSR (*Sovnarkom*); Fond 8424, State Arbitration courts of the USSR (*Gosarbitrazh*). References to archival material are given in the following notation: Fond.Register.File:Page.

of centralisation is reflected in the number of supervisory administrative bodies, such as the number of ministries. The reverse is true with respect to the number of production units that were officially recognised as independent enterprises. Both the number of ministries and the number of enterprises, given in the Soviet statistical sources (eg, *Narodnoe Khoziaistvo*), fluctuate over time rather than increase monotonically. These variables reflect institutional changes; not only the growth of the economy. An additional measure of the degree of centralisation is the share of profits that Soviet enterprises were allowed to retain. Despite the murky nature of the concept of profit in the Soviet economy, higher shares of retained profits did mean that the enterprises had greater control over their investment, employment, and remuneration decisions.

We will focus on several significant policy changes that are described in the literature on the Soviet period to compare periods of decentralisation with periods of 'tightening the screws.' The literature (Bergson, 1967; Nove, 1992; Gregory and Stuart, 1998) identifies the latter as the late 1930s, the late 1940s, the early 1950s, and the mid-1970s. Periods of decentralisation are the mid-1930s ('Stalin's neo-NEP'), the late 1950s (*sovnarkhozy* reforms), 1965–70 (Kosygin reforms and *khozraschet*, the period Bergson (1967) viewed as 'market socialism'), and 1985–91 (Gorbachev reforms).

A rapidly growing number of disputes filed with the courts of arbitration characterised the first period of liberalisation in the mid-1930s. The numbers reached a peak in 1936 with some 40,000 new cases. Subsequently, lower caseloads accompanied a greater reliance on direct administrative controls that extended from the late 1930s through the Second World War, and into the early 1950s.

In the mid-1930s, *Gosarbitrazh* initiated a number of reforms to improve the status of local contractors. The reforms did not take hold until the 1950s when enterprises started to participate on a more equal footing with ministries in determining the terms of general and local contracts. The period of most rapid increase in caseloads started in 1957, with Khrushchev's replacement of narrowly specialised industrial ministries by territorial regulatory bodies (*sovnarkhozy*). The *sovnarkhozy* reform increased the number of contracts crossing administrative boundaries, and enterprises had to use legal enforcement more intensively. Although *sovnarkhozy* were eliminated by the mid-1960s, reforms that granted more independence to the enterprises continued, causing further expansion of legal enforcement. After 1957, direct contracts became the dominant form of commercial transaction. An increase in the number of disputes in *Gosarbitrazh* mirrors this process. Caseloads were 14 percent higher in 1958, 40 percent higher in 1964, and 80 percent higher in 1971.

The second-half of the 1960s saw the elimination of the *sovnarkhozy* and restoration of industrial ministries. However, in 1965, a reform was adopted which increased managerial powers and independence. Enterprises were allowed to retain a greater percent of their profits while contributing less to the central budget. The ratio of profits retained by the enterprises to their assets can be viewed as a rough 'index of liberalisation' reflecting the state enterprises' incentives to seek a resolution instead of renege on the contract, should a dispute arise. Figure 2 demonstrates the co-movement of the ratio of retained profits and the caseload of *Gosarbitrazh*. In the second-half of the 1960s, the retained profit/asset ratio increased by nearly 60 percent while the caseload of *Gosarbitrazh* increased by 33 percent.

Reinforcement of the centralised ministerial system in the early 1970s was marked by a decrease in the number of disputes brought to *Gosarbitrazh* as managerial powers granted by the 1965 reform disappeared (Nove, 1992, p. 384). In 1974, the *Gosarbitrazh* system itself was pushed toward a greater centralisation. Specifically, local and republican arbitration courts lost their autonomy to the supreme arbitration court under auspices of the USSR Council of Ministers and the supreme arbitration court became responsible for monitoring all the local courts' decisions. By the late 1970s, the caseload dropped down by some 13 percent, from 760,000 cases in 1970 to 650,000 cases in 1979, while the ratio of retained profits dropped by 40 percent. Additionally, in the 1970s, the number of disputes filed with *Gosarbitrazh* are positively correlated with the number of enterprises and negatively correlated with the number of ministries (see Figure 3). The regression analysis (See Table 1) shows that roughly a 1 percent increase in the number of enterprises

