

Russia's Lawyers: Russia and the US Through the Lens of the Legal Profession

Author : Carole Silver

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Kathryn Hendley, [Evaluating the Prospects for Young Lawyers to Remake Putin's Russia](#), 1 **Russian Politics** 450 (2016).

The news about Russia's interference in the U.S. election raises myriad questions for lawyers, including for students of the legal profession. For example, are Russia's lawyers being trained in ways that position them to be complicit in President Putin's increasing autocracy? Or is their education preparing them to challenge his control? Have they served as enabler or challenger in the past? Is there any reason to expect them to take a more activist role today? And generally, what explains the differences among nations in the ways lawyers pursue or forego action aimed at constraining governmental overreach and corruption?

These questions are among the topics explored by Kathryn Hendley in her work on the Russian legal profession and legal system. Hendley's newest article, *Evaluating the Prospects for Young Lawyers to Remake Putin's Russia*, considers whether a group of recent law graduates "might be willing to take on the regime in defense of civil society." (P. 452.) Her focus on lawyers arises from the recognition that "[l]aw has played a critical role in this strangulation of civil society" in Russia, on one hand, and that "[i]n some other authoritarian polities, lawyers have taken the lead in holding authorities to account, often paying a heavy personal price for doing so." (P.451.) Their use of law's mechanisms to pursue justice "act as signals ... [that] may evince a nascent civil society" (P. 451.)

Hendley brings a career's worth of insight and understanding about Russia to this question.¹ Her starting point in this article is the observation that Russia's lawyers generally "do not see their role as questioning the existing laws; they accept these as a given and work to maximize the benefits for their clients." (P. 452.) While she notes exceptions, including the occasional lawyer who "represent[s] defendants in politically-charged cases," (P. 452.)² these do not support an expectation that lawyers will rise up in a public challenge to Putin. Nor is this simply a reflection of recent political regimes in Russia. Rather, as Michael Newcity wrote in an aptly-titled article, *Why Is There No Russian Atticus Finch? Or Even a Russian Rumpole?*, "casting lawyers, courts, juries, and judges in a positive, even heroic, light never took hold in Russia" despite widespread reforms initiated in 1864 based on "Western-style legal institutions."³ Nevertheless, the question that Hendley raises is whether there is *hope* for change, particularly because "the legal profession is not static." (P. 452.) He posits that change among those who study law and become lawyers in Russia may result in lawyers taking more activist roles. While it is not clear what, if anything, suggests that future lawyers will differ from past generations in this regard, one need only consider the forces of social media and information technology in recent world events to recognize the potential for more activist conduct.

To learn about this potential for change, Hendley has undertaken a new study focused on careers of Russian law graduates. This research is patterned on the After-The-JD study of US law graduates (P. 457.)⁴ and will involve a longitudinal study of law graduates who pursue various career paths. In this article, Hendley discusses results of a sample of 301 Russian law students who were about to graduate in 2015 from "a mix of state-funded and private law faculties from ten regions across Russia." (P. 458.) The sample included students of various backgrounds and experiences who intended to pursue diverse career trajectories (including working in the criminal justice system, the state bureaucracy, corporate organizations (in-house positions), and private practice. (Pp. 457-459.)⁵

One of the survey questions asked students why they decided to study law. Nearly 30% of the respondents identified their motivation as a "desire to change or improve society." Hendley focused on this group, which she dubbed the

“Social Change Group,” to explore their potential for challenging Putin’s policies and authority. (P. 460.) In order to understand what “change or improve society” means in the Russian law student context and what attitudes it suggests regarding politics and political activism, Hendley analyzed the characteristics of the Social Change Group in comparison to those of other respondents.

Hendley’s findings are disheartening if unsurprising: The “data provide no evidence of a willingness on the part of the Social Change Group to make waves or challenge the status quo in any meaningful way.” Rather, “their passion for changing and improving society will be expressed by yoking themselves to the Putin agenda.” (P. 477.) At the same time, students in the Social Change Group were not naïve; they indicated an awareness of the effects of politics on the legal system, including, for example, “recogniz[ing] the existence and power of extra-legal factors on the courts, such as connections and bureaucratic incentives.” (P. 477.)

Hendley places some responsibility for the Social Change Group’s support for Putin’s regime on Russian legal education, which has been “traditionally focused on studying the statutory codes, with the goal of mastering their intricacies.” (P. 454) Russian law students are taught in

[t]he tradition of studying law by memorizing the key sections of the major codes [, which] inculcates a deep respect for the law on the books among law students. They are not encouraged to question its content. They neither study the twists and turns of legislative history nor do they debate how the law might be improved. This lack of emphasis on critical thinking facilitates an unquestioning acceptance of the status quo. (P.476.)

