

Law and the Culture of Debt in Moscow on the Eve of the Great Reforms, 1850-1870

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ABSTRACT

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This dissertation is a legal and cultural history of personal debt in mid-nineteenth-century Moscow region. Historians have shown how the judicial reform of 1864 dismantled an old legal apparatus that was vulnerable to administrative interference and ultimately depended upon the tsar's personal authority, replacing it with independent judges, jury trials, and courtroom oratory. But as many legal scholars will agree, political rhetoric about law and high-profile appellate cases fail to capture the full diversity of legal phenomena. I therefore study imperial Russian law in transition from the perspective of individuals who used the courts and formed their legal strategies and attitudes about law long before the reform. I do so through close readings of previously unexamined materials from two major archives in Russia: the Central Historical Archive of Moscow and the State Archive of the Russian Federation, including the records of county- and province-level courts and administrative bodies, supplemented by the records of the charitable Imperial Prison Society. I also analyze the relevant legislation found in imperial Russia's Complete Collection of the Laws. Specific topics covered in the study include the cultural and social profiles of creditors and debtors and of their relations, the connection between debt and kinship structures and strategies, the institution of debt imprisonment and its rituals, various aspects of court procedure, as well as the previously unstudied issue of white-collar crime in imperial Russia.

I have found that debt was ubiquitous in Russian life, as in other pre-industrial societies in which cash was scarce, incomes erratic, and formal credit institutions insufficient. It was also

overwhelmingly personal, relying heavily on kinship, acquaintance, and the reputations of borrowers and lenders. My research contradicts the conventional view of Russian society at mid-century as a system of predominantly separate and closed estates. The system of private credit centered in Moscow connected merchants, civil servants, and the landowning gentry, and even wealthy peasants, some of whom lived or owned property in far-away provinces (privately-owned serfs were of course subordinate to their landlords in matters involving property). The credit network was sufficiently extensive and diverse to place an additional burden on Russia's already overworked legal system. The central theme of my study is the engagement of ordinary Russian lenders and borrowers of varying wealth and status, male and female, with each other and with the legal system (and through it with the state) during a crucial turning point in Russia's social and political history.

My research also questions the dominant notion of a closed system of inquisitorial justice in pre-reform courts. The cases I examined reveal the pre-reform legal process as messy, incomplete, polyphonic, and open to extra-legal influences, including those of tsarist administrative officials. Private individuals retained significant discretion and initiative both according to the law and in practice, beginning with the way a debt transaction was formalized and ending with the decision to imprison a debtor or to commit an insolvent to a criminal trial. I therefore argue that pre-reform law with all its faults was a site of conflict, cooperation, and negotiation among diverse individuals seeking to protect and promote their property interests and between private persons and government officials. I show the law to be a key tool for Russia's propertied classes for asserting their own rights against other private individuals and/or against the state. Thus, I reinterpret the relationship between individuals and the administration,

modifying the commonly held view of the Nicholaevan bureaucracy as a monolith imposing itself on the tsar's subjects. As the only study of imperial civil law in practice, this dissertation offers unique evidence on the operations of state and society in Russia at the key period of the Great Reforms, as well as establishes a basis for understanding subsequent legal developments.

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List of Abbreviations

<i>GA RF</i>	<i>Gosudarstvennyi Arkhiv Rossiiskoi Federatsii</i> (The State Archive of the Russian Federation)
<i>PSZ</i>	<i>Polnoe Sobranie Zakonov Rossiiskoi imperii</i> (The Complete Collection of the Laws of Russian Empire)
<i>SZ</i>	<i>Svod Zakonov Rossiiskoi imperii</i> (The Digest of the Laws of Russian Empire)
<i>TsIAM</i>	<i>Tsentral'nyi Istoricheskii Arkhiv Moskv</i> y (Central Historical Archive of Moscow)

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Dedication

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INTRODUCTION

This dissertation examines the culture of personal debt in mid-nineteenth century Moscow region, focusing on the legal aspects of this ubiquitous but little-studied aspect of Russian life.¹ Through close readings of unpublished court cases, I investigate the social ties and cultural rituals of debt, as well as the attitudes and practices of ordinary Russians of differing wealth and social status, male and female, in their engagement with the byzantine old-regime legal system that after 1864 was dismantled by the most spectacular and decisive reform in the history of Russian law.² I argue that debt relations in imperial Russia – diverse and overwhelmingly informal – at once reinforced and challenged such key social and cultural categories as personal autonomy, respectability, gender and kinship structures, and the relationship of individuals to authority; that legal institutions were central to the operations of Russia's culture of debt; and that the much-criticized pre-1864 courts enabled individuals to pursue their interests, to defend their property rights, and to harm their opponents, and thus were essential for understanding all subsequent legal transformations.

My first objective is to examine the social and cultural significance of debt in Russia during a key transitional period of its history, when the paternalistic yet in many ways hands-off social and political regime of Nicholas I (1825-1855) was followed by a period of reforms and relatively more lively economic development. Court records, as well as published sources, show that debt relations involved members of all social groups and legal estates, and were implicated

¹ I leave out imperial Russia's public and government debt, as well as corporate and other large-scale commercial debt, all either already covered in existing literature or deserving a separate treatment.

² The judicial reform of 1864 set up independent courts, jury trials, public and oral procedure, and an organized bar. Other reforms of the 1860s included the serf emancipation of 1861 and the introduction of local self-government.

in virtually all events in a person's life, such as marrying off a child, repairing a house, falling sick, or making routine purchases. Moreover, I argue that debt relations were overwhelmingly personal: liquid cash was scarce and credit institutions insufficient to meet demand and thus all social groups, even serfowners who were eligible for cheap loans from the state, had to resort to loans from friends and relatives or to the services of private moneylenders. This meant that borrowing required not simply economic assessments of one's financial prospects, but also of one's respectability, reputation, and position in the network of social and kinship ties. Gender norms and family structures thus were prominent in Russia's culture of debt, and loans became a central strategy for accomplishing intra-family and inter-generational property transfers.

At the same time, I argue that this traditionally personal and tightly-knit system of private credit had become significantly modified by the mid-nineteenth century, given Moscow's position as an administrative, industrial, and financial center of the empire that drew visitors not only from the surrounding agricultural provinces but also from places much farther away. The credit network that had Moscow as its major hub began to integrate members of all propertied social groups into a still-amorphous "middling" class.³ Credit relations began to be based upon weaker social and cultural ties that were more vulnerable to disputes and abuses, most notably to various types of fraud, discussed in Chapter Three of this study. Not surprisingly given the dearth of formal credit institutions, the court system on the eve of the reform of 1864 experienced additional pressure to regulate these disputes and to punish abuses.

My second related objective in this dissertation is therefore to investigate the mutual impact of legal and other related institutions of the tsar's government and Russia's social and cultural

³ My dissertation does not discuss personal debt among Russia's vast peasant population, except for its wealthier strata that lived in cities and used the courts.

practices relating to private credit. I do so through an analysis of the experiences of individual litigants as gleaned from the records of lower-level courts, as opposed to the writings of legal scholars and Senate appellate decisions, as has been the norm in the study of Russian law. I examine police collection procedures, especially debt imprisonment, as well as debt-related litigation in pre-reform civil courts with its prolonged exchange of written arguments between the parties. I also address several well-known criticisms of pre-reform legal procedure: that it was beholden to the tsarist administration, that it was fragmented according to the legal estates of the realm, that it used a cumbersome system of “formal” proofs and “inquisitorial” procedure that prevented judges from freely evaluating evidence, and that litigants lacked adequate legal representation.

I interpret these features of pre-reform law by examining what they meant to individual litigants in individual cases, and how they affected the goals and interests that individuals hoped to serve by going to court. The picture that emerges from my analysis is that of an amalgam of individual and group values, interests, and ambitions that routinely clashed among themselves and with the judiciary’s regulatory goals. I argue that people’s interactions with police and the courts reveal a degree of reliance upon individual initiative and discretion that is surprising under the conditions of Nicholas I’s authoritarian, bureaucratic regime. In part this private discretion resulted from the empire’s being, paradoxically, under-governed and under-policed, but in part it was an unintended effect of the way these institutions were originally structured. I also argue that individuals who used the courts routinely took advantage of their most criticized features, for example, by using dilatory tactics to turn the legal process into a background framework for effecting their out-of-court negotiations and dispute settlements. At the same time, legal practice

modified and sometimes completely eroded such features as the estate-based court structure and the outdated evidence system. Debt cases, involving a rich variety of factual situations and litigants from all walks of life, are particularly suitable for demonstrating these mutations. My analysis of Russia's legal system, grounded in routine cases involving unremarkable individuals, thus significantly modifies the commonly held view of the Nicholaevan bureaucracy as a monolith imposing itself on the tsar's subjects.

Considering that debt-related cases comprised a major part of court practice in the mid-nineteenth century, my study is applicable far beyond its immediate context. By studying the courts that by the 1860s were widely criticized as corrupt and inefficient, but still widely used by individuals of differing social ranks and wealth, my study fosters our understanding of the hopes and disappointments of the post-1864 legal system, and of the mid-century liberal transformations in general, thus providing an indispensable context for all later Russian legal developments. Finally, my dissertation offers a valuable case study for the history of Russia's institutions more generally, especially from the still-underdeveloped perspective of the relationship between individual Russians and the tsar's officialdom.

Histories of Debt in Russia and in the West

Existing scholarship of imperial Russia examines personal debt only briefly as part of the story of the serf emancipation of 1861 and the development of capitalism in the later nineteenth century.⁴ Several works by Russian and U.S. scholars, in particular those by Saul Borovoi, show

⁴ S.Ia. Borovoi. *Kredit i banki Rossii (seredina XVII v. – 1861 g.)* (Moscow, 1958); “*Kreditnaia politika tsarisma v usloviakh razlozheniia krepostnichestva*,” *Voprosy Istorii* (Feb., 1954), pp. 129-138; “*K voprosu o skladyvanii kapitalisticheskogo uklada v Rossii XVIII veka*,” *Voprosy Istorii*, (May, 1948), pp. 67-77. B.V. Anan'ich. *Bankirskie doma v Rossii, 1860-1914 gg: ocherki istorii chastnogo predprinimatel'stva* (Leningrad, 1991); *Kredit i banki v Rossii do nachala XX veka: Sankt-Peterburg i Moskva*, ed. by B.V. Anan'ich (St. Petersburg, 2005); V.V. Morozan. *Istoriia bankovskogo dela v Rossii: vtoraia polovina XVIII – pervaiia polovina XIX v.* (St.Petersburg, 2001); S.A. Salomatina. *Kommercheskie banki v Rossii: dinamika i struktura operatsii, 1864-1917* (Moskva, 2004). A.V.

the ubiquity of private lending among the Russian gentry (and, with even less detail, among merchants and peasants) and bring up evidence from published pre-Soviet statistical sources pointing out the large extent of gentry indebtedness to the state (two thirds of all privately owned serfs were mortgaged to the state as of 1859).⁵ However, a detailed history of personal debt in Russia – and especially of its non-economic and non-gentry aspects – was beyond their scope. Much of this neglect is, no doubt, attributable to the neglect of credit both in the works of classical political economists following Adam Smith, and in the works of their critics, most prominently Marx who “did not distinguish between cash and credit in his analysis of economic individualism and exchange relations.”⁶ As a result, personal credit has tended to be analyzed both in Russia and in the West as merely an “abstract factor of production (or consumption),” rather as “an open-ended and everyday element” in individuals’ lives during both the industrial and pre-industrial era.⁷

Those analyses of personal debt in Russia that do exist focus on the activities and the impact of the powerful Russian state, especially on its loans to the serf-owning gentry, the government

Bugrov. *Ocherki po istorii kazennykh bankov v Rossii* (Moskva, 2003). Another important body of scholarship – most notably represented by Vasilii Kliuchevskii – debates whether the enserfment of Russian peasants in the sixteenth and seventeenth century was in some way caused by their accumulated indebtedness to their landlords. For the discussion, see Richard Hellie, *Enserfment and Military Change in Muscovy* (Chicago, 1971), p. 3 ff. See in particular, Daniel H. Kaiser, “Forgive Us Our Debts’: Debts and Debtors in Early Modern Russia.” In *Forschungen zur osteuropaischen Geschichte*, pp. 155-193 (Berlin, 1995).

⁵ Borovoi. *Kredit i banki Rossii* and “Kreditnaia politika tsarisma”; N.I. Pavlenko, “O rostovshchichestve dvorian v XVIII v. (k postanovke voprosa)” in N.I. Pavlenko, ed., *Dvorianstvo i krepostnoi stroi v Rossii XVI-XVIII vv.* (Moscow, 1975), pp. 265-272; Jerome Blum. *Lord and Peasant in Russia: From the Ninth to the Nineteenth Century* (Princeton, 1961), pp. 379-385.

⁶ See discussion in Margot Finn, *The Character of Credit. Personal Debt in English Culture, 1740-1914* (Cambridge, 2003), p. 6-7; see also Craig Muldrew, “‘Hard Food for Midas’: Cash and Its Social Value in Early Modern England.” *Past & Present*, No. 170 (Feb., 2001), pp. 78-120, esp. 79 and 120.

⁷ This observation was made about the starting point of the studies of credit in Britain. See John Smail, “Credit, Risk, and Honor in Eighteenth-Century Commerce.” *Journal of British Studies* (July, 2005), pp. 439-456, 441.

pressure that may have resulted from these loans, and the gentry's occasionally expressed desire to liberate themselves from the state's influence through serf redemption payments. Prominent historians of the emancipation, Daniel Field and Terence Emmons, have regarded gentry debt to the state as evidence of poor management and preference for consumption over investment. Field, while not finding a direct causal connection between emancipation and indebtedness, raised the question of the government potentially exerting pressure upon the gentry, by virtue of being the latter's principal creditor (without, however, discussing exactly how the state could exert this pressure other than by dispossessing the gentry en masse).⁸ Emmons argued that the "desire to escape from indebtedness" was "a clearly observable factor leading to abolitionist sentiment among the gentry."⁹ He considered debt unequivocally a sign of economic decline, which was hastened by the availability of credit from the government and the lasting effects of Napoleon's invasion of 1812, as well as increasingly expensive consumption tastes.

This over-emphasis on the state's influence leaves out left out the possibility – well documented for the West (as discussed below) – that the dependency imposed by debt relations could be mutual and that debt could present – and represent – economic opportunities as well as burdens for creditors and borrowers alike. Several Russian and Western scholars have argued that gentry debt represented less of a crushing burden when compared with the overall assets available to serfowners; Boris Litvak also argued that the gentry's significant indebtedness tended to reveal their serf-worked estates' economic vitality and prosperity rather than

⁸ Daniel Field, *The End of Serfdom* (Cambridge, 1976), p. 31.

⁹ Terence Emmons, *The Russian Landed Gentry and the Peasant Emancipation of 1861* (Cambridge, 1968), p. 30.

insolvency or unprofitability.¹⁰ Moreover, the emphasis on the gentry's personal indebtedness to the state fails to consider the significance of debt, and especially its social and cultural aspects, for those Russians who could not meet their personal credit needs by mortgaging serfs to the state – i.e., the majority of the population.

Non-Russianist historians, by contrast, examine the impact of personal credit in Western Europe and North America upon changing social structures and hierarchies as well as upon individual mentalities. The most basic insight of their work is that borrowing permeated all aspects of life in pre-industrial societies (like imperial Russia where large-scale industrialization only occurred in the 1890s), given that ready cash was scarce and existing credit institutions unable to catch up with demand. Credit thus served as a focal point for a network of family and business connections, where borrowing was based on the notions of friendship, kinship, trust, and honor. As a result, debt influenced and even shaped such diverse aspects of life as political ideology, national consciousness, literature, the culture of commerce, family dynamics, and gender identities.¹¹ Most of these studies cover the period of financial, industrial, and consumer revolutions that first took place in Great Britain and were much slower to arrive in Russia.

¹⁰ Borovoi, *Kredit i banki*, pp. 181-213; S.A. Nefedov, *Demograficheski-strukturnyi analiz sotsialno-ekonomicheskoi istorii Rossii: konets xv – nachalo xx veka* (Ekaterinburg, 2005), pp. 220-221; B.G. Litvak, *Russkaia derevnia v reforme 1861 goda: Chernozemnyi tseñtr, 1861-1865 gg.* (Moscow, 1972) 379-384 (noting that indebtedness did not reflect insolvency or show that serf-worked estates were unprofitable); Evsey D. Domar and Mark J. Machina, "On the Profitability of Russian Serfdom." *The Journal of Economic History*, Vol. 44, No. 4 (Dec., 1984), 919-955, 948-949. See Chapter 2 for more discussion. (Struve also claimed that gentry borrowing was used for investment rather than consumption)

¹¹ Kathleen Wilson, *The Sense of the People: Politics, Culture, and Imperialism in England, 1715-1785* (New York, 1995); Smail, "Credit, Risk, and Honor"; Margaret Hunt, *The Middling Sort: Commerce, Gender, and the Family in England, 1680-1780* (Berkeley, 1996); Margot Finn, "Women, Consumption and Coverture in England, c. 1760-1860," *Historical Journal* 39 (1996), pp. 703-722; Catherine Ingrassia, *Authorship, Commerce, and Gender in Early Eighteenth-Century England: A Culture of Paper Credit* (Cambridge, 1998). See also works reviewed by Randall McGowen in "Review: Credit and Culture in Early Modern England," *The Journal of British Studies*, Vol. 41, No. 1 (Jan., 2002), pp. 120-131; Laurence Fontaine, "Antonio and Shylock: Credit and Trust in France, c. 1680-1780," *Economic History Review*, vol. 54 (2001), pp. 39-57 (uses debtor lists to show the non-economic role of debt).

However, their insights are acutely relevant for the case of imperial Russia, mostly because they challenge the clear-cut distinction of modern money-based versus pre-modern economy and society and suggest that changes in the structures and culture of personal credit should not be mechanistically tied to modernization and industrialization. For instance, Craig Muldrew has traced a massive increase in the volume of credit transactions in England as far back as the mid-sixteenth century, whereas Margot Finn has shown that informal credit structures based on personal acquaintance, honor, and reputation (rather than upon an impersonal economic calculation) have persisted among all classes of English society well into the twentieth century.¹² Once we recognize that debt and credit is not a function of capitalism or modernity or industrialization, it becomes much more relevant as a category of analysis for Russia, where these notions have always been even less clear than in the case of Western Europe.

Historians writing about debt in the West emphasize the relations of mutual dependency, risk, and contingency (the exact terminology varies) inherent in personal debt, and show how the social status, gender norms, and economic leverage of the parties shaped debt connections and structures. Thus, Craig Muldrew in his study of credit in early modern England argues that debt connections during capitalism's formative period created "tangled webs of economic and social dependency" which linked households "through the numerous reciprocal bonds of trust" and characterizes the entire early modern system of credit as "the system of judgments about trustworthiness."¹³ Margaret Hunt in her study of the "middling" classes in eighteenth-century

¹² Craig Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England* (London, 1998); Margot Finn, *The Character of Credit*, p. 8, especially relying on Jonathan Parry and Maurice Bloch, who argue against the notion of a "great divide" between the monetary and pre-monetary worlds, see *Money and the Morality of Exchange* (Cambridge, 1989).

¹³ Muldrew, *The Economy of Obligation*, esp. pp. 95-118 (esp. 97) and 148 ff., also quoted in Randall McGowen, "Review: Credit and Culture in Early Modern England," p. 128.

England (which, much like Moscow in the 1850s, included shopkeepers, tradesmen, lower-level professionals, and civil servants) likewise emphasizes mutual dependency and risk created by entangling debt relations that affected kinship groups far beyond those individuals who were actually engaged in commerce.¹⁴ Several U.S. scholars studying the culture and mentality of eighteenth-century Virginia Tidewater tobacco planters, their debts to British merchants, and their role in the American Revolution show how a collapse of an economic and social system predicated upon extensive debt relations had immense political consequences.¹⁵ Thus Western scholars show how debt undermined traditional hierarchies by creating political dissent and by operating across class lines, while at the same time reinforcing them by promoting individuals' concern for reputation and standing in community, as opposed to creating the modern autonomous inward-looking profit-driven consumer.¹⁶ These insights bring out the question of the significance of debt relations for strengthening or dissolving traditional social hierarchies in imperial Russia, where Weberian-style capitalism was slower to develop and where the government was particularly sensitive about social stability and the various factors affecting it.

¹⁴ Hunt, *The Middling Sort*, pp. 22-44, esp. 22 and 29-34. None of this literature addresses the issue of deception as an aspect of trust and risk, i.e., why was deception possible, how, why, and by whom was it carried out – see Chapter Three below.

¹⁵ Emory G. Evans, "Private Indebtedness and the Revolution in Virginia, 1776 to 1796," *William and Mary Quarterly*, Series 3, Vol. 38 (July, 1971), pp. 349-374; "Planter Indebtedness and the Coming of the Revolution in Virginia," *William and Mary Quarterly*, Series 3, Vol. 19 (October, 1962), pp. 511-533; T.H. Breen, *Tobacco Culture: The Mentality of the Great Tidewater Planters on the Eve of Revolution* (Princeton, 1985); F. Thornton Miller, *Juries and Judges Versus the Law: Virginia's Provincial Legal Perspective, 1783-1828* (Charlottesville, 1994) (the relationship of Virginian debt to the structure and ideology of the early American judiciary); Herbert Sloane, *Principle and Interest: Thomas Jefferson and the Problem of Debt* (New York, 1995) (the influence of national and personal indebtedness on Thomas Jefferson's politics and ideology); Bruce H. Mann, *The Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge, 2002), p. 110 (debt as antithesis of republican independence).

¹⁶ See, e.g., Hunt, *The Middling Sort*, pp. 22-29. The last point is made in Muldrew, *The Economy of Obligation*, pp. 261, 271, 316.

Western scholars also develop the theme of dependency and risk inherent in debt to focus on the issues of contestation, power, and inequality involved in debt relations, and on their effect upon individual mentalities. This is most explicit in the work of U.S. scholars who asked how colonial debt affected the self-perception of the American elite concerned with its loss of personal autonomy. In particular, Herbert Sloane has argued that Thomas Jefferson's political career around 1789-1790 was heavily shaped by his staggering personal indebtedness, which led to his attempts to set up the new nation along lines of austerity and independence from European creditors.¹⁷ This awareness of the coercive and authoritarian character of debt is also at the heart of Margot Finn's work on personal credit in England before 1914. Relying in part on Pierre Bourdieu's characterization of debt as an act of "gentle violence" and "an attack on the freedom of one who receives it,"¹⁸ Finn regards debt as a cultural conflict rather than a social connection, but she does not view even the most unequal contests – such as debtors' prisons or the application of the laws of coverture and necessities – as simply a one-sided application of force. These insights are important for the history of imperial Russia, and, in particular, of its legal institutions and of the interactions between private individuals and tsarist officials, because relatively few works so far have focused on these interactions as reciprocal relationships.

Although much of the recent literature on personal debt emphasizes the endurance and strength of personal informal credit ties, historians show that attitudes and practices relating to debt did evolve throughout the eighteenth and nineteenth century. Bruce Mann, Margot Finn, and

¹⁷ Sloane, *Principle and Interest*. The sentiment that Americans were losing personal autonomy through debt was taken so far as to prompt a comparison of debt with slavery, especially in the slave-owning tobacco colonies like Virginia. Mann, *The Republic of Debtors*, pp. 125-130.

¹⁸ Pierre Bourdieu, *Outline of a Theory of Practice*, trans. Richard Nice (Cambridge, 1977), p. 193, cited in Finn, *The Character of Credit*, pp. 9-10.

Jay Cohen, among other authors, discuss how the legal and cultural stance toward debt and insolvency as a culpable moral failure that required a harsh punitive response (often directed against the debtor's physical body) very gradually changed beginning in the eighteenth century to the view that debt was a necessary risk and even beneficial to economic activity.¹⁹ The ostensible result of this mental shift in all major Western legal systems was to gradually introduce bankruptcy discharge, as well as to limit and then abolish debt imprisonment. This process was not only slow (for example, American colonies started experimenting with bankruptcy statutes in the eighteenth century, but a permanent legislation only appeared in 1898), but also ambivalent: in England, as Margot Finn shows, while attitudes softened towards insolvents who were merchants and other "respectable" risk-takers, the law actually hardened in the nineteenth century with respect to petty, mostly working class debtors, who after the Victorian prison reform were treated as delinquents rather than victims of misfortune.²⁰ As I show in this study, similar, but not identical, legal changes also took place in imperial Russia, likewise showing conflicting motivations and uneven and often gradual development.

Law and Legal Reform in Imperial Russia

The study of law in imperial Russia has focused on the judicial reform of 1864 as the key event that introduced a measure of independence for the judiciary and a more efficient public and oral procedure with criminal jury trials.²¹ Existing works show how the reform was conceived,

¹⁹ Mann, *The Republic of Debtors*, Finn, *The Character of Credit*, Jay Cohen, "The History of Imprisonment for Debt and its Relation to the Discharge in Bankruptcy", *The Journal of Legal History*, Vol. 2, No. 2 (1982), pp. 153-171.

²⁰ Finn, *The Character of Credit*, pp. 152-196.

²¹ On the drafting and implementation of the 1864 reform, see Richard Wortman, *The Development of a Russian Legal Consciousness* (Chicago, 1976); M.G. Korotkikh, *Sudebnaia reforma 1864 goda v Rossii: Suschnost' i sotsial'no-pravovoi mekhanizm formirovaniia* (Voronezh, 1994); Jörg Baberowski, *Autokratie und Justiz: Zum Verhältnis von Rechtsstaatlichkeit und Rückständigkeit im ausgehenden Zarenreich 1864-1914* (Frankfurt am Main,

enacted, and implemented, as well as highlight the opportunities the reform offered, at least from the point of view of St. Petersburg bureaucrats, journalists, and legal scholars. The current consensus on the meaning of the reform and its eventual fate in the late imperial period has been summarized by Richard Wortman, who concluded that the new courts irreconcilably clashed with the autocracy's values and thus were unable to fulfill their full potential for installing the rule of law in Russia or to reach their creators' and the public's initial high expectations.²² Other authors have emphasized the harmful inertia of the Nicholaevan administrative and legal system during the post-reform period, for example, in the legal profession, in unreformed substantive law, and even in such supposedly enlightened procedures as jury trials.²³ At the same time, Richard Wortman has shown that the reforming ethos within the Russian high-level bureaucracy long pre-dated the 1860s, developing during the first half of the nineteenth century when the empire's laws were first collected, categorized, and digested under Mikhail Speranskii, and legal scholarship and legal education were developed systematically.²⁴ In this study, I extend this observation to note that after the old courts in central Russia closed in 1867-69, ordinary individuals' values, attitudes, and practices relating to law did not disappear or change overnight. Similarly, the disputes brought to the reformed courts during their first formative years originated under the rules and expectations of the pre-reform legal regime. Therefore, examining,

1996); A.D. Popova, "*Pravda i milost' da tsarstvuiut v sudakh*" (*iz istorii realizatsii sudebnoi reformy 1864 g.*) (Riazan', 2005).

²² Richard Wortman, "Russian Monarchy and the Rule of Law" *Kritika* vol. 6, No. 1 (Winter 2005), pp. 145–170.

²³ William E. Pomeranz. "Justice from Underground: The History of the Underground *Advokatura*." *Russian Review* Vol. 52 (1993), pp. 321-40; William G. Wagner, *Marriage, Property, and Law in Late Imperial Russia* (Oxford, 1994). Girish Bhat, "Trial by Jury in the Reign of Alexander II: A Study in the Legal Culture of Late Imperial Russia, 1864-1881," unpublished Ph.D. dissertation, University of California at Berkeley, 1995.

²⁴ Richard Wortman. *The Development of a Russian Legal Consciousness* (Chicago, 1976).

in contrast to Wortman, everyday low-level legal practice, I argue that the pre-reform legal culture, despite all of its possibly dubious legacy, was significant in teaching individuals to use the courts, to identify and defend their goals and interests, and, at the very least, to know what features to seek in the reformed legal system.

Despite their importance, pre-reform courts originally established in 1775 by Catherine II's provincial reform are still poorly understood, mostly because they tend to be examined within the framework of the much more illustrious post-1864 structures. Historians' understanding of pre-reform legal development owes much to literary works by Gogol, Ostrovskii, Sukhovo-Kobyl'in, and Saltykov-Shchedrin, and to well-known memoirs by intellectuals like Herzen and Aksakov, which were all used by the post-reform jurists to defend the reform from conservative attacks. Even those memoirs that are more thorough and better informed, such as those by Mikhail Dmitriev, who for many years served in the Moscow Criminal Chamber and in the Senate and who wrote at the end of his life in the 1860s, are clearly polemical.²⁵ Besides, even the most informative literary and memoir sources cannot replace legal histories grounded in actual court documents. Later pre-Soviet jurists like I.V. Gessen, I.A. Blinov, and G.A.

Dzhanshiev used the old legal system as a polemical backdrop to better highlight the reform's achievements.²⁶ The most commonly pointed-out defects of the old courts were incoherent court

²⁵ M.A. Dmitriev. *Glavy iz vospominanii o moei zhizni* (Moscow, 1998). See also N.M. Kolmakov, "Staryi sud," *Russkaia starina*, vol. XI (1886), oo, 511-544. (the Panin bribe story); B. Bochkarev, "Doreformennyi sud" in *Sudebnaia reforma*, ed. by N.V. Davydov and N.N. Polianskii, pp. 205-241. D.N. Bantysh-Kamenskii, "Shemiakin sud v XIX stoletii," *Russkaia starina*, vol. VII (1873), pp. 735-84 (Bantysh-Kamenskii was disgruntled because of a Senate inspection in 1828); I.N. Zakharin, "Rasskazy iz prezhnei sudebnoi praktiki," *Russkaia starina*, IV (1874), pp. 777-780; Anonymous (I.S. Aksakov). *Prisutstvennyi den' ugovnoi palaty. Sudebnye stseny iz zapisok chinovnika ochevidtsa* (Leipzig, 1874).

²⁶ I.V. Gessen and A.I. Kaminka, eds. *Velikie reformy shestidesiatykh godov v ikh proshlom i nastoiashchem* (St. Petersburg, 1905); I.V. Gessen, *Istoriia russkoi advokatury* (Petrograd, 1914); I.A. Blinov. "Sudebnyi stroi i sudebnye poriadki pered reformoi 1864 goda" in *Sudebnye ustavy 20 noiabria 1864 g. za piat'desiat let*. Vol 1 (Petrograd, 1914), 3-101; G.A. Dzhanshiev. *Epokha velikikh reform*, 2 vols. (St. Petersburg, 1905). The rhetoric of

organization, outdated procedural rules, lack of institutional autonomy, uneducated and corrupt personnel, lack of adequate legal representation, and failure to involve the public in the administration of justice.

There is little doubt that the reform of 1864 with all of its disappointments did improve the situation in all of these areas. At the same time, the writers just mentioned did not set out to provide a study of pre-1864 courts outside the polemical framework of post-reform improvements, and their claims are often vague when not outright contradictory or unsupported. To give just a few typical examples, Gessen supported his claim of the judiciary personnel's corruption and inefficiency by discussing a single low-profile out-of-court commercial arbitration case revealing nothing about actual court procedure.²⁷ His examples of officials falsifying legal documents refer to the police rather than the courts, and his claim that pre-reform judges did not write their decisions themselves but employed clerks and secretaries does not sound very shocking to me.²⁸ Gessen also quoted the well-known post-reform barrister Vladimir Spasovich as claiming that judges in the old courts were "only concerned with conducting the case mechanically according to the law, rather than according to their conscience."²⁹ Even if we do for a moment agree that judging a case according to the law is actually a shortcoming, Gessen later in his book noted that this criticism was directed at new courts as well.³⁰ Blinov thought that

the old corrupt system seems to be common in situations when one legal regime is supplanted by another, as in the U.S. after the Louisiana Purchase of 1803. See Stuart Banner, "Written Law and Unwritten Norms in Colonial St. Louis," *Law and History Review*, Vol. 14 (1996), pp. 33-80.

²⁷ Gessen and Kaminka, *Velikie reformy*, p. 10.

²⁸ Gessen and Kaminka, pp. 14-15. Indeed, a modern lawyer should take pity on Russia's post-reform judges, who spent sleepless nights personally composing their rulings.

²⁹ Gessen and Kaminka, p. 17.

³⁰ Gessen and Kaminka, p. 133.

judicial corruption in Russia could be studied on the basis of literary works, press articles, and Herzen's émigré publications, with "original cases" (*podlinnye dela*) only serving to provide additional examples, which he in any event deemed unnecessary.³¹ By contrast, this study maintains that the evidence of "original cases" is essential for studying any country's legal practice and legal culture.

Although works such as Gessen's or Blinov's did not set out to defend pre-reform justice, even if taken at their face value they show that the condemnation was not unequivocal despite all of its rhetorical impact. For example, Aksakov in his frequently quoted tirade from 1884 about his younger years spent as a court clerk admitted that province-level all-estate courts (judicial chambers) were staffed by individuals trained in law "who could not be fooled by a *zapiska*" (a case summary prepared by court secretaries who could potentially falsify the facts), although they did not have the authority to ask for additional information about the case (actually they did).³² In his work on the history of the Russian bar (discussed in Chapter Seven of this study), Gessen noted that some pre-reform lawyers were good; his claim that some were bad does not seem all that surprising or shocking, or for that matter easily rectifiable by the creation of an organized bar.³³ Blinov, after mentioning the horrors of pre-reform criminal procedure, noted that they did not apply to "privileged" offenders.³⁴ Nor should it be surprising that not very many memoirists as far as we know had warm reminiscences to share about their employment as chancery clerks, or about a smooth and pleasant inheritance dispute with their siblings.

³¹ Blinov, "*Sudebnyi stroi*," pp. 34-35. Please note that Blinov did not maintain that "original cases" failed to reveal corruption; he only thought them to be superfluous.

³² Quoted in Gessen and Kaminka, pp. 29-30.

³³ Gessen, *Istoriia russkoi advokatury*, p. 25.

³⁴ Blinov, pp. 29-30.

The reform-centered rhetoric of pre-Soviet writers also migrated into more recent scholarship, most notably through the work of Samuel Kuchеров who had been trained as a lawyer in imperial Russia.³⁵ For example, John LeDonne's detailed analysis of the Russian legal system stops at 1825 but has clear implications for Nicholas I's reign, which did not introduce any significant procedural innovations. LeDonne convincingly points out the influence of patronage and social networks upon the legal process, as well as the court system's responsiveness to political pressure.³⁶ However, it is less clear why these influences are portrayed as so despicable and pervasive or so unique to Russia, as to implicitly place it outside the range of European legal developments. It is also not clear why the actual conditions in Russia are measured against an ideal "Western" legal system which has never existed in reality. For example, Elise Kimerling Wirtschafter in her article on the rule of law in Russia makes observations such as "[t]here existed in 19th-century Russia a deep-seated belief that mutual understandings between individuals could be more efficacious than legal procedures and that the goal of justice could take precedence over strict observance of the law" or "in the Russian system of justice, flexibility was not the product of professional juristic reasoning [but resulted] as part and parcel of actual judicial proceedings."³⁷ If this and other similar statements commonly found in the literature on Russian law did not show a lack of any familiarity with actual Western legal

³⁵ Samuel Kuchеров, *Courts, Lawyers, and Trials under the Last Three Tsars* (New York, 1953). Most works addressing post-reform law simply assume the old courts' corruption and inefficiency. See for example Brian Levin-Stankeovich, "The Transfer of Legal Technology and Culture: Law Professionals in Tsarist Russia" in Harley D. Balzer, ed., *Russia's Missing Middle Class: The Professions in Russian History* (Armonk, NY, 1996), pp. 223-249.

³⁶ John LeDonne, *Absolutism and Ruling Class: the Formation of the Russian Political Order, 1700-1825* (New York, 1991), pp. 179-235.

³⁷ Elise Kimerling Wirtschafter, "Russian Legal Culture and the Rule of Law," *Kritika: Explorations in Russian and Eurasian History*, vol. 7, No. 1 (Winter, 2006), pp. 61-70, pp. 67 and 69.

experience, Wirtshafter's point that Russia's legal development should be measured against the same lofty standards if it wants to be accepted as part of the West, would be well taken.³⁸

The implicit comparison here seems to be with the Weberian "formal-rational" ideal type, of which Russian law, like any other country's, by definition falls short. The dramatic transformation of court organization and procedure effected by the 1864 reform has suggested to some scholars a shift towards the Weberian "formal-rational" ideal type.³⁹ While this type of comparison has its potential, there has not been a study systematically applying Weber's ideas about law to the Russian case. But Western sociologists of law have complicated this potential project by arguing that Weber himself, despite all of his partiality for the "formal-legal" rationality as exemplified by the German Pandectists, was ambivalent about its possible benefits and realized that it could never be achievable in practice.⁴⁰ Therefore, the "formal-rational" ideal type may be a useful starting point but certainly not the end of an analysis of Russian legal development.⁴¹ Moreover, Weber's theory of law arguably viewed Western legal systems as riddled with "irreconcilable tensions between process and substance – between formal and substantive rationality" rather than as the triumphant progression of the former.⁴² The analytical

³⁸ In the same article, Wirtshafter exclaims with the pathos worthy of Gessen or Dzhanishiev: "If the standard of development toward liberal principles of government appears to impose Western experience onto Russian history, so be it." "Russian Legal Culture," p. 70.

³⁹ Richard Wortman, *The Development of a Russian Legal Consciousness* (Chicago, 1976), p. 245. John LeDonne in *Absolutism and Ruling Class* does not invoke Weber directly, but seems to use him as the implicit standard for evaluating Russia's law in the early nineteenth century.

⁴⁰ David M. Trubek, "Reconstructing Max Weber's Sociology of Law." *Stanford Law Review*, Vol. 37 (1985), pp. 919-936, 932 ff. Anthony T Kronman commented on Weber's concern that modern law's excessive bureaucratization and reliance on legal specialists leads to a loss of individual autonomy (the "iron cage" of modernity). See his *Weber* (Stanford, 1983), pp. 174-5.

⁴¹ I prefer a comparison to actual nineteenth-century Western legal systems.

⁴² Stephen M. Feldman, "An Interpretation of Max Weber's Theory of Law: Metaphysics, Economics, and the Iron Cage of Constitutional Law." *Law & Social Inquiry*, Vol. 16 (1991), 205-248.

framework grounding my study relates more closely to this interpretation of Weber and is drawn from contemporary legal anthropology:

First, I recognize that any legal system is in practice intimately connected to its political, social, and cultural context regardless of the degree of the judiciary's alleged professional autonomy and regardless of our normative views on the proper relationship between law and morality; any formal legal order is thus only partial at best. I view this connection as an integral feature of a legal system, rather than as a defect or evidence of corruption. I argue that this perspective allows us to extract the meaning of the apparent confusion of debt-related litigation in Russian courts, which is moreover accessible to us through the raw material of petitions, complaints, and court protocols rather than through the belletricized and theatricized lens of lawyer speeches and newspaper reports characteristic of post-reform public trials. What these pre-reform cases manifest is a collision of multiple interests and values, including those of the legal system seeking to regulate society through formal enforcement of normative rules while at the same time achieving substantive justice, as well as those of individuals and social groups seeking to protect their property, injure their opponents, or accomplish their family strategies.⁴³

Second, while I do agree that one important function of the legal system is to resolve disputes, I do not consider formal law to be the only way to do so, or even always the best way, given that "legalizing" a dispute has been noted to intensify it and impede a mutually acceptable solution.⁴⁴ Thus the fact that individual litigants who in Russian case records appear as fighters trying to injure each other, rather than "civilized" people trying to resolve their issues in an

⁴³ This argument relies on Sally Falk Moore, *Law as Process: An Anthropological Approach* (London, 1978).

⁴⁴ Austin T. Turk, "Law as a Weapon in Social Conflict," *Social Problems*, Vol. 23 (1976), pp. 276-291. Most anthropologists seem to think of law as a conflict-resolving tool.

orderly fashion or to maximize their respective profits, is accepted as a normal feature of any legal system, thus allowing a scholar to focus on specific motives and interests driving these individuals. This perspective also allows us to recognize that other methods of conflict resolution, such as out-of-court settlements, which appear to have been common in Russian pre-reform courts, or even stalling the proceedings by either party, do not necessarily indicate a failure of the legal process, but rather are its integral part.

Third, while pointing out those features of Russian law that tended to repeatedly frustrate both its own and the litigants' goals and interests, I try to avoid characterizing any elements of the legal process in unambiguously positive or negative terms, believing that such characterization cannot produce accurate knowledge of the full range of relationships within the legal system and between law and other aspects of culture and society.⁴⁵ In addition to avoiding an emphasis on legal reform that often tends to obscure actual existing legal practices, as pointed out by Paul Kahn⁴⁶ (this is especially relevant given the looming context of the Russian 1864 reform), this approach reveals the meaning of some otherwise perplexing features of Russian law. For example, while trial procedures were clearly more prolonged and less elegant before the reform, they also accorded individuals a greater measure of autonomy and an ability to shape the proceedings, than one might believe to be possible under Nicholas I's rule, while at the same time helping defendants to evade responsibility.⁴⁷

⁴⁵ See Turk, "Law as a Weapon," p. 288.

⁴⁶ Paul Kahn, *The Cultural Study of Law: Reconstructing Legal Scholarship* (Chicago, 2000).

⁴⁷ In sum, my purpose here is similar to that expressed by Madeleine Zelin in a co-edited collection of essays that sought to "move away from the hollow debates over whether China had civil law and whether traditional Chinese "culture" was an obstacle to economic development." See *Contract and Property in Early Modern China* (Stanford, 2004, p. 2.

Although no systematic archival-based study of Russia's pre-1864 courts exists, some historians have departed from the reform-driven narrative to illuminate various aspects of Russian legal culture before the 1850s,⁴⁸ and even challenged the traditional pessimistic narrative. The most ambitious of them is Boris Mironov's sweeping social history of imperial Russia, which argues rather sanguinely that pre-reform courts already manifested a progression of legality and individual rights, and even employed some adversarial procedures (referring to Peter the Great's *sud po forme*, which, however, was used only rarely).⁴⁹ A much more convincing and empirically grounded depiction of the pre-1864 legal universe is found in Michelle Marrese's study of female property ownership and control. Marrese shows a close connection between the legal system and individual property rights and interests, which could be identified, asserted, and defended in court.⁵⁰ Marrese's approach is close to the studies of pre-Petrine courts by Nancy Shields Kollmann and George Weickhardt, who establish the existence of a vibrant, sophisticated, and widely used legal structure with well-developed procedural rules.⁵¹ Without attempting to whitewash, all these works question the divergence of Russia's legal universe from the Western "norm." My study, similar to the works of Marrese, Kollmann, and Weickhardt, focuses on the stories of individual litigants and interprets any legal system as a

⁴⁸ For a detailed bibliography, see Wirtschafter, "Legal Identity and the Possession of Serfs in Imperial Russia" in *The Journal of Modern History*, vol. 70, No. 3 (September 1998), pp. 561-587.

⁴⁹ B.N. Mironov. *Sotsial'naia istoriia Rossii perioda imperii (XVIII–nachalo XX v.)*, 2 vols. (St. Petersburg, 1999).

⁵⁰ Michelle Marrese, *A Woman's Kingdom: Noblewomen and the Control of Property in Russia, 1700–1861* (Ithaca, 2002).

⁵¹ Nancy Shields Kollmann. *By Honor Bound: State and Society in Early Modern Russia* (Ithaca, 1999); George G. Weickhardt. "The Pre-Petrine Law of Property." *Slavic Review*, Vol. 52 (1993), pp. 663-679; "Due Process and Equal Justice in the Muscovite Codes." *Russian Review*, Vol. 51 (1992), pp. 463-480.

venue where multiple interests and influences intersect and where political ideas often determine the outcome.

In addition to duly recognizing the flexibility and significance of the pre-1864 legal system, this study is concerned with Russia's legal culture and legal practice, and it is appropriate to clarify what I understand by these terms. While the term "legal culture" has many definitions and has been extensively debated by legal scholars, sociologists, and anthropologists, in this study I merely seek to get away from lawyers' focus upon the issues of legal reform at the expense of capturing existing practices and attitudes.⁵² I also want to recognize that in addition to legal institutions and substantive rules, a legal system possesses a cultural element, which the U.S. legal historian Lawrence Friedman has defined as "the values and attitudes that bind the system together, and which determine the place of the legal system in the culture of the society as a whole."⁵³ Importantly, this understanding sees legal culture not as a nuisance or a corruption of formal legal rules, but as a crucial element of how law operates. These values and attitudes, of course, are perhaps more often manifested in individuals' actions, some of which seemingly do not even relate to the law directly, and so my study of Russia's legal culture is just as much concerned with how individuals' beliefs about law were put into practice. After all, such actions as borrowing money in a particular way from a particular kind of lender, or demanding payment from a debtor, or entering state service to avoid potential arrest for debt, are not strictly speaking part of the legal process. However, they are performed with the expectation of entering the legal universe, even when (to use an example from one of the cases I examined) a poor drunk

⁵² Paul Kahn. *The Cultural Study of Law*.

⁵³ Lawrence M. Friedman. "Legal Culture and Social Development." *Law & Society Review*, Vol. 4 (1969), pp. 29-44, 34.

craftsman from 1860s Moscow refused to go quietly with the policemen to his house because the police were not allowed to inventory debtors' property in their absence.

There are, of course, many works on Russian law that are concerned with various aspects of Russia's legal culture, whether they explicitly use the term as Jane Burbank does, or prefer a different term like "ethos" (Richard Wortman) or "legal practice" (George Weickhardt), or avoid the issue of terminology altogether (Michelle Marrese).⁵⁴ Writings of legal scholars, the Senate's appellate decisions, bureaucratic memoranda and periodic press articles are all part of legal culture. However, what distinguishes my work, in addition to its timeframe and its concern with the connection between law and the social and cultural function of debt, is that I seek to illuminate institutional and substantive aspects of the Russian legal system in its connection with other social and cultural issues by focusing on the experiences of individual litigants in province- and county-level courts (rather than in the State Council or the Governing Senate). There are currently very few works that are as heavily case-driven as this study. In addition to those by Marrese, Burbank, Kollmann, and Weickhardt, there are two excellent studies of eighteenth-century Russian urban life by Aleksandr Kamenskii and Olga Kosheleva that rely on individual court cases, although they use law to illuminate urban culture, whereas I, in a sense, attempt the opposite, i.e., to engage with urban and middling-class culture in order to illuminate the history of Russian law.⁵⁵

⁵⁴ My approach is close to that of Jane Burbank, who views Russian peasants in the early twentieth century as autonomous court-goers. See *Russian peasants go to court* (Bloomington, 2004).

⁵⁵ A.B. Kamenskii. *Povsednevnost' russkikh gorodskikh obyvatelei: istoricheskie anekdoty iz provintsial'noi zhizni XVIII veka* (Moscow, 2006). O.Ie. Kosheleva. *Liudi Sankt-Peterburgskogo ostrova Petrovskogo vremeni* (Moscow, 2004).

Moscow and Its Courts

Imperial Russia was unusual among nineteenth-century states in having two capital cities with distinct symbolic and cultural associations, as well as social and economic structures. St. Petersburg, Russia's largest city, was the imperial center, the residence of the imperial family and the site of the top institutions of the government. Its character was linked with Russia's post-Petrine European identity and military power, and with its close commercial links with the West. Moscow was officially Russia's "original" (*pervoprestol'naia*) capital that had its own palaces and cathedrals and its own highest court of justice. Most importantly, Moscow was the center of Russia's patriotic sentiment, often seen as the embodiment of its national character, the most Russian of all the cities.⁵⁶ Nicholas I and his government saw this kind of sentiment as somewhat suspect, given that the Russian monarchy continued to remain "true to the western institutional and military values that centered in Petersburg."⁵⁷

At the same time, Moscow remained by far the second largest city and rivaled Petersburg not only as the symbolic and political center of the empire, but also as its key commercial and financial hub. Moscow's 369,000 inhabitants in 1856⁵⁸ grew to over 600,000 by the late 1860s. While small compared with London or Paris with their populations in the millions, in the mid-nineteenth century Moscow was comparable in size to such cities as New York or the smaller European capitals like Berlin or Vienna. Because of its large urban population Moscow province

⁵⁶ This sentiment is definitely not shared today, when Moscow is the largest city in Europe, about three times the size of St. Petersburg.

⁵⁷ See Richard Wortman, "Moscow and Petersburg: The Problem of Political Center in Tsarist Russia, 1881 – 1914, in Sean Wilentz, ed., *Rites of Power: Symbolism, Ritual, and Politics Since the Middle Ages* (Philadelphia, 1985), pp. 244-271, 247.

⁵⁸ *Statisticheskie tablitsy rossiiskoi imperii za 1856 god* (St. Petersburg, 1858), p. 222. Petersburg had over 491 thousand, Odessa 101. Warsaw had 140,000 inhabitants in 1850. See *Voenno-statisticheskoe opisaniie*, Vol. 15, part 3 (St. Petersburg, 1850), p. 240.

was the most thickly populated one in the empire, followed by the rich Ukrainian *gubernii* of Little Russia.⁵⁹ Its overall population of roughly 1.6 million was 11th highest in the empire, but its territory was one of the smallest (59th out of 65 provinces not counting those of Poland and Finland).⁶⁰

Table 0.1 Russian Urban Population

Estate	Moscow, 1871 ⁶¹		1858 (European Russia) ⁶²		Odessa in 1852 ⁶³		Spb in 1851 ⁶⁴	
	th.	%	th.	%	th.	%	th.	%
Nobles	48.2	8.0	291.7	5.2	3	3.11	44	
Clergy	11.2	1.9	91.7	1.6	0.6	0.62	2.5	
Merchants	36.3	6.0	3051.6	54.7	6	6.22	12.5	
Townspeople	153.9	25.6			52.6	54.56	50	
Military	76.3 ⁶⁵	12.7	786.7	14.1	5	5.18	70	
Peasants	260.4	43.2	1128.9	20.2	n/a	n/a	160	
Serfs	n/a	n/a	n/a	n/a	n/a	n/a	68	
Foreigners	6.9	1.1	37.9	0.7	6	6.22	16	
Others	8.8	1.5	195.3	3.5	25	25.93	36	
Total	602.0	100.0	5,583.8	100.0	96.4		481.3	

Moscow's population included a large segment of merchants and townspeople (*meshchane*), although as shown in Table 0.1, the city's social composition was not as unusual as, say, that of Petersburg with its disproportionately large number of nobles and civil servants. In the early 1850s Moscow province contained over 17,000 male merchants, including over three thousand rich ones enrolled in the first two guilds and listed as honorary citizens (a peculiar category

⁵⁹ *Statisticheskie tablitsy*, p. 259. The average population density in European Russia was 13 persons per square *versta*. Id, p, 257.

⁶⁰ *Statisticheskie tablitsy*, p. 246. One square *versta* equals 0.4394 square miles.

⁶¹ A.G. Rashin, *Naselenie Rossii za 100 let (1813-1913)*. *Statisticheskie ocherki* (Moscow, 1956), p. 125.

⁶² Rashin, p. 120.

⁶³ *Materialy dlia geografii i statistiki Rossii, Khersonskaia guberniia*, part 1 (St. Petersburg, 1863pp. 452, 460.

⁶⁴ *Voenno-statisticheskoe obozrenie Rossiiskoi imperii*, vol. III, part 1 (St. Petersburg, 1851), pp. 336-337.

⁶⁵ Only active and retired enlisted men and their families.

similar to personal nobility granted to especially successful merchants). The rest belonged to the less well-respected third guild.⁶⁶ The unprivileged *meshchanstvo* estate included 59,000 males and 54,000 females. 40,300 males resided in Moscow itself and approximately a quarter of them owned their own houses and were thus at least moderately well off, although unable or unwilling to enroll as merchants. Of these individuals, approximately 4,500 were engaged in commerce, crafts, and cottage production, 13,000 worked as domestic servants, and the other 24,000 did not admit to any permanent occupation and were dismissed by the military statisticians of the 1850s as “usurers and go-betweens” (*kulaki i svodchiki*).⁶⁷ Moscow also had large numbers of factory workers (43,500 in Moscow and over 11,000 in the industrialized Bogorodsk County), mostly employed in the textile industry.⁶⁸ Unskilled workers earned from 50 to 100 rubles depending on whether they also received new shoes and board.⁶⁹ Another 20,000 or so Muscovites owned various “craft establishments.”⁷⁰ Although various foreigners figure prominently in Moscow court records and debt registers, its permanent population in the 1850s included only a few hundred non-Christians and under 5,000 of Christians of non-Orthodox denominations.⁷¹ Thus, Moscow’s population, while abnormally large by the standard of Russian towns (which mostly

⁶⁶ *Voenno-statisticheskoe obozrenie Rossiiskoi imperii*, vol. VI, part 1 (St. Petersburg, 1853), p. 121. These statistical numbers do not represent the entire picture, since merchants officially enrolled in Moscow could live and do business in a different city, and conversely, merchants from elsewhere could “temporarily” register in Moscow.

⁶⁷ *Voenno-statisticheskoe obozrenie*, p. 122-123. The term *kulak* at that time did not yet refer to a rich peasant but rather to one’s taking advantage of the poorer members of the community.

⁶⁸ *Voenno-statisticheskoe obozrenie*, p. 151.

⁶⁹ *Voenno-statisticheskoe obozrenie*, p. 160-161.

⁷⁰ *Voenno-statisticheskoe obozrenie*, p. 214.

⁷¹ *Voenno-statisticheskoe obozrenie*, p. 184.

had only a few thousand inhabitants), does not appear all that unusual in terms of its social structure, except for the strength of its merchant estate.

What did give Moscow its particularly central role in Russia's society and economy (in addition to the factors that related to its political and cultural prominence) was its industrial production and its position at the center of Russia's system of private credit. In the 1850s and 1860s St. Petersburg did not yet acquire most of the concentrated heavy industry for which it became famous in the later imperial period. Thus, in 1856 Moscow's industrial output of 39 million rubles actually exceeded that of Petersburg (38 million). The other two centers, Vladimir province with the textile factories centered in Ivanovo-Voznesensk and Perm' with the Urals' mines and metalworking plants produced 21 and 19 million rubles' worth of output respectively. These four provinces therefore contributed to over half of Russia's entire industrial output of over 222 million rubles.⁷²

As to commerce, tsarist military statisticians found its volume much more difficult to estimate. Petersburg, Moscow, and Odessa had the largest guild enrollments, but the merchants' officially declared collective capital of over 537 million rubles in 1856 only referred to the amounts used to sign up as merchants and did not reflect the volume of their operations.⁷³ The estimate of Moscow's internal trade in the early 1850s was up to 60 million rubles' worth of imports. Of these, about two thirds made up raw materials, both for Moscow's own factories and for resale to other provinces. The rest were food imports, because Moscow province's poor soil did not produce enough to feed its large urban population. Exports were worth up to 46 million

⁷² *Statisticheskie tablitsy*, pp. 275-276 and 388 The number for Perm' plummeted in 1857 to 3,8 million rubles.

⁷³ *Statisticheskie tablitsy*, 278.

rubles.⁷⁴ The turnover of the various crafts were estimated at 30 million rubles.⁷⁵ According to the statistical survey of Moscow, merchants from other provinces not only traded in food and raw materials, but also came to the city to buy and sell foreign products, rather than to go to Petersburg. “Many entrepreneurs and merchants who could receive everything necessary for their factories and commerce directly from St. Petersburg prefer to turn to Moscow, both because it is closer, and because they already have credit with Moscow’s capitalists...”⁷⁶

Although the city possessed thousands of commercial establishments, including 11 bookshops, 49 inns and 180 restaurants,⁷⁷ in terms of municipal comforts it was said to lag behind many much smaller cities. The time when the city’s commercial center would be decorated with the latest Art Nouveau styles was still far off, and much of the city consisted of small one-and two storied buildings constructed mostly of wood and laid out according to pre-Petrine architectural precepts that were influenced by the Byzantine cannons and emphasized spaciousness and comfort, as well as orientation toward ecclesiastical structure, so that Moscow’s streets appeared as chaotic and village-like to westerners and western-minded Russians. However, wealthier merchants and the nobility lived in comfortable houses built of plastered brick.⁷⁸

⁷⁴ *Voenno-statisticheskoe Obozrenie*, pp. 173-181. To put these numbers into perspective, Odessa in 1856, immediately after the end of the war exported products (mostly grain) worth 17,8 million rubles and imported 11,9 million. These numbers grew by the end of the 1850s but still failed to match those for the pre-war period: in 1853 Odessa exported 25,7 million rubles’ worth of wheat alone. See *Materialy dlia geografii i statistiki Rossii, Khersonskaia guberniia*, part 1 (St. Petersburg, 1863), pp. 541 ff., esp. 567. In St. Petersburg, domestic commerce in 1847 included 55 million rubles’ worth of goods transported via internal waterways (the chief means of transporting goods). *Voenno-statisticheskoe obozrenie Rossiiskoi imperii*, vol. III, part 1 (St. Petersburg, 1851), pp. 277 and 355.

⁷⁵ *Voenno-statisticheskoe obozrenie*, pp. 214.

⁷⁶ *Voenno-statisticheskoe obozrenie*, pp. 173.

⁷⁷ *Voenno-statisticheskoe obozrenie*, pp. 216-218.

Also prominent were the several large neoclassical buildings that housed Moscow's various governmental offices. The governor and his offices occupied a compound facing the city's main thoroughfare, Tverskaia Street. Also separately – in their own building inside the Kremlin – were housed the three Moscow Departments of the Governing Senate, which until 1871 ensured that legal cases did not need to be forwarded to St. Petersburg unless they were appealed to the State Council. But the provincial governmental offices were located in a sprawling neoclassical building on the Resurrection Square just outside the Kremlin; known as *prisutstvennye mesta*, it is discussed in more detail in Chapter Seven. Those of its institutions that were most relevant to the city's culture of debt included:

- Provincial Governor's offices (*Moskovskoe gubernskoe pravlenie*) responsible to the city's civil governor, as opposed to his superior, the military governor general. This office was, among other things, responsible for selling debtors' property at an auction.
- The central police office (*Uprava Blagochinia*), responsible for debt collection, as well as for seizure and inventory of debtors' property and the arrest of their persons.
- Moscow Chambers of Civil and Criminal Justice, which were the primary province-level all-estate courts staffed by professional judges with legal training. The Chambers oversaw and reviewed the proceedings at the lower-level trial courts whose jurisdiction was divided according to Russia's system of legal estates: the County Court (*uezdnyi sud*) tried cases involving nobles and peasants, the Magistrate (*Magistrat*) had jurisdiction over merchants and townspeople, and the Aulic Court (*Nadvornyi sud*) – over government employees who

⁷⁸ Some members of the U.S. Russianist community have been recently agitated by the issue of how best to translate the Russian term *kamennyi*, which literally means “built of stone” as distinguished from the much more common wooden buildings. However, actual building stone, rather than brick covered by plaster, was hardly ever used.

did not own property in Moscow and over the *raznochintsy*, i.e., those individuals who did not belong to any estate. I discuss in detail the practical operations of this estate-based court system in Chapter Seven.

- Moscow Commercial Court, responsible for commercial litigation and for overseeing commercial bankruptcy proceedings. It was independent of the Chamber and thus stood out in the court hierarchy, but its caseload was relatively small and highly specialized.

Table 0.2: Pre-reform Legal System

Level	Institution	Date Est.	Primary Function
Central	Emperor		Accept petitions; issue decrees
	State Council	1801	Legislation; statutory interpretation
	Governing Senate	1711	Appellate Court
Provincial	Provincial Chambers, special courts (esp. Commercial and Equity)	1775	Non-estate first-tier appellate courts; special cases
Local	County, Magistrate, Aulic courts	1775	Estate-based trial-level courts

Table 0.3 Court Caseload, 1858⁷⁹

	Criminal	Civil
1st tier courts	137,950	143,194
Bankruptcy	n/a	394 ⁸⁰
Provincial Chambers	62,407 ⁸¹	108,866 ⁸²
Commercial Courts	n/a	4,219
Senate	3,643 ⁸³	17,449 ⁸⁴
Senate Joint Session	66	404

⁷⁹ *Zhurnal ministerstva iustitsii*, vol. IV, No. 1 (April, 1860), p. 24. Data include all cases processed by the courts, even if they were not decided during the year.

⁸⁰ Of these, 116 were decided during the year.

⁸¹ 18 provinces reported more than 100 new criminal cases, including 1,883 in St. Petersburg and 1,805 in Moscow. 51,661 cases were closed.

⁸² 80,098 cases were decided, including in Moscow – 6,016 in the First Department and “from 1,000 to 1,500” in the Second Department of the Civil Chamber.

⁸³ Of these, 2,742 were reviewed through the mandatory “revision” procedure and 901 were appeals. 47 cases were transferred to the Senate’s Joint Session.

Total	251,568	232,864
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Sources, Methods, and Representativeness

This study is based on unpublished legal and administrative records that are preserved in the Central Historical Archive of Moscow (*TsIAM*), supplemented by materials from the State Archive of the Russian Federation (*GA RF*). There are several factors that make Moscow court records, as opposed to those from any other Russian province, particularly useful for studying cultural and legal attitudes and practices relating to debt. As discussed above, although small by today's measurements or even those of the late nineteenth century, Moscow was the empire's second largest city, leaving far behind Warsaw and Odessa, and was uniquely positioned as the hub of domestic commerce, industry, and credit. Because of Moscow's size and diversity, cases filed in its various courts involved a variety of factual circumstances, as well as individuals from all social groups – from the highest aristocracy to civil servants, merchants, and even serfs – hailing from far-away provinces and foreign countries. The only type of activity not represented adequately was foreign export trade, which is tangential to the purposes of this study. Moreover, many of the cases discussed in this study originated outside Moscow and were litigated in its courts because the defendant happened to live or own property there. Thus, this study, while focusing on Moscow province, provides some insights in debt-related practices elsewhere.

Moscow's Representativeness

All of this brings up the question of representativeness: if Moscow was such an exceptional center, what does it really tell us about the rest of the country? This of course follows from today's perception of Moscow, the largest city in Europe containing over 10% of Russia's entire

⁸⁴ Of these, 12,712 were interlocutory appeals and 2,388 regular appeals. 131 cases were transferred to the Senate's Joint Session.

population, as being hugely out-of-step with the rest of the country economically, culturally, and socially. One reply is that while there are numerous observations about St. Petersburg's cultural distinctness from the rest of Russia, the opposite observations have been commonly made about pre-Soviet Moscow by visitors and literary figures. Another reply is that Moscow's relative commercial and industrial significance was so great that this study contributes to the study of Russia as a whole. Conversely, leaving Moscow out would justly prompt the question whether the study of Russia's law or its culture of private debt is illustrative enough without an in-depth look at the activities of Moscow's merchants, nobles, and townspeople. My third reply is that one important aspect of this study concerns the credit relations of Moscow's serfowning gentry, and as an agricultural province Moscow was typical of central Russia, if somewhat poorer than the average and forced to import grain because of its poor soil, and having a larger than normal urban population.

Court Records

The richness of the case record produced in Moscow courts, as well as the fact that, to the best of my knowledge, I am the first historian to have seen all of the cases reviewed in this study except one, means that other types of sources, despite their importance, have been given a supplementary role in this study. Among these are bureaucratic materials from St. Petersburg, writings of Russian jurists, periodicals and memoirs that are only used sporadically. These sources are generally well known to historians, and frequently mined, whereas court records – especially from the pre-reform period – have been neglected, which is an obvious and regrettable omission in Russian legal history. These cases have not been studied before most likely because such a project is extremely time-consuming, because it requires a legal background, and because

access to *TsIAM*'s holdings is even today far from simple, as an extraordinary portion of documents seem to require "binding" or "restoration," in effect banning historians from using them. Some collections at *TsIAM* endured a particularly severe treatment at the hands of Soviet-era archivists: for example, according to my estimate, approximately 90 percent of the records of the Moscow Commercial Court – which is obviously essential for any in-depth study of the Russian merchantry – were deliberately destroyed in the 1930s out of ideological hatred for the bourgeoisie.⁸⁵ During the post-WWII period, the archival leadership (ultimately responsible to the city's Party authorities rather than to the central archival administration) conducted an even more thorough and ruthless purge of Russia's past. For example, the records of the post-1864 District Court, essential to understanding the implementation of Alexander II's judicial reform, were stripped of all materials "not deemed not to have any historical value" (those materials that were retained only encompass a handful of discrete subjects, such as worker injury, lese-majeste, and illegal logging, giving a good idea of the wealth of historical detail that should have been available to historians). An even more brutal treatment was doled out to the collection of the Moscow governor generals and their chancery, which accumulated extensive information about all aspects of city life and which was reduced to thin assemblies of random documents selected as "illustrations of pre-revolutionary *deloproizvodstvo* (official paperwork)." I suppose it has been my luck that these lustration procedures took so long that the authorities had not had the chance to deal in a similar fashion with the records of most pre-reform courts.

⁸⁵ This estimate is based on my review of inventory (*opis'*) No. 1 of the Commercial Court's collection at *TsIAM*, comprising the original imperial-era inventory, with marks made in Soviet orthography noting files to be "kept" or "discarded." This and other inventories typically contain stamps at the back documenting reviews by archivists and numbers of files that had been discarded. My interpretation of the motives is confirmed in conversations with the archive's staff members and by the fact that the collection of Moscow Magistrate (a lower-level court that processed non-commercial cases involving merchants and townspeople) had suffered the same treatment, whereas other pre-reform courts' records did not attract the authorities' attentions.

Focus on Province-Level Courts

A careful reader of this study will note that it heavily relies on cases from Moscow's Civil and Criminal Chambers, which will raise the question of how representative these institutions were of Moscow's legal practice and legal culture. As discussed above, Chambers were the highest province-level courts established by Catherine II's court reform of 1775 which regularized the administration of justice in Russia. At different times they were divided into a Criminal and a Civil Chamber or merged into a single Chamber of Civil and Criminal Justice). Each provincial capital had a judicial Chamber, although their caseloads obviously varied. The advantage of studying the records of the Chambers – aside from their better preservation and easier accessibility to researchers as compared with the lower, county- and city-level courts – is that they reviewed every serious civil and criminal case litigated in the lower courts. Whereas the latter's business consisted largely of simple non-contested affirmations of inheritance and land sales, the law required that all criminal cases in which the punishment involved the loss of estate privileges and penal exile be automatically forwarded to the provincial Chamber for review.⁸⁶ For civil cases, individuals had the right of appeal to the Chamber if the value of their case exceeded 600 rubles,⁸⁷ and readily exercised that right.⁸⁸ Because the Chambers' records include the proceedings of the lower courts (and often subsequent decisions and rulings on interlocutory appeals), and because, unlike in the U.S. appellate proceedings, Chambers frequently overturned

⁸⁶ *Svod zakonov*, vol. XV, part II (*o sudoproizvodstve po prestupleniiam*), Art. 1074 ff.) – in such cases, first-tier courts did not make a “decision” but merely an “opinion.” Criminal cases involving smaller punishments (arrest, penalty, prison sentence) – the accused could appeal to the Chamber. Chamber's decision could be appealed only by members of privileged classes (nobles, civil servants, honorary citizens); others could complain to the Senate once they reached their exile destination.

⁸⁷ *SZ* Vol. 10, part 2, Art. 555.

⁸⁸ See Table 0.3.

the lower court's decision, studying Chambers' records allows better results than going to the lower courts' records alone. Furthermore, lower-level and province-level courts were staffed by different personnel (Chamber judges appearing as more professional and versed in the law), and allows an interesting insight into the interplay of the two styles of justice.

It may be accurate, however, to object that the reliance upon Chambers' records may portray Russian pre-reform justice in an overly favorable light. After all, Chambers' judges and clerks were relatively distant both from the higher authorities (the Senate being more concerned with a uniform empire-wide application of the laws), and from the patronage influences and bribery that targeted the lower courts. Unlike the Senate, the Chamber's judges were more likely to study the case record in detail, and in criminal cases they could question the defendant in person. Similarly, I've seen considerable evidence of corruption in the lower courts (see Chapter Seven), but none of the same criticisms or accusations made against the Chambers. The fact that this study is concerned with the culture of debt and is not entirely dedicated to court mechanics precludes me from considering in more detail the interplay between the three levels of Russia's pre-reform court system. In this situation, taking the Chamber's practice as the starting point seemed to be more justified than focusing on either the Senate or the lower courts.

Post-Reform Courts

Yet another question of selecting sources is the fact that I only rarely use post-reform cases. Unfortunately, routine debt cases in the new courts from the late 1860s have been virtually all destroyed in Moscow due to the peculiar archival preservation policies mentioned above. While post-reform cases that I did examine often involved pre-reform factual situations (and even incorporated pre-reform lower-court records), post-1866 decisions differ markedly by omitting

the extensive paper trail of the Nicholaevan bureaucratic style and by being centered on the narratives prepared by new-style professional barristers. These narratives appear much more literary, even theatrical in nature, removing this impression of the raw historical data conveyed by pre-reform records that typically appear as either technical or emotional in a much less skillful way. Thus simply the look of post-reform cases suggests greater efficiency, but I hesitate to conclude that this made pre-reform cases somehow more corrupt or less just or badly conducted just because they were less ornate.

Reliance on Court Cases

Another question relating to my sources is to what extent it is appropriate to rely so heavily on legal cases in order to depict Russia's culture of debt and its legal practice. After all, not all debt transactions ended up being litigated, and the instances when individuals quietly borrowed money and quietly paid it back would evade my attention. Nor is it easy to identify situations when, for example, a debtor did not pay back and the lender decided not to collect through police or legal channels. It is true that such instances are difficult to evaluate reliably; however, the fact that there were millions of legal cases processed during the reign of Nicholas I provides enough of a background to draw conclusions that reach beyond those individuals who were actual characters in the cases I have reviewed.

Furthermore, it is important to realize, as I suggested above, that a pre-reform "case" looked very differently from today's legal case published in a court reporter in the United States. Pre-reform legal cases were voluminous, messy, and polyphonic⁸⁹, containing all the raw evidence of

⁸⁹ Russian pre-1864 legal cases were polyphonic in the sense that – unlike reported legal cases in the U.S. that are written up by court clerks – they included all the original materials submitted by the various participants in the case, including all the documentary evidence. These were eventually summarized by a court clerk in a special memorandum to the judges, but all the originals were still kept in the case record.

petitions, letters, debt documents and other papers that were eventually summarized (accurately, as I argue in Chapter Eight) and presented to the judges. Thus, where a modern (or a post-1864 Russian) legal case would hardly contain any evidence of corruption or out-of-court negotiations, such instances are much commonly detected in pre-reform proceedings precisely because of this custom of accumulating mountainous records.

Finally, there are several other sources in addition to contested court proceedings from which scholars can learn about debt's existence and which are also used in this study. These include trusteeship (*opeka*) records, wills, Moscow Board of Trustees records, merchant books, bankruptcy proceedings, personal archives, and the Contract Section (*Krepostnaia eskpeditiia*) of the Moscow Civil Chamber, which recorded many significant debt transactions. Some of those records, like the Moscow procurator's archive or the Oral Court, even document petty debt involving poor townspeople and peasants residing in the city. Nonetheless, this dissertation is mainly concerned with the "propertied" classes, even if the amount of property was very small compared to the holdings of nobles and rich merchants. While lower-class debt is not examined here in detail, I can attest that the records of Moscow's Oral Courts and Justices of the Peace indicate that such debt was widespread and involved lively litigation.⁹⁰

Chronological Frame

Chronologically this study focuses on the 1850s and 1860s, the period during which most of the "great reforms" were drafted and implemented. Strict cutoff dates, however, are not feasible when studying pre-reform legal records, and several of the cases I found useful for this study are

⁹⁰ In addition, the archival collection of the pre-reform Moscow procuracy contains the so-called "prisoners' cases," which involved petty debt collections by the procuracy on behalf of imprisoned persons. See Burbank, *Russian Peasants Go to Court*, for peasants in the post-reform period.

from as early as the 1800s or as late as 1890s. The two reasons for this are, first, that these cases sometimes are useful to illustrate the subject of my discussion, as for example, later developments in while-collar crime prosecution or debt imprisonment. More often I use cases from outside my time period because they either originated in the earlier period and were litigated in the 1850s and 1860s, or, conversely, they originated during the period of this study but were litigated in the new courts. This provides another illustration that 1864 was not a precise cut-off period for Russia's legal development: for a long time afterward, there was ongoing litigation relating to factual situations that arose under the conditions and expectations of the pre-reform legal regime.

Western Comparisons

Throughout this study I make an occasional comparison of Russian law with other Western legal systems, most often using references to English and American law. In part this is because of my training as a lawyer in the United States and because the history of personal debt has been most comprehensively researched in the Anglo-American case. Another, more substantive reason for turning mainly to the common law tradition is that the English influence arguably provides a better model for comparison: while the influence of French and German legal systems was very direct and apparent in imperial Russia, English law is more illustrative because it was not entangled with Russian legal culture through direct borrowings (with very minor exceptions), and because English law from the late eighteenth century onward served as a model of legal (as well as economic and political) development for all of Western Europe.⁹¹

⁹¹ Legal treatises usually mention English law but in a distant way. On Blackstone's influence on Catherine II's thinking about law, see Mark Raeff, "The Empress and the Vinerian Professor," *Oxford Slavonic Papers*, vol. 7 (1974), pp. 18-40. Quote from Thomas Owen, *Corporation under Russian Law, 1800-1917* (Cambridge, 1991), p. 213: "Nikolai S. Avdakov, president of the AIT, announced to a delegation of English businessmen that "England will always be a model [*obraz*] to us, worthy of imitation in its concern for the national economy."

CHAPTER ONE

RUSSIA'S CREDIT NETWORK

Introduction

The eighteenth-century memoirist Andrei Bolotov, despite his professed aversion to excessive borrowing, described his 1762 move from Russian-occupied Koenigsberg to St. Petersburg as involving multiple credit relationships that transcended ethnic and social lines. For instance, Bolotov had to pay his debts to his Prussian hosts; borrow 100 rubles from his own serf to buy a new horse; consider borrowing from his boss-to-be, the St. Petersburg police chief baron N.A. Korf; lend 30 rubles to his regimental physician; and upon arrival in the capital, he had to raise another 100 rubles to buy one of the infamous new uniforms introduced by Peter III. In this last task, Bolotov had help from a fellow officer, who suggested that some of the tailoring could be done on credit, and offered to provide the necessary cash for the rest as a friendly loan.⁹² There were no private or government-owned banks for Bolotov to turn to. Instead, he could expect to borrow from his acquaintances based on their confidence in their relationship with him and his ability and willingness to repay. Bolotov's quick military and administrative advancement, owing largely to his solid knowledge of the German language, assured lenders that their investment was secure.

This chapter argues that a hundred years later, debt relations continued to pervade both commerce and the daily life of propertied groups in Russia, and that credit was overwhelmingly informal in the sense that it depended upon a network of personal connections, both direct and

⁹² A.T. Bolotov, *Zhizn' i prikliucheniia Andreia Bolotova, 1738-1793*, vol. 2 (Moscow, 1931), p. 104. As Olga Kosheleva has shown, St. Petersburg already had a lively culture of debt (buttressed by the legal institutions and involving not simply the nobility but broad commercial and urban classes) in the early eighteenth century: *Liudi Sankt-Peterburgskogo ostrova Petrovskogo vremeni* (Moscow, 2004), eg., pp. 416-417.

mediated, with the partial exception of those owners of serf-populated estates who were eligible for mortgage loans from the imperial government. While these state-issued loans to the gentry are the only aspect of Russia's culture of debt that has received scholarly attention in the past, I argue in the first section of this chapter that by the 1850s the network of personal credit connections in Russia and in particular in Moscow was large and independent of any state or private formal credit institutions. On the basis of several types of legal documents, including individual debtors' portfolios found in court cases, legal trusteeship (*opeka*) records, and the registration books of debt transactions, I argue that this credit network exhibited several types of borrowing patterns. Some individuals preferred to form "horizontal" links with persons of similar social standing. Most notably these included the wealthier gentry who borrowed from fellow-aristocrats, as well as those merchants whose commercial dealings were mostly with other merchants. At the same time, individuals of all social ranks and levels of wealth could choose or be induced to form "vertical" links with persons of different social and legal status. The two patterns seem to have had their advantages and disadvantages. Borrowing within one's kinship and social network allowed one to hope for better loan terms and more lenient treatment in the event of default; however, it probably involved a sacrifice in one's personal autonomy that was not involved in a more arm's-length transaction. From the lender's perspective the same considerations applied: one could have greater confidence in getting the debt paid from someone one knew well, but the relationship also could impose an awkward strain (to say the least) in case of default, when the lender might in the worst case be forced to resort to legal measures against the debtor.

Most common, however, were debt portfolios that combined “horizontal” and “vertical” connections. For instance, even aristocrats who preferred to borrow from their peers or from the government still shopped on credit, owed wages to servants, and sometimes had to turn to professional moneylenders. Even more strikingly, members of Moscow’s urban and commercial classes in the course of their credit dealings routinely penetrated the barriers between the merchantry, officialdom, and the gentry that – according to the traditional view – were erected by the empire’s system of separate legal estates. This prevalence of mixed debt portfolios suggests that personal and informal debt connections, in addition to reinforcing traditional Russian hierarchies of legal estate and state service, also simultaneously undermined them by uniting a “middling” propertied stratum that included the lesser gentry and civil servants, merchants, and better-off peasants and townspeople. These individuals shared a place of habitation, engaged in the same economic activities, and intermarried. Moreover, they had to share a set of attitudes and practices in order to engage in debt transactions, for example notions relating to trust, mutual dependence, and reputation in the community, as well as confidence in their ability to access the court system to structure debt transactions and to enforce payment.

Government versus Private Debt

The informal and personal character of Russia’s network of private debt was determined not only by its seasonal and agriculture-dependent economic structure, but also by state policies that discouraged the development of formal credit institutions. The government of Nicholas I (1825-1855) hoped to achieve economic and industrial growth mainly through private investment and initiative and with minimum state expenditure. Count Yegor Kankrin (Georg von Cancrin), the finance minister in 1823-1844, sought to control inflation and state budget through adhering to a

silver-based currency and avoiding foreign debt.⁹³ The silver standard limited the amount of cash in circulation, which reduced price inflation and fluctuation. Still, some public debt was unavoidable even before the Crimean War (1853-1856) demolished Kankrin's deflationary financial system. However, instead of issuing government bonds at home or abroad, the government created public debt in a roundabout way by borrowing from the state credit institutions. Only in the 1860s did the state encouraged the development of a modern financial infrastructure such as stock market, issues of government bonds, and the development of large private banks.⁹⁴ This development occurred much later than in Great Britain and the United States, where large joint-stock depository banks appeared in the 1830s, but Russia did not lag much behind other European states like France, Austria, Germany, and Italy, where such banks began to appear only in the late 1840s and early 1850s.⁹⁵

An important feature of Kankrin's system, that went hand-in-hand with the traditional aversion to private moneylending, was the increased role of state-run credit institutions. Originally set up in the eighteenth century to support serfowning gentry, under Kankrin these institutions accepted unlimited deposits that paid a generous four percent interest rate that could be compounded (i.e., added to the principal if not claimed). Thus, by the middle of the nineteenth

⁹³ Walter Pintner, *Russian Economic Policy under Nicholas I* (Ithaca, 1967).

⁹⁴ Stephen L. Hoch, "The Banking Crisis, Peasant Reform, and Economic Development in Russia, 1857-1861," *The American Historical Review*, Vol. 96, No. 3 (June, 1991), pp. 795-820.

⁹⁵ Gindin, *Banki i ekonomicheskaiia politika v Rossii*, p. 465. Russia's development should be compared to that of late imperial China, where the state was not interested in regulating economy and "was late in assuming responsibility for infrastructure development and the promotion of industry" (such as the development of bankruptcy or limited liability law). See Madeleine Zelin, *The Merchants of Zigong: Industrial Entrepreneurship in Early Modern China* (New York, 2005) (showing that this lack of government affected the forms of entrepreneurship but did not hinder economic development); Madeleine Zelin, et.al, eds. *Contract and Property in Early Modern China* (Stanford, 2004); "The Structure of the Chinese Economy During the Qing Period: Some Thoughts on the 150th Anniversary of the Opium War," in Kenneth Liberthal et al., eds. *Perspectives on Modern China, Four Anniversaries* (Armonk, 1991), esp. pp. 53-55.

century the government banks (especially the four large ones: the Loan Bank, the Commercial Bank, and St. Petersburg and Moscow Savings Treasuries run by the Board of Trustees of the Imperial Orphanage) accumulated nearly one billion rubles in deposits (an astronomical amount at the time enough to run all of Russia's military for several years).⁹⁶ As Soviet historian Iosif Gindin has suggested, these funds could have been used more productively to finance the development of Russia's economy. Instead, the larger portion of the amount was used to cover budget deficits, and a relatively small proportion (see below) was invested in loans to serfowning nobility. In contradiction to conventional view, in the nineteenth century the purpose of such loans was no longer a political one of supporting Russia's governing class but merely to invest excess funds in the most reliable type of loan, that secured by profitable real estate.⁹⁷ Even Soviet historians have never claimed that state loans were ever used to bolster those estates that were economically unproductive – rather, they lamented that the funds were wasted away by “parasitical” aristocrats. Moreover, as I show below (and as Soviet scholars Gindin and Borovoi failed to conclude no doubt for ideological reasons), the balance of payments shows that it was actually the gentry that supported the government financially rather than vice versa.

Mortgage banks for the gentry were established several times beginning in the mid-eighteenth century, but only as a temporary measure because the government was unable and unwilling to enforce repayment. Thus, the banks' operations had to discontinue once their capital was given away to the wealthier gentry. Under Catherine, financial support for the gentry was

⁹⁶ Gindin, pp. 505-507.

⁹⁷ See Gindin, *Banki* and Borovoi, *Kredit i Banki*. In the nineteenth century, the Loan Bank in St. Petersburg that was established specifically to bolster landowning gentry, was mostly used to cover budget deficit; in contrast, the purpose of the Board of Trustees' Savings Treasuries – that served primarily as mortgage banks – was to finance the operations of the Imperial Orphanage. Supporting gentry was not part of their mission. This change in policy has not been noticed in Western literature on Russia. See, for example, Blum, *Lord and Peasant in Russia*.

placed under a firmer basis by the establishment of several institutions that provided cash loans secured by serf “souls” at the low legally-sanctioned 5-6% rate; the most important ones (by the mid-nineteenth century accounting for about 80% of all government loans to the nobility) were the Moscow and St. Petersburg Orphanages. Each of them ran a “Savings Treasury” (*Sokhrannaya kazna*) through their Board of Trustees (*Opekunskii Sovet* – I will refer to this institution as the “Board of Trustees” or the “Board” to follow the contemporary usage).⁹⁸ Board loans issued from 1775 onwards were originally limited to 5,000 rubles and payable within five years, which ensured the Board’s solvency.

In the first half of the nineteenth century the loan terms were gradually liberalized: the repayment term was extended to 12 years in 1819, to 24 years in 1824, and finally to 26 and 37 years in 1830.⁹⁹ Maximum loan amounts were also greatly increased from the original 10 rubles per serf “soul” to 150-200 rubles depending on the value of the estate. By 1859, when a banking crisis induced the government to stop making these loans, the accumulated gentry debt amounted to a hefty 425.5 million rubles, secured by 66% of all privately owned serfs (the total amount for 1855 was 398.2 million).¹⁰⁰ The average loan amounts issued annually are difficult to estimate, but the average annual increase of gentry debt to the state in 1823-1859 was 9.3 million rubles.¹⁰¹

⁹⁸ D. Filimonov, “*Kreditnye uchrezhdeniia Moskovskogo vospitatel’nogo doma.*” *Russkii Arkhiv*, Vol. XIV, kn. 1 (1876), pp. 265-275. Other state-run credit institutions in the nineteenth century had much smaller operations (in 1859 the Loan Bank in St. Petersburg (the heir to the earlier unsuccessful operations) held debts worth 32.3 million rubles, and all the provincial Offices of Public Welfare taken together held loans worth 47.3 million rubles). See Aleksandr Skrebetskii, *Krestianskoe delo v tsarstvovanie imperatora Aleksandra II*, vol. 4 (Bonn, 1868), pp. 1242-1247.

⁹⁹ Filimonov, “*Kreditnye uchrezhdeniia*,” pp. 269-270.

¹⁰⁰ Skrebetskii, *Krestianskoe delo*, vol. 4, pp. 1247-1249 (actually has 65%, Troinitskii in *Krepostnoe naselenie Rossii po 10-i narodnoi prrepisi* (St. Petersburg, 1861) has 66%). For an overview in English, see Jerome Blum, *Lord and Peasant in Russia* (Princeton, 1961), pp. 379-385. However, B.G. Litvak argued that Russian landowners often exaggerated their indebtedness in their reports to the statisticians. See *Russkaia derevnia*, pp. 380-383.

¹⁰¹ Borovoi, *Kredit i banki*, pp. 197-198 – debt grew from 90 million rubles in 1823 to 425 million in 1859.

If one counts only the operations of the Moscow Board of Trustees, the actual loans amounts issued in the 1850s were higher than this average even during the economic slump caused by the Crimean War.¹⁰²

These amounts are of course staggering, but they have tended to obscure – even in the writings of Iosif Gindin and Saul Borovoi – the role of private credit networks, even though these scholars argued that government-issued credit was woefully inadequate to meet the needs of Russia’s developing economy (I am leaving aside the fact that Russian historians have completely overlooked the existence of debt that was neither commercial nor “parasitical”). While generous to the nobility, Kankrin’s credit policy nonetheless failed to eliminate or even undermine the activities of private moneylenders, given that even the richest serfowners frequently needed quick cash and that private lenders were the only option for individuals whose serfs were not eligible for government mortgage or for those who did not own any serfs at all.¹⁰³ The amounts of private loans are difficult to estimate precisely, because unlike the government loans they were not always carefully recorded; one pre-Soviet estimate put gentry indebtedness to private persons in Voronezh province in 1859 at 17% of the debt to the state.¹⁰⁴ In the absence of more reliable data, this estimate has been also used by modern scholars.¹⁰⁵ However, court

¹⁰² See Table 1.1 below. Filimonov gives 21.3 million rubles issued by the Moscow Board of Trustees in 1843 (“*Kreditnye uchrezhdenia*,” p. 272) but this includes payments to the government and institutional loans, as well as those to private persons. The Board’s account books suggest that the gentry borrowing did not taper off once most eligible serfs had been mortgaged but continued until its abolition in 1859, with the serfowners paying off some of their loans and then remortgaging their estates.

¹⁰³ Litvak showed that over 88% of state loans were issued to landowners with over 100 serfs. *Russkaia derevnia*, p. 383.

¹⁰⁴ *Materialy dlia geografii i statistiki* cited in Blum, *Lord and Peasant*. Other volumes of *Materialy* (Minsk, Lifland, Kaluga, Riazan’, Perm, Samara, Kherson provinces) do not give this kind of estimate but merely note that private debt was heavy.

¹⁰⁵ Evsey D. Domar and Mark J. Machina, “Profitability of Serfdom.”

records that I have examined suggest that this number should be greatly revised upward, and that Russia's private credit network, which included individuals of all social groups in addition to serfowners, rivaled and likely even exceeded government-issued debt. This revised estimate is based on the debt registers maintained by pre-reform courts, which were tasked with recording many transactions that we today consider the province of the notary public. Among them were the "registered loan letters" (*krepostnye zaëmnye pis'ma*) and mortgage notes (*zakladnye kreposti*), which will be discussed in detail in Chapter Six.

Table 1.1 lists the total amounts of serf-secured mortgages issued by the Moscow Board of Trustees in the 1850s (before such loans were discontinued in 1859).