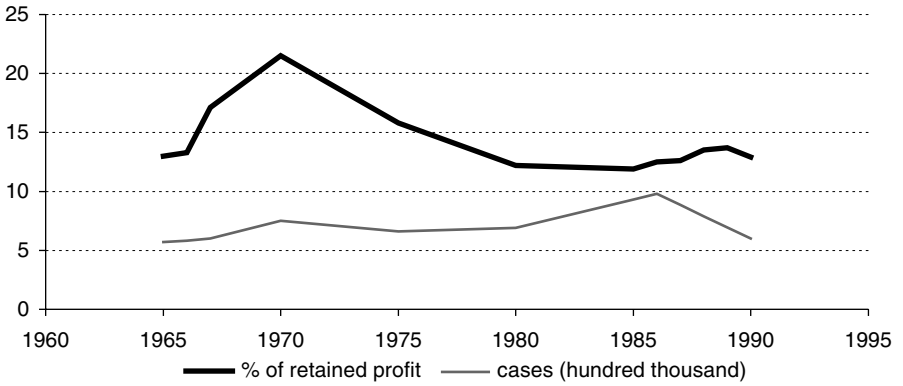

Figure 2: The ratio of profits retained by the Soviet enterprises to their assets, the 1960s – the 1990s. *Sources*: *Narodnoe Khoziaistvo*. Various issues.

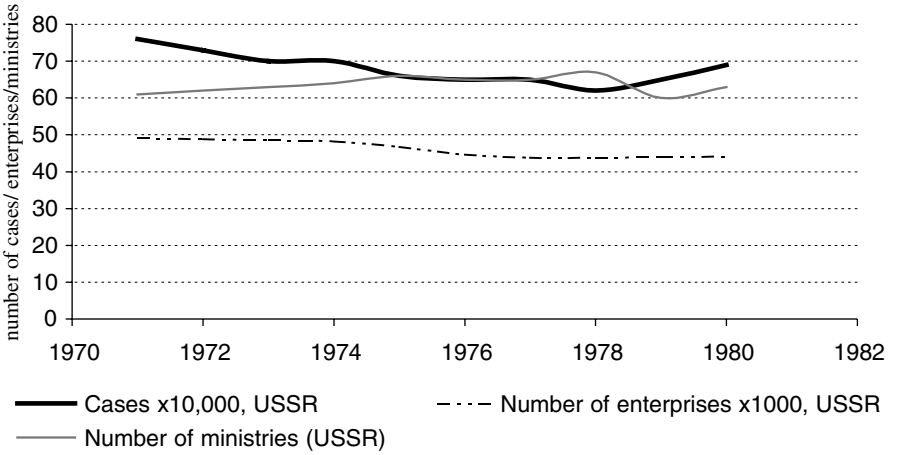

Figure 3: The caseload of the *Gosarbitrazh* of USSR *versus* the number of state enterprises, the 1970s. — cases × 10,000, USSR; – – – –, number of enterprises × 1000, USSR, —, number of ministries (USSR).

Table 1: Analysis of case loads 1970–80

	Coefficient	Standard error	*t* statistic	*P*-value
Intercept	3.683	1.615	2.280	0.057
Log of the number of ministries	−0.684	0.289	−2.365	0.050
Log of the number of enterprises (USSR)	0.881	0.200	4.397	0.003
R^2	0.833			

Dependent variable: log of the caseload.
Sources: See Figures 1 and 2.

led to a 1 percent increase in the caseload. At the same time, the growing number of ministries reflects increasing centralisation and rising power of administrative enforcement. Altogether such changes should have undermined the legal contract enforcement.