Hendley’s analysis of legal education’s role in the development of Russian law students’ professional identity emphasizes what is missing as much as what affirmatively is conveyed:

The sort of critical thinking that is the hall-mark of Anglo-American legal education is mostly absent from Russian law faculties. As a result, according to the typology of lawyers developed by Nelson and Neilsen, Russian lawyers are best conceptualized as technicians, rather than as advisors or hired guns. They rarely take a leadership role in solving problems. Instead, their clients take the lead. This is not unique to Russia, but is often found in authoritarian polities. (P. 454.)⁶

In placing this responsibility on legal education, Hendley also highlights what she characterizes as the distinctively different approach of U.S. law schools, where teaching critical thinking is a common goal. Indeed, it is the focus of the Socratic Method.⁷ Critical thinking, after all, is the *one* thing that most agree is effectively taught in U.S. law schools. At the same time, it is almost an after-thought today, often absent from the current focus on students’ acquisition of specific practice skills, specialized knowledge and technological competency. But while these educational gains admittedly are important for new law graduates, they do not substitute for critical thinking in lawyers’ work.⁸ Amidst the debates about the shortcomings of U.S. legal education, critical thinking often is overlooked.

Hendley’s highlighting of difference offers some potential salve for the arduous experiences we are encountering in the U.S. today, including interference in the electoral system, political objections to the judiciary, threats to immigrants’ rights, and challenges to the relevance and continued viability of U.S. legal education. American lawyers’ response to the Trump Administration’s initial Immigration Order (aka the Muslim Ban) poses a stark contrast. It would be naïve to tie this difference in approach and attitude to a single source, of course, and many leading activists are not lawyers. But to the extent that legal education plays any part, it highlights the important role of US legal education in civil society generally. Which brings home yet another take-away from reading Hendley’s work: as is often the case, learning in a comparative context teaches as much about home as abroad.

1. See, e.g., Kathryn Hendley, *To Go To Court or Not? The Evolution of Disputes in Russia*, in **Sociology of Justice in Russia** (Marina Kurkchiyan & Agnieszka Kubal eds., 2017); Kathryn Hendley, *The Role of Law in*

- Contemporary Russia*, in **Putin's Russia** (Stephen Wegren ed., 2015); Kathryn Hendley, [Judges as Gatekeepers to Mediation: The Russian Case](#), 16 **Cardozo J. of Conflict Resol.** 423 (2015); Kathryn Hendley & Peter Murrell, [Revisiting the Emergence of the Rule of Law in Russia](#), 16 **Global Crime** 19 (2015); Kathryn Hendley, [The Puzzling Non-Consequences of Societal Distrust of Courts: Explaining the Use of Russian Courts](#), 56 **Cornell Int'l L. J.** 517 (2012); Kathryn Hendley, [Varieties of Legal Dualism: Making Sense of the Role of Law in Contemporary Russia](#), 29 **Wisc. Int'l L. J.** 233 (2011); Kathryn Hendley, [The Role of In-House Counsel in Post-Soviet Russia in the Wake of Privatization](#), 17 **The Int'l J. of the Legal Prof.** 5 (2010); Kathryn Hendley, ['Telephone Law' and the 'Rule of Law: The Russian Case](#), 1 **Hague Journal on the Rule of Law** 241 (2009); Kathryn Hendley, [Are Russian Judges Still Soviet?](#), 23 **Post-Soviet Affairs** 240 (2007); Kathryn Hendley, [Law and Development in Russia: A Misguided Enterprise?](#), 90 **Proceedings of the Am. Soc. of Int'l L.** 237 (1996); Kathryn Hendley, [Trying To Make Law Matter: Labor Law and Legal Reform in Russia](#) (1996). [?]
2. Similarly, see **Human Rights Watch**, [Crimea: Defense Lawyers Harassed](#), (Jan. 30, 2017); Peter Finn, [Defense Attorneys Targeted in Russia](#), **Washington Post** (Aug. 14, 2005). [?]
 3. Michael Newcity, [Why Is There No Russian Atticus Finch? Or Even a Russian Rumpole?](#), 12 **Tex. Wesleyan L. Rev.** 271, 272-3 (2005). [?]
 4. For information on After-The-JD, see American Bar Foundation, [After the JD](#); see also, **Ronit Dinovitzer et al., American Bar Foundation, After the JD: First Results of a National Study of Legal Careers (2004); **Ronit Dinovitzer et al., American Bar Foundation. After the JD II: Second Results from a National Study of Legal Careers** (2009); [Gabriele Plickert, American Bar Foundation. After the JD III: Third Results from a National Study of Legal Careers](#) (2017). [?]**
 5. Given that legal education is an undergraduate course of study in Russia, as in many civil law jurisdictions, it is not particularly surprising that many law graduates pursue careers in other fields. (P. 453.) On Russian legal education generally, see Dmitry Maleshin, [The Crisis of Russian Legal Education in Comparative Perspective](#), 66 **J. Legal Education** 289 (2017). [?]
 6. References omitted. [?]
 7. See Elizabeth Garrett, [Becoming Lawyers: The Role of the Socratic Method in Modern Law Schools](#), 1 **Green Bag 2d** 199, 201 (1998) ("The goal [of the Socratic Method] is to learn how to analyze legal problems, to reason by analogy, to think critically about one's own arguments and those put forth by others, and to understand the effect of the law on those subject to it.")(footnote omitted). [?]
 8. See, e.g., Praveen Kosuri, [Beyond Gilson: The Art of Business Lawyering](#), 19 **Lewis & Clark L. Rev.** 463, 481 (2015) ("When one thinks about a lawyer's training, it is at its core about critical and analytical thought. That thought need not be relegated to applying securities law or drafting the best indemnity clause. It is equally valuable in helping clients solve problems that confront their business whether that problem has a solution rooted in the law or elsewhere."). [?]

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