Table 1.1 Moscow Board of Trustees Loans to serfowners (in silver rubles)

Year	1852	1854	1856	1858
Amount	14,566,216.64 ¹⁰⁶	9,716,892 ¹⁰⁷	8,597,904 ¹⁰⁸	16,719,290 ¹⁰⁹

These numbers must be increased – perhaps doubled – to account for other state-run credit institutions because Moscow's credit network cannot be isolated from the rest of Russia, as it was the credit hub for much of central and southern Russia.¹¹⁰

Compared to these numbers, "registered" loan letters recorded at the Moscow Chamber of Civil Justice (i.e., unsecured loans enjoying additional legal protections) constituted only six to

¹⁰⁶ *TsIAM*, f. 424, op. 1, d. 2081 (*Zhurnal prikhoda i raskhoda po vkladam i zaimam za 1852*).

¹⁰⁷ *TsIAM* f. 424, op. 1, d. 2083 (1854).

¹⁰⁸ *TsIAM* f. 424 op. 1, d. 2085 (1856).

¹⁰⁹ *TsIAM* f. 424, op.1, d. 2087 (1858).

¹¹⁰ For these purposes, I only have overall amounts of loan portfolios held by state-run banks (as opposed to those issued in particular years). Moscow Board in 1855 held loans worth 192.2 million rubles (decreased by 1.9 million in 1859). St Petersburg Board held 133.4 million rubles (grew by 17.8 million by 1859), the Loan Bank – 30.1 and 2.1 million respectively, and all the provincial Boards of Public Welfare – 42.4 million that increased by 5 million. Skrebetskii, *Krestianskoe delo*, vol 4, pp. 1244-1246.

seven percent. For example, in 1852 the Chamber registered debt transactions worth 1,118,073 rubles; in 1854 this amount was down to 636,238 rubles (representing the wartime slump); in 1864, although government loans were no longer available, the amount was only 606,900 rubles (although the list for that year appears to be only partial).¹¹¹ This type of transaction could be executed in any provincial capital, and so out-of-town borrowers or their agents would only come to Moscow to register a loan if their lender resided there. However, this type of long-distance borrowing was less likely in the case of loan letters that – as I suggest later in this chapter – represented “social,” rather than commercial borrowing. All this suggests that to take all of Russia into account, Moscow’s numbers should be increased considerably.

In addition to “registered” loans, private debt transactions included several other important types:

(a) “Private loan letters” (*domovye zaëmnye pis'ma*) that were not required to be executed and registered at a court. This category is the most difficult one to estimate, but the amount was probably at least as large as that for the “registered” letters: while “private” loans would most likely not include very large loans for which the parties would want to take all available legal precautions, nor loans by professional moneylenders, this would be compensated by medium-sized and small loans (below the “registered” letter’s median amount of three to five thousand rubles depending on the year) that were not worth the expense of taking a trip to the city and paying the required fees and taxes. “Private” loan letters were also probably more likely to be used in debt transactions between close acquaintances or relatives.

¹¹¹ *TsIAM* f. 50, op. 14, d. 2363 (*Kniga dlia zapiski [sic] krepostnykh zaemnykh pisem za 1852 g.*); *TsIAM* f. 50, op. 14, d. 2366 (*Kniga dlia zapiski krepostnykh zaemnykh pisem za 1854 g.*); *TsIAM* f. 50, op. 14, d. 2380 (*Kniga dlia zapiski krepostnykh zaemnykh pisem za 1864 g.*) (partial list).

(b) Private mortgages of rural properties, including serf-populated estates and unpopulated vacant lands. In 1862, this amount was 1,899,045 rubles.¹¹² When considering the earlier period, this amount should be reduced to perhaps one million rubles for the wartime period of 1854-1856, judging by the wartime slump that affected state-issued mortgage loans. But this amount should not be reduced too greatly, considering that government-issued credit was not as readily available to the gentry during the war, when the state took money from the Board to make up for its increased expenditures.¹¹³ For the pre-1854 period, this amount may have to be reduced yet further because competing government loans were more readily available, but perhaps, again, not by too much because the very high number of Board loans issued in 1852 suggests high demand for credit, which would also be reflected in the amount of privately-issued loans.

(c) Mortgages of urban real estate in Moscow that probably roughly equaled the amount of “registered” letters, based on the evidence of 1855, when such mortgages amounted to 518,843 rubles.¹¹⁴ Considering that 1855 was much worse for Russia’s credit than 1854 because of the war, the amounts for urban mortgages issued in 1855 were only slightly less than amounts for loan letters for 1854 (636,238 rubles, as noted above). This type of loan must have been proportionately larger for Moscow and the few other provinces that contained large cities.

(d) All other types of loan documents, such as *veksels* (bills of exchange) used by merchants and townspeople, and the more rarely used *sokhrannaia raspiska* (“safekeeping receipt” to be discussed in Chapter Six). As the statisticians from the 1850s noted, Moscow was much more

¹¹² *TsIAM* f. 50, op. 14, d. 1629 (land and populated estates) – note this was after the Board discontinued its loans.

¹¹³ These “borrowings” by the state (*zaimstvovania*) are shown in the Board’s account books. See notes 106-109 above.

¹¹⁴ *TsIAM* f. 50, op. 14, d. 1597. (land and houses in Moscow)

important as the source of domestic commercial credit than St. Petersburg. One way to estimate the relative financial power of its merchants is through the register of rural mortgages for 1862 (which is discussed later in this chapter). It shows that merchants and townspeople accounted for almost half of all rural mortgages in 1862, and thus the borrowing power of the merchantry that used Moscow as its credit center was not much smaller than that of the nobility, especially considering that most of the merchants' credit operations did not involve land and that after 1859 all of gentry mortgage needs had to be met with private loans.

Another way to estimate the volume of commercial credit is through the operations of the State Commercial Bank, which "discounted" (purchased for less than their face value) *veksels* (bills of exchange) issued by individual merchants. In 1853 the bank discounted *veksels* for 25,8 million silver rubles; during the Crimean War this amount decreased, but in 1859, because of the post-war economic upturn (and inflation), reached 47,7 million rubles.¹¹⁵ Considering that significant discount operations only existed in St. Petersburg, and that thus many *veksels* were unlikely to be brought there to be sold to the Commercial Bank, it is safe to conclude that commercial credit alone exceeded the government's annual credit operations.

Taken together, these numbers suggest that private debt issued annually in Moscow province alone must have exceeded Moscow-issued government credit, which served most provinces of European Russia.¹¹⁶ But although Moscow was the hub of Russia's domestic trade and commercial credit, private debt could also originate in 64 other provinces of the empire (as well

¹¹⁵ Borovoi, *Kredit i banki Rossii*, pp. 221-222; for slightly different figures, see V.V. Morozan, *Istoriia bankovskogo dela v Rossii (vtoraia polovina XVIII – pervaiia polovina XIX v.)* (SPb: 2001), pp. 383-386. Although the Commercial Bank's discounting operation was primarily conducted in its St. Petersburg office, which alone was permitted to purchase *veksels* using privately deposited funds and not just its relatively small principal capital, these numbers still suggest that annual credit operations of the Russian merchants were larger than those of the much more numerous nobility. Borovoi argues that because these amounts were small compared to deposits at the Commercial Bank (7,3% in 1856), *veksel* circulation and thus capitalism were not properly developing in Russia.

as in Poland and Finland). Although most of these regions had tiny economies, St. Petersburg and Riga controlled much of Russia's foreign trade, Black Sea ports – especially Odessa – exported grain, black-earth provinces grew cereals, refined sugar, and distilled liquor, while several provinces around Moscow and in the Urals included much of Russia's emerging industry. Again, precise numbers are difficult to calculate, as the military statisticians in the 1850s discovered while trying to estimate the volume of domestic commerce in various provinces. Those sent to Odessa found an ingenious way to do so through the volume of private cash transfers through the imperial post. In all of Russia in 1848, 211.6 million rubles were sent and 210.8 million received; of these, Moscow and St. Petersburg taken together amounted for 1/3 sent and 2/5 received, with Odessa as number three.¹¹⁷ Of course, this calculation did not include various types of cash equivalents that were mailed, but if it does indicate the two capitals' relative financial power, perhaps their combined share of Russia's private credit market can also be between 33 and 40 percent. In Odessa, the value of grain exports – which, as the authors of the statistical survey of Odessa made clear,¹¹⁸ relied on credit because of the seasonal character of agriculture and lack of cash – was 17.5 million rubles in 1852, 25.7 million in 1853 (figure for wheat only), and 9.2 in 1857.¹¹⁹ Finally, in 1857 there were 49 bankruptcy proceedings in Odessa

¹¹⁶ Skrebetskii showed that the geographical distribution of the loans by Moscow and St. Petersburg Boards involved some small overlap, but that St. Petersburg was preferred by the nobility from St. Petersburg, Novgorod, Pskov provinces, as well as those of Belorussia, Lithuania, and Western Ukraine up to and including Kiev province. Eastern and Northern Ukrainian and South Russian gentry went to Moscow, as did the borrowers from all central (including Smolensk), northern (including Vologda), and Volga provinces. See *Krestianskoe delo*, vol. 4, pp. 1244-46. There is obviously no precise way to determine whether this distribution also applied to borrowers from private persons outside their provinces, there was probably some similar geography-based correlation dictated by such factors as cultural preferences and ease of communications.

¹¹⁷ *Materialy dlia geografii i statistiki Rossii, Khersonskaia guberniia*, part 1 (St. Petersburg, 1863) p. 566.

¹¹⁸ *Id.*, pp. 543-544 and 564 ff.

¹¹⁹ *Id.*, pp. 566-568.

(of those 27 were left over from the previous years) over the debts that totaled more than three million rubles.¹²⁰ These numbers suggest that Odessa's private credit system was robust, even if smaller than that of Moscow.

Overall, it therefore seems to be fair – and extremely conservative – to estimate that all other provinces together added to approximately the same amount of private debt as Moscow.

Finally, these estimates do not include such categories of debt as retail trade or pawnshop business. Nor does this analysis include undocumented private debt, which is mentioned in court cases where many debt claims brought against individuals turned out to be undocumented and thus virtually impossible to enforce in court.¹²¹ These estimates, then, suggest that privately issued debt in Russia, estimated very conservatively, was at least as large as government loans, and that the earlier 17% estimate, which may be accurate for the gentry in Voronezh province, is far too low to apply to the entire empire.¹²²

Of course, my estimates operate with the numbers for annual debt transactions, rather than the total accumulated debt burden for a particular year. A critic might suggest that private debt would not rack up as massively as government debt because individuals would be more

¹²⁰ Id. p. 628.

¹²¹ See, for example, the case of the trading peasant Mavra Bubentsova, in which most claims against her were not documented. *TsIAM*, f. 78, op. 4, d. 275 (1869-70). See also the bankruptcy case of another merchant, Vasilii Prokhorov, in which almost half of the debt was not documented. *TsIAM*, f. 78, op. 3, d. 44 (1859). Artemii Riazanov, another bankrupt merchant from the same period, testified that undocumented debt was widely used by Moscow's merchants. *TsIAM*, f. 50, op. 4, d. 8960 (1866-69).

¹²² My research suggests that the only category of borrowers for whom the proportion of private debt was low was the small group of approximately 1,400 wealthiest serfowners (constituting just one percent of all gentry estate owners. See I.I. Ignatovich, *Pomeshchich'i krestiane nakanune osvobozhdenia* (Leningrad, 1925), p. 85). Such individuals held huge Board debts that dwarfed even their considerable private debts. See, e.g., *TsIAM*, f. 50, op. 5, d. 12256 (Trubetskoi) (1851), *TsIAM*, f. 49, op. 3, d. 889 Golitsyn, *TsIAM*, 50.5.12073 (Muraviova) (1848-1867), *TsIAM*, f. 50, op. 5, d. 12258 (Rakhmanova) (had no private debt) (1851-67) But some large estates could still be burdened with private debt: see *TsIAM*, f. 92, op. 6, d. 746 (Zubov), where several generations of borrowers accumulated private debts that exceeded Board loans; this larger proportion of private debt also was more typical for smaller serfowners. See *TsIAM*, 50, op. 5, d. 12260 (Nilus), *TsIAM*, f. 92, op. 6, d. 741 (Pevnitskaia).

motivated to repay high-interest private loans. It is often assumed that because of the generous terms of government loans, debtors were not in a hurry to repay them.¹²³ While this was apparently true enough for the special banks organized for the nobility in the eighteenth century, the Moscow Board of Trustees in the nineteenth century was not easily taken advantage of, considering that its account books consistently showed a significant positive balance, i.e., the nobles paid back more than what they borrowed in contradiction to the commonly held view that the state's credit institutions were in effect a subsidy for the nobility.¹²⁴ While Board loans were generous in terms of their amounts and repayment schedules, they did require timely annual payments. Even though – as is often noted in the literature – few estates were actually sold for government debt, these low numbers obscure the fact that the Board's typical way of dealing with defaulting debtors was first to threaten the debtor by inventorying his or her estate, and then to appoint a trustee over the delinquent's estate to collect its income, while a public sale was a last-resort measure.¹²⁵ Nor did the private lenders who charged a higher interest rate possess the

¹²³ See Blum, *Lord and Peasant*, pp. 379-385; Nefedov, *Demograficheski-strukturnyi analiz*, pp. 220 ff.

¹²⁴ According to the account books of Moscow Board of Trustees, in 1852 the Board issued 14,566,217 rubles' worth of loans secured by populated villages and collected 21,963,714 rubles of principal and interest on such loans; for 1854, the figures were 9,777,022 and 17,267,000 rubles respectively; for 1856 - 8,225,196 and 16,983,074; for 1858 - 15,919,270 and 21,535,266. This pattern was therefore independent of the wartime credit slump. See notes 106-109 above. For 1843 – see Filimonov, “*Kreditnye uchrezhdenia*.” These figures, as well as the fact that the Loan Department (*Ekspeditsiia zaimov*) of Moscow Board routinely transferred large amounts of cash (up to ten million rubles at a time) to the Deposit Department and to the government directly show that – in contradiction of the commonly held view – it was actually the gentry that subsidized the government, rather than vice versa. Similar pattern is observable with respect to commercial credit: only a small proportion of *veksels* sold by individual merchants to the Commercial Bank could not be collected from the original issuers. Morozan, *Istoriia bankovskogo dela*.

¹²⁵ *Materialy dlia geografii and statistiki*: in Simbirsk Province, in 1856 out of 800 mortgaged estates, 33 were inventoried, 14 taken over, only one sold; in 1860 – out of 897 mortgaged estates, 119 were inventoried, 109 taken over, and two sold (p. 502). In Riazan' in 1857 – out of 2554 estates, 194 were inventoried, taken over, or sold (p. 235). Cases show the kind of situation that caused a sale by the Board: see *TsIAM*, f. 92, op. 6, d. 746 (Zubov). Zubov's estate had been in extreme disarray for several generations, although for many years the Board was content with appointing a trustee. Andrei Chikhachev, a middling landowner from Vladimir (of modest fame as a publicist in the 1860s) in an *Agricultural Gazette* article lamenting the indebtedness of provincial serfowners, noted the estates being taken under trusteeship, but did not mention actual sales at an auction. This made sense considering the

same kind of legal advantage as did the Board with its enforcement mechanism. The kind of legal hassle that debtors could impose on their lenders – as discussed in the later chapters of this study – was not really possible to effect upon the Board, which operated outside the regular court system, had legally sanctioned priority in disposing the defaulting borrower's property, and whose discretion was limited only by the government's reluctance to appear to be ruining the gentry. This factor alone may account for the seeming irrationality of paying off lower interest loans at the same time or faster than those at higher interest. In any event, individual debt portfolios that I have reviewed do not suggest that debtors repaid private loans any faster or slower than those to the government. Rather, those debtors who did attempt to repay their loans paid off both types at the same time, rather than making an effort to repay private loans first.¹²⁶ In short, there is no evidence to suggest that the estimated proportion of accumulated private debt should be reduced because of a quicker repayment as compared to government debt.

The Landowning Gentry

Wealthy serfowners were the one category of population that was eligible to borrow large amounts from the state and thus could potentially avoid the burden of large private debts.

Moreover, members of Russian aristocratic families participated in extensive kinship and patronage networks.¹²⁷ One of the benefits of these networks seems to have been access to credit

Board's original mission of supporting the nobility and the difficulty of finding another landowner who would be willing to take on the Board debt in exchange for the estate that was almost certainly in bad condition. Chikhachev himself in his younger years inherited a badly managed property with large Board debt; he did so only because it was his family's ancestral estate, which he believed it was his duty to pass on to his children. The implication was that it would be an insult to the tsar to let his original gift to Chikhachev's ancestors to go back to the state. See Katherine Pickering Antonova's forthcoming microhistory of the Chikhachev family.

¹²⁶ *TsIAM*, f. 92, op. 10, d. 611 (Naryshkina) (1849-51); *TsIAM*, f. 50, op. 5, d. 12256 (Trubetskoi) (1851). *TsIAM*, f. 50, op. 5, d. 12073 (Muraviova) (1848-1867) (her guardians chose first to repay the low-interest Board debt).

¹²⁷ LeDonne, *Absolutism and Ruling Class*; Marrese, *A Woman's Kingdom*, pp. 216-218; I.M. Dolgorukov, *Povest' o rozhdenii moiom, proiskhozhdenii i vsei zhizni*, 2 vols. (St. Petersburg, 2004) (this memoir encompasses the period

that could allow nobles to avoid turning to professional usurers. Nonetheless, the lists of creditors included in court cases suggest that “horizontal” credit relationships based on kinship and patronage were far from predominant. At least some nobles either preferred, or were driven by circumstance, to borrow from their social inferiors, while the most common pattern was to mix the two patterns of borrowing.¹²⁸

The estate of Guard Captain Muraviov is one example of a preference for credit ties with one’s peers. At the time of his death in 1848 he owned 3,655 serfs in five different provinces (Orel, Riazan’, Voronezh, Vladimir, and Kaluga) and held a total of six loans from the Moscow Board of Trustees amounting to 164,455 rubles. His much more modest private loans were from Privy Councilor’s wife Davydova (3,500 rubles) and from Guards *Rotmistr* (cavalry captain) Pokrovskii; Muraviov also acted as a surety for the loan of 5,500 rubles incurred by his relative, State Councilor Aleksandr Muraviov (I do not include here the loans that seem to have reflected self-dealing and embezzlement of the trustees over Muraviov’s estate after his death).¹²⁹ While a few thousand rubles do not seem as much compared to the nearly 165,000 rubles of Board loans, it should be remembered that three thousand rubles annually would allow a comfortable existence to a gentry family and were not a trifle even to the likes of Muraviov. Almost half a century before that, Privy Councilor’s wife Ekaterina Naryshkina (her family has already been

from 1764 to 1822).

¹²⁸ Soviet historian D.I. Patrikeev found that the fabulously wealthy Morozov boyar family in the later seventeenth century lent money extensively to petty landowners and to its own enserfed peasants. See his *Krupnoe krepostnoe khoziaistvo xvii v.* (Leningrad, 1967), 133. Cited in Daniel H. Kaiser, “Forgive Us Our Debts’: Debts and Debtors in Early Modern Russia.” In *Forschungen zur ostereuropaeischen Geschichte*, 155-193 (Berlin, 1995), 158. These debt relations seem to have been “vertical,” not involving fellow magnates. Conversely, my review of court cases from the mid-nineteenth century has not identified any similarly extensive moneylending operations by the aristocracy, although the question could bear further investigation based on family archives.

¹²⁹ *TsIAM* f. 50, op. 5, d. 12073 (Muraviova) (1848-1867).

mentioned above), who was born into an old but undistinguished gentry family of Opochinins and married into an illustrious family of old Muscovite aristocracy, followed the same pattern in her borrowing: in addition to modest Board loans (since the terms were not as liberal in the early nineteenth century), around 1813-1815 she owed sums of 1,500 to 5,000 rubles to other old Muscovite gentry, including some relatives, such as an Opochinina, an Orlov, a Mansurov, and a Naryshkin.¹³⁰

Other aristocratic debt portfolios combined debts to peers with those to clear social inferiors (whether it was by need or preference cannot be determined). For example, Actual State Councilor Prince Iurii Ivanovich Trubetskoi upon his death in 1851 left private debts amounting to 81,115 rubles (which were dwarfed by his Board debt of almost 600,000 rubles) and an estate of 10,645 serfs bringing in over 70,000 rubles annually. Trubetskoi's debts included loan letters from persons who appear to have been his equals, such as Agrafena Mansurova (a cavalier of the Order of St. Catherine and wife of an Adjutant-General and Lieutenant-General) and Nadezhda Karnilieva, widow of a collegiate assessor (equal to colonel), as well as a 10,000 ruble loan from a very junior civil servant, and slightly smaller loans from a *meshchanka* (a townswoman) and from a high school student (*gimnazist*), all three of whom were probably professional moneylenders because their loans were executed as the "safekeeping receipts" (*sokhrannaia raspiska*) typically used by *rostovshchiki* (usurers). However, despite Trubetskoi's apparent sudden need for money, his largest single private loan by far of over 18,000 rubles was from

¹³⁰ *TsIAM* f. 91, op. 10, d. 611 (Naryshkina) (1849-1851)

Mansurova, most nearly his peer and his highest-ranked creditor, which shows that Trubetskoi preferred to borrow from his peers whenever possible.¹³¹

Aristocratic debt portfolios could be even more diverse, such as those of Privy Councilor Prince Vasiliĭ Alekseevich Khovanskii, who died in 1850 and who held estates in Ruza and Dmitrov counties in Moscow province. Khovanskii and his daughter, who was married to Privy Councilor Bulgakov, owed money to five nobles, five merchants, one *meshchanka* and two serfs. One of the latter must have been a trader, as his debt was only 384 rubles, but the other serf creditor, Egor Duduev, despite being owned by a Mrs. Shepeleva, must have been either a moneylender or a prosperous merchant/skilled craftsman, since he loaned 6,233 rubles. Interestingly, all but one of Khovanskii's noble creditors were very highly ranked: Khovanskii's own wife, a colonel's wife, a state councilor's wife, and a collegiate assessor (8th class), and thus these loans were probably "social" in character (i.e., signified more than a purely economic relationship). Their loans were much larger than the 6,000 paper ruble loan from the "noble-born maiden" Shemanskaia, who was more likely a professional moneylender.¹³² But the most extensive "social-based" credit network I found is the case of Anna Bestozheva (*sic*), a widow of a Guard captain, who became insolvent around 1870, fell ill and died in 1873 without any property but with debts to 21 persons – all of them except for four merchants being officers, gentry, and civil servants – totaling almost 160,000 rubles, of which only about 38,000 were her own debts, and the rest were her responsibility because she signed on as a surety, presumably for her friends or relatives.¹³³

¹³¹ *TsIAM* f. 50, op. 5, d. 12256 (Trubetskoi) (1851)

¹³² *TsIAM* f. 50, op. 5, d. 11967 (kn. Khovanskii) (1850...).

¹³³ *TsIAM* f. 142, op. 5, d. 1307 (Bestozheva).

The limitations on the kinds of loans that were available from one's peers are much clearer in the case of the young Count Dmitrii Nikolaevich Tolstoi, a remote relative of the great writer who lived with his father and went deep into debt to buy himself fine horses and other luxuries. Because Tolstoi had neither his own property, nor an established legal personality separate from his father (despite being of age), he had not been able to form such connections with fellow aristocrats that would include the possibility of extending credit. Thus, all four of the officers and civil servants among Tolstoi's creditors were of low rank: one staff captain, one titular councilor, one *shtabs-rotmistr*, and one collegiate registrar (none with particularly impressive names), which could suggest that they were merely other young men like himself who were likely to be his acquaintances, but it was alleged in the case record that at least some of Tolstoi's creditors were being investigated for usury, and so some of these civil servants may instead have been professional moneylenders. Other creditors were most likely those vendors who supplied Tolstoi with luxuries, including three merchants, one *meshchanin*, two serfs, one craftsman (*tsekhovoi*), one soldier and one free peasant.¹³⁴

It is important to remember that the lists of creditors found in court cases are not necessarily complete because they only include those individuals who either initiated the lawsuit or learned about it from newspapers and joined in later. Thus the complete debt portfolio of a propertied person must have been more extensive, including amounts owed not only to acquaintances, moneylenders, and business partners, but also the servants' wages and retailers' bills. Most of these claims never showed up in court records, but one exception was the case of the Privy Councilor's wife Princess Natalia Saltykova-Golovkina who died in 1860. Fifteen years

¹³⁴ *TsIAM* f. 81, op. 18, d. 1259 (Tolstoi) (1863-5).

previously, her estate of 10,300 serfs had been restructured as an indivisible estate (*maiorat*), meaning that while some of its income could be used to pay off Saltykova's creditors, the estate itself went to her son and could not be sold for debt (in contravention of the Russian inheritance custom of bequeathing a fair portion of one's property to each of one's children).¹³⁵ This special status of the estate perhaps explains the unusually meticulous inventory of all of Saltykova's debts, including some that were for only a few rubles from individuals who by themselves were unlikely to get involved in any litigation. Among 49 creditors, three were junior civil servants, 13 merchants, 18 serfs and free peasants, 12 *meshchane* and craftsmen, one a soldier's wife and one a foreigner; finally, only the Aulic Councilor Tuchkov, Saltykova's landlord, could be considered as her social peer. The merchants and peasants were mainly servants and retail vendors, including a cook (the former serf Petr Markov who hired Collegiate Registrar Bogoslovskii to collect his 340.90 rubles), purveyors of bread, coal, hay, firewood, clothing, medicine, miscellaneous goods (*melochnyi tovar*), and horse harness. There were 16 trader bills (and probably more because retail receipts were converted to loan letters if not paid quickly), as well as 17 claims for servants' wages and 14 money loans. Finally, there was merchant Iulii Zhianini, to whom Saltykova pawned various movable property for 3,300 rubles. Some of these loans were marked as partially paid, and there were no suspicions about Saltykova's solvency; nor were there any Board of Trustees loans, or even large private ones. Thus, unlike most debt portfolios discussed in this chapter, Saltykova probably represents the "normal" case that came to the courts accidentally, rather than because creditors despaired of any other way to collect

¹³⁵ For *maiorat* see K.P. Pobedonostsev, *Kurs grazhdanskogo prava*, vol. 1, §12.

their money. The case also shows – perhaps not surprisingly – that credit relationships involving significant cash loans should be augmented by the numerous links with servants and retailers.

Urban and Commercial Debt: Russia’s “Middling” Class

Whereas many court cases analyzed in this study originated in various parts of the country, and ended up in Moscow courts only incidentally, another important segment of Moscow’s court practice consisted of cases that linked together the propertied groups of the city proper. These groups included not only nobles, officers and civil servants, but also clergy, merchants, and better-off peasants. Even if these individuals did own houses in the city or landed properties in the surrounding countryside that could be mortgaged to the Board, government loans met only a small fraction of their credit requirements, as opposed to their close social connections in the city. Although they still liked to borrow from their own kind whenever possible, they obviously did not have very many wealthy relatives and friends, and had to diversify their credit links across social and estate lines, even permitting us to speak of a single “middling” urban estate in the mid-nineteenth century, one that united various civil and military officers, merchants, and other propertied city-dwellers.¹³⁶ The same observation applies to loans that were clearly commercial, whether they involved merchants or nobles, including those who actively managed and developed their estates or organized factories with serf labor.¹³⁷ While some commercial

¹³⁶ It is not clear when Moscow’s credit network became so diversified (or if it always was like that) – but it seems to have been in the slightly earlier period as well, judging by the list of imprisoned debtors who were considered for ransom on the occasion of Nicholas I’s coronation in 1826. Among them, for example, was an unmarried *meshchanin* Andrei Zotov, who was imprisoned on August 20, 1826, owed 3,000 rubles to the titular councilor’s wife Bulatova, 2,000 rubles to *meshchanka* Diakova, 1,200 rubles to *unter-ofitser*’s wife Tikhanova, 350 rubles to merchant Borodin, 350 rubles to gubernial secretary Medvedkov, and 400 rubles to merchant Chesnokov. He probably engaged in trade but it is interesting that out of his six creditors, there were two civil servants. *TsIAM*, f. 16, op. 30, d. 259.

¹³⁷ On “proto-industrialization” under serfdom in Russia, see Richard L. Rudolph, “Agricultural Structure and Proto-Industrialization in Russia: Economic Development with Unfree Labor,” *The Journal of Economic History*, vol. 45, No. 1 (Mar., 1985), pp. 47-69. See also Litvak, *Russkaia derevnia* (prosperous landowners were more indebted).

loans show strong preference for a debtor's own rank and social group, at least some diversification was common.

As in the case of wealthy gentry, individuals from the debtor's own social background often continued to be an important source of credit, especially for merchants. For example, the honorary citizen Nikolai Kuznetsov (a wealthy merchant who began his business already burdened with a 300,000 ruble debt he inherited from his father), who was put on criminal trial for alleged "malintentioned bankruptcy" in 1865, owed debts to seventeen creditors, all of whom were either merchants or *meshchane*, of whom five were specifically listed as being from outside Moscow, and with most of whom Kuznetsov seemed to have had long-term relationship, since they held up to nine of his *veksels* for different amounts.¹³⁸ Other merchants who generally dealt with their own kind, did nevertheless form some credit connections with the Moscow noble-servitor class. For example, Moscow merchant Zhivov had six creditors at the time of his death in the early 1850s, individual loans varying from 2,800 to 555,000 paper rubles. Of these creditors, four were also merchants, and only the smallest debt of 1,000 silver rubles came from a titular councilor, Shapovalov (equivalent in rank to an army captain); furthermore, Zhivov's house was mortgaged to Messrs. Orlov (the form Mr. at that time indicated nobility) for 17,428.53 rubles.¹³⁹ A much more modest merchant Iakov Chistiakov had seven creditors to whom he owed 2,710 rubles, of which five were merchants, one – with the name spelled by the court clerk as Gashinshchinov – most likely a "foreign" merchant of Armenian or "Tatar" origin,

¹³⁸ *TsIAM* f. 50, op. 4, d. 8960 (Kuznetsov) (1865)

¹³⁹ *TsIAM*, f. 50, op. 5, d. 12271 (Zolotareva) (1852).

and one was the titular councilor Nikolaev, to whom Chistiakov owed 350 rubles, less than the average amount.¹⁴⁰

A much more diversified debt portfolio was incurred by an equally modest female merchant Mavra Bubentsova, who sold fish and was not even enrolled in a merchant guild (she was a peasant who took a commercial license). She made debts worth over 40,000 rubles (while her merchandise stock was worth 962 rubles); however, for almost all of these (38,000 rubles) creditors could not present any written proof, making collection virtually impossible. Out of Bubentsova's nine creditors, three were peasants, three merchants, and three civil servants (one of the lowest 14th class and two of the 12th class). These estate-crossing links are remarkable, given Bubentsova's low social status, as is the fact that higher-status individuals (two 12th class civil servants, one honorary citizen, and peasant Gusev, who was rich enough to hire one of Russia's few pre-reform official lawyers (*prisiazhnyi striapchii* - officially registered, as opposed to regular legal representatives who were not required to possess any special qualifications), one Kaltynin, to represent him – all had documented debts that could be pursued in court, while the multi-thousand ruble debts from peasants and merchants, as well as the lowest-ranked civil servant, were not documented.¹⁴¹

Non-merchants likewise liked to borrow from their own kind. Consider the debts of the collegiate councilor's wife Liubov' Pevnitskaia, who owed approximately 24,000 rubles and was accused by her creditors of being a compulsive borrower, who incurred more debts even as it became clear that she was unable to repay most of them. Despite her ownership of 228 serfs in

¹⁴⁰ *TsIAM*, f. 50, op. 4, d. 8434 (Chistiakov)

¹⁴¹ *TsIAM*, f. 78, op. 4, d. 275 (Bubentsova) (1869-70).

Ruza County, and her husband's officially high rank (collegiate councilor corresponds to an army colonel), she was connected to Moscow's clerical circles, because her father had been a noble-born priest, as well as to the world of *raznochintsy*, since her husband was actually employed as a high school (*gimnaziia*) teacher. Her debt portfolio reflected this diverse background of clerical, noble, and urban elements. Out of 22 creditors, eight were officers and civil servants and six were clergy (two priests, a bellringer, two deacon's wives, and a priest's wife), with the latter being Pevnitskaia's largest creditors both in terms of the total and average loan amounts (see Table 1.2). At the same time, her creditors also included four merchants, two *meshchane* and two serfs. Thus, Pevnitskaia's debt portfolio suggests that her social background continued to be her single most important source of credit, but it was not by any means the sole source. After all, the table also shows that while the 12 loans from men were four to five times as large as the ten loans from women, loans from different estates did not differ drastically, giving some credence to viewing Pevnitskaia's milieu as a single "middling" urban class that included individuals very much unequal in terms of Russia's system of legal estates.¹⁴²

Table 1.2. Debts of Liubov' Pevnitskaia¹⁴³

	Men (12)	Women (10)	Servitor (8)	Clergy (6)	Urban & Peasant (8)
Total	19,306	4,358	7,276	8,739	7,649
Average	1,609	435	909	1,456	956

Whereas Pevnitskaia was able to incur substantial debts and to resist collection proceedings perhaps in large part because of her social connections, individuals of similar station in life but

¹⁴² Elise Kimerling Wirtschafter emphasizes porousness and plasticity of social categories and argues for the existence of a "middle estate which possessed all the cultural and socioeconomic [albeit not political – S.A.] ingredients of a European middle class." *Structures of Society: Imperial Russia's "People of Various Ranks."* (DeKalb, 1994), p. 136.

¹⁴³ *TsIAM*, f. 92, op. 6, d. 741, vol. 1, l. 6 (Pevnitskaia) (1852-4).

without either the landed wealth or a social network had more difficulty resisting insolvency. For example, a British subject Nikolai Dzhakson (Jackson) owned a house in Moscow together with his mother and his brother, but made his living by giving lessons and by translating literature from English into Russian. He also was pursuing two legal cases: one in the Moscow District court against the heirs of Major General Poliakov (up to 20,000 rubles) and the other one in St. Petersburg (at the Senate appeal stage) against another British subject, Gen [sic] for 1,000 rubles. By the time Dzhakson became insolvent in 1872, his debts reached 54,000 silver rubles owed to 16 persons, of whom 6 were civil servants, four merchants, one *meshchanin*, one foreigner, one midwife, one “maiden” (presumably of gentry origins), and one nobleman. Not only did he not borrow from other Englishmen or other Westerners residing in Moscow (except for one Prussian merchant), but he was involved in a lawsuit with his own countryman.¹⁴⁴ This apparent lack of social ties no doubt contributed to his financial ruin, although in the end most of his creditors took pity on him and his family.

Other urban debt portfolios likewise show the combination of strong links between the gentry and Moscow’s commercial classes, some links within one’s milieu, as well as connections with one’s social superiors. For example, the debts of the retired *rotmistr* (cavalry captain) Mikhail Levenets may have resulted from some commercial activity because he that he owed 35,773 rubles to the Dutchman Luk and 26,875 rubles to Collegiate Registrar (the lowest 14th class) Zamkov.¹⁴⁵ But at the same time, some of his debt may have been consumer-related, such as the 360 rubles to *meshchanin* Alatyrtsev and 200 rubles to craftsman Kumisov, while yet another

¹⁴⁴ *TsIAM*, f. 142, op. 4, d. 1446 (Dzhakson) (1872).

¹⁴⁵ It is difficult to suppose that a Dutchman would lend such a large amount without security for a non-commercial purpose.

group was probably his “social” debt, such as the 2,500 rubles owed to the staff-captain of the Guard Dashkov and 8,158 owed to Privy Councilor Prince Iurii Alekseevich Dolgorukov. While Levenets’ service in the cavalry implied substantial wealth, given that officers had to purchase expensive horses and uniforms, it also no doubt promoted the kind of useful credit connections that most persons described here lacked. Levenets even acted as a surety to the higher-ranked Collegiate Councilor Monkevich. At the same time, his credit connections remained diverse, with only one of his twelve creditors being a fellow military officer, five civil servants, three merchants, two townspeople, and one foreigner.¹⁴⁶

Less wealthy individuals did not show as much horizontal or “social” borrowing but still held surprisingly diverse debt portfolios. A gentlewoman of very modest means, staff captain’s wife Avdotia Zerkal’nikova, owed money to seven persons, of whom one was a cavalry officer of the same 10th rank as her husband, and two were the Gubernial Secretary and his daughter (12th class), one merchant, one *meshchanin*, one foreigner and one a postman’s wife. Notably, Zerkal’nikova either could not, or did not want to borrow from persons of superior status (although the cavalry officer was likely wealthier than Zerkal’nikova or her husband), but her credit connections show a strong degree of integration in Moscow’s credit community, which in her case linked such different persons as a cavalry officer and a postman’s wife (*pochtalion* means a mail delivery person, not a ranked postal service official).¹⁴⁷ Even very short debt lists could be diversified, for example that of the insolvent retired collegiate secretary Pëtr Glushkov, who owed 2,000 rubles to collegiate assessor Mikulyshin (this was a senior civil service rank –

¹⁴⁶ *TsIAM*, f. 142, op. 5, d. 1281 (Levenets) (1864).

¹⁴⁷ *TsIAM*, f. 142, op. 5, d. 1266 (Zerkal’nikova) (1868 – vol 2).

8th – that until 1856 bestowed hereditary nobility); another 2,000 to the second-guild merchant Sulaev, and 1,156 rubles to *meshchanin* Andreev.¹⁴⁸ Considering that there was a significant social gap between Glushkov's 10th rank and his creditor's 8th rank, it is interesting that Glushkov chose to borrow from a superior.

Lists of debtors are much less commonly found in court documents, and only then under some unusual circumstances, such as when creditor himself became insolvent or was prosecuted by authorities. But those lists that I have been able to locate likewise combined horizontal and vertical credit links. One example of a lender favoring his own kind was Lieutenant Vasilii Nilus, who died in 1852, whereupon the trustees appointed over his estates attempted to sort out his assets and debts. While Nilus owned 147 serfs (generally a bare minimum to be able to live on estate income alone) in the agriculturally-rich Orël province, most of his income must have come from his ownership of four houses in Moscow, as well as from his moneylending activities. He strongly preferred to loan money to other officers and civil servants: two of his debtors were staff captains, one was a titular councilor, and one was the aulic councilor (corresponding to lieutenant colonel), and one was an unspecified nobleman (indicated by the use of “mister” as the form of address). Nilus did, however, diversify his investments in other ways, by making several relatively small loans (2, 2, 3, 6.8 and 8.2 thousand rubles), rather than a few large ones, by lending money to a person from St. Petersburg, and by securing the loan to one Mr. Krenenberg with a mortgage on a house in the town of Orël. The loan to Titular Councilor Pavlov (of 8,208.50 rubles) must have turned sour because Nilus was engaged in a lawsuit which at the time of his death was being appealed to the Senate. In turn, Nilus himself actively borrowed money:

¹⁴⁸ *TsIAM*, f. 142, op. 4, d. 71 (Glushkov) (1872).

he mortgaged his estate for 14,140 rubles and one of his houses for 1,464 rubles to Moscow Board of Trustees (perhaps so that he could then loan this money to other individuals at a higher rate), as well as mortgaged at least one of his houses for 7,000 rubles to Mrs. Shamsheva (who judging by this form of address must have also belonged to the gentry class). Finally, Nilus also took out a cash loan of 865 rubles from *meshchanka* Olga Pisareva, in addition to owing an unspecified sum of money to his brother.¹⁴⁹

Another example of a lender is the honorary citizen from the town of Kashira Nikolai Popov, who inherited 10,000 rubles from his father and lived by lending this money out, allegedly at the “legal” interest rate and secured by real property. The list of his debtors showed a clear preference for other merchants who were also from Kashira and, if possible, his relatives: out of eight debtors, six were also merchants – of those, four were from Kashira (of whom three were related to Popov). At the same time, Popov did show some attempt to diversify his investments: one of his debtors was an army captain and one was a major general (who borrowed very small amounts). Also diversified were the kinds of debt obligations that Popov accepted: only two were actually mortgages (a factory in Moscow and a house in Kashira), one was a contractual obligation (*uslovie*) of unspecified sort, one was a rarely used *sokhrannaia raspiska*, and the others were loan letters, which were taken from all categories of borrowers, including officers, a *meshchanin*, and an honorary citizen from Kashira.¹⁵⁰

The debt portfolios of entrepreneurs who were not merchants or townspeople also varied in composition, with horizontal and vertical elements. One prominent example of an aristocratic

¹⁴⁹ *TsIAM*, f. 50, op. 5, d. 12260 (Nilus).

¹⁵⁰ *TsIAM*, f. 50, op. 4, d. 5294(a) (Shebardin) (*sic*).

entrepreneur is Prince Andrei Golitsyn, who participated in one of several ill-starred attempts to establish a silk-growing industry in Transcaucasia. Golitsyn became insolvent after his key partner who provided the necessary sericultural expertise died; the list of his 21 creditors is notable for the presence of other aristocratic names, such as Demidov, Iurgenev, Kurakin, Potemkin, Voeikov, baroness Dunka, counts Orlov and Bobrinskii, and the wealthy Titular Councilor Yakovlev. Altogether the list included only two merchants and one *meshchanin*, who, by the way, was the one creditor who actively pursued the lawsuit against Golitsyn, whereas most of his aristocratic creditors recognized his insolvency as a misfortune and refused to sue him.¹⁵¹

An even clearer example of the intertwined relationship between entrepreneurship, credit, and social status or connection is the case of collegiate councilor Platon Vasilievich Golubkov. Coming from a low-ranking civil service family, Golubkov became exceedingly wealthy through trade, government contracts, and, most importantly, ownership of gold mines in Eastern Siberia.¹⁵² The list of Golubkov's creditors shows no less clearly than does his patronage of the arts how economic success and the prestigious character of gold mining improved his social status and led him to aspire to join the likes of the Demidovs and Stroganovs. Similar to Golitsyn's creditors, Golubkov at the time of his death owed money to 14 nobles, including a Golitsyna, a Trubetskoi and a Shakhovskoi, and to only two merchants and one peasant. It is interesting that the peasant freedwoman Aleksandrova, who later enrolled in a merchant guild,

¹⁵¹ *TsIAM*, f. 50, op. 5, d. 11976, vol. 1. (Golitsyn).

¹⁵² *Russkii biograficheskii slovar'* by A.A. Polovtsov (Moscow, 1994-2000 reprint) www.rulex.ru. p. 270. (1786-1855) – born in Kostroma, became rich through liquor tax farming, government contracts and gold mining in Siberia. Spent much of his fortune on church, philanthropy and the “sciences.” Published books, sponsored Russian Geographic Society and others. Promoted Russian commercial expansion in Asia.

held Golubkov's largest single debt of 35,000 rubles and, similarly to Golitsyn's case, was one of the two creditors who initiated the lawsuit.¹⁵³

Entrepreneurs who did not have extensive connections in wealthy circles had to diversify their credit relationships, as shown by the example of the military engineer Colonel Nikolia, who dabbled in a variety of businesses and governmental contracts in the 1840s and 1850s (as discussed in more detail later in this chapter). By the time Nikolia became insolvent, he owed money to 48 individuals, of whom 28 were nobles, officers, and civil servants, 12 were merchants, 4 peasants, 3 foreigners and one clergyman. Because Nikolia's own milieu was not as well connected and did not possess resources as large as Golitsyn's or Golubkov's, he liked to borrow from other military engineers – there were five of them among his creditors – but could not rely on them for credit to any significant extent. Interestingly enough, the quickest and most informed creditors who were placed in the first category during the insolvency proceedings and thus were most likely to get repaid, included 13 persons of whom only one was a merchant.¹⁵⁴

Those nobles who were involved in commerce and manufacturing only as an aspect of their management of extensive serf-populated estates also tended to have diversified lists of creditors. One of Russia's more dramatic insolvents, Actual State Councilor Krotkov, attempted – ultimately unsuccessfully – everything from agriculture to technological innovation to manufacturing and government contracts, as I recount later in this chapter. His debts, worth almost 300,000 rubles, were held by 39 creditors, of whom 21 were military officers and civil servants, 17 merchants, one *meshchanin* and one foreigner. Of the former category, no fewer

¹⁵³ *TsIAM*, f. 92, op. 6, d. 698 (Golubkov) (1857).

¹⁵⁴ *TsIAM*, f. 142, op. 4, d. 64 (Nikolia)

than twelve held a senior rank (Class 8 and higher), suggesting that despite the chaotic character of Krotkov's entrepreneurship, he still found the most ready and willing source of credit amongst his social and service peers. At the same time, his involvement in manufacturing and government contracts invariably brought him into close contact with the merchants.¹⁵⁵

However, other enterprising wealthy serfowners borrowed from creditors who were far beneath them in station. For example, Collegiate Secretary Petr Zubov, who owned approximately 3,000 serfs in Arzamas and Makariev Counties (including some factories built on these estates), inherited from his brother debts to eleven persons, including three civil servants, one unspecified member of the gentry, one foreign merchant, three merchants and three *meshchane*. To these Zubov added his own additional debts to an army lieutenant and to a civil servant's wife. The only highly-ranked creditor was a collegiate councilor's wife (6th class). Whether or not any of Zubov's noble creditors were wealthy landowners like himself is not indicated in the record, but half of his debts were owed to persons of the commercial and urban estates; what is clear is that Zubov despite his considerable wealth and his allegedly desperate attempts to improve the estate's condition was either unwilling or unable to form most of his credit connections with peers.¹⁵⁶ We know even less about the activities of *Kornet* (cavalry lieutenant) Nikolai Engelgardt, who owned large estates in Kherson province and accumulated private debts reaching 300,000 rubles. The list of his 39 creditors (of whom 25 later thought it more profitable to sell their claims to merchant Volokhin) included seven military officers, six civil servants, one unranked member of the gentry, nine merchants, 2 *meshchane*, seven

¹⁵⁵ *TsIAM*, f. 142, op. 4, d. 81 (Krotkov) (1874-6)

¹⁵⁶ *TsIAM*, f. 92, op. 6, d. 746 (Zubov) (1853-1855)

peasants, five foreigners and two skilled mining craftsmen. Only a few of these can be considered Engel'gardt's peers: a landowner Count Raniker, a count Tolstoi, as well as two Swedes and another Engelgardt. Clearly, Engelgardt took advantage of the available opportunities to form debt connections with his peers, but either these were not sufficient for his needs, or he did not want to get too entangled with his friends and relatives.¹⁵⁷

In short, "urban" debtors and creditors display perhaps the strongest variety of credit links with their peers, subordinates, and superiors; while they definitely liked to borrow within their own group, whether in the case of fellow-clergy or people from the same hometown, it is also clear that their inability to borrow from formal credit institutions and their generally lesser wealth made it imperative to form mixed debt portfolios with members of other groups. The fact that debt portfolios were so mixed suggests that there was some shared set of attitudes and practices relating to credit – and, since debt relations were personal and informal in the sense of not being institutionalized, by extension there were some shared ideas relating to community, character, power, risk, and reputation – that transcended Russia's often-noted traditional hierarchies of state service and legal estate. Furthermore, since imperial law was the only formal institution regulating the culture of debt, mixed debt portfolios also suggest that a shared set of attitudes and practices relating to law – in other words, a common legal culture – also existed on the eve of the court reform of 1864.

¹⁵⁷ *TsIAM*, f. 142, op. 5, d. 1316 (Guriev) (1873-1880). The insolvent lieutenant colonel Petr Guriev, who died in Moscow in 1854, was a creditor to the titular councilor's wife Olimpiada Dolgova, who was Engel'gardt's principal creditor.

A Statistical View on Horizontal and Vertical Debt Connections

Individual cases discussed so far in this chapter, despite their usefulness, provide only fragmentary evidence of what kinds of debt relationships and practices were possible in mid-nineteenth century Moscow. A more systematic view is provided by the records of several types of debt transactions recorded in the Moscow Chamber of Civil Justice that are summarized in Tables 1.3, 1.4, and 1.5 and discussed in this section. These tables categorize numbers of transactions, as well as average and total loan amount involved in each type of transaction, by the service rank and legal estate of participants. They also show the relative disparity in rank and estate of individuals who engaged in these transactions, attempting to establish whether it was common to borrow from individuals much higher or much lower in official status. Creditors and debtors are sorted in accordance with the contemporary Russian practices into *generalitet* (Table of Ranks classes 1 to 4), *shtab-ofitsery* (classes 5 to 8)¹⁵⁸, *ober-ofitsery* (classes 9-14), the urban estates (honorary citizens, merchants, *meshchane* and *tsekhovye*), as well as clergy and “other” groups (non-serving nobles, non-ranked civil and military personnel, and foreigners).

Of the several debt ledgers that I have studied, I selected three for this detailed analysis:

- 1) The list of “registered” loan letters for 1852.
- 2) The 1855 list of mortgages of land, houses, and shops within the city of Moscow.
- 3) The 1862 list of mortgages of rural properties in various provinces that were registered in Moscow.

¹⁵⁸ Class 5, which at that time existed only in the civil service, since Russia by that time no longer used the military rank of brigadier, technically fell between the categories.

The legal requirements for these two types of debt transactions are discussed in more detail in Chapter Six, but for the purposes of this section it is important to note that the “registered” loan letters did not require collateral but did provide some additional legal protections (for example, the debtor was not permitted to claim that the registered letter was “moneyless”); this suggests that lenders who accepted loan letters would be confident enough in their borrowers and/or in the legal system to require no collateral, while still not confident enough to use one of the cheaper and more convenient instruments like a “private” loan letter (see Chapter Six). Conversely, the advantage of a mortgage loan was that it provided land and buildings as security and made debt collection much easier and more assured (because mortgages had priority in insolvency proceedings), thus reducing the importance of social connections between the lender and the borrower, of the debtor’s reputation, and of the creditor’s ability to navigate the court system. At the same time, mortgage was risky because the law limited a debtor’s liability to the value of the collateral, which could end up being less than the amount of the loan.¹⁵⁹

Yet another distinction that is important for this section is that loan letters were less likely to be used by merchants and townspeople who could use the much cheaper and more convenient *veksels* (bills of exchange, which circulated as cash and for which we therefore do not have systematic data). At the same time, women were generally not allowed to issue *veksels* without their husbands’ or fathers’ permission and so could find loan letters more appropriate.

For all their peculiarities and possibly incomplete state, these registers are valuable in confirming my proposition based on anecdotal case evidence that credit ties in Moscow combined both horizontal connections with one’s peers and “vertical” connections with

¹⁵⁹ *Zakon Sudoproizvodstva. Grazhdanskogo*, Art. 626; *Polozhenie o vzyiskaniakh grazhdanskikh*, Art. 315. Pobedonostsev, *Kurs grazhdanskogo prava*, vol. 1, p. 660.

individuals far up or down the service ladder or even completely outside one's official legal estate.

To begin with 1852, Table 1.3.1 showing the relative disparity in rank between creditors and debtors highlights the importance of horizontal ties among officers and civil servants (for brevity's sake, in this discussion I refer to this combined group as "servitors") who were *a priori* more likely to use this type of debt document and who participated on both sides of 100 out of 138 transactions. It was less predictable, however, that 55 of these involved a difference of only zero to two service ranks. At the same time, vertical ties were also important, with 45 transactions involving the difference of more than two ranks; however, it is notable that of these 45, 29 involved the still-relatively moderate difference of three or four ranks, and there were very few debt transactions that involved a great disparity of rank. There were only four transactions with a difference of more than six ranks. Table 1.3.2 also shows that the links between the servitors and various non-serving individuals were fairly common (38 transactions), with the most common cross-estate bond being between merchants and junior servitors (seven loans by merchants to officers and five vice versa).

For that same year of 1852, Table 1.3.2 showing the average amount of debt transactions sorted by actual rank of the parties likewise suggests a preference for "horizontal" links. Looking at debtors, senior servitors borrowed the largest amounts from other senior servitors and only about 20% of that amount from junior ones. Junior servitors similarly borrowed the most from their peers and only about 80% of that amount from senior servitors. Both junior and senior servitors took much smaller loans from merchants, no doubt because the latter were reluctant to issue unsecured loans. Creditors, in turn, showed a similar preference for individuals of their

own stations, because both senior and junior servitors loaned the largest amounts to their peers, with the major difference being that senior servitors loaned *much* less to junior ones, while junior ones loaned only *somewhat less* to the senior ones. Likewise, those few merchants who accepted loan letters lent the largest amounts to other merchants.

This analysis of the culture of loan letters as being largely the preserve of junior military officers and civil servants is confirmed by a much earlier record from the County Court in the town of Temnikov (Tambov Province). This partial record (for only three months of 1820) contains 36 borrowers, of whom 8 were ranked major and above, 22 were junior servitors, three non-serving nobles, one merchant and two *meshchane*. Of the 35 creditors, three were senior servitors, 29 junior servitors, and three were non-serving nobles. Thus, even more than in Moscow, debt culture in this rather backwater provincial town connected members of the “middling” gentry and a very tiny urban and commercial class.¹⁶⁰

Next, urban mortgages for 1855 (Tables 1.4.1 and 1.4.2) show much greater cross-estate interaction, although the preference for horizontal connections was still very strong. Of 100 transactions, two large groups stand out: one of 35 loans between merchants and another with 28 loans between servitors. Of the latter, loans with considerable disparity of service class (Table 1.4.1) were again very rare (only four with the disparity of over four ranks). The third large group involved loans between servitors and other groups: out of 35 such transactions, 18 involved merchants borrowing from servitors, and 10 vice versa. This distribution of transactions into three roughly equal groups, suggests that for mortgage loans, the estate divisions were less important compared with the statistics for loan letters. One reason for this could be that

¹⁶⁰ *TsIAM*, f. 50, op. 11, d. 95 (Arbenov) (1854-56).

merchants in Moscow owned considerable real estate; another possible reason was that merchants were more willing to deal with nobles and servitors if real property could be offered to secure loans; finally, it is possible that war-induced financial difficulties forced individuals to be less picky when looking to lend or to borrow money. These statistics also suggest that credit dealings that transcended estate boundaries – with all the necessary attitudes and practices involved in uninstitutionalized credit arrangements – were common within the two largest components of Moscow's propertied strata in the mid-nineteenth century: the merchantry and the gentry/civil servant/military officer class.

Next, looking at the average amount of loan sorted by the parties' ranks for 1855 (Table 1.4.2), the distinction between junior and senior servitors is much less pronounced, but otherwise the Table offers few consistent patterns, perhaps suggesting that the war may have disrupted socially-motivated borrowing patterns. Looking at debtors, senior servitors borrowed the most from merchants, and junior servitors borrowed the most from other servitors (whether junior or senior), whereas merchants still strongly preferred their own kind. Looking at creditors, servitors favored other servitors, whereas merchants loaned the largest amounts to senior servitors (although this last data is perhaps not representative: as one can see from the Table, loans by merchants to senior servitors were only five in number, as opposed to 35 to other merchants).

Finally, data for 1862 (Tables 1.5.1 and 1.5.2) involves rural mortgages in the period after Board of Trustees loans had been discontinued and nobles had to go to private lenders. Thus these data are probably even more representative than the other two selections in that there were no specific legal limitations influencing the conclusions as in the case of loan letters, as well as no limitation in scope as in the case of Moscow urban real estate. The data for 1862 still show

significant horizontal credit links, although they also show stronger connections between merchants and the servitor class. Looking at transactions within the servitor class depicted on Table 1.5.1 (37 transactions altogether), the most striking observation is that vertical links became much more common (14 transactions with the disparity of over five ranks), although the peer group was still strong (18 transactions with the disparity of two ranks and less). Intermerchant ties were also weaker compared to the 1855 data, perhaps because dispersed rural property was involved and it was easier for a merchant to form the connection with the neighboring gentry landowner; however, they do represent the largest single group.

Looking at the average amount of loans (Table 1.5.2), horizontal ties were still very strong: although senior servitors borrowed the largest amounts from junior ones, the average loan from their own kind was not much smaller. For junior officers, the data is ambivalent: although they borrowed much larger amounts from merchants, the number of such loans was only half of those with their own kind. Moreover, the average amount of loans to junior officers from senior ones was considerably smaller than of those from their peers. The merchants, once again, preferred their estate by borrowing on the average four times as much from other merchants than from senior servitors. Looking at creditors, the largest loans from senior servitors were to merchants, followed by their own kind and a much smaller amount loaned to junior servitors. For junior servitors, the distinctions were not as great, whereas merchants loaned the largest amounts to other merchants.

Overall, these data, while representing a fairly small sample and derived only from very specific types of debt transactions, confirms the conclusions drawn from my study of individual debt lists in the beginning of this section: although creditors and debtors did strongly prefer to

form debt connections with their peers, they were either unwilling or unable to do so exclusively and consistently. Thus, Russia's credit network included a strong element of interaction by individuals from different estates and service ranks. Historians of Russia have recognized for some time that the estate boundaries erected by the legal structure were in practice subverted by individuals and rendered porous.¹⁶¹ Still, some scholars continue to defend the importance of the estate paradigm in late imperial Russia.¹⁶² Alfred Rieber has noted that each social group in imperial Russia included a "hard, unyielding core" in addition to the more amorphous and porous periphery. If so, the study of Russia's network of private credit suggests that this "periphery" was very large indeed.¹⁶³ Moreover, this dissertation suggests that debt was one type of social connection that was previously unnoticed and that equally affected both the "denser interior" and the "soft outer pulp" of each social group, to use Rieber's terminology.

¹⁶¹ For an overview of the relevant literature, see Elise Kimerling Wirtschafter's extended essay, *Social Identity in Imperial Russia* (DeKalb, 1997).

¹⁶² Gregory Freeze, "The *Soslovie* (Estate) Paradigm and Russian Social History." *The American Historical Review*, Vol. 91, No. 1 (Feb., 1986), pp. 11-36.

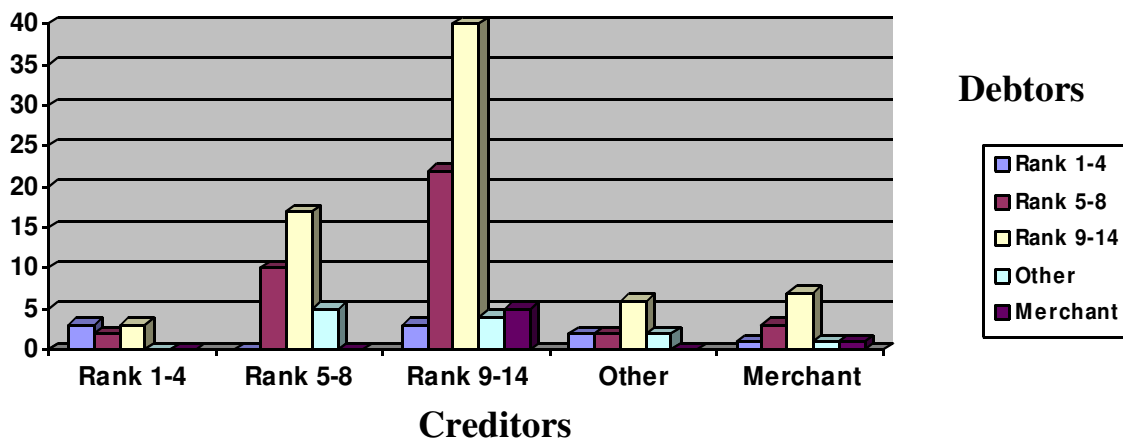
¹⁶³ See Alfred J. Rieber, Review of Elise Kimerling Wirtschafter, *Structures of Society in Russian Review*, Vol. 55, No. 1 (Jan. 1996), p. 125.

Table 1.3 Registered Loan Letters, 1852**Table 1.3.1 Relative Disparity in Rank Between Creditors and Debtors¹⁶⁴**

Disparity	0	1	2	3	4	5	6	8	9	10	n/ser	of/chanc.	ser/oth	ser/urb	oth.
Tr/actions	18	15	22	12	17	7	5	2	1	1	5	10	4	16	3

Table 1.3.2 Numbers of Loan Transactions by Participants' Rank & Average Loan Amounts

Debtor/Creditor	1-4	5-8	9-14	other	merchant
1-4	3 (63,300) 21,100	0	3 (4485) 1,495	2 (34,921) 17,460.5	1 (1000) 1,000
5-8	2 (23,200) 11,600	10 (334,088) 33,408.8	22 (141,733) 6,442.41	2 (138,000) 69,000	3 (14,770) 4,923
9-14	3 (25,000) 8,333	17 (107,225) 6,307	40 (347,262) 8,681.55	6 (31,128) 5,188	7 (14,060) 2,008.57
other	0	5 (9,550) 1,910	4 (6,630) 1,657.5	2 (5,700) 2,850	1 (4,220) 4,220
merchant	0	0	5 (7,400) 1,480	0	1 (5,000) 5,000



¹⁶⁴ n. – non-serving nobles; ser. – military officers and civil servants in the Table of Ranks; chanc. – chancery clerks and other government employees outside the Table of Ranks; urb. – merchants, townspeople, and craftsmen; other – foreigners, clergy, peasants.

Table 1.4 Urban Mortgages, 1855**Table 1.4.1 Relative Disparity in Rank Between Creditors and Debtors**

Disparity	0	1	2	3	4	5	6	8	10	serv/ other	serv/ urb	urb/urb
Transactions	3	6	1	9	5	2	2	1	1	5	30	35

Table 1.4.2 Loan Transactions by Participants' Rank & Average Loan Amounts

Debtor/Creditor	1-4	5-8	9-14	merchant	other
1-4	1 (6,000) 6,000	0	1 (1,780) 1,780	0	0
5-8	0	3 (21,700) 7,233.33	5 (42,100) 8,420	5 (58,330) 11,666	0
9-14	1 (2,000) 2,000	9 (54,300) 6,033.33	11 (64,600) 5,872.72	5 (19,400) 3,880	1 (900) 900
merchant	1 (5,000) 5,000	6 (20,960) 3,493.33	12 (30,815) 2,567.91	35 (160,248) 4,578.51	0
other	0	1 (1,110) 1,110	3 (29,000) 9,666.66	0	0

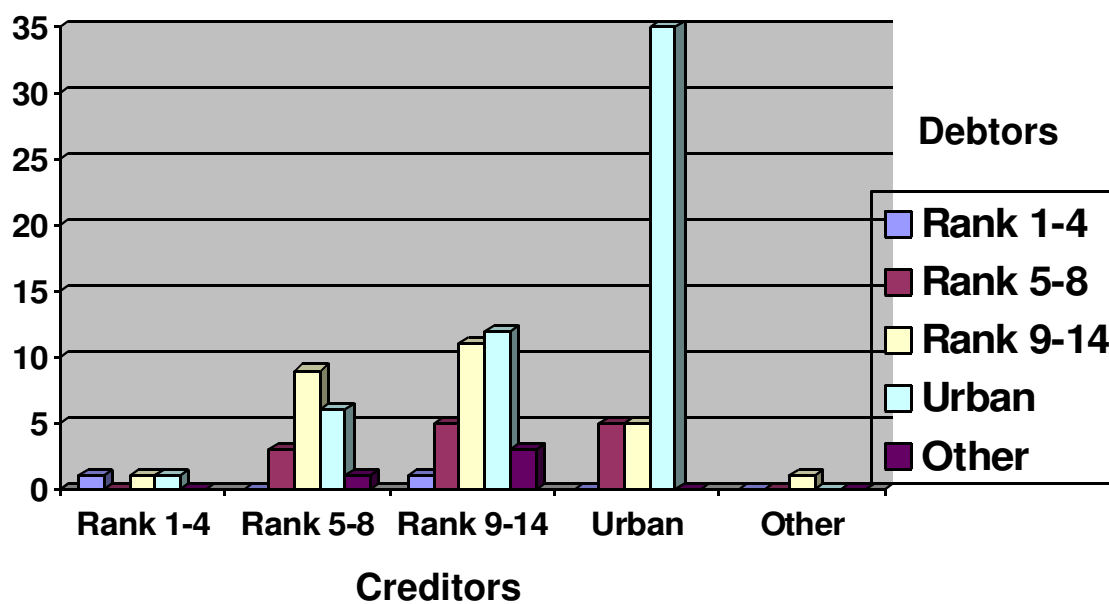
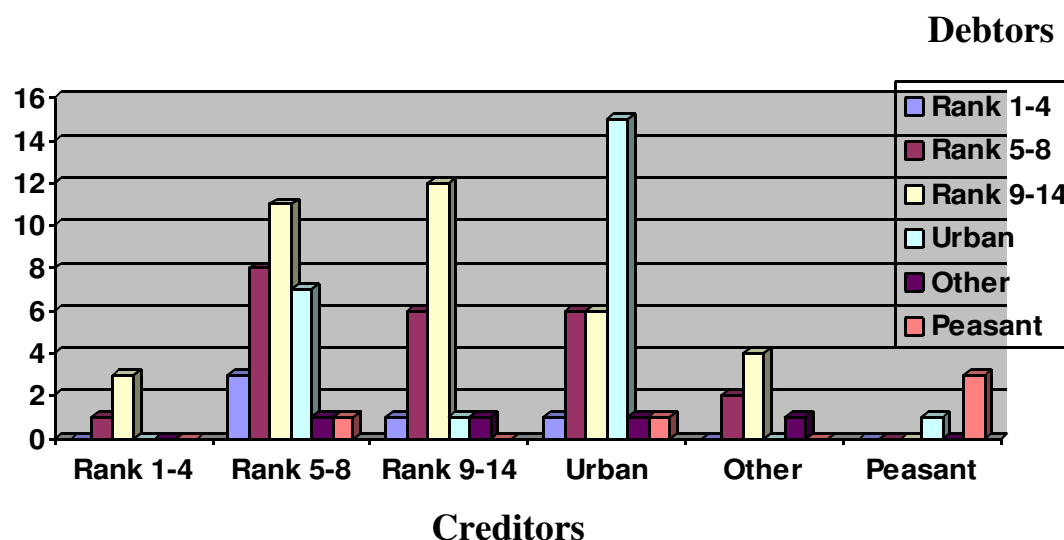


Table 1.5 Rural Mortgages, 1862**Table 1.5.1 Relative Disparity in Rank Between Creditors and Debtors**

Disparity	0	1	2	3	4	5	6	7	8	serv/ other	serv/ urb	other	urb/ urb
Transactions	8	7	3	9	4	4	2	7	1	7	22	8	15

Table 1.5.2 Loan Transactions by Participants' Rank & Average Loan Amounts

Debtor/Creditor	1-4	5-8	9-14	merchant	other	peasants	Total
1-4	0	3 (233,000) 77,666.66	1 (4,000) 4,000	1 (23,000) 23,000	0	0	5
5-8	1 (5,000) 5,000	8 (65,925) 8,240.625	6 (66,300) 11,050	6 (44,050) 7,341.66	2 (18,200) 9,100	0	23
9-14	3 (82,000) 27,333.33	11 (54,323) 4,938.45	12 (90,950) 7,579.16	6 (113,550) 18,925	4 (11,400) 2,850	0	36
merchant	0	7 (88,367) 12,623.85	1 (6,000) 6,000	15 (715,000) 47,666.66	0	1 (1,000) 1,000	24
other	0	1 (5,000) 5,000	1 (5,750) 5,750	1 (5,500) 5,500	1 (250,000) 250,000	0	4
peasant	0	1 (480) 480	0	1 (2,250) 2,250	0	3 (6,000) 2,000	5
Total	4	31	21	30	7	4	97



Credit Intermediaries and “Weak” Social Ties

Many debt transactions examined in this study involved lenders and borrowers who were each others' business partners, service colleagues, employers, servants, social acquaintances, or even relatives. In those cases, debt cemented (or strained, as the case might be) already existing social ties. But court cases reveal that debt transactions that were the *only* identifiable link between individuals were also common. This should not be surprising, given that Moscow was Russia's second largest city and, as has been discussed in the introduction, a major commercial and financial center. By the 1850s its credit network was large and often impersonal even though the government's policies delayed the development of such institutions as private banks and debt collection and credit-rating agencies. Instead, creditors and debtors who were unable to transact business with friends and relatives had to find each other through word of mouth, newspaper ads, and loan brokers of varying reliability; the parties often met for the first time – if at all – when the borrower came to the lender's house to sign the debt document. Thus debt relations in mid-nineteenth century Moscow can be viewed as an example of what the U.S. sociologist Mark

Granovetter has termed “weak” social ties. He defined the “strength” or “weakness” of an interpersonal tie as “a [...] combination of the amount of time, the emotional intensity, the intimacy (mutual confiding), and the reciprocal services which characterize the tie.”¹⁶⁵ In an influential article, Granovetter presented empirical evidence from the twentieth-century United States that diffuse networks or acquaintances, as opposed to tightly knit clusters of close friends, are essential for disseminating information throughout society, and thus for promoting plurality, for enabling social mobility, especially in educated middle-class and professional groups, as well as for “effecting social cohesion” by helping communities organize for common goals.¹⁶⁶ In short, Granovetter argues that weak ties are instrumental for individuals to adapt to modern societies. Given that imperial Russia’s “middling” classes are usually thought of as amorphous and incapable of common action, especially political action, the role of “weak” ties during the imperial period still awaits more detailed study. Here I merely explore the role of credit brokers and other intermediaries as the links between tightly knit social clusters that enabled the existence of Moscow’s large, although diffuse, network of private credit.

Those borrowers who were sufficiently wealthy to employ a property manager (*upravliaiushchii*) or a legal representative (*poverennyi*) issued him with a power of attorney either to borrow a specific amount or to make loans whenever possible. Registers of powers of attorney kept at the Second Department of the Moscow Chamber of Civil Justice show that debt collection represented between 10 and 27 percent of all matters for which representatives were hired. Only rarely were these issued to collect or to borrow from a specific person on a specific

¹⁶⁵ Mark Granovetter, “The Strength of Weak Ties,” *American Journal of Sociology*, Vol. 78 (1973): pp. 1360–80, 1361.

¹⁶⁶ Granovetter, “The Strength of Weak Ties,” p. 1373.

occasion; typically, principal issued a blanket permission to borrow (or to collect) on his or her behalf.¹⁶⁷ Cases suggest that the common practice was for the principal to note the credit limit he or she was granting to the agent on the power of attorney, where all the debts incurred on the principal's behalf had to be recorded as well.¹⁶⁸

Both powers of attorney, as well as legal cases, suggest that it was common to employ a relative or a trusted serf or a freedman as a legal representative. For example, Aleksandr and Dmitrii Glebov, descendants of an important Catherinian official, employed Titular Councilor (equivalent to army captain) Nikolai Dmitriev, the son of their emancipated former serf who had himself reached the civil service rank of Collegiate Assessor (equivalent to the army major). As I discuss in more detail in Chapter Three, Dmitriev was engaged in finding loans for his masters from many different private individuals, none of whom had the Glebovs' social standing. With some of these creditors Dmitriev had decades-long relationships.¹⁶⁹ Even individuals not nearly as wealthy as the Glebovs employed property managers who could be tasked with finding loans for their masters. For example, Princess Ekaterina Cherkasskaia, who had a house in Moscow and only 72 serfs in Iaroslavl' Province, employed Moscow *meshchanin* Konovalov as her estate manager and agent (*poverennyi i upravliaiushchii*, as he styled himself) and asked him to find a loan of 10,000 rubles to borrow in the beginning of a prolonged and dramatic case that is covered in more detailed in Chapter Three. The lender that Konovalov found, Gubernial Secretary Aleksandr Zaborovskii, was none too naïve himself, insisting on getting a receipt signed by Cherkasskaia whom he never met in person, even though the loan letter was executed at the

¹⁶⁷ For the date on powers of attorney, see Tables 7.2 – 7.5.

¹⁶⁸ *TsIAM*, f. 50, op. 4, d. 6259 (Kartashev) (1861-2).

¹⁶⁹ *TsIAM*, f. 50, op. 4, d. 3167 (Dmitriev) (1847-52).

Second Department of the Moscow Chamber and so, legally speaking, Cherkasskaia was not permitted to claim that she never received the money.¹⁷⁰ The type of agent represented by Dmitriev or Konovalov must have been a familiar presence in all types of transactions. In one well documented and striking fraud case involving a rather complicated mortgage fraud conspiracy headed by the Senate Registrar Petr Veselkin, only one of the many victims became suspicious several weeks after handing over his money to a “representative” of a non-existent Prince Kropotkin from Vladimir province.¹⁷¹

Another familiar figure in Moscow’s credit market was the freelancing loan broker, often referred to disparagingly as “*svodchik*” (a go-between), who, it appears, was typically hired by a borrower and accompanied him or her both during the preliminary negotiations of the terms of the loan and during the final signing. A rather flamboyant example of this kind of broker was the 29-year old former peasant Korotkov, who, as the later chapters recount, attempted to also involve himself in the “lawyerly” business and who was arrested for his involvement in pawning fake gold watches to a “Frenchwoman” (actually from Bavaria) Emma Flik. His other occupations were to work as a clerk for merchant Sudakov, as well as a pawnbroker in a loose partnership network with other individuals, including Flik, whom he “assisted” in finding clients. When Korotkov was finally arrested, the police prepared a detailed inventory of all papers and objects seized from him, which, in addition to a remarkable agreement to provide legal services (which is examined in Chapter Seven), included three passports, which apparently had been pawned by Korotkov’s clients, two bronze watches, a silver watch case, a leather wallet, a

¹⁷⁰ *TsIAM* f. 50, op. 4, d. 1983 (Cherkasskaia) (1843-53) and f. 50, op. 4, d. 3389 (Zavarovskii) (1848-9) (See Chapter Three for fuller discussion)

¹⁷¹ *TsIAM*, f. 50, op. 4, d. 4416 (Veselkin), 81.16.579 (Veselkin) (1845-7), and f. 50, op. 4, d. 4899 (Tatishchev)

leather-bound notebook, and thirteen notes (*zapiski*) of unspecified character. Korotkov also acted as a servant-finding broker, as evidenced by a reference letter from one aspiring servant, and by several sheets of paper with information about individuals available as servants or needing one. Finally, Korotkov possessed several cheatsheets for his loan brokering business. One of them listed the colors of different banknote denominations. The other sheet was titled “At what amount to receive collateral for a 100-ruble nominal price,” specifying, for example, that Finnish public debt went for 70% of its nominal value, and a pound sterling went for 6.3 rubles, while one share of the Riga-Dinaburg railroad sold for 100 rubles: altogether the list included 19 various types of currencies and commercial paper that were commonly circulating in Moscow in the 1860s.¹⁷²

It is perhaps safe to suggest that many debt transactions that went wrong involved individuals who dealt through a broker of the Korotkov variety who not only could be dishonest themselves, but were not really able to prevent dishonesty (or at least a misunderstanding) by one of the parties. For instance, the serf girl Praskovia Gavrilova attempted to sell to the merchant’s brother Lintsov a loan letter that belonged to her brother-in-law, using the services of chancery clerk Nikolai Pokhorskii, who somehow managed to avoid a closer look by the police that arrested Gavrilova for fraud.¹⁷³ Similarly, the retired chancery clerk Dmitrii Zaitsev, who was engaged to find money for Aulic Councilor’s wife Maria Skrebkova, may or may not have known that she was attempting to cheat the moneylender, Staff Captain Georgii Balakan, but he was put on trial together with Skrebkova, claiming in his defense that he was tricked by her as to who exactly

¹⁷² *TsIAM*, f. 50, op. 4, d. 8945 (Korotkov) (1866-67)

¹⁷³ *TsIAM*, f. 50, op. 4, d. 4441 (Gavrilova) (1854-55).

was supposed to act as the borrower, and successfully asserted that during the key moment when Skrebkova and her accomplice signed a fraudulent loan letter he was standing in a different room and so did not know what was happening.¹⁷⁴ Another *svodchik*, Tikhon Nikolaev, in 1855 helped a Collegiate Registrar Sheremetievskii to borrow 100 rubles from *meshchanin* Ivanov, but could not prevent a misunderstanding when the actual debt document was actually for 200 rubles and Sheremetievskii initiated a criminal investigation. Ivanov saw Nikolaev at the court building and loudly blamed Nikolaev for finding him a client who refused to understand the rules of the game and for testifying against him. Nikolaev called him a “usurer,” and Ivanov replied with “fool” (*durak*). This is the only indication in the sources that this kind of *svodchik* may have had any implied responsibility for vetting potential parties to a transaction.¹⁷⁵

Thus, although traditional credit ties between acquaintances and relatives remained strong in the 1850s and 1860s, the use of an intermediary who might or might not be acquainted with both participants to the transaction seems to have been nothing extraordinary in Moscow, considering that even such individuals as Korotkov managed to make a living from this activity. No less familiar was the use of an agent who would completely substitute for one of the parties – considering that in the Veselkin case, the practice did not raise any suspicions. Thus, yet another consequence of Russia’s system of private credit being large but at the same time based on interpersonal connections is that the “weak” ties among individuals became prominent, with all the attendant consequences yet to be studied.

¹⁷⁴ *TsIAM*, f. 50, op. 4, d. 8208 (Skrebkova and Korolev) (1865-66).

¹⁷⁵ *TsIAM*, f. 50, op. 4, d. 7229 (Ivanov) (1863-65).

Conclusion

Evidence from several types of legal documents suggests that Russia's network of private credit was large enough to rival the state's credit institutions, whose scope of operations was mostly limited to serf-secured mortgages and (in St. Petersburg) to purchasing bills of exchange issued by reputable merchants. The state policy of supporting the serfowning nobility through cheap credit (whose repayment was, however, strictly enforced) should be viewed in the context of Nicholas I's refusal to permit the erection of the necessary formal infrastructure of private credit, which induced the majority of the empire's propertied groups who did not own serfs to rely on friends and relatives or use the services of professional moneylenders and loan brokers. Perhaps an unintended consequence of this policy was that the credit network became not only large, but also quite diverse: while many Russians still preferred to borrow from their social peers, legal documents suggest that debt relations crossing social and legal estate boundaries were the norm, whether by choice or by necessity. Mixed debt portfolios and the reliance on services of loan brokers and intermediaries must have been based on – or alternatively led to the formation of – a set of shared values and practices relating to debt that were designed to achieve predictability and reliability. These are discussed in the next chapter. The diversity and the size of the credit network, and the lack of close personal ties between many borrowers and debtors also suggests that borrowers and lenders must have shared some confidence in their ability to deploy Russia's legal system – with all of its faults – to structure debt transactions and to force delinquent debtors to repay.

CHAPTER TWO

THE CULTURE OF LENDING

Introduction

This chapter attempts an overview of Russia's culture of debt from the perspective of individual debtors and creditors. The first section, focusing on creditors, examines the legal restrictions against usury, the way these restrictions were applied in practice, as well as the variety of motives and backgrounds of individuals choosing to lend money as an occupation or an investment. The second section focuses on the debtors' stories found in bankruptcy proceedings to examine the connection between cultural attitudes and legal practice, in particular asking whether and how Russian law both as written and as practiced reflected the balance between the older view placing all responsibility for an insolvency upon the debtor and the newer tendency to treat debtors with more consideration and in certain circumstances to shift the burden of financial loss upon creditors. Finally, the third section examines the common stereotype of Russia's culture of debt as driven by wasteful luxury-oriented consumption, as well as the opposite image of individuals attempting to limit indebtedness or to eliminate it entirely. Taken together, this chapter contradicts the view that Russian law – or Russian culture in general – was antagonistic toward lending. Although anti-usury laws did exist, and were applied in practice, punishment for usury was exceptionally mild (a small fine) as compared, for example, with punishment for fraudulent bankruptcy (exile to Siberia), and applied only sporadically given the rigors of Russia's pre-reform evidence law. Moreover, the treatment of insolvent debtors under Russia's bankruptcy laws relied upon the debtors' discretion, including the possibility of a bankruptcy

discharge – which was complete but officially applicable only in a narrow range of circumstances – and the authority to commit a debtor to a criminal trial. Finally, while some borrowers did exhibit wasteful and otherwise irrational behavior, legal documents show that attempts to avoid excessive debt were much more common, which would not have happened if individuals could rack up debts with impunity; moreover, Russia's propertied classes were not burdened with debt to the extent that is often assumed.

Investors and Usurers

Private moneylending was officially a suspect activity in imperial Russia: the law limited the maximum interest rate and established various state-run credit institutions designed to drive usurers out of business. At the same time, this very distrust of moneylending inhibited the appearance of formal non-state credit institutions and, paradoxically, made unregulated, unorganized private moneylenders indispensable. In Russian cultural memory these individuals have been immortalized mostly through a few striking literary images, such as Dostoevskii's Aliona Ivanovna (the infamous pawnbroker of *Crime and Punishment*) and Sukhovo-Kobylin's usurer Nikanor Bek and his underling Raspluiuev from *Krechinskii's Wedding*. But aside from these images, we still know very little about who these lenders were, why they chose to lend money (as opposed to some other less socially censured activity like buying land or depositing money in a bank), and how they went about it. Soviet historians of credit, most importantly, Saul Borovoi, operated within the orthodox Marxist doctrine, whereby the emergence of capitalism was associated with the development of "capitalist" joint-stock banks, whereas the preceding "feudal formation" involved the reign of "usurious capital" (*rostovshchicheskii kapital*). In line with this framework, Borovoi discussed "usurers" in unequivocally negative terms, apparently

defining them as all private lenders, and ignoring the fact that some lenders were not engaged in loansharking and the fact that private personal lending has persisted both in Russia and in the West long after the emergence of capitalism and large banks.¹⁷⁶ This section, by contrast, first examines the legal and popular attitudes toward moneylending in Russia and then explores the different backgrounds and practices of moneylenders. I argue that despite all the legal restrictions of usury and its popular condemnation, the prohibition was largely symbolic, and indeed that moneylending by private individuals was not in practice commonly restricted or harassed.¹⁷⁷ I also argue that creditors in the mid-nineteenth century came from all social strata and cannot be reduced to the marginalized stereotype familiar from literature.

Popular Attitudes and Legal Restrictions

In 1863, a merchant from the town of Sergiev Posad near Moscow, Vasilii Smirnov, read a newspaper advertisement by Mikhail Draevskii, a noble-born clerk at the First Department of the Moscow Aulic Court who added to his income by pawnbroking. Smirnov then sent his grown son Pavlin to borrow 65.50 silver rubles, secured by his wool-covered fox fur coat (worth over 125 rubles), a new wool suit worth 35 rubles, his wife's silk overcoat with fur lining and collar

¹⁷⁶ Borovoi, *Kredit i banki v Rossii*, esp. pp. 206-207 and 235-240. Borovoi (and Iosif Gindin as well) mention the allegation made by some nineteenth century writers that one result of the state's generous policy with regard to bank deposits (paying 4 percent interest that could be compounded) was that individuals could make loans to others using their deposit tickets which circulated like cash, and collect extra interest. Borovoi and Gindin were not sure how widespread this practice was. This practice they also called "usury" without differentiating lending activities. For predatory lending in the late nineteenth-century U.S., see Mark H. Haller and John V. Alvit, "Loansharking in American Cities: Historical Analysis of a Marginal Enterprise," *The American Journal of Legal History*, Vol. 21, No. 2 (Apr. 1977), pp. 125-156. Today in the U.S. state-licensed "payday lenders" can charge the equivalent of 5,474% annual rate for short-term loans. Stephen James, "The ancient evil of usury," <http://www.newsreview.com/sacramento/content?oid=7610> (07.19.01).

¹⁷⁷ As I argue in Chapter Six, administrative authorities could and did employ their police powers to act on the population's complaints about the most socially condemned types of lending practices, but the range of available sanctions was limited and does not seem to have compromised the integrity of the legal system and the latter's emphasis on protecting private property interests.

(75 rubles), and his son's wool overcoat worth 30 rubles. Between June and October, Smirnov paid Draevskii 10% interest each month, but when he wanted to redeem his property in October, it turned out that the usurer and his wife sold everything without giving any notice. Because the pawnshop transaction had been executed as a sale, the only recourse left to Smirnov was to petition Draevskii's superiors and the police, arguing that this story showed:

“... the dark side of bad faith not only on the part of the Draevskiis, but of all such enterprising usurers (*rostovshchiki*) who entice poor folk with an attractive bait of lending out money secured by collateral – for moderate interest and on attractive conditions, as is published: - but then, based on some fictitious receipts, using poor people's (*bednota*) extreme need, accepting something worth a ruble for a dime, - allow themselves, not binding themselves by any conditions – to embezzle at will the property they are entrusted with – without any mercy or pangs of conscience, solely for their enrichment; depriving the nakedness of its last cover. [...] With such means, with non-suppression of this evil by the Government, such enterprising types, given such principles of their enrichment, are capable through their avarice of ripping off (*obobrat*) the entire poor class of entire Moscow! – Into which category, under the stated enticement, I likewise fell unforeseeably, with my pawned things, into the hands of the Draevskiis. Who embezzled my things, while the term of the loan had not yet expired, and while I was paying the interest!”¹⁷⁸

A similar plea was made by a young Bessarabian nobleman Abramov, who was imprisoned by the professional moneylender Collegiate Secretary Semen Briukhatov and petitioned the governor Prince Dolgorukov in January of 1866: “few cases can equal ... the shame of [Briukhatov's] inhuman greed ... available only to a predator who possesses huge means.”

This extraordinary case “contains a story of such actions and actions, with which...” - better summarize – only a few cases can equal it, each page reveals the shame of inhuman greed and depicts the high degree of my misfortune, written out with a fine systematic sequence, with acquisitive purposes, accessible only to a predator who possesses huge means.” “Like myself, many others are suffering in Moscow from the same Briukhatov” – up to ten cases conducted by various investigators.¹⁷⁹

¹⁷⁸ *TsIAM*, f. 81, op. 16, d. 1642 (Draevskii).

¹⁷⁹ *TsIAM*, f. 50, op. 3, d. 8323 (Briukhatov) (1855-66).

Both cases suggest that in the popular perception, usurers operated without any significant interference from the government and easily availed themselves of the services of the legal system to collect their money. On a rare occasion, debtors would take the matter into their own hands, such as in 1864, when a 64 year-old merchant and moneylender Andrei Lukin was imprudent enough to visit the inner chambers of Moscow's debt prison. He was jumped by a group of inmates, who beat him, calling him a scoundrel (*podlets*) and a usurer, and telling him in the presence of a police officer who was helpless (or unwilling) to intervene that he was being beaten for "charging a very large and merciless interest rate, namely 15 percent per month"¹⁸⁰

The Russian renderings of "usurer" (*rostovshchik*, *protshchik*, less commonly *likhoimets* or *mzdoimets*) were of course terms of insult and reflected a long tradition of popular and official disapproval that Russia shared with the rest of the Christian world. The major grievances against usurers, in addition to the risk of fraud as in the Draevskii case, were that usurers charged a huge interest rate and that they preyed on needy persons and inexperienced youths. The former charge was repeated in many court cases. For example, the Old Believer merchant Artemii Riazanov testified during his bankruptcy proceedings that after his small textile factory began to fail, he had to continue replacing the *veksels* that were coming due with others for larger amounts, in lieu of payment.¹⁸¹ Several cases suggest that it was common for moneylenders to take debt documents for twice the amount actually borrowed, presumably to use as leverage in the event of default. For example, in the insolvency case of the young Count Dmitrii Nikolaevich Tolstoi, his father's lawyer argued that the main creditor, merchant Gorodetskii, always took debt documents

¹⁸⁰ *TsIAM*, f. 50, op. 4, d. 8044 (Lukin).

¹⁸¹ *TsIAM*, f. 50, op. 4, d. 8960 (1866-69) (Riazanov).

for twice the amount actually issued.¹⁸² In another case, Gubernial Secretary Dmitrii Sheremetievskii claimed that in 1855 he borrowed 100 rubles from Moscow *meshchanin* Nikolai Ivanov, but had to write debt documents for 200 rubles and a few months later was sued for the entire amount.¹⁸³ In some debt transactions, the relationship of the amounts listed on the debt documents with the amounts of cash that were actually issued to debtors was at best nebulous: for example, in 1860 Moscow *meshchanin* Mikhail Ulitin had another *meshchanin* Aleksei Klimov write out a slew of *veksels* with different dates and to different persons, but allegedly only gave him a few rubles.¹⁸⁴ Such situations must have been further complicated by the fact that in Russian commercial practice, merchants usually wrote out *veksels* in exchange for merchandise rather than ready cash.