The Constitution of the USSR of 1977 provided, for the first time, a legitimate basis for *Gosarbitrazh* (Article 163). In 1980, the USSR Supreme Council passed a new law on *Gosarbitrazh*. Shortly thereafter, several amendments to the law were adopted that spelled out the functions of the republican and local arbitration courts and essentially sanctioned a return to liberalisation. This liberalisation resulted in a 10 percent increase in the caseload, from 620,000 cases in 1978 to 690,000 cases in 1980. By the late 1980s, the caseload grew dramatically (by some 40 percent), due to the fact

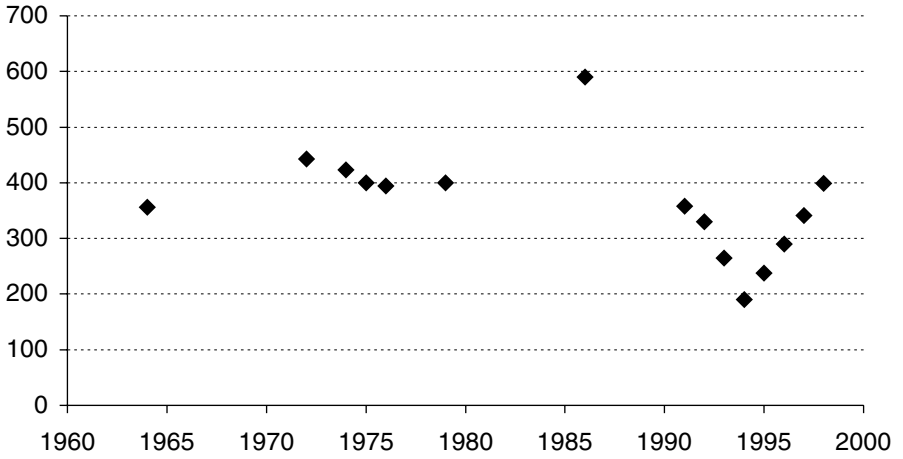

Figure 4: The caseload of Gosarbitrazh, Russia, 1964–98.
Sources: 1979: Shakarian; 1986: Abova and Puginski; 1991–94: Pistor (1996); 1997: Hendley *et al.* (1999, ftn.40); 1995–98: Glenn P. Hendrix (2001).

that republican and local arbitration courts increased their independence and Soviet and international enterprises were allowed to seek dispute resolution in *Gosarbitrazh*.

Overall, during the Soviet era, policy changes toward liberalisation corresponded to increases in the activity of *Gosarbitrazh* suggesting that *Gosarbitrazh* might have been indeed a real alternative to administrative contract enforcement.

In the first years of postcommunist transition, legal contract enforcement experienced a sharp decline along with the economy as a whole. In the first-half of the 1990s, under the conditions of endemic arrears and barter, relational contract enforcement based on the personal relationships came to the foreground replacing fading administrative enforcement and chaotic legal enforcement. However, the period of economic and institutional stabilisation, in the second-half of 1990s, brought about reconsolidation of legal contract enforcement and resulted in the steady increase in the number of appeals to the arbitration system (see Figure 4).

CONCLUSIONS

The archival data indicate that since the mid-1930s prompt dispute resolution at a relatively low cost stimulated Soviet economic agents to seek legal

remedies for the breach of contracts and relieved the government of the burden of trivial decision-making. Although the Soviet *arbitrazh* courts had a number of weaknesses, they formed an institution valued by the government and respected by economic agents. The analysis of *Gosarbitrazh's* operation against the backdrop of major policy changes shows that *Gosarbitrazh*'s activity increased in periods of economic liberalisation and decreased during policy turns toward greater centralisation. This suggests that *Gosarbitrazh* was not a mere 'bolt' in the Soviet administrative system but rather resembled a 'normal' legal contract enforcement institution, typical of a market economy.

The contemporary *arbitrazh* courts emerged through a series of gradual reforms that transformed a viable pre-existing institution that had developed an expertise in inter-enterprise dispute resolution. This seems to explain somewhat surprising recent observations of successful operation of *arbitrazh* courts as the principal institution for legal contract enforcement in Russia's transitional economy.

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