Despite occasional administrative reprisals against a particularly odious usurer (who could be expelled from Moscow by the order of the governor general), the Russian law against usury was extremely mild and was relaxed even further throughout the nineteenth century. All restrictions were completely abolished in 1879, only to be resurrected in a milder form in 1893. Moreover, in the pre-1864 courts proving usury was subject to the rigid system of formal proofs (see Chapter Seven).

The Law Code of 1649 prohibited any interest collection on loans without specifying a penalty for violation.¹⁸⁵ However, the collection of interest was legalized soon after Peter the

¹⁸² *TsIAM*, f. 81, op. 18, d. 1259 (Tolstoi) (1863-65), l. 22.

¹⁸³ *TsIAM*, f. 50, op. 4, d. 7229 (Ivanov) (1863-65). Another instance of this practice may have occurred in the case of the young landowner from Kherson province, Nikolai Abramov, who issued a “moneyless” *veksel* for 15,000 rubles to the Moscow usurer Collegiate Secretary Semen Briukhatov. See f. 50, op. 3, d. 8323 (Briukhatov) (1865-66).

¹⁸⁴ *TsIAM*, f. 50, op. 4, d. 8264 (Ulitin) (1865-66).

¹⁸⁵ P.S.Z. I, vol. 1, Ch. X, art. 255, 258, 112.

Great's death by the law of August 26, 1727, setting its maximum annual amount at 6 percent per annum. The purpose of this law was to protect merchants, especially foreign ones, and to encourage commerce, as well as to recognize the fact that under the old rules prohibiting interest, it could have been more profitable for a debtor to withhold payment and benefit from the use of the money, since after a prolonged lawsuit he would only be responsible for the principal and a moderate fine (known as *proesti* and *volokity*).¹⁸⁶ The actual punishment of usury was introduced by Empress Elizabeth's decree of May 13, 1754, which also established the State Loan Bank designed to rescue Russia's nobility from the depredations of usurers.¹⁸⁷ Noting that private moneylenders often charged 12, 15, and even 20% interest, the law required that the amount of interest be stated in mortgage letters; it punished usury by allowing the debtor to keep the money and confiscating the usurer's property. At the same time, those lenders who already held higher-interest debt were freed from this punishment.¹⁸⁸

Practical enforcement of this law was obviously impossible, which was recognized by the next law on the subject issued on April 3, 1764, which noted that moneylenders could list the 6% rate on the debt document and still charge higher amounts in practice. This decree did not invent any additional substantive measures to curtail usury, but merely waxed on the "mortal sin" of "lawless avarice" and made numerous references to religion.¹⁸⁹ A more practical law was introduced on June 28, 1786 as part of the establishment of yet another State Loan Bank to bail

¹⁸⁶ P.S.Z. I, vol. 7, No. 5145.

¹⁸⁷ Interestingly enough, in the 1850 General Staff officers preparing statistical description of Chernigov province thought that the huge indebtedness of local landowners to the state was caused by insufficient private credit *Materialy dlia geografii i statistiki*, vol. 25, p. 153.

¹⁸⁸ P.S.Z. I, vol. 14, No. 10235.

¹⁸⁹ P.S.Z. I, vol. 16, No. 12124.

out indebted nobles. Because the interest rate this bank was allowed to charge was reduced to only 5%, the same limit was also applied to private moneylenders. While the language prohibiting “abhorrent usury by Our strong Imperial command” was as forceful as ever, the punishment of usury was now merely to seize from the lender the amounts lent out at a usurious rate and transfer them to the local Office of Public Welfare (*Prikaz Obshchestvennogo Prizreniia*).¹⁹⁰ The maximum rate was once again increased to 6% in 1808, yet again because of the government’s policy (now instead of bailing out the nobility it wanted to collect more revenue on its loans).¹⁹¹ This limit remained in force until 1879. The only exception was for *veksels* (bills of exchange), for which it was possible to add up various collection fees amounting to eight percent on the top of the usual six.¹⁹²

However, under Nicholas I, the “bite” of anti-usury laws continued to decrease. For example, the law of 1834 permitted creditors to tack on a penalty clause for missing the due date to mortgage agreements without it counting as interest.¹⁹³ Another important change was introduced by Article 2220 of the Penal Code of 1845, which changed the punishment for usury to a mere fine of thrice the amount of usurious interest (with short prison sentences added for subsequent offenses).¹⁹⁴ The debtor was still responsible for paying both the principle and the interest!¹⁹⁵

¹⁹⁰ P.S.Z. I, vol. 22, No. 16407.

¹⁹¹ P.S.Z. I, vol. 30, No. 23317.

¹⁹² P.S.Z II, vol. 7, No. 5462, section 120.

¹⁹³ P.S.Z. II, Vol. 9, No. 6775. The case of Colonel Nikitin showed that this law was confused with the law of August 31, 1818 (No. 27,524), which ordered that the law imposing a penalty of 3% on delinquent loans secured by movable property did not apply to mortgages). But the law of 1818 did not prohibit the parties from making a separate penalty agreement to make the transaction more reliable.

¹⁹⁴ P.S.Z. II, vol. 20, No. 19283.

¹⁹⁵ One example of the Senate ruling to this effect was the criminal bankruptcy trial of merchant Ivan Borisovskii in the early 1860s. See *TsIAM*, 50, *op. 5, d. 12850* (1859-1865).

Then, a law of 1849 abolished the rule limiting the overall amount of accruing interest to the amount of the principle.¹⁹⁶ Finally, usury was easy to disguise by writing up the transaction as accepting the amount of the loan for “safekeeping” (such documents, favored by “professional” moneylenders, were known as *sokhrannye raspiski* – safekeeping deposit tickets), which conferred upon the lender additional legal advantages, as discussed in Chapter Six. Another option, preferred by pawnbrokers, was to write up the debt as a sale, which of course placed borrowers at their mercy.

Thus, the law of 1879, which finally abolished all restrictions on loan interest rates, was only part of a long process that began long before the “great reforms”; unless one counts Finance Minister Bunge’s reforms of the 1880s, this law can perhaps be counted among the last “great reforms” (albeit a little noticed one; it went along with the “abolition” of debt imprisonment in that same year).¹⁹⁷ In line with other European statutes that abolished usury around the same time, the law of 1879 required special rules to be introduced at a future date to regulate predatory lending practices that were to be prosecuted as usury; when finally introduced in 1892, the new rule, much like its European counterparts, replaced the mechanical limitation of permissible interest rate by a more flexible and discretion-based circumstance test designed to prevent abuse of particularly vulnerable individuals, most importantly, peasants.¹⁹⁸ However, maximum interest rate was soon restricted again by the law of June 8, 1893 to 12 percent. Once again, special rules

¹⁹⁶ P.S.Z. II, vol. 24, No. 23112. See also P.S.Z. II, vol. 29, No. 28,398 (1854).

¹⁹⁷ P.S.Z. II, vol. 54, No. 59370. Soviet scholar Iosif Gindin suggested that the legal limitation on the permissible interest rate actually had the effect of lowering the rates of private moneylenders. See *Banki*, p. 491. Usually scholars simply state that private lenders charged much higher rates than the state.

¹⁹⁸ Pobedonostsev, *Kurs grazhdanskogo prava*, Vol. 3, pp. 96-99.

were designed to restrict the so-called “rural usury,” which was seen as a distinct affliction of the Russian countryside.¹⁹⁹

Not only did Russian laws provide several important loopholes for lenders and only mild punishments for those who were caught, actual court cases show that prosecutions for usury were rare and resulted in conviction only under very unusual circumstances. The case of Gubernial Secretary Dmitrii Sheremetievskii (mentioned above) shows why usury was so difficult to prove: given that the law did not require the amount borrowed to be transferred immediately upon the signing of the debt document (see Chapter Six), Sheremetievskii, having signed debt papers for 200 rubles and, as he alleged, having borrowed only 100 rubles, had no way to prove this fact other than by producing his letter to the usurer describing the situation. The court ruled that the letter was not specific enough to show that it applied to that particular loan transaction.²⁰⁰ In a legal system giving judges more discretion in evaluating evidence, this letter would most likely be considered as more probative.

It was generally only possible to prove usury when there was a careless admission by the lender or sworn testimony by more than one witness. For example, one pawnbroker, Count Sheremetiev’s serf Epistimiia Durkina, was convicted for usury in 1861 after she loaned 44 rubles to *meshchanin* Sergei Ivanov at the annual rate of 60%, secured by two gold watches and an icon frame, and, apparently needing money herself, in turn pawned the watches elsewhere. Durkina was ignorant enough of the law to testify that she was charging 5 percent per month (ten times the legal amount), and that the accumulated interest of 76 rubles made it impractical for

¹⁹⁹ P.S.Z. III, No. 9654.

²⁰⁰ *TsIAM*, f. 50, op. 4, d. 7229 (Ivanov) (1863-65).

Ivanov to attempt to redeem his collateral, which he then asked her to sell. The Chamber of Criminal Justice, taking into account Durkina's admission, sentenced her to the fine of 64.8 rubles (three times the amount of excessive interest minus the legal 6%). Interestingly (and typically for the criminal sentences during that period that were often overly harsh only to be reduced after the review of the Criminal Chamber), the original sentence by the Moscow Aulic Court was to convict Durkina of fraud for embezzling pawned property (Art. 2299, 2272), to strip her of her legal rights, give her 50 lashes and place her in the workhouse for a year and a half.²⁰¹

Even for much more sophisticated moneylenders, witness testimony could lead to a criminal conviction. For example, a Dmitrov *meshchanin* Demian Pastukhov apparently had an arrangement with a Kishinev merchant Mikhail Gendrikhov in the 1840s, whereby they collected debts on each other's behalf; by 1851, Pastukhov collected 3,159 rubles but never delivered the money because he held this money to be the interest owed to him for his labors. In a conversation with Gendrikhov, Pastukhov claimed that "he never took less than 15% interest per year and that even better people than Gendrikhov pay up." These words were overheard by merchant Provotorov and *meshchane* Plotnikov and Sovelov. Because three witnesses were more than enough for conviction under Russian evidence laws, the Moscow Aulic Court sentenced Pastukhov to three days' arrest pursuant to article 2036 of volume XV of the Digest of the Laws (the decision was affirmed by the Criminal Chamber and the Governor General).²⁰² In a similar case, collegiate registrar's wife Elizaveta Shustitskaia (Pereshivkina in her second marriage) was

²⁰¹ *TsIAM*, f. 50, op. 4, d. 6234 (Durkina) (1861-63).

²⁰² *TsIAM*, f. 50, op. 4, d. 3926 (Alekseev) (1851-52).

prosecuted for usury in 1843 after she took from Moscow *meshchanka* Ekaterina Bulasheva personal effects (*veshchi*) worth 1,335 paper rubles and gave her 284 paper rubles at the annual rate of 80 percent. Bulasheva paid interest at the end of each month but eventually could not afford this high rate and had to permit her to sell a fox fur coat for 500 paper rubles to pay off the debt. Her witnesses were 9th Class official Ivan Sokovin, chancery clerk Glazatov, and 2nd Lieutenant Vladimir Schmidt, who all heard Pereshivkina claim that she was charging 7% per year. Because there was an issue of Bulasheva bribing witness, the lower court (a Joint Session of County Court and the Magistrate) ruled that usury had not been proven and instead convicted Bulasheva for attempting to influence witnesses, but the Criminal Chamber ruled on December 21, 1856 that Pereshivkina's usury was proven by three witnesses under oath and punished her by the triple fine required by the law. However, her conviction was vacated pursuant to the Tsar's amnesty Manifesto of March 27, 1855.²⁰³

In addition to a criminal prosecution, the authorities' other option was to use the governor's police powers to punish or at least harass usurers, which was apparently done when there were multiple complaints about a particularly despised moneylender. But, as discussed in Chapter Seven in the section concerning administrative meddling in court procedure, these administrative measures were limited to expelling the usurer from Moscow; this could shut down his or her business but did not provide any direct relief for the debtors.

In sum, there is no denial that moneylending in pre-reform Russia was regarded negatively not only by private persons but also by the law, which limited the interest rate and criminalized usury throughout the imperial period, except for 1879-1893. Moreover, usury laws were

²⁰³ *TsIAM*, f. 50, op. 4, d. 4732 (Pereshivkina) (1856-57).

enforced in actual legal practice. However, anti-usury measures not only failed to effectively curtail private moneylending as a practical matter, but they could not possibly have been intended to do so, given that an actual conviction resulted in a small fine. And that even not taking into consideration the rigors of Russia's pre-reform evidence laws (the system of "formal proofs" was designed – as were its early eighteenth-century German counterparts – to eliminate judicial discretion by requiring a confession or testimony from two witnesses to prove a criminal case), which made a usury conviction virtually impossible except for a rare confession or a case when there were witnesses. These witnesses would most likely be other debtors and in order to testify they would have to act against their obvious self interest by enraging the creditor, given that the punishment for usury did not affect their continued legal obligations to the predatory lender.

Varieties of Lenders

The traditional image of a moneylender, exemplified by Dostoevskii's Aliona Ivanovna, is an individual of a low social rank, a shrewd but pathetic creature who does not put his or her money to any good use. She spent her time in a small crude apartment much like a fairy-tale witch. Russian lawyer G.O. Rozenzweig in his collection of anecdotes from Russian legal practice presented as a curiosity the story of Vladimir Panshevich, a retired major-general serving as a professor of mathematics at the prestigious Mikhailovskaia Artillery Academy and a well-known expert in ballistics, who was put on trial in the late 1890s for charging 36 percent interest to his numerous debtors (all from prosperous social groups since Panshevich only made loans of over 1,000 rubles).²⁰⁴ Real-life moneylenders were a much more diverse group, sometimes

²⁰⁴ G.O. Rozenzweig, *Iz zaly suda. Sudebnye ocherki i kartinki* (St. Petersburg, 1900), pp. 456-569. (other interesting aspects: (a) technically the lender was nobleman Yaroshko who acted as a go-between; Each loan included a built-in

approximating Dostoevskii's characters and sometimes, like Panshevich, turning the stereotype upside down.²⁰⁵

Most "professional" lenders who are mentioned in court cases did not enjoy a particularly exalted social status. Nonetheless, "elite" moneylenders, mostly junior-rank civil servants, appear in court records as well-integrated members of Moscow's genteel strata familiar with the administrative and legal procedures. Several individuals discussed in this study, including Briukhatov, Draevskii, and Pereshivkina who have already been mentioned in this chapter, belong to this category. Such individuals serviced a respectable clientele of wealthy merchants, nobles, and civil servants, had enough cash to enable them to travel abroad (Briukhatov) – not exactly a common thing to do for lower-level civil servants – and could even own a serf-populated country estate (Draevskii). Some could also be members of the merchant class with pretensions of gentility: for example, Nikolai Popov, the honorary citizen from Kashira (also discussed in Chapters One and Three), more resembles a French *rentier* than a traditional Muscovite merchant.

extra security of 100-200 rubles. And this in the late imperial period when bank loans became available. This case occurred after the restrictions on interest rates were reintroduced in 1893; indeed, one of the contested issues was the extent to which the lender modified his practices to conform with the law.

²⁰⁵ Soviet historian D.I. Patrikeev documented extensive lending operations by the fabulously wealthy Morozov boyar family in the second half of the seventeenth century. See his *Krupnoe krepostnoe khoziaistvo xvii v.* (Leningrad, 1967), 133. Cited in Daniel H. Kaiser, "'Forgive Us Our Debts': Debts and Debtors in Early Modern Russia." In *Forschungen zur ostereuropaischen Geschichte*, 155-193 (Berlin, 1995), 158. I have not been able to ascertain whether Russia's highest aristocracy in the mid-nineteenth century likewise acted as a center of extensive credit operations or – put differently – whether the aristocracy's patronage networks documented by John LeDonne were strengthened and supplemented by moneylending. That said, as I have shown in Chapter One, aristocrats routinely borrowed and lent money, but I have not been able to identify *large-scale* lending activities. Another Soviet scholar, S.Ia. Borovoi, found that individuals from diverse social groups, including peasants, merchants, and magnates, were involved in moneylending in the seventeenth century. See his "*Rostovshchichestvo, kazennye ssudy i gosudarstvennyi dolg v protsesse pervonachal'nogo nakopleniia v Rossii.*" In *K voprosu o pervonachal'nom nakoplenii v Rossii (xvii – xviii vv.). Sbornik statei* (Moscow, 1958), 500. Cited in Kaiser, "'Forgive Us Our Debts,'" 159.

Not only did these “elite” moneylenders enjoy their wealth; they were also at home in the world of Russian officialdom, which of course made debt collection and debt imprisonment more efficient. For example, Briukhatov’s victim, the young nobleman Abramov, complained to the governor general, Prince Dolgorukov, that Briukhatov’s appetites were “accessible only to a predator who possesses huge means.” Although Briukhatov himself was under criminal investigation, he quickly managed to get Abramov imprisoned and willing to negotiate. Draevskii, who served as a clerk at the Aulic Court, eventually had to leave service, but he clearly benefited from his official position in that his superiors, to whom Draevskii’s victim, merchant Smirnov, directed numerous complaints, were either unable or unwilling to provide redress. Pereshivkina, in turn, was familiar enough with the ways of the courts that she at least initially managed to turn the case against her accuser Bulasheva by challenging Bulasheva’s witnesses and exposing her attempts to bribe them. Finally, merchant Lukin, who is discussed in more detail in Chapter Five, after being beaten by the imprisoned debtors, was influential enough to induce the government to conduct a swift and effective investigation (no doubt aided by the fact that authorities were alarmed about even a small prison riot).

The upscale lenders were also differentiated by their practices and the types of loans they made. For example, one type of lender consisted of relatively “elite” pawnbrokers, such as Pereshivkina, Draevskii, and those moneylenders to whom Moscow *meshchanka* Lebedeva pawned several pianos that she previously rented in music shops. Such lenders took nicer items as collateral: for example Draevskii took the best winter clothes of a prosperous merchant. Usually the items most easily pawned included clothes, furs, jewelry, watches, icon frames and musical instruments. Their clientele represented Moscow’s middling classes: for example,

Pereshivkina, who was married to a Collegiate Registrar, dealt with *meshchane* who rubbed elbows with the likes of retired Second Lieutenant Vladimir Schmidt and 9th Class Official Ivan Sokovin (equivalent to an army captain). Also prestigious were loans secured by real estate; for example, honorary citizen Popov testified that he made a living by making mortgage loans, for which he used 10,000 rubles inherited from his father. It is interesting that this was his self-description, whereas his actual loan portfolio (discussed in the previous chapter) actually included only two mortgages. Another lender who specialized in mortgage loans, Staff Captain Balakan, was on familiar terms with Moscow's merchant elite, such as its former mayor Korolev. He was also on good terms with the police, and was able to secure its services in an easy and confident manner when a civil servant's wife Skrebkova attempted to defraud him. Colonel Nikitin was able to loan the staggering 100,000 rubles secured by mortgage of one of Moscow's public bathhouses (at that time an extremely profitable and desirable type of property).

Yet another type of lenders made unsecured loans documented by "loan letters" that were for the most part issued by nobles, junior officers and civil servants, and their wives and daughters (specific legal requirements are discussed in more detail in Chapter Six). One example is Lieutenant Terskii whose name occurs frequently in the lists of loan letters registered by the Moscow Chamber of Civil Justice in 1852 and 1854. Another example is the wife or widow of a Gubernial Secretary (class 12 corresponding to lieutenant in the army) Stepanida Popova, who seems to have been the primary private moneylender in the out-of-the-way town of Temnikov in Tambov province in the 1820s. She was followed by Lieutenant Prince Ivan Engalychev whose

operations were far less extensive than Popova's.²⁰⁶ Other lenders already mentioned in this chapter, such as Briukhatov and *meshchanin* Ivanov also accepted unsecured *veksels*. Because these loans were not backed by specific property that would be easily placed at creditor's disposal in the event of a default, such lenders must have possessed good connections at the court building to be able to stay in business. In fact, Terskii is frequently encountered signing his name as a witness in debt transactions in the mid-1850s, and Ivanov, who was not a nobleman or a civil servant, likewise seemed to be at home in the court building, where he engaged in his quarrel with the loan broker Tikhon Nikolaev. Finally, some lenders specialized in lending to particular groups of people: for example, merchant Poluekt Chistiakov catered to university students in the mid-1860s and suffered unpleasantness with the secret police when it found out that one of his clients was the noted revolutionary Pavel Maevskii.²⁰⁷ Such individuals as Briukhatov, Logotini and other lenders in the case of the Old Believer merchant Ivan Butikov, or Gorodnitskii in Count Tolstoi's case all seem to have specialized in lending to young people.

More subaltern, Dostoevskii-style moneylenders also existed. Their inferior position manifested itself in a lesser ability to utilize the legal system to their advantage; therefore such lenders almost invariably required collateral. For example, peasant Durkina already mentioned above was foolish enough to admit in court to charging an illegal interest rate. She was clearly not far above poverty herself, since she had to sell some of her collateral before it could be redeemed. Such moneylenders were particularly vulnerable to fraud, as was the German Emma Fick, who accepted fake gold watches as collateral. Her partner, peasant and "lawyer" Krotkov,

²⁰⁶ *TsIAM*, f. 50, op. 11, d. 95 (Arbenov) (1854-56).

²⁰⁷ *TsIAM*, f. 16, op. 57, d. 1 (Chistiakov) (1866).

was most likely part of the deception. These individuals seem to be more often women, in line with European developments elsewhere.

Finally, perhaps the largest group of lenders were not professional usurers at all and acted as one-time investors, or were simply helping relatives or friends. One indication of this is found in the registers of loan letters at the Moscow Civil Chamber. Only very few individuals loaned to more than one person in a given year: 5 out of 138 in 1852, 7 out of 122 in 1854, and 2 out of 55 in 1864.²⁰⁸ For the purposes of comparison, loan letters registered in the town of Temnikov (Tambov Province) in the first three months of 1820 show that out of 35 creditors, four made more than one loan, including one person who made six loans. Mortgage loans may have been more attractive for professional moneylenders, since in 1855 11 out of 100 lenders loaned more than once (although only three out of 97 in 1862).²⁰⁹ By contrast, transactions between close relatives were more common for loan letters: 12 in 1852, 14 in 1854, and 8 in 1864; for mortgages, the data are once again less clear – only four transactions in 1855, but eight in 1862. Still, these numbers clearly show that the overwhelming majority of creditors made only one loan in the course of the year, which suggests that for most property-owning individuals, lending money – with or without security – was an investment, rather than a profession.

Legal cases provide more detailed examples of individuals who used the courts to defend or promote their property interests relating to debt transactions but were not professional moneylenders. To give just a few examples, throughout this study I discuss the debt case of

Lieutenant Colonel Blaginin, whose estate was contested by his brother and by his friend,

²⁰⁸ *TsIAM*, f. 50, op. 14, d. 2363 (registered loan letters, 1852); f. 50, op. 14, d. 2366 (registered loan letters, 1854); f. 50, op. 14, d. 2380 (registered loan letters, 1864).

²⁰⁹ *TsIAM*, f. 50, op. 14, d. 1597 (urban houses, shops, and lands, 1855); f. 50, op. 14, d. 1629 (rural mortgages for 1862).

meshchanka Anna Antonova. It is uncertain whether she really did loan him 600 rubles, but it is clear from the case record that this was not a routine transaction for her.²¹⁰ The 1840s case of the aristocratic Ekaterina Naryshkina contains detailed account books from the earlier part of the century, showing that she almost invariably borrowed from her peer aristocrats (as discussed in Chapter One) and, more importantly, actually paid six percent interest on such loans.²¹¹ In the 1850s, several landowners in Moscow province who were swindled into loaning money secured by non-existent estates (Veselkin fraud case discussed in Chapter Three) were also clearly investors and not professional lenders. They knew enough to eventually raise alarm by checking court records and writing to the authorities, but initially one of them would not even bother to travel to Moscow to sign the transaction, and Veselkin with his accomplices had to pay a court clerk to visit the victim's country estate with his registration book.²¹² Aristocrats who lent money to Prince Golitsyn, a partner in the disastrous Transcaucasian Sericultural Company did so either to do him a favor or as an investment (or both).²¹³ This list can of course continue to cover the majority of the several hundred debt cases that I have consulted for this study, but even these few examples make it clear that Russians from various propertied strata – from an illiterate townswoman to an aristocratic landowner – chose to lend money as an investment or a favor to relatives and friends, without practicing moneylending as an occupation.

Whether lending to close acquaintances or to individuals they barely knew, both professional moneylenders and one-time investors of course had to evaluate their borrowers' ability and

²¹⁰ *TsIAM*, f. 92, op. 9, d. 806 (Blagin).

²¹¹ *TsIAM*, f. 92, op. 10, d. 611 (Naryshkina).

²¹² *TsIAM*, f. 50, op. 4, d. 4416 (Veselkin), 81.16.579 (Veselkin) (1845-7), and f. 50, op. 4, d. 4899 (Tatishchev).

²¹³ *TsIAM*, f. 50, op. 5, d. 11976 (Golitsyn).

willingness to pay back. Court cases give several indications of the factors that were considered. For example, the defrauded creditors of Nikolai Dmitriev, who borrowed money with fake credentials in the name of his former employers, brothers Glebov, noted in their petitions to police that they knew him for many years, loaned him money before, and that he always paid back on time. In another case, nobleman Khlopetskii who loaned money to university student Ivan Chulkov (see Chapter Six for more detail on this case), noted two precise grounds for extending credit: one was Chulkov's claim that he was going to receive an inheritance from a relative and second, that Khlopetskii had gathered up information about Chulkov and received good references to the effect that he paid his debts to other persons in a satisfactory manner.²¹⁴ The young Count Dmitrii Tolstoi likewise was able to borrow from usurers because he was the sole heir to his wealthy and elderly father and also was expecting to get married. *Meshchanin* Aleksei Klimov, disputing his debt to another *meshchanin* Mikhail Ulitin in 1866, claimed during an "*ochnaia stavka*" (a face-to-face meeting between the defendant and the prosecution witness) that he could not possibly have entrusted him with a large amount of money, because Ulitin did not even know where Klimov lived. Ulitin responded that that was true enough, but that instead they went together to the Moscow Magistrate to obtain information about the inheritance Klimov was about to receive.²¹⁵ In 1855, Collegiate Registrar Dmitrii Sheremetievskii borrowed 100 (or 200) rubles from *meshchanin* Nikolai Ivanov with the expectation that he was going to get money in a few months after selling some land.²¹⁶ Actual State Councilor Prince Vladimir Sergeevich Golitsyn was made more creditworthy by being the

²¹⁴ *TsIAM*, f. 81, op. 16, d. 1998 (Khlopetskii) (1864-66).

²¹⁵ *TsIAM*, f. 50, op. 4, d. 8264 (Ulitin) (1865-66).

²¹⁶ *TsIAM*, f. 50, op. 4, d. 7229 (Ivanov) (1863-65).

heir to his wealthy aunt, and claimed that his insolvency in part resulted from the fact that she later changed her will and disinherited him.²¹⁷

Court cases show that Russian merchants were acutely conscious of outside factors that could damage their social standing, such as getting into trouble with authorities, being slandered, or even becoming the victim of trademark infringement. Being in trouble with the police was one significant factor that could easily damage one's credit, as shown by the persistent petitions of an extremely wealthy Moscow Old Believer merchant and textile manufacturer Ivan Butikov, who in 1859 had a confrontation with the policemen trying to arrest his son for debt. Not finding the son, the police placed armed guards around Butikov's house, which caused the old merchant to frantically petition the Chief of Gendarmes and Moscow Governor General to argue that such actions were illegal and damaging for his business reputation and his *kredit*.²¹⁸

Rumors spread by one's ill-wishers could be just as damaging as actions by Russia's clumsy police apparatus: Moscow *meshchanin* Vasilii Kurochkin, a freed serf and later an innkeeper at the Smolensk Market and estate manager to his former master Major General Grigorii Kolokol'tsev, was accused of embezzlement by the late general's children. In his suit for slander, Kurochkin complained that "through being slandered (*posramlenie*) by Mrs. Kolokol'tsev in this fashion, I and my family fell into complete penury and as a man of commerce engaged in various kinds of trade, I thereby lost all trust in my credit (*poterial chrez to vsiakoe doverie v kredit*).²¹⁹ We know that as part of their campaign, the general's heirs had petitioned the Board of Trustees and the Commercial Bank not to issue any money to Kurochkin *or* his relatives. The heirs

²¹⁷ *TsIAM*, f. 81, op. 21, d. 302 (Volkov v. Golitsyn)

²¹⁸ *TsIAM*, f. 16, op. 23, dd. 208 and 209 (Butikov).

²¹⁹ *TsIAM*, f. 50, op. 4, d. 8981 (Kurochkin) (1865).

responded that their investigation of the embezzlement did not have an “official character” and so Kurochkin could not have lost his credit because the allegations were not published in print. Kurochkin’s criminal “insult and slander” (*obida i kleveta*) case missed the filing deadline at the Moscow County Court (because his papers were delayed, perhaps intentionally, in the Aulic Court), and Kurochkin was left with the far less threatening recourse to the civil court.

Even an indirect slight such as trademark infringement could be interpreted as harming one’s credit by associating the merchant with inferior quality goods, as was argued by the Prussian subject Stepan Iakovlev Schiffers who traded in woolen clothes in partnership with another merchant Shaposhnikov, selling them to China through the Kiakhta tradepost. Schiffers alleged that Shaposhnikov continued to use their common trademark on his rolls of cloth long after their partnership had ended, and thereby “harmed his credit.”²²⁰ This evidence is of course fragmentary, but it shows, first, that creditors lending for economic reasons rather than social ones based their decision on the borrowers’ previous “credit history,” as well as on their future financial prospects measured, for example, by expectation of an inheritance or a marriage, and second, that that an individual’s reputation in the community had a direct bearing on his or her creditworthiness.

In sum, legal documents show that moneylenders were a diverse group with diverse practices. By far, the majority were ordinary individuals making a one-time investment or a favor to a friend or a relative. The small group of “professional” moneylenders included a relatively prosperous and well-integrated group familiar with the bureaucratic and legal machinery, supplemented by a much less respectable stratum of small-scale pawnbrokers. While

²²⁰ *TsIAM*, f. 50, op. 4, d. 765 (Schiffers) (1857-62).

Dostoevskii's pawnbroker – the widow of a low-ranking civil servant – was realistic enough for St. Petersburg with its abnormally large *chinovnik* population, in Moscow a usurer of Aliona Ivanovna's stature would most likely have been a *meshchanka* or even a peasant. But overall, court cases suggest that success in the lending business generally required the ability to make intelligent economic calculations, coupled with social skills and connections, a familiarity with the world of officialdom, and a degree of self-confidence that is not found in the shady and pathetic characters found in literature.

Narratives of Failure: Bankruptcy and Attitudes to Debt and Debtors

This section shifts the perspective to debtors, focusing on their stories and on what these stories can reveal about the culture of debt in Russia, about attitudes to debt and debtors, and the relationship between legal norms and cultural practices. In the course of my research I discovered that ordinary debt cases from the pre-reform period only rarely delved into the question of why individuals became burdened with debt (“for my own needs” was the usual terse description of their motivations) and why they failed to repay. Thus this section is mostly based on the records of bankruptcy proceedings, which involved a great deal of inquiry into the debtor's motivations and circumstances and thus contain some of the most detailed and illuminating personal stories from Russian court practice. The reason for this was that under Russian bankruptcy law the discharge of one's debts was highly conditional, and the debtor's testimony typically acquired the performative and even dramatic aspect that was so lacking in regular Russian court procedures before the 1864 reform.²²¹ Bankruptcy proceedings are also

²²¹ On performance and bankruptcy in US law today, see Donald R. Korobkin, “Bankruptcy Law, Ritual, and Performance.” *Columbia Law Review*, Vol. 103, No. 8 (Dec., 2003), pp. 2124-2159.

important because they took place outside the regular court system both before and after the 1864 reform and thus represent a bridge between the two systems.

I argue in this section that both cultural attitudes and actual legal practice in mid-nineteenth century Russia balanced the two approaches to debt that could be found in the West since the eighteenth century: the default rule assumed that insolvency was caused by a debtor's recklessness and poor business decisions, while the newer attitude shifted the risk of failure upon the creditors when the insolvency stemmed from circumstances beyond the debtor's control. While bankruptcy discharge was institutionalized in Russia very early compared to many other Western legal systems (for example, a permanent bankruptcy statute was not introduced in the U.S. until 1898), I argue that it was conditional and limited in its scope, and, more importantly, that its application depended like most of the nineteenth-century Russian legal and administrative system upon the discretion of the individual creditors who staffed bankruptcy boards. The possibility of loan forgiveness in effect became just another factor in out-of-court negotiations between the debtor and his or her creditors, who were motivated to get their investment back if possible, if necessary by threatening the debtor with prison or even a criminal prosecution and by holding out the possibility of a discharge as a reward for cooperation.

In Western Europe and North America the treatment of debtors in the eighteenth and early nineteenth century gradually shifted away from regarding debt and bankruptcy as a moral failing that was to be dealt with through harsh legislation. Although much of day-to-day debt relations continued to rely upon personal acquaintance and traditional notions of honor and character, the emerging consensus was that debt was necessary and even beneficial for commerce, and that insolvency was primarily an economic, rather than a moral failure, meaning that individuals

taking business risks were no longer be punished for it.²²² Thus the first English bankruptcy laws that were penal in character were replaced with the statutes of 1825 and 1849 that offered greater protections to merchants, and the statute of 1869 that extended bankruptcy protections to non-traders.²²³ The effect of these laws and of similar measures in other Western nations was that cooperating debtors could enjoy a complete discharge of their debts and could start with a blank slate free of oppressive legal sanctions and virtually free of social disapproval. At the same time, debtors in the West continued to view debt as limiting their personal autonomy as citizens (this is particularly well documented for the early U.S.).²²⁴ As to those individuals whose debts were too small to be eligible for bankruptcy protection, i.e., the poor and the laboring classes, they were increasingly viewed not as objects of charity but as delinquents who needed to be restrained and punished.²²⁵

In imperial Russia, a broadly similar trend may be observed, comparing the eighteenth-century legislation with its emphasis on penal measures to the nineteenth century when debt discharge became available. However, Russian bankruptcy proceedings never became a mass phenomenon because they were available only in cases of debts exceeding 1,500 rubles.²²⁶ Another reason was that the discharge was highly conditional upon the approval of one's creditors; while Russian bankruptcy procedure was in part designed to protect debtors, its most

²²² Bruce Mann, *The Republic of Debtors*.

²²³ Jay Cohen, "The history of imprisonment for debt."

²²⁴ See Introduction.

²²⁵ Finn, *The Character of Credit*.

²²⁶ *Ustav Torgovogo Sudoproizvodstva* Art. 405; Shershenevich, *Kurs torgovogo prava*, §132.

important goal was to provide for an orderly and equitable way to distribute debtor's assets in cases with multiple creditors.

The Bankruptcy Statute of 1800 established three categories of bankrupts: "accidental," "reckless," and "intentional." The default rule requiring no special showing was to hold an insolvent debtor to be "reckless," whereas in order to have his or her debts forgiven, an insolvent debtor had to prove that there were external circumstances that affected his or her ability to pay. Among the various conditions for this full discharge was that the insolvency be caused by a natural disaster or an enemy invasion, or "other accidental decline or bankruptcy, an extraordinary fall in the prices of merchandise, if it will be proven that other merchants suffered the same fall at the same time ... and other similar circumstances, which he could not prevent." (Art. 132). Conversely, if creditors found that the debtor concealed property that could be used to cover the debt or engaged in any other fraud (such as falsified account books or failed to keep them altogether), they held bankruptcy to be "malintentioned" (*zlonamerennoe bankrotstvo*), which automatically resulted in a criminal prosecution. Unlike usury, a malintentioned bankruptcy could be punished with exile to Siberia. The creditors' findings were reviewed by the Commercial Court (for commercial bankruptcies) and often resulted in litigation, especially when challenged by those creditors who were not satisfied with the majority's decision.

Bankruptcy cases suggest that the way an insolvent debtor was treated seems to have depended more on his or her relationship with the creditors, rather than on any automatic application of the law, which as written was based upon creditor discretion, albeit ultimately subject to the review by a court. One example of this is provided by case of the military engineer Colonel Vladimir Nikolai who became insolvent in 1870 with debts worth nearly 185,000 rubles.

By that time he had retired from commerce and worked for the Warsaw-St. Petersburg Railroad, but in the 1850s he had been heavily involved in municipal engineering projects and government contracts. His misfortunes started in 1859 when his uninsured grain barge on the Volga burnt down (allegedly the insurance companies in those days refused to insure barges). Later he built an embankment in the town of Rybinsk, which was destroyed by ice before he officially turned over his work; then he lost money in a “unlucky enterprise of an oil-making factory,” as well as through managing a steamship company in 1851-63 and designing a water-supply operation in the city of Kazan’.²²⁷ Nikolia’s creditors concluded that this kaleidoscope of projects was evidence of “recklessness” (which entailed serving up to five years in a debtors’ prison). Such an attitude could mean that Russians at that time had not yet adopted the more debtor-friendly attitude to commercial failure that just then prevailed in Great Britain; but considering that Nikolia and his creditors eventually settled the case, agreeing to set him free to pursue yet another project in exchange for continuing to make payments on his debt, a more likely interpretation is that the creditors were simply trying to put pressure on Nikolia to agree to favorable settlement terms.²²⁸

While it is less clear whether it was Nikolia’s mismanagement or misfortune that mostly contributed to his insolvency, other cases make much clearer the string of “social” and natural disasters that built up over the years and brought to nothing even wealthy persons’ attempts to recover their finances. These cases make for some of the most dramatic reading in pre-reform court documents. For example, Prince Andrei Golitsyn inherited a debt-ridden estate from his

²²⁷ *TsIAM*, f. 142, op. 4, d. 64 (Nikolia) (1870-71).

²²⁸ For other sample large bankruptcies see *TsIAM*, f. 142, op. 1.862 (Solodovnikov) (1881-1892); f. 81, op. 21, d. 302 (Golitsyn).

father, suffered crop failure for two years, massive peasant disobedience (a reaction to Golitsyn's attempt to set up 800 households as individual farmers), and on the top of that the ruin of his investment in the Sericultural Company in Transcaucasia when five of his partners who had the necessary expertise died and the company was taken over for its debt to the imperial treasury.²²⁹ Many of his creditors, especially those of his own social circle (as discussed in Chapter One), chose to discontinue their claims, considering his bankruptcy as unintentional, but others continued the suit.

A similar detailed and dramatic testimony was offered in a different case by Collegiate Secretary Petr Fedorovich Zubov who had estates in Arzamas and Makarievsk Counties in the Volga region with nearly 3,000 serfs. Zubov chose to take over this debt-ridden estate from his brother and for several years attempted to straighten it out by improving conditions for his peasants (such as by paying them to develop additional lands and transferring newly-bought serfs from Central Russia to work on empty lands), and developing a timbering operation (which came to nothing because his creditors shut it down). All these efforts eventually failed, according to Zubov, because of the “unfortunate confluence of circumstances” (*neschastnoe stecheniie obstoiatel'stv*), which included several crop failures, fires destroying both Zubov's and his peasants' structures (59 peasant homes, a tar-making and a carpet-making factories), and the serfs suing Zubov to gain their freedom and refusing to pay their rent which, in turn, made it impossible for him to repay the mortgage to the Moscow Board of Trustees. The Board then had a trustee appointed over the estate to collect its income, which put an end to Zubov's attempts to regain his financial autonomy. For his daring in taking on this debt-ridden estate, Zubov was

²²⁹ *TsIAM*, f. 50, op. 5, d. 11976 (Golitsyn).

held to be a “careless” bankrupt, although actually arresting him proved to be impossible, since after being expelled from his estate Zubov went into hiding, apparently at his friends’ estates.²³⁰

That the outcome of cases like Zubov’s or Golitsyn’s depended completely upon the creditors’ goodwill and discretion is showed by another almost identical case that did lead to a full discharge. The misfortunes of Actual State Councilor (equivalent to army major general) Sergei Ivanovich Krotkov’s began in 1847, as soon as he received – as was commonly practiced by the Russian landowning gentry – his portion of his future inheritance while his father was still alive. This transfer was accompanied by various debilitating conditions (for example, the father kept much of the income from this property) and was followed by three years of bad harvests in 1847, 1848, and 1849, when Krotkov had to borrow to pay his living expenses and the interest on the Board of Trustees loan, as well as to feed his hungry peasants and their livestock and rebuild their houses that burnt down. At that point, Krotkov had not yet given up, but decided to rebuild his distillery plant as a textile factory to take advantage of low prices for raw wool. Although this required yet another loan, Krotkov was able to repay much of his debt and made a profit for four years, until the Crimean War ended in 1856 and the demand for woolens went down because the government was no longer buying new uniforms. Then Krotkov tried himself out as inventor, traveling to London to attempt to sell a patent for an “electro-magnetic guard.” However, he was swindled (despite the Russian ambassador’s efforts on his behalf) and had to come back to Russia after spending another 20,000 rubles for the trip. Having returned to his estate in 1860, he organized a mechanical sawing workshop to manufacture “cheap men’s clothes” out of the woolens made at his factory. For awhile he was paying off his debts but then a clerk sent to

²³⁰ *TsIAM*, f. 92, op. 6, d. 746 (Zubov) (1853-55).

Nizhnii Novgorod stole 10,000 rubles' worth of merchandise. At that point, Krotkov was finally ruined; once serfdom was abolished, he needed cash to continue to operate his factory, which he could not raise because of his debts. He therefore had to lease it out, thus losing the income, and had to begin a pyramid scheme of borrowing money solely to repay his old debts.

Thus, Krotkov became insolvent, according to his own words, “despite the fact that throughout his life he never allowed himself to live above his station, and even less to spend his money lightly, while to the contrary using all of his strength and ability to preserve his fortune.” The final coup was delivered in 1874 by a colonel's wife, Aleksandra Shenshina, who brought to the recently opened District Court his letter begging her to wait because his other creditors had forced a sale of his properties for less than half of their value and so he was left with no means to make any more payments. The court clerk underlined these lines with a pencil and wrote “debtor's admission.” Unusually for Russian bankruptcy proceedings, none of his 39 creditors had any objections to Krotkov's testimony and in 1876 held him to be an “accidental” bankrupt.²³¹ It is difficult to argue that Krotkov was any less “reckless” than, say, Zubov; for instance, both stories included references to natural disasters that according to the Bankruptcy Statute entitled debtor to a full discharge.

One possible reason for the leniency to Krotkov was the more liberal attitude to insolvents in the 1870s (leading, for example, to the partial abolition of debt imprisonment in 1879); judging by the earlier examples, Krotkov would not have been so lucky in the 1850s and early 1860s. But it seems that another important reason was that Krotkov's insolvency board was packed with his relatives, with his wife alone accounting for almost 1/3 of the total amount of the debt. Whether

²³¹ *TsIAM*, f. 142, op. 4, d. 81 (Krotkov) (1874-6).

because of this creditor-driven nature of Russian bankruptcy proceedings, of because of the nature of my sources, I found relatively few cases when debtors received a full discharge on the basis that their bankruptcy was “unfortunate.”²³² In contrast to the Krotkov case, in the case of Nikolia discussed above creditors were clearly pressing the debtor to reveal any hidden assets or make some other arrangement for repayment, while in the Zubov case, it is unclear what motives, other than malice and frustration, induced his creditors to declare him “careless,” since there was no chance that Zubov retained any significant property or could acquire any in the future. What is clear is that the discharge could be agreed on as part of the deal between the creditor and the debtor: this is precisely what happened with Moscow merchant Borisovskii, who legally speaking was anything but “accidental” bankrupt, since he was caught hiding merchandise and various household furnishings with his relatives, as I discuss in more detail in Chapter Four. However, the creditors voted to ignore this inconvenient evidence that would have committed Borisovskii to a criminal trial and thus would have prevented him from repaying any of his debts in the future.²³³ Conversely, creditors could pressure debtor despite good evidence, for example, Artemii Riazanov (the elderly Old Believer merchant) received no sympathy despite very good witness testimony that said he was “an honest old man” and became insolvent because of his inexperience in running a textile factory and because of bad prices for raw materials.

²³² I was unable to thoroughly examine the records of Moscow Commercial Court, which handled commercial bankruptcies, due to difficulties of access. The surviving documents represent no more than 10% of the original amount after intentional destruction of records by the archivists in the 1930s, and those documents that remain seem to be in poor condition. Those cases of merchants’ bankruptcy come mostly from criminal court records and therefore almost invariably involve allegations of fraud and misconduct.

²³³ *TsIAM*, f. 50, op. 5, d. 12850 (Borisovskii) (1859-65). Cases that I have reviewed contain very few instances of a full bankruptcy discharge. The explanation for this is probably that, given that the creditors’ agreement was required for a discharge, those that were sympathetic to the debtor would have already reached a settlement during the early stages of a bankruptcy proceeding.

In addition to the balance between debtors' financial and business decisions and those circumstances that were beyond their control such as natural disasters and widespread price fluctuations, another important factor influencing the way debtors were treated in bankruptcy proceedings was information about their personal character, such as honesty, family commitment, and sobriety. To some extent this notion was inherent in the very rules of Russian criminal procedure, which was applied in cases of "intentional" bankruptcy.²³⁴ Before the 1864 reform, it included an atrophied vestige of jury trial called *poval'nyi obysk*, whereby the court investigator questioned twelve members of the defendant's community of the same legal status (i.e., merchant, peasant, etc.) about the defendant's behavior and character. The answer was virtually always positive, except that in a very few instances the person so questioned "did not know" anything about the defendant. While this particular procedural element had lost its practical meaning by the mid-nineteenth century, the question of debtors' character continued to be crucial in bankruptcy proceedings, considering the central role of the creditors' discretion and thus of their good opinion about the debtor.²³⁵

Another type of evidence that shows the balance between outside circumstances and personal character in determining how debtors were treated was a list of less wealthy debtors who were imprisoned in Moscow in the 1826 and were considered for ransom on the occasion of Nicholas I's coronation festivities, which prompted many charitable donations. These prisoners were all members of Moscow's "middling" class, including junior civil servants, lesser merchants, *meshchane*, and peasants engaged in commerce. The ransom procedure is discussed in more

²³⁴ Defendant's character and reputation obviously continues to be important in today's U.S. law (character testimony and admissibility of prior convictions).

²³⁵ As I showed in the last section, debtor's character was also important in the original decision to extend credit.

detail in Chapter Five, but here it is important to note that the list of 71 prisoners included detailed annotations of their character and of the reasons of their debt. These fall into two groups. The first set of 45 persons contains debts related to business. To give just a few examples, the foreign merchant Petr Temerer could not repay 630 rubles related to his collapsed cartwrighting business. Merchant Zimin could not repay a 1,000 ruble *veksel* (commercial promissory note) because his money disappeared in bad debt extended to others. The merchant Kozma Ulianov owed over 4,000 rubles in rent to the city for keeping fisheries on its property and could not repay because of a flood, which also may have ruined *meshchanin* Ignatii Lubkov who owned a mill. Another merchant, Petr Malyshev, rented space for an inn from General Poltoratskii but was ruined when the nearby theater closed down, leaving Malyshev in debt for 2,500 rubles. These were all considerable debts for mid-nineteenth century Russia, vastly exceeding the amounts earned by manual laborers, for example, but still far short of the large commercial bankruptcies with their toll extending into hundreds of thousands rubles.

The second set of debtors in the list were victims of a wide variety of everyday life circumstances. It included individuals of all social estates. For instance, collegiate registrar's wife Maria Aleeva became heavily indebted because of the slow progress of some legal case in which she was involved. Army staff captain Afanasii Bakhterev could not repay 4,000 rubles because his 100 serfs were refusing to pay their quitrent. No less than five individuals ended up in prison because they had to borrow to pay for their daughter's wedding: soldier's wife Maria Fomina owed 400 rubles (her daughter married Gubernial Secretary Onofrienko); *tsekhovoi* Ilia Rodionov owed 1,500 rubles (which also included some business debt); three other townspeople owed 291, 200, and 600 rubles respectively. Illness was another common cause, ruining

foreigner Fedor Ride and *meshchanin* Gerasim Gavrilov (300 and 200 rubles respectively). Irina Kozlova owed 700 rubles for rent and the expenses of signing up as a Moscow *meshchanka*. Katerina Prakhova, a *meshchanka*, owed 2,800 rubles because her late husband had borrowed from a wife of a civil servant who was later convicted for embezzlement. *Meshchanin* Sergei Smirnov still owed 800 rubles for timber used to rebuild his house after the French invasion in 1812. *Meshchanin* Konstantin Danilov owed 3,000 rubles that he borrowed to ransom himself from serfdom. *Tsekhovoi* Sergei Maksimov had borrowed 280 rubles to pay his taxes.²³⁶ This list could be continued, but what is already clear is that aside from such misfortunes as illness, peasant unrest or legal expenses, the single most common cause of crippling indebtedness for these relatively humble individuals was a too-expensive attempt to better one's social condition, whether by giving one's daughter a respectable wedding, rebuilding a house, or escaping serfdom. This suggests an important social role for debt that is difficult to document *en masse* from any other single source.

Although the debtor's character and actions, as well as his or her behind-the-scenes negotiations with the creditors seems to have been the two most important factors affecting his or her treatment, there is some evidence that mid-nineteenth century Russian legal practice was at least beginning to recognize that simply engaging in commerce made debt inevitable and insolvency highly possible – even in the absence of famines and enemy invasions. First, Russian merchants and government officials alike tended to conflate large debts and large business turnover. For example, in the criminal bankruptcy trial of the elderly merchant F.A. Solodovnikov and his sons, his creditors and the court that reviewed their decision recognized

²³⁶ *TsIAM*, f. 16, op. 30, d. 259 (Delo ob osvobozhdenii dolzhnikov) (1826).

that the Solodovnikovs' annual business turnover of 800,000 to 900,000 rubles "obviously could not occur without using credit."²³⁷ This statement was made in a much later period than that covered in this study; however, Solodovnikovs' business and related indebtedness that eventually resulted in a bankruptcy did go back to the 1850s and 1860s. Earlier, in 1863, Moscow governor general dispatched his special aide, Titular Councilor Count Konovnitsyn, to oversee renovations in the debtors' prison. In his report arguing for improved conditions for wealthier debtors, Konovnitsyn noted that "almost always the greater amount of debt, the larger the debtor's affairs must have been (*vël bol'shie dela*), [he must have] had more money, and therefore was used to a better life." The governor did not agree with this (the phrase is underlined with a question mark) but Konovnitsyn's opinion could not have been so eccentric if it was offered up to the governor in an official report.²³⁸

Second, as I mentioned earlier, the Bankruptcy Statute did list market fluctuations as a basis for debt discharge, and actual bankrupts did bring up the vicissitudes of commerce to explain their insolvency. For example, the 75-year old Old Believer merchant Artemii Riazanov unsuccessfully ran a small textile factory (20-30 workers) and for his debts was imprisoned for over four years and eventually put on trial for criminal bankruptcy. Explaining his failure, Riazanov mentioned high prices for raw cotton and low prices for finished goods that forced him to sell at a loss, in addition to the commonly given story of theft and purchase of defective materials. Riazanov was unique among Russian debtors whose cases I reviewed to describe his emotional depression as a contributing factor in his financial misfortune and as explaining his

²³⁷ *TsIAM*, f. 142, op. 1, d. 862 (Solodovnikov) (1881-1892).

²³⁸ *TsIAM*, f. 16, op. 30, d. 410 (Delo o perestroike doma otdannogo Mosk. Gor. Obshchestvom pod pomeshcheniie dlia vremennoi tiur'my neispravnykh dolzhnikov) (1865-66).

unsatisfactory testimony to the bankruptcy board (I try to keep intact the original's grammatical structure):

I traded in cotton goods and because fortune did not accompany my commerce, my business went badly, and therefore I gradually lost myself and fell in spirit paying little mind to my thoughts and cares, and came to a kind of sickly condition which included not only a lack of focus, but also forgetfulness. And for that reason when proceedings were instituted regarding my inability to pay the debts pursuant to documents issued to creditors for the amounts indicated in them, then I, given my circumstances, agreed to everything as long as I was not constrained and could come back to myself – expecting some more favorable circumstances, which happen frequently in commerce, when a rich man becomes poor and a poor man becomes rich, and so I testified about my insolvency indeterminately and haltingly, expressing myself for the most part with phrases “I don’t know” and “I don’t remember. [...] and all of this was attributed by my creditors, who became my judges, to my intention to conceal capital and merchandise to their detriment, whereas my testimony clearly spoke to my mental condition [...].”²³⁹

Less expressively, the brewer and innkeeper Prokhor Bodrov, who became insolvent in 1867, explained his failure by a general decline of the beer trade, the loss of a large sum in bad debt, trade losses resulting from competition by tax-farmers (*otkupshchiki*) who until 1863 administered Russia's alcohol monopoly, and the loss of up to 12,000 rubles that resulted from his attempt to renovate his inn (he lost the lease on the building and new lessees failed to reimburse him). This went along with a less convincing story of thieves stealing a chest with his account books and debt documents worth up to 20,000 rubles.²⁴⁰ While in those cases that I was able to review creditors usually suspected foul play and were not very inclined to listen to debtors' stories of declining prices and markets,²⁴¹ at least the courts that had to review and

²³⁹ *TsIAM*, f. 50, op. 4, d. 8960 (Riazanov) (1866-1869).

²⁴⁰ *TsIAM*, f. 142, op. 2, d. 4 (Bodrov) (1867-9).

²⁴¹ However, many of these criminal proceedings against “intentional” bankrupts took such turn solely because of one or two hold-out creditors who were unhappy with the original ruling; otherwise, such cases would not even make it beyond the Commercial Court. Most merchants either did not keep account books or did not surrender them to creditors and thus were liable for criminal prosecution; as to whether one actually took place depended on the creditors' disposition and the court's attitude in each particular case.

affirm the initial rulings of bankruptcy boards staffed by creditors approved the notion that market failure could be a mitigating factor. For example, the Moscow Commercial Court, aggressively pursuing an elderly Moscow merchant Ivan Borisovskii, contrasted his story of an unsuccessful investment in the purchase of several houses in Moscow with an “accidental decline” (*nechaiannyi upadok*) in trade that could get him a more lenient treatment.²⁴² Taken together, it seems that the notion of unfavorable business circumstances leading to indebtedness and bankruptcy was used by debtors and their creditors and judges alike, but did not acquire the force of a general outcome-determinative rule, since the lenient treatment did not reliably extend to instances of unsuccessful individual investment and risk-taking that was interpreted to be reckless.

In sum, Russian bankruptcy law early on provided for a full discharge of debts for individuals who fell victim to natural disasters, enemy invasions, and sudden market fluctuations that ruined their business. However, actual cases show that the three-fold classification of bankruptcies as “unfortunate,” “reckless,” and “malintentioned” – clear enough on paper but not corresponding to actual practices of Russian merchants and other entrepreneurs and dependent on the discretion of the creditors staffing bankruptcy boards – primarily served as the framework for practical negotiations between creditors and debtors. The former appear to have been more motivated to save their investment (and, in some cases, to assist their insolvent friend or relative, as I show in Chapter Four), rather than to argue about precise legal definitions. Debtors, in turn, were motivated to convince creditors that they did not intentionally deprive them of their money and were not hiding anything of value.

²⁴² *TsIAM*, f. 50, op. 5, d. 12850 (Borisovskii) (1859-65).

Wastrels and Misers: Cultural Responses to Indebtedness

Bankruptcy cases discussed in previous sections show that many Russians – especially the wealthier landowners and merchants – could resist the burden of debt for many years, inventing new ways to raise cash and, if necessary, making new loans to pay off the old ones. Court cases also show two other possible responses to indebtedness, one of which – giving in to wasteful luxury spending – became so culturally prominent that some modern scholars hold all Russian debtors on the eve of the 1861 serf emancipation to be extravagant luxury-lovers.²⁴³ But this section argues that spendthrift behavior was a continuum, with some types of wasteful conspicuous consumption explained as necessary to maintain one's rank and social position. Nor was this behavior limited merely to a few aristocratic youths: Russians of lower social ranks also displayed irrational and emotional behaviors when borrowing large amounts and thus surrendering their personal autonomy. I also argue that the opposite cultural response – an attempt to live debt-free or at least to limit borrowing – seems to have been more prominent socially and culturally both for merchants and for the nobility, who had sufficient financial means to avoid excessive indebtedness.

Those Russians who reflected on the issue of debt often spoke of it as a burden, or even an illness. Unknowingly echoing the American Founding Fathers, in 1846 a middling serfowner from Vladimir Province, Andrei Ivanovich Chikhachev, wrote in the *Agricultural Gazette* (whose target audience consisted of other gentry landowners): “Few of us are not afflicted with the dangerous and malignant illness of debt ... [which] has now become so widespread that the

²⁴³ Hoch, “The Banking Crisis”; Blum, *Lord and Peasant in Russia*; Emmons, *The Russian Landed Gentry*. For a sampling of contemporary opinions to that effect, see Nefedov, *Demograficheski-strukturnyi analiz*.

present generation will not likely be able to get rid of it.”²⁴⁴ “Only the rare postal delivery fails to bring a summons to appoint a trustee over [someone’s] estate,” lamented Chikhachev in another one of his numerous articles. The very notion that one’s property could easily be ravaged if not entirely taken away by a government-appointed trustee or even a private moneylender must have been extremely unsettling to a landowning nobility imagining itself, as Katherine Pickering Antonova has shown in her microhistory of the Chikhachev family, as the focus of a patriarchal village-based community. Chikhachev’s response was to limit his consumption and to improve his estate’s economic condition in partnership with his wife, which enabled him to approximate his ideal by paying off his inherited debt.²⁴⁵

Some scholars would counter that this outcome was atypical because most pre-reform nobles supposedly resigned to a lifetime of debt (until the serf emancipation bailed them out)²⁴⁶ The image of an aristocratic spendthrift (in Russian rendered as *mot, rastochitel’, tranzhir, rastratchik, or prozhigatel’*) ravaging his patrimony because of a combination of inexperience and lack of restraint was prominent in the nineteenth century (in Russia and elsewhere), and also enriched Russian legal history with some colorful episodes. Consider the young Count Dmitrii Nikolaevich Tolstoi (from a different branch than the writer’s family), who was declared insolvent in 1863 with debts approaching 30,000 rubles, some of them secured by various expensive movable property such as furs. A large proportion of this money Tolstoi seems to have spent on fine horses, some of which turned out to have fake certificates and were actually worth very little money. As I discuss in a later chapter, Tolstoi was lucky in having his father pay his

²⁴⁴ A.I. Chikhachev, “O dolgakh.” *Zemledel’cheskaia Gazeta* (Sept. 6, 1846).

²⁴⁵ Kate Pickering Antonova (forthcoming book).

²⁴⁶ See Introduction.

debts and get the case closed, but much as with the case of Naryshkin, these debt did not seem to have a relation to state service, since the young count served at Moscow Noble Assembly apparently solely to avoid imprisonment for his debts.²⁴⁷ The expectation that a son of a wealthy family would be tempted to lead a merry life that entailed large indebtedness was also shared by the creditors of Moscow's commercial class. For example, in the bankruptcy case of Moscow honorary citizen A. Kalashnikov (litigated in 1874-5), one of his creditors wanted to put him on criminal trial for intentional bankruptcy because, "[b]eing a son of wealthy parents, he early became acquainted with a quite dissolute and merry (*razgul'naia i veselaia*) life and [...] began to borrow money from various persons in order to later announce himself insolvent [...]."²⁴⁸

Although some legal cases clearly have to do with the amusements of Moscow's golden youth, this image is complicated by other stories involving young nobles who had to spend large amounts on luxuries in order to establish or preserve their civil or military career; such cases therefore arguably include some element of rational calculation. State service, especially in the capital cities, was important for securing income and maintaining family status, but did demand significant expense, and the line between luxury and perceived necessity was apparently not always easy to determine. The memoirist Andrei Bolotov coming to St. Petersburg in 1762 to serve as general Korf's aide-de-camp was clearly reluctant to spend large amounts on horses and gilded uniforms, which could not be accomplished without borrowing, but found that he had no choice if he wanted to retain his advantageous position.²⁴⁹ Twenty three years later, the young Prince I.M. Dolgorukov, another well-known memoirist, noted that "Judging by the common

²⁴⁷ *TsIAM*, f. 81, op. 18, d. 1259 (Tolstoi) (1863-1865).

²⁴⁸ *TsIAM*, f. 142, op. 4, d. 758 (Kalashnikov).

²⁴⁹ Bolotov, note 92 above.

opinion, I established myself in [St. Petersburg] society on a good footing, but look at what this cost me. I am not talking about boredom, strivings, petitions and various whims that I had to withstand here and there. Most of all I was beginning to be oppressed by debt, this ever-wakeful worm that afflicts city dwellers! ... Foppery made my head dizzy.”²⁵⁰ At the end of 1785 Dolgorukov discovered that he owed up to 2,000 rubles to clothiers, hairdressers, and cabmen. He did not have his own horses, a house, nor did he indulge in any significant gambling and carousing, and so these expenses seem to have been necessary for retaining his position in the Imperial Guard and close to Grand Duke Paul’s inner circle. Such apparently non-productive expenses were necessary even for much more modest officers, for example, Aleksei Andreevich Chikhachev, the son of a middling landowner from Vladimir province who served briefly in the late 1840s and noted his expenses in his diary.²⁵¹

These requirements did not change much by 1860, when another scion of the ancient Russian aristocracy, the young Prince Nikolai Pavlovich Obolenskii, was unable to obtain a position in the Imperial Guard after finishing his education due to his poor performance in school, and had to content himself with entering the Elizavetgrad Hussar Regiment.²⁵² From the very beginning of his service, Obolenskii bombarded his uncle and guardian with letters, which, while disavowing a desire to be overly particular about finances (*uschityvat’*), begged him for more money: it turned out that even a regular cavalry regiment required the officers to provide themselves with expensive horses, uniforms, and equipment. Those officers who had not

²⁵⁰ I.M. Dolgorukov, *Povest’*, vol. I, p. 110.

²⁵¹ Kate Pickering Antonova, forthcoming book.

²⁵² Cavalry regiments served as a spill-over receptacle for aristocrats who could not find a position in the Guard. Regular noblemen could not afford to serve there. Hussar regiments with their gilded uniforms were particularly expensive.

acquired a horse quickly enough were to be transferred to the infantry, the shame of which the young prince could not even contemplate. As the year went on, Obolenskii's letters became more desperate: although he initially vowed to have not "the slightest intention to make new debts," the gilded hussar uniform turned out to cost more than 1,700 rubles, and he had to acquire a horse for the February 9, 1861 inspection by the divisional commander; in his Christmas letter to his uncle the young prince confessed to having "out of necessity made some debts." Thus, although Obolenskii regarded his hussar regiment as somewhat beneath his family pedigree, it still proved to be beyond his means, and he had retired from service by 1862. It is interesting that Obolenskii's uncle did not give an indication that this indebtedness was inevitable or even useful (in fact, he did not show much reaction at all). Even less easily explained are such persons as one eighteenth-century nobleman described by Bolotov who established a small private hussar cavalry force on his estate or like *Kamerger* Aleksandr Vlasov who before his death in 1825 had spent a fortune collecting art, which his heirs were unable to sell for anything approaching its purchase price, as I discuss in a later chapter.²⁵³

In addition to expelling their wastrel child from the house or bailing them out (which is what Count Tolstoi did), parents and other relatives had the option of petitioning the provincial governor to establish a trusteeship (*opeka*) over the spendthrift's property. Governors had the final say, subject to review by the Senate, over establishing a trusteeship, pursuant to their police powers under the Provincial Statute of 1775, Article 84, to prevent and curtail excessive luxury, dissolute behavior, and *motovstvo*.²⁵⁴ Originally this provision did not include the power to

²⁵³ See Chapter Seven.

²⁵⁴ P.S.Z. I, No. 14392.

establish trusteeship over wastrels' property (the law of August 12, 1797 explicitly permitted trusteeship to be established only over property of minor children and insane persons). However, the law of 1817 did extend the rule to include wastrels.²⁵⁵ It applied not only to nobles, but also to merchants and townspeople, for whom the rules were finalized only in 1859.²⁵⁶ Interestingly, the first two cases falling under these powers that caused the 1817 decree to be issued in the first place involved not some aristocratic Golitsyn or Dolgorukov, but the wife of Gubernial Secretary Levashov (Class 12 on the Table of Ranks) and retired non-commissioned officer Bykov.

The effect of placing wastrel's property under *opeka* was to deprive him of the ability to enter into any legal transaction or agreement and thus to (mis)manage his remaining assets. As in many other areas of Russian (and other countries') law, the precise rules were often unclear. For example, in 1830 the emperor issued a decree permitting persons whose property had been taken over to continue *khodataistvo* (pursuing the case) over court cases that involved them (for which the trustees nonetheless retained ultimate responsibility!).²⁵⁷ However, the overall effect of a trusteeship was that, as long as creditors had not grown too impatient and the wastrel had not had the chance to ruin all of his remaining property, the trustees could make partial payments or negotiate with creditors to prevent insolvency and summary sale of the property. Creditors, in turn, would be more likely to be patient seeing that the debtor's financial affairs were being regularized. Thus, the *opeka* had the practical effect of limited bankruptcy protection, although these protections did not in any way limit creditors' rights to sue and to seize debtor's property,

²⁵⁵ P.S.Z. I, vol. 34, No. 26766 (April 4, 1817). Victims could complain to the Senate pursuant to the law of February 2, 1829 (P.S.Z. II, vol. 4, No. 2650).

²⁵⁶ P.S.Z. II, vol. 34, No. 34021 (Jan. 5, 1859).

²⁵⁷ January 11, 1830.

unlike certain other closely related provisions. For example, special Debt Commissions were established mostly in the eighteenth and early nineteenth century by imperial decrees as a favor to individual aristocratic debtors (these operated just like bankruptcy boards except they were run not by creditors but by trustees appointed by the debtor!); Mediation Commissions set up by the 1827 law (unlike Debt Commissions, they had to be creditor-approved and only applied to solvent debtors); and trusteeships imposed over the estates of serfowners who defaulted on their debts to state credit institutions, such as the Moscow Board of Trustees (in such cases, having one's estate taken over could actually benefit the debtor, since private creditors could not seize the estate and have it sold until the Board debt was paid²⁵⁸).

Nonetheless, for some families having a wastrel's property taken over by a trustee was still helpful despite all the negative effect upon that family's reputation caused by newspaper announcements (intended to prevent the wastrel from making new debts). For example, in 1825 Actual Chamberlain²⁵⁹ Prince Fedor Nikolaevich Golitsyn petitioned Moscow's governor general to place his son Nikolai under trusteeship, arguing that he "due to the weakness of his behavior incurs considerable debts and, thus wasting away his capital, may with time lose all of his property." He also petitioned to appoint Privy Councilor Prince Sergei Mikhailovich Golitsyn and Privy Councilors Senator Lev Alekseevich Iakovlev as guardians for as long as they considered it necessary; the father also wanted to make newspaper advertisements? announcements? which would prevent Nikolai from incurring new debts. The governor forwarded this petition to the provincial administration, which declined to impose trusteeship

²⁵⁸ P.S.Z. II, vol. 3, No. 1662 (1828) (confirms decree of 1803, No. 21059). Same year – no. 2470 – no "acts" allowed w/r/t mortgaged estates w/o Board's permission.

²⁵⁹ In the mid-nineteenth century this was the highest court rank in the Table of Ranks.

because Nikolai did not own property in Moscow province. However, the governor overrode this decision, arguing that the father already had control over Nikolai's property, and ordered the trusteeship established specifically over his person (*lichnost'*). Interestingly enough, merely limiting Nikolai's ability to dispose of his property was insufficient, since he was not prevented from signing debt obligations, and he had to be equated with a child or a mentally incompetent person. At that point Nikolai owed over 165,000 rubles. His property ended up being sufficient to pay off his debts in just a few years (the trusteeship was removed in 1835), while paying Nikolai for his living expenses the staggering annual stipend of forty to sixty thousand rubles.²⁶⁰

However, if a property's condition was beyond repair or the relatives could not agree on a strategy, insolvency could still result after the trusteeship had been imposed. For example, in 1858 the Moscow military governor ordered trusteeship established on the grounds of "*rastochitel'nost'*" over the person of Moscow merchant Vasilii Prokhorov who owned a shop of "Russian goods." Whether because – as Prokhorov himself claimed – the trustees mismanaged the shop, or because the business at that point was already beyond repair, Prokhorov was still held to be insolvent in 1859. Family feuds clearly contributed to this result, because Prokhorov's relatives refused to stand surety for him and eventually refused to be his trustees, citing his "inconstant (*nepostoiannaia*) life." Prokhorov himself responded that life in debtors' prison would be more pleasant than living with his relatives who "put him to shame and took from him everything he had

While perhaps not so great in overall numbers, the stories of wealthy spendthrifts, as well as their numerous fictional counterparts, may be seen as undermining or at least questioning the

²⁶⁰ *TsIAM*, f. 49, op. 3, d. 889 (Golitsyn) (1825-1837).

modern view of debt as a rational and sober economic transaction and pointing out its emotional aspect. This irrational type of debt transaction is shown by individuals signing debt documents while drunk. It is especially notable in the 1863 case of the young university student Ivan Chulkov (discussed in more detail in Chapter Six). Chulkov refused to pay his debt on the grounds that he had been underage at the time and testified that he became drunk and lost a card game, after which “the friendly game suddenly became serious” and his partner nobleman Khlopovitskii forced him to sign a *veksel* (bill of exchange). He claimed to have been so intoxicated that he only remembered writing something to Khlopovitskii’s dictation but did not remember what it was. Chulkov’s story of intoxication, craftiness, and betrayal was completely rejected by his creditor who claimed that they never played cards but that he loaned money to Chulkov so that he could pay his other debts.²⁶¹

The two conflicting narratives of Chulkov’s case present two conflicting interpretations of debt: the more commonly accepted view of debt as a rational transaction and the alternative presentation of debt as an emotional, deceptive, and harmful act. Another example of this second view is the case of *meshchanin* Aleksei Klimov, who in 1865 borrowed money from another *meshchanin* Mikhail Ulitin. While drunk, Klimov wrote seven backdated *veksels* for different dates and to different people, but according to his claim received no cash from Ulitin except for three rubles for a cab (a rather large amount since ten kopeks would have sufficed).²⁶² In the fraud case of Aulic Councilor’s wife Maria Skrebkova, which is discussed in several chapters of this study, her accomplice honorary citizen Dmitrii Korolev, who impersonated his prominent

²⁶¹ *TsIAM*, f. 81, op. 16, d. 1998 (Khlopetskii) (1864-66),

²⁶² *TsIAM*, f. 50, op. 4, d. 8264 (Ulitin) (1865-66).

brother Ivan Korolev and fraudulently signed a *veksel* in his name, testified (possibly falsely and to no good effect) that it was actually he who wanted to borrow 3,000 rubles from the lender, Captain Balakan, who would only agree to lend him money if he wrote the *veksel* in the name of his brother Ivan and in the amount of 6,000 rubles. Having been allegedly made drunk by Balakan, he signed and left without getting any cash. When he came back for the money, he was met by the police.²⁶³ Thus, although court cases do show examples of non-productive indebtedness, such as that most easily noticed and pointed out by contemporary observers, a more careful look suggests that the cultural and legal label of spendthrift actually encompassed several phenomena, including not so much careless behavior as borrowing to acquire or maintain one's social status or an irrational and emotional reaction to financial or other circumstances.

I also found that the burden of debt was unpleasant enough to frequently elicit an attitude of debt-avoidance among Russia's property owners. Moreover, court cases and other records, in particular those of Moscow Noble Trusteeship (*Moskovskaia Dvorianskaia Opeka*) show that the burden of debt was not so heavy or unavoidable as to doom any attempts to be debt free.

One group of landowners, represented by the abovementioned Chikhachev, avoided debt by reducing their level of luxury consumption and paying close attention to the management of their estates. Perhaps the best known representative of this tendency is the eighteenth- and early nineteenth-century memoirist Andrei Bolotov who according to his memoirs was always reluctant to incur debt and spent much of his life at his estate engaged mostly in scholarly and agricultural pursuits. Neither Bolotov nor Chikhachev ever attempted to achieve complete economic self-sufficiency. What happened to a noble family that did attempt to practice

²⁶³ *TsIAM*, f. 50, op. 4, d. 8208 (Skrebkova) (1865-66).

complete self-sufficiency is shown in the memoirs of Elizaveta Vodovozova (nee Tsevlenskaia). After her father, a landowner and a judge at the County Court in Porechie (Smolensk province) died during the 1848 cholera epidemic, her mother paid off all of their inherited “town debts,” many of which were incurred to cope with the illness, and retired to her modest country estate with all the children and servants.²⁶⁴ From then on, the family strove to minimize expenses by purchasing as little as possible for cash and producing as much as possible on the estate; most household serfs were sold or forced to work the land. As the result, the family lost many of the customary attributes of the nobility, having to do without sugar, tea, coffee, or white bread. Lack of suitable clothes and of a decent carriage severely limited the family’s social engagements with nearby landowners or trips to the local church.²⁶⁵

While Tsevlenskaia’s story is perhaps not so common for middling serfowners owning over 100 “souls,” it was perhaps more familiar to those gentry owning few or no serfs (a majority). For example, the children of Lieutenant Colonel Aleksandr Iukichev, who died in 1851, inherited only 27 serfs, bringing 100 rubles of total income (it seems that his children were educated at the state’s expense, but there is no mention of a pension being paid to his widow). When the mother needed the money in 1854 to prepare one of her sons for military service, she preferred to do so by accumulating arrears on her taxes, rather than by borrowing from private persons. In 1861 she did have to borrow a few hundred rubles from fellow gentry, but already by 1863 she had repaid some of the debt.²⁶⁶

²⁶⁴ E.N. Vodovozova, *Na zare zhizni*, vol. 1 (Moscow, 1987), p. 86.

²⁶⁵ Vodovozova, *Na zare zhizni*, vol. 1, pp. 100, 116-120, 153.

²⁶⁶ *TsIAM*, f. 50, op. 5, d. 12064 (Iukichevy) (1851-1863).

Similarly, deceased Moscow merchants and townspeople whose minor children were placed under court-ordered trusteeship often left a debt-free inheritance, whether they were poor *meshchane* or merchants worth several thousand rubles in cash.²⁶⁷ This is remarkable even taking into account possible undocumented debt and the custom of paying off one's debts when mortally ill (noted by Bolotov, for example²⁶⁸): first, it seems that even if these individuals were indebted during their lifetime, they were able to repay it quickly when this was thought to be necessary; second, even if there were some undocumented debts, creditors did not hesitate to submit them for collection even if they were ultimately unsuccessful.²⁶⁹

Whether Tsevlenskaia's attempts to be self-sufficient were eccentric or pragmatic, it is clear that those landowners who did not avoid borrowing altogether could, however, manage to avoid overwhelming and irreversible indebtedness. To begin with, they clearly had the means to do so, considering that their overall debt to the state (the often-cited 425.5 million rubles accumulated by 1859), even increased to account for private indebtedness, still did not represent an unmanageable amount compared to their assets. According to the Soviet economic historian Iosif Gindin, the state-owned banks held 936 million rubles in deposits in 1856,²⁷⁰ which exceeded the amounts deposited in Russian or even German banks until the mid-1890s.²⁷¹ By 1859, this

²⁶⁷ *TsIAM*, f. 50, op. 5, d. 12253 (*meshchanin* Fedorov) (1852-1861) (inheritance worth 30.53 rubles); f. 50, op. 5, d. 12255 (merchant Sobolev) (1851-1862) (2,430 rubles); f. 50, op. 5, d. 12252 (merchantess Samsonova) (515 rubles); f. 50, op. 5, d. 12251 (*meshchanin* Aleksandrov) (17.20 rubles); f. 50, op. 5, d. 12068 (merchant's wife Andreeva) (1851-1864) (8,300 rubles).

²⁶⁸ A.T. Bolotov. *Pamiatnik pretekshikh vremen, ili kratkie istoricheskie zapiski o byvshikh proisshestviakh i o nosivshikh v narode slukhakh* (Moscow, 1990), § 186.

²⁶⁹ *TsIAM*, f. 78, op. 4, d. 275 (Bubentsova) (1869-70).

²⁷⁰ I.F. Gindin, *Banki i ekonomicheskaiia politika v Rossii (xix-nachalo xx v.)* (Moscow, 1997), pp. 505-507. (originally published in 1961 and 1968).

²⁷¹ Gindin, *Banki i ekonomicheskaiia politika*, p. 468.

amount grew to 970 million (without Commercial Bank).²⁷² Some historians have pointed out that given the estimates of the value of the noble real estate between 1.375 billion rubles in 1853²⁷³ to 2.1 billion in 1859, the overall debt to the state of 425.5 million should not be considered as excessive.²⁷⁴ Thus, the average amount of debt taken out on each serf soul (approximately 60 rubles) actually did not even come close to the full amount that could have been borrowed (150-200 rubles). One can of course object that these riches could have been very unequally distributed within the gentry. However, even contemporaries noted a lack of correlation between debt and wealth. Interior Minister Lanskoi noted in 1856 that landowners in the wealthy Saratov province owed almost as much as those in destitute Vitebsk province.²⁷⁵ The account books of the Moscow Board of Trustees suggest that serfowners who mortgaged their estates to the state consistently repaid more than they borrowed, whether in the 1840s or the 1850s, as I have already pointed out in Chapter One.

²⁷² Borovoi, *Kredit i banki*, p. 198.

²⁷³ Gindin, *Banki i ekonomicheskaiia politika*, p. 485.

²⁷⁴ Nefedov, *Demograficheski-strukturnyi analiz*; the appraisal value of property in imperial Russia was tied to its income. Mortgage registers (discussed in Chapter One) show that property was valued at ten years' income (whether tenant rents for city property or agricultural income and serf quitrents for rural estates), which shows that the legal practice followed precisely the law of June 27, 1827 (P.S.Z. II, No. 1217) (the table from the 1821 law referred to in that document applied to land transactions and when estates were "placed under interdiction," but the 10-year income rule applied when debtor's property was sold at an auction. The 10-year rule originated in the eighteenth century. The law of August 7, 1730 (landed estates not to be sold at a public auction for less than the value of ten years' income, although Senate could waive this). The law of November 24, 1821 contained a table listing values of populated estates in various provinces (divided into seven classes depending on the provinces' population). See P.S.Z. II, vol. 37, No. 28814. The rationale beyond all this active lawmaking appears to have been to ensure the state received its stamp tax from property transactions. The same law of 1821 stated that factories and other industrial buildings were valued at 10 years' net income. As to houses, shops, and other urban properties, I have not yet found any clear rule – but in practice I found that the same ten years' rule was used. For the purposes of valuing the property used as deposit by individuals engaged in government contracts, the value of "unburnable" material in the building, such as brick or metal, was used. P.S.Z. II, No. 4611 (May 30, 1831); the same rule appears to have been used by fire insurance companies. Other relevant laws: P.S.Z. II, vol. 3, No. 2058 (1828) (actual, not potential income was to be used for valuation. June 25, 1832 (extensive rules; ten years' income rule for landed properties; eight or six years for stone or wooden structures).

²⁷⁵ Borovoi, *Kredit i banki*, p. 204.

Thus, suggestions that the Russian state propped up the nobility financially are, to say the least, inaccurate.²⁷⁶ On the contrary, during the difficult years of war and financial crisis, it was the nobility that propped up the state with its loan payments and bank deposits that the state used to bolster its shaky finances.²⁷⁷ Similarly, the records of the Commercial Bank in St. Petersburg show that out of hundreds of million rubles' worth of *veksels* that it purchased at a discount during its existence, bad debt amounted to the trifling 1,510,229 rubles.²⁷⁸ This of course shows that Russia's merchants as a group were likewise able and willing to pay their debts.

Even those individuals who were heavily burdened with debt often possessed the ability and the will to either repay it completely, or to make substantial progress towards repayment. One type of record showing this are again the trusteeship records of the Moscow provincial Noble Trusteeship Board (*Moskovskaia Dvorianskaia Opeka*), an elected body that appointed guardians for the estates of underage, profligate, and legally insane noble landowners. For example, the guardians over the children of Actual State Councilor Prince Iurii Ivanovich Trubetskoi (appointed after his death in 1851) encountered debts of almost 600,000 rubles to the Board of Trustees and of over 80,000 rubles to private lenders; by 1857 this debt had shrunk to under 500,000 and just over 50,000 rubles respectively, even with annual maintenance payments to the prince's widow and children (who rented a villa in Tuscany) amounting to tens of thousands

²⁷⁶ This argument is often made: Nefedov, Blum. Emmons and Field suggest that the emancipation bailed out serfowners from a debt burden that they would not have been otherwise able to bear. See discussion in Introduction.

²⁷⁷ Iosif Gindin has shown that the Russian state under Nicholas I extensively used the enormous private deposits accumulated in government-run banks to cover its budget deficit, thus avoiding the necessity of either borrowing from abroad or issuing official public debt. See *Banki i ekonomicheskaia politika*, p. 468.

²⁷⁸ V.V. Morozan, *Istoriia bankovskogo dela*, pp. 383-386; I.N. Levicheva, "Osobennosti stanovleniia bankovskoi sistemy Rossii v kontse xviii – nachale xix veka," <http://vep.ru/bbl/history/cbr24.html> (accessed July 8, 2010).

rubles.²⁷⁹ The estate's income (over 10,000 serfs bringing between 84,000 rubles in 1851 and 100,650 rubles in 1857) could have allowed an even faster repayment. Another somewhat smaller estate (2,395 serfs) that had belonged to Guard Captain Rakhmanov and was inherited by his legally insane wife, also in 1851, was burdened by over 66,000 rubles in debt to the Board, which was completely paid off by 1857.²⁸⁰

Other nobles, whose property was not under trusteeship, but who were being sued for debt, routinely made partial payments on their loans. Some of such cases have already been mentioned earlier in this chapter (Nikolia, Zubov, Krotkov and others all attempted to repay their debts). But even those debtors who were ill and elderly, like Guard Captain's widow Anna Bestozheva, refused to deal with debt in the manner of an ostrich: when she petitioned for insolvency in 1870, six out of her 21 debts were partially repaid.²⁸¹ As I discuss in more detail in Chapter Seven, another widowed debtor, Pevnitskaia, when faced with the persistent legal action of her creditors who were trying to sell off her property, managed to fend them off for many years (at least from 1847 to 1853) by making partial payments, which she, in turn, could afford by retaining control over her estate.²⁸²

In sum, this section examines a persistent cultural stereotype about Russia's culture of debt, one which emphasizes its wasteful consumption-oriented character. Court documents contain some memorable images of wasteful spendthrifts; however, I have suggested that this phenomenon was more nuanced than is commonly assumed. First, many so-called wastrels

²⁷⁹ *TsIAM*, f. 50, op. 5, d. 12256 (Trubetskoi) (1851) and f. 50, op. 5, d. 12332 (Trubetskoi) (1857).

²⁸⁰ *TsIAM*, f. 50, op. 5, d. 12258 (Rakhmanova) (1851-1867).

²⁸¹ *TsIAM*, f. 142, op. 5, d. 1307 (Bestozheva).

²⁸² *TsIAM*, f. 92, op. 9, d. 803 (Kupriianova).

engaged in what we view today as conspicuous consumption for the purpose of establishing and advancing themselves in a prestigious service position. Second, although very little is known about the history of emotion in Russia, some legal cases suggest that borrowing could serve as an irrational emotional act responding to financial or personal circumstances. Finally, it is also important to consider evidence of the opposite response to a culture where incurring debts was difficult to avoid and financial solvency could not be taken for granted. Whereas attempts to achieve complete financial self-sufficiency were rare and ineffective, court documents suggest that financial prudence was common among Russia's propertied classes, from wealthy landowners to merchants and all the way down to only moderately well-off townspeople. Serfowning gentry owned sufficient land and cash, and at least in the middle of the nineteenth century repaid their debts to the state accurately enough, to disprove the assertion that they were crippled by debt. Members of the urban and commercial classes featured in my representative selection of *opeka* cases managed to pass their property on to their heirs debt-free. But most important, no analysis of the culture of debt in Russia – or elsewhere – should automatically assume that indebtedness was “unproductive” or that “debt-free” life was a sign of economic prosperity – as even some Russians at the time have pointed out.

Conclusion

This chapter explores some of the attitudes and practices relating to debt in imperial Russia from the perspective of both creditors and debtors. It questions the still-common perceptions relating to Russia's culture of debt, such as those of a wasteful gentry and socially-marginalized, even shady, moneylenders. By contrast, both creditors and debtors are presented here as diverse groups with diverse motivations, practices, and ways of addressing indebtedness, or, more

precisely, addressing the fact that debt was difficult to avoid and, once debt was incurred, it was often difficult to repay. The first section showed that lending money was a one-time affair for most creditors and that “professional” moneylenders occupied a spectrum that included wealthy and well-socialized individuals, as well as those who were poorer and badly informed. The second section shows that attitudes to debt as revealed in bankruptcy proceedings focused on examining debtor’s conduct and character, as well as mitigating events beyond his or her control; however, the outcome of specific cases also depended heavily upon the creditors’ motivations and what must have been behind-the-scenes negotiations of all the parties involved in bankruptcy proceedings. Finally, the third section showed the complexity of the more drastic cultural responses to debt, suggesting that conspicuous consumption-oriented borrowing by wealthier Russians should not be exaggerated, and that a much more commonly encountered response was the attempt to limit one’s borrowing, which was economically feasible given the wealth accumulated by Russia’s propertied classes. One overall conclusion relevant to the study of Russia’s legal culture and legal practice that is suggested by this material is that the occasional observation that Russia’s law was pro-debtor (which perhaps drove up actual – rather than legal – interest rates, thus causing gentry to clamor for reform) is contradicted by the mildness of the anti-usury law and its only sporadic enforcement, and by Russia’s bankruptcy proceedings, which were dominated by creditors who had the power to grant bankruptcy discharge or to commit an insolvent debtor to a criminal trial.

CHAPTER THREE

DEBT AND WHITE COLLAR CRIME

The “Respectable” Thief and the Limitations of Trust

Introduction

As I show throughout this study, Russia’s system of private credit depended on a network of personal connections and on individuals’ reputations and mutual trust, although in the mid-nineteenth century it was becoming too extensive to continue to function without formal institutions. The main argument of this chapter is that these two factors – the dependence of credit on trust and the large size and diffuse character of the credit network – enabled several types of fraud and embezzlement to flourish in mid-nineteenth century Russia, although the damage was perhaps not quite as extensive as it might have been, in that age before bank failures and railway scams. Today, offenses committed by privileged members of society in the course of their occupation are known as “white collar” crime.²⁸³ In all times and places, several factors deterred detection, prosecution, and conviction for fraud and embezzlement. The criminals involved were generally quick-witted and imaginative. Unlike muggers and burglars, they typically belonged to “respectable” society (*prilichnoe obshchestvo*) and often were business partners or even relatives of their victims. Finally, they took advantage of their victims’ inadequate precautions and of the various flaws of a criminal justice system that focused on catching “lower-class” criminals. I argue that studying Russia’s criminal “upperworld” (to borrow George Robb’s coinage²⁸⁴), its victims, as well as how white collar crimes used and subverted the credit system serves to reveal this system’s operations and the underlying values –

²⁸³ The U.S. criminologist Edwin H. Sutherland, who first coined the term in 1939, defined it “as a crime committed by a person of respectability and high social status in the course of his occupation.” See *White Collar Crime* (New York, 1949), p. 7.

in this case those of trust and respectability. Studying white collar crime also permits us to learn more about notions of criminality and deviance in imperial Russia, a subject that is as poorly understood as white collar crime itself. Thus Section One of this chapter examines the experiences and motivations of respectable criminals and how they used their respectability once in trouble with the law. Section Two extends this analysis to those criminals who more properly belonged in the lower social strata or came from borderline backgrounds, but who assumed a veneer of respectability to accomplish their crimes. Section Three concerns the background and behaviors of the victims of white collar crime.

Historians of imperial Russia have given little attention to most aspects of crime and criminal law, although there are fine monographs that address peasant and poor criminality in the post-1856 period.²⁸⁵ Middle- and upper-class occupational crime has been completely ignored beyond some unsupported general claims about Russian merchants' "well-deserved reputation for dishonesty, ignorance, and incompetence."²⁸⁶ This historiographical neglect, while not exactly surprising, also fits well into a wider Western context. In Victorian England, as George Robb has argued, the public were preoccupied with the inherent criminality of the "lower orders" and perceived elite crime as a "relatively minor social ill."²⁸⁷ It is remarkable that the very term

²⁸⁴ George Robb, *White-collar crime in Modern England: financial fraud and business morality, 1845-1929* (Cambridge, 1992),

²⁸⁵ Stephen Frank, *Crime, cultural conflict, and justice in rural Russia, 1856-1914* (Berkeley, 1999); Joan Neuberger, *Hooliganism: crime, culture, and power in St. Petersburg, 1900-1914* (Berkeley, 1993); Jane Burbank, *Russian peasants go to court* (Bloomington, 2004). For corporal punishment, see Abby M. Schrader, *Languages of the Lash: Corporal Punishment and Identity in Imperial Russia* (Dekalb, 2003).

²⁸⁶ Thomas C. Owen, *The Corporation under Russian Law*, p. 207. Owen has noted briefly that corporate fraud in Russia persisted into the twentieth century, while incorrectly claiming that in England fraud was made difficult as early as 1860 through improved accounting standards.

²⁸⁷ George Robb, *White-collar crime in Modern England*, p. 147.

“white collar” crime as a distinct criminological concept was only invented by the U.S. sociologist Edwin H. Sutherland in the wake of the Great Depression.²⁸⁸

At the same time, white collar crime was extremely common in nineteenth- and early twentieth-century Great Britain. Between 1856 and 1900 anti-fraud provisions in English law were intentionally weakened by the legislature, with neither legal accounting standards nor annual audit requirements for most companies, and without a legal requirement to keep detailed account books prior to 1928.²⁸⁹ Prosecution of white-collar criminals thus presented formidable evidentiary problems in addition to being, as it has been elsewhere, extremely expensive and difficult to pursue.²⁹⁰ While merchants and creditors had very few direct control mechanisms to deter fraud and embezzlement, victims and criminals alike were driven by promises of quick riches and by pressures to maintain middle-class proprieties, while lax professional and business ethics nurtured a permissive and speculative peer environment.²⁹¹ To this day, as recent news headlines show, neither improved accounting standards, nor Western entrepreneurial culture, nor vast legal safeguards, which were all underdeveloped in imperial Russia, prevent or even curtail large-scale corporate fraud in Western Europe and North America. What this study takes from Western historiography of white-collar crime is that, at least in this context, the presumption of Russian legal and cultural inferiority is not very helpful and should be replaced, as this chapter attempts to do, with a detailed study of the specific instances of white collar crime and of what

²⁸⁸ Edwin H. Sutherland, “White-Collar Criminality,” *American Sociological Review*, Vol. 5, 1940, pp. 1-12.

²⁸⁹ George Robb, *White-collar crime in Modern England*, p. 159.

²⁹⁰ Robb, pp. 148 ff.

²⁹¹ In addition to Robb, see Rob Sindall, “Middle-Class Crime in Nineteenth Century England,” *Criminal Justice History*, vol. 4, 1983, pp. 23-40, and John P. Locker, “‘Quiet thieves, quiet punishment’: private responses to the ‘respectable’ offender, c. 1850-1930,” *Crime, histoire & societes*, vol. 9, 2005, pp. 9-31.

they reveal about the motivations of privileged criminals, their victims, and the tsarist administrative and legal system.

While the mid-Victorian period was the golden age of fraud in Great Britain, the culture of debt in mid-century Russia was, as we have seen in previous chapters, overwhelmingly personal and informal (given that neither banks nor joint stock companies yet existed in large numbers), and at the same time large enough to become more and more dependent on “weak” social ties rather than on kinship or acquaintance links within communities.²⁹² With traditional precautions becoming less adequate in preventing fraud, the courts had to take up the slack. Imperial Russian legislation against fraud developed gradually from the beginnings of a centralized Muscovite state and consisted of a rather casuistic set of provisions that varied by the time and place of their origin (i.e., provisions that were adopted from German law, as well as those of native Russian provenance). During the reign of Nicholas I (1825-1855), some of the most obviously redundant and outdated provisions were eliminated, especially in the Digest of the Laws of 1832 and in the Criminal Code of 1845. Until the end of the Russian empire, the key provision against fraud (*moshennichestvo*) was Catherine II’s decree of April 3, 1781, which classified it as one of the three varieties of “*vorovstvo*” together with theft (*krazha*) and robbery (*grabezh*), with all the resulting confusion (for example, fraud initially included pickpocketing and openly snatching property from under the victim’s nose).²⁹³ *Moshennichestvo* required criminal intent (which was also an evidentiary problem in contemporary English law), and was defined as “open and sudden

²⁹² See Mark S. Granovetter, “The Strength of Weak Ties,” *The American Journal of Sociology*, vol. 78, No. 6 (May, 1973), pp. 1360-1380.

²⁹³ *P.S.Z.* vol. XXI, № 15147. Today “*vorovstvo*” means refers to a theft, but in the pre-1781 usage it referred to any serious criminal offense (Brockhaus & Efron)

taking of another's property and its appropriation through lies or deceit." It was punished, depending on the value of stolen property, with the same severity as larceny.

In addition to *moshennichestvo*, Russian law had several other anti-fraud provisions, the most important category being that of *podlog*, or forgery. In addition to forgery in its usual meaning, *podlog* included all types of real estate fraud (on the rationale, according to I.Ia. Foinitskii, that it could not be effected without forging documents), usury, and malintentioned bankruptcy.²⁹⁴

Forgery stands out from other types of white collar crime, not only for its technical sophistication, but also because of the state's particularly strong interest in suppressing it, which thus conflicted particularly sharply with society's reluctance to punish middle-class offenders.²⁹⁵ In England, the effect of this reluctance was to abolish capital punishment for forgery in 1832, even as judges and the crown wanted to keep it, fearing possible effects on state finances and public credit.²⁹⁶ Russia in the mid-nineteenth century had neither the death penalty, nor a free press or (until 1866) criminal jury trials.

Nonetheless, both pre-reform and especially post-reform court records contain detailed narratives intended to evoke sympathy in middling-class judges or jurors. While the law contained severe penalties punishing the counterfeiting and forgery of official papers, only a few types of private documents, such as wills, bills of exchange (*veksels*), and registered contracts (*kreposti*) enjoyed the same level of protection before the new Criminal Code was enacted in

²⁹⁴ I.Ia. Foinitskii, *Moshennichestvo po deistvuiushchemu russkomu pravu*, §§ 27-30.

²⁹⁵ For England, see Randall McGowen, "From Pillory to Gallows: the Punishment of Forgery in the Age of the Financial Revolution," *Past and Present*, No. 165, 1999, pp. 107-140, 139. See also his "The Bank of England and the Policing of Forgery, 1797-1821," *Past and Present*, No. 186, pp. 81-116.

²⁹⁶ Phil Handler, "Forgery and the End of the 'Bloody Code' in Early Nineteenth-Century England," *The Historical Journal*, vol 48, 2005, pp. 683-702.

1845. That same Code also removed open snatching of property from the rubric of *moshennichestvo*, as well as abolished the separate large category of “false actions” (*lzhivye postupki*) that included some types of commercial fraud in addition to perjury, false denunciation, and false lawsuit (*iabeda*). Finally, under the 1845 Code a fraudulent document could be held to be void even if all the formalities had been observed, whereas previously the issuer’s signature, if confirmed, ended all inquiry except if physical or mental duress was involved.²⁹⁷ The Criminal Code of 1845 thus greatly improved the categorization of fraud-related crimes and created minimally acceptable anti-fraud legislation appropriate for a nineteenth-century Western legal system. However, to the end of the imperial period there was neither a single legal rubric for fraud, nor any clearly stated general legal principles (so desired by Russian lawyers trained in the Continental tradition).

It seems that this lack of clear categorization helped to keep the types of property crimes committed by “respectable” offenders beneath the notice of the Russian bureaucracy or society in general, much as in other Western countries. For example, incidences of fraud, forgery, or embezzlement are impossible to glean from the annual reports of the quasi-charitable Imperial Prison Society in the 1840s, 1850s, and 1860s, which provided otherwise extremely detailed prisoner statistics; they subsumed fraud under other categories of crime against property.²⁹⁸ Criminal statistics compiled by the General Staff in the 1850s (based upon reports by local police authorities) show that in 1844 in St. Petersburg, there were 1,444 “thefts and frauds” reported (making it obviously impossible to distinguish fraud from simple theft), in addition to 347

²⁹⁷ Foinitskii, § 23.

²⁹⁸ For an example, see *GA RF f. 123, op. 1, d. 322*.

“*podlogi*” and 62 “*obmery*” and “*perekupy*” (retail frauds).²⁹⁹ A different table with crime statistics in the same source showed different (smaller) numbers, this time separating common theft and fraud – virtually the only time I have seen this done (see Table 3.1). Unfortunately, no such table exists for Moscow, where, nonetheless, we know of three investigations of criminal bankruptcy in 1850 and 372 of fraud (unclear whether this included other types of fraud in addition to *moshennichestvo*), as compared to 40 investigations of murder, 16 of robbery, and 981 of simple theft.³⁰⁰

Table 3.1 Selected Crime Statistics in St. Petersburg, 1841-1846³⁰¹

	1841	1842	1843	1844	1845	1846	Ave.
Murder	24	20	18	16	17	15	18
Robbery	10	8	4	4	7	5	6
Fraud	42	107	93	73	59	51	70
Theft	85	128	134	105	180	129	137
All Crime	421	483	396	369	483	437	432

I was also able to locate a curious archival document listing criminal records of hundreds of Moscow merchants and *meshchane* and compiled in connection with Moscow municipal government elections in the 1860s. It is unclear how complete this list is because it includes just a handful of individuals per year for the early 1860s, presumably because complete information was not yet available. Merchants were most commonly convicted for selling conscription volunteers for the army or hiding stolen goods. One honorary citizen (a category reserved for the wealthiest merchants) was convicted for collecting money pretending to be the legendary

²⁹⁹ *Voenna-statisticheskoe obozrenie Rossiiskoi imperii*, vol. III, part I (St. Petersburg, 1851), 355.

³⁰⁰ *Voenna-statisticheskoe obozrenie Rossiiskoi imperii*, vol. VI, part I (St. Petersburg, 1853), 199-200. This should be compared with 8,129 arrests for drunkenness in the city alone.

³⁰¹ *Voenna-statisticheskoe obozrenie Rossiiskoi imperii*, vol. III, part I (St. Petersburg, 1851), App. 15.

Crimean War sailor Petr Koshka. However, earlier years were more complete, listing between 12 and 40 convictions per year. For example, out of 27 convictions in 1845, including six frauds, such as using false manumission papers to enroll as a merchant, participating in accepting a “moneyless” loan letter, faking a house appraisal, forging pawnshop tickets, and forging liquor tax seals.³⁰²

Furthermore, it is important to remember the Victorian habit of punishing middle class offenders “domestically,” i.e., through informal means such as firing the offender and leaving him and his family without sustenance or at least the ability to maintain a respectable lifestyle.³⁰³ There is some evidence that this was often the preferred method in Russia as well, especially given the relatively more tightly-knit structure of Russia’s business firms and credit networks, which made it likely that the offender would be the victim’s relative or a close acquaintance.³⁰⁴ Thus, it is difficult to estimate incidence of white collar crime in mid-nineteenth century Russia with any measure of precision, but it was clearly far more common than dangerous violent crime like murder, robbery, and arson, and may have represented a considerable proportion (up to ¼ in Moscow) as compared with simple theft. In addition to the cases reported to the police, memoir evidence suggests that petty fraud and embezzlement were rarely reported or prosecuted.³⁰⁵

Therefore I believe that it is reasonable to conclude that the statistical occurrence of white collar

³⁰² One more was simply listed as fraud. *TsIAM*, 81, *op.* 16, *d.* 1772 (Vedomosti o sudimosti mosk. kuptsov, meshchan i prochikh lits, neobkhodimye dlia otchetnosti pered nachalom gorodskikh vyborov) (1861-65). Actually the case covers 1838 to 1865.

³⁰³ See Locker, “Quiet Thieves, Quiet Punishment.”

³⁰⁴ See the extraordinarily rich memoir by a prominent Moscow merchant N.A. Varentsov, *Slyshannoe. Vidennoe. Peredumannoe. Perezhitoe* (Moscow, 1999). Although Varentsov was writing about the second half of the century, I believe that his observations also apply to the period of 1850-1870.

³⁰⁵ N.I. Sveshnikov, *Vospominaniia propashchego cheloveka* (Moscow, 1996).

crime certainly earned it more attention from authorities and scholars but failed to receive it no doubt for cultural reasons.

The “Uncommon” Thief, His Fates and Motivations

As in contemporary England, Russian white collar criminals spanned the entire range of polite society, from the rare aristocrat to the more common middling gentry, merchants, and civil servants, as well as petty clerks and tradesmen. Regardless of their station in life, these individuals forced their victims, relatives, acquaintances, and the government officials who dealt with them to consider, explicitly or implicitly, what kind of persons and actions could be considered criminal, as well as what motives could drive men and women of similar breeding and social rank to forge bills of exchange or use false collateral to obtain loans. This section attempts to convey some of the uncertainty involved in implicating high-ranking individuals in credit-related fraud, as well as the variety of motivations displayed by Russia’s white collar criminals, ranging from the typical nineteenth-century desire to maintain or regain a middle-class standard of life to the rarer career criminal and the Dostoevskian compulsion to drink and carouse.³⁰⁶

By the mid-nineteenth century, the days when the tsars felt empowered to exile and imprison even their highest-ranking subjects without much hesitation – especially for non-political reasons – were long gone (the last such period being the brief reign of Tsar Paul in 1796-1801). In the nineteenth century, court cases against members of Russia’s most prominent families challenged Russia’s legal system to identify and punish the offender without at the same time disturbing

³⁰⁶ For motivations of English white collar criminals, see Sindall, “Middle-Class Crime in Nineteenth Century England” and Locker, “Quiet Thieves, Quiet Punishment.” On Western European notions of respectability, see F. M. L. Thompson, *The Rise of Respectable Society* (London, 1988); J. Barry and C. Brooks, eds., *The Middling Sort of People: Culture, Society and Politics in England, 1550-1800* (Basingstoke, 1994).

high society's sensibilities or the authority of the court system. When someone wealthy or prominent *was* subjected to a criminal investigation, it was either because a violent crime was involved (as in the case of Sukhovo-Kobylin and others like it) or because the crime in question threatened one or more of the key power arrangements of the empire. Below I discuss the case of Ekaterina Naryshkina (one of whose ancestors was Peter the Great's mother), who was turned into an example despite her name and her old age because her actions could potentially undermine the rules of inheritance and property ownership structures within Russia's upper class. By contrast, the case of Glebov brothers did not evoke such a reaction because their (likely) crime was easily blamed on their former employee who borrowed money in their name.

Chapter One mentioned the lawsuit between the heirs of a privy councilor's (class three on the Table of Ranks) widow **Ekaterina Naryshkina**, who owned lands in Moscow, Vladimir, and Iaroslavl' provinces populated by over 1,600 serfs; she thus belonged to the tiny upper echelon of Russia's landowning class. In 1845, six years before her death, she was subjected to a full-scale criminal investigation initiated by a denunciation from her son Nikolai, a wastrel who had been banned from his mother's house since 1826.³⁰⁷ A retired army officer heavily in debt and at one point exiled by the government to the northern town of Vologda for his behavior, Nikolai claimed that his mother had let into her house (most likely as a surrogate son) an enterprising young man named Divarii, who had previously been expelled from the Corps of Gendarmes for seducing a lady and who now induced the elderly woman to take out mortgages on her vast holdings to satisfy his love of luxury. The problem was that Naryshkina received almost 1,100 of her serfs from her mother and sister in 1804 as a life tenant, meaning that she could enjoy the

³⁰⁷ *TsIAM* f. 92, op. 10, d. 611 (Naryshkina) (1849-51); see also f. 50, op. 5, d. 12279 (Naryshkin) and f. 92, op. 9, d. 947 (Naryshkina) (1854-64).

income but could neither sell nor mortgage these serfs, who were to go to her children after her death. Considering that the well-being of Russia's upper class depended on this type of property arrangement, the governor of Moscow dispatched a high-ranking aide to investigate, and it turned out that Naryshkina had indeed mortgaged some of the "children's" estates in 1841 to the Imperial Orphanage for 31,860 silver rubles.

On April 14, 1847, the 78-year old Naryshkina was interrogated in the presence of a Procuracy official (*striapchii*) and a deputy from the nobility, State Councilor Stroev. Aside from these protections, the interrogation followed the standard form of any criminal investigation, as if Naryshkina had been a common thief: she was asked her full name, age, literacy, and religious affiliation, and then some very detailed and prying questions about her property (including what kind of presents she had been given fifty years earlier by the late tsar Paul). While neither relatives nor a legal adviser was present during the interrogation, Naryshkina displayed a very detailed knowledge of all of her properties and their legal status. She claimed that even if she had mortgaged her children's serfs (which she was not admitting), it was only a small number so as to deny her sons' creditors the ability to seize these lands, and that she used the money for improvements on the estates. She could not convincingly explain why she never revealed the serfs' true ownership on her tax rolls.

Despite this menacing beginning, the authorities eventually "decriminalized" Naryshkina's case and chose the sanction typically applied in Russia since the reign of Catherine II (1762-1796) to mentally incompetent individuals, spendthrifts, and minor children, namely, to place *all* of her property *and* her person under trusteeship. However, after Naryshkina exercised her connections in the highest spheres, the trusteeship was left only over the "children's" properties,

and the control over Naryshkina's own lands was restored to her, although without the right to sell or mortgage. The government also seems to have removed her case from the jurisdiction of Moscow's regular courts, because her case file stops abruptly shortly after the first interrogation. Despite Naryshkina's travails, it seems that she actually prevailed in the end, because there is no indication that her illegal mortgage was subsequently rescinded.

Even more ambiguity about how the legal system should treat elite defendants could be observed in a case when the powerful person in question did not threaten fundamental social or state structures and at the same time managed to avoid direct accusations by conducting credit operations through an intermediary. For example, the brothers Aleksandr and Dmitrii Glebov, from an ancient line of important tsarist bureaucrats and both holding the rank of a state councilor (Dmitrii also had minor poetic fame as the author of patriotic verse), in the early 1840s became implicated in the fraud case against Titular Councilor **Nikolai Dmitriev**, whom they formerly employed to manage their affairs.³⁰⁸ This engagement included obtaining loans from various private persons. When meeting potential creditors, Dmitriev would show them a blank sheet of paper with the Glebovs' signatures and claim that if his patrons refused to honor the debt incurred by Dmitriev on their behalf, he would convert this sheet into a promissory note and collect from them in court. Seeing such apparent trust from the Glebovs, creditors quickly came up with the money without ever asking themselves why the brothers did not simply give Dmitriev a regular power of attorney (*veriushchee pis'mo*). Although Dmitriev's family had served the Glebovs for decades (his father was a freedman of the brothers' father), in 1835 they had a falling-out and Dmitriev was fired. However, he continued to borrow money in the

³⁰⁸ *TsIAM*, f. 50, op. 4, d. 3167 (Dmitriev) (1847-52).

Glebovs' name until 1839, when the brothers finally thought to announce Dmitriev's dismissal in newspapers and creditors subsequently complained to the police and the gendarmes. However, the best they could do now was only to try to collect from the penniless Dmitriev.

What is most interesting about this case is the extent of the Glebovs' involvement after case came to court, and the authorities' hesitation to pry into their affairs: for instance, the police made no attempt to ascertain whether the Glebovs actually received any of the money borrowed by Dmitriev in their name or why they failed to notify creditors about his dismissal in a timely fashion. The brothers, in turn, claimed that their signatures on the blank sheet were forged (which had not prevented them from benefiting from Dmitriev's legitimate use of the sheet for years before his dismissal) but made this claim impossible to verify by buying the sheet for 10,000 rubles and destroying it. For the destruction of a key piece of evidence in a large-scale criminal fraud case, they *were* indicted, but only received a mild reprimand that was cleared under the tsar's 1841 amnesty. The brothers also indirectly admitted their involvement by offering and in some cases reaching settlements with Dmitriev's creditors for a fraction of the original amounts. Of course, bribery and personal connections must have played some role here, although the case record does mention the Glebovs' financial troubles, suggesting that their ability to pay must have been limited. In any case, the convenience of placing all the blame on Dmitriev (who died before his case went on trial in 1846) must have been as obvious to the court as it was to the Glebovs. Thus, as in the Naryshkina case, in which the authorities were reluctant to go through with the criminal prosecution of someone who had been close to the court, in the Dmitriev case the authorities seem to have calculated the risks and chose not to pursue an inconvenient, embarrassing, and no doubt ultimately futile investigation of the Glebovs' possible

involvement. The courts also may have been receptive to the Glebovs' willingness to make things right with the creditors, for whom this was the only chance to return some of their money.

Compared to his patrons, Dmitriev was far more typical of those white collar criminals in imperial Russia who were actually prosecuted and convicted, and in these cases we'll see that though these individuals lacked the influence of a Naryshkina or a Glebov, they used their "respectable" social position to effect their crimes and, once caught, secured better treatment from the courts or (after 1866) juries, even in cases of obvious culpability, especially if they could convincingly define their behavior as striving for or intended to restore their respectability. The overwhelming majority of individuals who committed credit-related fraud who are mentioned in the case selection I reviewed came from those groups of people most concerned with achieving or maintaining respectability – those not so high that they have no need to question their status, or so low that real respectability was out of their reach – i.e., Moscow's often overlapping middling urban and commercial classes, including junior *chinovniki* (civil servants), petty gentry, merchants, and better-off townspeople (*meshchane*). Dmitriev himself, as I mentioned, was the son of a privileged household serf who was freed by his powerful master and subsequently awarded the civil service rank of collegiate assessor (Class VIII according to the Table of Ranks), which before 1856 brought with it the right of hereditary nobility. Dmitriev-junior, in turn, was employed by the Board of Trustees of the Imperial Orphanage (Russia's most important formal credit institution, which offered loans secured by serf-populated noble estates) but only reached the more junior IX Class. We can only speculate whether it was Dmitriev's ambition or loyalty to his employers (loyalty itself being a marker of respectability) that caused

him to embezzle, but all of his creditors, one of whom had known him and his father for decades, noted that he had always made timely payments and thus earned their trust.

Other cases of fraud suggest, much as in Victorian England, a combination of social pressures to maintain a certain lifestyle, and the ease of forging documents and otherwise confusing potential victims. Both Pavel Galitskii and Aleksandr Saltykov, after confessing to maintaining huge “pyramid schemes,” narrated long stories of their unfortunate circumstances and of their long struggle to maintain their finances and to regain respectability. The merchant **Pavel Galitskii** began his career of fraud both because his merchant status allowed him to issue easily-forged bills of exchange (*vekseli*) and because (according to his testimony) he was striving to support his family and to regain his financial soundness (lost through no fault of his own). In a proceeding that began in 1880 in the reformed post-1864 court with a jury trial, he pled guilty to forging 236 bills of exchange worth at least 234,000 rubles.³⁰⁹ In his testimony to the police, he recounted a decades-long history of struggling to maintain his status as a merchant, to hold off creditors, and to counter the effects of various bad financial decisions made by others. From 1855 he had served as a clerk (*kontorshchik*) to another merchant for the salary of 300 and then 700 rubles per year (a rather considerable amount corresponding to the wages of a mid-ranking civil servant). Soon he married and, while continuing his job, started a separate business with his wife in ready-made women’s clothes. He was successful at first, accumulated a modest capital of 3,000 rubles, and made useful connections in the business world. One of those connections was the merchant Fedor Zhechin, who once, being in need of money, asked Galitskii for bills of exchange worth 8,000 rubles which Zhechin then sold at a discount to various persons. However,

³⁰⁹ *TsIAM*, f. 142, op. 1, d. 104 (Galitskii) (1880-93).

Zhechin soon became insolvent and Galitskii had to pay the 8,000 rubles with his own money, which crippled his business and forced him to go into partnership with his original boss. At the end of the year it turned out that this shared business ran a loss of 15,000 rubles and Galitskii discovered from questioning the clerks that his partner had been embezzling cash, which he lost in cards or spent on his wedding and on gifts to his bride. At that point, Galitskii's debts started to fall due, and he decided that his only solution was to forge several bills of exchange in the name of two well-known merchants "whose *veksels* were circulated as easily as cash." He soon turned this into a habit and was initially able to continue his trade until the forged bills, in turn, became due, their "issuers" became suspicious, his own credit dried up after he left his dishonest partner, and the entire "pyramid scheme" collapsed. Galitskii decided that there was no escape left and went to the court building to report himself. By turning himself in and weaving this elaborate story (true or not) of hard luck and the tireless effort to do right despite all obstacles, Galitskii portrayed his motives and many of his actions as fully appropriate for a man of his station in life – thereby leaving bad luck as the only possible explanation for the uncomfortable fact that crimes had indeed been committed. He was convicted, but only had to resettle in Eastern Siberia for a reduced period of time because his jury recommended leniency.

Galitskii's story, which is certainly not unusual for white collar crime in Western Europe, seems to have been common in Russia as well. I discovered a nearly identical case, with the slight twist that the perpetrator of the pyramid scheme was a prominent Moscow barrister (*prisiazhnyi poverennyi*) **Aleksandr Saltykov**.³¹⁰ Beginning in the early 1870s he earned a living by investing his clients' money in loans and mortgages. Earning seven to eight thousand rubles

³¹⁰ *TsIAM*, f. 142, op. 2, d. 154 (Saltykov) (1897-1916). In 1890 Saltykov was elected to the Board of Moscow Bar Association, the self-regulating body of Moscow's legal profession.

per year, Saltykov was nonetheless burdened with debt incurred in setting up his legal career and by his early marriage, and as early as 1875 he began to embezzle his clients' money and give them *veksels* written out in the name of fictitious persons. In the 1880s Saltykov branched out into fake mortgages, which he always closed himself; he also paid out interest on this fraudulent debt, so that his clients, trusting him as their attorney, never bothered to gather any information about the property allegedly mortgaged to them or about their borrowers. Only in 1891 did one of his numerous high-ranking victims, Actual State Councilor Ternovskii, become suspicious and Saltykov had to stage his own suicide, assume a fake identity, and move to the city of Kishinev in the southern region of Bessarabia. He stayed there for seven months, then came back to Moscow and surrendered to the police, fully confessing all of his many frauds and mentioning his sense of guilt and his duties to his family as reasons *both* for committing his crimes *and* for deciding to surrender. He explained that his schemes resulted from his desire to set things right by incurring more and more fraudulent debt to keep himself afloat long enough to make money from his profession. Thus, again, by claiming that his crimes stemmed from efforts or intentions to engage in correct or respectable behaviors (supporting his family, paying off debts), Saltykov (and his defense attorney) effectively made what were unquestionably criminal acts seem excusable, or even necessary. And this strategy worked: Saltykov was acquitted at the end of his closed-door jury trial (with the important stipulation that this verdict would not prevent his victims' recovery in a civil suit). In other words, as with Galitskii, the jury believed that Saltykov's alleged efforts to do right according to the standards of respectability trumped his breaking of the law, and that he had enough potential (unlike Galitskii) to eventually make good the damage.

Both Galitskii and Saltykov perpetuated their frauds for decades and were clearly influenced by the substantial real pressure to maintain a respectable standard of living and to support their families. Another type of white collar criminal was the young man not satisfied with his slow advancement and seduced by the ease with which he could part his victims from their money. This criminal, too, though less able to call on the sympathy of courts and jurors, used the unquestionable desirability of achieving respectable status as an excuse or explanation for criminal acts. At the same time, more obviously than other white-collar criminals, they used the appearance of respectability, such as a position in the civil service, being a small landowner himself, or filial piety to gain their victims' trust. Just as juries in the later period were ready to excuse the crimes of a Galitskii or a Saltykov because they seemed to have the right kinds of motives, victims of fraud (as well as the officials prosecuting these cases) were willing to assume good motivations and mentalities.

Twenty-four-year old Collegiate Registrar (Class 14) **Aleksandr Schtibing** benefited from the trust individuals placed in him because of his service as a clerk at the Board of Trustees in the early 1850s.³¹¹ Schtibing's victims must have thought it a smart precautionary measure to engage him when borrowing or depositing money to help them with the paperwork (although the law prohibited hiring civil servants to help with processing cases at institutions where they served). However, he took his clients' money and gave them fake receipts with forged signatures of senior Board officials. In 1854 an out-of-town merchant asked for verification about two such receipts that came to him from one of Schtibing's victims, a physician's wife, Ekaterina Bove. The clerks checked the Board's journal and found that no payment was recorded under the

³¹¹ *TsIAM f. 50, op. 4, d. 4727* (Schtibeng Aleksandr and Ivan) (1856-62).

numbers of those receipts. When questioned about the receipts, Schtibling confessed to embezzling Bove's money, and when his apartment was searched, the Board officials found evidence of about a dozen other similar episodes. It seemed that he made no effort to conceal his activities and (at least at that time) had no explanation in case he was discovered (for example, that he had made a mistake).

Typically for many embezzlement cases, Schtibling's superiors were reluctant to get the police involved right away or to detain him to prevent his flight. But he slipped away as soon as his questioners left (instructing him to stay in his apartment), and so we can not find out much more about his motivations. He left behind a letter which claimed that he was about to drown himself in Moscow River and that he alone was to blame for his crimes (there was some evidence that his brother Ivan took part in forging the receipts). Two weeks later a dead body was found floating in the river; it was sufficiently decomposed that the police could not determine the precise cause of death, but there were no obvious signs of beatings or injuries. In the corpse's pocket was found a letter from Schtibling's aunt to the merchant Solodovnikov (perhaps one of Schtibling's creditors), and Schtibling's relatives recognized the clothes found on the corpse as belonging to him. They were never shown the body itself, and so we can only guess whether he did actually kill himself or managed to stage his suicide using a (hopefully) dead body. Interestingly, the clothes on the corpse did not fit the description of what Schtibling wore when he was last seen; furthermore, the police report gave the corpse's age as approximately 45, whereas Schtibling was only 24. In any event, the Criminal Chamber was not convinced and ruled "not to enter a judgment" about the dead body or about Schtibling until he was found (which was not likely to result from any efforts by Russia's understaffed and overworked police

force). Whoever that corpse really was, once Schtibling was revealed to have abused the trust inherent in his position in Russia's credit system, his only escape, in his mind at least, was either his own literal death, or a metaphorical death in which he had to commit further frauds and begin his career completely new with a fresh identity – as if his old identity, having lost its respectability, had lost all its value.

In addition to occupying a position of trust as Schtibling did, another enabling factor in committing credit fraud was having accomplices and thus in a way impersonating a discrete unit in Russia's network of private credit. One of the more complicated mid-century fraud-related cases centered on the young Senate Registrar **Pëtr Vesëlkin** (he was 22 in 1841), who was noble-born and owned land with 32 serfs in the out-of-the-way Zaraisk County.³¹² Vesëlkin entered government service as a “junior sorter” at the Riazan' provincial post office in 1835 and four years later moved to Moscow to serve as a clerk at the Moscow Office of Crown Lands, both of which posts yielded a meager income to complement an equally meager income from his lands (depending on the land's quality, about 100 serfs was the minimum for the owner to maintain a comfortable living). Not surprisingly, in 1841 Vesëlkin left service, with good recommendations from his superiors. His other, more profitable occupation, was carried out beginning in 1839 with two partners, a former Moscow merchant Aleksandr Lefort who typically posed as a representative of a fictitious Prince Dmitrii Kropotkin of Vladimir province, and another former merchant, Ivan Miliutin, who claimed to represent the equally non-existent Lieutenant Goncharov from Riazan' province. Vesëlkin's brother and wife Klavdia were also in the gang. With forged powers of attorney and other paperwork, Lefort and Miliutin (who were

³¹² *TsIAM*, f. 50, op. 4, d. 4416 (Veselkin), f. 81, op. 16, d. 579 (Veselkin) (1845-7), and f. 50, op. 4, d. 4899 (Tatishchev).

“well known” in Moscow and raised no doubts about their identity) registered mortgages for their “clients” fictitious estates at the Second Department of the Moscow Civil Chamber and then remortgaged to actual wealthy landowners in the Moscow area who were looking for investment opportunities (Lefort also took a trip to St. Petersburg to look for victims there but was not successful). Only a few weeks after the last such transaction, one of the victims, Collegiate Assessor Glazunov, decided to double-check and found out that the documents were forged. In the presence of witnesses, he confronted Lefort, who lost his composure and allegedly said “I already know that the certificate and the power of attorney are false.”³¹³ Vesëlkin and his friends were able to delay and confuse the investigation for several years, until in 1847 Lefort unexpectedly and voluntarily showed up at a police station in Moscow and confessed the entire scheme, claiming that he composed all the fake mortgages, as well as forged pawnshop tickets, together with Vesëlkin who “enticed him with promises of a great profit.”³¹⁴

There are many things that are striking about this Gogolesque case: Vesëlkin’s youth, Lefort’s apparently voluntary confession, and especially the huge disadvantage of Vesëlkin’s otherwise ingenious scheme: that it was very labor- and time-consuming, requiring complex negotiations, close interaction with the victims, and the forgery of many documents that could be easily checked with the appropriate authorities. For present purposes, the other point to draw from the scheme is that what made it work as well as it did despite the effort and great risk involved, was the sheer size of the criminal group. Each member could vouch for and lend an appearance of respectability to the others, which allowed them to earn the trust of their victims

³¹³ This would not count as a confession because it was not made at a government office after the beginning of an official investigation.

³¹⁴ Vesëlkin was sentenced to six years’ of hard labor in Siberia in 1854, and his brother was to be conscripted to the army. I was unable to determine what ultimately happened to Lefort.

(who were wealthy investors, and therefore likely to see through less elaborate schemes, one would assume).

For a young man looking to get money quickly it was much easier to simply forge bills of exchange and sell them at a discount, which is what a 24-year old son of a merchant (*kupecheskii syn*) **Klavdii Rudnev** did in the early 1850s, signing the *veksels* (bills of exchange) with his father's name.³¹⁵ It was the father himself who suggested to the police that Klavdii, "as he had heard," issued "many forged *veksels*." At first Klavdii fled Moscow, but soon came back home and was presented to the police by his father, confessing that he had talked a now-deceased foster son of his father's into forging signatures on the bills of exchange. Klavdii "spent away" (*promotal*) the money thus obtained. At the same time, handwriting experts (the procedure of handwriting analysis will be discussed in Chapter Seven) thought that Klavdii's father may have been the actual forger, and some of the deceived merchants said that they received the fake bills of exchange directly from him. In any event, the old man died during the investigation, after which Klavdii recanted his confession and claimed that his father forced him to take the blame, which he agreed to do out of his "burning" filial love and sense of guilt for "past transgressions" (referring to his alleged mismanagement of the family business during his father's illness). Klavdii even claimed that during the investigation he learned to imitate his father's signature to make the original confession more convincing. The Criminal Chamber, while upholding Rudnev's sentence of Siberian exile, found that his father's participation was a mitigating factor. While Klavdii's actual culpability in this case is unclear, his father's involvement (no matter how extensive it actually was) must have had a significant effect upon Klavdii's motivation, while his

³¹⁵ *TsIAM*, f. 16, op. 21, d. 425 (Rudnev) (1854-59).

testimony adopts the familiar motif of excusing criminal behavior by claiming it was motivated by a desire to live up to respectable ideals – in this case “filial love” and a guilty conscience.

Some of Russia’s white collar crime cases resemble events from Gogol’s *Dead Souls* – most conspicuously Vesëlkin’s band of forgers cruising the countryside in search of wealthy victims. However, the fundamental factors motivating white collar crime seem to be not much different from other times and places: first, a social and cultural environment that eased both the moral burden of fraud and the acquiring of accomplices; second, a position of trust occupied by many of the criminals; and third, cultural and social pressures to maintain a respectable standard of living and the lack of attractive career opportunities for numerous young educated individuals, who were thus tempted to take advantage of the specific loopholes in the country’s system of private credit: in Russia’s case, it was the lack of formal credit institutions and a cash-scarce economy that caused merchants to circulate large numbers of easily forged bills of exchange.

White Collar Crime on the Fringes of Respectable Society

Yet another, perhaps the most important prerequisite to committing the kinds of fraud perpetrated by individuals like Saltykov, Shtibing, or Vesëlkin, was to be accepted by their potential victims as members of “respectable” society (*prilichnoe obshchestvo*), and thus to gain trust and special consideration from their supposed peers. The obvious requirements for membership in what Catriona Kelly in her study of nineteenth-century advice literature in Russia calls a common culture of “gentility” were property ownership and education, which tended to “homogenize” Russia’s commercial, landowning, and service classes, in a similar way to the process that occurred in Georgian England in a slightly earlier period.³¹⁶ As discussed in Chapter

³¹⁶ See Catriona Kelly, *Refining Russia: Advice Literature, Polite Culture, and Gender from Catherine to Yeltsin* (Oxford, 2001), e.g., 99. For England, see Amanda Vickery, *The Gengleman’s Daughter: Women’s Lives in*

One, Russia's social network of private credit strengthened such homogenization, in addition to empirically confirming its existence through legal records of actual cases. Thus, all the individuals discussed in the previous section *were* unquestionably members of the respectable society, i.e., they were real civil servants, merchants, or landowners, even though in absolute terms their wealth and social position were inferior to those of most of their victims (leaving aside their as-yet undetected criminal behavior).

What *this* section does, by contrast, is explore the outer limits of "respectable" society by focusing on the criminals who possessed neither wealth nor education but were nonetheless able to convincingly put on the appearance of gentility to commit credit fraud and other similar abuses of confidence and, once caught, to be marked as different from a "common" criminal (and therefore treated differently by authorities). When criminals used the assumptions inherent in the idea of membership in respectable society to commit crimes, their victims and those officials who later attempt to adjudicate these cases were forced to examine and reexamine – consciously or unconsciously – their understanding of the empire's social and cultural hierarchy, precisely during the time when this hierarchy was becoming subjected to an intellectual (and later physical) assault.

There is no doubt that the issue of the defendant's belonging to "respectable" society was the central question that the courts and police considered when deciding how to treat a specific case involving an "uncommon criminal." The case of **Nikolai Popov** shows that sometimes the potential defendant's respectability was the *chief* factor determining whether a case would be

Georgian England (New Haven, 1998).

launched at all. Popov was a 26-year old hereditary honorary citizen³¹⁷ from the town of Kashira, who was unmarried, orthodox and literate, and had no particular occupation, except that he maintained himself with the capital of around fifteen thousand silver rubles left by his father, which he lent out “for lawful interest” secured by various real property.³¹⁸ On a spring day in 1859, Popov went on an evening stroll with the 27-year old merchant Chelnokov (who lived by rental income from his house), with Chelnokov’s 21-year old wife, and with 20-year old *meshchanka* Kravitsyna, who lived by sewing ladies’ outfits. On the sidewalk on Ordynka Street Popov saw a paper envelope, stirred it with his cane and picked it up, whereupon several men pounced upon him and his companions and accused them of being criminals. It turned out that the owner of the house next to this location, merchant’s widow Tsilibeeva, had received a threatening letter demanding 300 silver rubles, and her friend State Councilor Folz had suggested an ambush of the blackmailer. They placed a paper envelope under a rock on the sidewalk just as was demanded, and put a *dvornik* and two of Folz’s serfs in ambush. According to them, Popov turned over the rock and picked up the envelope, which he would not have seen otherwise. Popov and his companions claimed that they simply saw the paper and picked it up out of curiosity. Popov’s girlfriend claimed that Popov was not caught at all, but rather went to the house with the envelope he found, asking for the landlord. The most interesting fact about this case is that this was the end of it. The file contains the actual threatening letter, written in bad handwriting and semi-literate in style. There is also a long list of mortgages held by Popov (see Chapter One), revealing his assets to amount to 12,420 silver rubles. The Moscow Criminal

³¹⁷ This was a legal category granted to the top layer of Russia’s commercial classes, designed to serve as quasi-nobility (had many of the same rights such as freedom from conscription, corporal punishment, or “soul” tax).

³¹⁸ *TsIAM*, f. 50, op. 4, d. 5294(a) (Shebardin) (1865). (the actual title of the case does not correspond to the one given by Soviet archivists).

Chamber did not pursue the matter any further, ruling that Popov was “involved in this case accidentally.” Based on the way the casefile and the case memo were composed, and on the fact that the only evidence in the case file relates to the way Popov made his living and to his assets, it is clear that the court decided that Popov could have no possible reason to blackmail Tsilibeeva, and that crime is generally something limited to the lower classes. The fact that Popov was, essentially, a usurer (for no one could possibly believe that he actually lent his money out at a 6% annual rate), was not considered to be a sufficiently morally suspicious occupation to make one likely to blackmail people.

Popov’s case shows how the appearance of respectability, namely, nice clothes, a leisurely occupation that allowed a man to take an evening stroll with some friends, and ownership of a sum of money was the standard that allowed him to avoid unpleasantness with Russia’s criminal justice system. It is not surprising, then, that those white collar criminals who could achieve a veneer of respectability used it to their advantage (even when they did not have any “capital”), one key feature being the appearance of foreignness. A citizen of Hamburg, **Nikolai Bedeker** (born around 1839) inspired trust in his victims by his knowledge of French, by his pleasant manners, by his beautiful handwriting, and by his neat dress and clear, clean-shaven face, which made him stand out in Moscow’s less tidy urban strata of clerks, artisans, and tradesmen.³¹⁹ Of his background we only know that his Lutheran family must have seen more affluent times, that he had two slightly younger sisters also living in Moscow who belonged to the estate of townspeople (*meshchane*) (one of them could only speak German), and that his many friends and acquaintances were mostly from the lower orders, including one girlfriend who was a peasant

³¹⁹ *TsIAM*, f. 50, op. 4, dd. 7742 (1861-64), 7744 (1863-64) and 7745 (1864-65). The other three volumes of this case were denied by the archive.

and another who was a *meshchanka* from the southern town of Bolkhov (although one of his friends owned a hotel). Bedeker had no permanent dwelling of his own but spent his nights with friends or in various rented rooms (only a stay over three days required a police registration), and whenever arrested stated his occupation as “commerce on commission” or “buying and selling various items.”

Already in 1856 Bedeker was prosecuted for forging a quittance to get a mail package that belonged to a Mrs. Naryshkina and fleeing from arrest. He was sentenced to three months in the workhouse (his deportation was ordered but not carried out). Subsequently, he seems to have committed his crimes in sprees according to one particular scheme over the course of just a few days. This strategy, while eventually alarming the police more than usual, prevented his initial victims from communicating information about his activities quickly enough to alert other potential victims. While I was permitted to review only about half of Bedeker’s massive case record, one of his favorite schemes, used early in 1861, was to take advantage of Russia’s credit-based system of retail commerce (which also existed elsewhere in Europe), in which the merchant would not expect a full payment right away. Bedeker would come to a foreign-owned fine clothing shop, introduce himself in French, and then take a selection of the product, such as fine shirts or linen, allegedly in order to bring it to a wealthy buyer. The owner would send along a serving girl or come herself, but Bedeker would manage to lose her on the way either by running away or by entering a hotel and leaving by another door while the woman waited outside. The plan backfired when a serf girl employed as a seamstress by Riga citizen Khristina De Lor managed to chase him down Kuzhnetskii Most and onto Lubyanka Square, where he was tackled by passers-by and delivered to the police. On different occasions, Bedeker took further

advantage of Russia's retail trade being heavily dependent on personal credit by helping himself to such diverse items as pianos, "foreign-made liquid paint," and carpets from Moscow's Gostinyi Dvor.

Bedeker's other favorite scheme, used in 1863 in St. Petersburg, likewise took advantage of his "respectable" manners and appearance. He would dress up as a clerk and visit the houses of various important officials and merchants, show them beautifully written notices³²⁰ and claim that there was a ship from abroad in port that carried a package for them. The important person would give Bedeker the shipping money and send with him a clerk or a servant, whom he always managed to lose on the way to the port. This scheme, which only rendered him around 20 rubles at any one time, must have been so unprofitable (even compared to working as an actual clerk or a tradesman) as to suggest that Bedeker did it out of a sense of adventure or kleptomania.

In addition to his manners and his handwriting, Bedeker was also helped by his network of acquaintances, friends, and business contacts, the possession of which should also be regarded as a sign of respectability, given that recent migrants from the countryside (who already swelled the lower classes in Russia's larger cities in the mid-nineteenth century) were unlikely to have either close relatives or friends in the city who could vouch for them before the authorities. The benefit of such a network can be shown by yet another of Bedeker's numerous brushes with the law that happened on December 21, 1864, when he was being escorted from the prison hospital in Moscow to a police station by two middle-aged soldiers of the Ekaterinoslav Grenadier Regiment. With them he at once adopted a tone that marked him as different from a common criminal or from former peasants like themselves. First, he suggested that they take a cab rather

³²⁰ The original notes were attached to the case file but I could not get them xeroxed because of prohibitive copying costs charged by the archive.

than trek across the city to the remote Khamovniki precinct, no doubt offering to pay for the ride. He then talked the guards into stopping by his sisters' apartment, where his bride, a peasant girl Evdokiia Galkina, was also present, and where everyone proceeded to have tea and vodka. After resuming the trip, Bedeker managed to run away by telling his tipsy guards that he needed to make a stop to pick up some money. Two days later, Bedeker was recaptured at a friend's house in a village just outside the city. After being arrested again, Bedeker played up his respectable pedigree to the very end, claiming that he only decided to run away when a police officer he met on that day screamed at him for being drunk and waved his fist (but did not do anything more than that). The affront to his dignity, apparently, was plausible as an excuse for running from the police.

Bedeker, with his handwriting and his manners, could easily have been employed as a clerk and earned a decent living, probably at least as much as he made with his schemes. While his behavior was most likely very uncommon for Germans who emigrated to Russia in the eighteenth and nineteenth centuries, the outlines of Bedeker's story seem to be not atypical for the younger representatives of Russia's growing and upwardly mobile urban classes who had been exposed to genteel lifestyles but had no opportunities to earn enough money to adopt it permanently.

In addition to Bedeker, there are other examples, some of which, like the Moscow *meshchanin* and a one-time merchant Sergei Konovalov, appear to be his complete opposite in most outward respects. Konovalov came from a moderately well-to-do traditional Moscow family of small tradesmen, but was estranged from his parents since 1840 because of his "immoral behavior, drunkenness and disobedience." In the early 1840s he was hired to manage

the affairs of the **Princess Ekaterina Cherkasskaia**, who was only moderately well-off but came from an ancient aristocratic family.³²¹ In 1842 the Princess employed him to raise for her a loan of 10,000 silver rubles. Konovalov received the money from the creditor, embezzled it, and then had the lender blamed for the crime and convicted in court. In 1845, however, he repented and confessed, in part because he interpreted his serious venereal disease (most likely syphilis) as a punishment from above. While in prison, Konovalov bragged to another inmate, a “tramp” (*brodiaga*) and an army deserter Diakov (who nonetheless was rich enough to have loaned Konovalov 2,275 rubles at one point), that he used the money to rent a sizable apartment and stage there “evenings in Paradise, where dancers of both sexes represented the first humans before the Fall” for as much as 1,000 paper rubles per night. Konovalov’s story reveals the inner world of a young man from an urban background who balanced on the thin border of respectability, but ultimately failed to secure it. Particularly interesting are Konovalov’s notions of how a rich man with 10,000 silver rubles (like the two higher-class people whom he managed to cheat) could be expected to behave.

While Bedeker and Konovalov appear to have carried out their frauds entirely voluntarily, one of their female counterparts, *meshchanka* **Maria Lebedeva**, was trying to provide for her four small children, while probably being pressured by her unofficial patrons and creditors.³²² Lebedeva was the 32-year old daughter of a Moscow merchant and a widow of a *meshchanin* from Podol’sk. While she had no material possessions other than the clothes she wore, she made a living – in addition to fraud – by teaching music and sewing men’s shirts. It was her claimed

³²¹ *TsIAM* f. 50, op. 4, d. 1983 (Cherkasskaia) (1843-53) and f. 50, op. 4, d. 3389 (Zavarovskii) (*sic*) (1848-9). Despite her aristocratic name, Cherkasskaia, daughter of an army first major, only held 72 serfs in Iaroslavl’ province in addition to owning a house in Moscow.

³²² *TsIAM*, f. 81, op. 18, d. 1322 (Lebedeva) (1865).

status as a music teacher that enabled her in 1861 to rent four pianos from different pianomakers and music shops and pawn them to different usurers. When pawning the pianos Lebedeva claimed them as her own (“because otherwise they would not be accepted as collateral”) and issued a note of sale (pawnshop tickets were written up as sales receipts). Lebedeva herself claimed that she acted “out of poverty” and only at the insistence of *meshchane* Smirnov and Rozanov, to whom she owed money. In addition to her tricks with the pianos, Lebedeva also replicated Bedeker’s stratagem, by taking cotton fabric worth 61.16 rubles from the Hamburg-born Anna Winterling, for which Lebedeva’s fictitious fiance was supposed to pay. She even dabbled with the pawnbroker business by taking a fox coat from state peasant Smirnov worth 160 rubles but only giving him half the amount and then disappearing, as well as taking a 150-ruble fur coat from *meshchanka* Shustova, and later claiming that it was taken from her on the street by two muggers. Lebedeva thus appears as a virtual double of Bedeker – except that she was completely Russian, female, and at least to some extent motivated by real responsibilities to her children rather than any sense of derring-do. Interestingly, the pre-reform Criminal Chamber chose to believe that Lebedeva deserved leniency and closed the case holding that she used neither fraud nor violence and thus no crime had been committed (the lower court originally convicted her of fraud and sentenced to be stripped of her civil rights and placed in the workhouse for eighteen months).

Finally, yet another notable aspect of a veneer of high-culture that aided white collar criminals was a love for books and reading. On the surface, **Nikolai Sveshnikov** (1839-1899) was nothing but a thief and a drunk who spent his younger years working in various clerical and menial occupations, quickly learning from his older fellows to cheat and embezzle from his

employers and to use the proceeds to satisfy his love for drink, girls, and other pleasures offered by city life. He was arrested and expelled to his native town of Uglich many times for passport violations and once for robbing a friend, but never for any of his numerous frauds, which he described with gusto in his fascinating but little-known memoir.³²³ In his middle years he acquired a habit of reading, became literary-minded himself, and attempted to make a living as an itinerant bookseller both in St. Petersburg and in the villages and small towns around Uglich. Although he was clearly an unreliable partner or agent, other St. Petersburg booksellers time after time entrusted him with merchandise (which he for the most part embezzled), and some of Russia's minor literary figures offered him help and guidance (eventually he became acquainted with such figures as N.S. Leskov, G.I. Uspenskii, and A.P. Chekhov), seemingly only because reading and literature in Russia then, as now, created a kind of mysterious psychological bond that made Sveshnikov's partners to turn a blind eye on his frauds.

While individuals dealing with the likes of Schtibing, Vesëlkin, or Saltykov could easily assume correctly that they were dealing with persons of some breeding, in this section I examined white collar criminals who do not properly fit the definition, since they did not really possess any of the hallmarks of prestige or real standing in Russian society. However, they possessed certain aspects of gentility, such as a stolen nice-looking coat, or knowledge of music, or the ability to recognize a good book, which provided them access to Russia's network of private credit, to the misfortune of their victims.

³²³ N.I. Sveshnikov, *Vospominaniia propashchego cheloveka* (Moscow, 1996).

Fraud Victims and Prevention Strategies

This section continues the analysis of the criminal aspect of Russia's system of private credit, but from the perspective of the victims of fraud and embezzlement. It is tempting to look for downtrodden groups that were particularly likely to become victims. George Robb in his study of white collar crime in England has pointed out its destructive effect upon the poorer strata of the Victorian middle classes, who were often induced to speculate by their precarious financial prospects.³²⁴ In the case of Russia, some obvious candidates spring to mind as potentially vulnerable: foreigners, such as those upon whom Bedeker preyed; out-of-town gentry who needed to visit the city to fully participate in the culture of debt; or women, who frequently managed landed estates as well as commercial enterprises and may have been thought of as easy targets.³²⁵ However, the most obvious pattern as far as white collar crime victims are concerned, is the lack of a pattern. Anyone could be defrauded, a peasant or a prince, male or female, simple or sophisticated, which suggests that the kinds of credit crimes described in this chapter should be regarded as an integral aspect of Russia's culture of debt. For example, forgery of *veksels* (bills of exchange) was a necessary aspect of their free circulation in Russia's cash-starved economy, and the various Gogolesque crimes of confidence were an inevitable aspect of relying on informal debt networks – much as today the widespread crime of identity theft in the United States is an inevitable side-effect of the largescale recording and tracking of personal information that was introduced to reduce fraud.

³²⁴ Robb, *White Collar Crime*, 30.

³²⁵ Marresse, *A Woman's Kingdom*, for noblewomen managing property. For female merchants, see Galina Ulianova, *Female Entrepreneurs in Nineteenth-Century Russia* (London, 2009).

There is some indication in court records that foreigners tended to be more trusting of their countrymen. The victims of Nikolai Bedeker, whose exploits were discussed in the previous section, tended to be foreign-born merchants. Because Bedeker himself was completely integrated into Russian society, given that he had not a single foreign-named acquaintance save for his sisters (his acquaintances were mostly simple Russian peasants and *meshchane*), it is safe to suggest that Bedeker purposefully selected foreigners as his victims.³²⁶ A peasant from the northern Kholmogory County, **Boris Korotkov**, who unsuccessfully tried to start a “law office,” as discussed in later chapters, pawned two fake gold watches to a Bavarian woman, Emma Flik.³²⁷ Flik unconvincingly denied being a pawnshop owner, but in any event she was apparently a fairly recent arrival in Russia (she could not even sign her name in Cyrillic) who had to rely on her acquaintances to get business. Similarly, in 1854 a Bukharan Jewish merchant Ilia Izmailov arrived to Moscow to sell some merchandise, including gold and silver watches. He was visited in his hotel by one Aron Cherkinskii who introduced himself as a merchant and offered to help him sell the watches to a Prussian citizen **Adol’f Schmidt**. However, Cherkinskii turned out to be not a merchant but a soldier, and Schmidt, having taken Izmailov’s merchandise, gave him a forged bill of exchange and left without paying, claiming later to the police that he had never seen Izmailov before.³²⁸

Another category that may seem likely to be victims of white collar crime is women from the lower strata of Russia’s system of legal estates, namely peasants and townspeople (*meshchane*). For example the victim of the XII Class Civil Servant **Aleksandr Demazer** was a wealthy serf of

³²⁶ See note 319 above.

³²⁷ *TsIAM*, f. 50, op. 4, d. 8945 (Korotkov) (1866-67)

³²⁸ *TsIAM*, f. 50, op. 4, d. 4439 (Schmidt) (1854). Another case - f. 50, op. 4, d. 8263 (Kornfel’d) (ca. 1865).

Count Sheremetev, Akulina Mikhailovna Mashkina, with whom he was “acquainted.”³²⁹

Demazer suggested to Mashkina that she would live more comfortably in her own house and proposed to buy one for her in his own name because as a serf she could not close the purchase in her own name or (allegedly) in her landlord’s, but in fact the house would belong to her. She agreed and gave Demazer 6,573 silver rubles, which he used to buy a house that he promptly claimed as his. While in her court papers Mashkina claimed that she was illiterate and inexperienced, this case is not so simple: Mashkina was certainly sophisticated enough to keep her money deposited in a bank, and once she became suspicious of Demazer she quickly obtained advice on how to proceed and went on to complain to the police. In addition to Mashkina’s “inexperience”, it is also possible that she simply did not *want* to buy a house through her landlord (Sheremetevs were the wealthiest family in Russia second to the Romanovs) thinking Demazer to be more reliable. Besides, the aristocratic **Princess Cherkasskaia** in the case discussed above was not any wiser, given that she hired Konovalov to manage her property without finding out more about him (such as the fact that his own parents had expelled him from their house for bad behavior) – and that despite her acquaintance and relationship to the likes of Colonel Begichev and Gendarme Colonel Tolstoi. Similarly, in the **Dmitriev** fraud case that has already been discussed, some of his victims could have come out of George Robb’s monograph on Victorian England, being middling kind of people investing their few thousand rubles in what they thought of as a safe loan to the aristocratic Glebov brothers. However, another victim, Fedorova, was married to a senior police officer, a precinct chief in

³²⁹ *TsIAM*, f. 50, op. 4, d. 4758 (Demazer) (1856-57).

Moscow, which presupposes a considerable degree of worldliness (she was the first to raise an alarm).³³⁰

While it is difficult to dispute that being illiterate, or foreign, or being a single woman without immediate family, or being drunk,³³¹ made one more likely to be a target of fraud, court records from Moscow reveal huge numbers of patently sophisticated victims of exactly the same types of fraud, and I thus conclude that the types of credit fraud described in this chapter were simply one of the dangers of participating in Russia's culture of debt. In order for the culture of debt and credit to maintain the fluidity and personal character that allowed it to serve people's interests in the absence of more formal credit institutions or a reliable cash economy, the system had to be left open to these types of abuses. This seems to be at least how the merchants who complained about fake bills of exchange issued in their name interpreted the situation: for example, in the case of **Klavdii Rudnev** discussed in the previous section, the merchants who first discovered his forgery acted as a group to resolve the case in a matter-of-fact way.³³² This is very different from the victims' reaction in many other cases (such as that of **Dmitriev**), in which victims had no communication with each other and whose complaints contain a desperate, even hysterical note.

Other individuals simply incorporated criminal proceedings into their litigation and debt collection strategy, which suggests that credit fraud was not an extraordinary event or one likely to target only some specific population groups. Many cases turn out to have been criminal in

³³⁰ *TsIAM*, f. 50, op. 4, d. 3167 (Dmitriev).

³³¹ Signing debt obligations while drunk (without getting all the money) seems to have happened fairly commonly in the cases I have reviewed. See *TsIAM*, f. 50, op. 4, d. 8264 (Ulitin); (Chizhov), *TsIAM*, f. 50, op. 4, d. 7731 (Smirnov).

³³² *TsIAM*, f. 16, op. 21, d. 425 (Rudnev).

name only and had neither a real criminal nor an identifiable victim, particularly because of a peculiarity of Russian law, which commanded a full-scale criminal trial pursuant to Article 651 of the Commercial Code whenever a debtor denied having signed a bill of exchange. Typically, handwriting experts would find the signature to be genuine and the court would return the debt document to police for collection.³³³ Concerning how unreliable handwriting experts could be (see Chapter Seven), threatening to start a criminal investigation (which would not in any event have bad consequences for the debtor) could induce the creditor to be more willing to negotiate. An even more obvious display of middle-class litigiousness that took advantage of the “industry” of forgery prosecutions is the case of Collegiate Secretary (X Class) **Vasilii Gruzdev**, which centered on a forgery accusation, but actually was a trivial dispute in which there was neither a victim nor a criminal.³³⁴ In 1865 another Collegiate Secretary, Dmitrii Adamovich, accused Gruzdev, whom he was suing to collect 200 silver rubles, of signing papers as Collegiate Councilor (equivalent to colonel, four ranks higher), of claiming a *veksel* to be “false,” and of forging a notice in the name of Adamovich of discontinuing the suit. The Criminal Chamber found in 1867 that Gruzdev made a simple slip of the tongue because he was recently promoted to Titular Councilor, that he called the *veksel* “false” because it had already been paid, and that the discontinuing notice Adamovich himself had acknowledged to the Commercial Court as genuine. The court therefore denied Adamovich’s petition, as well as the petition by his attorney Slavysenskii to close the case in order to restart it in the “New [post-1864] Judicial Institutions,” given that such right was only granted for civil cases.

³³³ *TsIAM*, f. 50, op. 4, d. 7731 (Smirnov) (1864-67); f. 50, op. 4, d. 6191 (Shatov) (1861-66); f. 50, op. 4, d. 8434 (Tikhomirov) (1865-74). Of course, the case became more complicated if handwriting experts could not agree, as I have shown in Chapter Three,

³³⁴ *TsIAM*, f. 50, op. 4, d. 8272 (Gruzdev) (1865-67)

Another case illustrating the fine line between routine creditor-debt negotiations and a prosecution for white collar crime is that of Collegiate Registrar's wife (XIV Class) **Elizaveta Pereshivkina (Shustitskaia)** who made a living as a pawnbroker.³³⁵ In 1843 she was accused by a Moscow *meshchanka* Ekaterina Bulasheva, apparently unhappy with the high cost of the loan, of illegal usury (charging an 84 percent annual interest instead of the permitted 6 percent). In a highly unusual situation, two witnesses, a 9th class *chinovnik* Sorokin and a retired Second Lieutenant Schmidt, testified under oath that they saw Bulasheva pay a 7% monthly interest. Bulasheva, after bringing up Russia's rarely used anti-usury law, in turn found herself in trouble with the law when some evidence of her attempting to change other witnesses' testimony was uncovered. The interesting fact about this long and bitter court battle with several sharp twists of fortune for both parties was that there was no financial interest at stake, since Bulasheva would still have to repay her debt to recover her collateral, and Pereshivkina would only have to pay a modest fine if convicted of usury. In another similar case, several Moscow merchants, who were swapping each other's debt documents to ease collection, could not agree on an exact accounting and ended up accusing each other of usury. The unlucky loser in this case of legal Russian roulette ended up being incarcerated for three days.³³⁶

While a certain proportion of criminal prosecutions can be interpreted as part of debtor-creditor negotiations, even individuals experienced in Russia's culture of debt and in dealing with its officialdom could become victims of fraud. For example, the retired *shtabs-kapitan* Georgii Balakan, who made a living by lending money, was saved only by a lucky accident from

³³⁵ *TsIAM*, f. 50, op. 4, d. 4732 (Pereshivkina) (1856-57).

³³⁶ *TsIAM*, f. 50, op. 4, d. 3926 (Alekseev) (1851-52).

a fraudulent scheme perpetrated by the wife of an Aulic Councilor **Maria Skrebkova**.³³⁷

Skrebkova asked Balakan for a loan, but he only agreed on the condition that merchant Ivan Korolëv, the former mayor of Moscow, would be the actual borrower. Balakan thought it was wise to visit Korolëv in person to make sure, only to find out that he had nothing to do with Skrebkova's loan and that it was his dissolute brother Dmitrii who was posing as him. Balakan had the police stage an ambush and catch Dmitrii Korolëv and Skrebkova just as they signed the fraudulent debt instrument (which Balakan snatched from them in the nick of time). Of course, using an intermediary, who in many cases discussed in this chapter turned out to be malintentioned, made it impossible to rely on personal acquaintance with one's lender or borrower as a safeguard against fraud.

However, in real estate mortgages, there existed a simple safeguard of writing to the governmental bodies that registered the mortgages and issued the required certificates, to ensure that the property in question was real and not mortgaged to someone else. Failure to do so – out of neglect or some sense of honorable dealing with one's fellow landowner – could have grave consequences. For example, in 1865 Moscow merchantess **Kurenkova** purchased a *dacha* (a suburban home) in Sokol'niki Park on the outskirts of Moscow from merchant Vasilii Mazurin, paying him 4,500 rubles in advance of the closing. However, Mazurin continued to delay the closing for many months and Kurenkova eventually found out that the house had been mortgaged to someone else when she and her husband were evicted.³³⁸ Similarly, the victims of the **Vesëlkin**-Lefort-Miliutin trio discussed above did not think to question the authenticity of the

³³⁷ *TsIAM*, f. 50, op. 4, d. 8208 (Skrebkova) (1865-66).

³³⁸ *TsIAM*, f. 50, op. 4, d. 8968 (Mazurin) (1866-69).

gang's powers of attorney and the mortgage certificates that they presented. Even Glazunov, who owned an estate just outside Moscow and eventually unmasked the scheme, only became suspicious a few weeks after handing over his money. At that point it took him no more than a few weeks to unmask the scheme by obtaining all the necessary information from Riazan' and Vladimir provincial registers of the powers of attorney, of mortgage certificates, and provincial tax rolls.³³⁹ Although he did have the good sense (eventually) to pursue this course, Glazunov was not able to recover his investment. Even less lucky was Gubernial Secretary Aleksei Zaborovskii, who loaned 10,000 silver rubles to **Princess Cherkasskaia** but was falsely accused by her representative Konovalov of taking the debt document and never issuing the money.³⁴⁰ While it is possible to speculate that Glazunov may have been a naïve rustic landlord, Zaborovskii had served at the state-owned Commercial Bank and must have had a fairly detailed knowledge of the risks of his trade, yet he was perhaps the hardest-hit white collar crime victim of all that I have reviewed, having spent several years under the threat of being exiled to Siberia, in addition of losing his money.

In all of these cases, the main immediate cause of the scheme's success was that lenders and creditors would not deal with each other directly. But this was because Russia's network of private credit had become so large by the mid-nineteenth century that financial links between individuals who were neither acquainted personally nor willing to become acquainted became commonplace. This was the risk that Russia's wealthy and/or aristocratic elites were willing to run. Thus the Glebov brothers avoided trouble only through their own good judgment of

³³⁹ *TsIAM*, f. 50, op. 4, d. 4416 (Veselkin), 81.16.579 (Veselkin) (1845-7), and f. 50, op. 4, d. 4899 (Tatishchev)

³⁴⁰ *TsIAM* f. 50, op. 4, d. 1983 (Cherkasskaia) (1843-53) and f. 50, op. 4, d. 3389 (Zavarovskii) (*sic*) (1848-9).

destroying a key piece of evidence, and Princess Cherkasskaia and the clients of barrister Saltykov (who as a group were so powerful and wealthy that his jury trial was held behind closed doors and not reported in the press) all failed to avoid being taken in. Among this large group of Saltykov's victims were members of Russia's commercial elite, high ranking civil servants and military officers like Actual State Councilor Ternovskii or the Counts Tolstoi and Olsufiev, their daughters and widows.³⁴¹ This group was not overwhelmingly male or female, and as far as I could tell there was no social stigma attached to a woman of high society acting as the borrower directly.

The group of victims of **Aleksandr Schtibing**, the clerk at the Board of Trustees discussed above, was not quite as illustrious, but they were sophisticated enough to be aware that their money was best deposited with the Board, that paperwork should be completed correctly, and that it was a good idea to hire someone who did this every day for a living. Most of them were serving or retired junior officers and civil servants, their wives, mothers, and sisters, a "noble-born maiden," a *meshchanin* and a wealthy serf, but also Actual State Councilor (equivalent to major general) Petr Divov and Actual State Councilor's wife Princess Elizaveta Dolgorukova. What is particularly interesting about Schtibing's scheme is that it victimized members of literally all ranks and estates of Russian society equally (it is less clear whether they were equally held responsible for their foolishness, since many of them admitted that they knew that they were not supposed to pay a Board employee to help them with business there).³⁴² But, considering how easy it was to catch Schtibing, engaging him *may* have been the most reasonable choice for his

³⁴¹ *TsIAM*, f. 142, op. 2, d. 154 (Saltykov) (1897-1916).

³⁴² *TsIAM* f. 50, op. 4, d. 4727 (Schtibeng Aleksandr and Ivan) (1856-62).

victims, compared to hiring someone not connected to the Board. Consider the case of **Ivan Stoliarov**, a *meshchanin* from Valdai, who was asked by a peasant from Novgorod province, Konon Osipov, to help him with depositing 354 rubles (no doubt, all the money he had earned from his trade in the city) at the Board. Stoliarov simply took the deposit ticket and claimed it for his own.³⁴³ A more circumspect investor than Stoliarov would have preferred to hire an actual Board employee, even though, as we have seen, that too did not guarantee security.

Pawning of movable property was another type of debt transaction that involved an increased risk of fraud. Unlike in England, the pawnshop business in Russia was only semi-legitimate; while the laws regulating its operations did exist, in practice pawnbrokers seem to have documented their loans as sales, which obviously made embezzlement easy.³⁴⁴ Other than harm the pawnbroker's reputation, there was little a deceived borrower could do. For example, we have no information on what led the scribe of Moscow Aulic Court, noble-born **Mikhail Draevskii**, who – as already discussed in Chapter Two – made a living on the side by making loans secured by personal property, to embezzle in 1863 the property of the merchant Vasilii Smirnov.³⁴⁵ The original transaction presumably was of a common variety, because Smirnov pawned his family's winter clothing in June (his own fox fur coat and a wool coat, his wife's fur-lined coat, and his son's wool overcoat), and once it started to get cold in November he found the money to repay the principal and asked for his clothing back. However, Draevskii seems to have sold the items as soon as he received them. After Smirnov complained to the judge of the Aulic

³⁴³ *TsIAM*, f. 50, op. 4, d. 6164 (Stoliarov) (1861-5).

³⁴⁴ The only completely safe pawnshop (*Ssudnaia Kazna*) in Moscow belonged to the Board of Trustees and accepted only gold, jewelry, and expensive furs).

³⁴⁵ *TsIAM*, f. 81, op. 16, d. 1642 (Draevskii) (1863).

Court, Draevskii had to leave his post and the city, but he never paid Smirnov for his loss. It seems as though Smirnov's trouble was not only in pawning his property long-term, but also in having his son Pavlin complete the transaction and the fact that technically the lender was Draevskii's wife (who could not be easily located and owned no property of her own). Similarly, a serf of Count Sheremetev named **Epistimia Durkina** (also discussed in Chapter Two) simply re-pawned two gold watches and a gold icon frame that she received as collateral from *meshchanin* Sergei Ivanov.³⁴⁶ When Ivanov wanted to redeem his property, she gave him the deposit ticket which Ivanov, in turn, had to redeem for the additional ten rubles.

Although there were no doubt some individuals who were perceived as particularly likely targets by white collar criminals, it seems that the only pattern, or only "typical" victim was not a particular type of individual – male or female, Russian or foreign, rich or poor, but a particular kind of debt transaction that was more risky than others, for example pawning valuable property to a usurer or using an intermediary with whom one was not well acquainted. Personal acquaintance with one's creditor or debtor, and such transactions for which reliable documentation could be obtained, such as those involving mortgages of real property, made fraud prevention easier, but avoiding the riskier transactions entirely (especially dealing through intermediaries) would have been very difficult given that Russia's credit network was informal and at the same time large.

Conclusion

White collar crime was small-scale in mid-nineteenth century Russia as compared to the railroad scams and bank scandals that were to occur from the 1870s onwards (Veselkin's large criminal

³⁴⁶ *TsIAM*, f. 50, op. 4, d. 6234 (Durkina) (1861-63).

group seems to have been exceptional, leading both to its initial success and to its ultimate demise). Nonetheless, fraud was ubiquitous in terms of its statistical occurrence, the types of criminals who perpetuated it, and the victims that it targeted, thus enabling me to argue that it stemmed from (or that it utilized) the very character of Russia's system of private credit. In other words, the types of fraud and abuse of trust described in this chapter were inevitable in a credit network that completely depended upon informal contacts between private individuals, but at the same time was large enough – and decentralized enough – to require credit intermediaries and transactions between individuals who were not previously acquainted. This growing credit system began to depend on “weak” social ties outside of one's immediate community and kinship network, whereas Russia's larger commercial economy of the 1850s and 1860s depended on the easily forged bills of exchange that circulated like cash. In such conditions, continuing to rely on interpersonal trust made white-collar crime easy to commit and difficult to prevent. Swindlers made good use of the outward marks of their “respectability” and reliability – real or phantom – whether it was a nice coat, knowledge of music, actual ownership of some serfs, a civil service post, or a connection to an aristocratic patron – the very features that also enabled honest persons to obtain credit. The best precautionary mechanism in such conditions was still a personal acquaintance with one's partner (which is what saved Captain Balakan but did not save Dmitriev's victims). The legal system with all of its faults was still the only organized fraud-prevention and fraud-suppression mechanism, and although the police and the courts dealing with “respectable” criminals had to exercise some care (often at the victims' expense), important legal safeguards were still available to those individuals who were informed enough to use them, such as the registers of several types of important legal documents kept in every provincial

center. Petr Veselkin's last victim, Glazunov, unfortunately only thought to check these resources only after handing over the money; he was certainly not the first or the last person to have made that mistake.

CHAPTER FOUR

KINSHIP AND FAMILY

Introduction

As the preceding chapter has shown, Russia's system of private credit in the mid-nineteenth century rested upon personal connections between lenders and borrowers. This chapter argues that family ties in particular were integral to the culture of debt. Court cases reveal that parents and children, husbands and wives, brothers and sisters borrowed from each other, sued each other in court, and served on each others' bankruptcy boards. The basic explanation of this phenomenon is certainly not unique to Russia: for example, writing about England in the late seventeenth and eighteenth century, Margaret Hunt has explained a similar reliance on kin by the necessity to allocate scarce resources, especially liquid cash, as well as by a lack of bureaucratic structures that lodged significant authority in individual households, which induced creditors and debtors to rely on the moral pressure of kin ties to procure loans and to ensure their repayment, thus compensating for the lack of business ethics, commercial law, a finance system, and reliable communications. This personal and informal credit system acted not only as a system of social insurance, but it also created considerable potential for friction.³⁴⁷ Similarly, in Russia the lack of formal credit institutions and other financial infrastructure led relatives and spouses to actively help each other to cope with the burden of debt or, if necessary, to resist and evade creditors, taking full advantage of legal rules and sometimes subverting them to suit their ends. At the same time, individuals actively used the laws of debt to structure marital and testatory property

³⁴⁷ Margaret Hunt, *The Middling Sort. Commerce, Gender, and the Family in England, 1680-1780* (Berkeley, 1997).

arrangements. This chapter therefore supports existing work emphasizing the importance of kinship networks in imperial Russia by extending it from the wealthiest and most influential stratum of the nobility – these kinship networks have been analyzed by John LeDonne – into the overlapping circles of communities that included the lesser gentry, as well as urban and commercial classes.

This chapter also explores the connection between Russia's system of private credit and the laws and legal practices regulating property ownership within the family, in particular that by women. Western scholarship has shown that whether one speaks of the early modern period, or of the nineteenth century, the legal restrictions on female inheritance and marital property control had an immediate influence on the development of private credit, while being adapted creatively by individuals (male or female) to suit their strategies and property interests.³⁴⁸ Russian laws concerning family and marriage often departed from other European examples, for instance by complicating divorce proceedings and by maintaining separate marital property for women. As Michelle Marrese has shown, the law permitting married women to own and control property separately from their husbands was observed in actual practice, and noblewomen in Russia controlled both urban property and provincial landed estates. Marrese has also concluded that Russia's legal system, "for all of its shortcomings," allowed women to protect and to advance their and their families' property interests, and that noblewomen using the courts "experienced no greater disadvantages than their male counterparts."³⁴⁹ Similarly, Galina Ulianova has shown

³⁴⁸ See Margot Finn, "Women, Consumption and Coverture in England, c. 1760-1860," *Historical Journal* 39 (1996), pp. 703-722; Judith Spicksley, "Usury legislation, cash, and credit: the development of the female investor in the late Tudor and Stuart periods," *Economic History Review*, Vol. 61, No. 2 (2008), pp. 277-301.

³⁴⁹ Marrese, *A Woman's Kingdom*, p. 237.

that female merchants and entrepreneurs controlled up to 25% of businesses (depending on the industry, the period and the region).³⁵⁰

This chapter adds to this literature by examining a discrete sphere of activity – borrowing and debt management – which was not as a whole defined by Russia’s system of legal estates, and which was significantly affected by the law of separate property. I also contribute by focusing on family and kinship structures, in which women participated, and whose interests they advanced – as did other members – through exercising their particular legal rights. Thus, for example, separate property ownership by a married woman advanced not only her own property interests, but also her husband’s; families deployed these legal rights as part of their common strategy. Moreover, I argue that the legal rules relating to marital and family property did not merely resolve or prevent disputes and protect individuals’ property rights, but just as frequently they served to create and perpetuate disputes, and, in sum, they served as a strategic tool for individuals to assert their power and to change existing property distributions within kinship networks and between generations.

Debt and Kinship Ties

Perhaps the most important way in which family and kinship relations affected the culture of debt was for relatives to help debtors cope with indebtedness. If the family was unable or unwilling to simply pay up, they had the option to devise strategies, such as hiding the insolvent’s property from creditors (which was of course against the law but apparently widely practiced) or ensuring that the debtor owed some money to his or her relatives, who would then be admitted to participate in bankruptcy proceedings. Another way to protect the family’s

³⁵⁰ Galina Ulianova, *Female Entrepreneurs*.

property was to take some preemptive steps through inheritance or trusteeship arrangements that would prevent property from falling in to the hands of those relatives who were vulnerable to creditors.

The most direct way to help one's relatives was to pay their debts. For example, previous chapters already mentioned young Count Dmitrii Tolstoi, who in the early 1860s incurred substantial debts due to his love of good horses. His father managed to buy up most of Dmitrii's debts and get the insolvency case closed, as well as to spoil the triumph of the one hold-out creditor by complaining about him to the Gendarmes, who started an investigation of his alleged predatory lending practices. The father also assisted his son by taking over the burden of the legal proceedings. In general, it was fairly common in Russia to petition the courts on behalf of one's relatives, especially when they were imprisoned for debt (this was also common in small claims courts in England).³⁵¹ For example, the young merchant Nikolai Kuznetsov, put on trial for "malintentioned" criminal bankruptcy in 1865, benefited from his mother's petitions defending his case, which were prepared with the help of top-notch lawyer Aristov (see Chapter Six).³⁵² Almost a hundred years previously, memoirist Prince Ivan Dolgorukov was similarly bailed out by his own father for his debt incurred by having to maintain a proper lifestyle as a Guard officer in St. Petersburg.³⁵³ According to Dolgorukov's memoirs, this was done in good cheer, perhaps in hopes that the young prince would imbibe the moral lesson and in the future avoid endangering his family's finances. Less wealthy families likewise supported their relatives

³⁵¹ Finn, *The Character of Credit*.

³⁵² *TsIAM*, f. 50, op. 4, d. 8960 (Kuznetsov)

³⁵³ I.M. Dolgorukov. *Povest' o rozhdenii moiom, proiskhozhdenii i vsei zhizni*, vol. 1 (St. Petersburg, 2004), pp. 110-111.

by helping them pay their debts and avoid making new ones. For example, another eighteenth-century memoirist, Andrei Bolotov, after moving to St. Petersburg to take up a lucrative position with the police chief baron Korf, received a timely shipment of money from his country relatives just before he had to find the money to pay for his elaborate new uniform.³⁵⁴

More strategic ways to keep creditors at bay could necessitate keeping property away from the children's control for as long as possible. For example, insolvency proceedings against Dmitrii Tolstoi ran into difficulties when it turned out that he had no property for creditors to seize because, although of age, he lived with his father, who owned everything in their apartment, as well as all the carriages and fancy horses, since Dmitrii had no legal property of his own.³⁵⁵ As I already suggested in Chapter Two, the expectation of an inheritance was often considered by moneylenders a sufficient guarantee of repayment to extend credit to young persons without any money of their own, which is what happened in the Tolstoi case. While Russian law provided parents with the option of issuing children with their share of the inheritance while they were still alive, and while many parents did choose to do so, the key point was that neither the children nor their creditors could legally *force* parents to transfer property during their lifetime, and thus the creditors' only option would be to wait until the parents died and the child came into possession of the inheritance (which in Russia at that time did not always happen easily).³⁵⁶ This was also the situation of another aristocratic spendthrift, Nikolai Naryshkin, who had for years tried to gain control over his mother's property, including the estates that had been specifically set aside "for the children," and which the mother (Privy

³⁵⁴ Bolotov, note 92 above.

³⁵⁵ *TsIAM*, f. 81, op. 18, d. 1259 (Tolstoi) (1863-65), l. 19.

³⁵⁶ As Pobedonostev notes in his civil law treatise, the key point about inheritance law is that the person has to die first.

Councilor's widow Ekaterina Naryshkina) could use during her lifetime but not sell or mortgage. Just in case Nikolai contrived to get around this arrangement, the mother kept him entirely ignorant about this arrangement, and mortgaged the estates illegally to the Moscow Board of Trustees just to make it more difficult for Nikolai to seize them. As an extreme measure, parents could petition to place their children's property under a trusteeship, as was discussed in Chapter Two.³⁵⁷

A more complicated – and less predictably effective – strategy was to contrive to place oneself among the relative's creditors, thus gaining the ability to influence insolvency proceedings. While there is no doubt that Count Tolstoi, in the case just discussed, really did buy up all the claims against his son, it was also possible to simply loan money to the relative: although creditors who ran bankruptcy boards could challenge or even exclude suspicious debt claims, legally it was nearly impossible to prove whether relatives really did or did not transfer the money, as long as the transaction was properly written up. For example, Colonel Count Ivan Zotov when he died in 1853 was embroiled in a legal dispute with a *shtabs-rotmistr* Vasilii Mozharov who maintained that the Zotovs owed him nearly 9,000 silver rubles related to a land sale by the Countess. However, the late Zotov's largest creditor was his son *rotmistr* Petr Zotov – for over 41,000 rubles. While it is unclear just how far Petr was able to press his advantage, Mozharov's actions were clearly constrained, because Petr never tired of pointing out in his court petitions that his debt was much larger than Mozharov's and because Mozharov was ultimately unable to get an insolvency proceeding underway (especially after the remaining two creditors

³⁵⁷ *TsIAM*, f. 49, op. 3, d. 889 (Golitsyn) (1825-1837).

settled their claims).³⁵⁸ However, entangling one's financial affairs with those of relatives could be a dangerous route leading to the one's own insolvency, which is what happened to Collegiate Secretary Petr Zubov, discussed throughout this study, who owned nearly 3,000 serfs in the Upper Volga region. When declared insolvent in 1853, Zubov claimed that he had accepted a debt-ridden inheritance from his brother Aleksandr largely because of the latter's debt of 67,227 silver rubles (300,000 assignat), whereas the other brother, Valerian, wisely refused the inheritance (although he seemed to have helped Petr Zubov to hide some movable property such as furniture after the Board of Trustees finally took over the estate and expelled Petr).³⁵⁹

For merchants – who often lived near each other and constantly shuffled their merchandise around – the preferred solution was to hide movable property with relatives – this included not only merchandise but also furniture, clothing, jewelry, and horses. One example is the criminal prosecution of two insolvent Moscow merchants, brothers Nil and Aleksei Bakhrushin. In 1864, their brother Ivan, who owned a shop of “fashionable goods” (*magazin modnykh tovarov*) in Moscow's Golitsyn Gallery, became insolvent and, after moving some merchandise to his brothers' shop, in 1864 declared to his creditors that he was too ill to continue in business and transferred the shop to Nil, Aleksei, and to his son-in-law. What ensued next were prolonged negotiations with creditors, several settlements (usually of a few dozen kopeks per ruble) and a continuing shift of merchandise between the shops. The shops would be alternately emptied out of anything but the most poor quality goods (*zaval*), and then filled up again. The police

³⁵⁸ *TsIAM*, f. 142, op. 4, d. 1417 (Mozharov) (1869).

³⁵⁹ *TsIAM*, f. 92, op. 6, d. 746 (Zubov) (1853-55).

investigator found fake account books and discovered that the Bakhrushins even managed to place one of their clerks as a member of their bankruptcy board.³⁶⁰

More remote relatives of the members of Moscow commercial classes likewise actively helped debtors to hide property. For example, in later chapters I discuss the case of a Jewish ex-policeman Leiba-Srulevich Sumgalter, who retired after over 20 years of service and then came back to Moscow to collect his debt from *meshchanin* Krasil'nikov, who lost all court proceedings outright, but was able to hide all of his movable property with his mother-in-law, who claimed it as hers.³⁶¹ Similarly, the old merchant Fedor Solodovnikov, who owned a textile factory in the village of Bogorodskoe outside Moscow, transferred large amounts of money to his daughters-in-law (also by the way taking advantage of the separate marital property law by avoiding giving the money directly to his sons, who were his business partners).³⁶² Moscow flour and wheat merchant Mushnikov, when sued for debt in 1842 (including 1,000 rubles left by his late father), transferred merchandise worth 1,500 silver rubles through his wife to his brother Grigorii Volkov and then absconded. This he did despite apparently having “great strife” with his relatives, whom he described as “insignificant people without much money” who were taking advantage of his success.³⁶³

Another merchant, Pavel Lavrentiev, gave 53 large cases of tea to his relative, craftsman Lebedev, who in turn gave it to Lavrentiev's sister-in-law Anna Kochnaia who transferred it to Moscow's Kaluga Warehouse (*Kaluzhskoe Podvorie*), from which it was removed by some

³⁶⁰ *TsIAM*, f. 81, op. 16, d. 2079 (Bakhrushiny) (1865).

³⁶¹ *TsIAM*, f. 16, op. 23, d. 1107 (Sumgalter).

³⁶² *TsIAM*, f. 142, op. 1, d. 862 (Solodovnikov) (1881-1892).

³⁶³ *TsIAM*, f. 50, op. 4, d. 4333 (Mushnikov) (1849-53).

person whose identity the creditors were unable to uncover. As of May, 1865, the creditors were at a loss, when an unknown person appeared at their office and reported that Lavrentiev was hiding his property at Kochnaia's house. Two of the creditors came to her apartment with the police and found Lavrentiev and over ten cases of tea, which Kochnaia (also spelled as Khichnaia and Kichina) admitted belonged to him. However, Lavrentiev had another line of defense, not surprisingly involving debt: he claimed that he had pawned this tea to his sister-in-law several months ago for 1,000 rubles and thus was not concealing any property. While the conclusion of that case file does not survive, Lavrentiev's defense was probably relatively strong, because he produced two witnesses to back up this claim.³⁶⁴

More sophisticated merchants could distribute property among relatives in such a way that even when an informant could point to the location of the items, it was not easy for the creditors to seize them. For example, I have already mentioned in Chapter Two the case of Moscow merchant and honorary citizen Ivan Borisovskii, who owned five houses, two teashops, and a vegetable trading business. When he became insolvent in 1845, it turned out that only one of the houses was free of mortgage and could be seized by the creditors, and that the police search found merchandise worth only 5,000 paper rubles and no movable property. However, Borisovskii's former servant, peasant Egutov, denounced him for secretly taking various items out of his house (which was legally owned by Borisovskii's brother Martemian) and concealing it with his son-in-law, with *meshchanin* Alekseev, and in the shed in the courtyard. The second police search located several carriages, a sleigh and a horse, as well as mahogany furniture, mirrors, a clock, trunks with clothing and boxes with bronze, porcelain, and glass dishes, two

³⁶⁴ *TsIAM*, f. 50, op. 4, d. 8430 (Lavrentiev) (1865-66).

grand pianos, five cases of tea, 10 silver-lined *khomuty*, some old accounting books and many other items. The house of the son-in-law was also searched but nothing was found there.

Borisovskii claimed that all the property belonged either to his wife or to his brother Martemian (although he could not explain why it was packed in boxes). The pianos had allegedly been gifted by Martemian to Ivan's daughters, and the icons were gifted by Ivan's mother to her grandchildren. Clothes and fur coats were his, and he claimed that he omitted reporting them to the creditors because they were only interested in his furniture during their previous visits. All the property found during this second search was valued at 981.07 rubles (in Russia at that time any clothes or furniture that were not brand new were always appraised very low).

The creditors were not satisfied with this result, arguing that Borisovskii "occupied a huge two-storied house, had seven horses, a carriage, and other things, but according to the inventory and a the search he had not a single shirt and not a single suit, except for those on his body, no table linen, and not a single spoon or a saltshaker ... the best and most valuable things are concealed; for instance, there are seven frames that could hold 37 icons, but the icons themselves are missing, there are glass clock cases but no clocks, there are samovar chimneys but no samovars, carafe stoppers but no carafes, and the tableware is packed in boxes as if for transportation." Other servants and relatives testified that in Borisovskii's house in the past they saw numerous valuable items such as icons in silver frames, bronze clocks, silver spoons, carriages, horses, table linen and so on, although no one admitted to seeing anything during the customary face-to-face meeting (*ochnaia stavka*) with Egutatov at the police station. The creditors not surprisingly complained about the fact that the police somehow failed to find property during their first search and had not found anything truly valuable during the second

one. However, despite all these complaints, the Commercial Court took seriously enough the claims by Borisovskii's wife and brother that these items belonged to them or to Borisovskii's daughters, and did not allow the sale.³⁶⁵

Cases like Bakhrushin's, Lavrentiev's and Borisovskii's may not have been representative of typical bankruptcy proceedings, which never made it to the criminal court and are thus more difficult to access today. Those individuals who did get caught were either too incompetent to hide property well, unlucky enough to get denounced by their servants, or simply unable to come to an early agreement with their creditors. Their remaining property would in any case most likely provide little satisfaction to their creditors: carriages and fur coats only maintained a façade of financial stability but were actually worth relatively little compared to debts of tens of thousands of rubles. However, even these relatively unsuccessful attempts to swindle creditors that eventually resulted in a criminal prosecution show that distressed debtors in Russia had little chance of resisting their creditors or inducing them to negotiate a settlement without considerable assistance from their family members, other relatives, and servants, and that the overwhelming majority of these people remained loyal to their bankrupt patron even when questioned by authorities, showing ties of relation and employment to be usually stronger than the obligation to be forthcoming with creditors and government authorities.

Debt, Inheritance, and Family Conflict

In addition to family and kinship ties assisting individuals' attempts to cope with outside creditors, debt ties could also exist *within* families; their functioning was more complex than the straightforward motivation to help one's family. The simplest relationship would be for

³⁶⁵ *TsIAM*, f. 50, op. 5, d. 12850 (Borisovskii) (1859-1865). This ruling did not end the case, since two of the hold-out creditors complained to the Senate, as is recounted in Chapter Four.

borrowers to go to their relatives for loans before seeking help from unrelated individuals. Registers of mortgages and loan letters show that generally between 8 and 14 percent of all transactions took place between close relatives.³⁶⁶ This number was probably higher, since creditors lending to their relatives were probably less likely to require the security of real estate or the additional legal precautions provided by “registered” loan letters (see Chapter Six), and thus more likely to use simpler “private” loan letters.

A more complicated use of inter-family debt ties involved inheritance arrangements. For example, those individuals who were normally excluded from succession either by law or by custom could use debt to claim their share of an inheritance. I have mentioned the litigation involving the Privy Councilor’s widow Ekaterina Naryshkina who died in 1851 and who lived with her daughter Natalia, whereas her wastrel son Nikolai was banned from the house back in 1825. Natalia was entitled by law to inherit only 1/14 of the real property and 1/10 of the movable property, and the mother apparently did not want to disinherit her son (and even if she did, the result would probably still be a prolonged legal case between the siblings). But shortly before her death, the mother signed a loan letter to Natalia for 30,000 silver rubles. Apparently, Natalia was ultimately unsuccessful in enforcing her claim against her mother’s estate, the courts seemingly openly favoring the dissolute Nikolai, but the attempt to use debt to effect a more equitable property distribution is nonetheless notable.³⁶⁷

Another almost identical arrangement took place in the aristocratic family of Colonel’s widow Anna Lopukhina, who did produce a will bequeathing 100 serfs to her second nephew

³⁶⁶ See note 209 above.

³⁶⁷ *TsIAM*, f. 92, op. 9, d. 947 (Naryshkina) (1854-64) and f. 50, op. 5, d. 12279 (Naryshkina).

Actual State Councilor Sergei Dolgorukov, a house in Moscow to her granddaughter, Colonel's wife Voeikova, and absolutely nothing to her niece (perhaps actually second niece), Major General's wife Tvorogova. Tvorogova was apparently was the closest person to the almost 90-year old Lopukhina before her death in 1842 and executed such sensitive tasks as inspecting her estates and dealing with serf disobedience, and after Lopukhina's death she took care of the funeral at her own expense. Although she was excluded from the inheritance, Tvorogova produced an unwitnessed safe deposit receipt (*sokhrannaia raspiska*, a form of IOU) from Lopukhina for 15,000 silver rubles, the form being undoubtedly selected for its legal advantages (discussed in Chapter Six). Dolgorukov resisted Tvorogova's suit, as is recounted elsewhere in this study, and the case dragged on for years; however, once again, the use of the debt document as a form of inheritance seems to be the most likely explanation of this litigation.³⁶⁸

Yet another example of this tactic is found in the case of the Lieutenant-Colonel Nikolai Blaginin, which is discussed in more detail in Chapter Seven. This retired military officer lived alone in a small house in Moscow, and was looked after by an illiterate former serf – and then *meshchanka* – Anna Antonova. Blaginin gave her a debt note for 600 rubles, which she was highly unlikely to have ever possessed in the first place. It is less relevant whether this was Blaginin's idea (it seems as though in such case the document would not have lacked some formalities like witnesses and the appropriate stamped paper), or whether Antonova thought that she should be the proper inheritor of Blaginin's little house for her cares, but it is interesting that this was the preferred solution rather than simply writing a will in Antonova's favor.³⁶⁹

³⁶⁸ *TsIAM*, f. 50, op. 5, d. 12292 (Tvorogova) (1852-76); f. 50, op. 5, d. 12294 (Tvorogova) (1861-2).

³⁶⁹ *TsIAM*, f. 92, op. 9, d. 806 (Blaginin)

The reason for a preference for debt documents over a formal will was no doubt not simply the rigors of inheritance litigation, but also some kind of social constraint that limited one's choice of official heirs, which is possibly illustrated in the lawsuit by Major General's widow Anna von Bussau against a former cavalry lieutenant Prince Nikolai Obolenskii, who apparently borrowed 15,000 rubles from her in 1858 under the supervision of his uncle and guardian, *shtabs-rotmistr* Bove, who served as the County judge in Mozhaisk. The conflict and negotiations that were involved in this case are covered in a later chapter, but what is interesting to note here is that von Bussau was apparently a close family friend, since in a letter to his guardian the young prince frequently implored him to help "poor" Anna Pavlovna who found herself in "extreme circumstances." However, no blood relation between them is mentioned. What makes this debt look suspicious was the fact that in 1858 Obolenskii was a young military cadet under strict military discipline who could neither need 15,000 rubles nor indeed have this money in his possession; thus his story – that Bove made him sign the note, claiming that this was the debt of Obolenskii's father – was probably true. More mysterious, however, are Obolenskii's hints at Anna Pavlovna's "close" relations (*blizkie* – can suggest intimacy when between a man and a woman) with his father, and her taking this hint as a serious insult, about which she complained to the court. Finally, while Obolenskii managed to resist the collection fairly successfully in court, he was eventually confronted by his uncle and several military officers and forced to acknowledge the debt. Although we do not have all the facts of this case, it seems likely that this debt was a well concealed device for Anna Pavlovna to claim a part of

Obolenskii-senior's inheritance, something that could not have been accomplished openly since Anna Pavlovna was not a relation.³⁷⁰

Friction and conflict were no less apparent whenever the older generation intentionally passed on its debts to the younger generation, often thereby ultimately ruining its chances of financial autonomy. The already-mentioned Prince Andrei Golitsyn who in the late 1830s was ruined by his investment in the failed Transcaucasian Sericultural Company first began his downward slide into insolvency when his father transferred to him as his part of his future inheritance an estate in the fertile Kursk province of 2,520 serfs and 9,000 *desiatinas* of land with a saltpeter factory and a liqueur distillery. Golitsyn found that the factory was mortgaged, the estate came without any liquid cash, while at the same time he had to pay his father's "private" debts plus the estate's tax arrears and his own creditors (altogether around 73,000 rubles).³⁷¹

A similar story occurred with another memorable bankrupt, Actual State Councilor Sergei Krotkov, who was also discussed in Chapter Two. When finally testifying to his bankruptcy board in 1874, he complained that from the very moment he received his portion of the inheritance during his father's lifetime in 1847, he was put in a "false" position, whereby the very acquisition of property was the source of his ruin, compelling him to incur significant debts. Part of the problem was that the villages Krotkov received were in complete disorder, so that he had to build himself a house and all other necessary buildings. Even more crippling were the conditions imposed by Krotkov's father in exchange for this early transfer of his share: first, the

³⁷⁰ *TsIAM*, f. 81, op. 18, d. 1277 (von Bussau).

³⁷¹ *TsIAM*, f. 50, op. 5, d. 11976 (Golitsyn).

father kept the income from the distillery located on the estate for three years; second, during these three years the son was obligated to furnish up to 100 peasants (some with horses) to work on his father's land for six weeks in the summer during the crucial harvest season; third, the father sold all the grain from the 1846 harvest and kept the money, and fourth, the father remortgaged the estate just before handing it over to the son and, once again, kept the money. Not surprisingly, despite Krotkov's attempts to straighten out his finances over the years, he was starting with a huge disadvantage that if not determined his ultimate failure, then certainly helped to bring it about.³⁷²

This kind of debilitating inheritance could also be found in merchant families, for example, in the case of the young Moscow merchant Nikolai Kuznetsov, who became insolvent in 1865. He had inherited from his father property worth nearly 90,000 silver rubles, including movables for 1,498 rubles, merchandise worth 46,000, cash of almost 1,000, and debt obligations from various persons worth over 41,000. He also inherited clan (*rodovoe*) property consisting of two houses and grain warehouses in Moscow that were worth 85,000 rubles. But once again, out of these amounts Kuznetsov not only had to provide 25,000 rubles for his mother and sister, but also pay his father's debts worth over 300,000 rubles. Whether or not Kuznetsov was, as his creditors later alleged, something of a wastrel, he was clearly constrained by this burden, according to his mother's court petition: given that he did not inherit enough money to repay his father's debt outright, he had to transfer it to his own name, with all the accrued interest, which

³⁷² *TsIAM*, f. 142, op. 4, d. 81 (Krotkov) (1874-76).

made it impossible for him to incur new loans inherent in the business process, thereby crippling his trade and hastening the insolvency.³⁷³

Even when there was no apparent abuse on the part of the older generation, family deaths could bring one's financial affairs into disarray, not simply because of debt, but also because formalizing the inheritance usually took time, which creditors were not always willing to concede. For example, the Englishman Nikolai Dzhakson (Jackson), who has already been mentioned in this study, became insolvent in 1872 with debts of up to 54,000 rubles, whereas his property was limited to a house which he owned jointly with his mother and brother (whose shares were also burdened with debt). Both died within seven months of each other, which made it impossible for Dzhakson to effect any kind of financial transaction involving the house until his rights of inheritance were affirmed.³⁷⁴

In addition to simply passing on their debts to the next generation, parents could also contrive to use debt to continue to control their children after they came of age and (in the case of women) moved under their husband's supervision. One such example is the case of the wealthy Moscow merchant Dmitrii Savinov, who in 1839 married off his daughter Maria to *podporuchik* (Second Lieutenant) Vladimir Aleksandrov; to provide her with a dowry he purchased a large estate outside Moscow from the aristocratic Guard Colonel Ivan Musin-Pushkin. At that time, according to the daughter's testimony, Savinov had a talk with his daughter, giving her "many examples of unfortunate marriages, in which husbands, having spent not only their own fortunes, but also those of their wives, left them with the children lacking any daily sustenance, and told

³⁷³ *TsIAM*, f. 50, op. 4, d. 8960 (Kuznetsov) (1865) [check number] These cases should be compared with those discussed in Chapter Two, when deceased persons left no debt.

³⁷⁴ *TsIAM*, f. 142, op. 4, d. 1446 (Dzhakson) (1872).

[her] that [her] husband was still a young man, little known to [them], and God knows what he will be like in the future.” Ostensibly to guard against this uncertainty, Savinov had his daughter sign a 350,000 ruble mortgage note to him for the estate, promising to nullify the debt once Aleksandrov had his approval. Because of her “child’s love and unconditional obedience,” the daughter did not dare to refuse. Although the entire estate was purchased for only 117,000 paper rubles, the huge mortgage only applied to a small portion of only 40 *desiatinas*.³⁷⁵

Although – as I recounted in Chapter One – Savinov’s contrivances were remarkable for their complete failure, self-dealing by individuals appointed as trustees over a relative’s property was far from uncommon, although because of the formal way in which trustee’s reports were reviewed by the courts, such incidents are not always easy to identify. One obvious example involved the inheritance of Guard Captain Muraviov, who died in 1848, leaving a 27-year old “insane” daughter Ekaterina and 3,655 serfs in five different provinces. Her guardians were Muraviov’s sister Sofia Bibikova and her husband Major Bibikov. Although during the first few years of the trusteeship much of the existing private and state debt was paid off, it then turned out that Muraviova’s other aunt, Chertkova, had loaned 6,000 rubles to bury Ekaterina’s grandmother, and Major Bibikov loaned 6,804 rubles to help pay the interest to the Board of Trustees, as well as taking another interest-free loan of 4,500 rubles. By 1859 the trustees lost all fear and new huge debts surfaced: a 60,000 debt to Chancery Clerk Aleksandr Muraviov (allegedly incurred back in 1844), as well as a 42,000 debt to Sofia Bibikova; at the same time, in order to pay off the 60,000 debt, the trustees in 1860 borrowed over 30,000 rubles from – not

³⁷⁵ *TsIAM*, f. 91, op. 2, d. 704 (Savinov) (1850-51).

surprisingly – that same Sofia Bibikova.³⁷⁶ In other words, Muraviova’s guardians, who were most likely also her heirs, had no scruples about helping their own finances out of her estate, in part through spurious-seeming loans.

Lawsuits between parents and children in pre-reform Russia had to be litigated in the special Equity Court (*Sovestnyi Sud*), established by Catherine II’s court reform of 1775 apparently under the influence of the English Court of Chancery and Court of Exchequer, which had jurisdiction over numerous types of cases for which common law contained no remedy.³⁷⁷ In Russia, the government obviously did not dare to give the courts a similarly broad discretion, and the equity courts established in each province were instead tasked with processing cases that required special protection and consideration for one or more of the parties, such as criminal offenses by minors, lawsuits between parents and children, and cases involving accusations of witchcraft and sorcery (apparently because popular superstitions required special measures for their eradication).³⁷⁸ Another important distinction was that English equity procedures (especially in the Court of Chancery) were written and secret, actually rather similar to pre-reform procedures in regular Russian courts; by contrast, Russian courts of equity employed a streamlined oral procedure involving a face-to-face meeting between the parties that at least in theory was more similar to a mediation procedure than a trial. Judging by the records of the Moscow Equity Court, its most common type of civil case was parents suing children for maintenance payments (thus making King Lear’s troubles less likely in the Russian context).

³⁷⁶ *TsIAM*, f. 50, op. 5, d. 12073 (Muraviova) (1848-1867).

³⁷⁷ Mark Raeff, “The Empress and Vinerian Professor.”

³⁷⁸ *SZ*, Vol. 10, part 2, Art. 3263 (note 2). John Baker, *An Introduction to English Legal History*, 4th edn. (Oxford, 2005) on equity in England..

Thus, while similar conflicts between spouses were litigated in ordinary courts (as I discuss later in this chapter), some equally complicated cases like Savinov's had to go to the Equity Court because they were presumed to be less acrimonious and less intense, and were to be resolved through a mediation-like procedure rather than a full-blown lawsuit. In reality, father versus son cases could be anything but amicable, such as the bitter dispute in the late 1840s between *meshchanin* Kolpinskii and his son Petr, which centered on a loan letter for 10,000 rubles, which was written out in the son's name, but which the father wanted in his possession. The senior Kolpinskii eventually complained to authorities that Petr had expelled him from the house, and got the police to seize all of his property. Unfortunately for the father, his house had also been signed over to his granddaughter, and in addition mortgaged to his *svat* (the father of his daughter-in-law), serf Tsurikov. Petr was arguing that his father was not expelled at all but actually went to Moscow to collect a debt from his son-in-law for 550 assignat rubles. It is unclear how the Equity court would have eventually resolved this bitter conflict, but the father died in August of 1848, and the court happily closed the case.³⁷⁹

This section has shown that the relationship between kinship structures and the culture of debt was much more complicated than mutual aid and cooperation between relatives helping each other to pay debts or to hide property from creditors. No less often, debt served as a vehicle of family conflict and tension, pointing to the struggle around attempts to redistribute property between generations, as well as the struggle for power within families. Results of course varied from case to case, but it seems that property owners were much less successful – if the cases I

³⁷⁹ *TsIAM*, f. 91, op. 2, d. 322 (Kolpinskii) (1848-59).

reviewed are representative – in using debt as a substitute for testatory arrangements, than they were in passing their own debt along to their descendants.

Debt and Marital Property

Both imperial-era lawyers and modern historians have been unsure as to exactly why imperial Russia adopted the regime of separate marital property, which allowed women legal control over their dowry, and the acquisition, ownership, and management of property completely independently from their husbands. Pre-reform jurist Dmitrii Meier offered a functional explanation: he pointed out that the rule did not prevent effective joint control over marital property in properly functioning marriages (the few legal formalities like getting a wife's signature could be easily taken care of), while at the same time providing real protection for spouses in poorly functioning relationships. This is certainly true but does not explain very much, since there were many perfectly reasonable legal rules in Russian (or any other) legal history that were proposed but never adopted, and vice versa – many very inconvenient rules were stubbornly retained until 1917. The historian Michelle Marrese offered another, historical, explanation in her monograph on female property ownership and control in Russia. She argued (together with some earlier jurists like Pobedonostsev) that the rule first became practically effective in the first half of the eighteenth century and concluded that it offered some safety for family property when nobles were frequently exiled and dispossessed during the political struggles of that period. This does not, however, explain why some key aspects of the rule, namely, the limitations on spouses' liability in insolvency cases, were only finalized in 1846 after prolonged debates, when the horrors of the Secret Chancery of the 1730s were long past and after even the Decembrists' families had suffered no repressions.

The government's concern that led to the law of 1846, as Marrese has shown, was that spouses would abuse the separate property rule by fictitiously transferring property between each other and by making fake loans between themselves in order to evade creditors.³⁸⁰ The law of 1846 thus required an insolvent's wife to submit proof of her property ownership and allowed her to keep all property either received as dowry, inherited or gifted by third parties, or purchased with her own money (or even with her husband's money if she had within ten years paid the husband's debts of equal value). Moreover, the wife could keep any property acquired more than ten years before the insolvency, even if it was gifted by her husband. Even those wives who could not submit the necessary proof were still protected by the rule that secured for them all the women's and children's clothing, half the dishes, furniture, silverware, carriages, horses, and horse harness in the couple's possession.³⁸¹ During insolvency proceedings, wives could be admitted to participate as creditors, but only if the money they lent to their husbands was acquired in one of the ways listed above.³⁸² Interestingly, although wives obviously could also become insolvent and try to hide property with their husbands, the rule was worded differently in the two otherwise identical versions inserted in the Civil Code (intended for non-commercial debt) and the Commercial Code. Whereas the heading and the title of the 1846 law was gender neutral and only refers to transactions "among spouses" (*mezhdú suprugami*), the Civil Code version was couched in gendered language, referring only to an insolvent's wife. However, the insertions into the Commercial Code were gender-neutral - referring to "spouses" or to transfers both from husband to wife and from wife to husband – in the article about invalid

³⁸⁰ Marrese, *A Woman's Kingdom*, pp. 68-69.

³⁸¹ The rules of 1846 – PSZ II, Vol. 21, No. 20138. See also Pobedonostsev, *Kurs*, Vol. 2, p. 133.

³⁸² SZ vol. XI, Commercial Code, 1857 edn., Article 1936.

property transfers between spouses. The article about a wife's property being out of reach for creditors was once again gendered.³⁸³

The law of 1846 remained unchanged until the end of the imperial period and had great significance for Russia's culture of debt. First, the law obviously did not eliminate opportunities for husbands and wives to support each other's maneuvering against creditors (or against debtors, as the case might be). Second, the separate property regime as finalized by this law created a potential for arm's length debt relations between spouses that could be used for various property arrangements and lead to bitter litigation, for example when spouses used debt to effect dowry arrangements or to dispute them, or even to secure divorce (something that normally was not easily done in imperial Russia through official channels). For example, dowry could be written up in whole or in part as a loan, while women could use their husbands' debts to themselves as a leverage to make them cooperate in divorce proceedings. This section examines the situation in which spouses used their technically separate legal personality to protect each other's interests vis-à-vis creditors by, for example, standing surety for each other, petitioning courts, and participating in insolvency proceedings, as well as invoking the law to resist creditors' attempts to seize property.

The simplest way to take advantage of spouses' separate legal personalities that was commonly used in the mid-nineteenth century was to guarantee each other's debts (see Chapter Six for the legal background of suretyship in Russia). There are many examples in the cases that are discussed in detail elsewhere in this chapter: Collegiate Councilor's wife Liubov' Pevnitskaia had some of her debts guaranteed both by her husband and by her father priest Rozanov, while

³⁸³ Commercial Code Articles 1767-1768 (1932-1933) were gender neutral; Articles 1770-1772 (1935-1937) only referred to wives. (for the Civil Code provisions, see SZ Vol. X, part 1, Appendix to Article 114 (1842 edition)).

she herself likewise guaranteed some of her husband's debt.³⁸⁴ In 1825, Moscow merchant Marshchev was imprisoned for debt to the Treasury connected to liquor taxfarming, whereupon his wife petitioned the Governor to release her husband "at her guarantee" (*mne pod raspisku*).³⁸⁵ Thirty five years later, when another insolvent merchant Vasilii Prokhorov quarreled with his relatives (who, as I noted earlier, managed to establish trusteeship over his property), so that none of them would agree to be his surety to keep him out of debtors' prison, eventually his wife Iuliia Fedorovna guaranteed his debt, although at the end of the case file, creditors became suspicious and were inquiring whether she actually owned any property of her own that she could use to guarantee her husband's debts.³⁸⁶

Even when a wife did not own debt-free property but merely was engaged in a "secured" legal case against someone else,³⁸⁷ it could prove enough to rescue a bankrupt husband. This happened, for example, with Actual State Councilor Prince Vladimir Sergeevich Golitsyn, who became insolvent after unsuccessfully attempting to run a textile factory in the Bronnitsy district in partnership with several aristocratic women, including a Bakhmetieva and another Golitsyna, as well as his wife. Of his own property Golitsyn had only seven serfs plus a salary of under 550 rubles. In 1849, Golitsyn's wife Praskovia successfully petitioned the Moscow County Court to secure some of the claims against her husband totaling almost 40,000 paper rubles by her own claim against Colonel Nikolai Borisovich Golitsyn for 60,500 paper rubles, which she had been trying to collect since 1826. Needless to say, the creditors refused to in effect take over

³⁸⁴ *TsIAM*, f. 92, op. 6, d. 741 vol. 1 (Pevnitskaia) (1852-54).

³⁸⁵ *TsIAM*, f. 16, op. 4, d. 2522 (Marshchev) (1825).

³⁸⁶ *TsIAM*, f. 78, op. 3, d. 44 (Prokhorov) (1859).

³⁸⁷ Meaning that the defendant's property sufficient to cover the amount of the lawsuit had been inventoried and placed under "interdiction" (i.e., could not be sold or mortgaged).

Praskovia's ancient lawsuit against her debtor, but she then petitioned to consider their claims as not concerning her and her property, leaving the creditors with the option of going after her husband's estate with its seven serfs.³⁸⁸

Similar to parents, wives could petition on behalf of their husbands, especially if they were imprisoned and could not easily advocate for themselves. For example, in 1844 Moscow *meshchanin* Ivan Monakhov became insolvent for not repaying his debts to various persons related to his cartmaking business, mostly, it seemed, due to foul play by merchant Dmitrii Evdokimov who was refusing to pay his debt to Monakhov of over 10,000 rubles, while presenting his own claim for half of that amount. As part of the prolonged case that stretched into the 1850s, Monakhov's illiterate wife Anna, with the help of *meshchanka* Elizaveta Filipova (who signed her petitions for her), successfully complained to the Governor as part of Monakhov's appeal process and offered to stand surety for her husband.³⁸⁹

Yet another related option was for wives to make sure that they were counted among their husbands' creditors. For example, in the Krotkov insolvency case that has already been discussed, his creditors included his wife Varvara with the claim of over 47,000 rubles, twice as much as the next largest claim. Adding to this the large claims by several other Krotkovs, it is not surprising that the creditors eventually voted to grant him full bankruptcy discharge.³⁹⁰ Another wealthy debtor, Privy Councilor Prince Vasilii Khovanskii, who died in 1850, likewise had his wife listed among the creditors with the hefty claim of 13,148 rubles.³⁹¹

³⁸⁸ *TsIAM*, f. 81, op. 21, d. 302 (Golitsyn).

³⁸⁹ *TsIAM*, f. 16, op. 23, d. 463 (Monakhov (1857); see also f. 50.4.4897 (Monakhov) (1857-1862).

³⁹⁰ *TsIAM*, f. 142, op. 4, d. 81 (Krotkov).

³⁹¹ *TsIAM*, f. 50, op. 5, d. 11967 (Khovanskii).

While all these strategies utilized the fact that the wives of insolvent husbands remained off-limits to creditors and could actually count themselves among them, the law of separate marital property was also extremely useful in another common type of situation when creditors attempted to seize the property that belonged (or allegedly belonged) to the debtor's spouse. For example, in the Moscow Equity court case of merchant Savinov discussed in the preceding section, which involved him suing his daughter on the basis of a mortgage note for the estate that he purchased for her as dowry, the father attempted to argue that he actually took this mortgage note in exchange for 200,000 rubles that he gave to his daughter's husband. He backed up this argument by some letters written by his son-in-law. However, the daughter reasonably maintained that she had no idea whether her husband and her father had any debt relations, but "according to existing laws" she was not to be held accountable for them since the letters did not mention her in any way, and her husband was not mentioned in the mortgage note.³⁹²

The issue of separate marital property came up even more often when creditors simply showed up at the debtor's house and attempted to inventory or take away movables. For example, in the case of Moscow brewer and merchant Marshchev who was imprisoned for treasury debt in 1825 (that is, long before the 1846 law), the police searched his apartment but were forced to conclude that all the property there belonged to his wife. Thus, even the government, while usually very jealous of its financial prerogatives, had enough respect for the law to interpret it to favor the wife.³⁹³ In another case, Lieutenant Nikolai Tolstoi managed to mix up his property with that of his wife Natalia (who was also burdened with debt, some of it

³⁹² *TsIAM*, f. 91, op. 2, d. 704 (Savinov) (1850-51).

³⁹³ *TsIAM*, f. 16, op. 4, d. 2522 (Marshchev) (1825).

guaranteed by her husband, while at the same time acting as her husband's creditor) so thoroughly that the police could not properly untangle the question of ownership and in 1851 sent the case to Moscow County Court "as is." The court obviously objected that it was unclear what property, if any, belonged to Tolstoi's wife, and which claims had been properly submitted to his review, and, finally, noted that some of the claims were actually against the wife, and that "it is even more impermissible to mix up the collections against him with those against his wife simply because this court is only examining the case of Mr. Tolstoi." The court then sent the case back to Moscow's central police office (*Uprava Blagochiniia*) for additional investigation. When the police came to his house to inventory his movable property, Tolstoi claimed everything in the house belonged to his wife, who submitted the proper "explanation" and refused to let the police into the house.³⁹⁴ Similarly, in another case Collegiate Assessor's wife Maria Serebriakova refused four times to let the police inventory the property – furniture, horses, and carriages – that she claimed was hers. The court eventually held that half of that property was still subject to seizure, but Serebriakova was referring to the 1842 *riadnaia zapis'* (dowry contract) that showed this property as hers.³⁹⁵

Even in situations when wives were unable to protect their property (at least in the short run), the rule of separate property permitted them to fight back the police and the creditors. In the 1841 case of a modest and not-too-educated Moscow merchant Ivan Ignatiev, who was accused of forging a *veksel* and imprisoned at a police precinct, the authorities inventoried and sealed the merchandise in the shop of his wife Avdotia and obstinately resisted petitions to reverse their

³⁹⁴ *TsIAM*, f. 92, op. 6, d. 1082 (Tolstoi) (1851).

³⁹⁵ f. 50, op. [1]4, d. 12053 (Serebriakova) (1851).

decision. According to Ignatiev's complaint to the governor, a corrupt and malevolent police clerk falsely wrote in the interrogation transcript that the shop belonged to him. In fact, Ignatiev only "managed and oversaw" the establishment, which his wife legally owned, financed with her own capital, and provided with merchandise of her own manufacture. We do not know whether Advotia eventually managed to get her property back, but it is clear, first, that both she and her husband were fully aware of the law of separate marital property despite their rather modest status, and in fact probably set up their joint business with this rule in mind, and second, that the police's obstinacy may have resulted from the fact that it was Ignatiev who managed the business and contracted debt and thus appeared to be the owner. Because *meshchane*, unlike merchants and peasants, did not need to enroll in guilds or obtain trading licenses, it would have been very difficult for the court to ascertain who actually owned the business. While this confusion obviously harmed the Ignatievs' finances while their business was shut down, this case shows that even in a situation involving serious police misconduct (which, incidentally, caused the governor's personal intervention) the law of separate property prevented Ignatievs' from losing their shop outright.³⁹⁶ In situations when the property clearly belonged to the husband, the creditors and the courts seem to have followed the requirement of giving the wives half of the husband's movable property. For example, in the case of merchant Artemii Riazanov, half of his property was given to his wife Matrena Anisimova Riazanova, and the other half was sold at an auction, except for the family's icons which were also given to the wife.³⁹⁷

³⁹⁶ *TsIAM*, f. 16, op. 5, d. 241 (Ignatiev) (1830-37).

³⁹⁷ *TsIAM*, f. 50, op. 4, d. 8960 (Riazanov) (1866-1869).

The rule about separate marital property also applied when it was the wife who had become insolvent, occasionally upturning the gender stereotypes that were reflected in the statutory language. For example, Collegiate Councilor's wife Liubov' Pevnitskaia did not allow the police to take property from her house, claiming that all of it had belonged to her husband before their wedding, although it turned out that two years earlier she had acknowledged this property (furniture, three horses, horse harness, and an icon) as hers. Thus, the County Court ordered in 1852 to take away Pevnitskaia's movables "without accepting any more refusals from her," but three months later her husband was still not allowing the police to take the valuables to an auction, claiming that all the property was his, that his wife's debts could be paid out of the income from her rural estate, and that in any event he had the right to consider half of these possessions as his "untouchable property" (*neprikosnovennoi svoei sobstvennostiu*), thus applying to himself the law of 1846 that on its face was designed to protect wives and was specifically couched in a feminine language.³⁹⁸

In many of these cases, while it is clear that debtors were attempting to use the separate marital property rule to advance their interests vis-à-vis their creditors', the extent to which the latter were actually swindled is not always clear. For instance, Prince Vladimir Golitsyn, already mentioned above, was sued and declared insolvent because all the debts of the textile factory that he was running were in his name, whereas the actual owners of the factory were his wife, another Golitsyna who owned the estate where the factory was built, and the general's wife Bakhmetieva. Intriguingly, Golitsyn mentioned in his testimony that although the losses from the fire on the factory constituted his wife's share, they "fell" on him. It seems that the creditors

³⁹⁸ *TsIAM*, f. 92, op. 6, d. 741, vol. 1 (Pevnitskaia) (1852-54), l. 145-145 ob.

were not able to clearly determine who owned the factory and that there was some kind of original agreement whereby the three women were the actual owners but Golitsyn, the “manager,” contracted to run the factory at his own expense.³⁹⁹ This arrangement may have been made confusing on purpose to make debt collection more difficult and to shelter the three women and their property.

While it was obviously difficult to catch someone of Prince Golitsyn’s status in any obvious wrongdoing, the law was rather strict with another common abuse of the separate property rule, which consisted of one spouse issuing debt documents in the name of the other without the appropriate power of attorney. As Margaret Finn has shown for Victorian England, wives’ ability to pledge their husbands’ credit resulted in a great deal of litigation and legal uncertainty.⁴⁰⁰ In Russia, this kind of situation could result in a criminal proceeding, as beset the humble Moscow *meshchanin* Mikhail Loskutkov who was placed on trial for issuing *veksels* in his wife’s name in 1853; he signed the documents because of his wife’s illiteracy, which created an additional problem when she claimed that she never borrowed any money and never gave a power of attorney to her husband. Loskutkov himself admitted during the interrogation that his wife knew nothing about his action, although one of the witnesses, the creditor’s servant, testified that when he was sent to ask the Loskutkovs for repayment, it was the wife who requested a postponement. The wife, however, claimed that she was merely asking for a postponement until her husband returned home and was able to respond himself. The Chamber of Criminal Justice held Loskutkova’s denial to be invalid, but she appealed to the Senate in 1863, arguing that she did

³⁹⁹ *TsIAM*, f. 81, op. 21, d. 302 (Golitsyn).

⁴⁰⁰ Finn, “Women, Consumption and Coverture.”

not engage in trade at all. The Senate ruled that Loskutkova was not to be held responsible because her husband admitted that she knew nothing about the *veksels*, because she did not admit to anything, and because the *veksels* were not properly registered with the municipal loan broker.⁴⁰¹ Thus, this case revealed the tension between the formal *veksel* law (the advantage of using bills of exchange was, in part, that they circulated like cash, i.e., the only legally relevant information was what was written on the *veksel* itself – as I discuss in Chapter Six) and civil law, which was more willing to accept outside evidence: and surprisingly the latter won.

The legal regime of separate marital property may have been instituted to protect noble families from the autocracy, but in the mid-nineteenth century it served as yet another legal and practical strategy deployed by individual litigants, one that was intimately connected with the culture and practice of debt. Court cases show that separating the spouses' property was rarely easy even after the law of 1846 limited the kinds of property the spouse could legally hold to be his or her own. At the same time, the rule most likely eliminated many other possible disputes, such as those that occurred in England because of the application of the law of necessities.

Debt, Dowry Arrangements, and Interspousal Litigation

In addition to using the regime of separate marital property to resist outside creditors, husbands and wives utilized the law to borrow from each other. I argue in this section that debt arrangements often reflected larger property disputes and strategies between the spouses, and were utilized by one of the spouses to secure their interests at the expense of the other.

Perhaps the simplest arrangement was to contractually recreate the so-called “dotal system” whereby the husband acquired the ability to use the wife’s dowry in exchange for providing an

⁴⁰¹ *TsIAM*, f. 50, op. 8, d. 595 (Loskutkov) (1862-3).

equivalent amount of property as security in event he lost the dowry through bad investment or other circumstances. This system, adopted in some mid-nineteenth century continental legal systems,⁴⁰² was not the default rule in Russia, where the dowry remained under the wife's complete control. However, it could be provided for in the marriage contract. For example, in the 1850s, a Guard Lieutenant Prince Aleksandr Kol'tsov-Mosal'skii issued his wife Elena (nee Ghika, a well-known feminist and Romantic artist and writer under the pen name Dora d'Istria⁴⁰³) loan letters for 7,500 rubles. According to the husband, this was done so as to enable him to repay his 5,000 ruble debt to a Friedrichsgam merchant's wife Sofie Miller, for which debt Elena acted as a surety. When Elena sued her husband, he claimed that because he had already repaid Miller's debt, the loan letter should be nullified. However, the wife in her petition interpreted the story differently, arguing that her husband gave her the loan letter not because she was acting as a surety, but to guarantee the part of her dowry that she turned over to the husband to enable him to repay his other debts. To support her claim, she sent to the Aulic Court from Florence where she was living, carefully arranged and annotated extracts of her husband's letters that she had translated into Russian and had notarized by the Russian consul in Livorno. These letters showed that the Prince had a habit of spending his wife's as well as his own property and was at least on paper feeling guilty about it. However, the court obviously refused to accept copies of extracts of the letters as proof, since the consul only certified the translations and not the original letters. Although Elena had no less a person working on her behalf than the chief of

⁴⁰² D. I. Meier, *Russkoe grazhdanskoe pravo* (Moscow, 2003), p. 734 (originally published in 1858-59); Pobedonostsev, *Kurs*, Vol. 2, pp. 124-127.

⁴⁰³ See Armand Pommier, *Madame la comtesse Dora d'Istria*, (Brussels, 1863); Bartolomeo Cecchetti, *Bibliografia della Principessa Elena Ghika, Dora D'Istria*, 6 ed. (Florence, 1873); Dora d'Istria, "Italy" in *Woman Question in Europe*, ed. Thomas Stanton (New York, 1884), p. 327.

the political police Aleksandr Potapov, she lost the first proceeding at Moscow Aulic Court, which held that her own petition admitted that the letter was “moneyless” because it was issued to guarantee her dowry. According to the court, Article 2017 of the Civil Code that provided that letters “given in exchange for work performed, services, merchandise,” etc., were still collectable. Incidentally, the civilist Pobedonostsev in his treatise interpreted this rule as requiring that something of value be transferred – and here the husband clearly benefited by getting the money to pay this debt, which makes the decision appear incorrect. Unfortunately, the records from the rest of the case do not survive so we do not know if this was its final chapter.⁴⁰⁴

Much more successful was Anna Shevich, wife of a former Guards officer, who held a “safekeeping note” (*sokhrannaia raspiska*) from her husband for 60,000 rubles. The couple exchanged arguments at the Aulic Court for over three years in 1863-65. The husband recounted that Anna petitioned for divorce in 1862 in Kaluga after a “unpleasantness” had appeared between them, and she moved to live with her father. The husband allegedly implored her to end this “unpleasantness” and the wife agreed but, knowing her father’s dislike for her husband, suggested that the husband write a debt note in her name with the sole purpose of showing it to the father, thereby convincing him not to hinder the reconciliation desired by the husband. But having obtained the note, Anna remained with her father and stopped the proceedings in Kaluga only to restart them in Moscow, and used the debt to persuade her husband not to hinder the divorce proceedings, otherwise threatening him with a lawsuit. The husband also argued rather convincingly to a modern reader that his wife would hardly have loaned him 60,000 rubles while quarreling with him and engaging in divorce proceedings. The husband also submitted a letter

⁴⁰⁴ *TsIAM*, f. 81, op. 18, d. 1326 (Kol’tsova-Mosal’skaia) (1864).

from Anna where, he claimed, she explicitly admitted that she was only using the debt to get the divorce:

I feel compelled to employ such methods, which do not at all fit my character, and do not agree with my ways of thought. If there was not this other business between us, I would never even think to talk about this money, which I gave you not meaning to ever demand it back, and which I will never demand, if you will not hinder the divorce. [...] I cannot understand why you call [this note] moneyless. It is true, I did not give you the money precisely on the day you wrote the note, but it does state that the money was taken in the course of some time. You should not think that I am tormented by the thought that I want to proceed against you using a moneyless note, and I feel completely confident in this respect, because honestly I do not at all consider this note moneyless.

Confronted with this letter, Anna claimed that this letter did not constitute a proof according to the Russian Civil Code (articles 318-19) and that if anything, it shows that the debt was *not* moneyless. She (or rather her lawyer) showed a rather sophisticated understanding of the law, arguing that the words that she did not in the future intend to ask the money back was not a condition for the loan but simply an intention that could always change later.⁴⁰⁵ And even if the money did constitute a gift, she could demand it back according to Article 974 of the Civil Code because of her husband's "slander and clear disrespect." Whether or not the letter was a threat to her husband was completely irrelevant because it did not in any way suggest that the note was moneyless.

While it is not exactly clear from this point how the courts would eventually rule, the husband chose not to try his luck (continuing to defend the suit would have involved posting sufficient property to "secure" it). As of March 1866, Anna Shevich was referred to as the wife of Titular Councilor Popov and was said to have gone abroad. Thus, the final resolution of the court was to close the case because the wife had "returned the note to her husband and thereby

⁴⁰⁵ Similar language in Pobedonostsev, *Kurs grazhdanskogo prava*.

acknowledged that it did not require payment.”⁴⁰⁶ This case is perhaps illustrative of the pre-reform legal system, in that it clearly shows some of the requirements for success in litigation: first, a certain amount of guile, second, access to qualified assistance, and third, recognition that the legal system was often more effectively used by threatening litigation rather than by an actual suit.

Another use of debt was to enable husbands to seize a portion of wives’ property that was officially off-limits to them. For example, another notable mid-nineteenth century female Romantic author, Major-General’s wife Ekaterina Lachinova, signed a promise to her husband in 1837 to pay him 30,000 assignat rubles out of her 100,000 ruble dowry that her father was supposed to provide for her, with the purpose to provide for Lachinov’s expenses during the first seven years of their marriage. The agreement was that if the father, tax farmer and *kamerger* Petr Shelashnikov, did not pay this money, the agreement provided that the husband could still recover this amount. In order to stop the “marital discord” between the spouses, the wife’s mother acted as a surety. Lachinov sued his wife and her mother in 1847, but unsuccessfully.⁴⁰⁷

Another aristocrat who attempted to get his hands on his wife’s property by means of debt was Prince Urusov, who in 1864 sued his wife pursuant to a loan letter for 10,000 rubles that had been issued in 1860. The wife presented as security an estate in Tver province but disputed the suit as illegal, arguing that “the above-mentioned loan letter is moneyless, taken from me by trick (*vymanennoe*) during my difficult illness – in the last month of my pregnancy, and given by me with the sole purpose of providing for my husband’s future in the event of my death, on the

⁴⁰⁶ *TsIAM*, f. 81, op. 18, d. 1290 (Shevich) (1862-63).

⁴⁰⁷ *TsIAM*, f. 81, op. 18, d. 725 (Lachinova) (1850-51).

condition that he desist from collecting the debt while I am still alive.” Apparently Urusova had allowed her husband to manage his property, and before a trip abroad in 1858 issued a will under his persuasion (giving all of her property to him), but seeing how he mismanaged her property and wishing to provide for her children, she nullified the will and instead issued the loan letter so as not to deprive him of a living in the event of her death. Urusova also noted in her petition (standing gender stereotypes on their head):

This current collection from me is even more unjust, because during the many years of our life together, my husband had no means of his own and all the maintenance of the house, children, and of himself was always effected, and is still effected, solely at my expense; my husband’s capital, which he received after his father’s death, was squandered by him before 1860, according to his assurances in order to improve my estate in Kaluga province and on various speculations; however, my estate not only was not improved, but rather was brought to a ruinous condition. But in October 1860 my husband did not have ten thousand rubles that he could loan me; otherwise, he should have been able to give exact directions as to when exactly and for what purpose I borrowed this kind of money from him, while being very ill and not leaving my room for several months; likewise, where he kept this amount, in what kind of bills it was given to me and who else knows about this. Otherwise his suit is an abuse of my trust, with which he, not in any way helping me in bringing up five children and taking all of his maintenance from me, is turning a document that was taken from me by deceit in the above-mentioned circumstances, to harm the entire family.

At the end of this petition (written up by Moscow *meshchanin* Semen Kusovnikov and represented by Collegiate Assessor Zhuazel’), Urusova requested the police to investigate the moneylessness of the loan letter. The police forwarded this case to the Aulic Court without making any kind of determination or resolution, so the court sent it back, reporting to Urusova that once the police did make some kind of official resolution, she could submit her petition to the appropriate court that had jurisdiction over her, in the event “she wished to begin a legal suit” (*esli pozhelalet nachat’ delo sudom*).⁴⁰⁸

⁴⁰⁸ *TsIAM*, f. 81, op. 18, d. 1307 (Urusov) (1864).

A much easier trick for a spendthrift husband was to sell the wife's loan document to another person, which is what Gubernial Secretary Ivan Martynovskii did with the 10,000 ruble loan letter from his wife Avdotia. The husband sold the letter to merchant Andrei Eikhel', who in turn sold it to another merchant, Pavel Bronnikov. Once the demand for payment trickled back to Martynovskaia in 1853, she claimed that she had made the final payment to her husband, and she presented his receipt as well as witnesses who confirmed that she had to borrow money to pay off her husband, and that he promised to tear up the letter. The receipt dated August 17, 1852 stated that the husband obligated himself to tear up the debt and was witnessed by Gubernial secretary Timchenkov, merchant's son Basarev, and State Councilor Kovalevskii. Merchant Novikov, hired to collect on behalf of Bronnikov, argued that the receipt did not indicate whether it referred to that same loan letter or some different one and did not contain the signature of the municipal loan broker (*makler*) or of Martynovskaia's sisters who had signed the original letter as sureties. The husband responded that he issued the receipt to his wife because he was intending to get the letter back from Eikhel before he sold it to someone else, and petitioned the police to the effect that he was in turn deceived by Eikhel who in exchange for the letter only gave him a receipt promising to pay in a week. Eikhel' responded that the receipt was forged and the husband for his labors found himself subjected to a criminal trial for forgery, for which he was "left under strong suspicion," which was pre-reform Russia's equivalent of a suspended sentence (eliminated by the reform of 1864). All these proceedings (ruled on by a Joint Session of the Moscow Aulic Court and the Moscow Magistrate in 1859 and by the Criminal Chamber in

1861) did not solve the wife's case, ruling that this was entirely a matter for the civil court. Thus the creditors would have had to start their proceedings over again.⁴⁰⁹

In sum, this section shows that the law of separate marital property often became only a strategic tool in an intramarital conflict; used creatively, a debt obligation could shift the balance of power within the relationship and, for example, allow a wife to gain a divorce from an unwilling husband, or to allow either spouse to tap into the other's property that would otherwise have been off-limits to them.

Conclusion

This chapter represents an attempt to discuss in a systematic way the interaction between family and kinship structures and the credit relations in imperial Russia. This relationship was extremely complex: while family members relied on each other to help cope with the burden of debt, they also used debt relations to assert their financial and other interests vis-à-vis each other. This applied to parents and children – who brought their disputes to special Equity courts; this also applied to spouses who in Russia possessed a separate legal personality – and, as Michele Marrese has shown in her work on Russia's noblewomen and Galina Ulianova in her monograph on female merchants – readily exercised it. The legal rules that were implicated in such family strategies and family conflicts – most notably Russia's regime of separate property rules – were likewise applied in a variety of ways. The rule of separate property was useful to fight off the creditors' attempts to seize the debtor's property. They could be used both by wives defending their interests, as well as by husbands attempting to get hold of their wives' property. In sum, the rule of separate marital property and other legal rules examined in this chapter appear as strategic

⁴⁰⁹ *TsIAM*, f. 81, op. 16, d. 675 (Martynovskii) (1856-1865).

instruments used by many parties – not necessarily by those that these rules were designed to protect – in order to protect and promote their property and other interests.

CHAPTER FIVE

DEBT IMPRISONMENT AND CHARITY: PRIVATE ACTION UNDER AUTOCRACY

Introduction

The Debtors' Section of the Moscow Municipal Prison, known colloquially as the "Debtors' Pit" (*Dolgovaia Yama*), was a major part of the city's culture of debt, despite its complete neglect in historical literature. Although the number of its inmates was small compared to its English counterparts or even to St. Petersburg's debtors' prison, the Moscow Debtors' Pit left its mark on the city's cultural memory, figuring prominently in Aleksandr Ostrovskii's plays, as well as in guidebooks and descriptions of the city. More importantly I argue in this chapter that the practice of debt imprisonment in Russia reveals little-known aspects of the actual daily interactions between the tsarist bureaucracy and private individuals. First, debt imprisonment provides yet another example of how Nicholas I's ostensibly paternalistic regime relied on private initiative and discretion in its everyday operation. Debtors were imprisoned on behalf of, and at the expense, of their individual creditors, by itself a surprising concession by the autocratic regime of what we today view as a major prerogative of the centralized modern state. Nonetheless, the bureaucracy attempted to control and regulate the practice of debt imprisonment, not only by forcing creditors to pay for prisoner upkeep, but also by refusing to privatize prison operations. Second, imprisoned debtors enjoyed a peculiar status between free persons and the mass of Russia's prison population, thus constantly bringing into question officials' understandings of the rights (or privileges) granted to the tsar's subjects. Finally, the redemption rituals that set free imprisoned debtors several times a year served to cement symbolic connections within

Moscow's propertied population, as well as its link with the imperial family and other wealthy donors.

Debt imprisonment in Russia, as it was institutionalized in the nineteenth century, was much more regulated as compared to the well-known English model. This regulation must have contributed to the relatively limited use of this institution, but never threatened its essentially private-law character, thus manifesting the mixture of governmental paternalism and the reliance upon private discretion and initiative in financial and economic matters that was typical of Nicholas I's epoch. However, debt imprisonment shows how even a relatively limited legal institution was utilized by private persons striving to protect their interests and to accomplish their strategies, sometimes in a manner that was entirely unanticipated by the government. Only after 1879 did the imperial Russian state manage to largely rid itself of this anomalous institution and secure its prerogative to imprison its subjects.

The Law and Practice of Debt Imprisonment

The history of debt imprisonment in Russia is little known but nonetheless important for understanding the development of Russian legislation, legal practice, and legal institutions.⁴¹⁰ As was the case with all other legal rules I discuss in this study, the ability to physically imprison one's debtor was widely used by individuals as a strategic and a negotiating tool, with much of the bargaining power (but by no means all of it) favoring creditors. Nonetheless, the use of debt imprisonment raised many thorny legal issues concerning the legal remedies that should be available to private persons, concerning the nature of punishment and of the distinction between

⁴¹⁰ Gernet in his massive study of tsarist prison focuses on the political aspects. M.N. Gernet, *Istoriia tsarskoi tiur'my*, 5 vols, 3rd ed., (Moscow 1960-3). An overview of legislation – see V.V. Zakharov. *Sposoby prinuditel'nogo ispolneniia v russkom prave XI – nachala XX veka: preemstvinnost' i innovatsiia*. <http://scientific-notes.ru/pdf/saa22.pdf>.

civil and criminal law. In other western legal systems, as well as in Russia, lawyers and statesmen queried whether private law remedies could properly include effectively holding one's debtors hostage for ransom or, conversely, punishing them with prison for not being able to repay, or whether there was a way to view imprisonment as somehow non-punitive.⁴¹¹ The logical implications of such inquiries, as well as the changing understanding of debt from a moral to an economic failure led most Western legal systems, including Russia's, to limit and gradually abolish debt imprisonment during the second half of the nineteenth century, although in Russia this was done in a way that was significantly different from the English model.

Debt collection measures against a debtor's person were already employed in the Muscovite period. Known as *praviozh*, it at least theoretically involved daily beatings of the debtor until he paid up or the mandated time period had lapsed, in which case the collection was then directed against the debtor's property.⁴¹² According the Law Code (*Ulozhenie*) of 1649, creditor also had the option of claiming the debtor's labor at the rate of 5 rubles per year, a considerable sum (lesser amounts were counted for women's and children's labor).⁴¹³ Peter the Great abolished *praviozh* (as well as formal slavery) and encouraged the employment of delinquent debtors on the galley fleet and other state projects.⁴¹⁴

Another measure that was commonly used in the eighteenth century was indentured service to third parties (as opposed to the creditor) that was known as *partikuliar*, under which creditors

⁴¹¹ Bruce Mann, *The Republic of Debtors*; Margot Finn, *The Character of Credit*; Jay Cohen, "The history of imprisonment for debt."

⁴¹² *Ulozhenie* of 1649, Chapter 10, Art. 262, 263, 269.

⁴¹³ Richard Hellie, *Slavery in Russia, 1450-1725* (Chicago, 1982), esp. 41-44. It is less clear whether and to what extent debt slavery was practiced in the earlier Muscovite and in the Kievan period.

⁴¹⁴ Decrees of July 15, 1700 and January 15, 1718. D.I. Pikhno, "*Istoricheskii ocherk mer grazhdanskikh vzyiskanii po russkomu pravu*", *Kievskie Universitetskie Izvestiia*, No. 8, 9, 10 (1874).

were paid a specified amount each year.⁴¹⁵ Although this system would have been reasonably efficient for relatively small debts, the legally mandated wages could not possibly help repay larger loans, in effect amounting to a form of bankruptcy discharge (as long as the third party accepting the debtor's labor was a friend or a family member). One late eighteenth century memo from Moscow city police chief to the governor therefore argued that the arrangement whereby someone with multi-thousand ruble debts went to work for the legally mandated wage of 24 rubles a year in effect allowed spendthrifts and bankrupts to escape their obligations (considering that even an unskilled laborer at that time received at least 60 rubles per year). The proposed solution was to indenture those debtors who became insolvent through no fault of their own to a highest bidder and to exile more blameworthy debtors to penal labor.⁴¹⁶ Apparently the city authorities did follow this recommendation at least in part, because a later list from the same document included a list of debtors indentured to work for as much as 100 rubles a year, although most were still receiving between 24 and 30 rubles. At the same time, the Moscow Magistrate compiled a list of 51 debtors who wished to enter indentured service, including four women.⁴¹⁷ The fact that the debtors' wages were not adjusted for inflation supports the conclusion that the practice of *partikuliar* was adapted in practice to serve as a form of bankruptcy discharge if the debt was large (over several hundred rubles) and as a settlement between debtors and creditors if the debt was moderate (to the limit of few hundred rubles).

⁴¹⁵ Decree of 1736.

⁴¹⁶ *TsIAM*, f. 16, op. 1, d. 598 (*Ob otavaemykh za dolgi na partikuliar kuptsakh i meshchanakh*) (1795-96).

⁴¹⁷ *TsIAM*, f. 16, op. 1, d. 598, l. 67 ff. Other eighteenth-century laws about indentured labor and debt imprisonment: January 15, 1718; September 18 and April 4, 1722; October 8, 1726; July 19, 1736; August 29, 1763; May 28, 1767; August 13, 1784.

Debt imprisonment per se was also commonly used by the end of the eighteenth century, especially after Russia began to acquire an organized prison system under Catherine II. A 1793 list of debt prisoners from the various parts of Moscow province (not counting the city proper) included very small numbers of individuals who agreed to served as indentured laborers. For example, in Kolomna debtors were only two out of 80 prisoners (it is unclear, however, if that number applied only to imprisoned debtors or, as is more likely, to all prisoners in the town).⁴¹⁸ In Moscow itself imprisoned debtors were numerous enough by the beginning of Paul's reign to participate in an elaborate ransom ritual in 1797.⁴¹⁹

Like many other Russian laws relating to debt, those for debt imprisonment were for the first time systematized by Paul's Bankruptcy Statute of 1800, which later under Nicholas I was broken up by the Digest of the Laws into commercial and non-commercial portions. The key change from the traditional Muscovite rule was that an individual could not be arrested for debt if he or she had sufficient property to cover what was owed.⁴²⁰ Debtors who were unable to repay and had no personal or real property could be subjected to arrest as a civil law (or *veksel* law) remedy (*vzyskanie*).⁴²¹ Insolvent debtors could also be arrested at their creditors' discretion while their case was being processed and held for up to five years if they were found to be "reckless" bankrupts (this period included the time of the preliminary arrest). Finally, debtors could be

⁴¹⁸ *f. 68, op. 1, d. 80* (1793).

⁴¹⁹ *TsIAM, f. 16, op. 1, d. 715* (O vykupe liudei, soderzhashchikhsia za dolgi v Moskovskom tiuremnom zamke) (1797).

⁴²⁰ *SZ*, Vol. 10, part 2, *Vzyskaniia grazhdanskie*, Art. 326 - 414 – first move against movables, then immovables, then against person. A. Grinevich, "O lichnom zaderzhanii v grazhdanskom protsesse," *Zhurnal grazhdanskogo i ugovnogo prava*, No. 1 (1873), pp. 55-102.

⁴²¹ *Vzyskaniia grazhdanskie* (Art. 1237, 1876 edn. – serving sentence equals payment; Art. 1234 – time depends on the size of claim; Art. 1442, note 2: imprisonment discontinued by plaintiff's petition).

imprisoned in lieu of “securing” certain types of civil lawsuits against them if they could not post property sufficient to cover the amount of the suit or find a friend or a relative who did have enough property to guarantee the suit. Unlike English and American systems which in some extreme cases permitted debtors to grow old in prison (but similar to the French system), Russian officials were not too eager to increase their prison population, and the length of imprisonment for any one claim was limited to five years, although until the reform of 1864 a debtor who had served this time continued to be liable for the debt if he or she later managed to acquire any property. After the 1864 reform was put into effect, however, debt prison in effect amounted to a form of bankruptcy discharge.⁴²²

Another important reform, introduced in 1828, required creditors to provide debtors’ monthly “maintenance fee” (*kormovye den’gi*), which were set to 1½ times the amount provided by the state to imprisoned criminals; debtors whose creditors failed to pay within one week were then freed and could not be rearrested for the same debt.⁴²³ This rule again followed the French practice and was very much unlike the English practice of requiring imprisoned debtors to pay their own way.⁴²⁴ In the 1840s and 1850s this law elicited a debate within the bureaucracy as to whether charging prisoner upkeep to creditors was the best policy choice. In 1841 Count Benckendorff (who as President of the Imperial Prison Society oversaw prisoners’ living conditions) argued that increasing the maintenance fee would not only make imprisonment less

⁴²² For a detailed discussion of the 1879 law, see *Zakon ob otmene lichnogo zaderzhaniia neispravnykh dolzhnikov* (Moscow, 1879).

⁴²³ Nov. 18, 1828 (PSZ No. 2,440). Creditors were free to increase that amount but apparently never did in practice.

⁴²⁴ Finn, *The Character of Credit*. On the Russian perception of French practices, see *GA RF*, f. 123, op. 1.89 (*O poruchenii raznym litsam osmotret’ tiuremnye zamki i drugie mesta zakliucheniia*) (1842-51). See also PSZ II, Vol. 15, No. 13406 (1840).

onerous for individuals who had not been convicted or even suspected of any crime, but also to some extent prevent collusion between creditors and debtors who were known to imprison each other solely in order to benefit from charitable donations. Higher charges would at the same time discourage “avaricious speculators” who bought up debt documents for a tiny fraction of their cost and then imprisoned debtors to extort the entire amount. The minister of Justice Panin replied that neither the Senate nor he himself wanted to increase the amount charged to creditors because he found that “any concession to a debtor already in a way violates the rights of the creditor, who, failing to recover his property, has the right to expect from the Government, not concessions to [the debtor], but rather aid through all legal measures and a just recovery of his loss.” Displaying a curious mixture of reliance upon private initiative and a paternalistic regulation that was so characteristic of Nicholas I’s regime, Panin concluded that he wished to avoid any measure which would look like a concession (*poslablenie*) to debtors and that “[i]mprisoning debtors constitutes a measure of preserving private credit in the State[, w]hich must be brought under the protection and care of the Government, and therefore there are insufficient grounds to free it completely from all expenses that may occur in this regard and to demand that all expenses be carried by private persons.” Panin and the Senate thought that although collusions would decrease if the maintenance fee were to be raised, the measure would damage or even ruin the less wealthy creditors who could not afford the higher charge.⁴²⁵

In practice, the decision whether to imprison one’s debtor was merely one of the several strategic negotiation choices available to creditors and which choice was the better one depended on several circumstances. The maintenance fee was obviously the more important one, since

⁴²⁵ GA RF, f. 123, op. 1, d. 62 (*Perepiska s Ministrom Iustitsii i Ministrion Vnutrennikh Del ob uvelichenii vnositelnykh kreditorami deneg na sodержanie dolznikov*) (1841), l. 7 ff.

creditors were likely to balk at having to pay yet more money after already losing their investment, although this consideration could obviously be outweighed by the desire for retribution. In many debtors' cases I have reviewed, only a minority of the creditors were actually willing to pay to have their debtor imprisoned. In a typical case, a bankrupt Moscow merchant Vasilii Prokhorov remained free in 1859 because none of his creditors was willing to pay for his upkeep.⁴²⁶ It seems that when creditors did pay the maintenance fee, they first of all wanted to demonstrate their resoluteness to debtors and thereby induce them to repay.⁴²⁷ Initial court petitions to collect debt often included the maintenance fee to imprison the debtor as an additional threat, although most of the time the threat was not actually carried out and approximately half of all prisoners were freed within one month.⁴²⁸

In addition to the maintenance fee, genuine creditors could be disinclined to imprison debtors for a number of other reasons. Between 1864 and 1879 serving prison time wiped away a debtor's liability, and creditors were motivated not to imprison debtors so long as there was any chance for future repayment. Creditors could also choose to allow debtors to retain their freedom so that they could continue their employment or trade and earn the money for repayment. For example, in the case of the bankrupt engineer and entrepreneur Colonel Nikolai, his creditors left him free (he was employed by a railroad) "to give him opportunities to engage in activities suitable to his profession."⁴²⁹ Conversely, the Moscow Aulic Court in 1858 did not allow the

⁴²⁶ *TsIAM*, f. 78, op. 3, d. 44 (Prokhorov) (1859).

⁴²⁷ Resoluteness was demonstrated because creditors had to pay the nonrefundable maintenance fee for the entire month, even if the debtor paid up (or was ransomed by charity) and was freed within a few days.

⁴²⁸ *GA RF*, f. 123, op. 1, d. 62 (*Perepiska s Ministrom Iustitsii i Ministron Vnutrennikh Del ob uvelichenii vnosimyk kredisitorami deneg na sodержanie dolzhnikov*) (1841), l. 34 ff.

⁴²⁹ *TsIAM*, 142, op. 4, d. 64 (Nikolia)

creditors of Collegiate Assessor Semen Iesaulov to free him in order to earn some money for repayment, ruling that Iesaulov was being accused of criminal (“malintentioned”) bankruptcy and had to remain in prison at the state’s expense if the maintenance money were not paid.⁴³⁰ Many creditors also chose not to imprison their debtors because of their pitiable condition, such as illness or responsibility for a large family, or otherwise were prevented by the authorities. For example, the 55-year old insolvent widow of a Guard captain Anna Bestozheva was in bed when the police came to arrest her and refused to come along because of her illness. She was then examined by a police doctor on February 7, 1868, and found to have an inborn heart defect and a developing paralysis. One of the creditors demanded that she be placed in the prison hospital, but the doctor determined that she could be neither sent to the hospital nor brought to the police station.⁴³¹

Thus, there were numerous reasons *not* to imprison one’s debtors; however, sometimes it was the only practicable way to get repaid, whether because the creditor knew of some hidden property or because of the high probability of a ransom by charitable persons or the Moscow Prison Committee. For example, ex-policeman Leiba-Srulevich Sumgalter traveled to Moscow to collect his debt from *meshchanin* Krasil’nikov, and won every court proceeding but was still unable to get his money because the debtor managed to hide his property with relatives. Finally, Sumgalter had Krasil’nikov imprisoned (which must have been a difficult decision given the small amount of the debt), and in March, 1863, he was ransomed by the Prison Committee.⁴³²

Other creditors were apparently not so desperate but merely wished to take advantage of

⁴³⁰ *TsIAM*, f. 50, op. 5, d. 12754 (Iesaulov) (1858).

⁴³¹ *TsIAM*, f. 142, op. 5, d. 1307 (Bestozheva) (1870-73).

⁴³² *TsIAM*, f. 16, op. 23, d. 1107 (Sumgalter).

charitable sentiment: one official report in 1856 mirrored Minister Panin's earlier observation and suggested that "at least half" of the huge prison population on the eve of Alexander II's coronation were imprisoned for fake debts "pursuant to an agreement with their friends" just to take advantage of the charity, as apparently happened frequently in the past.⁴³³ Another police report to the governor enclosed the following anonymous denunciation:

Having learned that Your Excellency will be ransoming debtors from the Provisional Prison before Easter, I resolved to notify You that the debtors being ransomed only imprison themselves for the purpose of being ransomed; in particular I must point out *meshchanki* Kalinina and Uskova, who each year before each holiday imprison more than ten people, who they claim owe them large amounts of money, for the purpose of collecting ransom. I dare to bring this to your attention.⁴³⁴

Even genuine creditors apparently waited to imprison their debtors until just before Easter and Christmas in the hopes of ransom.⁴³⁵

The effectiveness of debt imprisonment as a way to obtain repayment can be judged by the various reasons why imprisoned debtors were released in St. Petersburg and in Moscow in 1862, which are summarized in Table 5.1.⁴³⁶

Table 5.1 The Causes of Imprisoned Debtors' Release in 1862

	Ransom by Prison Committee		Ransom by private persons		Paid themselves or by relatives		Discont. claims or nonpayment of fees		Total
	# of debtors	ransom amt.	# of debtors	ransom amt.	# of debtors	ransom amt.	# of debtors	ransom amt.	ransom amt.
St. Petersburg	70	385/101 ⁴³⁷	61	215/78	31	166/134	280	837	442/564
Moscow	96	307/98	n/a ⁴³⁸	n/a	0	0	0	0	96/96

⁴³³ *TsIAM*, f. 16, op. 44, d. 6 (*O vremennoi tiur'me*) (1846-59).

⁴³⁴ *TsIAM*, f. 16, op. 20, d. 55.

⁴³⁵ Same f. 16, op. 20, d. 55.

⁴³⁶ *GA RF*, f. 123, op. 1, d. 322 .

⁴³⁷ The first number represents the average debt, the second number represents the average sum of ransom, in **thousands of rubles**.

While, as I show below, the number of debt prisoners listed for Moscow was somewhat low for the 1860s, it is notable that every one of Moscow's prisoners was freed through the charity administered by the Prison Committee (whose operations are discussed in the third section of this chapter). In St. Petersburg, almost 50 percent of all creditors initially chose to imprison their debtors but gave up before receiving any repayment. However, almost 29 percent were rewarded for their perseverance and were repaid either by debtors or by charitable donations. Even this number is rather high and suggests that debt imprisonment was an effective strategy both in Moscow and in St. Petersburg.

The number of imprisoned debtors in Moscow as shown in the statistics of the Imperial Prison Society was much smaller than in St. Petersburg and indeed only a tiny fraction of the huge English debtor inmate population, but roughly comparable to those in France, where the debtors' prison in Paris held 125 prisoners in 1851.⁴³⁹ The data summarized in Table 5.2 suggest that the numbers increased since the early nineteenth century but that the year of Alexander II's coronation in 1856 was anomalous (suggesting that Muscovites were indeed imprisoned with the expectation of charitable ransom).

Table 5.2 "Snapshot" Statistics for Imprisoned Debtors in Moscow

Year	Nobles	Merchants	Townspeople	Peasants	Others	Total
1808 ⁴⁴⁰	11	49	--	--	--	60
1817 ⁴⁴¹	10					125

⁴³⁸ In Moscow private donations were administered through the Prison Committee.

⁴³⁹ *GA RF*, f. 123, op. 1, d. 89 (*O poruchenii raznym litsam osmotret' tiuremnye zamki i drugie mesta zakliucheniia*) (1842-51).

⁴⁴⁰ *TsIAM*, f. 16, op. 3, d. 2521. (*Ob osmotre general maiorom Nikolaem Fedorovichem Khitrovo gubernskoro tiuremnogo zamka i vremennoi moskovskoi gorodskoi tiur'my*) (1808). Other prisoners included 22 women and 84 criminals.

Year	Nobles	Merchants	Townspeople	Peasants	Others	Total
1826 ⁴⁴²						71
1856 ⁴⁴³						400
1865 ⁴⁴⁴	19	54	53	7	10	143
1865 ⁴⁴⁵						113

These numbers do not include those debtors who were detained for tax arrears at the Moscow Workhouse or were briefly detained at the local police stations for either private debts or tax arrears.

Earlier, in 1841, the Senate in one of its rulings cited a much smaller number of imprisoned debtors: only 12 persons in St. Petersburg at the end of 1841, between 20 and 35 at any one time in Moscow, and no more than 58 in Odessa during the entire year.⁴⁴⁶ Given that the Senate was trying to justify its refusal to increase debtors' maintenance fees, these numbers were obviously polemical: most debtors were ransomed or otherwise set free before Christmas, and so their number was of course low at that time of the year.⁴⁴⁷ In addition to Christmas-time private charitable donations, the Prison Committee typically carried out a ransom operation on

⁴⁴¹ *TsIAM*, f. 105, op. 4, d. 997 (*O dostavlenii svedenii o arestantakh vo vremennoi tiur'me i o instruksii v onoi dlia voinskogo karaula*).

⁴⁴² *TsIAM*, f. 16, op. 30, d. 259 (*Delo ob osvobozhdenii dolzhnikov iz Moskovskoi vremennoi tiur'my v den' koronovaniia Nikolaia I*) (1826). The list of prisoners may be incomplete (possibly including only persons potentially considered for ransom).

⁴⁴³ *TsIAM*, f. 16, op. 44, d. 6 (*O vremennoi tiur'me*) (1846-1859). Provisional Prison only.

⁴⁴⁴ *TsIAM*, f. 50, op. 4, d. 8044 (Lukin). Provisional Prison only.

⁴⁴⁵ *TsIAM*, f. 16, op. 30, d. 410 (*Delo o postroike doma otdannogo Mosk. Gor. Ob-vom pod pomeschenie dlia vremennoi tiur'my neispravnykh dolzhnikov*) (1865-66), l. 9-9ob. Provisional Prison only.

⁴⁴⁶ *GA RF*, f. 123, op. 1, d. 62 (*Perepiska s Ministrom Iustitsii i Ministrion Vnutrennikh Del ob uvelichenii vnosimyykh kreditorami deneg na sodержanie dolzhnikov*) (1841), l. 10 ff.

⁴⁴⁷ To give just one example, as of January 1, 1850, Moscow Provisional Prison housed only six debtors, whereas during the year the overall number was 322. See *GA RF*, f. 123, op. 2, d. 155 (*Otchet [...] za 1850 g.*)

November 19, the anniversary of the death of its founder Alexander I. Only the number for Odessa may be close to accurate.

The overall numbers of persons imprisoned for debt in Moscow during a particular year can be surmised from the statistics of the Imperial Prison Committee, which for some years include numbers for the Workhouse and police precincts, as shown in Table 5.3.

Table 5.3 Imprisoned Debtors in Moscow: total numbers for a given year (in parentheses – the total for European Russia which does not include police arrests).

1850 ⁴⁴⁸	1851 ⁴⁴⁹	1852 ⁴⁵⁰	1855 ⁴⁵¹	1861 ⁴⁵²	1862 ⁴⁵³	1868 ⁴⁵⁴	1869 ⁴⁵⁵
944	429	982	884	616	96 (1054)	(1223)	(1149)

These are at first sight not large numbers, but they should be compared to Russia's overall prison population, which in the mid-nineteenth century was superficially large but consisted overwhelmingly of persons held briefly for petty theft, passport violations, brawling and drunkenness. For example, the 573 debtors detained at Moscow's police precincts in 1850 should

⁴⁴⁸ GA RF, f. 123, op. 2, d. 155, ll. 85 ff. (*Otchety obshchestva o tiurmiakh Moskovskoi gubernii* – “Moskovskaia za 1850 g). Includes 322 persons in Provisional Prison, 49 in the Workhouse, and 573 in police precincts. 70 were female.

⁴⁴⁹ Does not include debtors detained at police stations. 57 females. See GA RF, f. 123, op. 2, d. 606, l. 68 ob. ff. (*Otchety gub.i u. pop. o t. kom-v za 1851 god*).

⁴⁵⁰ GA RF, f. 123, op. 2, d. 208 (*Otchet obsh pop o t. mosk. gub*) (1853). Including 257 at the Provisional Prison, 350 at police precincts, and 374 at the Workhouse.

⁴⁵¹ GA RF, f. 123, op. 2, d. 302 (*Otchety tiuremnykh komitetov Moskovskoi gubernii*) (1856). Included 240 in Provisional Prison, 472 in the Workhouse and 172 in police precincts.

⁴⁵² GA RF, f. 123, op. 2, d. 510 (*za 1861 g. po Mosk. gub*). Included 9 in Butyrkskaia Prison, 325 in Provisional Prison, 185 in the Workhouse and 97 in police precincts.

⁴⁵³ GA RF, f. 123, op. 1, d. 322. The number is for Provisional Prison. Altogether in the Empire there were 1054 imprisoned debtors.

⁴⁵⁴ GA RF, f. 123, op. 1, d. 446 (*Po otchetu Obshchestva Popechitel'nogo o tiur'makh za 1868 i 1869 gg.*) (1871) The number for all of Russia.

⁴⁵⁵ GA RF, f. 123, op. 1, d. 446 (*Po otchetu Obshchestva Popechitel'nogo o tiur'makh za 1868 i 1869 gg.*) (1871) The number for all of Russia.

be compared to 1,430 thieves, 21 murderers, 12 robbers and 10 rapists. The rest of the police detainees (altogether 16,590 males and 4,706 females) were arrested for petty crime, with the largest category by far (7,327 arrests) being “drunkenness and dissolute life.” During 1850, 196 male and 48 female Muscovites were exiled to penal labor in Siberia, and 946 males and 246 females were sentenced to the milder penal settlement.⁴⁵⁶ In 1855, there were 168 murderers and murder suspects held at the provincial transit prison and 12 at police precincts and elsewhere.⁴⁵⁷ In 1862, there were 2,573 persons held on suspicion of murder in the entire Russian empire, robbery, and arson, 58 held for bribery, and 55 for blasphemy, as compared to 1,054 debtors.⁴⁵⁸ In 1868, the total number of prisoners in the state’s custody in Russia was 153,828, which included 2,372 debtors, as compared to 1,410 murderers and murder suspects, 420 arsonists, 89 smugglers and 637 counterfeiters, whereas almost 50,000 persons were held for theft and vagrancy.⁴⁵⁹ The purpose of providing these statistical details is to show that examining the low overall numbers of imprisoned debtors out of context of Russia’s entire penal system is misleading because, while their number was small compared to those of thieves and tramps, it was quite considerable to those of persons held for serious crimes like murder and arson. Moreover, prisoner statistics only occasionally provide the much larger numbers for debtors held at police stations.

⁴⁵⁶ GA RF, f. 123, op. 2, d. 155, ll. 85-86 and l. 9 ob. (*Otchety obschestva o tiurmiakh Moskovskoi gubernii – Moskovskaia za 1850 g.*).

⁴⁵⁷ GA RF, f. 123, op. 2, d. 302, l.3. (*Otchety tiuremnykh komitetov Moskovskoi gubernii*) (1856),

⁴⁵⁸ GA RF, f. 123, op. 1, d. 322, l.34 (C’ty report for 1862)

⁴⁵⁹ GA RF, f. 123, op. 1, d. 446 (*Po otchetu Obshchestva Popechitel’nogo o tiur’makh za 1868 i 1869 gg.*) (1871).

The nineteenth-century system of debt imprisonment existed without much change until 1879, when personal arrest *as a civil remedy* was abolished. This in effect abolished debt imprisonment in Russia, although officially it was retained in insolvency proceedings (which were only available for debts over 1,500 rubles⁴⁶⁰), in *veksel'* collections as a brief preliminary arrest, and in those borderland provinces that had not yet adopted the court reform of 1864.⁴⁶¹ Generally speaking, this measure was in line with other European countries that abolished debt imprisonment around the same time (England: 1869), but it was different from the English development. In England, in line with the general legal trend to introduce greater protections for commercial debtors, debt imprisonment was abolished for the wealthier debtors, but was retained in a different guise as a measure imposed by small claims courts against poorer debtors, who were seen as undisciplined and requiring correction rather than protection.⁴⁶² By contrast, in Russia debt imprisonment after 1879 threatened primarily wealthy merchants and other individuals subject to insolvency proceedings.

Debt imprisonment in Russia, as it was institutionalized in the nineteenth century, was much more regulated as compared to the well-known English model. This regulation must have contributed to the relatively limited use of this institution, but never threatened its essentially private-law character, thus manifesting the mixture of governmental paternalism and the reliance upon private discretion and initiative in financial and economic matters that was typical of

⁴⁶⁰ *Ustav torgovogo sudoproizvodstva*, SZ, Vol. 11, Article 405; Shershenevich, *Kurs torgovogo prava*, §132.

⁴⁶¹ P.S.Z. II, Vol. 54, No. 59374 (1879). None of these instances canceled out the debt. However, the Imperial Prison Committee, not wishing to part with the money, concluded that debtors could still be ransomed. l.70 - the meeting of the Council on Prison Affairs on June 4, 1882, to which Senator Frisch and Chairman of Spb. Commercial Court V.N. Wilson were invited. *GA RF f. 123, op. 1, d. 670, l. 70 (Perepiska s Glavn. Tiur. Upr. i Spb. tiuremnym komitetom o raskhode deneg, sobrannykh na vykup dolzhnikov, na drugie nuzhdy)* (1878).

⁴⁶² Finn, *Character of Credit*. The practice continued into the 20th century.

Nicholas I's epoch. However, debt imprisonment shows how even a relatively limited legal institution was utilized by private persons striving to protect their interests and to accomplish their strategies, sometimes in a manner that was entirely unanticipated by the government. Only after 1879 did the imperial Russian state manage to largely rid itself of this anomalous institution and secure its prerogative to imprison its subjects.

A Different Kind of Prison

The Debtors' Pit was anomalous among Russia's prisons because of its conditions and the social composition of its inmates. Because it was run by the Moscow police and because lengthy terms of imprisonment were uncommon, it did not possess a distinct internal social structure and rituals (other than in a very elementary way), nor was it in any sense a haven for distressed debtors in the manner of English gaols and sponging houses.⁴⁶³ However, the Pit curiously intermingled repression and privilege, and, much like other tsarist institutions that regulated Russia's culture of debt, was the place where private individuals strove to protect their interests and even impose them upon the administration, along with their understandings of personal identity and autonomy.

In the late eighteenth century imprisoned debtors were kept in the regular Moscow city prison originally located near the quarters of the Butyrskii Regiment and therefore colloquially known as Butyrka.⁴⁶⁴ After the Bankruptcy Statute mandated that imprisoned debtors be kept separately from criminals with minimum restrictions, it became clear that separate facilities were

⁴⁶³ Finn, *Character of Credit*.

⁴⁶⁴ *TsIAM*, f. 16, op. 1, d. 715 (*O vykupe liudei, soderzhashchikhsia za dolgi v Mosk. tiuremnom zamke*) (1797).

required in those cities that had large numbers of debtors.⁴⁶⁵ Whereas in St. Petersburg, where the debtor population was far larger than in Moscow, a separate building was eventually constructed, Moscow authorities utilized the Provisional Prison located within the provincial court building on Resurrection Square just outside the Kremlin. The original purpose of the prison was to house criminal defendants on the days when they were needed in the courtroom. It seems that the move took place sometime between 1803 and 1808.⁴⁶⁶ After the move the prison was still simultaneously used for its original purpose, but its character as the debtors' prison clearly predominated.

The entire court building was constructed on the site of a former imperial Mint, and the portion occupied by the Pit consisted of two levels, with vaulted chambers surrounding the open internal courtyard that was sunk one floor beneath street level, thus giving the prison its colloquial name. An urban legend traced the Pit's curious topography to its use as a zoo during

⁴⁶⁵ Bankruptcy Statute; also SZ Vol. 14, art. 30 (also see Article 211) (*Ustav o sodержanii pod strazhei*). As of 1861, this law was located in SZ, Vol. 14, Article 96, Appendix, Paragraph 232: «Весьма часто случается, что добродетельный отец семейства, хороший гражданин, честный человек, без всякой вины, неожиданно переворотами судьбы и случаями, коих не в силах человеческих предвидеть, может быть потерю всего состояния, вовлечен в долги, за которые правительство принуждено будет лишить его свободы. Несправедливо было бы и противно здравому разсудку (sic), содержать такового с тою же строгостью, как и тех, кои заключены за тяжкие и умышленные преступления; и для того, надзор за таковыми должен ограничиваться единственно лишением их способа к уходу из тюремного замка.» (It occurs rather often that a virtuous father of a family, a good citizen, an honest man, without any fault, suddenly through vicissitudes of fortune and accidents which human powers cannot foresee, may be brought into debt by the loss of all his property, for which the government will be forced to deprive him of his freedom. It would be unjust and against common sense to keep such a person with the same kind of strictness as those persons who are imprisoned for severe and intentional crimes; and therefore, the supervision of such persons must be limited solely to depriving them of the means to leave the prison building.)

⁴⁶⁶ In 1803 a report to Moscow Civil Governor Diakov refers to the prison's inmates as *podsudimye*, suggesting that at that time the Provisional prison was mostly being used for its original purpose of housing prisoners who were being tried in the courts located in the same building. See *TsIAM*, f. 68, op. 1, d. 547 (*o perevode vremennoi tiur'my*) (1803); by 1808 the prison had already been organized to house debtors. See *TsIAM*, f. 16, op. 3, d. 2521. (*Ob osmotre general maiorom Nikolaem Fedorovichem Khitrovo gubernskoro tiuremnogo zamka i vremennoi moskovskoi gorodskoi tiur'my*) (1808) – but this last document suggests that the Provisional Prison was from the very beginning established with debtors in mind.

the reign of Boris Godunov in the early seventeenth century.⁴⁶⁷ However, there is no actual evidence for that, and the likely origin of the indentation was the mint facilities that required easy access to running water.⁴⁶⁸ There seems to have been a marked distinction in the quality of basement chambers, reserved for the poorer debtors, that were damp and poorly lit, and the nicer rooms on the upper floor, which were reserved for nobles and wealthier merchants (the prison church was also located there).⁴⁶⁹ In 1861, one of the reform-minded officials in Moscow wrote to the governor that

[F]resh air and sunlight almost never reach the prison, in the winter the entire courtyard is covered in snow, and in the spring and summer flooded with water, and for that reason the prison is constantly damp, which acts very ruinously (*gibelno*) upon the health of the inmates, and one can positively state that one can hardly find a prison building in Russia, which would combine so many inconveniences and hardships for the inmates as the Moscow Provisional Prison.⁴⁷⁰

Because of frequent prisoner complaints about crowded conditions, there were several proposals to purchase or rent a separate building for the prison, as had been done in St. Petersburg.⁴⁷¹ The tsar approved this measure in 1862, but just at that moment the Moscow City Duma moved to its separate building and the authorities merely reshuffled the spaces in the court building. After these renovations, the Pit shed its most dilapidated features, but it never acquired the palatial

⁴⁶⁷ See, e.g., *TsIAM*, f. 16, op. 44, d. 6 (*O vremennoi tiur'me*) (1846-59), l. 32-32 ob.

⁴⁶⁸ Conversation with N.S. Datieva.

⁴⁶⁹ *TsIAM*, f. 16, op. 30, d. 410 (*Delo o postroike doma otdannogo Mosk. Gor. Ob-vom pod pomeshchenie dlia vremennoi tiur'my neispravnykh dolzhnikov*) (1865-66), ll. 26-29.

⁴⁷⁰ *GA RF*, f. 123, op. 1, d. 59, ll. 210-211.

⁴⁷¹ *TsIAM*, f. 16, op. 44, d. 6 (*O vremennoi tiur'me*) (1846-59). Brockhaus & Efron's dictionary lists 1856 as the date when St. Petersburg debtors' prison was founded, but considering that its instructions already existed in the 1830s, this date should be much earlier.

look that one Russian visitor (a physician from the St. Petersburg municipal prison hospital) noted in the Parisian debtors' prison in 1851.⁴⁷²

The Pit was originally structured to reflect the empire's system of legal estates. One of the earlier descriptions of the prison listed six different rooms: for noble debtors, for merchants and *meshchane* (townspeople), for criminal defendants, for women, for sick persons (with six beds), and for persons temporarily arrested for petty crime.⁴⁷³ However, by the mid-nineteenth century, the estate-based system was no longer operational in the prison. One of the reasons was probably that all debtors, even peasants and *meshchane*, were entitled to the higher maintenance fee that among ordinary prisoners was allotted only to nobles and civil servants. In 1841 St. Petersburg police specifically noted that prisoners were provisioned "without any division into estates."⁴⁷⁴ In Moscow, the issue came up during the great renovation project of the court building and the Provisional Prison in the early 1860s. Governor Tuchkov sent his aide, Count Konovnitsyn, to determine how the expanded space should be apportioned among the various categories of debtors. Konovnitsyn was reacting to the complaints from the humbler type of debtors, who had been housed in inferior rooms, while the better ones went to those "who asked most persistently," without there being any definite rule. Thus, he wanted "to destroy the lack of certainty, the existing arbitrariness (*proizvol*) in accommodating debtors, which, as any arbitrariness, can bring harm."

⁴⁷² GA RF, f. 123, op. 1, d. 89, ll. 77 ff. (*O poruchenii raznym litsam osmotret' tiuremnye zamki i drugie mesta zakliucheniia*) (1842-51).

⁴⁷³ TsIAM, f. 16, op. 3, d. 2521 (*Ob osmotre general maiorom Nikolaem Fedorovichem Khitrovo gubernskoro tiuremnogo zamka i vremennoi moskovskoi gorodskoi tiur'my*) (1808).

⁴⁷⁴ GA RF, f. 123, op. 1, d. 62, l. 17 (*Perepiska s Ministrom Iustitsii i Ministron Vnutrennikh Del ob uvelichenii vnosimyykh kreditorami deneg na sodержanie dolzhnikov*) (1841), l. 17.

Konovnitsyn's proposed solution was to house debtors based on the amount of their debt. He reasoned that debtors who owed larger amounts had to be confined longer and thus deserved better space, but also, that larger debtors must have had "larger business, had more money, and therefore were used to a better life." Thus, two rooms were reserved for debtors owing up to 150 rubles, two rooms for those owing up to 300 rubles, and two rooms for those owing over 300 rubles. Four more rooms were given to insolvent debtors, who could be confined for up to five years. Finally, there were ten single rooms for foreigners, nobles and the elderly persons of all estates, as well as a special chamber for the "unruly (*buinye*) persons rejected by the [debtors'] community (*obshchestvo*). Thus debtors could house themselves according to their personalities (*kharaktery*). Debtors also had a common dining room.⁴⁷⁵ Yet another proposal was to adopt the St. Petersburg rule and house debtors "according to their position in society."⁴⁷⁶

It is unclear which of these systems, if any, was actually put into practice, or whether housing was assigned on a case-by-case basis. But it is clear that in practice there was no clear segregation of the estates. For example, as of June 15, 1865, the Noble Section of the Debtors' Pit held 14 prisoners, of whom 9 were nobles and 5 were merchants. The First Merchants' section held 13 merchants, two civil servants (including one Aulic Councilor) and three others. The Second Merchants' Section held 15 merchants, 15 *meshchane*, 4 servitors (including an army major and a cavalry lieutenant) and 6 others. Other sections, while mostly occupied by merchants and *meshchane*, also included a few nobles and civil servants; interestingly, the First *Meshchane* Section housed mostly *meshchane* and was clearly intended for the poorer type of

⁴⁷⁵ *TsIAM*, f. 16, op. 30, d. 410. Apparently some debtors were unhappy with this new arrangement and complained to the civil governor Prince Obolensky when he was visiting the prison.

⁴⁷⁶ *TsIAM*, f. 16, op. 30, d. 390, ll. 10-24, art. 9.

debtors, whereas the Second *Meshchane* Section contained 8 merchants, one civil servant, 2 peasants and only 4 *meshchane*.⁴⁷⁷ Thus, the distribution of debtors was clearly based on either their wealth or the amount of their debt, but definitely not on the prisoners' official legal rank within Russia's system of legal estates.⁴⁷⁸

Although the Pit held a scattering of officers and civil servants and an occasional truly wealthy merchant, the bulk of its inmates consisted of "middling" merchants and *meshchane* who were far removed from the rich bankrupts who could owe hundreds of thousands of rubles, but at the same time were far above poor debtors who were imprisoned in the Moscow Workhouse for tax arrears of only a few dozen rubles. For example, the average debt on the list of 66 debtors prepared by the governor's officials in 1826 was 2,060 rubles, with a median of 1,250 (leaving out one untypically large debt of 30,000 rubles).⁴⁷⁹ Since even 200 rubles (the smallest debt on the list) was a sizable amount, there were no truly poor persons on the list, nor were there any truly large debts except for one person.

The internal rules governing everyday life in the Debtors' Pit had nothing of the easygoing chaos of unreformed English debtors' gaols, where prisoners often could leave the premises during the day, have family members live with them, and enjoy outside food, drinks, and smokes.⁴⁸⁰ However, there was also none of the harshness of regular Russian prisons, where

⁴⁷⁷ *TsIAM*, f. 50, op. 4, d. 8044 (Lukin)

⁴⁷⁸ Another equalizing factor was that all prisoners received the same amount of maintenance money, whether noble or commoner, whereas ordinary prisoners received less maintenance if they were commoners. See *TsIAM*, f. 16, op. 30, d. 390, ll. 6-9 ob.

⁴⁷⁹ *TsIAM*, f. 16, op. 30, d. 259.

⁴⁸⁰ See Finn, *The Character of Credit*. I did, however, see one (possibly sexualized) reference to the "family" (*semeistvo*) or "commune" (*obshchina*) of debtors by one prisoner who was confronting a moneylender and berating him for "making that family grow". See *TsIAM*, f. 50, op. 4, d. 8044 (Lukin).

inmates often had their heads shaved, were placed in irons, and had to dress in disfiguring and uncomfortable prison clothes. Although the law required special rules for debtors' prisons to be issued by the Minister of Interior, the authorities found out in the early 1860s that no such instruction existed even for St. Petersburg, where debtors were kept based on a set of rules "that solidified over time" (*utverdivshikhsia po vremeni*) but apparently were not issued by any higher authorities.⁴⁸¹ In Moscow, the instruction to the watch officer at the Pit was identical to that for the Butyrka Prison, among other things prohibiting debtors from having ink, quills, and paper (a rule which apparently was not strictly followed). The instruction also prohibited prisoners from begging for alms, possessing knives and other weapons (all bread brought inside had to be sliced), playing cards (even without money stakes), alcohol, songs, or music. In 1860 the military authorities also instructed the watch officer to prevent alcohol from being brought into the prison unless accompanied by a note from the Caretaker (this rule seems to have been often violated);⁴⁸² another order prohibited private soldiers from searching female visitors "indecently and impudently."⁴⁸³

⁴⁸¹ *TsIAM*, f. 16, op. 30, d. 390 (*Kopiia instruksii i proekt rasporyazhenii sodержashchikhsia za dolgi v mestakh zakliucheniia v Moskve*).

⁴⁸² The Pit's staff consisted of a Caretaker, who in 1848 received 142.85 rubles per year plus a three room apartment with kitchen and firewood. Secretary (in the rank of Gubernial Secretary) received 128.57 rubles, one room, firewood and candles, the Cossack officer had one room and firewood, and salary from his own regiment. The scribe, a Moscow *meshchanin*, was paid 114.285 rubles by the Prison Committee rather than city income. Finally, a retired non-commissioned officer was in charge of food distribution and was paid 51.43 rubles by the Prison Committee. Other live-in staff consisted of six policemen (each paid 6.8 rubles) and three Cossacks (paid 24.83 rubles), who were fed by the Prison Committee. No doubt reflecting a much lighter workload, these salaries were far less to those of the Butyrka Prison staff, whose Caretaker received 285.71 rubles plus extra 600 rubles from the Prison Committee and a large apartment. Other Butyrka officials likewise received much higher salaries and had larger apartments. See *TsIAM*, f. 16, op. 14, d. 7 (*Spiski chinovnikom lekariam i prochim litsam sluzhashchim pri gubernskom Tiuremnom i Peresyl'nom zamkakh i vo Vremennoi Tiur'me*). Interestingly, none of the Provisional Prison staff were there longer than a few years, whereas some of the Butyrkaia prison staff had been employed there since the 1820s.

⁴⁸³ *TsIAM*, f. 16, op. 30, d. 390.

In 1861, the police chief suggested to the military governor general that a less restrictive set of rules should be adopted, based on an 1836 draft instruction that was never confirmed, as well as on the St. Petersburg rules which were adopted for Moscow with only a few changes to reflect existing Moscow practices.⁴⁸⁴ The duties of the military guard were limited to preventing debtors from physically escaping the building,⁴⁸⁵ to conducting a daily roll-call, and to stopping any disturbances among the prisoners, but only at the Caretaker's request. Entering prisoners were to be examined by a doctor (who had to visit the prison at least twice a week) and were deprived of sharp weapons, large amounts of money, and any alcoholic beverages. Debtors were to have their clothes and underwear, but if they had no bed or linen of their own, they were to be issued a bed with mattress, sheet, blanket, cover, a small cupboard and a stool (the comment on the margins was that the Provisional Prison had very few of these items and they had to be acquired).⁴⁸⁶ Debtors in Moscow were not obligated to perform any labor other than keeping their rooms clean and tidy (in St. Petersburg they had to oversee food preparation to prevent possible complaints).

With respect to dining, the rules in Moscow and St. Petersburg differed considerably. In St. Petersburg food was prepared for all the prisoners at the same time and consumed in the common dining hall during set dining hours. In Moscow, each debtor received his own maintenance money to use as he or she saw fit, usually by forming an eating *artel'* with several other

⁴⁸⁴ The St. Petersburg rules are listed in *TsIAM*, f. 16, op. 30, d. 390, ll. 10-24.

⁴⁸⁵ Debtors were permitted to leave the building (after proper sign-out procedures and under escort) to meet with their creditors, as well as in case of a family illness or death. This privilege was definitely not extended to regular prisoners. *TsIAM*, f. 16, op. 23, d. 2078 (*Ob iz'iatii na vremia iz Mosk. tiur'my nesostoiatel'nykh dolzchnikov*) (1861)

⁴⁸⁶ Although the Pit had its own bath until the 1860s, thereafter debtors were allowed to go to outside baths once every two weeks, ten persons at a time. *TsIAM*, f. 50, op. 4, d. 8044 (Lukin).

prisoners or buying food from the outside.⁴⁸⁷ Debtors were allowed to have food from the outside and to have small sums of money to buy tea, sugar, and other necessary supplies. The menu in St. Petersburg (and most likely in Moscow as well) consisted of beef soup (*shchi*, a cabbage base, or *borshch*, with beets added), millet or buckwheat kasha (that could be replaced with pasta) with butter, and on holidays beef roast with sauce and potatoes or cucumbers. During fast days, soup was made with sturgeon or *snetki* (small dried salted fish), soup with white (porcini) mushrooms and peas, and *kasha* prepared with sunflower oil or replaced by potato *kisel'* (a starchy suspension), supplemented on Sundays by fried fish. During high holidays prisoners were to receive *pirogi* (savory filled pastries), on the last three days before Easter – pancakes, and on Easter itself – eggs, *kulich* and *paskha* (Easter cakes), and for dinner – roasted veal and ham. In addition, prisoners were to receive bread and salt at all times without limit. While simple, this fare seems to be better and cheaper than what was offered in unreformed English debtors' gaols.⁴⁸⁸ St. Petersburg rules that were most likely not followed in Moscow also required that prisoners be quiet during dinner, and not be allowed to cook by themselves.

Debtors were to be housed in such a way as to fit each others' personalities, and in the event of a quarrel were to be moved to different rooms to ensure "quiet, peace, and concord." They were to have complete freedom inside the prison, their rooms were not locked, and there were no guards inside the prison. The outside gate was to be unlocked during the day, with a doorman posted at the entrance (unlike in the St. Petersburg prison, where the outside doors were always

⁴⁸⁷ As of 1865, debtors were supposed to eat in dining rooms next to the kitchens, and prohibited from eating in their rooms, but this may not have been strictly observed. *TsIAM*, f. 50, op. 4, d. 8044 (Lukin).

⁴⁸⁸ Finn, *The Character of Credit*; Philip Woodfine, "Debtors, Prisons, and Petitions in Eighteenth-Century England." *Eighteenth-Century Life*, Vol. 30, No. 2 (Spring, 2006), pp. 1 – 31.

locked). Prisoners could engage in crafts⁴⁸⁹ and read books and journals in their rooms (in St. Petersburg reading periodicals was only allowed in the dining room). Debtors could write all kinds of papers concerning their cases, although official court submissions had to go through the Caretaker. Whereas in St. Petersburg visitors were only allowed in the special visitors' room, in Moscow visiting was allowed from 8 am to 4 pm in the debtors' rooms.⁴⁹⁰ Neither drinking nor gambling was permitted (unless playing such games as dice, cards, or checkers not for money). No quarreling, swearing, songs or excessive noise were to be tolerated, and offenders could be placed in a jail room for one hour to three days. Otherwise, the prison staff was to treat inmates "as politely and meekly (*krotko*) as possible, through which they would be persuaded to be polite and respectful to each other."⁴⁹¹

The Provisional Prison also included a separate Women's Section. The number of female debtors imprisoned throughout the year seems to have been between 20 and 40.⁴⁹² (The Workhouse housed up to 100 women imprisoned for tax arrears throughout the year.)⁴⁹³ The Women's Section had beds for 22 persons. According to the 1853 report, female debtors were

⁴⁸⁹ The instruction in effect in 1865 stated that debtors were permitted to engage in all activities permitted to free city inhabitants, as long as there were no indecency and no inconvenience to other debtors. *TsIAM*, f. 50, op. 4, d. 8044 (Lukin).

⁴⁹⁰ After the renovations in the early 1860s, the Pit had a special visitors' room, and only relatives were allowed to visit debtors in their own rooms, although this rule was not strict. Visiting hours were not strictly observed, since another paragraph of the instruction only required that all visitors be out before 9 pm. Because the visitors' room was crowded and hot, many meetings also took place in the sunken central courtyard of the prison. Thus the prison corridors were typically busy with dozens of debtors, servants, and visitors moving about, who were often difficult to distinguish from one another. *TsIAM*, f. 50, op. 4, d. 8044 (Lukin).

⁴⁹¹ Another version of the instruction in effect in 1865 mandated that «Смотритель обходится с должниками кротко и человеколюбиво; старается приобрести их доверие себе; расспрашивать о их нуждах и по просьбе их должен исполнять все законом дозволенные их требования» *TsIAM*, f. 50, op. 4, d. 8044 (Lukin).

⁴⁹² See notes to Table 4.3 above.

⁴⁹³ *GA RF*, f. 123, op. 2, d. 208 – (*Otchet ...*) (1853), l. 54.

housed separately from non-debtors in a “rather comfortable and large room, supplied with the necessary furniture, beds, bed supplies, and linen.” Non-debtor prisoners, by contrast, slept on bunk beds (albeit separated from each other by partitions) on felt mattresses and pillows stuffed with hay, and were subjected to constant supervision by a female overseer who treated them to “spiritual books.”⁴⁹⁴ Nonetheless, female debtors were subjected to a far greater scrutiny than male ones, since the Ladies’ Committee of the Prison Society appointed one of its members to gather “most precise information about social position (*sostoianie*), conduct, way of life, and morality of female prisoners, and about the reasons for which they fell into insolvency, at the same time inquiring into the social position of the creditors themselves and into the nature of their debt.”⁴⁹⁵ The Inspectoress of the Women’s Section in the late 1840s, was the wife of a 14th Class civil servant, Anna Pichugina. She was hired in 1844 and paid 85.7 rubles by the Committee (not by the police or the city authorities), as well as provided with a two room apartment, three Dutch ovens and firewood for them (although she had to buy her own candles).⁴⁹⁶

Although Prison Committee officials were frequently concerned about maintaining the morality of female prisoners throughout Russia, only in 1861 was there an instruction issued for Provisional Prison (conforming to the rule that existed in St. Petersburg’s debtors’ prison) that required women’s quarters to be entirely separate from the rest of the prison, and the door to be locked at all times, with the Inspectoress having the key. Thus, female debtors’ freedom was significantly restricted as compared to their male counterparts. This was in line with the French practice, reported in 1851 by a Russian visitor, to allow male debtors to receive their wives and

⁴⁹⁴ *GA RF*, f. 123, op. 2, d. 208, l. 97.

⁴⁹⁵ *GA RF*, f. 123, op. 2, d. 208, l. 51 ff.

⁴⁹⁶ *TsIAM*, f. 16, op. 14, d. 7 (*Spiski chinovnikam...*).

children in their rooms during visiting hours or take walks together in the prison's flower garden, but not allowing the same privilege to imprisoned married women, who were only allowed to see their husbands in the common visitors' room, for the avowed purpose of preventing pregnancies.⁴⁹⁷ But in Moscow keeping male and female debtors in the same building was still deemed to be inappropriate, and, interestingly, it was one of the female members of the Moscow Prison Committee, Novikova, who donated 1,500 rubles in 1862 to establish a separate women's debtors' prison in the building of Prechistenka Police Station, after which, the Committee boasted, the Women's Section became "most comfortable" and could "stand among the best establishments of this kind."⁴⁹⁸ The report suggests that the new facility separated women by their rank, which was not done in the Provisional Prison.

Despite their relatively relaxed living conditions, imprisoned debtors frequently challenged the authorities. For example, in 1856 State Councilor Gastev reported to the governor general that ever since the debtors' bathing facilities were converted to living space to house their swelling numbers, and visits to outside baths had been allowed, debtors used these visits mainly as a chance to walk through the city and obtain drink, which was not permitted in the prison.⁴⁹⁹ Debtors also skillfully explored the lack of coordination between different bureaucratic structures, for example, first petitioning the city police chief to be allowed to leave prison for various private reasons and if refused, petitioning the provincial procurator who was more

⁴⁹⁷ *GA RF*, f. 123, op. 1, d. 89 (*O poruchenii raznym litsam osmotret' tiuremnye zamki i drugie mesta zakliucheniia*) (1842-51)

⁴⁹⁸ *GA RF*, f. 123, op. 1, d. 322, l. 41 ob. ff.

⁴⁹⁹ *TsIAM*, f. 16, op. 44, d. 6 (*O vremennoi tiur'me*) (1846-1859), l. 29 – 30 ob. The reason for these crowded conditions was Alexander II's coronation, which induced creditors to imprison their debtors more often in hopes of ransom money from the imperial family and private donors.

generous.⁵⁰⁰ Furthermore, they managed to evade the restrictions against drinking by consuming vodka not only when visiting home or the baths, but even on visits to the police offices or the courts that were all located in the same building as the prison. Debtors also managed to smuggle alcohol into the prison in violation of the rules, for example, in 1847 the city Police Chief inspected the Pit and noticed the smell of vodka in one of the rooms. Investigation revealed that the drink had been brought in by retired sergeant (*unter-ofitser*) Boitsov who had been hired by the Prison Committee as a servant and was immediately fired after the incident.⁵⁰¹

Quarreling and disorders of various sorts also seem to have been common in the Pit. For example, in 1830 Collegiate Secretary Aleksei Komarov, who was not a debtor but was placed in Provisional Prison during a criminal investigation, inflicted knife wounds on another civil servant, Botashev, apparently because Komarov asked Botashev to bring him vodka, who brought him a carafe of water as a joke, and then took a small whip that was for some reason found in their room and started jokingly hitting Komarov, who eventually lost his patience. Botashev, however, claimed that Komarov was hitting him with his pipe, and that he was using the whip in self-defense. Komarov was at first sentenced to be conscripted to the army (or exiled if not fit for service), but the Senate overruled and sentenced him to one month's arrest.⁵⁰²

A much more disruptive episode, already mentioned briefly in Chapter Two, occurred in June of 1865, when 64-year old merchant Andrei Lukin, who apparently made a living as a moneylender, visited the Pit to meet with one of his debtors and was beaten by a group of inmates in the presence of a police officer who was for some reason unable or unwilling to

⁵⁰⁰ *TsIAM*, f. 16, op. 23, d. 2078 (*Ob iz'iatii na vremia iz Mosk. tiur'my nesostoitel'nykh dolzhnikov*) (1861)

⁵⁰¹ *TsIAM*, f. 1581, op. 1, d. 6 (*Protokoly Moskovskogo Popechitel'nogo o Tiur'makh Komiteta*) (1847)

⁵⁰² *TsIAM*, f. 50, op. 2, d. 4605 (Komarov) (1830).

intervene. The pretext for the beating was that Lukin had unjustly imprisoned the Armenian nobleman and wine merchant Serebriakov. Lukin complained to the police, and after a preliminary investigation the governor assigned the case to a special aide, Colonel Prince Chagadaev. Given the subversive character of the incident, the colonel was zealous in his efforts. However, the prisoners refused to implicate any of their number, and none of the young merchants and *meshchane* accused by Lukin confessed, whereas Serebriakov, who allegedly was the cause of the incident, soon paid his debt, was freed and immediately took a train to Nizhnii Novgorod before Chagataev had a chance to detain him. The police officer, who was eventually dismissed, was likewise either unable or unwilling to recognize any of the culprits. Lukin himself changed his story and became lost in details, and apparently was greatly disliked by the police (who took advantage of every opportunity to infuriate him, for example, by refusing to issue him a copy of his medical examination).

Strikingly, the investigation made progress only when the elderman of the room where Lukin was beaten, a Jewish merchant from Berdichev named Natanzon, agreed to testify and identify three men who were the most active perpetrators of the beating (one of them was actually a member of the prison's staff!). Chagataev had, no doubt, managed to locate the one prisoner who was most likely to cooperate, since he was harassed by prisoners and by the authorities alike, and was no doubt all too happy to be rid of his tormentors. But one witness was not enough for conviction under the Russian law of evidence, and Lukin assisted the investigation by getting another imprisoned Jewish debtor, Matvei Shmuller, to testify on his behalf. Subsequently three non-Jewish debtors also agreed to testify and confirmed Natanzon's and Schmuller's account of the incident. Although the case file is not complete, we can be certain that with so many

witnesses Chagataev was going to get convictions he sought.⁵⁰³ An indirect confirmation of this is presented by a different incident that occurred a couple of months into the investigation, around eleven o'clock in the evening of August 11, 1865, when eight imprisoned debtors (including several of those who were being accused of beating up Lukin) beat up Natanzon and three other debtors, threw out furniture and belongings from Natanzon's room, and insulted the Caretaker and the police officer on duty. Apparently the cause of the riot was that several debtors decided that the police officer, Voznesenskii, wanted to free Jewish debtors. However, every eyewitness to the incident gave a different version of the story, and the newly-established District Court ruled that the incident happened too long ago and that it was impossible to conduct a proper investigation (considering that most of the debtors involved were already free), and closed the case.⁵⁰⁴

Lukin's story suggests that Moscow's authorities were deeply conflicted about their approach to the issue of moneylending and debt imprisonment: on the one hand, the police guards warned Lukin not to go inside by himself but were unwilling or unable to prevent or to stop the beating and unwilling to cooperate with the investigation. This might indicate either a personal dislike of Lukin or a more systemic distaste for his type of moneylending. On the other hand, once the investigation had been launched, Prince Chagataev found the culprits quickly and efficiently after finding a way to break through the prisoners' code of silence. This was caused, no doubt, mainly by the governor's motivation to suppress and punish any prison riot in such a central location as the city's court building. However, wealthy and literate Lukin himself does not at all

⁵⁰³ *TsIAM*, f. 50, op. 4, d. 8044 (Lukin).

⁵⁰⁴ *TsIAM*, f. 142, op. 2, d. 232 (*O besporiadjakh proizvedennykh v dolgovom otdelenii soderzhashchimisia tam dolzchnikami*).

appear in this story as a downtrodden type of moneylender who – if the stereotype about the universal hatred of moneylenders were true – should have been afraid to remind the authorities about his existence. Instead, he took a most active part in the investigation, meeting with witnesses and constantly petitioning Chagataev, the police, and the governor. The case, in fact, closely resembles that of the elderly Old Believer merchant Butikov (discussed throughout this study), who complained against police misbehavior in 1859 and eventually saw the offending officer dismissed; both cases suggest that the higher-level city authorities were reluctant to antagonize Moscow's influential and wealthy commercial strata, whatever they may have thought about the morality of usury.⁵⁰⁵ Lukin's case also shows that the times had changed: Alexander II's liberal reforms were in full swing, and thus there is no indication of any police abuse towards the accused individuals, which fifteen or twenty years earlier would have probably been placed in solitary confinement and induced to confess.

In sum, although the Provisional Prison was located next door to the city's bureaucratic hub, and although it was unmistakably a prison locked up for the night under military guard, its everyday conditions seem to have been relatively relaxed and permissive, in some aspects – such as in the general level of supervision and surveillance – more so than in the semi-privatized debtors' prison in St. Petersburg. Even more important, the prisoners were not segregated according to the empire's system of legal estates but rather housed to their wealth and social status; while most of them were *meshchane*, they mingled freely with merchants, civil servants, military officers, and even wealthier peasants. Interestingly, none of them were poor (creditors

⁵⁰⁵ Discussed throughout this study. Governor's aide in that case was similarly energetic; it obviously proved more difficult to break the policemen's code of silence, but eventually he found an indirect way to punish an overzealous police officer through finding accounting "irregularities" in his books.

would not have thought small debts to be worth paying maintenance fees), nor were all but a few exceptional cases truly rich, with most prisoners owing only a few hundred rubles. While inmates regularly challenged the authorities in various ways, this misbehavior was not harshly punished, and even serious crimes like the beating of Lukin were investigated energetically but carefully. The Debtors' Pit's operations thus question, or at least complicate, the meaning of authority and punishment in microcosm just as these concepts were being re-worked within the larger cultural context by the Great Reforms. Although the stereotypical view of Nicholas I's reign was its paternalism and authoritarianism, the Debtors' Pit operations, as well as many other aspects of the pre-reform legal and administrative system, relied upon private action and discretion. As long as the prison was filled up on behalf of private individuals with debtors who were not considered as real prisoners, the Pit could not be fully subjected to bureaucratic control. While the abolition of debt imprisonment in 1879 appears to be mostly following the trend in all major legal systems, it should perhaps be examined as delineating more sharply between the government and the public and asserting the former's power to control the penal system.

The Rituals of Compassion

The Debtors' Pit, in addition to being a place of conflict and cooperation among creditors, debtors, and government officials, was also a target for the charitable sentiment both of ordinary Muscovites and of some of the most influential persons in the empire. Twice a year, on Easter and Christmas, most imprisoned debtors were ransomed with money from private donations. On other occasions throughout the year, tied to the memory of important dynastic events and to religious holidays, smaller numbers were set free as well. These ceremonies were supervised by important government officials ostensibly in their private capacity as members of the semi-

official philanthropic Moscow Prison Committee (*Popechitel'nyi o tiur'makh komitet*). Involving often complex negotiations with creditors, as well as assessments of the debtors' moral character and behavior, ransom procedures demonstrated the curious way in which public and private elements intertwined in Russian life before and during the great reforms. Official tutelage encouraged private charitable sentiment, while directing it along desired lines. Beginning in the late eighteenth century, ransom rituals forged a symbolic link between Moscow's populace, who provided most of the money, the imperial family, whose members donated their influence, some of the funds, and the use of the bureaucracy to administer the charity, and the orthodox faith, which during the reign of Nicholas I became the three elements of official nationality. These rituals thus represented an example of official nationality in action, emerging in practice almost before it was formulated in theory. The doctrine of "official nationality" was formulated in Russia in the 1820s by conservative intellectuals. It centered on the triad of Orthodoxy, Autocracy, and Nationality (*narodnost'*).⁵⁰⁶ Nicholas Riazanovskii has argued that the doctrine had a direct influence upon the everyday operations of the Russian bureaucracy under Nicholas I (rather than serving merely as a rhetorical device), and concluded that this influence had the harmful effect of alienating Russia's educated society from the government. This dissertation, by contrast, presents evidence for a different kind of official nationality "in action" that may not have been intended or even noticed by Uvarov or Nicholas I, but that combined popular and populist monarchical and religious elements.

⁵⁰⁶ Riazanovskii, *Nicholas I and Official Nationality in Russia, 1825-1855* (Berkeley, 1967). A.L. Zorin, *Kormia Dvukhglavogo Orla... Literatura i gosudarstvennaia ideologia v Rossii v poslednei treti xviii – pervoi treti xix veka* (Moscow, 2001).

During most of the nineteenth century ransom operations were administered by the local Committees of the Imperial Prison Society, which was established by the English philanthropist John Venning, whose brother owned a factory in St. Petersburg and who himself came to Russia in 1817 to propagate the ideas of the Bible society and the English Prison Society.⁵⁰⁷ Alexander I took the project under his patronage, and operations were launched in 1819, with branches eventually opening in all sizable cities and towns.⁵⁰⁸ As the Soviet historian Mikhail Gernet has noted, Society operations had from the start a semi-official character: while technically a private charitable society, it was headed by the Minister of Interior and staffed by bishops, governors and other local dignitaries. Not surprisingly, in 1879 the Society lost most of its philanthropic character and became the Chief Directorate of Prisons.⁵⁰⁹ The second important aspect of the Society was the way it combined practical efforts to improve the prisoners' physical conditions with a concern for their spiritual well being, as well as with the introduction of "prison discipline," such as strict visitation hours, a combination of work and rest periods, and in general various restrictions and regimentation.⁵¹⁰

⁵⁰⁷ See Barry Hollingsworth, "John Venning and Prison Reform in Russia, 1819-1830." *The Slavonic and East European Review*, Vol. 48, No. 113 (Oct. 1970), pp. 537-556.

⁵⁰⁸ Although prisoner ransom was carried out already in the late eighteenth century (and was perhaps associated with the Empress Maria Fedorovna – only Paul's name was mentioned in the course of the 1797 ransom ceremony), it only became regularized and institutionalized under Alexander I, who became celebrated in the Prison Committee's lore (the anniversary of his death on November 19 became an occasion for prisoner ransom that was observed into the 1860s). I am unsure about Maria Fedorovna's role, however.

⁵⁰⁹ Ironically, after the prison reforms of the 1860s (which replaced military control with civilian staff), the Prison Society was looking forward to becoming a purely charitable institution and discarding any appearance of a governmental institution and its "administrative ways" (*priiomy*). *GA RF*, f. 123, op. 1, d. 446 (*Po otchetu Obshchestva Popechitel'nogo o tiur'makh za 1868 i 1869 gg.*) (1871).

⁵¹⁰ M.N. Gernet. *Istoriia tsarskoi tiur'my, 1762-1825*. (Moscow, 1960), pp. 139-145. See also Talberg D.G. "Obshchestvo popechitel'noe o tiur'makh" in *Zhurnal grazhdanskogo i ugolovnogo prava*. 1878. vol.5

The rules of the St. Petersburg debtors' prison required clerks processing new prisoners to find out as much information as possible about the circumstances which caused them to default on their debts, which was to be verified at the debtor's home address by interviewing his acquaintances and combining it with "detailed information about his way of life."⁵¹¹ In Moscow, where the Provisional Prison had a very small staff, this duty was delegated to the Prison Committee, which had a special member who made regular visits and investigated any inmates who were particularly worthy of compassion, although they seem to have been particularly prying only with female debtors. Another member was appointed as an intermediary (*khodatai*) on behalf of those debtors who were imprisoned at police precincts throughout the city.⁵¹² Yet another interesting impact of Prison Society ideas was that both in Moscow and in St. Petersburg the prison's caretaker was charged with negotiating with creditors to persuade them to free debtors from arrest altogether or to forgive part of their debt.⁵¹³ Even more importantly, the Committee set aside some of its funds to ransom prisoners in addition to private donations. In addition, Doctor Gaaz, the famous nineteenth century philanthropist, received 100 rubles once a month to help the families of poor imprisoned debtors, and each December he received another 200 rubles to ransom Workhouse inmates kept for tax arrears.⁵¹⁴ When ransoming the Workhouse inmates, Dr. Gaaz also distributed religious literature (such as psalters and catechisms) that he purchased with his own money, as well as Russian and Church Slavonic grammars.

⁵¹¹ *TsIAM*, f. 16, op. 30, d. 390, l. 10 ff.

⁵¹² *TsIAM*, f. 1581, op. 1, d. 6 (*Protokoly...*) (1847), l. 22ob.

⁵¹³ *Id.* - f. 16, op. 30, d. 390, l. 10 ff.

⁵¹⁴ *TsIAM*, f. 1581, op. 1, d. 6

The earliest redemption ritual whose detailed description I was able to locate took place in 1797 on the occasion of Emperor Paul's birthday, long before the Prison Society was established, but it established the pattern that was to be repeated over and over: the philanthropic subjects of the tsar donated the money, and then the city's top officials arrived at the prison and rescued grateful debtors. As the city's governor general reported to the tsar

For the Most happy day of your Imperial Majesty's Supreme birth, the inhabitants of this capital as the sign of their feelings toward Your Majesty's most Supreme favors toward them, donated a sum of money [...] in order to ransom those imprisoned pursuant to *veksels* and other collections, with which on that day ransomed and freed 51 person. The joy of those receiving their freedom was so touching that many creditors [...] conceded 50 to 60 percent of their claims.⁵¹⁵

The newspaper account of this event noted a Nezhin Greek merchant, Konstantin Bakcheev, who contributed over 5,000 rubles, and described the collective visit of the prison by the military and civil governors, ober-procurator of the Senate, the Vice Governor, provincial procurator, and other officials, who administered the ransom and inspired such joy among the prisoners that many creditors were then induced to forgive additional sums; one just-released debtor hurried to find his own debtor who was still imprisoned and set him free. This description suggests that the ransom ceremony – although not strictly a public ceremony like a coronation – took place in a confined but crowded and emotionally charged environment of the Provisional Prison with its church, its courtyard, its broad corridors and staircases, and its relatively spacious chambers. Inmates, creditors, and government officials appear to have been able to observe each other's bargaining and its results. After the ransoming was completed, all the debtors and the officials (*nachal'stvo*) also went to the Prison church together and prayed for tsar's health.⁵¹⁶

⁵¹⁵ *TsIAM*, f.16, op. 1, d. 715 (*O vykupe liudei, soderzhashchikhsia za dolgi v Mosk. tiuremnom zamke*) (1797).

⁵¹⁶ *Moskovskie Vedomosti*, 1797, No. 76 (Sept. 23).

A similar ceremony took place on the occasion of Nicholas I's coronation in 1826, when the dowager Empress Maria Fedorovna donated 5,000 silver rubles for ransoming those debtors who were "worthy of compassion."⁵¹⁷ On the Coronation Day (August 22, 1826) 17 persons were ransomed for the amount of 2,880 rubles (exactly 25 percent of their original debt). Creditors had to issue signed receipts agreeing to discontinue their claims. The anniversary of Alexander I's death on 19 November was a popular occasion for charitable works given that he was the august founder of the Prison Society.⁵¹⁸ After Nicholas I died in 1855, four Moscow merchants donated 10,000 silver rubles to ransom debtors in memory of the anniversary of his death.⁵¹⁹ This was enough to ransom 15 persons from the Provisional Prison and 92 persons who were kept in the Workhouse for tax arrears.

The imperial family also ransomed debtors during regular holidays. For example before Easter in 1847, the Prison Committee received 572 rubles for ransoming "debtors who are more worthy than others of compassion and aid" from "two Persons who wished to remain anonymous" but used the Hofmarshal of the heir to the throne to transfer the money.⁵²⁰ In 1850, Nicholas I donated 10,000 rubles to ransom debtors owing no more than 100 rubles.⁵²¹ In 1855 he donated 6,329.03 rubles (which probably amounted to 10,000 paper rubles).⁵²²

⁵¹⁷ *TsIAM*, f. 16, op. 30, d. 259. Nicholas I seems to have been more generous; for instance, he donated 10,000 silver rubles in 1850 to ransom debtors owing no more than 100 rubles. See *TsIAM*, f. 16, op. 16, d. 1368.

⁵¹⁸ *GA RF*, f. 123, op. 1, d. 322, l. 54 ob. Also f. 123, op. 1.446 (*Po otchetu Obshchestva Popechitel'nogo o tiur'makh za 1868 i 1869 gg.*), l. 68. Other popular occasions in the 1860s were deaths of significant donors, the day commemorating empress Maria Fedorovna, the day of death of Catherine II, and Alexander I's coronation. See *GA RF*, f. 123, op. 1, d. 446, l. 65-66 ob. (*Po otchetu ... za 1868 i 1869 gg.*).

⁵¹⁹ *TsIAM*, f. 16, op. 20, d. 55.

⁵²⁰ *TsIAM*, f. 1581, op. 1, d. 6 (1847).

⁵²¹ *TsIAM*, f. 16, op. 16, d. 1368.

⁵²² *GA RF*, f. 123, op. 2, d. 302 (*Otchety tiuremnykh komitetov Moskovskoi gubernii*) (1856), 1.17 ff.

Private citizens followed suit (or led the way, as the case might be). For example, in 1807 on the occasion of the peace treaty with France, Moscow's liquor tax farmers donated 5,000 rubles to ransom debtors who owed between 100 and 500 rubles, which curiously excluded the poorest and the richest debtors alike and benefited Moscow's middling groups.⁵²³ In 1817, debtors at the Pit received private donations for 2,500 rubles and large quantities of bread, fish, eggs, salt, and other supplies.⁵²⁴ In 1847, to mark the 700th anniversary of Moscow's foundation, the elders of its Old Believer communities and a group of tax farmers sent 1,000 silver rubles to the city governor to ransom debtors "who will deserve it." The governor forwarded the money to the Committee and directed its particular attention to the unfortunate condition of Lieutenant's wife Princess Kastrova who was at the time hospitalized but was to be imprisoned upon discharge for her debt of 750 paper rubles to the wife of a 14th Class civil servant Rombakh. During the second half of that year, charitable donations for ransoming debtors amounted to 1,149.82 rubles.⁵²⁵ In 1856, Governor Count Zakrevskii donated 825 rubles, 12 other persons, including merchants, civil servants, and a priests – between 2.5 and 145 rubles, and "various unknown donors" gave 3,420.36 rubles.⁵²⁶ It seems that Muscovites were far more charitable than St. Petersburgers. For example, in 1862 new private donations in St. Petersburg amounted to only 755.40 rubles. In Moscow, private donations were over ten times that amount: 7,848 rubles.⁵²⁷ In fact, unless a

⁵²³ *TsIAM*, f. 16, op. 3, d. 2431 (*O vykupe dolzhnikov iz-pod strazhi sodержateliami mosk. piteinykh otkupov*) (1807)

⁵²⁴ *TsIAM*, f. 105, op. 4, d. 997 (*O dostavlenii svedenii o arestantakh vo vremennoi tiur'me i o instruksii v onoi dlia voinskogo karaula*).

⁵²⁵ *TsIAM*, f. 1581, op. 1, d. 6 (1847).

⁵²⁶ This seems to confirm the Western view of Russian charity as being religiously motivated (as opposed to Galina Ulianova's interpretation stressing the desire for self-advertising. *GA RF* f. 123, op. 2, d. 302 (*Otchety tiuremnykh komitetov Moskovskoi gubernii*) (1856)

⁵²⁷ *GA RF*, f. 123, op. 1, d. 322, l. 72.

given year happened to include a major dynastic event, most donations to ransom debtors came from private persons: for example, in 1850 the imperial family gave 572 rubles to ransom debtors in Moscow, whereas various private donors gave 6,598 rubles.⁵²⁸

In addition to giving money directly, private donors frequently set aside certain sums in their wills to be deposited at a bank and to be used for ransoming debtors, usually on a holiday like Good Friday. For example, in 1810 the famous Princess Ekaterina Dashkova willed 500 rubles, enough to ransom eight persons. In 1811 there was a set of bequests including State Councilor's wife Alfimova (600 silver rubles), *hegoumenos* (abbot) Simonovskii (5,000 paper rubles), maid Bileva (400 paper rubles), cavalry Lieutenant Tarelkin (200 paper rubles), and State Councilor's wife Baskakova (100 rubles). The income from this amount (310 rubles) was sufficient to ransom six Moscow *meshchane* during Easter.⁵²⁹ Their creditors – who had to make a considerable concession of the original total debt of 1,155 rubles, included an army non-commissioned officer, a craftsman, a merchant, a soldier's wife, and a servant. Other donations were not self-advertising and not timed for some festive occasion. For example, in 1823 *meshchanin* Ivan Kholshchovnikov was freed when “an unknown philanthropic person” paid his debt of 184.50 rubles.⁵³⁰ Thus the ransom ritual symbolically connected the donors (some of whom were wealthy, even aristocratic, and some only donated a few rubles) with the lower stratum of Moscow's propertied classes.

⁵²⁸ GA RF, f. 123, op. 1, d. 446, l.65-66 ob. (*Po otchetu Obshchestva Popechitel'nogo o tiur'makh za 1868 i 1869 gg.*).

⁵²⁹ TsIAM, 68, op. 1, d. 799 (*Po otnosheniiu Moskovskogo grazhdanskogo gubernatora ob iskuplenii sodержashchikhsia pod strazheiu za dolgi*) (1811). For the 1860s, see GA RF, f. 123, op. 1, d. 353 (*Po raznym predmetam, ne trebuiushchim dalneizhego formirovaniia*) (1865-7).

⁵³⁰ TsIAM, f. 54, op. 12, d. 222 (*O sodержanii arestantov Moskovskoi vremennoi tiurmy*) (1823-5).

As can already be seen, creditors who received ransom money could only hope to recover a fraction of the original debt. As of 1826, the number could be as little as 20%, which was of course better than not receiving any repayment at all.⁵³¹ However, complex negotiations often took place. It seems as though creditors who sensed that a particular debtor attracted the authorities' sympathy were more likely to hold out. For example, in 1826 officials were unable to persuade Sergeant's wife Ezhevskaiia to accept anything but the full amount owed to her by Collegiate Registrar's wife Maria Aleeva, who incurred her debt because of a complicated lawsuit. Despite the high amount of her debt, officials were sympathetic to her situation because she had been nursemaid to Prince Paul of Wuerttemberg, father-in-law of the tsar's brother Grand Duke Mikhail Pavlovich. Only several months later her creditor agreed to take 1,300 rubles in cash and to take over Aleeva's own lawsuit against *meshchanin* Dolgov for 25,000 rubles.

Whereas this court connection automatically entitled Aleeva to special consideration, ransom procedures typically involved complex assessments of debtors' behavior and moral qualities. The 1826 ransom on behalf of the dowager Empress Maria Fedorovna created the most detailed record of such a procedure that I was able to locate. One of the governor's aides, Aulic Councilor Nechaev, drew up a list of all prisoners and selected those who deserved preference in light of the length of their confinement, the large size of their families, and the small size of their debt, which "condemn them to a useless lack of activity and distract them from their families and their ordinary commercial or craft activities." Even then, the amount of their debt was four times what was available as ransom, and Nechaev had to hope for concessions from the creditors.

⁵³¹ *TsIAM*, f. 16, op. 30, d. 259 (*Delo ob osvobozhdenii dolzchnikov iz Moskovskoi vremennoi tiur'my v den' koronovaniia Nikolaia I*) (1826).

Nechaev's short list included 29 persons, of whom three were women (one was a wife of a minor official and two were *meshchanki*). This is a rather small number, considering that Russian women frequently engaged in commerce and typically there were at least a dozen in the Provisional Prison at any one time. Altogether, there were 20 *meshchane*, one *chinovnik*, three foreigners and five craftsmen (*tsekhovye*). The first on the list was *meshchanka* Katerina Prakhova, who was also the subject of a separate memo, detailing that she had absorbed her dead husband's debt of 2,800 rubles, which he had borrowed from a County Treasurer in connection with his liquor tax farming operation in the town of Makariev. This money turned out to have been stolen, and so the Prakhovs were left responsible for the debt to the Treasury. Next to each name Nechaev made notes about each debtor's character and their reasons for indebtedness. When the debtor's references were good, the notation was simply "outstanding," "good," or "decent." Sober behavior was definitely a plus (although, as shown below, drunkenness was not automatically a minus), and so was having a spouse and children. It is noteworthy that the debtors' acquaintances' vouching for them made further elaboration into a debtor's qualities unnecessary, as far as Nechaev was concerned.

Bad or ambivalent references were more varied: for example, Collegiate Registrar Tselevich was "unsober," plus his wife had a small amount of property; the "way of behavior" of Provincial Secretary Naryshkin was "known," soldier's wife Fomina was "an idle woman of mediocre behavior," and craftsman Rodionov was "not completely sober, but otherwise ha[d] good qualities"; *meshchanin* Gavrilov was "not always temperate but deserves compassion because of poverty and a large family." Other sample notations were "has own house"; "decent man but poor; son keeps a drinking establishment"; "went into debt because of illness." To sum

up, people weak toward drink were not automatically out of luck, while keepers of drinking establishments definitely were even when their debt was not large; also out of luck were merchants with relatively large debts (of several thousand rubles – Nechaev did not even make inquiries about them). The reasons for indebtedness varied (see Chapter Two), but seemed to have little bearing on whether someone made it onto the short list, unless it was one of only a few accidental causes, such as flood or illness.⁵³²

Although the 1826 list was unusually detailed, the practice of evaluating debtors' character in a detailed bureaucratic way persisted into the 1850s. For example, when in 1855 four Moscow merchants donated 10,000 silver rubles to ransom debtors in memory of Nicholas I's death, authorities ransomed 15 debtors from the Pit and emptied out the Workhouse of its 92 inmates. Similarly to the 1826 procedure, officials assessed the debtors' moral qualities and even compiled a list of 22 persons who were not to be ransomed under any circumstances. This included a couple of "thieves and frauds," one debtor who had already been ransomed in the past, and several men who were involved in the business of furnishing substitute conscripts to clients who wished to avoid the draft.⁵³³ Interestingly enough, no inquiries were ever made about Workhouse inmates kept there for tax arrears and routinely ransomed *en masse* without any extra ceremony: Muscovites seemed to show a rather more unconditional charity toward the poorest debtors as compared to the contemporary English trend of treating poor debtors as blameworthy delinquents.⁵³⁴

⁵³² TsIAM, f. 16, op. 30, d. 259 (*Delo ob osvobozhdenii dolzchnikov iz Moskovskoi vremennoi tiur'my v den' koronovaniia Nikolaia I*) (1826).

⁵³³ TsIAM f. 16, op. 20, d. 55.

⁵³⁴ Finn, *The Character of Credit*.

In sum, ransom rituals mingled official and private behavior, in effect symbolically linking the people of Moscow, who were both the donors and recipients of charity, with the Orthodox faith (given that ransom was often carried out during a holiday and presumably tapped into popular religious sentiment), as well as with the imperial family (through the donations of its members and the tying of many ceremonies to important dynastic events) and its bureaucracy, which actually presided over the rituals. Ransom rituals thus applied the underlying sentiments of official nationality in practice before the doctrine itself was officially enunciated. Finally, the procedure of evaluating debtors' characters and behavior reflected (and perhaps even helped to form) the identity of Moscow's middling classes. For instance, the categories of wealth, commercial success, and official rank were secondary compared to the debtor's reputation with his or her acquaintances, the size of the debtor's family, and any personal connections (however tenuous) with the imperial family. Ransom rituals thus show an interesting example of how existing popular charitable sentiment was blended with – and clearly triumphed over – foreign-derived ideas of prison reform and moral discipline.

Conclusion

Moscow's Debtors' Pit was one of only two specialized debtors' prisons in imperial Russia, and its inmate population, while small compared to their English counterparts, or to the vast mass of Russia's vagrants and petty thieves, was significant as compared to the small amounts of persons arrested or convicted for serious crimes. Moreover, the rituals and practices of debt imprisonment challenged some of the key understandings of the tsarist political system relating to punishment, authority, and personal autonomy. Debt imprisonment viewed as part of Russia's legal process relied upon the cooperation, and even initiative, of private persons, similarly to

police collection procedures, civil-law court proceedings, and bankruptcy boards. Like all other pre-reform institutions, the debtors' prison had its peculiar dynamic of cooperation and confrontation between individuals and authorities, showing that the relationship between the overt political and police power of the government and the more subdued "exercise of gentle violence" (to use Bourdieu's words⁵³⁵) represented by creditors was less of a dichotomy and more of a symbiosis. The Debtors' Pit existed because private persons were imprisoned at the discretion of other private persons, and treated differently from Russia's generally miserable "normal" prison population. The corollary was that the authorities could not control the Pit any better than bankruptcy boards or the regular courts with their often drawn-out proceedings. Finally, the history of debt imprisonment in Moscow, as part of Russia's culture of debt, reveals the formation of a single "middling" class that was replacing Russia's official legal hierarchy of estates. Materially, this process is revealed in the make-up of the imprisoned debtor population, which excluded truly rich or truly poor persons and had little regard for their legal estate. Symbolically and mentally, this process is revealed in the debtor ransom rituals, which emphasized the middling classes' identity as propertied Orthodox Muscovites and connected them with (or set them up in opposition to) the upper classes and the imperial family.

⁵³⁵ Bourdieu, Pierre. *Outline of a Theory of Practice*, trans. Richard Nice (Cambridge, 1977), p. 193.

CHAPTER SIX

RUSSIA'S LAW OF DEBT

Introduction

The purpose of this chapter is to examine the formal aspect of the imperial Russian law of debt and the way it affected the everyday practices of debtors and creditors.⁵³⁶ My most immediate aim is to discuss the requirements for different types of debt documents that ensured their validity: the discussion here will therefore be useful to those readers of classical Russian literature who are puzzled by all the references to *veksel'*, *zakladnaia*, and *zaëmnoe pis'mo*. Simply providing English translations is not sufficient, both because many readers will not readily recall, for example, the difference between a bill of exchange and a promissory note, and because many legal doctrines and procedures that Russia adopted from the West were modified considerably to suit Russian conditions. My second, broader, aim is to probe the significance of debt-related legal formalities from the perspective of the interests and actions of individual borrowers and lenders, as well as to outline the collision between form and substance of pre-reform law that was so often problematized by pre-Soviet jurists who in one breath accused pre-

⁵³⁶ This chapter adopts a common-sense intuitive definition of legal “form” and “substance” as applied to the law of debt. “Formalities” refers to specific requirements for legal documents and their validity, whereas the terms of individual debt transactions that could vary within these requirements are defined as their “content.” This distinction should not be confused with the dichotomy of substance v. procedure, both of which have formal features that are “independent of the substantive content of the law.” See Robert S. Summers, “The Formal Character of the Law,” *The Cambridge Law Journal*, Vol. 51, No. 2 (Jul. 1992), pp. 242-262; P.S. Atiyah and R.S. Summers, *Form and Substance in Anglo-American Law* (Oxford, 1987). My use of terminology is also different from the distinction between formal and substantive aspects of the law, defined by Max Weber as a continuum assessing the degree to which the legal system bases its decisions upon criteria intrinsic to the legal system, in other words, legal decisions according to Weber are more “substantive” if they are based upon moral, social, religious, and other non-legal norms. (Lawrence Friedman, “On Legalistic Reasoning – A Footnote to Weber.” *Wisconsin Law Review* (1966)).

reform courts of being overly formalistic and at the same time not formalistic enough.⁵³⁷ The first two sections of this chapter address the two major types of debt transactions in imperial Russia: simple loan (*zaëm* or *zaim*) regulated by civil law, and bill of exchange (*veksel*), which was regulated by a special statute and until 1862 available only to merchants; the last section examines the tension between form and substance in practice through the example of the rule prohibiting borrowing by minors.

The tension between the formal and substantive aspects of law was as inherent in the operations of Russia's law of debt as it was in any other legal system. Imperial Russian legislation spelled out in detail how various legal transactions were to be documented, executed, and registered, with sample specimens of agreements attached; court proceedings were governed by strict rules of evidence. On the other hand, individual creditors and debtors had considerable discretion as to the terms of a particular transactions, including the choice of a specific legal form that best suited their interests. Despite all the concern with legal form that was so characteristic of pre-reform law, some legal scholars have subsequently suggested that pre-reform law, especially before the codification of 1832, emphasized substantive issues at the expense of procedure.⁵³⁸ Also typical is the view that Russian merchants and entrepreneurs have shunned the use of formal contracts and debt documents, preferring oral agreements based on trust.⁵³⁹ The tension between form and substance is therefore crucial for understanding the issues

⁵³⁷ See Introduction.

⁵³⁸ John LeDonne argues in *Absolutism and Ruling Class* that in Russia there was no separate code of civil and criminal procedure as in France, but he deals with the period preceding the compilation of the Digest of the Laws in 1832. The rules set out in part II of its Volume 10 (*O sudoproizvodstve i vzykaniakh grazhdanskikh*) were still comparatively simple but certainly count as a code of civil procedure.

⁵³⁹ See Gindin, *Banki i ekonomicheskaiia politika*, p. 486. Gindin's view is contradicted by my study of court documents, which showed that oral and other informal agreements were practiced but were apparently not the norm. In addition to court cases that obviously usually involved written debt documents, one argument to support my

often raised in debt-related court cases, such as what counted as a legally enforceable contract, what kind of legal forms were prescribed, and what were the consequences of not following them.

The Russian civil law scholar Konstantiin Pobedonostsev concluded that the body of substantive law relating to contracts in its basic principles “did not exhibit formalistic tendencies.”⁵⁴⁰ Unlike other European legal systems of the time that prohibited verbal agreements exceeding a certain amount or going beyond a particular set of circumstances (such as the French or the Prussian ones), Russian law did not contain a blanket prohibition, as long as the agreement was voluntary and did not contain illegal provisions (art. 571 of the Civil Code).⁵⁴¹ Pobedonostsev also noted, based on his knowledge of Senate practice and of the combined body of Russian law, that some supposedly strict formal requirements, such as the formal registration procedure (*iavka*) mandated for certain types of contracts, had only “relative” practical significance and that failure to follow it did not necessarily invalidate the agreement if the intention of the parties was clear and there was neither a statute making the agreement otherwise invalid nor some overriding government interest.⁵⁴² Thus, according to the Russian law of

position is as follows: if oral agreements were the norm, one should expect litigants in court cases to argue vigorously for their validity (especially since, as I mention below, Russian law was not opposed to such arguments). Similar stereotype exists with respect to late imperial China, where, as Madeleine Zelin and others have shown, “The use of contracts in the conduct of business was pervasive, belying the much-touted reliance of Chinese merchants on face-to-face relations and trust.” See *Contract and Property in Early Modern China*, p. 2.

⁵⁴⁰ Pobedonostsev, *Kurs*, Vol. 3, p. 55. Pobedonostsev participated in the 1864 reform of Russian civil procedure and was well-versed in pre-reform law, and his treatise on civil law is perhaps most helpful for my purposes, compared to those by other Russian civilists like Meier, Nevolin, or Shershenevich, whose outlook was pre- or post-reform only.

⁵⁴¹ English Statute of Frauds. Similar provisions exist in continental law. See Robert S. Summers, “Formal Legal Truth and Substantive Truth in Judicial Fact-Finding: Their Justified Divergence in Some Particular Cases.” *Law and Philosophy*, Vol. 18, No. 5 (Sept., 1999), pp. 497-511; “The Formal Character of the Law.” *The Cambridge Law Journal*, Vol. 51, No. 2 (Jul. 1992), pp. 242-262.

⁵⁴² Pobedonostsev, *Kurs*, Vol. 3, p. 59.

contracts, a debt transaction did not absolutely have to be in writing to be legally enforceable, nor did it absolutely have to be written up and registered in a specifically prescribed way (although this last failing would place the creditor at the back of the creditors' list during insolvency proceedings).⁵⁴³ Moreover, as a general rule, some types of debt documents could be voided if a debtor could prove that nothing of value (or "consideration" in the Anglo-American law of contracts) was transferred.⁵⁴⁴

Despite these general rules favoring substantive legal principles, Pobedonostsev pointed out that Russian law also had powerful formalistic aspects. Much of the imperial-era obsession with legal formalities was catalyzed by the system of formal proofs adopted in the early eighteenth century and retained until the 1864 reform. This approach to evidence sought legal certainty by differentiating witnesses' credibility based on their gender and social and service rank, as well as by introducing "perfect" and "imperfect" proofs (a confession was the best proof, followed by the testimony of two witnesses and documentary proof). Despite the existence of substantive provisions permitting oral agreements, Pobedonostsev therefore concluded in his treatise that Russian evidence law endowed only written agreements with the full force of legal proof.⁵⁴⁵ Thus, while oral agreements *were* permitted as a general rule, and specified as a permissible form of certain types of agreements (none of which were related to debt), proving them under pre-reform evidence rules was a different matter altogether, unless the creditor could present two witnesses or the debtor's confession. Moreover, sometimes even having witnesses to an oral debt

⁵⁴³ Pobedonostsev, *Kurs*, Vol. 3, p. 328.

⁵⁴⁴ Pobedonostsev, *Kurs*, Vol. 3, pp. 326-327. Such documents were called "moneyless" (*bezdenezhnye*). See *TsIAM*, f. 81, op. 18, d. 1290 (Shevich) (1862-63) (discussed in Chapter Four).

⁵⁴⁵ Pobedonostsev, *Kurs*, Vol. 3, p. 55.

transaction was of no help in proving one's case, because the courts often required that evidence be submitted at the time of filing a case, and most courts only admitted written evidence.⁵⁴⁶

The second notable formalistic aspect in addition to the law of evidence was a complex hierarchy of procedures required by Russia's civil code for different types of contracts. These forms were "full registered" (*krepostnoi*), "simple registered" (*iavochnyi*), "notarial," and "private" (*domovoi*).⁵⁴⁷ At the very least, not following these procedures automatically turned relatively simple police collection proceedings into an expensive and complicated court case; and with some types of loans, such as mortgages, not following all the required formalities turned the transaction into a simple debt obligation without the considerable legal protections afforded to mortgages.⁵⁴⁸

All the material presented in this chapter of course barely scratches the surface of the various aspects of legal formality, leaving aside the questions of legal procedure, court hierarchy, and statutory interpretation (although some of these issues are taken up in other chapters). Nor does it have much to say about those debt transactions that were informal and undocumented, since those are only rarely reflected in legal documents. However, even a brief overview of the most pertinent debt-related formalities allows me to argue that pre-reform bureaucratic legality, despite its general aim to achieve legal certainty and its more specific aim to protect individual borrowers and lenders, left considerable room for personal action, interest, and conflict, as well as for practical mutations of the law. We see this relative flexibility not only in areas that the law

⁵⁴⁶ Pobedonostsev, *Kurs*, Vol. 3, p. 60.

⁵⁴⁷ Pobedonostsev, *Kurs*, Vol. 3, pp. 56-57.

⁵⁴⁸ Pobedonostsev, *Kurs*, Vol. 3, p. 58-59.

left relatively open-ended, such as the form of a loan agreement, but even in areas where the law attempted to draw a firm rule, such as the rule against borrowing by minors.

Loan Letters, Collateral, and Suretyship: the Limits of Discretion and Practical Application

The loan letter (*zaëmnoe pis'mo*) was the default type of debt document in imperial Russia, available to all legally competent persons and organized for the first time in the Bankruptcy Statute of 1800.⁵⁴⁹ It could be written in any form as long as the word “borrow” (*zanimat'*) was present in some form, although the statute provided sample forms for the different types of loans. The letter could be freely transferred to a third person through to a special transfer notation (*peredatochnaia nadpis'*), which had to be registered with a notary. The letter could be issued for a specified period or be payable on demand. If a debtor failed to pay, the creditor was not obligated to sue immediately but had to register the missed deadline with a notary within three months in order to retain a favorable position in bankruptcy proceedings. Thus, the rules about loan letters were flexible and left specific detail to the parties' discretion.

The reverse side of this flexibility was that the transaction was open to challenge. Unlike, for example, a banknote, a loan letter was merely evidence of a loan that could be disproved in court. The most common way to dispute a loan letter was to claim that the creditor had already received the payment or that nothing of value was actually transferred and the letter was therefore “moneyless” (*bezdenezhnoe*). However, proving “moneylessness” was extremely difficult in practice: first, because the law did not require that the creditor transfer money or other value precisely at the moment when the letter was issued, and a separate round of receipts

⁵⁴⁹ P.S.Z. I, No. 19,692 (Dec. 19, 1800). These rules were broken up in 1832 into the various provisions of Volumes 10 and 11 of the Digest of the Laws, but substantively remained in force (with some alterations) until the end of the imperial period. The other key type of debt document, *veksel* (bill of exchange), was available only to males.

and letters of acknowledgment was often needed as evidence, creating additional potential for abuse.⁵⁵⁰ In practice, there was little to prevent creditors from issuing much less money than what was written in the loan letter (as I discuss in Chapter Two, creditors routinely took loan documents for twice the amount borrowed as an additional precaution against default) other than the creditor's concern for his or her reputation, or social factors such as the debtor's friends or relatives who could witness the transaction or intervene on his or her behalf.⁵⁵¹ Second, proving in court that creditor did not actually issue the money was still subject to Russia's difficult and highly formalistic evidence law. Finally, the creditor could take an additional precaution by having the letter executed, witnessed, and registered at court, in which case claims of "moneylessness" were not permitted.⁵⁵² These "fully registered" (*krepostnye*) loan letters involved additional fees and a trip to the court, whereas "private" (*domovye*) loan letters could be executed out-of-court in the presence of witnesses and merely had to be registered with the municipal loan broker (*makler*) within seven days, in order to retain priority in any possible bankruptcy proceedings.⁵⁵³

In practice, I found that debtors claimed moneylessness frequently, but hardly ever effectively, even for "private" loan letters. Although I argue in Chapter Seven that courts were not as deaf to circumstantial evidence as the law required them to be, debtors could not

⁵⁵⁰ See, for example, *TsIAM* f. 50, op. 4, d. 1983 (Cherkasskaia) (1843-53) and f. 50, op. 4, d. 3389 (Zavarovskii) (*sic*) (1848-9).

⁵⁵¹ *TsIAM*, f. 50, op. 4, d. 7229 (Ivanov) (1863-65); f. 81, op. 18, d. 1277 (von Bussau); f. 50, op. 4, d. 8264 (Ulitin) (1865-66).

⁵⁵² The only situations when a registered loan letter could be held void was if it was issued by an incompetent person or issued as part of a crime (prohibited gaming, bribe to an official (SZ, Vol. 10, part 1, Article 2025), or fraudulent property transfer by a bankrupt (Article 2014).

⁵⁵³ The Bankruptcy Statute of 1800 specified that "private" loan letters were intended for borrowing from creditors who debtors trusted, i.e., when extra formalities were not required. An interesting example how an important statute acknowledged the existence of an alternative debt culture based on trust and personal connections.

successfully make such arguments as, for example, that the lender was himself so poor that he could not possibly have loaned a large amount of money, unless there was some additional evidence that could be fitted into the system of formal proofs.⁵⁵⁴

In addition to loan letters, another way to document a loan was through a safekeeping receipt (*sokhrannaia raspiska*, regulated by its own set of rules). The agreement of *poklazha* or *otdacha pod sokhranenie* (safekeeping) was written up as a hire of movable property (which in practice typically consisted of cash). Technically speaking, the debtor did not borrow money from the lender but accepted it temporarily for safekeeping. In theory the safekeeping receipt had several possible applications, but in practice served primarily as a legal fiction allowing creditors to dispense with the form of the loan letter and some of its inconveniences.⁵⁵⁵ There were several reasons to go through this trouble. One – noted by the pre-reform civilist Dmitrii Meier – was cultural, in that high-ranking individuals may have thought it beneath their dignity to issue loan letters to commoners. While not impossible, this motivation would be difficult to confirm through court cases, and those cases that I did review show that high-ranking aristocrats could issue loan letters to merchants, *meshchane* (townspeople), and even peasants. A more important practical reason was that the “safekeeping” transaction was only subjected to a “simple” stamp duty rather than to one in proportion with the amount borrowed, as was the case with loan letters. The second practical advantage was that the lender gained more secure rights in his or her investment because unlike a regular loan, the safekeeping transaction was not subject to Russia’s basic ten year statute of limitations, and so the lender’s rights to sue were limited only to both

⁵⁵⁴ *TsIAM*, f. 81, op. 18, d. 1277 (von Bussau); *TsIAM*, f. 81, op. 18, d. 1326 (Kol’tsova-Mosal’skaia) (1864) (creditor admitted moneylessness).

⁵⁵⁵ Meier, *Russkoe grazhdanskoe pravo*, pp. 632-633; SZ, Vol. 10, part 1, Art. 2104-2111.

parties' lifetime.⁵⁵⁶ Finally, this type of transaction received preferential treatment in bankruptcy proceedings. The lender could also potentially begin a criminal investigation against a delinquent borrower for embezzlement (*rastrata*), although I have not located any such instances in my review of debt-related criminal cases. In order to prevent this type of agreement from replacing regular loans in practice entirely, the law contained unusually detailed provisions, such as the requirement of a detailed description of the type of property that was being transferred, including the numbers on banknotes and their denomination, as well as the type and the year of issue of coin. This was, of course, easily circumvented in practice, by listing types of coins that were easily replaced, for example. However, the law stopped short of the one requirement that would have effectively stopped the use of the safekeeping transaction for disguising loans, which was sealing the money package to ensure that it was not spent and then replaced. This suggests that although the tsars and their ministers and senators sought to protect lenders by erecting extra formal precautions, they at the same time avoided making private credit too inconvenient and refused to eliminate a known popular adaptation of the law.

Loan letters (as well as bills of exchange that are covered in the next section), despite their flexibility and convenience, had one significant shortcoming: if the debtor failed to repay, his or her creditors were faced with a complicated collection proceeding, with one option being to pay the maintenance fee to imprison the debtor (as discussed in Chapter Five) and the other being to locate, seize, and sell the debtor's property, which then might have to be shared with other creditors. The solution was to require a collateral of real property (a mortgage) or personal property, or to require the creditor to provide another person who would guarantee the debt (such

⁵⁵⁶ For the statute of limitations, see the imperial manifesto of June 28, 1787, Art. 4.

guarantor is called surety in English and *poruchitel'* in Russian). The rules relating to mortgages and sureties, each of which was systematized in a separate section of Russia's civil code, were important for several reasons. One was that real property in mid-nineteenth century Russia seems to have only rarely been free of mortgage and in some way was involved in much of the litigation in pre-reform courts; given that land was the source of most of Russia's wealth at that time, it is not surprising that imperial law paid particular attention to transactions involving it. Second, the widespread use of suretyship added an extra social and cultural dimension to the practice of debt by implicating a debtor's friends or relatives and creating more potential for litigation.

Loans with collateral in imperial Russian law were divided into *zalog* (mortgage loans) and *zaklad* (collateral of movable property, which Russian law defined to include not only such items as jewelry or clothing, but also buildings when the land on which they were erected was owned by a different person).⁵⁵⁷ A mortgage note (*zakladnaia krepost'*) could be issued by all legally competent persons, male or female, and was similar in form to a loan letter.⁵⁵⁸ Reflecting the importance of landed property in imperial Russia, mortgage notes benefitted from several additional legal provisions designed to deter fraud. One was that a mortgage note could not be transferred to a third party without the debtor's permission and the execution of a separate agreement. Another protection was that mortgages involved the highest level of procedural formality in that they had to be executed at court ("*krepostnym poriadkom*"), whereas loans secured by personal property only had to be registered at court ("*iavleny u krepostnykh del'*").

⁵⁵⁷ It was also possible to include movable property as collateral in "private" loan letters. In practice, *zalog* and *zaklad* were often conflated for linguistic reasons, because the verb *zalozhit'* (to mortgage) applied to both types of security.

⁵⁵⁸ For the forms, see Part II of the Bankruptcy Statute of 1800.

Considering that a loan secured by mortgage involved a specific property whose location and condition were known, the collection procedures were much easier in practice, since the creditor did not have to undertake the complicated and often fruitless investigation into the debtor's property that was inevitable for an unsecured loan. The disadvantage of using a mortgage loan was clear as well: in the event of a default, the creditor could not take over any property other than that securing the loan, even if it had declined in value or otherwise turned out to be worth less than the amount of the loan.

Loans secured by movable property were of two kinds. In one type of loan the collateral remained in the debtor's possession. This arrangement most commonly applied to loans secured by those buildings that the law considered to be movable property (see above). While theoretically a debtor could pledge his or her furs, jewelry, or other personal property and keep them in his or her possession, in practice these items typically were transferred to the creditor, whether that was the state-operated pawnshop, Loan Treasury (*Ssudnaia kazna*), or one of the numerous pawnbrokers often encountered in literature. Given that formal debt documents entailed witnesses, fees, and registration, it is not surprising that pawnbrokers – when they documented a transaction at all – found it more convenient to execute their loans as sales of collateral by the debtor, who was welcome to buy it back when he or she had the money. This is another example – in addition to the “safekeeping receipts” discussed above – when individuals adopted existing legal forms to suit their own interests. But while the government attempted to limit the use of “safekeeping receipts” as debt documents nothing could be done to prevent loans

disguised as sales. Thus, as cases indicate, there was little that debtors could do when pawnbrokers lost or sold the collateral before the due date.⁵⁵⁹

The second major way to secure a loan, in addition to requiring some kind of collateral, was to require a surety, or a guarantor, which to this day remains a common practice in Western legal systems. In mid-nineteenth century Russia with its underdeveloped banking system and nonexistent credit reporting and debt collection agencies, suretyship introduced not merely an additional protection for creditors, but also an extra layer of interaction and conflict into already highly personal debt relationships. Suretyship (*poruchitel'stvo*) was known in Russia since before Peter the Great and was practiced both by private persons and by the government to assure payment of taxes (*krugovaia poruka*). The nineteenth-century law of suretyship was set out in the Bankruptcy Statute of 1800 and amended by the law of June 2, 1858.⁵⁶⁰ This law permitted any person to be surety, provided that he or she was otherwise permitted to enter into contracts (thus, for instance, minor children and insane persons were excluded). The law also set out two types of suretyship: limited in time (*na srok*) and the default unlimited (*prostoe*). Limited suretyship was useful because a creditor could sue the person acting as surety right away, without even bothering to collect from the actual borrower; however, the creditor would have to submit his or her claim within one month of the due date, otherwise the surety was free from all liability. The default “simple” or unlimited suretyship permitted a creditor to sue within six months of the due date, but the surety was only required to pay once the debtor was found by the court to be insolvent, his or her property was distributed to the creditors and found to be

⁵⁵⁹ *TsIAM*, f. 81, op. 16, d. 1642 (Draevskii); *TsIAM*, f. 50, op. 4, d. 4732 (Pereshivkina) (1856-57).

⁵⁶⁰ See P.S.Z. I, vol. 26, No. 19,692, and P.S.Z. II, vol. 33, No. 33,236. These rules can be also found in Volume 10 of the Digest of the Laws (Articles 1555-1562 of the Civil Code, 1867 edition, and Articles 1306-1313 of the 1842 edition).

insufficient to cover the debt. But although the creditor could not take possession of the surety's property until the insolvency proceedings were complete, he or she could place that property under "interdiction" (*zapreshchenie*) right away, meaning that the surety could not sell or mortgage the property. Perhaps because of this potentially drawn-out procedure, this unlimited default form does not seem to have been common in practice. However, it seems that the relative advantages of either form depended on the particular circumstances of each set of borrowers and creditors: for instance, if the surety knew that the delinquent debtor did own some property (or would get some property later), he or she would prefer to wait until the insolvency proceedings were completed, especially since the debtor could meanwhile settle the debt with creditor for part of the amount of the debt, which would free the surety from liability for the rest of the amount.⁵⁶¹ Conversely, if the surety knew that the debtor truly had no property left, it would be beneficial to pay off the creditor right away to avoid extra interest and collection costs that could accumulate during the insolvency proceedings (which could take years). Clearly, the effect of the surety rules was to leave much room to individual strategies and thus to reinforce the relationship between legal formalities and personal connections and circumstances.

Court cases provide some indication that suretyship could be no less essential for debt relations than the borrowing itself; as I mentioned in Chapter Four, husbands and wives routinely stood surety for each other. The lists of "registered" loan letters (which already benefitted from extra legal protections) show roughly the same percent of transactions involving a surety (16 out of 138 in 1852, 15 out of 122 in 1854, and 7 out of 55 in 1864). The insolvency case of the Guard Captain's widow Anna Bestozheva is perhaps extreme, but it shows that suretyship could

⁵⁶¹ Senate decision from 1860 (*Zhurnal Ministerstva Iustitsii*, No. 11 (1860), cited in *Grazhdanskie zakony* (St. Petersburg, 1869), p. 360).

create a social network that was at least as dense and complicated as debt relations themselves: when she became insolvent in 1870, Bestozheva owed 38,000 rubles that she herself borrowed and over three times as much in other people's debt that she had guaranteed.⁵⁶²

Examined together, Russia's laws relating to a simple loan (*zaëm* or *zaim*) included a variety of formalities to provide a safety net for those transactions that were truly at arm's length, i.e., between parties that shared few links other than those of debt: among the precautions were the special registration procedures and the institutions of suretyship and collateral, as well as the possibility of structuring the transaction as a sale or a safekeeping deposit. The Bankruptcy Statute of 1800 explicitly recognized that a different set of procedures, such as the "private" loan letter, could be used by parties who knew and trusted each other. However, this relative flexibility and substantive open-endedness of the legal rules pertaining to loans also created – potentially and in practice – considerable difficulties when coupled with the rigid and formalistic pre-reform procedural and evidence rules, thus making the relative status and resources, legal skill, and determination of individual parties an even more important factor in determining the litigation's outcome than it has been in other, Western legal systems.

Bills of Exchange: Adaptation and the Limits of Liberalization

The second common type of debt document circulated in mid-nineteenth century Russia was the bill of exchange (*veksel*, from the German *Wechsel*), which was much more convenient than the loan letter, but until 1862 was legally permitted to be used only by individuals engaged in

⁵⁶² *TsIAM*, f. 142, op. 5, d. 1307 (Bestozheva). (other relevant cases: *TsIAM*, f. 81, op. 18, d. 725 (Lachinova); f. 92, op. 6, d. 741 (Pevnitskaia); *TsIAM*, f. 92, op. 6, d. 679 (kamer-lakei's wife Chizhikova) – confusion of the two types of surety).

commerce. Bills of exchange were invented by European Renaissance bankers to facilitate long-distance commerce: a merchant, instead of transporting cash, deposited it with a banker who issued a document asking another banker in a different city to pay that amount to the bearer.⁵⁶³ In addition to their convenience, bills of exchange benefitted from a stricter enforcement mechanism (quick imprisonment of a delinquent debtor or a quick sale of his property), and were more difficult to challenge in court, because any legally relevant information had to be inscribed on the document itself and so no extraneous evidence was admissible.⁵⁶⁴

In Russia, bills of exchange were introduced by foreign merchants in the Pre-Petrine period, but were particularly strongly promoted by the government in the early eighteenth century because of Russia's unsafe roads and great distances. The first *Veksel* Statute was adopted under Peter II in 1729 (P.S.Z. I, No. 5410), with its text closely following German models and published simultaneously in German and Russian. Subsequently the law was modified by the Bankruptcy Statute of 1800 (P.S.Z. I, No. 19,692) and replaced by another complete statute – this time with strong French influences – in 1832 (P.S.Z. II, No. 5,462), and then again in 1903.⁵⁶⁵ This considerable legislative attention is particularly striking compared to other important areas of the law (such as the draft civil code which was still not implemented as of 1917) that did not benefit from such decisive improvements over time.

In practice, *veksels* as used in Russia acquired their own peculiarities that departed from legislative intentions. Although in Russia, as in the rest of Europe, they circulated basically as

⁵⁶³ On bills of exchange, see G.F. Shershenevich, *Kurs torgovogo prava*, vol. 3 (Moscow, 2003), pp. 24-172 (originally published in 1909) and D.I. Meier, “*Ocherk russkogo veksel'nogo prava*,” in *Izbrannye proizvedenia po grazhdanskomu pravu* (Moscow, 2003), pp. 296-379 (originally published in 1857).

⁵⁶⁴ Meier. “*Ocherki russkogo veksel'nogo prava*.”

⁵⁶⁵ Meier, “*Ocherki*,” p. 311.

cash, in Russian practice their classic form (i.e., payable by a third person⁵⁶⁶) was only rarely used. Instead, Russians mostly used *veksels* as pure debt documents, i.e., as a more formal and more strictly enforced form of a loan letter.⁵⁶⁷ Consequently, some of the distinctions between *veksels* and ordinary loan letters became blurry in the minds of lenders and borrowers: most significantly, the fact that a debtor was not legally permitted to claim that a *veksel* was “moneyless.”⁵⁶⁸

However, on balance the practical distinction remained clear enough for two reasons. One was that *veksels* – unlike loan letters – did not require witnesses and did not need to be notarized (Article 442 of the *Veksel* Statute of 1832), thus making them cheaper and more convenient (although the government was not in any way thinking about giving merchants a financial break at its expense when introducing this rule). The second factor that kept *veksels* distinct in practice was that until 1862 the law restricted their use (which included issuing and accepting) to individuals engaged in commerce. From the very beginning of their introduction in Russia, *veksels* were viewed as one of the merchants’ special privileges, although in the early eighteenth century the privilege applied to all persons who had financial dealings with merchants, i.e., a person of any estate could issue a *veksel* to a merchant or accept it from one. However, the government eventually sought to limit the *veksels*’ circulation so as to protect nobles and peasants from excessive debt, although the measure could hardly restrict the activities of private

⁵⁶⁶ known in Russian as *perevodnoi veksel*.

⁵⁶⁷ *prostoi veksel*’ in Russian, equivalent to English “promissory note.” Shershenevich, *Kurs*, vol. 3, p. 39. Meier, “*Ocherki*.”

⁵⁶⁸ Meier, “*Ocherki*,” p. 312 (notes that even official papers sometimes listed all debt documents as *veksels*. Not clear what period he was discussing, but I have not seen this in any of the cases I reviewed).

moneylenders.⁵⁶⁹ The *Veksel* Statute of 1832 adopted a restrictive position that the privilege to issue *veksels* was available only to persons specifically listed; as finalized in the statute's 1857 edition, these were (a) merchants enrolled in a guild; (b) nobles enrolled in a merchant guild; (c) foreign merchants; (d) *meshchane* (townspeople) and *tsekhovye* (craftsmen) in the capital cities; and (e) peasants conducting commerce with a trading license.⁵⁷⁰ Yet another restriction was that married women and unmarried daughters legally unseparated from their parents were not allowed to issue *veksels* without their husbands' or fathers' permission - even if they belonged to these five categories, – unless they engaged in commerce in their own name. This restriction against women came to Russia directly from the Napoleonic Code and did not fit within Russia's regime of separate marital property (see Chapter Four), and, furthermore, raised the obvious practical challenge of determining whether the debt did or did not relate to commerce and whether a woman was “unseparated” (since it was possible to have a young woman with vast property in her own name who happened to live with her parents and, conversely, a poor woman whose parents had no property that could have been separated).

These limitations largely disappeared with the law of December 3, 1862, which extended the privilege of issuing *veksels* to all persons except for clergy, private soldiers, and peasants without landed property who did not take out commercial licenses.⁵⁷¹ Soldiers were allowed to issue *veksels* in 1875 as part of Miliutin's project of creating a citizen army,⁵⁷² and all peasants were

⁵⁶⁹ Shershenevich, *Kurs*, vol. 3, p. 36.

⁵⁷⁰ SZ, Vol XI, part 2, *Ustav Veksel'nyi*, Art. 546, note).

⁵⁷¹ P.S.Z. II, No. 38,993.

⁵⁷² Shershenevich, *Kurs*, vol. 3, p. 61.

allowed to issue *veksels* in 1906. However, the restrictions against women and clergy remained in force until the end of the imperial period.⁵⁷³

Thus *veksels* eventually supplanted loan letters in practice, except, of course, for women. Court cases and debt registers show that in the 1860s loan letters were still widely used, but the more time-consuming “registered” loan letters became less available as the old courts that registered them gradually closed down from the late 1860s onward, pursuant to the court reorganization commenced in 1864. The *veksel* reform of 1862 reflected a general trend in Western law⁵⁷⁴ and can be regarded as an important “great reform” in its own right, considering its huge effect in liberalizing and simplifying the market for private credit, as well as the government’s insistence on preserving some outdated restrictions from earlier law and its attempt later in the 1890s to reverse the trend and once more restrict the *veksels*’ circulation.⁵⁷⁵

Formalities in Practice: Borrowing by Minors

In addition to specific formalities required for the different types of debt documents, imperial Russian law contained a range of prohibitions for certain categories of persons (such as foreigners, Jews, monks, and civil servants) to enter into particular types of legal contracts.⁵⁷⁶ In addition to these partial prohibitions, the law prohibited from entering into any legal contracts all persons who were not legally competent, i.e., those subject to an appointed trusteeship.⁵⁷⁷ The

⁵⁷³ Shershenevich, *Kurs*, vol. 3, p. 61-64.

⁵⁷⁴ Shershenevich, *Kurs*, vol. 3, p. 59-60.

⁵⁷⁵ Pobedonostsev, *Kurs grazhdanskogo prava*.

⁵⁷⁶ Pobedonostsev, *Kurs*, Vol. 3, p. 38.

⁵⁷⁷ Trusteeship also could be appointed over all or part of one’s property, in which case a person did not become legally incompetent but merely lost control of that property. Trusteeship over one’s person, however, made one legally incompetent.

largest and most clearly defined category of such persons were minors. This strict prohibition was widely known, and Moscow court archives contain numerous cases in which debtors attempted to evade payment by claiming that they had not reached majority at the time of the transaction. These cases reveal yet another aspect of the tension between formal and substantive elements in the pre-reform legal system. The rule was strict, yet socially sensitive (since it concerned a particularly vulnerable group⁵⁷⁸), and to a legal historian it is intriguing to find out whether the courts were actually able to enforce it as intended against potential abuses (mostly by minors misrepresenting their age to lenders and then refusing to pay), or whether even such a simple rule was transformed and adapted to suit practical conditions similar to the rules relating to bills of exchange and safekeeping receipts. I argue that the courts were able to address abuses and practical concerns not by stretching this purposefully inflexible rule, but by coopting Russia's criminal justice system. Conversely, individual debtors and creditors were unable to transform this rule to any significant degree, but nonetheless they did adapt – and sometimes subvert – this rule in order to defend and promote their property interests.

The rule against borrowing by minors addressed the common cultural image of the time: that of unscrupulous moneylenders preying on young persons who were ruined through their lack of experience. According to articles 218 and 220 of the 1867 edition of the Civil Code (Articles 212 and 216 in the 1842 edition), debts issued by a minor were invalid without a guardian's approval and signature. One difficulty with this rule was that Russian law set the age of full majority at 21 but granted a limited capacity to manage property (which did not include incurring debts) for persons over 17. As the cases discussed below show, this requirement created much confusion,

⁵⁷⁸ This section could also be written about another important subaltern group – serfs, but they are the subject of my other study currently underway.

since a person under 21 could appear as independent in most aspects: a young man could serve in the army, and a young woman could marry and move under the jurisdiction of her husband. A related difficulty was to determine exactly how old the person was at the time of the debt transaction. In the mid-nineteenth century, this was not always easy, since metrical records obtainable from ecclesiastical authorities could be lost or unavailable for certain populations such as Moscow's numerous Old Believers.⁵⁷⁹ Other less conclusive sources included tax rolls (*revizskie skazki*), confession records, and circumstantial evidence such as witness testimony. Not surprisingly, abuses, errors and misunderstandings were difficult to avoid.

To address potential abuses and errors, some European legal systems chose to retain some responsibility for minors to prevent unjust enrichment on their part, especially when a minor posed as an adult, as in Austrian law. Another option would have been to discard the two-tier system of guardianship or to provide for a court-ordered emancipation as was done in the law of Russia's Baltic provinces.⁵⁸⁰ By contrast, Russian law – in line with the pre-reform tendency not to give judges too much interpretative leeway – adopted the bright-line rule that the only factor that mattered was the person's actual age at the time of the transaction; neither anyone's subjective belief, nor any deception employed could make the transaction valid. In practice, the Senate in the 1860s modified the rule by requiring any minor who issued a debt obligation by certifying his or her age by illegal means to compensate the creditor, and by permitting the court to require an adult to repay a debt incurred before the age of majority if he or she admitted that debt after coming of age.⁵⁸¹ These decisions introduced some measure of safety for defrauded

⁵⁷⁹ *TsIAM*, f. 50, op. 4, d. 5362 (Krivtsovy).

⁵⁸⁰ Pobedonostsev, *Kurs*, Vol. 3, p. 37.

⁵⁸¹ *Zakony grazhdanskie* (St. Petersburg, 1869), p. 41; see also Pobedonostsev, *Kurs*, vol. 3, p. 39.

creditors at the expense of additional procedures, uncertainty, and judicial discretion, but only served to account for the most extreme cases without modifying the basic rule.

In turn, individual creditors and debtors were aware of the rule and took necessary precautions when executing and registering debt transactions. For example, the registries of loan letters at the Second Department of the Moscow Chamber of Civil Justice included the borrowers' in some entries (presumably when they looked young enough to be possibly under 21, since the age listed was always in the early 20s), as well as the guardian's permission and signature. Nonetheless, individuals often attempted to take advantage of their creditors by claiming to be of age, and in such cases the creditor's best recourse was pre-reform criminal law, as illustrated in the case of Moscow University student Ivan Chulkov. He was born in 1843 to a serf-owning army major and a serf woman, Agafia Rodionova. At first his parents signed him up as a *meshchanin* as required by law for the children of such unions but later his mother paid a merchant's tax for her son "just so he could have that rank."⁵⁸² As the young man later stated to the police, on July 14, 1863 he was playing cards with his friend, nobleman V.I. Khlopetskii (also rendered as Khlopovitskii) who "took advantage of his inexperience," turned the card game "into a serious affair" and took from him a *veksel* for the weighty sum of 4,500 silver rubles, which he later sold to Titular Councilor Osvetimskii. When the police came to Chulkov's home to collect the money, he claimed that he issued this document as a minor because of his inexperience but never received any money. On the document, however, Chulkov wrote that he was 22 years of age. He was freed on the surety of his landlord *Meshchanin* Smirnov and told to bring his birth certificate to the police.

⁵⁸² (*dlia odnogo zvania*). *TsIAM*, f. 81, op. 16, d. 1998 (Khlopetskii v. Chulkov)

As the investigation continued Khlopetskii testified that he did not play cards but loaned the money to Chulkov so that he could pay his debts. He did not know that Chulkov was underage, but the broker (*makler*) who was recording the transaction began to doubt Chulkov's age and asked him to write his age on the debt document. However, none of these circumstances turned out to be legally relevant. While legally Chulkov could not be required to repay his debt, the police started a criminal investigation of his intentional misrepresentation of his age, and this threat effectively induced him to come to a settlement with Khlopetskii. Eventually, the two of them petitioned the court to discontinue the case, emphasizing that Chulkov "could easily have made a mistake about his age." The investigator chose to drop the charges, although of course he was not obligated to do so.

What could have happened if Chulkov had not settled the case is illustrated by the fraud proceedings against noblewoman Agrafena Krivtsova (born an Old Believer), who in 1849 signed a loan letter for 5,000 rubles and falsely claimed to be 25 years old, to which her husband Nikolai falsely witnessed.⁵⁸³ Krivtsova claimed that she only found out her age when the loan letter was first presented for collection because "as a maiden living in her parents' house she had no necessity to know her exact age and upon marrying she was deprived of any means to obtain correct information about it." Her husband unsuccessfully attempted to get out of trouble by claiming that his signature only meant that he certified his wife's identity and not her age.⁵⁸⁴ Krivtsova's original sentence from Moscow Aulic Court was to leave her "under strong suspicion" (the pre-reform equivalent of a suspended sentence)⁵⁸⁵ but free her from the debt

⁵⁸³ *TsIAM*, f. 50, op. 4, d. 5362 (Krivtsovy) (1859-61).

⁵⁸⁴ See SZ, Vol. 10, Art. 654.

⁵⁸⁵ SZ (1857), Vol. 15, part. 2, Art. 344.

collection because of her minority. The Chamber held her to be potentially liable to a sentence of one year in the workhouse, but freed her from punishment pursuant to Article 19 of the tsar's Manifesto of August 26, 1856. If not for this manifesto, Krivtsova would have lived the rest of her life with the blemish of a criminal conviction, which would have affected her in various ways even if she had not had to spend any time in prison or the workhouse. Still, although the Senate freed Krivtsova from having to repay the loan, it noted that the creditors still had the right to recoup their losses through criminal proceedings, of which, however, the case file contains no indication.

These two cases show how a debtor could attempt to use the inflexibility of the law to his or her advantage, whether or not Chulkov or Krivtsova *did* know their true age at the time of their transactions (considering that Chulkov was a university student, it is likely that he was better informed about his age than the average Russian of the time). At the same time, these cases show – independently of the question of what the most effective legal rule would be – that the pre-reform legal system in Russia was by no means toothless, and that potential criminal law sanctions served to deter or punish abuses of the “bright-line” prohibition of borrowing by minors.⁵⁸⁶

The rule against borrowing by minors was effective even when the circumstances of the case made the action against a debtor swift and difficult to defend against, such as the 1845 proceedings against the Senate Registrar's wife Mel'nikova.⁵⁸⁷ She was sued by a former tenant,

⁵⁸⁶ Criminal proceedings could also be instituted against lenders if there were several complaints against a moneylender taking advantage of young persons' inexperience. See, for example, *TsIAM*, f. 50, op. 3, d. 8323 (Briukhatov) (1865-66).

⁵⁸⁷ *TsIAM*, f. 68, op. 2, d. 172 (*Perepiska po prosheniiam arestantov*)

a captain's daughter Olenina, for 840 rubles but claimed that she never received the money and had issued the note without knowing she was doing so because of her inability to read shorthand (*skoropis'*). The police applied Russia's system of formal evidence to rule that since Mel'nikova admitted the signature on the note was hers, she had to pay, and the Aulic Court affirmed this ruling and sent her to debtors' prison even as she was further appealing this decision. However, someone must have advised Mel'nikova of the law about minors, and as soon as the court was informed that she was only sixteen when she signed the debt note in 1842, she was freed from arrest.

Interestingly, the courts enforced the law even at the expense of parental authority, which the imperial regime also usually strove to protect. While financial transactions between spouses and other relatives were fully subject to litigation in regular courts (as discussed in Chapter Four), lawsuits between parents and children had to be brought at the Equity Court (*Sovestnoi sud*), which was originally modeled by Catherine II's legislation on its English namesake, but in its Russian incarnation was designed to process civil and criminal cases involving minors, insane persons, and those between parents and children.⁵⁸⁸ While normally parents were automatically their children's guardians (and trustees over any separate property that a child might hold in his or her own name), the issue was more complicated when parents and children were on the opposite sides of a transaction, and the former could not be expected to exercise impartial judgment. This was the issue in the Equity Court case between a wealthy Moscow merchant D.M. Savinov and his daughter, who was married to an army lieutenant Aleksandrov. Savinov wanted to collect from his daughter the debt of 350,000 paper rubles secured by a mortgage on

⁵⁸⁸ The English system of equity covered situations for which common law had no provisions.

part of his daughter's lands.⁵⁸⁹ The daughter claimed that she signed the mortgage note at the insistence of her father and that she was then only 18, as confirmed by the enclosed birth and baptism certificate from the Moscow Spiritual Consistory. Given that her father had to be aware of his daughter's age, he therefore could not legally make her sign the mortgage without appointing a separate guardian to review and approve the transaction. Furthermore, the daughter unearthed another questionable transaction, an 1841 gift to her brother Dmitrii of four stone shop buildings that were originally purchased in her name in 1838. When the gift was registered at the Moscow Civil Chamber, Savinov named himself as his daughter's guardian, without being affirmed in this capacity by any official institution. Over Savinov's objections, the court found that he was not recorded anywhere as his daughter's official guardian, and therefore ruled against him (Savinov appealed to the Senate and lost).⁵⁹⁰

Parents could also attempt to benefit from this rule by having their children sign a debt document in their place, perhaps to avoid having to pay back the debt, although in the case of an old merchant Artemii Riazanov there was some doubt as to who ultimately deceived whom. At his trial for malintentioned bankruptcy, one of the charges against Riazanov was that in 1860 he had his 18-year old son Vasilii claim that he was 22 years old and sign a 900 ruble *veksel* to merchant Tikhomirov, and when Tikhomirov tried to collect the money, Vasilii said that he was a minor and only signed the *veksel* on his father's command. However, the senior Riazanov claimed that he carried out that trick at the request of Tikhomirov himself, who would only agree to loan him the money if the loan was in Vasilii's name with the father's signature to guarantee it

⁵⁸⁹ *TsIAM*, f. 91, op. 2, d. 704 (Savinov).

⁵⁹⁰ While Russia's statutory law concerning this kind of conflicts of interests was not developed, Pobedonostsev noted in his civil law treatise that the Senate held in these kind of cases that the office of *opekun* was incompatible with entering into a legal agreement with the person under trusteeship. See *Kurs*, Vol. 2, p. 211.

(the loan signed by a minor was still legally invalid even though his father guaranteed it). If this is true, it is possible that Tikhomirov intended to cause Riazanov to violate the law in order to hold the threat of a criminal prosecution over him and Vasilii, thus motivating the senior Riazanov to repay the loan.⁵⁹¹

On the basis of only a few cases it is of course impossible to conclude decisively whether on balance the law against borrowing by minors served on the whole to enable young wastrels to avoid repayment or prevented unscrupulous creditors from taking advantage of young people. What is important for the purposes of this study is that each set of borrowers and lenders used the rule to advance its own ends. It is also clear that the courts applied this law strictly; the law may have been too formalistic for our modern taste, but it resulted from a rational intention to protect young property owners by placing the entire burden on the creditors to ensure that borrowers were competent to contract the debt. It is undeniable that both the minor borrowers themselves, and the older relatives who probably directed their actions in many cases, could take advantage of this rule, but this simply shows that even the clearest legal rule is never foolproof and never works exactly as intended. Moreover, in the Russian case, as in other legal systems, criminal law was used to provide the necessary strength to deter the most egregious abuses.⁵⁹²

Conclusion

While much of the eighteenth- and early nineteenth century legislation relating to the various types of debt transaction was designed to make credit cheaper and safer, it remains to be determined whether actual borrowers and lenders saw this greater regimentation as an obstacle to

⁵⁹¹ *TsIAM*, f. 50, op. 4, d. 8960 (Riazanov) (1866-1869)

⁵⁹² The U.S. securities law is a modern example of civil and criminal law working in tandem (for example, criminal penalties for making “false and misleading statements”).

their interests and strategies. If they did, individuals would presumably react by resorting to different forms or by dispensing with forms altogether in favor of oral contracts (which relied on forces other than the law to enforce them). Evidence from court cases supports both of these possibilities, thus suggesting that the choice of strategy depended heavily on individual circumstances.

First, it does seem that many debtors and creditors in the mid-nineteenth century, including even wealthy merchants, reacted to the complexity of the formal legal requirements by refusing to adopt them altogether and resorting to oral debt transactions. For example, an elderly bankrupt Old Believer merchant Artemii Riazanov stated during his trial in 1865 that “debts could be large, or small, pursuant to documents or without them” as part of his lengthy discourse on merchants’ credit practices.⁵⁹³ Creditors who did not have an appropriate document could still present their claim to the court when a merchant’s insolvency was announced, but typically with little success, such as in the case of a female fish merchant Mavra Bubentsova, where four of her eight creditors failed to substantiate their claims with documents and were excluded from the distribution of her property.⁵⁹⁴

A much safer shortcut for creditors dissatisfied with existing legal forms seems to have been to ignore the law of debt and to use a different set of legal provisions. One example is that of private pawnbrokers, who chose to structure their deals as sales of collateral by debtors, thus depriving borrowers of almost any legal recourse. Another example is that some Russian merchants, who found themselves on the bankruptcy boards of their insolvent debtors,

⁵⁹³ *TsIAM*, f. 50, op. 4, d. 8960 (1866-69) (Riazanov).

⁵⁹⁴ *TsIAM*, f. 78, op. 4, d. 275 (Bubentsova) (1869-70). Nobility also used oral contracts but less commonly, it seems. See *Rasskazy babushki. Iz vospominanii piati pokolenii, zapisannye i sobrannye ee vnukom L. Blagovo* (Leningrad, 1989) (originally published in 1878).

sometimes suggested that they only “entrusted” (*vverili*) the money to the borrower. Potentially, this language may have represented an attempt by creditors to argue that a loan transaction did not transfer the full ownership of the money to the borrower, as the law demanded, but only permitted him to use it, while creditors still retained ultimate property rights. A similar encroachment upon debtors’ rights was found in Articles 1932 and 1933 of the Commercial Code (1870 edition), which prevented debtors from transferring their property to their friends and relatives and thus placing it beyond creditors’ reach. The law held all property that the debtor transferred *bezdenezhno* (without payment) within last ten years and after his debt exceeded half of his overall worth to be subject to seizure by the bankruptcy trustees, on the rationale that “the property that he transferred [...] in effect already belonged not to himself but to his creditors.” Legal scholars to this day debate the distinction between investing and merely lending,⁵⁹⁵ and in early modern Western Europe the personal and informal character of borrowing often made it even more difficult to untangle all the property interests, according to historians Margaret Hunt and Craig Muldrew.⁵⁹⁶ To go back to the Russian case, its equivalent of the English doctrine of trusts was not distilled into general principles, and so creditors were not able to articulate their claims convincingly. This example therefore represents the limit to which legal practice and individuals’ ideas about law were able to subvert and adapt formal legal rules. Although these attempts to limit debtors’ property rights applied to individuals who were already insolvent and the state in any case discouraged any creativity at that stage of the legal process,

⁵⁹⁵ To get some sense of this on-going discussion in today’s U.S., see Margaret A. Gibson, “Comment: The Intractable Debt/Equity Problem: A New Structure for Analyzing Shareholder Advances,” *Northwestern University Law Review*, Vol. 81 (Spring, 1987), 452-491; Daniel M. Schneider, “Characterization and Assignment of Corporate and Shareholder Income,” *Northern Illinois University Law Review*, vol. 14 (Fall, 1994), 133-189, 181-184.

⁵⁹⁶ Hunt, *The Middling Sort*, p. 23; Muldrew, *The Economy of Obligation*.

nonetheless nothing could prevent creditors from documenting their loans so as to retain some overall control, if they thought that usual means were inadequate. However, I found the opposite to be true: even in relationships where creditor and debtor were business partners, and their debts were inseparable from their financial participation in the business, these debt relations were articulated in terms of straightforward mutual debt obligations.⁵⁹⁷

Despite all the attempts (successful or not) to circumvent and adapt legal rules, court documents indicate that the law's preference for writing and formality made itself felt even among debtors and creditors who were relatively poor and barely (if at all) literate. For example, Mikhail Kolpinskii, a *meshchanin* from the town of Zvenigorod outside Moscow, was certainly well-off compared to most peasants living around him. He even owned a loan letter for 10,000 paper rubles issued by a nobleman named Muraviov. At the same time, the actual cash involved in Kolpinskii's property dispute with his son involved much smaller sums like 43, 200, or at most 500 paper rubles and such movable property as a watch and a set of silver icon-frames. Furthermore, Kolpinskii was literate but a letter he wrote to a creditor was so full of errors that we can be sure the hassle with receipts, loan letters and bills of sale could only have been a nightmare to him.⁵⁹⁸ Many participants in debt transactions of even humbler origins were

⁵⁹⁷ *TsIAM*, f. 50, op. 4, d. 3926 (Alekseev) (1851-52); *TsIAM*, f. 50, op. 5, d. 12153 (Faleeva) (1851).

⁵⁹⁸ *TsIAM*, f. 91, op. 2, d. 322 (Kolpinskii) (1848-59). Here is the text of Kolpinskii's note to his creditor, to whom he was related by marriage (preserving the original's orthography and punctuation):

Милостивый Государь Сват

Григорий Михайлыч и Павел Григорич во первых кланюсь и жилаю быть здоровым а во вторых всепокорнейше я вас прошу ни отказать в моей прозбе в которой могу просить ибо вы и прежде ни отказывали так ни откажити мне в двухстах рублях по десети тысячное заемное письмо ибо я по сее время ни получал процентов что [ill.] дома нету и находится в санпетербурги и типерича поехали к нему но свояченица как только по приезду ея выслать деньги обищала и я вам предоставляю с виликою благодарностью и если вы ниможити вспомошествовать то должен закладывать в другия места но я всепокорнейши я вас сват прошу ниоткажити ибо я пред вами биздельным чиловеком никогда ни останусь а по услугам вашим остаюсь – сват ваш (Михаила Колпинскай); ежели ниоткажети и можете соблаговолить то вручити моей нивески Дарьи Колпинской и получить от нее заемное письмо в десять

completely illiterate (by their own admission) yet did not hesitate to handle debt documents of different types. For example, in the inheritance case of lieutenant-colonel Andrei Blagin, one of the Blagin's creditors was the illiterate former serf woman Anna Antonova who held a loan letter for 600 rubles.⁵⁹⁹ In another case, an illiterate serf girl Praskovia Gavrilova got her hands on a loan letter that belonged to her brother-in-law and attempted to sell it to the merchant Aleksandr Matveev in 1853.⁶⁰⁰ Illiterate individuals (typically female merchants and *meshchanki*) occasionally appear in the court registers of mortgages and loan letters.

In sum, Pobedonostsev may be generally correct that Russians' poor rate of literacy caused a practical neglect of legal formalities (III/61), but I believe that a more accurate conclusion is that debtors and creditors who dispensed with formalities did so as part of their strategy, rather than out of simple helplessness. The likes of merchant Riazanov discussed above certainly chose to conceal their debt relations and neglect to keep proper account books at the risk – and a very real one – of criminal prosecution in the event of insolvency.⁶⁰¹ Conversely, even poor and illiterate peasants and *meshchane* chose to use the legal forms because of the obvious additional safeguards and additional value that they offered.

In this chapter I outlined the most important rules delineating debt transactions in mid-nineteenth century Russia, such as what types of persons could legally incur debt obligations and what kind of rules governed the way debt was structured. My main goal was not simply to provide a more thorough understanding of the legal terms used in the rest of this study, but also

тысяч рублей.

⁵⁹⁹ *TsIAM*, f. 92, op. 9, d. 806 (Blagin).

⁶⁰⁰ *TsIAM*, f. 50, op. 4, d. 4441 (Gavrilova) (1854-55)

⁶⁰¹ Riazanov even alleged that about nine out of ten merchants in Moscow refused to keep the books in order to guard business secrets from their creditors. *TsIAM*, f. 50, op. 4, d. 8960 (1866-69) (Riazanov).

to suggest how the structure and content of imperial legislation relating to debt may have influenced the practices of private borrowers and lenders. I believe it is not sufficient to simply point out that legislation and practice were typically at odds with each other and that law in Russia was somehow a “cultural fiction,” to use Viktor Zhivov’s expression.⁶⁰² That much is true of any legal system and does not warrant belaboring.⁶⁰³ Instead, I attempt to show the precise mechanisms that allowed the transition of legal rules into practice. These mechanisms were inscribed in Russia’s laws relating to contracts, loans, and bills of exchange, which were at once detailed and formal, and yet left much to the discretion of creditors and debtors. Individuals could not blindly follow the law even if they wanted to: as I have shown, even such supposedly clear rules as the prohibition of borrowing by persons under 21 left much room for contention and misunderstanding. Individuals inevitably had to apply the rules and procedures to suit their understanding of the law and their private interests – even such individuals who are typically thought to prefer to avoid formalities whenever possible. As to those situations when formalities were neglected or even subverted in practice, they can be explained more readily as active individual choice and strategies that replaced one set of formalities and procedures with another, rather than passive choices primarily motivated by a sense of helplessness or frustration with the legal system.

⁶⁰² V.M. Zhivov, *Razyskaniia v oblasti istorii i predystorii russkoi kul’tury* (Moscow, 2002), pp. 256–270.

⁶⁰³ True in the sense that law is a narrative, as opposed to Zhivov’s unsubstantiated claim that Russian law existed on paper but was not applied in practice.

CHAPTER SEVEN

DEBTORS AND CREDITORS IN MOSCOW COURTS Institutional Autonomy and Legal Expertise

Introduction

A guidebook to Moscow published in 1827 proudly introduced the “enormous” “beautiful building of the newest Architecture,” which housed the municipal and provincial governmental offices (*prisutstvennye mesta*). It was located on a prominent spot just outside the Kremlin and Red Square, to the right of the Resurrection Gate, on the site of today’s Lenin Museum. The building was originally a seventeenth-century Mint complex, converted to offices under Catherine II and given its final neoclassical appearance after renovations completed in 1820 (Figure 6-1).⁶⁰⁴ Perhaps symbolic of the general state of the Russian legal system, the elegant exterior of the court building was the complete opposite of its busy and cramped interior, which was divided into hundreds of small chambers, staircases, and corridors, with the debtors’ prison occupying part of its left wing (Figure 6-2). The guidebook listed all the offices located in the building – in addition to the courts of law, it housed such key provincial and municipal institutions as the main police office (*Uprava Blagochiniia*), the Noble Board of Trustees (*Dvorianskaia Opeka*), the provincial Treasury (*Kazionnaia Palata*), and the provincial administrative office (*Gubernskoe Pravlenie*) – and then noted with a touch of irony: “each of our readers, I think, has some knowledge of the function of each of these governmental offices.”⁶⁰⁵ The guidebook’s readership, no doubt mostly persons of some property, could hardly

⁶⁰⁴ In 1889 it was demolished and replaced with the present eclectic “Russian-style” building of the Moscow City Duma, which was converted into the Lenin Museum after 1917.

⁶⁰⁵ *Moskva ili istoricheskii putevoditel’ po znamenitoi stolitse Gosudarstva Rossiiskogo* (Moscow, 1827), pp. 330-332. I am grateful to N.S. Datieva for the reference.

avoid visiting the building, either in person or through a representative, on a myriad of errands and matters that bound the early nineteenth-century police state and its subjects, whether it was to register a debt transaction, to request a police debt collection proceeding, to purchase stamped paper used for all official business, or to pursue a court case.

This chapter begins to examine the operations of the courts of law housed inside these cramped chambers, focusing on the everyday practices and attitudes of individuals who used the courts, as well as on the connection between Russia's legal culture and its culture of personal debt, which (as I have shown in previous chapters) rested upon informal personal connections among members of Russia's various propertied groups. I reexamine several key features of the pre-reform court system that are most commonly singled out for criticism when compared to the post-1864 transformation. Section One analyzes the claim that pre-reform courts lacked independence or even autonomy from executive officials, that they were fragmented by the empire's system of legal estates, and that they were infested with corruption and bribery. Section Two addresses the claim that Russia's law of evidence was so rigid and outdated that it impeded the effective administration of justice and thus the development of the rule of law. I review the courts' manner of conducting document and handwriting analysis, which was the type of evidence that was most relevant to debt cases. Finally, Section Three examines the claim that effective legal representation was generally not available before an organized self-regulated bar was established by the 1864 reform.⁶⁰⁶

I do not attempt to overturn our perception of the pre-1864 legal universe; its structural defects and peculiarities did affect legal practice, even though they were not so overwhelming as

⁶⁰⁶ This Chapter thus focuses on the structural issues, whereas Chapter Eight deals specifically with the procedural mechanics in pre-reform courts.

to make law purely decorative. Russia's court system and its network of private debt arguably shared a tendency toward informal connections and solutions and a greater role for individual discretion and initiative than what we assume today as the norm, be it the administration's in- and out- of court influence over litigants, the unregulated legal profession, or the reliance upon private moneylenders. Rather, my objective here is to find out how these structural issues and patterns translated into actual practice in private debt cases brought to define, protect, and promote property interests. I argue that even though many structural elements of pre-reform courts appeared anachronistic by the mid-nineteenth century, their practical impact was modified in practice and adapted to practical circumstances and to the imperative to protect private property and thus social stability. In particular, corruption and administrative interference, while significant, operated beside, rather than instead, of formal legal rules; document analysis undermined Russia's archaic system of "formal proofs" that was designed to minimize judicial discretion; finally, legal advice of variable quality was available long before the reform of 1864. The chapter thus shows the court structure as more viable and adaptable than is normally recognized, suggesting that it was a precursor of the post-1864 legal system rather than a dead branch on the tree of Russian legal development.

Institutional Autonomy and Corruption

One of the most celebrated achievements of the Russian legal reform statutes of 1864 was the effective removal – despite all subsequent attacks – of the court system from the direct influence of executive authorities. Courts' insulation from political, social, religious, cultural and other pressures has been generally seen as the cornerstone of any modern Western legal system, from Montesquieu's doctrine of separation of powers to Max Weber's ideal type of formal-rational

law, where “formal” meant the ability of the legal system to operate according to its own internal rules of procedure rather than some moral or other norms imposed from outside the system.⁶⁰⁷ In this chapter I examine the extent to which pre-reform courts conformed to that ideal, based on actual debt-related legal cases from Moscow provincial and county (*uezd*)-level courts. I argue that the courts experienced a variety of extra-legal influences, both from powerful officials and from less formal patronage networks, but these influences were confined to a fairly limited set of circumstances and thus not sufficiently predictable or determinative of the litigation’s outcome to subvert or replace official legal procedures.

In post-Petrine Russia the issue of court autonomy has been seen as particularly sensitive. The main culprit undermining autonomy is usually seen to be the monarchy, jealous of its supreme position and reluctant to give up its control over any part of the government.⁶⁰⁸ Another, perhaps more immediate issue was the corruption and inefficiency of the tsarist bureaucracy. Although some pre-Petrine chancery offices (*prikazy*) had developed judicial specialization, they were not clearly distinguished from the mass of other governmental offices and their functions were not clearly delineated.⁶⁰⁹ Peter the Great attempted to establish a separate court system that would relieve provincial governors from judicial responsibilities, but the court reform of 1718 proved to be abortive, mainly through lack of resources and trained personnel.⁶¹⁰ Only in 1775

⁶⁰⁷ Weber, *Economy and Society* vol. 2.

⁶⁰⁸ Richard Wortman, *The Development of a Russian Legal Consciousness* and “Russian Monarchy and the Rule of Law.”

⁶⁰⁹ M.F. Vladimirkii-Budanov, *Obzor istorii russkogo prava* (Kiev, 1908); V.I. Sergeevich, *Leksii po istorii russkogo prava* (St. Petersburg, 1890).

⁶¹⁰ D.O. Serov, *Sudebnaia reforma Petra I* (Moscow, 2004); C. Peterson, *Peter the Great’s Administrative and Judicial Reforms: Swedish Antecedents and the Process of Reception* (Stockholm, 1979); Richard Wortman, “Peter the Great and Court Procedure,” *Canadian-American Slavic Studies* (Summer, 1974), pp. 303-310.

did Catherine II establish a court system separate from the provincial administration (technically province-level courts were subdivisions of the central College of Justice and after the early nineteenth century subordinated to the Minister of Justice). The task of strengthening the principle of separation of powers in the Russian government was continued by Mikhail Speranskii in the early nineteenth century. However, provincial governors, who in the nineteenth century took their orders from the Interior Minister, retained some important judicial functions despite being explicitly prohibited from acting as judges. Conversely (I do not believe that this has often been pointed out by critics of the pre-reform system), courts were burdened with responsibilities that had nothing to do with judging cases.⁶¹¹

On the lowest structural level, there was even confusion as to what was considered to be a court. For example, the Land Court (*zemskii sud*) was actually a police office in counties (*uezdy*). Therefore, as even a cursory look at Nicholaevan-era archives abundantly reveals, the courts were still not seen as a completely separate or peculiar sphere of activity from other types of “official business” (*khodataistvo po delam*), but were regarded, officially and in practice, as just another type of “administrative office” (*prisutstvennoe mesto*) – highlighted by the fact that all the offices were housed in the same building. The structure of the “case” (*delo*) and its movement through bureaucratic channels underscored the uniformity of bureaucratic procedure. Both Russian observers during the reform period of the 1860s and today’s scholars of imperial Russia have suggested that this lack of structural definition made debt collection unreliable, kept

⁶¹¹ For example, provincial Chambers of Civil Justice (generally staffed by personnel with legal training) were responsible for notary-level work, like registering wills, contracts, debt or sale transactions; in Moscow these functions were concentrated in the Chamber’s Second Department.

interest rates high, and thus hampered the development of Russia's system of private credit.⁶¹²

This state of affairs was sharply criticized from the mid-nineteenth century to this day, at first in memoirs, and then in the various journalistic, historical, and juridical publications. However, we still do not have a very accurate idea of how extra-legal influences manifested themselves in actual routine cases.

The Influence of High-Ranking Bureaucrats

Perhaps the best-supported criticism of pre-reform courts focuses on the provincial governors' legally sanctioned interference (as well as on their less formal influence).⁶¹³ Of all tsarist bureaucrats, a provincial Governor General exerted the most direct daily political influence upon court operations. He did so through personal intervention (especially effective given that a governor of a major city was appointed from among the emperor's highest servitors) and through subordinate officials. Even nominally, governors possessed extensive judicial functions set out in Catherine's 1775 legislation on provincial government (*Uchrezhdenie o guberniakh*).⁶¹⁴ These functions were, however, mostly confined to criminal law; most importantly, governors reviewed and approved criminal sentences that involved the loss of estate-specific legal rights (*prav sostoianiia*) and penal exile (but when governors did not approve a sentence, the case was reviewed by the Senate, and thus did not leave the legal system). Governors also controlled pre-trial procedures, most directly by ordering their aides to investigate and prosecute a particularly important or complicated criminal case. In civil law, however, governors had no direct judicial

⁶¹² Wortman, *The Development of a Russian Legal Consciousness*; pp. 255-257; Field, *The End of Serfdom*; Emmons, *The Russian Landed Gentry*.

⁶¹³ See especially I.A. Blinov, "Sudebnyi stroi" (discussed in Introduction).

⁶¹⁴ PSZ I, Vol. 20, No. 14,392.

role, although they could affect outcomes indirectly, most importantly through their control over the police, which collected debts, imprisoned debtors, assessed and seized debtors' property, and could even remove individuals from the city. In Chapter Five we have already seen that governors had a great deal of influence in the ritual of charitable ransoming of imprisoned debtors from Moscow's "Debtors' Pit."

This authority of the governor was particularly noticeable in Moscow between 1848 and 1859 when the office was occupied by Count Arsenii Andreevich Zakrevskii, a hero of the war of 1812 who was remembered by Muscovites for his suspicion of any freethinking, for his arbitrariness (*samodurstvo*), and for his dislike of moneylenders that was considered to be excessive by St. Petersburg authorities.⁶¹⁵ Archives contain numerous indications of his personal forceful influence upon the various aspects of city life, including its culture of debt. At the same time there is no sign of his personally and directly interfering in civil law debt litigation once it entered the court system. Zakrevskii could order a creditor to drop his claim on pain of administrative reprisals, but he could not directly order the judges of the Criminal or Civil Chamber – which as noted above were subordinate to the Minister of Justice and not to the Minister of Interior – to rule against this creditor. Needless to say, the governor could attempt to influence the proceedings secretly, but all indications are that because of their very power, high-level officials in Nicholaevan Russia, such as governors, ministers, or Chiefs of Gendarmes (militarized political police), chose to intervene directly and publicly through writing addressed to appropriate persons. I have not seen any notes or letters to judges suggesting that they move

⁶¹⁵ *Russkii biograficheskii slovar' v 25 t.* by A.A. Polovstov (Moscow, 1896-1918), vol. 10, pp 195-198 (includes references to memoirs about Count Zakrevskii); *Entsiklopedichskii slovar' Brokgauza i Efrona* (Moscow, 1890-1907); V.S. Aksakova, *Dnevnik, 1854-55* (Moscow, 2004).

the case in a certain direction. Potentially such letters could be presented as bringing some “new evidence” or “new circumstances” to the judges’ attention and thus not even violate the letter of the law. However, I have reviewed routine cases where judges or Moscow senators disagreed with the governor’s views of specific criminal law issues.⁶¹⁶

In the debt-related cases that I have reviewed (civil, as well as criminal ones⁶¹⁷), officials appear to have respected the integrity of the legal process and intervened directly only in a specific set of circumstances that Russian bureaucrats in general viewed as deserving their heightened attention, such as a potentially criminal issue emerging from a debt-related dispute, especially one that affected a sufficiently large number of persons to threaten public order, or when evidence laws did not permit any redress of a wrong that was abundantly and clearly established by circumstantial evidence. Moreover, officials intervened not by contacting courts directly, but rather operated outside the judicial process by exerting their personal (in the case of governor Zakrevskii, one can almost say “charismatic”) prestige, as well as by using their considerable police powers. One type of situation that frequently prompted the provincial governor to intervene was when there were numerous complaints about a particular moneylender’s practices, for example when predatory creditors took advantage of younger Muscovites to burden them with debt. The governor could either use his personal authority or

⁶¹⁶ One such sharp conflict took place over the issue of criminal bankruptcy cases; the question was that, once the creditors ruled the bankruptcy to be “malintentioned”, the Commercial Court affirmed this ruling, and the case was sent to a criminal court as required by law, should this criminal trial be limited to assigning a punishment (such was the view held by the governor), or should the court be able to acquit the bankrupt or leave him under suspicion despite the creditors’ ruling (the position, not surprisingly, taken by judges and the Senate).

⁶¹⁷ Criminal and civil proceedings, while distinguishable procedurally in several important aspects (see Chapter Seven), were nonetheless closely intertwined in debt-related matters, most commonly when a debtor denied his or her signature on the debt instrument, which turned the case into a fraud investigation conducted in a criminal court. *TsIAM*, f. 50, op. 4, d. 5808 (Lukin) (1860-66); f. 50.4, d. 8960 (Kuznetsov) (1865); f. 16, op. 21, d. 463 (*meshchanin* Monakhov) (bankruptcy and wrongful arrest) (1857).

appoint a special commission to handle the complaints. One example from 1857 illustrates the nature and the extent of a governor's personal direct intervention to sanction an individual who could not be disciplined through legal channels. A 12th Class official Aleksandr **DeMazer** was on trial for embezzling from a wealthy female serf (owned by Count Sheremetev), who wanted to purchase a house in his name.⁶¹⁸ There were several witnesses to confirm the transaction, but only one agreed to testify under oath, and under Russia's system of formal proofs there was not enough evidence to convict DeMazer. The judges of the Criminal Chamber left him under the "strongest suspicion" (at the time Russia's equivalent of a suspended sentence)⁶¹⁹ and recommended that the governor order his expulsion from the city to his hometown. Shortly after the ruling Governor Zakrevskii ordered DeMazer to be removed from Moscow as "unreliable" and "harmful to the capital city." However, DeMazer remained the legal owner of the property he embezzled. This case thus shows both the governor's power and its limitations: while neither he nor the judges were able to help DeMazer's victim (by, for example, simply ordering DeMazer to simply turn over the property to his victim), they allowed the legal proceeding to run its course and then acted to extent of their authority in order to prevent DeMazer from continuing his dishonest practices, as long as his property rights were not openly violated.⁶²⁰ Ironically, the case also shows that courts were not too averse to leaning upon the governor to achieve its goals, as opposed to the usually assumed opposite situation.

⁶¹⁸ *TsIAM*, f. 50, op. 4, d. 4758 (DeMazer) (1856-57). Serfs could purchase property with their landlord's permission, which in this case was somehow inconvenient. See more on this case in Chapter Eight.

⁶¹⁹ SZ, vol. 15, part 2, Art. 344.

⁶²⁰ Another example showing Count Zakrevskii respecting property rights is the case of Countess Zinaida Graziani, who was heavily indebted and petitioned the governor to allow her to stage a lottery for her property and use the proceeds to satisfy her creditors. In denying Graziani's request, the Count listed several reasons, noting that she had failed to obtain the creditors' permission. See *TsIAM*, f. 16, op. 17, d. 95 (Graziani) (1851).

In cases when no criminal proceedings were initiated, the governor's ability to influence outcomes of cases was even more limited. In earlier chapter I already mentioned the 1859 case of a wealthy Old Believer merchant **Ivan Butikov**, who complained of misconduct by police officers when they broke into his house in an attempt to arrest Butikov's son for debt.⁶²¹ Simultaneously with the governor's investigation of the police actions, his office was also investigating the usurious activities of the junior Butikov's lenders. The governor (by that time it was Zakrevskii's successor, the more liberal Pavel Tuchkov) chose to intervene as directly as he ever did by summoning Butikov's creditors to his presence and "urging" them to settle their claims against Butikov out of court. Two of the creditors, merchant Sabanin and an civil servant (*chinovnik*) Ivanov made a "good-faith settlement" with Butikov but the third creditor, Gubernial Secretary Logotini, despite all the urgings refused the settlement and petitioned to proceed through the legal channels (*zakonnym poriadkom*). The Chief of Gendarmes Prince Dolgorukov (to whom Butikov also complained) and Governor Tuchkov then concurred in June of 1860 that because it was not "possible to compel Lagatini [sic] with administrative measures to end the case," it was necessary to continue the legal proceedings but "on the condition that Logotini, as a "reprehensible usurer," be expelled from Moscow."⁶²² It is remarkable that persons as powerful as Tuchkov and Dolgorukov did not simply prevail upon the police or the courts to stop the collection against Butikov, which, remarkably, proceeded in the regular prescribed fashion and led to the conflict between Butikov and the police. Even more remarkable is Logoniti's steadfast refusal to accommodate the officials; perhaps it can be explained by his hopes of greater liberalization of the early 1860s.

⁶²¹ *TsIAM*, f. 16, op. 23, dd. 208 and 209 (Butikov).

⁶²² *Id.*

On some occasions the governor's interference could have even less effect. In a case similar to the previous two, **Collegiate Secretary Semen Briukhatov** was put on criminal trial for defrauding the nobleman Abramov, who borrowed money secured by a landed estate with serfs.⁶²³ This was only a part of an extensive investigation by the governor's office of Briukhatov's predatory lending practices with respect to approximately ten other young (or even minor) men of property (or expectation of such). The special commission established by the governor's decree on March 16, 1865, included Colonel Sochinskii (from the procurator's office), the Gubernial *Striapchii* (government attorney) Pavlovskii, Colonel Voeikov from the Corps of Gendarmes, and Mr. Saveliev, the governor's aide "for special assignments." Interestingly, the Commission did not seem to have taken over any legal cases against Briukhatov but merely wrote to the Criminal Chamber and requested to be informed of any charges and convictions against Briukhatov. This is significant enough, but even more significant is that despite all this pressure against him, Briukhatov continued to keep Abramov imprisoned for his debt and even induced him to come to a settlement, which Abramov later managed to rescind. A similar situation occurred to the young **Count Dmitrii Nikolaevich Tolstoi** (only remotely related to the great writer) who, while still living with father, racked up large debts and was declared insolvent.⁶²⁴ His father's legal representative, as part of his legal defense strategy, notified the Gendarmes that one of the creditors, a "baptized Jew" and a temporary Moscow third-guild merchant, Gorodetskii, took advantage of Tolstoi's youth and took debt notes for twice the amount actually borrowed. In response, Gendarme Colonel Voeikov wrote that Gorodetskii had on "many occasions" evoked "critical responses" for engaging in illegal usury,

⁶²³ *TsIAM*, f. 50, op. 3, d. 8323 (Briukhatov) (1865-66).

⁶²⁴ *TsIAM*, f. 81, op. 18, d. 1259 (Tolstoi) (1863-65).

and that he went as far as to take the young's count personal clothing. While the anti-usury sentiment of the Moscow upper classes and of the authorities is not surprising, it is remarkable that the collection and insolvency proceedings against Tolstoi continued despite the Gendarmes' involvement and only stopped when father reached a settlement with his son's creditors.

While in most of these examples the governor's intervention was directed against an alleged predatory lender, authorities were by no means always pro-debtor. In fact, the governor's archive contains numerous petitions by individuals complaining that their debtors are maliciously evading payment and asking for his special intervention.⁶²⁵ What could the governor do for such persons? This can be glimpsed from the case of retired private **N. Leiba-Srulevich Sumgalter** who had served in Moscow police force for 28 years and retired to Zhitomir province (within the Pale of Settlement).⁶²⁶ In December of 1859 he travelled back to Moscow to collect a 118.50 debt from *meshchanin* Krasil'nikov and spent several months trying to negotiate with Krasil'nikov and then going through police collection and then the courts. Eventually Sumgalter petitioned governor Tuchkov to summon Krasil'nikov to his office and induce him to pay Sumgalter's traveling expenses. Interestingly, this is exactly what Tuchkov did on January 19, 1861; even more interestingly, Tuchkov's personal talking-to session with Krasil'nikov seems to have had very little effect upon Sumgalter's ability to collect because Krasil'nikov proceeded to hide his property with relatives and then was declared insolvent. Of course, the governor's most potent power of expelling the debtor from the city in this situation would not have been very helpful! Sumgalter was only able to collect a portion of the amount owed to him several years later by

⁶²⁵ Governor's office archive is poorly preserved due to archival policies during the Soviet period.

⁶²⁶ *TsIAM*, f. 16, op. 23, d. 1107 (Leiba-Srulevich Sumgalter) (1860-1863).

placing Krasil'nikov in the debtors' prison, from which he was ransomed by the Prison Committee (whose operations were discussed in Chapter Five).

In addition to the governor general and his subordinates, individuals could turn to other officials of comparable rank residing in St. Petersburg, such as the Minister of Justice or the Chief of Gendarmes (who was also the Minister of Interior). The gendarmes, in addition to serving as the muscle of Russia's secret police (known as the Third Section of His Majesty's Own Chancery), during the later pre-Soviet period comprised what Barbara Alpern Engel has shown to have been a veritable alternative justice system in the area of family law.⁶²⁷ But it appears that from the very beginning of the gendarmes' existence their Chief was petitioned by individuals in difficult legal circumstances, both by wealthy and sophisticated ones, and those clearly from middling ranks – with different results.⁶²⁸ The merchant Butikov, already mentioned above, while pursuing his vendetta against Moscow police, petitioned the Chief of Gendarmes Count Shuvalov while the main investigation was handled by the Moscow governor's staff and attracted the Gendarmes' attention. In the fraud case of **Princess Ekaterina Cherkasskaia** discussed in Chapter Three, a Commercial Bank official who supplemented his income by lending money was convicted wrongfully and swiftly most likely because of the intervention by Gendarme Colonel Tolstoi. Eventually Cherkasskaia's embezzling estate manager repented and sent written confessions both to the Moscow governor and to the Minister of Justice Count Panin. Perhaps because of these high personages' special attention, Zaborovskii's initial

⁶²⁷ Barbara Alpern Engel, *Breaking the Ties that Bound: The Politics of Marital Strife in Late Imperial Russia* (Ithaca, 2011).

⁶²⁸ It is notable that the petitions were addressed to the Chief of Gendarmes, rather than to the Minister of Justice, who was the same person.

conviction was quickly invalidated.⁶²⁹ Earlier in the nineteenth century, before the Corps of Gendarmes was established, such complaints were addressed directly to the tsar, such as in the 1805 case of a wealthy Moscow merchant **Goriunov**.⁶³⁰ Although Goriunov's property (shops next to the Kremlin wall along Neglinnaia River) was sufficient to cover his debt, he was declared a "bankrupt" under the 1802 Bankruptcy Code. He was kept imprisoned for long periods of time, made several deals with his creditors and was allowed to continue to manage his property (such as to rebuild his wooden shops in "stone") and then again imprisoned. Much like Butikov's case sixty years later, Goriunov's complaint was forwarded to Moscow authorities without any specific and direct command that could predictably affect the outcome. The value of these petitions was not in producing a specific governmental action, but rather in showing the local officials that their actions were being monitored by their superiors. However, the grantees of Nicholas I's reign, such as Counts Zakrevskii or Benkendorf (the first Chief of Gendarmes), were obviously unable and unwilling to help every single person who asked them.

In the case of a less prominent petitioner, one that did not involve significant properties or any possible threats to public order, the high official could simply forward the case to one of his subordinates who might not choose to expend his efforts. This is what happened in another fraud case involving a civil servant who had served as an agent for the wealthy Glebov brothers (grandsons of a Catherinian grandee) and continued to borrow in their name long after being dismissed from their service.⁶³¹ In that case, one of the victims, no novice in the world of Moscow officialdom (her husband was the chief of one of Moscow police precincts), complained

⁶²⁹ *TsIAM* f. 50, op. 4, d. 1983 (Cherkasskaia) (1843-53) and f. 50, op. 4, d. 3389 (Zavarovskii) (*sic*) (1848-9).

⁶³⁰ *TsIAM* f. 16, op. 3, d. 1254 (*Ob ob'iavlenii kuptsa Goriunova bankrotom*) (1805-06).

⁶³¹ *TsIAM* f. 50, op. 4, d. 3167 (Dmitriev).

to Count Benkendorf, who transferred the matter to his subordinate, Major General Perfiliev who did not seem too sympathetic to her case (his questions to the woman sounded like he was somehow more suspicious of her than of the perpetrator of the crime). From this and other similar cases it appears that the tsar's governors and ministers did *not* seem to think that they had to personally affect the outcome of every case in which their assistance was summoned.

It thus appears that, on the one hand, government officials who were in a direct position to influence court proceedings, most importantly Ministers of Justice and Interior and Moscow's governor general with his policemen, clearly had significant means to do so at their disposal, both through their legal authority and through their personal prestige. However, a set of practical considerations limited excessive exercise of this authority. First of all, officials were clearly reluctant to violate property rights. Second, they found it either impossible or politically undesirable to subvert the legal process through direct intervention. Officials did use their police powers to achieve their goals, but these were generally limited to certain sets of circumstances both by political consideration and by their practical inability to intervene in all cases, especially those that did not promise a political reward.

An Example of Central Government's Intervention: Debtors' Lotteries

Much as a governor could personally intervene into Russia's culture of private debt, the central government in St. Petersburg (and the tsar himself) occasionally became closely involved in specific cases, in particular when a high-profile debtor with staggering amounts of liabilities became bankrupt or died. Once again, this intervention generally occurred through parallel extra-legal procedures rather than through subversion of the court system.

While the second half of the nineteenth century became the age of notorious high-profile commercial bankruptcies, the most celebrated aristocratic financial collapses occurred earlier in the century, namely in the 1820s when the last of Catherinian grandees were dying and leaving enormous debts incurred to maintain decades of opulence. Although they fall outside the strict chronological frame of this study, some examples should be mentioned here because they demonstrate an interesting alternative to using the court system that was available to the heirs of Russia's wealthiest debtors. One such example occurred in 1821, when Count N.N. Golovin, the great-grandson of Russia's first admiral of the Petrine era, died leaving three million rubles' worth of property (including a fabulous estate in Nizhnii Novgorod province with five thousand serfs) and seven million rubles' worth of debts.⁶³² The late Count's heirs obviously refused to take on the inheritance, and the government was obligated to form a special commission to deal with Golovin's debts, which was established outside the regular court system and headed by the Minister of Interior. At first the government took over the administration of the estate but since this did not promise a quick solution, the tsar in 1822 authorized a special commission to sell the estate off at a lottery. The commission issued 170,000 tickets each worth 50 rubles (to which were later added cheaper tickets entitling the buyer to a fraction of a prize).⁶³³ Lottery tickets were sold in the offices of the State Commercial Bank or by provincial governors and vice-

⁶³² *Syn otechestva* 1823. According to V.K. Rakhilin, the practice of staging lotteries of debtors' property went back to the eighteenth century. As elsewhere in Europe, the government was suspicious and required a special permission, most commonly when the debtor owed money to the Treasury. Catherine II prohibited the practice in 1764 after another such lottery, ordering that "debt to the treasury be collected pursuant to the laws, and such lotteries are not to be undertaken in the future." Lotteries were again prohibited by the decree of March 23, 1774, and permitted by the *Ustav Blagochiniia* of 1782 but only in "exceptional" circumstances for charitable purposes. After 1829 only the emperor could permit a lottery of over 500 rubles. V.K. Rakhilin "Lotereia: chto eto?" *Numizmaticheskii almanakh*, 1998, No.1, 25-29. www.bonistikaweb.ru. The rules for Moscow: PSZ I, vol. 38, No. 29425 (1825)

⁶³³ V.K. Rakhilin, "Pervye rossiiskie gosudarstvennye lotereii" *Numizmaticheskii almanakh*, No.2, 29-31, No.3, 25-27, and No.4, 38-42 (1998). www.bonistikaweb.ru (accessed 02/13/2010).

governors. The four winning tickets included portions of Golovin's extensive landed estates, but there were also 6,009 money prizes ranging from 50 to 200,000 rubles. The drawing, originally scheduled for November 15, 1822, was postponed several times because the tickets were not sold quickly enough, but finally began on June 12 of the following year and lasted until June 30. The actual drawing was conducted by twelve children from the Gatchina Imperial Orphanage, and information about the lottery and the drawing was published daily in the St.Petersburg *Vedomosti*. The winners included individuals from many different provinces, of various estates (gentry, civil servants, soldiers, merchants, *meshchane*, and even a serf of Count Sheremetev who won 25,000 rubles). The lottery had a huge resonance across Russia, because individuals from many provinces and from different social ranks bought tickets and were eagerly hoping to win. P.I. Mel'nikov-Pecherskii in his *Babushka's Tales* wrote: "In her last years grandmother prayed every day to the point of fainting ... At that time there was a lottery for the Golovin estate; grandmother bought three tickets and she wanted very badly to win Vorotynets [the estate constituting the main prize]. She prayed for it so hard that every day she would be put to bed unconscious. The lottery was drawn, grandmother lost, but she did not want to believe it and every day prayed for the rich Vorotynets with its gardens, wharfs, picture galleries, and all the riches of the fabulous estate."⁶³⁴ Another reaction, exemplified by characters in Leskov's unfinished piece "A Family in Decline," was shock at the fact that human beings (Golovin's serfs) were being sold at a lottery.⁶³⁵

⁶³⁴ Mel'nikov-Pecherskii quoted in Rakhilin, "*Pervye rossiiskie gosudarstvennye loterii*."

⁶³⁵ Leskov, "A Family in Decline."

A similar case occurred when *kamerger* Aleksandr Sergeevich Vlasov, another eighteenth-century grandee, died in 1825 and his heirs refused to take on the estate because of its staggering debts, in his case incurred by acquiring a fabulous art collection of paintings, engravings, bronzes, marbles, porcelain, books, antique weapons etc. 2,154 items were to be drawn at the lottery, likewise established by Alexander I's special decree explicitly as an alternative to court procedures, which were thought to be ill-equipped to deal with a case of such magnitude.⁶³⁶ However, in this case the tickets were selling so poorly that the lottery had to be canceled and replaced by the more typical auction sale.⁶³⁷ This kind of alternative procedure seems to have become an established feature in the culture of debt, even if it was only used sporadically. For example, in 1860 there was a widely publicized lottery of an estate in Warsaw province, which consisted of five sections each divided into three classes. Prizes were staggering: in only one of the several sections the main prize was 425,700 rubles.⁶³⁸ An official permission was necessary to stage a lottery, which was sometimes denied (perhaps because it was seen merely as way for the debtor to get out of paying).⁶³⁹ As with direct intervention by governors and ministers of the tsar, public lotteries, while representing a fascinating slice of Russia's culture of debt, and an interesting alternative to a legal procedure, were only used sporadically and not always successfully.

⁶³⁶ *TsIAM*, f. 16, op. 4, d. 2607 (Vlasov)

⁶³⁷ *Id.*

⁶³⁸ Rakhilin, "Pervye rossiiskie gosudarstvennye loterii."

⁶³⁹ This happened to Countess Zinaida Graziani in 1851. See *TsIAM*, f. 16, op. 17, d. 95 (Graziani). Graziani also petitioned the tsar, who deferred to Count Zakrevskii's opinion (which was negative).

Influences of the Estate Structure

While the influence of individual powerful officials was clearly significant, it was sporadic and sometimes had only limited effectiveness. Another important extra-legal influence was the empire's social divisions and its system of legal estates. As I have mentioned earlier in this study, the notion that Russia was divided into the strict system of predominantly closed legal estates has been challenged by recent scholarship showing estate boundaries to be porous and contested. However, other scholars argue for the continued relevance and even importance of estate-based social identities until the end of the imperial period.⁶⁴⁰ The one factor that has been seen to unequivocally support the estate structure was Russia's pre-reform legal system, which is typically labeled in its entirety as estate-based. It is true that Catherine's 1775 Provincial Statute established a system of first-tier trial courts that was based on her notion of peer-administered justice and therefore divided into County courts for nobles and (later) free peasants,⁶⁴¹ Magistrates for merchants and townspeople, and Aulic courts in Moscow and St. Petersburg for government officials and *raznochintsy*. Scholars of Russian law for the past hundred and fifty years have interpreted this structure as evidence of the fractured and unreliable character of the Russian legal system. One historian, for example, has argued that the courts were "disjointed and separated" and that "[t]here was no unified system of national courts to apply a common law. Court systems served the nobility, the townspeople, the merchants, and state officials."⁶⁴²

Historians have ignored the fact that all other elements of the court system were common to all

⁶⁴⁰ See notes 161-163 in Chapter One.

⁶⁴¹ Serfs were also tried in County courts for crimes that went beyond their masters' jurisdiction; they could also use the courts for civil proceedings with their masters' permission.

⁶⁴² Levin Stankevich, Brian. "The Transfer of Legal Technology and Culture: Law Professionals in Tsarist Russia" in Harley D. Balzer, ed., *Russia's Missing Middle Class: The Professions in Russian History* (Armonk, NY, 1996), pp. 223-249, 228 and 224.

estates, as well as the fact that first-tier courts in the pre-1864 court organization were closely supervised and reviewed by non-estate province-level courts. Moreover, no scholar, as far as I know, has taken into account *how* estate-based pre-reform courts actually functioned.

The estate principle built into the 1775 system had to be eroded in practice if the new courts were to function at all, most importantly because the system of separate estate-based courts raised the issue of jurisdiction in cases involving members of different estates. The basic principle of Russian law that the suit was to be brought in the court that had jurisdiction over the defendant obviously gave advantage to the latter.⁶⁴³ In the United States today such cases are transferred from state to federal courts but in imperial Russia an analogous solution would be to transfer “diversity” cases to provincial Judicial Chambers, which, however, would disorganize the system and overburden overworked province-level courts. The problem became even more complicated for cases where defendants belonged to different legal estates (which was also common, judging from the case lists in the courts’ archival inventories). Theoretically such cases could be split into separate proceedings. However, this would violate the principle of “procedural indivisibility,” also known in Western European law, which prohibited the break-up of large cases with multiple defendants.⁶⁴⁴

The solution adopted by Section 340 of the 1775 Provincial Statute mandated joint trials in cases when more than one court was “involved” in a case.⁶⁴⁵ Even in these early years the government viewed local court judges as interchangeable despite their estate affiliation: for example, when one of the two elected County court members was not available, he was to be

⁶⁴³ SZ, vol. 10, part 2.

⁶⁴⁴ Ye.A. Nefediev, *Souchastiie v grazhdanskom protsesse* (Kazan’, 1891).

⁶⁴⁵ PSZ I, vol. 20, No. 14,392 (1775).

replaced by a member from the peasants' court (*nizhniaia rasprava*).⁶⁴⁶ Subsequent legislation and court reorganization only furthered the erosion of the estate principle. Catherine's successor Paul I (1796-1801) abolished the original second, estate-based tier of the court system (which was initially four-tiered).⁶⁴⁷ This undermined the estate principle because from then on only the lowest and least important county- or city-level courts were estate based. Alexander I ascended the throne in 1801 but did not reverse this reform. Rather, he eroded the estate principle even further by placing state peasants under the jurisdiction of County courts, thus eliminating these courts' all-noble character.⁶⁴⁸ State peasants, relatively few in number in the eighteenth century, multiplied enormously in the first half of the nineteenth, until they made up almost two-thirds of the empire's peasantry on the eve of the Emancipation of 1861. The law was then adapted to account for the participation of peasant representatives in County courts by specifying that they were not to participate in cases involving only nobles.⁶⁴⁹ Furthermore, the law of 1827 changed existing rules by strengthening the nobles' influence in County Courts by requiring noble members to participate even in cases that involved solely state peasants.⁶⁵⁰ This legislation, taken together with the abolition of separate all-peasant courts suggests the government's desire to strengthen the nobility's tutelage over other estates, but it also continued to undermine the intended compartmentalization of the legal system.

⁶⁴⁶ PSZ I, vol. 22, No. 16,077 (1784-88).

⁶⁴⁷ N.P. Eroshkin, *Istoriia gosudarstvennykh uchrezhdenii dorevoliutsionnoi Rossii* (Moscow, 1968), 141-2; M.F. Vladimirkii-Budanov, *Obzor istorii russkogo prava* (Kiev, 1908).

⁶⁴⁸ PSZ I, Vol. XXVI, No. 20,004 (1801).

⁶⁴⁹ PSZ I, vol. 27, No. 20,284 (1802).

⁶⁵⁰ PSZ 2, vol. 2, No. 862 (1827). Reference in V.A. Voropanov, "Izmeneniia v soslovnoi kompetentsii sudei na Uralskoi i v Zapadnoi Sibiri v 1780-1866 godakh," *Izvestiia Cheliabinskogo nauchnogo tsentra*, vyp. 3 (2003), 96-101, 98-99 (has wrong references to PSZ). In 1852, the government carried out an experiment in Tambov province, which abolished the Magistrate and merged it with the County Court. PSZ 2, vol. 27 (1852), No. 26,597.

As to joint sessions between the courts, the original law of 1775 mandating joint sessions was practiced until the end of the pre-reform legal system with the effect that pre-reform courts appeared to function as one single unit, as one little known pre-Soviet jurist noted.⁶⁵¹ The law of 1848 elaborated the rules on the joint sessions of County Courts and Magistrates. These sessions were to be chaired by the crown-appointed County Court Judge and consist of three or five members of each court (including the chairman) depending on whether peasant members were involved.⁶⁵² In Moscow, the practice of joint sessions (*obshchiie prisutstviia*) became common at least by the mid-century, in criminal as well as in civil cases. Virtually every significant case discussed in this study involved a joint court session. Exact statistics would take years to compile from thousand-page annual “journals” of each court, but I did locate a list (more like working notes) from 1860 of occasions when the Moscow Magistrate invited County court members to a joint hearing of various contested (*iskovye*) civil cases (see Table 7.1).⁶⁵³ The Magistrate was obviously an important court in Moscow with its large commercial population, and the fact that this list is not hugely long should be explained by the fact that the Magistrate did not process “commercial” cases in which merchants were likely to be involved and which were litigated in the Commercial Court.⁶⁵⁴ Nor does this list include criminal cases or instances of other courts

⁶⁵¹ N. Gartung, N. *Istoriia ugovnogo sudoproizvodstva i sudoustroistva Frantsii, Anglii, Germanii i Rossii* (St. Petersburg, 1868), pp. 192, 201. Discusses specifically criminal law, but joint sessions also took place in civil cases. Gartung’s second example: an Equity court w/ jurisdiction over minors and other incompetents formed a joint session when the case also involved regular defendants.

⁶⁵² PSZ 2, vol. 23, No. 22,274, (1848).

⁶⁵³ *TsIAM*, f. 92, op. 9, d. 1092 (*O vyzovakh Moskovskim magistratom chlenov Moskovskogo Uездnogo Suda dlia obshchego slushaniia raznykh iskovykh del*) (1860-61).

⁶⁵⁴ This perhaps accounts for what appears to be less-than-vigorous legal practice at the Magistrate compared to the other two lower courts. At the same time, there are other possible reasons why the Magistrate’s records do not look as complete: first, they suffered particularly severely in the Soviet period (according to one archivist, because the early Soviet regime was eager to destroy the records of the former “exploiting class”). In addition to that, all three lower courts’ records had been preserved relatively poorly from the start.

inviting each other's or the Magistrate's members to *their* joint sessions. What is important is the fact that this list was compiled at all, which provides additional confirmation that at least in the minds of court officials joint sessions were a regular practice, and that lower-level courts in Moscow tended to operate as a single unit.

Table 7.1 Joint hearings at Moscow Magistrate with invited members of the Moscow County Court (*Moskovskii Uezdnyi Sud*), 1860

Date	Litigants	Type of Case
4.26	Coachmen (<i>iamshchiki</i>) N. Sharov and S. Bezport(ill). v. <i>meshchanka</i> M. Shchukina	Unlawful building by Shchukina on plaintiffs children's land
5.10	Guard Colonel V.B. and <i>shtabs-kapitan</i> D.D. Kazakovs v. late merchant N.N. Kraiushkin	Collection of a debt (38,000 & 9,000 rubles) incurred by Kraiushkin's father
5.18 and 5.24	<i>meshchanin</i> A. Dmitriev	Exercise of the redemption right to Dmitriev's patrimonial house, on sale by a nephew
6.15	Kraiushkin (see above)	Kraiushkin's wife claims her share of inheritance through her representative merchant Rasadin and demands to examine the debt documents; therefore, the Joint Session cannot yet meet
7.20	Household serf of Count Sheremetev A. Mashkina v. Retired 12 th Class Official A. DeMazer	Contested ownership of a house, plus income money and insurance expenses
8.31	Kraiushkin (see above)	See above
10.18	Collegiate Registrar's wife V.A. Gukova (one judge removed b/c has a legal claim against her husband)	Contested will
10.17	Moscow Merchant A.F. Bovastro v. Collegiate Councilor V.F. Mit'kov	Contested ownership of a "chocolate machine"
11.29	Gukov and Mit'kov (see above)	See above

Yet another factor promoting a single national legal system in the core Russian provinces actually resulted from what is commonly thought of as a defect, namely, the infamous Nicholaevan over-centralization of governmental authority, which, as applied to law, manifested itself in concentration of key decision-making in the non-estate-based provincial Judicial

Chambers and in the Governing Senate (which was divided into St. Petersburg, Moscow, and Warsaw groups Departments for criminal and civil cases).⁶⁵⁵ I do not want to suggest that lower court proceedings were always a mere formality; in many cases the most interesting “action” took place precisely there, for example, in the **Blagin** debt-related inheritance case where the parties were a clerk from Orenburg province and a Moscow *meshchanka*; this case will be discussed in detail in the next section.⁶⁵⁶ Appellate courts could simply rule rather laconically to leave the lower court decision as it was. Nevertheless, there are numerous other examples suggesting that province-level Civil and Criminal Chambers had the real authority, responsibility, and legal expertise, and that the lower courts tended to function merely as the Chamber’s subdivisions, doing its “busy work.”⁶⁵⁷ This practical situation perhaps was strengthened by the peculiar legal status of Russia’s courts, which under Catherine’s 1775 statute were considered to be branches of the central College of Justice (in 1802 replaced by the Ministry of Justice). Thus the lower courts were not legally separate and independent entities but officially subordinate to the Chambers. In criminal cases the Chamber had to review all but the most minor convictions, and in civil ones all disputes involving more than 30 rubles could be (and virtually invariably were) appealed to the Chamber.⁶⁵⁸ One of the most illustrative cases is the debt proceedings of a widow of a *kamer-lakei* (highly-ranked court servant) Nastasia Chizhikova, in which the court ordered a sale of the house that belonged to a woman who signed

⁶⁵⁵ I.A. Blinov, “*Sudebnyi stroi*.”

⁶⁵⁶ *TsIAM*, f. 92, op. 9, d. 806 (Blagin).

⁶⁵⁷ The provincial Chambers were very strict in making sure that every legal question was first examined by a lower court. See, for example, *TsIAM*, f. 50, op. 5, d. 12153 (Faleeva) (1851).

⁶⁵⁸ A civil case could be appealed to the Senate if the dispute involved more than 600 rubles.

Chizhikova's debt as a surety.⁶⁵⁹ From reading this in every way routine and uncomplicated debt case one gathers that the County Court was not a judiciary organ in its own right, because the Chamber oversaw, reviewed, and second-guessed every step of the litigation, no matter how minor. Thus, provincial Chambers of Criminal and Civil Justice reviewed every case of any consequence, sometimes in excruciating detail, and thus largely obviated the already-eroded estate-based court structure.

Corruption and Litigants' Personal Influence

From what has followed so far in this section it becomes clear that the criticism of Russia's pre-reform legal system as not being "formal" in the Weberian sense, i.e., basing its decisions upon some outside non-legal criteria such as the political will of the sovereign or the interests of a particular legal estate or population group, should not be exaggerated. Such influences were significant but not automatic or necessarily determinative of the outcome.⁶⁶⁰ An obvious follow-up question concerns the effects of corruption, such as bribery and the influence of kinship, and personal friendships, which, as we already know, were central to the operations of Russia's network of private debt. Of course evidence of corruption is always difficult to identify and evaluate. However, researchers are aided by the fact that pre-reform legal procedure was almost entirely written, that courtroom oratory was nonexistent, that court petitions were frequently prepared by individuals without a formal legal training, and that they tended to focus on

⁶⁵⁹ *TsIAM*, f. 92, op. 6, d. 679 (Chizhikova) (1853-54).

⁶⁶⁰ Was it the nobles' justice? I haven't seen any glaring indication that the courts judged cases in favor of nobles as such. Indeed, the courts appear to have been just as willing to sell their property as that of merchants (if nothing else, court staff could themselves benefit from the proceedings). It appears to me that the court officials' identity as *chinovniki* would be at least as strong as their identity as *dvoriane* (nobles).

technical legal argumentation, making a case's subtext easier to identify than it is often the case with post-1864 court proceedings.

In mid-century debt-related cases extra-legal intervention appears not as a dichotomy between corruption and honesty but rather as a continuum, one end of which was more akin to lobbying, and the other end consisted in outright bribery. For example, calling upon a powerful relative in a difficult situation was the first obvious step to take, even before reporting a crime like a credit fraud to the police. When the elderly Princess **Ekaterina Cherkasskaia** became a victim of fraud, she consulted with her estate manager and their first action was to "invite the assistance" of her nephew Colonel Begichev (as well as of the Gendarme Colonel Tolstoi, with whom Cherkasskaia must have been also acquainted).⁶⁶¹ These two officers helped her to contact the police and presumably kept an eye on the investigation. Wealthy Muscovites strove to make friends with police officers, inviting them to their houses for meals and giving them gifts. In the **Butikov** case (discussed throughout this study), the wealthy Old Believer merchant cultivated a good relationship with the local police and even "supported" (*pokrovitel'stroval*) it, thus making his abuse at the hands of a local police officer particularly outrageous in his eyes.⁶⁶² Time and again, court cases contain allegations of one of the sides being friendly with a judge,⁶⁶³ reflecting the fact that judges from first-instance courts were elected from the same social milieu as the litigants, as well as the courts' recognition that personal connections had the potential to affect

⁶⁶¹ Much as the Gendarmes are now remembered to be commonly disliked, Moscow's upper classes seem to have cultivated an acquaintance with a highly ranked Gendarme officer for just such occasions. See *TsIAM* f. 50, op. 4, dd. 1983 (Cherkasskaia) (1843-53) and 3389 (Zavarovskii) (1848-9); also *TsIAM*, f. 81, op. 18, d. 1259 (Tolstoi) (1863-65). Both cases, as discussed elsewhere in this study, involved wealthy Muscovites perceiving themselves in legal difficulties.

⁶⁶² *TsIAM*, f. 16, op. 23, dd. 208 and 209 (Butikov).

⁶⁶³ I only saw cases involving lower-level judges, implying that both Chambers were regarded as more professional.

legal cases. For example, in the standard debt collection case of Colonel **Nikitin** – marked only by the wealth and sophisticated knowledge of the law of both litigants – the defendant, Actual State Councilor Surovshchikov (equivalent to a major general), claimed that his creditor had “acquaintance and friendship” with one of the judges on the County Court, Vinogradov, and had him replaced by a judge delegated from the Aulic court.⁶⁶⁴ More than ten years later, in the beginning of the reform period, a Collegiate Secretary **Vasilii Gruzdev** complained that the Aulic Court ordered a criminal investigation solely out of its collusion with the defendant (another collegiate secretary named Dmitrii Adamovich).⁶⁶⁵ Gruzdev complained to the Criminal Chamber that that the lower-level Aulic Court appeared to consider itself entitled to do “everything in its whim” (*zablagorassuditsia*) and that it was concerned more with proliferating its caseload, rather than with its reduction. As a busy civil servant, he was irritated at losing time and energy by being implicated in a completely baseless criminal investigation solely through the ill will of court officials. The Criminal Chamber immediately closed the case.

Cases like Gruzdev’s suggest that personal connections were regarded by the litigants and widely used, but at the same time they were not foolproof, most importantly when the case moved to the province-level Chamber that was staffed by trained lawyers and less susceptible to bribery or influence-peddling. Other cases show the alternatives left to individuals from a middling urban and civil-service background who found themselves in a tight spot but could not summon the assistance of a powerful relative or acquaintance. For instance, the former Commercial Bank employee Aleksei Zaborovskii, who was wrongfully convicted of defrauding

⁶⁶⁴ *TsIAM*, f. 92, op. 6, d. 677 (Nikitin) (1853).

⁶⁶⁵ *TsIAM*, f. 50, op. 4, d. 8272 (1865-67).

the old **Princess Cherkasskaia**, was eventually cleared after the true criminal, Konovalov, repented and confessed. However, during the investigation that eventually cleared him and reversed his initial conviction, Zaborovskii became indicted for destroying the evidence that he may have persuaded Konovalov to change his story, for having his brother bring presents to the police investigator, and for coaching his serf and his fellow prisoners to testify in his favor.⁶⁶⁶ Although in the end Zaborovskii was only sentenced to a church penance, this case shows in detail the methods available to an average Muscovite from the “middling” classes who did not have any special leverage to influence the police and court officials. In another case, a townswoman Ekaterina Bulasheva seeking to get even with a hated pawnbroker, Collegiate Registrar’s wife Elizaveta Pereshivkina, apparently bribed several individuals with criminal records to falsely testify on her behalf (some of them were under investigation for different frauds, and the alcoholic *meshchanka* Vasilieva was won over by a promise of a cut of fabric.). Bulasheva’s stratagem was discovered, and she came close to serving time in Moscow Workhouse.⁶⁶⁷

Failure to follow the rules of how precisely a bribe was to be offered could lead to unpleasant consequences. Only a few years after Zaborovskii’s trial, the Aulic court tried the case of Collegiate Councilor **Lebedev**, who seemed to be completely inexperienced in that art.⁶⁶⁸ Lebedev was an elderly professional “mechanic” coming from the family of a junior officer who could not pass on his “personal noble” status. Lebedev did, however, succeed in marrying another civil servant’s daughter who owned 48 serfs in Tver province. Despite his poor health

⁶⁶⁶ *TsIAM* f. 50, op. 4, dd. 1983 (Cherkasskaia) (1843-53) and 3389 (Zavarovskii) (1848-9).

⁶⁶⁷ *TsIAM*, f. 50, op. 4, d. 4732 (Pereshivkina) (1856-57).

⁶⁶⁸ *TsIAM* f. 81, op. 16, d. 1400 (Lebedev) (1862-3)

and lack of children, Lebedev had a good position at the Moscow Palace Office and a good pension of 571.84 (far greater than the salaries of most court clerks and officials). In his old age, Lebedev decided to become a serfowner himself by purchasing the estate of Titular Councilor Kologrivov at an auction that was to be held on September 25, 1862. However, Lebedev was intimidated by the bureaucratic procedures involved, and in particular was intelligent enough to fear that the officials would contrive to sell the estate without its stocks of rye, hay, and straw, which constituted its chief value. Lebedev wrote a letter to the secretary responsible for the auction named Mikhail Tsvetkov, asking him for assistance with the sale and promising 25 rubles for his labors. Either this letter was read by a wrong person or the amount was too small, but this proved to be Tsvetkov's chance to show his probity by reporting Lebedev. During the auction itself in the presence of all the officials and potential buyers, the Civil Governor of Moscow asked Lebedev whether it was he who wrote the letter, to which Lebedev admitted, after which his case was sent to the Moscow Aulic Court.

During his interrogation Lebedev testified that there were many legal problems with the estate he was trying to buy and that it was only natural for him to offer Tsvetkov a compensation for his labors which he was not otherwise obligated to perform for Lebedev, and complained that Tsvetkov's denunciation (*donos*) was a grave moral insult to him and his family, considering his thirty years' in the government service. At the same time, Lebedev did not hesitate to ask for help from his old acquaintance and a neighbor, whose name, unfortunately, was not mentioned, in "providing protection against the hostile actions of Mr. Tsvetkov, which inflicted great sorrow on me and my family, about which I am induced to ask you more in order to sooth my family." Lebedev maintained that he wrote the letter to Tsvetkov "without thinking" and "offered

gratitude out of kindness of my soul and not doubting the Christian kindness of Mr. Tsvetkov's soul, as well as because of my inexperience in such matters," which he could not acquire by working in the technical field. Lebedev also claimed that he did not offer the bribe forcefully or persistently, but only "in the event this would be allowed, and not with the intention of gaining anything for my profit." Whether it was this intervention of an old friend, or the Aulic Court's good judgment, the judges seem to have accepted his story, ruling to give Lebedev a warning for "merely asking for a permission to offer a gratuity to a public official, even if for his official labors [as opposed to doing something illegal]."

In sum, court cases contain a surprising number of references to "corrupt" practices and influences, considering that most such incidents are usually thought to avoid notice. It does appear that those individuals who ended up prosecuted were particularly inept at giving bribes (like Zaborovskii and Lebedev). However, it is also clear that when the parties to a litigation were relatively evenly matched (as in the cases of Nikitin, Gruzdev, and others), they did not hesitate to challenge each other on the grounds of having some special unfair advantage such as a relation or an acquaintance with one of the judges. Taken together, our evidence suggests, first, that corruption and patronage were apparently important at the lowest level of the court system, but that they must nonetheless be discussed within the overall context of the legal system. In other words, if corruption were all powerful and determined the outcome of every case, as some extreme critics of Russian law, such as Viktor Zhivov, would have it, such level of corruption would have made legal rules and institutions meaningless, thus making it pointless for individuals to try to subvert them. On the next tier of the legal system, in the Senate and in the provincial Chambers, "corruption" must have taken a different guise more akin to lobbying. At

least, I have not been able to locate any allegations against the Moscow Chamber or Moscow Senate Departments similar to those made at the lowest level.

This section sought to determine how the well-known generalization about pre-reform courts' corruption and vulnerability to administrative meddling was manifested in actual debt cases. I found that such powerful bureaucrats as the Moscow governor general or the Chief of Gendarmes affected the legal process both through their legally delineated authority, including their extensive police powers, as well as through their personal power and prestige. However, they tended to intervene in debt-related cases only under a predictable and defined set of circumstances, for example when there was a public-order aspect to the case or if unusual criminal proceedings were involved. They were clearly unable and unwilling to personally intervene in every case in which a litigant requested their patronage to advance his or her claim. In those cases when bureaucrats did intervene, their influence affected the proceedings but did not necessarily determine the outcome, mostly because they were unable and/or unwilling to directly subvert court proceedings but rather chose to respect the established legal procedures and especially the legally-established property rights of the litigants, even those who engaged in behavior that was condemned by society, such as predatory lending. It seems unlikely that Counts Zakrevskii or Benkendorf had some kind of special respect for the courts that their peers lacked (if anything, they were great supporters of personal informal authority). Rather, a routine bureaucratic demarcation of authority was most likely the chief motive for their relative

moderation. Nonetheless, the effect of this demarcation was to provide pre-reform courts with considerable space in which to exercise their function.⁶⁶⁹

As compared to the rare and unreliable interventions of highly ranked bureaucrats, personal informal connections and influence that ranged in character from outright bribery to the exercise of political patronage were clearly more widely resorted to in debt-related legal proceedings. However, I found that court cases show these attempts to influence litigation were neither foolproof nor universally available, especially once a case was transferred from the lower-level courts with their links with local society to more professional intermediate-level provincial Chambers and the Senate. Notwithstanding contemporary critics' rhetorical abuse (which in any event was directed solely at lower-level courts), corruption and the influence of patronage and political connections complemented formal legal rules and procedures but does not seem to have undermined or compromised them.

Similarly, the alleged fragmentation of the court system on the basis of the empire's estate structure existed more on paper than in real legal practice. Court cases, as well as legislation, show that estate-based court organization was eroded almost from the moment it was introduced, in part because of practical considerations of judging cases with multiple plaintiffs and defendants, and in part because of the early-nineteenth century drive for centralization, so that the non-estate-based provincial Chambers, applying the same laws and staffed by professional

⁶⁶⁹ This section – and much of this study – modifies the commonly held view that property rights in imperial Russia were insufficiently defined in part because of the government's attitudes (see, for example, Olga Crisp and Linda Edmondson, eds., *Civil Rights in Imperial Russia* (Oxford, 1989)). My argument here is similar to that expressed in the collection of essays edited by Madeleine Zelin, Jonathan Ocko, and Robert Gardelia, which show – in contravention of the commonly held opinion – that the Chinese state in the late imperial period supported and enforced property rights. See *Contract and Property in Early Modern China* (Stanford, 2004).

judges, quickly became the key locus of Russian legal practice and thus should be seen as precursors of the post-reform District courts (*okruzhnye sudy*).

“Formal Proofs” in Practice: Handwriting Experts and Forgery

Another often-criticized feature of pre-reform law was its rules of evidence, namely, its reliance on the so-called “formal proofs” long after they were abandoned by other Western legal systems. Formal proofs reflected the attempt to achieve rational legal certainty and predictability by depriving judges of discretion in evaluating evidence.⁶⁷⁰ The various types of proofs were ranked according to their evidentiary force: a personal confession was preferred, followed by testimony of two sworn witnesses (who themselves were ranked according to their social status, sex, and age), by documentary proof, and a judicial oath.⁶⁷¹ Evidence law is vitally important not only in a historical context, but also for understanding Russia’s legal development in the twentieth century, such as the Soviet fondness for building cases solely upon forced confessions. However, we know very little about how “formal proofs” operated in practice, given that pre-reform cases

⁶⁷⁰ John Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*, 3rd edn. (Stanford, 2007); Elisa Marielle Becker, “Medicine, Law and the State: The Emergence of Forensic Psychiatry in Imperial Russia”, Ph.D. dissertation, University of Pennsylvania, (2003), n. 61; Langbein, John H. *Prosecuting Crime in the Renaissance: England, Germany, France* (Cambridge, 1974); Engelmann, Arthur. *A History of Continental Civil Procedure* (Boston, 1927); Esmein, A. *A History of Continental Criminal Procedure, with special reference to France* (Boston, 1913). For the development of prosecution on the basis of circumstantial evidence, see Alexander Welsh, *Strong Representations* (Baltimore, 1992); Barbara Shapiro, *Beyond Reasonable Doubt and Probable Cause* (Berkeley, 1991). The motivation – while obviously dear to the Russian autocracy – is also not unusual in the more “enlightened” western legal systems that did not use “formal proofs.” – For example, the Napoleonic Code of 1803 was intended to make law so precise as to leave no gaps requiring interpretation/exercise of discretion; Similarly, in the U.S. today there are Mandatory Sentencing Guidelines.

⁶⁷¹ Merriman, *The Civil Law Tradition*, p. 126; in Russian law, the rules of formal proof were found in SZ, Volume 15, part 2 (criminal law) and Volume 10, part 2 (civil law). I have not seen a nineteenth century case that actually calculated “half proofs”, “quarter proofs” and “full proofs.” It is notable that according to Russian law, several imperfect proofs could add up to a perfect proof when there is no possibility “to wonder (*nedoumevat*)” about defendant’s guilt. See SZ, Volume 15, part 2, Art. 1173 (also 1169) (1842 edn.). I have not seen any actual cases that applied that rule. In the West, even in Anglo-American law, which did not use formal proofs, there was a sense that writing was superior to oral testimony. See Stephan Landsman, “From Gilbert to Bentham: The Reconceptualization of Evidence Theory,” *The Wayne Law Review* 36 (1990), 1149-53. John Langbein, “Historical Foundations of the Law of Evidence: A View from the Ryder Sources,” *Columbia Law Review* 96 (1996), 1168-1202.

have not yet been studied (with the exception of Michelle Marrese's study of one very discrete issue, female property ownership and management). This section analyzes the way pre-reform evidence rules were applied in civil and criminal cases involving personal debt, in which the analysis of written documents was much more often involved than any kind of oral testimony could be.

Pre-reform evidence rules were widely criticized by later writers for requiring judges to ignore much pertinent evidence and for placing even more value on a confession than has typically been the norm in most Western legal systems.⁶⁷² Critics correctly point out that formal proofs ensured less, rather than more certainty in courts' rulings. More recent work, however, shows that such broad generalizations do not exhaust the subject. In her unpublished dissertation, Elisa Marielle Becker has argued that the quest for legal certainty embodied in the system of formal proofs actually promoted the rise of forensic expertise, in particular, of forensic medicine.⁶⁷³ According to Becker, medical expertise was privileged second only to confession and was thus legally insulated from "legal evaluation, challenge, or criticism," although she did not examine legal practice to determine how medical testimony was actually used.⁶⁷⁴ According to Becker, "[i]ronically, the inquisitorial system that reformers such as [A.F.] Koni disparaged, in fact, granted the physician the legal status, probative weight, and unfettered discretion that such

⁶⁷² See Blinov (pre-Soviet writer), LeDonne (U.S. scholar) and others discussed in Introduction.

⁶⁷³ Becker, "Medicine, Law and the State," pp. 46-48 and 54.

⁶⁷⁴ Becker noted that medical testimony seems to have been rarely if ever challenged in pre-reform courts, but that it could be discarded altogether if it did not fit the "other circumstances" of the case. I found from reviewing pre-reform reading cases that the "circumstances test," which applied to other types of proof such as confession, *could* be, although very rarely, invoked by a sophisticated criminal defendant (the fraud case involving Princess Ekaterina Cherkasskaia. See *TsIAM f. 50, op. 4, dd. 1983* (Cherkasskaia) (1843-53) and 3389 (Zavarovskii) (1848-9)). Similar issue exists in the U.S. law: the admissibility of medical evidence in actual cases hasn't yet been discussed (James C. Mohr in *Doctors and the Law: Medical Jurisprudence in Nineteenth-Century America* (Baltimore, 1993) claims that the courts in 19-century US accepted any plausible medical testimony).

reformers would seek for medical experts in the postreform period ... the limitation on judicial discretion (imposed by the rules of proof) entailed the displacement of that discretion to the physician ... the physician and his form of knowledge – in theory and practice – enjoyed basically unconstrained discretion, autonomy, and immunity from external attack.”⁶⁷⁵ By contrast, I argue that the use of document analysis in debt cases actually served to undermine rather than reinforce the system of formal proofs: not because handwriting experts were challenged in court but because the way the analysis was conducted made results ambiguous and forced judges to exercise their discretion.

Handwriting identification, as Jennifer Mnookin has pointed out, is “an unusual form of expert evidence because it was the first kind of expertise that was primarily *forensic*, invented specifically for use in the legal arena.”⁶⁷⁶ Unlike doctors, professional handwriting experts generally do not exercise their skills outside the courtroom in a sizeable community of other professionals. In Anglo-American law this accounts in part for lawyers’ uneasiness about handwriting identification (despite its widespread use). Until 1854 English courts prohibited any handwriting comparison, especially by handwriting experts, as did most early U.S. courts until the first half of the nineteenth century.⁶⁷⁷ The four-fold rationale for this prohibition was so curious and logically indefensible that it reminds us how contingent the notion of legal rationality really is: (1) the issue of collateral proof: the party introducing a writing sample would in turn also need to prove its authenticity (the answer to this is why not do so if the

⁶⁷⁵ Becker, “Medicine, Law and the State,” p. 44.

⁶⁷⁶ Jennifer L. Mnookin, “Scripting Expertise: The History of Handwriting Identification Evidence and the Judicial Construction of Reliability”, *Virginia Law Review*, vol. 87 (2001), 1723-1845, 1727.

⁶⁷⁷ Mnookin, “Scripting Expertise”; Randall McGowen, “From Pillory to Gallows: the Punishment of Forgery in the Age of the Financial Revolution.” *Past and Present*, No. 165 (1999), pp. 107-140; “The Bank of England and the Policing of Forgery, 1797-1821.” *Past and Present*, No. 186, pp. 81-116.

document is important to the case); (2) the sample could misrepresent one's handwriting (but any evidence can potentially be misleading); (3) illiterate jury members would not be able to evaluate the analysis (this was originally a key issue in English practice but it became irrelevant as literacy spread in the nineteenth century); and (4) the professional expert could be unreliable (but so can any witness testimony).⁶⁷⁸ Thus, instead of expert handwriting comparison, Anglo-American law relied on handwriting *recognition* by someone personally acquainted with the writer and with his hand. In the nineteenth century this practice began to change as credit networks became more reticulated and impersonal, and meaningful personal connections between the writer and the witness became less feasible, so that handwriting experts were gradually allowed to testify, although they were not securely established in the U.S. until late in the century.⁶⁷⁹

In Russia the development of handwriting identification generally followed Western European trends by experimenting with a variety of arrangements before "scientific" handwriting experts appeared in the second half of the nineteenth century.⁶⁸⁰ The earliest court cases involving handwriting identification have been dated to the sixteenth century. As in early modern Western Europe, these cases involved disputed wills, rather than debt instruments; they were carried out by senior court staff (*diaki*).⁶⁸¹ Subsequently, Russian law followed the continental

⁶⁷⁸ Mnookin, "Scripting Expertise," pp. 1764-74.

⁶⁷⁹ In the U.S. courts, handwriting experts reigned unchallenged for most of the twentieth century, but recently lawyers and judges have started to question their qualifications. See D. Michael Risinger et al., "Exorcism of Ignorance as a Proxy for Rational Knowledge: The Lessons of Handwriting Identification "Expertise"," *University of Pennsylvania Law Review* vol. 137 (1989), 731 – and Michael J. Saks, "Merlin and Solomon: Lessons from the Law's Formative Encounters with Forensic Identification Science," *Hastings Law Journal*, vol. 49 (1998), 1069 -

⁶⁸⁰ A.V. Dulov, I.F. Krylov. *Iz istorii kriminalisticheskoi ekspertizy v Rossii: ekspertiza dokumentov* (Moscow, 1960).

⁶⁸¹ I.F. Krylov. *Sudebnaia ekspertiza v ugovnom protsesse* (Leningrad, 1963); A.V. Dulov, I.F. Krylov. *Iz istorii kriminalisticheskoi ekspertizy*. In addition to property disputes, handwriting comparisons were performed in such

model in allowing handwriting expertise to be used as evidence.⁶⁸² The experts were engaged by the court, and not by the parties to the case (who did exert control on the procedure indirectly by supplying the documents for comparison). In the mid-nineteenth century, Russian courts experimented with two kinds of experts: one (more traditional) was to poll large numbers (dozens but sometimes hundreds) of court clerks.⁶⁸³ The alternative, parallel to (and even slightly presaging) the developments in Anglo-American law, was to employ calligraphy and drawing teachers from Moscow *gimnazii*; however, the peculiarity in the Russian case was that instead of employing one expert, courts used a panel of four or five teachers from different schools. I have not located any cases from pre-reform courts when individual experts were used instead of a panel. Not surprisingly, panels rarely reached full consensus, thus leaving it to the court to interpret their sometimes rather intricate findings (unless there were enough other grounds for deciding the case) and thereby to exercise the discretion that was supposed to be eliminated by the system of “formal proofs.”

The most notable feature of handwriting comparison by court clerks (presumably on the rationale that they were the persons most accustomed to dealing with large numbers of documents and different handwritings) is the large number of individual clerks invited from those courts that were equal in rank to the one in which the comparison was performed. One example of how the procedure operated is supplied by the case of **Lieutenant Colonel Andrei Blagin**, used throughout this study to illustrate various features of the pre-reform legal

historically prominent situation as the authorship of anonymous denunciations (*izvety*) that turned out to be false.

⁶⁸² Dulov and Krylov, *Iz istorii*. Also E.f. Burinskii, *Sudebnaia ekspertiza dokumentov: proizvodstvo i pol'zovanie ei* (St. Petersburg, 1903).

⁶⁸³ Both of these arrangements are set out in SZ, Volume 10, part 2 (Art. 348 ff.).

system.⁶⁸⁴ This litigation involved the late Blaginin's inheritance, which was contested by his brother Piotr, a clerk from the South Urals town of Troitsk, and by a Moscow *meshchanka* Anna Antonova, who held a debt note from the late lieutenant colonel. After Piotr contested the validity of the debt note, the Aulic court requested that he furnish any papers which he acknowledged to have been written by his brother in order to compare the handwriting. Piotr responded that all of Andrei's letters were accidentally destroyed in a fire 1842, after which the brothers exchanged only two letters that became lost in 1848 when their mother died. But Blaginin's other creditors came up with the idea of using the account books of the Moscow County Treasury, which Blaginin used to sign to get his pension. After the court obtained the books (after getting a moderate run-around with the Treasury), secretaries and chancery officials of courts that were equal in rank to the County Court arrived to its Second Department and examined the signatures under both documents. Their opinion was polled by their court of origin, instead of on a person-by-person basis, but even so proved to be sharply divided: the officials from the First and Second Departments of the Moscow Magistrate and the Second and Third Departments of the Aulic Court concluded that the signature on the debt note "had resemblance" to Blaginin's undisputed signature. The officials from the First Department of the County Court judged that the signature "in the character of some letters has small resemblance, but complete resemblance cannot be observed." Finally, the officials from the Orphan Court thought that "the handwriting had no resemblance." The results were obviously far from clear, and the "experts" themselves were far from conclusive, limiting themselves to a rather weak "has resemblance" (when they were more sure, they would say "has strong resemblance" or "has perfect

⁶⁸⁴ *TsIAM*, f. 92, op. 9, d. 806 (Blaginin) (1849-1851).

resemblance”). Strangely enough, the court interpreted these findings to mean that the writing on the note was not Blaginin’s and noted it in its decision (rendered on February 27, 1852), which ruled against Antonova on a technicality (the note was not written on the required stamped paper and there was no other evidence of its validity). In the Blaginin case, the size of the panel was not specified, but the forgery case of a merchant’s son **Klavdii Rudnev** appears to have been fairly typical (except that it was a real forgery and not a simpler type of a case when a debtor denied signing the debt document, which also led to a criminal investigation). Rudnev confessed to forging bills of exchange in his father’s name. However, rather inconveniently for the investigation, fifteen court secretaries from “the courts equal in rank to the Moscow Magistrate” found that the allegedly forged signatures were “similar” to Rudnev-senior’s genuine ones, thus implicating Klavdii’s father in the case.⁶⁸⁵

A slightly different approach to handwriting identification by court clerks can be found at the same County Court at around the same time. In the case of the **Major General’s wife Tvorogova**, a grandniece sued her great aunt’s heirs for debt pursuant to a note which the old lady allegedly issued shortly before her death.⁶⁸⁶ The defendant (Prince Sergei Dolgorukov) was an upwardly mobile young bureaucrat in the beginning of the suit, and at its end he was one of the empire’s highest ranking civil servants, and not surprisingly he was able to delay the proceedings for several years by not finding the right kind of document for handwriting comparison. After the court carried out a handwriting analysis anyway using only the plaintiff’s papers, Dolgorukov had this comparison overturned through a collateral appeal but had to finally

⁶⁸⁵ *TsIAM*, f. 16, op. 21, d. 425 (Rudnev) (1854-59).

⁶⁸⁶ *TsIAM*, f. 50, op. 5, d. 12292 (Tvorogova) (1852-1876). As I discussed in Chapter One, this was another case of using debt as a wealth transfer strategy because the granddaughter would otherwise be banned from inheriting.

furnish his own papers for analysis. Altogether there were three comparisons, the first two conducted at Moscow Criminal Chamber, which compared the debt note to a registered power of attorney and to a receipt relating to a property sale; the third one was conducted at the Civil Chamber and used all available documents. The **first** expertise involved 180 officials, of whom 22 judged the documents to be “completely similar”, six – to “have small similarity”, 146 – as “not having any similarity”, while another six “gave a conclusion that did not contain a positive definiteness.” The **second** expertise involved 182 officials, of whom 164 found that the signatures were “similar” and 18 found that they were “similar in some letters.” Finally, the third expertise involved 124 officials, of whom 98 found “similarity”, 18 – “some similarity”, and six – “no similarity.” Taken together, of these 486 persons (although later there were found to have been some overlaps) 283 affirmed similarity, 152 denied it and 51 gave an indeterminate conclusion. With these results, first the Moscow County Court and then on appeal the Moscow Civil Chamber and the Seventh (Moscow) Department of the Senate ruled in Trorovoga’s favor. However, Dolgorukov appealed further and the joint session of Moscow Senate Departments held that 283 officials did not constitute a proper majority because that number included a number of those 146 officials who originally denied any resemblance during the first comparison. Another comparison was ordered, whose results we do not know, although, as will be shown in Chapter Eight, the case dragged on into the 1870s.

The strategy of using a large number of “experts”, as we can see, was not very reliable in practice, nor was the practice of actually taking a vote of each individual expert any more helpful than recording their collective opinion. Pre-reform courts also experimented with other solutions, such as using a smaller number of clerks, or using a combined panel of experts: for example, in a

debt-related case of witness bribery in the mid-1860s, the panel consisted of a secretary of the local magistrate, two teachers, a court investigator, and a *chinovnik* “for special assignments.”⁶⁸⁷

In another case that originated outside the city proper, that of the Merchant’s Son **Aleksandr Prokofiev**, only four local court secretaries conducted the first identification and found that the signature on the debt instrument “did not resemble” debtor’s actual signature. The second identification (concerning a different debt instrument) was conducted by 19 secretaries with same result. Chiefly based on this evidence, Prokofiev was convicted of forgery and sentenced by a joint session of the Moscow Aulic court and the Magistrate to be stripped of his estate privileges, branded, punished with 90 lashes, and exiled to Siberia.⁶⁸⁸

Another method of handwriting identification that became particularly popular from the 1860s onwards was to invite four or five teachers of calligraphy and drawing. The Soviet criminologist I.F. Krylov was very dismissive of the practice, which he contrasted with chemical and photographic techniques, which were developing at the same time.⁶⁸⁹ However, the use of the calligraphy and art communities as a “breeding ground” of handwriting experts, as Jennifer Mnookin has pointed out, was the norm in nineteenth century Anglo-American practice.⁶⁹⁰ In Russian legal practice, as Krylov has failed to note, there developed (at least in Moscow) a group of calligraphy and drawing teachers who were invited to serve as handwriting experts over and over throughout the 1860s. I was able to locate the service list (*formuliarnyi spisok*) of one of these teachers who served as an expert in most of the cases I reviewed (archives of individual

⁶⁸⁷ *TsIAM*, f. 50, op. 4, d. 7368 (Pavlov) (1864-67).

⁶⁸⁸ The sentence was later reduced, but this is discussed in Chapter Five.

⁶⁸⁹ See *Iz istorii kriminologicheskoi ekspertizy*.

⁶⁹⁰ Mnookin, “Scripting Expertise,” p. 1785.

Moscow *gimnazii* do not seem to be very complete or well preserved).⁶⁹¹ His name was Aleksandr Trofimovich Skino, he was born in 1826 in a Greek family settled in Russia and had no landed property. He studied at the Second Moscow Drawing School, and in 1847 joined the First Moscow Uezd School as a drawing and calligraphy teacher. In 1849 he was confirmed in state service and removed from the community (*obshchestvo*) of Nezhin Greeks. He was then hired by the First Moscow Gymnazium. Throughout the 1850s he moved through the ranks, becoming a Collegiate Secretary in 1856 and two years later receiving from the “Gracious Sovereign Emperor” a diamond ring with a ruby as a reward for presenting the tsar a model of one of the Kremlin towers cut out of wood. He also received occasional rewards of money from his superiors for excellent service, as well as “gratitudes” in 1864 and 1870. In 1866 he was promoted to titular councilor. His salary in the 1860s was approximately 400 rubles. All this detail is important to show that Skino was not a stereotypical intelligentsia member, but rather a very reliable (*blagonadezhnyi*) civil servant highly valued and promoted by his superiors: a good indication for the courts of his reliability as an expert witness.

The cases I have reviewed that involved identifications by Skino and his colleagues (such as Sabinin from the Third Gymnazium, Mikhailov from the Second, and Kondyrev from the Fourth) involved much more sophisticated conclusions than identifications performed by court secretaries. For example, in the alleged forgery case of **Moscow Merchant Aleksandr Smirnov**, the debtor challenged signatures on several of his debt documents.⁶⁹² However, the calligraphy teachers (Sabinin, Mikhailov, Kondyrev, and Skino) not only confirmed his handwriting on these

⁶⁹¹ *TsIAM*, f. 371, op. 2, d. 214 (Skino) (1853).

⁶⁹² *TsIAM*, f. 50, op. 4, d. 7731 (Smirnov) (1864-67).

veksels, but also determined that he intentionally modified his handwriting when signing papers at the police station. On the basis of this identification, the Criminal Chamber held the debt notes to be genuine and returned them to police for collection.

However, even calligraphy teachers could fail to agree, forcing courts to consider other evidence, which is what happened in the case of **Moscow Merchant Ilia Shatov**.⁶⁹³ Together with a partner, another Moscow merchant Taras Kalinin (who supposedly “loved him like a son”), Shatov contracted with the government to transport wool cloth to Nikolaev for the Black Sea fleet. Kalinin presented as collateral to the government his stone house valued at 10,400 silver rubles, while Shatov presented two deposit tickets, one to the Deposit Treasury and the second one to the Loan Bank for 2,755.75 rubles. Subsequently, Shatov claimed that he discharged all of his obligations to Kalinin by presenting a receipt, but Kalinin claimed that the signature on it was not his. A handwriting identification conducted largely by the same teachers (also including one named Odintsov) was only able to establish “some resemblance” to Kalinin’s handwriting. The court interpreted these rather ambiguous results to mean that the receipt was forged. However, Shatov did not confess to anything and the only other evidence in the case was testimony by one witness, and so there was not enough evidence under the system of formal proofs to convict him, and he was only “left under suspicion” of knowingly presenting a forged document. In another similar case, that of Moscow Merchant **Stepan Tikhomirov**, the court conducted two identifications of the writing on a debt note (*veksel*).⁶⁹⁴ The first one, by secretaries of the Provincial Office (*Gubernskoe pravlenie*), Chamber of Treasury, and the

⁶⁹³ *TsIAM*, f. 50, op. 4, d. 6191 (Shatov) (1861-66).

⁶⁹⁴ *TsIAM*, f. 50, op. 4, d. 8434 (Tikhomirov) (1865-74).

Commercial Court (“official places” equal in rank to the Criminal Chamber), found that the debtor’s writing “had resemblance” to the signature on the note, whereas the defendant’s did not. However, the second comparison, carried out by calligraphy teachers Sabinin, Kondyrev and Skino, determined that debtor’s handwriting “did not have resemblance” to that on the debt note. The debtor must have been confident of his ability to change his signature and dismissive of the experts’ ability to detect his forgery, because two witnesses later testified that the debtor asked for a postponement on his debt, threatening otherwise to deny his signature.

Handwriting identification, despite being widely used in different legal systems, has often been subjected to skepticism as to its reliability. The solution that pre-reform Russian courts seem to have adopted on a regular basis (when a more costly chemical or photographic expertise could not be conducted: despite Krylov’s evidence, I have not found any cases from the 1850s-1870s using these methods to analyze debt documents) was very similar to that of U.S. courts, namely, to use a small group of experts well known to judges for their professional ability and reliability.⁶⁹⁵ Identifications by a small group of calligraphy teachers were certainly more manageable than those by crowds of court secretaries, but as individual debt cases show, they came far short of the rational certainty demanded by the doctrine of formal proofs. When no other proofs, such as confession or sworn witnesses, were available, courts had to exercise their own judgment about the debt documents’ authenticity. Thus, from the perspective of the law of evidence, debt cases represent yet another direction from which pre-reform legal system was

⁶⁹⁵ For the U.S., see Mnookin, “Scripting Expertise.”

being undermined and even dismantled long before 1864 (and would be dismantled one way or another even if there had been no major reforming event in 1864).

Lawyers and Scriveners: Legal Advice and Legal Knowledge

Russian tsars have been frequently quoted as expressing their extreme disgust with the very word “lawyer” (*advokat*) and a firm belief that in their lifetime the organized bar would not appear in their empire.⁶⁹⁶ The introduction of western-style lawyers with their education, their habits of public speaking, and their knowledge of the bureaucratic apparatus would be threatening to a monarchy that sought to instill legality in Russia while at the same time remaining its supreme arbiter.⁶⁹⁷ Nonetheless, legal advice and legal representation did exist in Russia long before an organized bar was established by the 1864 reform, and this section examines it through the lens of individual legal cases.⁶⁹⁸ I argue that pre-reform legal advisers and court representatives varied widely in their ability, their level of sophistication, and their social standing (the latter ranged from serfs and semi-literate individuals to educated lawyers who handled appellate litigation in the higher courts). These individuals were crucial for the functioning of Russia’s culture of debt (as lawyers usually are everywhere) because they merged with the class of intermediaries (addressed in Chapter One) who were central players in Russia’s growing network of private

⁶⁹⁶ I.V. Gessen, *Istoriia russkoi advokatury* (Petrograd, 1914), 25, quoting E.V. Vas’kovskii, *Organizatsiia advokatury* (St.Petersburg, 1893), p. 320. Catherine II wrote in a letter: “advocates, depending on when and how they are paid, sometimes support truth, and sometimes lies ... My advocates and procurators do not legislate and will never legislate as long as I am alive...” Nicholas I said to one of his highest servitors: “as long as I reign Russia does not need advocates. We’ll do just fine without them.” Peter the Great referred to lawyers as “*iabedniki*.”

⁶⁹⁷ Wortman, *The Development of a Russian Legal Consciousness*. Post-reform reality seems to have justified these fears as lawyers were the only force before 1905 that could to some extent engage in free speech and thus indirectly challenge the autocracy (under the Provisional Government of 1917 occupied government posts).

⁶⁹⁸ Thorough research that was beyond the scope of this work will require the use of other sources in addition to court documents. Here I am interested to look at lawyers from the perspective of legal documents.

credit that was still informal and based upon personal connections but was becoming extensive enough to rule out personal acquaintance in many debt transactions.

An organized legal profession is usually seen as one of those essential elements of a modern legal system that were absent in pre-reform Russia. One Western historian has alleged that it was more efficient in pre-reform courts to spend resources bribing a chancellery clerk than hiring an “attorney” (without explaining why most litigants at the time *did* choose to hire one).⁶⁹⁹ Memoirs and fictional accounts have been marshaled to “attest to the disdain” and “suspicion” for pre-reform legal practitioners (as if disdain or suspicion of lawyers were somehow peculiar to pre-reform Russia).⁷⁰⁰ This type of account is based on the writings of pre-Soviet writers, such as Iosif Gessen, a liberal author of the first thorough study of Russian lawyers, who listed the most scathing memoir criticisms of *striapchestvo* (a colloquial term for representation in court and on any official business). The disparagement is aided by a misleading use of the term “*striapchii*” to refer to the official name for pre-reform lawyers.⁷⁰¹ While *striapchii* was a colloquial, even “folksy” way of referring to private legal representatives, the term used in law-related documents and correspondence was *poverennyi*, which suggests much greater continuity with the post-reform barrister (*prisiazhnyi poverennyi*; simply *prisiazhnyi* was only used as an abbreviation for juror, *prisiazhnyi zasedatel’*).

⁶⁹⁹ Brian Levin-Stankevich, “The Transfer of Legal Technology and Culture,” pp. 224-230. A.D. Popova, “*Pravda i milost’ da tsarstvuuiut v sudakh*” (iz istorii realizatsii sudebnoi reformy 1864 g.) (Riazan’, 2005). Also see Tables 7.2-7.5 (summarizing data from powers of attorney and showing that it was common to engage someone to work on a court case.

⁷⁰⁰ Levin-Stankevich, “The Transfer of Legal Technology and Culture,” pp. 225, 230.

⁷⁰¹ Levin-Stankevich, p. 226, translated *striapchii* as “representative”, which shows that he had in mind the correct term *poverennyi*, which actually *is* translated as “representative.” The term *striapchii* has had several law-related meanings (see Brockhaus & Efron). I have seen only one single occasion in the cases I reviewed of this word being used to refer to private legal representation (and none in actual court documents, some of which in pre-reform period were *extremely* colloquial).

What is most fascinating about these descriptions is the catalogue of pre-reform lawyers' misdeeds. The most concrete allegation was conflict of interest, i.e., representation of both parties in the same lawsuit. As today's legal practice shows, this violation of legal ethics is perhaps the easiest to eradicate. The bulk of the criticism, however, was more abstract, for example alleging that pre-reform lawyers perpetuated conflicts rather than helped to solve them. Interestingly enough, this allegation is not limited to pre-reform Russian lawyers but is current in today's Western legal systems, especially in the U.S. While most jurists today seem to agree that lawyers "may make negotiations more rational, minimize the number of disputes, discover outcomes preferable to both parties, increase the opportunities for resolution out of court and ensure that the outcomes reflect the applicable legal norms,"⁷⁰² there are legal scholars who point out that the lawyers' usefulness is not completely clear, that sometimes lawyers deprive judges of discretion by "forum shopping" (selecting a court in which to sue as part of a litigation strategy), prevent cases from reaching decision, or cause cases to be decided on issues other than their merits.⁷⁰³ Lawyers may be more likely to use threats and misrepresentation, and their participation may lead to more disputes and higher costs without improving the fairness of outcomes ("iatrogenic disease").⁷⁰⁴

However, Gessen and other pre-Soviet jurists and memoirists are more subtle in their analysis: what they criticize is not so much pre-reform lawyers' lack of effectiveness or

⁷⁰² Mnookin, Robert H. and Kornhauser, Lewis. "Bargaining in the Shadow of the Law: The Case of Divorce." *The Yale Law Journal*, Vol. 88 (1979), pp. 950-997, 986. (quotes Eisenberg - "Janus-like role, facing the other as an advocate of his principal, and facing his principal as an advocate of that which is reasonable in the other's position.")

⁷⁰³ Lynn M. LoPucki and Walter O. Weyrauch, "A Theory of Legal Strategy," *Duke Law Journal*, Vol. 49, No. 6 (Apr., 2000), pp. 1405-1486.

⁷⁰⁴ "Bargaining in the Shadow of the Law," p. 986.

uniformly low qualifications, but rather their varying quality and lack of professional regulation. Even Gessen's evidence, collected to defend the achievements of the judicial reform, shows that there was a gradation among pre-reform legal practitioners, among whom there were educated and even honest individuals.⁷⁰⁵ Furthermore, memoir evidence is not completely one-sided. Memoirs by M.A. Dmitriev (writing in the 1860s about a long career in pre-reform courts) and Ie.N. Vodovozova (her father was a county court judge), or, for the earlier period, by I.M. Dolgorukov (who had civil service career in the 1780s-1810s) contain criticisms but not "disdain" or "suspicion."⁷⁰⁶

Pre-reform lawyers varied so much according to their skills and activities that to evaluate them we need to narrow down what should be considered legal representation. A *poverennyi* could be engaged to perform a variety of tasks, as testified by the powers of attorney (*veriushchie pis'ma*) registered at the Second Department of the Moscow Civil Chamber. For my sample I selected the registration books for 1852, 1857, 1861 and 1867. My chief purpose was to determine a change in Russian legal practice during the period of the "great reforms." The results, summarized in **Tables 7.2** and **7.3** show that many more attorneys were hired for court-related representation from the late 1850s onwards, i.e., long before the new courts were in the works.

⁷⁰⁵ Gessen, *Istoriia russkoi advokatury*, pp. 1-25. Russian law before the reform permitted virtually anyone to be someone's representative (*poverennyi*) and imposed no external regulation on their activities other than with respect to a small body of lawyers serving specialized commercial courts (*prisiazhnye striapchii*). By contrast, the new courts that opened in 1866 were served by an organized bar that strove to regulate and discipline its members and that was filled by individuals with university law degrees. See Jane Burbank, "Discipline and Punish in the Moscow Bar Association," *Russian Review* 54, no. 1 (January 1995), pp. 44-64. That said, "private barristers" also existed. Should not overestimate the value of a formal law training (as opposed to practical training on the job).

⁷⁰⁶ Dmitriev, *Glavy iz vospominanii*; Vodovozova, *Na zare zhizni*; Dolgorukov, *Povest*.

Table 7.2 Legal practice based on powers of attorney (*veriushchie pis'ma*) registered at the Second Department of the Moscow Civil Chamber.⁷⁰⁷

Type of Matter	1852 ⁷⁰⁸	1857 ⁷⁰⁹	1861 ⁷¹⁰	1867 ⁷¹¹
Register document ⁷¹²	22	20	17	5
Property transactions ⁷¹³	29	31	24	14
Property divisions	9	8	8	1
Property management ⁷¹⁴	49	21	64	17
Render army recruit	8	6	1	0
Borrow money (unsecured)	0	0	3	0
Mortgage operations ⁷¹⁵	26	12	8	2
Government contracts	6	8	14	6
Customhouse representation	17	29	14	1
Debt collection	23	22	34	36
Court representation	27	25	48	46
Court appearance to hear decision	6	2	5	0
Collect and issue money, merchandize, mail	22	13	9	4
Serf redemption matters	0	0	3	4
Total	241⁷¹⁶	197	252	136

⁷⁰⁷ This is not meant to estimate the volume of court business (I cannot be certain that these were the only registers of powers of attorney), but rather its different varieties.

⁷⁰⁸ Source: *TsIAM* f. 50, op. 14, dd. 4 and 5 (*Kniga dlia zapiski veriushchikh pisem za 1852 g.*)

⁷⁰⁹ Source: *TsIAM* f. 50, op. 14, d. 108a (*Kniga dlia zapiski veriushchikh pisem za 1857 g.*)

⁷¹⁰ Source: *TsIAM* f. 50, op. 14, d. 220 and 221 (*Kniga dlia zapiski veriushchikh pisem za 1861 g.*)

⁷¹¹ Source: *TsIAM* f. 50, op. 14, d. 387 (*Kniga dlia zapiski veriushchikh pisem za fevral' 1867 g.*). Seems like this was the last time one could register a POA at the Chamber, so that there was such a large number.

⁷¹² Such as entering possession, confirming a will.

⁷¹³ Purchase, sale, lease of houses, estates, serfs, borrowing money

⁷¹⁴ Serf-populated estates, businesses, houses. Often included the authority to borrow money.

⁷¹⁵ Including obtaining a certificate, bringing it to the Board of Trustees, receiving the money.

Table 7.3 Russian legal practice by type of matter.⁷¹⁷

Type of Matter	1852	1857	1861	1867
Real Estate matters	136	101	110	33
Commercial matters	44	44	54	21
Contested cases	54	47	84	80
Other ⁷¹⁸	8	5	4	2
Total	241⁷¹⁹	197	252	136

Interestingly, despite the lack of a formal legal profession in pre-reform Russia (except for the small body of *prisiazhnye striapchie* practicing before the commercial courts), powers of attorney reveal a rather sharp separation of litigation-related matters and other more routine business, such as property management (especially of serf-populated estates) and routine one-time visits to “official places” to sign papers or obtain some necessary documents. What should be remembered here is that even in the Anglo-American legal world attorneys in the nineteenth century (as well as today) managed property, collected debt and performed other non-glamorous but paying functions.⁷²⁰ Furthermore, while an organized bar is a venerable legal institution, legal advice and legal representation at trials as a rule rather than an exception are a very recent innovation, taking root in England, for example, only in the mid-nineteenth century, thus making Russia’s lack of an organized bar not quite as glaring a failure as it might appear today.⁷²¹

⁷¹⁶ Some powers of attorney had multiple purposes.

⁷¹⁷ For sources see notes to Table 7.2.

⁷¹⁸ Mainly receipt of money and mail.

⁷¹⁹ Some powers of attorney had multiple purposes.

⁷²⁰ Lawrence Friedman, *A History of American Law*, 3rd Edition (New York, 2005); Bruce Mann, *The Republic of Debtors* (uses attorneys’ documents extensively).

⁷²¹ For example, in England defense counsel started to become available in criminal trials only in the eighteenth century. See J.M. Beattie, “Scales of Justice: Defense Counsel and the English Criminal Trial in the Eighteenth and

Furthermore, in Russia lawyers continued to be engaged in various less glamorous activities such as collecting debt even after they became barristers in 1866.⁷²² Therefore, while readily conceding the political and ideological significance of an organized legal profession and its key role in, say, criminal trials, we should not exaggerate the impact of its appearance for Russia's everyday culture of debt.

Individuals engaged as representatives in pre-reform Russia varied widely as to their social rank and, presumably, the quality of their work. I summarize the rank and gender of persons who were engaged as *poverennye* in **Tables 7.4 and 7.5**.

Table 7.4 Legal practice by rank of agents (*poverennye*).⁷²³

Rank ⁷²⁴	1852	1857	1861	1867
Generals (Class 1-4)	0	3	4	0
<i>Shtab-ofitser</i> (Class 5-8)	40	30	43	17
<i>Ober-ofitser</i> (Class 9-14)	63	40	81	45
Noble without rank	3	3	6	7
Civil Servant w/o rank	5	2	8	3
Lawyer ⁷²⁵	0	0	3	7
Soldier (not officer)	3	1	1	1
Merchant	47	56	45	24
<i>Meshchanin</i>	14	14	19	10

Nineteenth Centuries," *Law and History Review* 9 (1991), 221 - 268; John Langbein, "The Criminal Trial before the Lawyers," *University of Chicago Law Review* 45 (1978), 263-72.

⁷²² A.N. Markov, *Pravila advokatskoi professii v Rossii* (Moscow, 2003) (originally published in 1913); see also the fraud case of attorney Aleksandr Saltykov: *TsIAM*, f. 142, op. 2, d. 154 (Saltykov) (1897-1916).

⁷²³ For sources, see notes 708-711.

⁷²⁴ Civil and military officers are shown together.

⁷²⁵ *Prisiazhnyi poverennyi, kandidat prav or kandidat na sudebnye dolzhnosti*.

Rank	1852	1857	1861	1867
<i>Tsekhovoi</i>	0	1	3	0
Foreigner	7	10	4	1
Serf, peasant, servant	53	34	21	10
Other	6	3	14	11
Total	241	197	252	136
Female	16	12	16	4
Male	225	185	236	132
Close relatives to P	46	35	49	15
Serfs of P	36	21	11	n/a

Table 7.5 Legal practice by gender and kinship status of agents.⁷²⁶

Gender and Kinship ⁷²⁷	1852	1857	1861	1867
Female	16	12	16	4
Male	225	185	236	132
Close relatives to Principal	46	35	49	15
Serfs of Principal	36	21	11	n/a
Total	241	197	252	136

These tables show that *poverennye* whose powers of attorney were registered in Moscow (although they did not necessarily reside or even conduct business there) can be roughly divided into three large groups. The largest one consisted of individuals who held either a civil or a military officer's rank listed in the Table of Ranks (either acting or retired). The second group consisted of merchants and townspeople (*meshchane*), which is not surprising, given Moscow's

⁷²⁶ For sources, see notes 708-711

⁷²⁷ Civil and military officers are shown together.

commercial significance. The third group consisted of privileged serfs, peasants, and domestic servants (either one's own or someone else's), who were typically engaged to manage an estate, to furnish a conscript to the military authorities, but also frequently used for debt-related matters, most notably obtaining a certificate required to remortgage an estate, or even for court appearances, especially for hearing the lower-court decision and signing the intention to appeal (*udovol'stvie ili neudovol'stvie*). It is also notable that the practice of engaging women, one's servants, or close relatives – very common in the 1850s – deteriorated rapidly in the 1860s.

Individuals connected to Moscow's world of officialdom seem to have been the most numerous type of *porerennye*. It could be someone with a very low official status. For example, a wealthy and legally-knowledgeable owner of one of the largest public baths in Moscow, when sued by an equally wealthy **Colonel Nikitin** for the debt of 110,000 rubles, hired a police copyist Nikolai Semenov to prepare his court petitions.⁷²⁸ Many more debt litigants were represented by a *poverennyi* who held (or had held) a junior commission rank either in the military or in the civil service. For example, merchant **Marshchev** was imprisoned for his debt to the treasury related to a liquor concession, and his illiterate wife petitioned for his release with her as a surety, with the help of the Second Lieutenant Mogilevich.⁷²⁹ In the forgery case of Moscow Merchant **Stepan Tikhomirov**, the alleged fraud victim, another merchant named Iakov Chistiakov was represented by the Gubernial Secretary Konstantin Lozhkin, who in March of 1867 requested the Chamber to be allowed to review the case and “give explanations” to the court and was told that the case had been already reported to the court but that he could still give his comments

⁷²⁸ *TsIAM*, f. 92, op. 6, d. 677 (Nikitin) (1853).

⁷²⁹ *TsIAM*, f. 16, op. 4, d. 2522 (Marshchev) (1825).

(*poiasneniia*).⁷³⁰ In yet another debt case, **Collegiate Councilor's wife Strekalova** hired Collegiate Assessor Mikhail Rakhmaninov to defend her case from her creditor, nobleman Faleev.⁷³¹ These seem to have been the mid-range lawyers, equally removed either from the ranks of the bottom-of-the-barrel scriveners or from the highly-successful *poverennye* with a university degree, some of whom would continue on as barristers after Moscow bar was organized in 1866. The latter group of prestigious lawyers were employed by Moscow's wealthiest and most influential citizens.

We have already discussed in detail in Chapter Two the case of the **Merchant Ivan Butikov** and his feud with the local police. Because of his wealth, Butikov could afford the services of the Titular Councilor Mikhail Aristov, who was referred to in a police document as a "well-known Moscow *advokat*."⁷³² Aristov seems to have specialized in representing wealthy merchants in complex commercial and bankruptcy matters, including appeals to the Senate.⁷³³ In 1866 he became one of Moscow's first sworn barristers.⁷³⁴ In the case of the young Count **Dmitrii Tolstoi** (already mentioned above), the young debtor's father, represented by a *poverennyi* Shimanovskii, negotiated with creditors and ended up buying up the majority of his son's debt, so that he controlled the disposition of the bankruptcy proceedings.⁷³⁵ In defending her debt case,

⁷³⁰ *TsIAM*, f. 50, op. 4, d. 8434 (Tikhomirov) (1865-74).

⁷³¹ *TsIAM*, f. 50, op. 5, d. 12287 (Strekalova) (1856-1858).

⁷³² *TsIAM*, f. 16, op. 23, dd. 208 and 209 (Butikov).

⁷³³ For example, Aristov was also involved in the Kuznetsov bankruptcy case discussed in Chapter Five. f. 50.4.8960 (Kuznetsov) (1865 -). Simpler petitions in that case were prepared by a "non-serving nobleman" Iosif Kertselli. See also f. 81, op. 19, d. 196 (Nagorskii) (1857-1864) (possibly the wrong Aristov).

⁷³⁴ Troitskii, N.A. *Advokatura v Rossii na politicheskikh protsessakh 1866-1904 gg.* (Tula, 2000).

⁷³⁵ *TsIAM* f. 81, op. 18, d. 1259 (Tolstoi) (1863-5).

the noblewoman **Anna Faleeva** mentioned in her petitions to the court that she spent a large sum of money on appellate litigation in St. Petersburg through “*poverennye*.”⁷³⁶

The group on the lower end of the scale were the Russian versions of “ambulance chasers” or pettyfoggers who for a small fee prepared court petitions and were commonly criticized for engaging in legal (or illegal) trickery.⁷³⁷ As legal historian William Pomeranz has shown, such individuals continued to be of concern to officially recognized attorneys long after the reform.⁷³⁸ Sometimes these “underground” (*podpol'nye*) lawyers were former chancellery clerks, but on occasion they had no clearly discernible prior connection to the official world. Lower-end legal representatives could find employment even with wealthy gentry, such as the the Titular Councilor’s wife **Aleksandra Vasilievna Kupriianova**, who in the late 1840s was fighting her late cousin’s creditors for his inheritance and delaying accepting the property to avoid it being sold for debt.⁷³⁹ Kupriianova engaged an illiterate Moscow *meshchanka* Stepanida Matveeva and later another Moscow *meshchanka*, Elizaveta Diushkova to help her with the busy work at the courts. While it is unclear whether Kupriianova prepared her petitions herself or hired someone else, her case was masterfully defended, so either the *meshchanki* were efficient, or perhaps their apparent vulnerability was part of Kupriianova’s litigation strategy (or both).

⁷³⁶ *TsIAM*, f. 50, op. 5, d. 12153 (Faleeva) (1851).

⁷³⁷ N.I. Sveshnikov, *Vospominaniia propashchego cheloveka* (Moscow, 1996). For England, see C.W. Brooks, *Pettifoggers and Vipers of the Commonwealth: The ‘Lower Branch’ of the Legal Profession in Early Modern England* (Cambridge, 1986).

⁷³⁸ William E. Pomeranz, “Justice from Underground: The History of the Underground Advokatura.” *Russian Review*, Vol. 52 (1993), pp. 321-40.

⁷³⁹ *TsIAM*, f. 92, op. 9, d. 803 (Kupriianova) (1847).

Another *poverennyi* with no obvious qualifications for his occupation was the peasant **Boris Korotkov**, who was arrested in 1865 for pawning fake gold watches.⁷⁴⁰ Because the police seized and inventoried his belongings, we now have a unique insider look into the world of an “underground lawyer” on the threshold of two epochs in Russia’s legal development. We already know from Chapter One that Korotkov made his living through various debt-related operations as a go-between. However, among his possessions was also found an agreement (*uslovie*) to open a law office in partnership with a man who was most likely the source of the fake watches. This document is so unique and fascinating that it deserves to be translated here (I attempt to preserve the original’s style):

“Agreement.” I, Korotkov, proprietor of a legal and brokerage company [*advokatnuii i kamisionerskuii kompaniiu* (sic)] in Moscow with the capital of 400 silver rubles, have accepted as a companion Mr. Maliutin with the capital of 400 silver rubles, which I received from him in cash.

2nd. Maliutin, as Korotkov’s companion, has accepted the obligation, having given 100 silver rubles to secure [*v obespechenie*] his activities, to be engaged in those activities constantly, with a profit, and not concealing anything from Korotkov, in whichever contested [*“iskovymi i tiazhebnymi”*] cases will be taken up by either of them on commission from private persons, as well as to be engaged together, as diligent companions, in the sale and purchase in general of movable and immovable property on commission received at our office.

3rd. Accounting and paperwork, pursuant to the account books, are to be carried out in a proper order by a clerk [*kontorshchik*] provided by Korotkov; we both have a full right with the agreement of the other to account and examine them on any day, entering into these books all credits and debits, both cash [*po kasse*], as well as in the contested cases, sales, purchases, and mortgages of movable and immovable property, according to pure conscience and complete truth.

4th. All expenses relating to the office, such as travel in the city, office upkeep, renting apartments for employees, furniture, heating and lighting and other items I Maliutin and I Korotkov accept in equal amounts amongst ourselves pursuant to the inventory and to our mutual agreement.

⁷⁴⁰ *TsIAM*, f. 50, op. 4, d. 8945 (Korotkov) (1866-67)

5th. If either of us leaves the companionship before its term expires, he must announce it three months in advance and pay 50 silver rubles for violating its terms, after which no legal proceedings will be possible.

6th. If either one of us will be caught in an injustice or negligence or concealment from each other of cases accepted by us for commission, then we will elect two persons by our mutual agreement and resolve the matter without any legal proceedings and he who will be shown to commit a wrongdoing will be removed from the office's affairs completely, and will pay a penalty of one hundred silver rubles. Our partnership will then be permanently terminated.

7th. Pursuant to everything written above we, companions Mssrs. Maliutin and Korotkov, shall divide equally all amounts of money received by us as commissions from private persons pursuant to our partnership for contested court [*iskovym, tiazhebnym striapcheskim*] cases, sales, purchases, mortgages, re-mortgages of movable and immovable property and recommendations of all kinds of domestic servants, and shall account to each other monthly.

8th. To our clerk we undertake to pay the salary of 10 *kopeek* from all our income from every ruble, which for each of us will be 5 *kopeek* from every ruble.

9th. The expenses related to the signing of this agreement we agree to share equally;

10th [We undertake] to keep this agreement sacred and unbreakable [*sviato i nerushimo*]. The original signed by Maliutin and I Korotkov [ill]

11th. The cash that we have we shall spend with each other's agreement as good companions.⁷⁴¹

This agreement has several fascinating aspects. On the one hand, Korotkov's legal partnership seems to have never taken off, as his papers only contained several commissions to provide domestic servants (governesses, thus being the higher-end variety), in addition to the fiasco with fake watches. We know that in addition to his independent activities, Korotkov was himself employed as a clerk by a merchant in Moscow. At the same time, he had some advantages: although he should be considered to be semi-literate at best by today's standard, this was still the period when the overwhelming majority of peasants and many *meshchane* (especially female) were not literate at all. Korotkov's handwriting was quite good, which was very important in the nineteenth century, although he wrote with many errors. Despite his low status and young age (he was 29 and Maliutin was 25), the agreement mentions significant amounts of cash (400

⁷⁴¹ I attempted to preserve the original's style. Many orphographical errors.

rubles was the annual salary of a mid-level civil servant) that partners either possessed or reasonably expected to possess. The agreement itself, despite its awkward style, is sophisticated and even contains an arbitration clause. Even Korotkov's intellectual outlook was not as limited as we may presume: included in his papers was the following poem:

Взятковский! Ты
 Прошел Науки ...
 скажи (sic) На что даны
 Нам руки ----
 Ужель на то
 Чтоб взятки брать
 да подзатыльники
 Давать⁷⁴²

This suggests that Korotkov was even somewhat familiar with then-fashionable reformist rhetoric! But the most fascinating fact about Korotkov is the very fact that this young semi-literate peasant was hoping to make a living as a “lawyer” in Moscow, which desire can only be interpreted as a sign of high demand for his services and of the profession's desirability (and perhaps even prestige). It was a desirable thing for Korotkov to open specifically an *advokatnaia* [sic] office.

More commonly peasants and other lower-status individuals employed as *poverennye* were not “underground” lawyers like Korotkov but rather privileged household servants, either serfs or freedmen, who sometimes handled complicated cases with large amounts of money at stake. For example, the daughter of a Privy Councilor **Natalia Naryshkina** engaged her freedman Petrov in her litigation with her wastrel brother for her mother's inheritance.⁷⁴³ Although Natalia

⁷⁴² Translation: “Mr. Bribes! You have Mastered the Learning ... tell us Why We are given hands ---- is it Truly So that we can take bribes and smack people on the head”

⁷⁴³ *TsIAM*, f. 50, op. 5, d. 12279 (Naryshkina).

seems to have eventually lost, Petrov's petitions were literate and clearly written, although they did not display great legal subtlety or energy. However, representation by one's serf could also be quite competent and energetic, as in the debt case of **Lieutenant Nikolai Tolstoi**.⁷⁴⁴ Tolstoi mortgaged his landed estate populated by 19 serfs (with the poetic name of Upper Dirt) for 9,000 rubles to Lieutenant Beklemishev. Beklemishev acted through his serf, who prepared and filed complaints when Tolstoi avoided payment by constantly moving his residence and continued to get into still more debt. Beklemishev's serf also represented another creditor named Goffard, and showed considerable energy in pursuing Tolstoi and locating his other estate in Orel province, which Tolstoi was trying to hide from his creditors. A serf could have even what appeared to be a fully-fledged paralegal practice, as did Count Zakrevskii's serf **Matvei Toropov** (who, no doubt, benefitted from the aura of his illustrious master).⁷⁴⁵ He was commissioned by a merchant from Vyborg named Vorontsov to collect debts pursuant to a large number of debt documents, which Vorontsov transferred to Toropov in exchange for an advance payment, often of thousands of rubles. After the merchant died, his widow (undeterred by Zakrevskii's name) sued Toropov for an accounting, interestingly enough making use of the streamlined oral procedure at the Moscow Equity Court (*sovestnoi sud*), but her suit was rejected because Toropov submitted the payment receipts from her late husband.

While it is clear that even persons of moderate means could access some kind of legal representation and wealthy individuals could access the services of higher-end lawyers who functioned similarly to post-reform barristers (and who in some cases even joined the bar after

⁷⁴⁴ *TsIAM*, f. 92, op. 6, d. 1082 (Tolstoi) (1851).

⁷⁴⁵ *TsIAM*, f. 91, op. 2, d. 338 (Toropov) (1855).

1866), the related question of how easily information about the law was accessed is less clear. This question is important because, as contemporary research shows, the individual's ability to conceive his or her circumstances in legal (as opposed to moral, cultural, social, religious etc.) terms is one of the key factors determining the decision to litigate.⁷⁴⁶ Evidence on how well informed Russians were about the law before the reform is conflicting. Michelle Marrese in her work on female property ownership and control in Russia tends to be pessimistic, emphasizing the difficulties.⁷⁴⁷

Some of my research is in the same vein. Individuals of considerable means and social standing made mistakes in negotiation and litigation and either used bad legal advice or none at all. For example, an extremely wealthy noblewoman **Anna Shevich**, whose debt suit against her husband was closely related to her divorce proceedings (see Chapter One), lost because she admitted in writing that the debt transaction was “moneyless,” i.e., that no money exchanged hands when the note was signed.⁷⁴⁸ We have already described in the first section of this chapter the embarrassing situations of the defendants in the **Cherkasskaia** and **Lebedev** cases, in which individuals of mid-level civil service rank failed to “engage” with the world of tsarist officialdom, no doubt because they were unable or unwilling to engage “intermediaries.” Those two cases, discussed in detail throughout this study, show that even fairly sophisticated and educated individuals could be helpless in the world of officialdom to such an extent as being unable to secure the services of an “intermediary.”

⁷⁴⁶ George L. Priest and Benjamin Klein, “The Selection of Disputes for Litigation.” *The Journal of Legal Studies*, Vol. 13, No. 1 (Jan, 1984), pp. 1-55.

⁷⁴⁷ Marrese, *A Woman's Kingdom*.

⁷⁴⁸ *TsIAM*, f. 81, op. 18, d. 1290 (Shevich) (1862-3).

At the same time, my research identified numerous cases in which individuals displayed a remarkable command of the legal issues relating to their proceedings. Particularly interesting are those situations when individuals initially made mistakes but later managed to obtain helpful advice, whether from a legal representative or from well-informed friends or acquaintances. For example, in the fraud case of the 12th class official **Aleksandr DeMazer**, a wealthy serf woman named Mashkina gave money to DeMazer so that he could purchase a house in her name, but then became suspicious, “consulted with other people” and asked him for an accounting and the original purchase agreement for the house, eventually complaining to the police.⁷⁴⁹ Similarly, an illiterate Moscow **merchantess Daria Kartasheva** initially admitted a debt to the police, but two weeks later changed her mind and contested the collection, claiming that her son issued the debt note in excess of the amount allotted on his power of attorney.⁷⁵⁰ Kartasheva’s petition to the Commercial Court stated the reasons why the debt was not valid in a clear and professional way that sounds very much like a document that could be written today, suggesting that Kartasheva was able to secure services of a competent lawyer. Finally, a remarkable example of a sudden and dramatic change in an individual’s legal circumstances is found, again, in the **Cherkasskaia** case, where the defendant, who originally confessed to a fraud he never committed (and made many other mistakes), at the end of the proceeding obtained accurate information about the laws governing confessions and achieved the unusual result of having the court rule to dismiss his initial confession as wrongfully obtained.⁷⁵¹ Individual cases thus suggest a more nuanced view of the availability of legal information: while wealthy and/or sophisticated litigants could make

⁷⁴⁹ *TsIAM*, f. 50, op. 4, d. 4758 (Demazer) (1856-57).

⁷⁵⁰ *TsIAM*, f. 50, op. 4, d. 6259 (Kartashev) (1861-62).

⁷⁵¹ *TsIAM* f. 50, op. 4, d. 1983 (Cherkasskaia) (1843-53) and f. 50, op. 4, d. 3389 (Zavarovskii) (1848-9).

egregious mistakes, many members of Moscow's administrative and commercial classes had access to legal advice and information that made considerable difference in the outcome of their cases even after initial mistakes. In the **Dmitriev** fraud case (discussed in detail in Chapter Eight), the defendant allegedly used a forged blank sheet of paper with his former employers' signatures to borrow money in their name. After accumulating significant debt, Dmitriev surrendered this sheet to one of his creditors, who, in turn, was advised by his *poverennyi* that the sheet was most likely fraudulent because Dmitriev's employers would have used a standard power of attorney (*veruishchee pis'mo*) if they had really authorized him to borrow money. In short, access to legal knowledge was not a given, but by no means rare, and was not limited to persons of certain background (e.g., of wealth or social estate); most likely, it depended (much as it does today in Russia *or* in the United States) on the character of one's social and kinship network and whether it included someone with experience or right connections.

The gradation in the quality and character of legal services persisted after 1864, according to William Pomeranz. While writers such as Gessen emphasized the striking novelty of the emergent organized bar in terms of personnel, when the first 27 barristers were sworn on April 17, 1866, the day when the new courts were open in Moscow, they included individuals who had been practicing law for some time, such as Nikolai Aristov and Adam Fal'kovskii,⁷⁵² as well as some lawyers who had been practicing before the Moscow Commercial Court.⁷⁵³ Thus it is important to remember that pre-reform legal practitioners, although they would have benefited from self-regulation and greater social standing, were not some kind of parasitic phenomenon;

⁷⁵² N.A. Troitskii, *Advokatura v Rossii na politicheskikh protsessakh 1866-1904 gg.* (Tula, 2000), pp. 183-4, 186.

⁷⁵³ Gessen, *Istoriia russkoi advokatury* (Spb, 1914).

they performed real services for their clients and for the legal system in general. While educated “*advokaty*” were available for complicated cases, such as appellate proceedings in the Senate, or to serve high-profile individuals like the merchant Butikov, underground lawyers like Korotkov were sufficient for the variety of business at Moscow’s *prisutstvennye mesta* building that required a practical acumen and experience but not necessarily a university education or a persuasive pen. Considering today’s reservations about legal professionals, criticisms of pre-reform lawyers could be moderated.

Conclusion

This chapter explored some of the most commonly criticized features of pre-reform courts, including extra-legal influences, the archaic system of proofs, and the lack of an organized legal profession (the next chapter examines Russia’s “inquisitorial” procedure). By looking at these well-known features of pre-reform law from the perspective of individual court cases, I have argued that in the course of everyday legal practice these “defects” were moderated or adapted to suit particular circumstances, as well as the political expediencies of maintaining social order and protecting the property rights of the tsar’s wealthier subjects. Both law and practice maintained the courts’ relative autonomy by delineating spheres of authority, by securing social order through protecting property rights, and by privileging certain areas of legal activity like criminal cases. In spite of a general respect for the personal authority of the tsar and of his high-ranking servitors like ministers and governors, such influential individuals could not hope to intervene in routine cases, nor did they seem to want to do so. While litigants could influence courts in a variety of ways, such corrupting interference seems to have been constrained and regulated by the legal rules and procedures applicable in a case; while routine bribery was no doubt

widespread, the written character of court procedure and the relative accessibility of appeals ensured that bribery and corruption could not ensure litigation success.

Similarly, the very way the estate-based lower-court structure was established by Catherine II's 1775 statute ensured that it was unworkable in practice and that County-level courts had to operate as a single unit. As to Russia's anachronistic system of evidence that employed "formal proofs," most debt cases required an examination of debt documents, which in Russian practice involved panels of experts, thus requiring the courts to exercise discretion and evaluate evidence in order to make sense of their findings. Finally, even though Russia lacked an organized bar with its ideology, rituals, and traditions, the tsar's government did not preclude individuals from rendering or using legal advice that was imperative to securing property rights in Russia's legal system. In fact, virtually any legally competent individual was permitted to perform legal services. Needless to say, we may suppose that these conclusions would be very different for other aspects of Russian legal practice, for example for the overwhelming majority of criminal cases that involved lower-class vagrants, thieves, drunks, and runaways. Nonetheless, the existence of a "higher" and "lower" legal system has been documented for other countries at that time, such as the U.S., and does not imply that the "higher" system is somehow not representative. What this chapter endeavored to show was that at least the "higher" system of pre-reform courts, for all of their anachronisms, was more viable and dynamic than has been previously claimed. It depended heavily upon sometimes-informal individual discretion and initiative, much like Russia's culture of private credit to which it was closely linked. Extra-legal connections and social status, the ability to engage the help of powerful patrons, the reliance on the opinions of numerous handwriting experts, the lack of any regulation of the individuals who

provided legal advice all suggest that the Nicholaevan legal universe was under-governed rather than over-governed. Pre-Soviet liberal critics notwithstanding, it is not so easy to prove whether this was good or bad. Most of us today would prefer to engage a professional attorney rather than a scrivener, just as we would most likely prefer to use a credit card rather than borrow from a neighboring grandee. However, similarly to the way the informal character of debt connections created opportunities for social connections and influences, the option to complain to the governor or to hire a cheap legal representative created its opportunities, as well as dangers.

CHAPTER EIGHT

DEBT AND CIVIL PROCEDURE

Individual Discretion, Dilatory Tactics, and Out-of-Court Settlements

Introduction

This chapter examines debt-related litigation in Moscow courts by focusing specifically on pre-reform civil procedure. I begin my inquiry again with a well-known observation about pre-reform law: that it employed “inquisitorial” procedure, which was intended to minimize the ability of individual litigants to affect the course of the trial. I investigate the way pre-reform civil procedure operated in actual court practice, specifically, how it influenced individual litigants’ goals and litigation tactics, as well as what factors made these tactics succeed or fail. Section One looks into the heart of a pre-reform civil case – that is, the exchange of written arguments between the parties. Section Two examines the parties’ ability and willingness to deploy dilatory tactics, which are often thought to be a major defect of the pre-reform legal system. Finally, Section Three addresses the practice of reaching a court-approved settlement after the beginning of a case. My research suggests that at least in civil, as opposed to criminal cases, private persons had a significant ability to influence, and even to direct court proceedings, and judges frequently adopted a “hands-off” attitude not typically associated with “inquisitorial” procedure. I do not argue that the pre-reform legal system was “better” or “worse” than it is usually thought, but rather that pre-reform court practices, with all of their defects, were to an important extent shaped by the actions of ordinary Russians who used the courts and whose attitudes and practices were in one shape or another transferred into the post-reform period.

The rules of pre-reform civil procedure were set out in Part II of Volume X of the Digest of the Laws of the Russian Empire.⁷⁵⁴ A civil case started when a plaintiff submitted a petition to the appropriate lower-level court or, in many debt cases, when the debtor raised an objection to the debt during the police collection procedure, which automatically transferred the case to a court.⁷⁵⁵ The proper court was the one that had jurisdiction over the defendant (County Court for nobles and peasants, Magistrate for the urban and commercial classes, and Aulic court for officials temporarily residing in the capitals or *raznochintsy* who did not own real property) in the locale where the defendant resided or owned property.⁷⁵⁶ Unless a debtor raised one of the objections listed in Article 78, the police collection against him continued even after the case was transferred to a court.⁷⁵⁷ This meant that he or she was required to “secure” (*obespechit*) the suit by posting the contested amount of money (oneself or through a surety) or by placement in debtors’ prison.⁷⁵⁸

Once the suit was initiated, parties exchanged written petitions responding to each other’s claims and presenting evidence. This exchange was the longest part of the proceedings, most importantly because the original rule introduced by Peter the Great allowing only two rounds of

⁷⁵⁴ After the 1864 reform, these statutes were moved to the new Volume XVI of the Digest of the Laws (which contained the reform legislation), because they contained some substantive provisions that remained in force and because some outlying areas of the empire retained the old court system until the end of the nineteenth century.

⁷⁵⁵ SZ, vol. X, part II, Art. 78. Permissible objections generally were of three types: (1) debtor denied his or her signature on the debt document; (2) debtor presented evidence of payment; and (3) debt was invalid because debtor was incompetent (for example, a minor).

⁷⁵⁶ SZ, vol. X, part II, Art. 202 and 14. If there were several defendants who lived in different provinces, the case was to be filed directly in the Civil Chamber of the guberniia “where the actions from which those suits arose, were effected (*sovershilis*).” Cases involving mortgages were to be filed where the property was located (Art. 745).

⁷⁵⁷ Art. 78, Note 2 and Art. 79.

⁷⁵⁸ For the rules of securing a lawsuit, see Art. 57-74. (and preceding articles when the debt was secured by collateral).

petitions was obviously not feasible, and already in the eighteenth century many suits contained over thirty rounds. Rather than trying to come up with an alternative number, the law was left in suspense without any set limit, according to the Digest of the Laws.⁷⁵⁹ The law thus made it very easy for both parties to engage in dilatory tactics (see below). In addition, the court could make information requests of its own, for example, in an inheritance case it could require the heir to produce documents confirming his relation to the deceased, or if a litigant referred to a document without producing it, the court could demand to see it. Interlocutory appeals were permitted (with some restrictions) and could further delay the case.⁷⁶⁰ The parties could reach a settlement (*mirovaia sdelka*) before or during the proceedings, or even after the court decision either by recording it as a settlement notation (“*mirovaia zapis*” recorded “*u krepostnykh del*”) or by filing a petition at the court – which had to interview the parties to ensure that their settlement was truly voluntary (art. 1131-1137). The written exchange could be supplemented by personal appearances of the litigants or their representatives before the judges. As noted in Chapter Seven, pre-reform courtrooms were small and more closely resembled offices rather than post-1864 courtrooms. This space was known as *prisutstvie* (presence-chamber), referring to the fact that officials were not allowed to conduct business in the secrecy of their homes. Although by no means “public” in the same way modern courtrooms are, a *prisutstvie* was not as “secret” in the same way that is conjured by a twentieth-century image of, say, NKVD troikas. Rather, the

⁷⁵⁹ SZ, vol. X, part II, art. 297, Note.

⁷⁶⁰ Articles 57 and 59 of Appendix to Article 14 (note 2) (see also 477) list the reasons for interlocutory appeals – rejection of a complaint, ruling on jurisdiction, refusal to accept evidence, ruling on securing the suit or management of disputed property, removing a judge, rulings concerning executing the decision, slowness, etc.

rooms occupied by the courts and the adjacent corridors and stairways seem to have been crowded by numerous staff and visitors.⁷⁶¹

The precise moment when the exchange of petitions was complete occurred when, “all the evidence had been presented,” after which neither party was permitted to submit any additional petitions or claims. Who made this determination was left unclear by Article 297 – presumably, the court. In any event, at the end of the process the secretary of the court compiled a summary of all the pleadings, called a digest (*vypiska*) or a memorandum (*zapiska*), prepared according to specified rules. The parties reviewed the summary for accuracy, made additions they thought were necessary (Art. 447), and signed at the end. The secretary listed applicable statutes (he was criminally responsible for the accuracy of this list), which was a much easier task after the Digest of the Laws was published in 1832. Once the case was ready for trial, a hearing was held, during which the *zapiska* was read out to the judges. The parties could be present during the hearing and were allowed to give oral “explanations,” but not to present any new evidence, claims, or arguments (Art. 465).

The decision itself was a multi-stage process: after hearing the case the judges recorded and signed their decision (*rezoluitsiia*) in the court’s journal. The next step was to combine the *zapiska* with the decision and produce the official case record (*protokol*), until which point a judge could still change his mind and record his new opinion in the journal. After the *protokol* had been signed, no more changes were permitted. The decision was considered to acquire its legal force, even though it was not yet announced to the parties. The parties were then notified in writing and assigned a date to appear in court, review the decision, and sign off whether they

⁷⁶¹ So that in one case, a prisoner being led from a court hearing managed to escape by mingling with the crowd in the building.

were satisfied with the decision or intended to appeal. The decision was considered to acquire its legal force when the *protokol* was signed, even though it was not yet announced to the parties. This was different from “final legal force” when it was the kind of case that could not be appealed or the party that intended to appeal missed the deadline for filing it. In its decision the court had to list the ways it was to be executed (for example, sell debtor’s property) – and forward it directly to the applicable police authorities for execution.

Even before the reform of 1864, civil and criminal procedure differed in several important ways.⁷⁶² Most importantly, civil cases involved much less intervention and supervision by outside officials. Unlike in criminal cases, there was no mandatory review by a higher court or approval of decisions by the provincial governor, and no procuracy involvement, as well as no police investigation. Parties determined what arguments to make and what evidence to present; litigants were free to get legal advice or to conduct their case through representatives. In short, the differences between civil and criminal cases concerned key procedural elements and do not support one historian’s observation that Russian “judicial procedure so lacked autonomy and recognition that it was not even clear whether a distinction existed between civil and criminal procedure.”⁷⁶³

This failure to recognize significant differences between civil and criminal cases has led modern-day historians to make exaggerated claims about the extent to which the pre-reform legal

⁷⁶² Interestingly, after 1864 criminal case involved much more public participation because they featured juries, while before 1864 it was the opposite: while the government could keep a criminal investigation completely secret, a civil trial was much more open to the litigants’ influence.

⁷⁶³ LeDonne, *Absolutism and Ruling Class*, p. 193. Another historian has claimed that “the dominance of public law concepts since the Muscovite period left Russia with little in the way of a native private law tradition,” citing the pre-Soviet jurist Shershenevich, who actually in the cited selection (*Nauka grazhdanskogo prava*, p. 28) argued that Russia’s attunement to Western European developments in private law was both a strength, as well as a weakness. Levin-Stankevich, “The Transfer of Legal Technology and Culture,” p. 225.

system “rejected” adversarial proceedings in favor of the inquisitorial system.⁷⁶⁴ As noted above, the term “inquisitorial procedure” refers to the judges’ overall control over the proceedings, and the balance of power in criminal prosecutions significantly favoring the state.⁷⁶⁵ The judge, rather than limiting himself to ensuring that all the procedural rules are observed, takes an active part in questioning the parties and their witnesses. More often than not, such procedure is conducted in writing and outside public view. It is typically associated with the legal systems of Germany (from which Russian law adopted freely in the eighteenth century) and France, in contrast with the “adversarial” Anglo-American legal systems (where the famous English Court of Chancery was an important exception employing written non-public proceedings). However, this distinction of inquisitorial and adversarial procedure is most directly observable in criminal cases, and is much less relevant to civil ones, in which “the determination of what issues to raise, what evidence to introduce, and what arguments to make is left almost entirely to the parties” by either one of the two Western legal traditions.⁷⁶⁶ Furthermore, lawyers have noted that in actual legal practice a purely adversarial civil process is no more possible than a purely inquisitorial one, given that, unlike in a horse race, it is impossible to determine the winner objectively because the judge must exercise his discretion while reaching a decision.⁷⁶⁷ It is thus more

⁷⁶⁴ LeDonne, *Absolutism and Ruling Class*, p. 195. But I do not agree with Boris Mironov’s observation that Russian procedure was partially adversarial because of the “sud po forme” option. It did exist, but was only very rarely used (I only saw a few cases out of several hundred that I have reviewed). See also V.V. Zakharov, “‘Sud po forme’ kak osobyi poriadok rossiiskogo grazhdanskogo sudoproizvodstva v pervoi polovine xix stoletii: normativnaia model’ i ee prakticheskoe osushchestvlenie.” *Uchenye zapiski. Elektronnyi zhurnal Kurskogo gosudarstvennogo universiteta*, No. 2 (2008). <http://scientific-notes.ru> (accessed 02.11.2010).

⁷⁶⁵ Merryman, *The Civil Law Tradition*, p. 127. See also Mirijan Damaska, “Presentation of Evidence and Factfinding Precision” *University of Pennsylvania Law Review*, Vol. 123 (1975), 1083-1105.

⁷⁶⁶ Merryman, p. 115.

⁷⁶⁷ J.A. Jolowicz, “Adversarial and Inquisitorial Models of Civil Procedure,” *The International and Comparative Law Quarterly*, Vol. 52 (2003), 281-295. This article shows that we can only talk about adversarial *elements* in procedure.

correct to talk about adversarial or inquisitorial *elements* in procedure. In short, procedural rules can be placed on a sliding scale, and while the Russian rules were firmly located on the inquisitorial end of the spectrum, this does not mean that Russian litigants did not have an opportunity to match wits against their opposing side.

Moreover, while lawyers trained in the common law tradition are accustomed to thinking that the adversarial system is the best type of procedure, recent Western legal practice has tended to merge the two types of procedure in order to mitigate their worst features.⁷⁶⁸ In civil cases in particular, English procedure has recently witnessed “an erosion of the adversary and orality principles, marked by increasing intervention by the court [...] and ... a greater reliance on the use of written materials.”⁷⁶⁹ Jurist Cyril Glasser has noted that this tendency could improve the “inchoate” English discovery system.⁷⁷⁰ In the US, many federal judges have long abandoned their traditionally dispassionate attitude in the famous movement “to adopt a more active, ‘managerial’ stance.”⁷⁷¹ More active involvement by judges is thought to be more suitable for complex cases with large numbers of witnesses and a voluminous documentary record.⁷⁷² Thus, I suggest that when discussing Russian civil procedure on the eve of the judicial reform, the ideal model should be an effective form of merger between the two types of procedure, not a triumphant progress of the common law archetype.

⁷⁶⁸ Merryman, p. 126.

⁷⁶⁹ Cyril Glasser, “Civil Procedure and the Lawyers – The Adversary System and the Decline of the Orality Principle,” *The Modern Law Review*, Vol. 56 (1993), 307-324, 308.

⁷⁷⁰ Glasser, p. 311

⁷⁷¹ Judith Resnik, “Managerial Judges,” *Harvard Law Review*, Vol. 96 (1982), pp. 374-448.

⁷⁷² See also Mirjan Damaska, *The Faces of Justice and State Authority* (New Haven, 1986), 104-140. – in some cases, a more active role of the court is desirable – matters of public interest or “integrity of the system.”

Written Procedure: Case Management, Individual Discretion, and Legal Arguments

The core of a civil, as opposed to a criminal, case in pre-reform courts was the exchange of petitions, initiated after the plaintiff filed a complaint or when the police debt collection was ruled to be “contested” (*spornoe vzyskanie*) and transferred to the court. These petitions, composed with varying degrees of skill and persuasiveness, were the raw material of Russian legal culture, since they replaced what would have been oral arguments at a trial. This section analyzes a selection of debt-related cases, focusing on the balance between judges and individual litigants in shaping the direction of the proceedings. These cases are absolutely ordinary and typical, whether they involve wealthy litigants (such as **Nikitin** or **Tvorogova**) or those who were not wealthy at all (**Blagin** or **Sumgalter**). I argue that litigants in pre-reform civil cases, whether they were rich noble-born Moscow entrepreneurs (**Nikitin**) or a petty clerk from a small town in the Urals (**Blagin**), controlled the pace of the proceedings and even, more subtly, the type of evidence presented by submitting circumstantial information that the judges were not technically permitted to consider among the “legal proofs.” While the courts did not openly or explicitly accept these arguments, they tended to rule in favor of the party that used them. I conclude that a much greater flaw of pre-reform civil procedure than its being “inquisitorial” lay in the rather lax provisions for case management by the courts. In other words, Russian inquisitorial procedure was, paradoxically, not inquisitorial enough.

Court records show that even individuals who were relatively disadvantaged as compared to most pre-reform court-goers could formulate a litigation strategy and pursue it through the exchange of petitions persistently and with minimal cost and effort, as illustrated by the litigation

for **Lieutenant-Colonel Andrei Blaginin's** inheritance.⁷⁷³ Andrei Blaginin was a typical Nicholaevan-era soldier of humble origins (son of a peasant who had been conscripted into the army) who became commissioned at the age of 31 and thus gained hereditary nobility.⁷⁷⁴ After retiring in 1839 at the age of only 41, he lived in a small wooden house in Moscow near the German Market on his pension of 666 rubles per year, never marrying and keeping no servants. Instead, he met Anna Gavrilova Antonova, an illiterate daughter of a household serf from the backwater Zaraisk County who had managed to move to Moscow and enroll as a *meshchanka*. Blaginin visited Antonova, ten years' his junior, twice a day at her apartment and boarded with her, until in June of 1849 he became ill with chest pain and heart palpitations aggravated by his love for "hot" beverages. On June 9 Antonova went to check on him herself and found him dead in his bed. She summoned the police, who sealed up the house and inventoried all the property inside.

Typically, the next step would be for Blaginin's heirs, if any, to take over his property; however, Antonova immediately submitted for collection a debt note for 600 silver rubles issued by Blaginin two years previously. Her petitions did not anticipate any challenge to the collection and requested that the house be rented out until the case was resolved (given that Blaginin's property was insufficient to cover this debt). However, the County Court ruled to wait until the heirs had been notified. This happened very quickly, and as soon as July, the court heard back

⁷⁷³ *TsIAM*, f. 92, op. 9, d. 806 (Blaginin). Chapters One, Two, and Four examine the importance of this case for the culture of debt and Chapter Seven discusses the handwriting analysis conducted; this Chapter, by contrast, focuses on the significant procedural aspects.

⁷⁷⁴ The case file includes Andrei Blaginin's service list, which suggests that his successful career after becoming an officer (moving from Second Lieutenant to Lieutenant Colonel in only ten years without participating in any wars) was due to his skill at drill (six "gratitudes" from the tsar), as well as to his willingness to be involved in the administration of the infamous "military settlements" in South Russia.

from Andrei's brother Pëtr, who was a retired NCO serving as a petty clerk in the County Treasury in his native Troitsk in the South Urals (no doubt of some importance in his far-away town, he was absolutely nobody as far as Moscow was concerned). Pëtr claimed the inheritance for himself and for his two married sisters, although he had no money to come to Moscow himself. He asked the police to send him any property or cash left from his brother's estate (at first he did not know about the house). He also asked the police to investigate the validity of any debt claims against the estate, i.e., whether they were properly witnessed and notarized.

Pëtr's petitions to the court are remarkable for their clear style, good handwriting, and for their amateurish, silly suspiciousness.⁷⁷⁵ They show him to be familiar with the basics of pre-reform bureaucracy, but they also make it clear that he was no giant of Russian officialdom. Pëtr asked why there was only one witness at the inventory, why the house was located on someone else's plot of land and why it was undervalued (in his opinion), whether Andrei had received his last pension installment, whether the police had checked if Andrei's acquaintances or his (nonexistent) servants stole his property, as well as whether Andrei's creditors had at any point lived in his house and whether they had somehow been able to take advantage of him. He was also unclear about his brother's real social standing, writing about "various teams of horses" and "fur garments" (that were beyond Andrei's means even before his retirement). Pëtr's petitions sound as if he had an absolute and indisputable right to know about all of these things, and that some large-scale conspiracy to defraud him might have been brewing, perhaps even with police participation. However, he skillfully managed to avoid making his claims sound offensive or target specific individuals or institutions.

⁷⁷⁵ He prepared these petitions himself, because their text was in the same handwriting as the signature, and no other preparer was listed at the end (as required by law).

It is unclear whether Blaginin's paranoid style and his irrelevant questions and claims benefited his case by persuading court personnel in Moscow that he was more trouble than he was worth, but at least they did not harm him, considering the outcome of the case. When he demanded to see the original debt documents so that he could decide whether to contest them, they were mailed to him and in July of 1850 he wrote to the court arguing that they were invalid because they were written on the wrong variety of stamped paper and not witnessed. But he did not stop there and listed other reasons why he thought Antonova's claim was suspicious, for example, that a 600 ruble loan was secured by a house that was worth only 100 (judging by the fact that property at that time was typically valued at ten years' rental income, 800 rubles would have been a more accurate appraisal).⁷⁷⁶ Pëtr also claimed that Antonova had lived with Andrei for several years, that she wrote that note herself after his death, and that her "enterprising" character is proved by the fact "that she dared, without any permission from the local police and contrary to existing laws to spend a significant sum on the funeral and the wake." Pëtr could not be more specific on what kind of self-interest induced Antonova to pay for the funeral and the wake.

This exchange continued for most of 1850 and 1851, until the parties were finally summoned to court. There is no indication that Pëtr ever made it to Moscow in person and there is no mention of any other person who helped him to prepare or to submit his petitions. It seems that he conducted the entire litigation by mail from Troitsk. The joint session of the County Court and the Magistrate (which had jurisdiction over Antonova) on February 27, 1852 acknowledged

⁷⁷⁶ But in other instances (most notably insurance), property was appraised at the value of "unburnable" materials used in its construction, which made most of Moscow's real estate, built of wood, be officially worth very little. On property appraisal, see note 274 above.

Pëtr as Andrei's heir and ordered to pay Antonova's funeral expenses out of his estate, but ruled that she could not collect her debt because the note was written on the wrong kind of paper and even fined her for "incorrectly bringing the suit." The court also ignored the ambiguous result of the handwriting analysis (see Chapter Seven) and ruled that Andrei's signature was not genuine. Interestingly, Antonova appealed the case to the Civil Chamber, lost her appeal, and decided not to pursue the case to the Senate.

This uncommonly well-detailed case record raises several key questions about pre-reform legal culture and legal practice. First, this case casts serious doubt on the claims that pre-reform legal space was somehow fragmented; here we see that central and local officials, litigants, and institutions could interact perfectly seamlessly, suggesting that Nicholaevan officialdom *did* operate in a single legal space despite the empire's size and its estate system. Second, the case shows that pre-reform legal culture, while clearly appearing as somewhat amateurish compared to post-reform law, could be effective in enabling individuals to identify and pursue their interests in court, and that those legal cases that did not involve incentives for corruption or delay could be conducted efficiently and inexpensively. Finally, it is remarkable how Pëtr Blagin in managed to maintain an extremely proactive and even aggressive stance during the proceedings despite being somewhat irrational and living very far away. Antonova, in turn, was a remarkably active participant in the legal culture despite being an illiterate former serf. Compared to the two litigants, the court itself appears reactive, even aloof, its only "inquisitorial" action was the obvious step of asking Pëtr to confirm his relation to his late brother.

Cases of a relatively poor outsider able to litigate successfully in the capital were not unusual, although without Pëtr Blagin in's civil service experience such litigation was noticeably

more difficult, even if the creditor decided to come to Moscow in person. The suit of a Jewish *meshchanin* from the Ukrainian province of Zhitomir, **N. Leiba-Srulevich Sumgalter**, was successful, although actual collection from Sumgalter's debtor, *meshchanin* Krasil'nikov, was difficult because relatives hid him and his property.⁷⁷⁷ Unlike Pëtr Blagin, Sumgalter did have considerable experience of Moscow officialdom because he served there as a rank-and-file policeman for 28 years after being conscripted into the Russian army (after his service he returned to his hometown). In 1859 he came back to Moscow to collect a 118 ruble debt from Krasil'nikov, who after engaging in various dilatory tactics admitted his debt, after which the Magistrate ruled in December of 1860 to collect against him. Krasil'nikov appealed to the Civil Chamber, and lost again, after which the police started to inventory and sell his property. Sumgalter won every court proceeding despite his debtor's best efforts, but because Krasil'nikov became insolvent after managing to hide most of his property with relatives, the only way to collect from him was to have him imprisoned and ransomed by the Prison Committee (see Chapter Five), which is what Sumgalter proceeded to do.

Similar to Blagin, Sumgalter in his petitions to the court freely employed legally irrelevant arguments, such as those relating to his poor condition and the fact of having to live in the expensive capital city just to collect his debt. He even petitioned the authorities to have Krasil'nikov pay his living expenses while in the city. Even more striking is the fact that the relatively small amount of Sumgalter's suit caused him to go to all this effort (rather than to simply sell his debt note at a discount and go back home). One reason for this could be that Sumgalter wanted to stay in Moscow (I believe that as a former soldier he could in any event

⁷⁷⁷ *TsIAM*, f. 16, op. 23, d. 1107 (Leiba-Srulevich) (1860-63)

reside outside the Pale of Settlement), another likely reason would be Sumgalter's pride and desire to assert his rights that forced him to all this trouble in his old age. Finally, it is interesting how Krasil'nikov's kinship network turned out to be the equal of the administration and the courts, enabling him to resist the lawsuit and police proceedings for several years.

Wealthier litigants were more likely to cite sophisticated legal concepts in their petitions, although they could at the same time supplement these with the kind of speculative and circumstantial arguments used by Pëtr Blagin. The case of Colonel **Nikolai Nikitin** was litigated in the same County Court at the same time as the Blagin case, and similarly it involved individuals with equal social and economic status.⁷⁷⁸ The difference was that Nikitin, it seems, was a wealthy moneylender and his debtor, State Councilor Surovishchikov, and his family had for decades owned profitable public baths in the central Tverskaia precinct.⁷⁷⁹ Not surprisingly, this case shows even more confidence by the litigants in their dealings with the court. The object of the case was the staggering sum of 100,000 silver rubles, loaned by Nikitin to Surovshchikov's wife (as her husband's agent) on the condition that debtor was to pay a 15,000 ruble penalty if he failed to repay the loan on the due date. After debtor failed to pay, Nikitin seized the baths but Surovshchikov obviously was not willing to pay the additional 15,000 in cash and started a lawsuit.

The legal contest regarding the validity of the penalty clause took the familiar shape of a seesaw-like exchange of petitions (which added next to nothing to the original complaint and answer). Surovshchikov's position strikingly combined legally sophisticated arguments (relating

⁷⁷⁸ *TsIAM*, f. 92, op. 6, d. 677 (Nikitin) (1853)

⁷⁷⁹ *TsIAM*, f. 16, op. 5, d. 64 (*O gorodskoi nedoimke po Moskve*) (1823).

to the legal status of penalty clauses) with those that were clearly ridiculous. He claimed that he did not authorize his wife to borrow money on such unfavorable conditions, while at the same time accusing Nikitin of usury (he allegedly only received 90,000 rubles) and of showing insufficient respect by not addressing Surovshchikov by his name and patronymic.

Surovshchikov also had one of the judges removed from the panel on the grounds that he was Nikitin's friend. Nikitin objected that the whole point of the clause was that Surovshchikov agreed to pay 15,000 rubles in the event of default without any "trial or contest" and that his wife was authorized to borrow money on any conditions. The County Court's only attempt to be proactive was in denying one of Surovshchikov's information requests, which was reversed by the Senate after an interlocutory appeal, showing the court to be powerless and/or unwilling to take the proceedings into its own hands.

The actual ruling by two of the three judges held on June 1, 1853, was that Surovshchikov only had to pay 100,000 rubles. One judge ruled that his wife was only authorized to mortgage the baths for 100,000, and the other held that under Russia's civil code (Articles 1333, 648, and 1324) penalty clauses were prohibited for mortgages of real estate and that here the clause was part of the debt document and not a separate contract. The dissenting judge argued that the clause was a separate agreement inducing Surovshchikov to repay on time and compensating Nikitin for his possible loss, since he otherwise might not have lent such a large sum of money. This ruling shows the County Court, despite its insufficient force to channel the proceedings and despite the Chamber's oversight, was still being independent-minded enough to find it necessary to list all these arguments. Also, the judges were well oriented in the legal issues despite the stereotype about lower-level court judges being untrained in the law and completely dependent on the

secretaries (described by Dmitriev in his memoirs for the earlier part of the century and by others). Should we imagine that this court's secretary prepared different opinions for different judges? While in this instance the debtor won the case, it is important to note that the entire litigation only contested the penalty clause: as to the baths themselves, Nikitin quickly seized them. This case clearly contradicts the commonly made observation that the pre-reform legal system was geared against the creditor; rather, the effect of the ruling seems to have been to prevent Nikitin's unjust enrichment (since he most likely did issue Surovshchikov with only 90,000 rubles and was entitled to additional fees and interest) and to emphasize the fact that the very meaning of issuing a mortgage is that it is secured by real property and nothing else.

Once the exchange of petitions in a civil case was complete, the secretary of the court prepared the summary of the case, as discussed above. This was an essential practical step, especially in complicated litigations with dozens or even hundreds of documents. Many writers on Russian law have claimed these case summaries to be "unreliable," noting that the procedure placed undue power in the hands of the court secretary who could slant the digest in favor of one of the defendants.⁷⁸⁰ However, I found exactly the opposite to be the case. I have not been able to locate any material alterations. At most, secretaries slightly *improved* the summaries by removing superfluous verbiage, but this happened only rarely. Typically, secretaries merely changed all first-person pronouns to third-person and kept the text of a petition intact. In fact, most cases that I have reviewed contain pencil marks on the petitions showing the alterations made during the preparation of the digest. One interesting example is the collection case of 25,000 rubles by merchant Volkov against Actual State Councilor Prince Vladimir Sergeevich

⁷⁸⁰ for example, LeDonne, *Absolutism and Ruling Class*; Levin-Stankevich, "The Transfer of Legal Technology and Culture."

Golitsyn in 1849.⁷⁸¹ Another good example is the case of **Collegiate Councilor's wife Strekalova**.⁷⁸² Discussed in detail elsewhere in this Chapter, this typical debt case included a summary in which the secretary simply changed the pronouns, dropped some of the most extreme verbiage, and changed Strekalova's lawyer's spelling of the word "sequester" (*sekverst*) to the standard "*sekvestr*."⁷⁸³

Even if a secretary *had* misrepresented one side's arguments, the litigants were required by the law to review the digest, note anything they did not agree with and sign it and, if they felt necessary, to make oral explanations in person in front of the judges. This right was not a mere formality but, as I have determined, was widely deployed in actual cases. For example, in the **Nikitin** case above, the Colonel examined the digest and noted his objection to the fact that it incorrectly named Surovshchikov, rather than his wife, as the borrower. This right was exercised even in criminal cases in which defendants' rights were much less protected. For example, merchant **Mokhov**'s case started as a debt collection against merchantess Levi who was able to leave Moscow without having to "secure" the claim against her (2,785 rubles).⁷⁸⁴ The litigation turned against him and he was subjected to a criminal accusation of not proving a denunciation (*izvet*)⁷⁸⁵ and of including in his court papers an improper ("*neprilichnoe*") expression about the actions of the Joint Session of Moscow County Court and the Magistrate (he called their actions

⁷⁸¹ *TsIAM*, f. 81, op. 21, d. 302 (Volkov) (1849).

⁷⁸² *TsIAM*, f. 50, op. 5, d. 12287 (Strekalova) (1856-58)

⁷⁸³ This other spelling was occasionally used in documents.

⁷⁸⁴ *TsIAM*, f. 50, op. 4, d. 3161 (Mokhov) (1845-51).

⁷⁸⁵ Legally speaking, there were two types of denunciation – *izvet* and *donos* (articles 916 and 934 of the Criminal Code). An *izvet* did not have to be proven on pain of criminal penalty. According to Article 914, everyone was required to report crime, and so an *izvet* was not punishable.

“illegal and premeditated”), as well as “irrelevant” language in his receipt relating to his complaint against the police. After the summary of these criminal charges was prepared, he was able to add two large pages of very small handwriting, which in his view must have better stated his position than his own prior petitions, which had been completely accurately summarized by the secretary. After successfully arguing that the type of denunciation that he made was not punishable, nor were “irrelevant” expressions, he was only given a warning (*vnushenie*) for his choice of words. The case of Moscow merchant **Stepan Tikhomirov** began as a regular debt collection case but was transferred to the criminal court when the debtor, merchant Iakov Chistiakov, denied signing the bill of exchange.⁷⁸⁶ In 1867 Chistiakov decided to hire a new-style barrister to represent him in the Criminal Chamber (his case was initiated there, and he was thus unable to take advantage of the new criminal court with jury that was opened in 1866); the barrister was allowed to “comment” on the case even after it had already been presented to the judges. Finally, even in the fraud case of Gubernial Secretary **Aleksei Zaborovskii**, who was rather roughly treated by the police, he was allowed in 1846 to review the case summary and did not hesitate to petition the Criminal Chamber to be allowed to appear before it in person when he felt that the written record was not sufficient to properly present his defense.⁷⁸⁷

None of this is, of course, to deny that Russian pre-reform civil (and criminal) procedure was written rather than oral. What is surprising is the fact that the parties often seemed to have preferred it that way. The procedure that, since the days of Peter the Great, provided for simplified oral pleadings (*sud po forme*) as an alternative to the usual lengthy procedure was

⁷⁸⁶ *TsIAM*, f. 50, op. 4, d. 8434 (Tikhomirov) (1865-1874).

⁷⁸⁷ *TsIAM*, f. 50, op. 4, d. 1983 (Zaborovskii).

only rarely used, as shown by my own research and by one other legal historian.⁷⁸⁸ I was only able to find a handful of references to litigants using this procedure, but even in such instances, they preferred to exchange written pleadings whenever the court would allow it. For instance, *sud po forme* was the required procedure at the Moscow Equity Court, which had jurisdiction over all money suits between parents and children, and this is where a wealthy merchant **Savinov** sued his daughter for 200,000 rubles. Although the parties were required to meet in court to present their arguments, at every court date either only one party showed up, or none at all. The daughter's husband, who represented her, even argued that he was not required to have face-to-face meetings with his father-in-law according to the Provincial Statute of 1775 and to the Civil Code. Savinov's representative, the chancery clerk Nechaev, pursued the case through the customary exchange of written statements, despite the court's repeated attempts to have both parties face each other. In the end, the court decided the case not on the basis of a face-to-face oral trial, but on the basis of the documents that the parties submitted (including a purchase agreement and the mortgage note).

This section has suggested that a simple characterization of pre-reform civil procedure as “inquisitorial” does not sufficiently explain the workings of pre-reform courts in terms of practice, as opposed to the official rules of procedure. Actual civil cases show that individual litigants determined the direction of the proceedings during the initial phase of the exchange of written statements, thus determining what legal issues were going to be raised and what evidence would be considered. The arguments used by the parties varied from sophisticated interpretation

⁷⁸⁸ B.B. Zakharov, “‘*Sud po forme*’ kak osobyi poriadok rossiiskogo grazhdanskogo sudoproizvodstva...”

of statutory law and insinuations that appear to us as irrelevant, if not ridiculous, although they still seem to have had the desired effect on the judges, or at least not to have harmed the respective side's position. This applied equally to litigants who were rich and powerful, like Nikitin or Savinov, or not so rich at all like Blagin in or Sumgalter. Their statements were accurately summarized by secretaries, after which the litigants had the opportunity to correct and supplement these *zapiski*. Depending on the individual case, what I have discussed here can be characterized as an adversarial motif within the inquisitorial model, or conversely as lax case management by the courts. In any event, these cases suggest that the major problem with pre-reform courts was not that they employed inquisitorial procedure, but the rather the fact that it was not inquisitorial enough.

Dilatory Tactics and the Russian *Bleak House*

A corollary to litigants' ability to influence the direction of a civil trial was their ability to delay the proceedings if they thought it to their advantage. While even simple civil cases in pre-reform courts could last for several years, especially with the full round of appeals, more complex litigation could take decades. While such cases, resembling the English Court of Chancery proceedings described by Dickens in *Bleak House*, were not particularly common, they did happen, and in this section I would like to address several unusually long cases in which litigants clearly engaged in dilatory tactics.⁷⁸⁹ Excessively long litigation has been mentioned by virtually every author who wrote on pre-reform law; usually it is attributed to the court staff's desire to benefit financially from long cases and to defendants' desire to evade responsibility. By contrast, in this section I argue that delays in pre-reform cases were attributable to both plaintiffs and

⁷⁸⁹ Exactly what constituted a "case" is difficult to define for any complex pre-reform litigation that included many separate proceedings in different courts.

defendants, and that they could result from completely rational interests and objectives, and should be viewed as an integral part of pre-reform legal culture, rather than as a reprehensible failure.

Delay in litigation is a problem in many legal systems. It increases costs both to individuals and to society because victims do not get timely compensation and because the legal system thus fails either to deter unlawful behavior or to reach accurate decisions. One empirical study of this issue in today's Great Britain found that delay increases "when the litigants face low costs of bargaining [...], when the estimated damages are high, and when the defendant feels that it is not liable for the damages being claimed,"⁷⁹⁰ thus showing the issue to be much more complicated than a simple desire by a defendant to avoid responsibility. The authors' suggested measures to fight delay were to institute tighter case management, forcing the sides to exchange information and state their legal position early in the trial, and to lower the costs of litigation (which of course could have exactly the opposite effect of prolonging cases). In the US, likewise, some provisions meant to reduce delay, for example imposing pre-judgment interest in tort claims, have been argued to actually have the opposite effect.⁷⁹¹

In pre-reform Russia, in spite of its legal procedure being "inquisitorial," presupposing the judges' authority to speed up the trial, there were in actual practice significant institutional factors encouraging delay, most importantly lax case management and the lack of limitations on the number of written statements that could be exchanged by the parties. That said, Table 0.3 showing the courts' caseload for 1858 shows that at the first appellate level of provincial

⁷⁹⁰ Paul Fenn and Neil Rickman, "Delay and Settlement in Litigation." *The Economic Journal*, 109 (1999), 476-491, 489.

⁷⁹¹ Daniel Kessler, "Institutional Causes of Delay in the Settlement of Legal Disputes" *Journal of Law, Economics & Organization*, Vol. 12, No. 2 (Oct., 1996), 432-460.

chambers, over 73 percent of all cases on the courts' docket were closed during the year. Other provisions meant to discourage litigiousness and delay, for example large amounts of interest and heavy penalties for "wrongful" suits and appeals, may have actually encouraged delay by raising the stakes for the parties.⁷⁹² None of these factors, however, seem to be so fundamental that they could not be solved with a major overhaul of the legal system. Nor is it clear how the court staff could be interested in delay, given that none of the courts seem to have suffered from a lack of business. Processing cases more quickly would only encourage more litigants to use the courts thus bringing more income to bribetakers.⁷⁹³ Conversely, those overworked officials who procrastinated were targeted in the regular inspections ordered by the Senate in order to reduce the caseload. While I have seen cases when the courts clearly attempted to speed up the trial, such as in the **Nikitin** case already discussed, I have not seen any clear cases when it was the courts, rather than the litigants, that caused the delay.

The most obvious and commonly cited reason for delay is defendant's desire to avoid responsibility. Typically, dilatory tactics seems to have required wealth and/or considerable social standing coupled with a skillful legal representative. Otherwise creditors would simply have debtors' property sold and/or place him or her in prison. One illustrative situation when the debtor's high civil service rank protected him from his creditors is the case of Major General's wife **Evgeniia Tvorogova**.⁷⁹⁴ As discussed in Chapter Four, this case involved the use of a debt instrument to get around the provision in Russian inheritance law that prevented a niece from

⁷⁹² At the same time, the legal requirement of posting the amount of the lawsuit as "security" (*obespechenie*) brought property ownership into question for the duration of the trial and would serve to discourage delay, which would in such a situation definitely not favor the debtor side in a lawsuit.

⁷⁹³ A similar argument was made by the pre-Soviet writer P.A. Ilinskii. See Marrese, *A Woman's Kingdom*, p. 209.

⁷⁹⁴ *TsIAM*, f. 50, op. 5, d. 12292 (Tvorogova) (1852-1876) and f. 50, op. 5, d. 12294 (Tvorogova) (1861-2)

inheriting if there was a nephew (in situations when there was not a valid will). Tvorogova's aunt, Anna Lopukhina (née Dolgorukova), died in 1842 and in her will left 100 serfs to her nephew, Prince Sergei Dolgorukov. Tvorogova herself was left out of the will and was not entitled to anything under Russian inheritance law because her right was supplanted by the nephew, Dolgorukov. But Tvorogova did have a debt note from her aunt for 15,000 silver rubles (apparently issued shortly before the old woman's death as a reward for helping her in her old age) and sued Dolgorukov. As of 1858, the case still showed no signs of nearing the conclusion. Why? Actually, there were three reasons: first, Dolgorukov's dilatory tactics; second, Tvorogova's dilatory tactics, and third, the interest Tvorogova's heirs had in restarting the case.

First, Dolgorukov was difficult to sue because he was an upwardly mobile bureaucrat, member of the Commission for Petitions and of the Manufactures Council of the Finance Ministry. By 1854 he was a Secretary of State for Petitions to the Emperor and as of 1858 he reached the high rank of Privy Councilor. At first he employed arguments that were rather weak from a legal standpoint (such as that his aunt said before her death that she was debt free, that it was impossible to suppose that Tvorogova would lend so much money to an "ancient and barely mobile 95-year old woman" and that Dolgorukov should only have to pay if the 15,000 rubles had been spent before Lopukhina's death). More to the point, Dolgorukov found no resemblance between Lopukhina's signature on the debt note and her signature on her other papers in Dolgorukov's possession. However, twelve years after making that claim the Prince still had not provided the court with these documents, claiming that he could not locate them and that he never thought he would need them in connection with the lawsuit, "because these letters are private and could not, in my opinion, serve as proofs in the eyes of the law." Finally the court

sent him some of Tvorogova's papers, and in 1855 the Chamber ruled that he had admitted the authenticity of Lopukhina's signature on one power of attorney, which then enabled it to have experts conduct a handwriting comparison, which came out in favor of Tvorogova. Dolgorukov then somehow managed to find the relevant documents after all and had the Senate order another comparison. Throughout the process, Dolgorukov frequently moved between various cities, which made it extremely difficult to contact him.

But Tvorogova also did not seem to be too interested in finishing the case quickly. Just like Dolgorukov, she moved frequently, making it difficult for the post to find her and get her signature on the court rulings, responses, petitions and so on. Perhaps Tvorogova knew that she was unlikely to win the suit (either on the merits or because of Dolgorukov's power) and merely wanted to put pressure on him to induce him to settle. Finally, after Tvorogova became elderly and was taken under trusteeship, Dolgorukov and her son attempted to settle the case, but her trustee surprisingly (at that point) would not agree and the case went on. The circumstances of this case thus suggest that its prolongation should be attributable not simply to Dolgorukov's unwillingness to pay but also to the fact that this was not a simple arm's length economic dispute, but one that also involved the politics of kinship networks, wealth transfer, and inheritance strategies. Cases that *were* simply about money, as far as we can tell, proceeded much more quickly, such as in the **Nikitin** case discussed above, which involved similar tactics of deliberately vague petitions, of submitting irrelevant information and demanding more and more documents for review.

While Dolgorukov stalled by denying his responsibility for the debt, there were other possible motivations and strategies, most importantly, when a lawsuit was used primarily as the

additional leverage in the dispute resolution process that was mainly happening outside the court system. For example, Titular Councilor's wife **Aleksandra Vasilievna Kupriianova** delayed taking on her cousin's debt-ridden inheritance to avoid having it sold by his creditors, while at the same time making partial but regular payments.⁷⁹⁵ Of the total debt of 1,050 rubles she paid 200 or 300 rubles at a time even as the collection proceedings were taking place. Although her creditor Collegiate Assessor Samoriadov continually asking the court to sell the house (which was not possible until Kupriianova was registered as the legal owner), he did not otherwise attempt to speed matters, since the house only brought 8.57 rubles of monthly income and he was much better off getting payments from Kupriianova. She continued making payments throughout 1850 and 1851, rejecting attempts by the police to inventory the house. Finally, in March of 1852 the police finally sent her the sale notice but she refused again on the grounds that she had already paid off her debt to Samoriadov and her other debts were secured by her estate in Ruza County. In May the police came to inventory the house but she again refused and complained to the Civil Chamber, but lost, meanwhile making another payment in January, 1853. As of May of that year, the inventory had still not been carried out. As of 1857, the process was not yet over. The remarkable effect of this lawsuit was that its conclusion was not advantageous for either party. Kupriianova wanted to avoid the sale of her house in Moscow, while making partial payments from her other sources (she also owned small estates in Ruza County and in Riazan' and Kostroma provinces that brought, respectively, 1,021.43, 285.8575, and 285.715 rubles respectively and were mortgaged to other creditors, but not yet being sold). Her creditors were getting some of their money back instead of the house that was not bringing any significant

⁷⁹⁵ *TsIAM*, f. 92, op. 9, d. 803 (Kupriianova) (1847).

income. Unless Kupriianova's creditors at least implicitly condoned this kind of equilibrium, one would have to suppose that she was uncommonly crafty in resisting lawsuits by her creditors *and* by her relatives who were at the same time trying to reclaim their share of the inheritance.

Similar cases on an even grander scale could likewise be interpreted as involving negotiation and debt restructuring in the course of legal proceedings, as for example in the merchant **Ivan Ignatiev's** case from the earlier part of the century.⁷⁹⁶ The case started as early as 1798 against Ignatiev's debtor, a wealthy Moscow merchant Ivan Bol'shoi Kolosov and involved numerous civil, criminal, and bankruptcy proceedings. The original condition of the debt was that Ignatiev would be repaid after the Kolosovs' family property was divided up. However, he had a disagreement with Kolosov's brothers after his death, around 1815, and had them declared bankrupts and removed from managing Kolosovs' properties. In response, Gavril Kolosov (one of Ivan's brothers) claimed that some of Ignatiev's bills of exchange were fraudulent, starting a criminal proceeding. The case dragged on, even causing the emperor to set up a special commission for dealing with it. Meanwhile Gavril was freed to manage his factory, although he was arrested several times and eventually induced to admit that Ignatiev's claims were valid. Ignatiev then turned his attention to the other brother, Ivan Men'shoi Kolosov and had him imprisoned for mismanaging the factory. While technically this case represents an interminable bankruptcy proceeding with an occasional criminal twist, in fact life obviously went on during all these years, and debtors were allowed to manage the Kolosov property in the hopes that they would rebuild their business and repay their debts. Ignatiev and other creditors obviously did not

⁷⁹⁶ *TsIAM*, f. 16, op. 5, d. 241 (Ignatiev) (1830-37).

want to quickly bring the proceedings to a conclusion because in that case they would lose all hope for eventual repayment.⁷⁹⁷

As a debt litigation dragged on, the stakes became higher given the legal requirement for the debtor to pay the interest if he or she lost. The interest could be quite considerable in a case that lasted for a long time, such as that of Collegiate Councilor's wife **Strekalova**.⁷⁹⁸ This case, not showing Russian jurisprudence in its best light, involved the accounting between two wealthy tax farmers (the true financial elite in Nicholaevan Russia), to one of whom Strekalova was an heir. The original case started in 1819 and was only resolved against Strekalova in 1855, mainly because the plaintiff neglected to pursue it between 1822 and 1848. The interest that Strekalova had to pay was obviously quite considerable and consequently the rest of the litigation focused on Article 2094 of Russia's Civil Code, which did not allow the interest to exceed the principal. Strekalova's representative submitted what he thought was the required amount to the court, but it turned out to be insufficient and Strekalova's property was seized, all because the Senate either willingly or through ignorance disregarded Article 2094 and ordered that interest on Strekalova's debt be calculated until the day of payment, not the day it equaled the principal. Strekalova started another round of litigation through the County Court and the Civil Chamber (it was in her interest to move quickly and this last stage of the case was resolved in less than two years), until on June 28, 1857, the Senate ruled that because Strekalova had not paid when the final decision in the case was made in 1855, the interest did not stop running when it equalled the principal but continued to accrue until the payment day so as to discourage delay by the losing side.

⁷⁹⁷ This seems to have been common in large commercial bankruptcies. See Ransel, David L. *A Russian Merchant's Tale: The Life and Adventures of Ivan Alekseevich Tolchënov, Based on His Diary* (Bloomington, 2009); See also *TsIAM*, f. 16, op. 3, d. 1254 (*Ob ob'iavlenii kuptsa Goriunova bankrotom*) (1805-06).

⁷⁹⁸ *TsIAM*, f. 50, op. 5, d. 12287 (Strekalova) (1856-58).

Strekalova paid the rest of the money by September of that year. Another case supporting the notion that the rule intended to reduce delay actually increased delay and encouraged further litigation was that of Moscow *meshchanin* **Ivan Rylov**.⁷⁹⁹ He was imprisoned for not paying the fine for a wrongful appeal, which ruling he, in turn, wanted to appeal all the way to the tsar if he had to; he had nothing to lose because he was in prison for not paying the fine.

Finally, legal culture and legal practice always contains an irrational, emotional element, i.e., individuals can file and pursue lawsuits not because of potential monetary gain but because of a desire to harm their opponent or from some sense of affronted prestige (which can be not so irrational after all but closely affected an individual's standing). The case of **Sumgalter** above could be one such example, since the relatively small debt of 118 rubles does not seem to be worth years of litigation. Another case, that of noblewoman **Anna Vasilievna Faleeva**, involved an extremely wealthy litigant who delayed the resolution of the case because of a 21.51 ruble fine that she felt, apparently correctly, that she did not have to pay.⁸⁰⁰ Faleeva's late husband was another example of a Nicholaevan newly-made grandee, a taxfarmer who supplied victuals to the imperial Navy and ended up owing 318,000 rubles to the treasury as a penalty for selling defective provisions, in addition to private debts for over 100,000 rubles. Faleeva, as her husband's heir and his largest creditor, sued her husband's former partners for their share of the debt to the state. Complicated claims and counterclaims followed one another, including Faleeva's successful attempt to implement her plan of dividing up her property and its income to satisfy her own creditors. However, her chief creditor Collegiate Assessor Nikolai Kamenskii

⁷⁹⁹ *TsIAM*, f. 68, op. 2, d. 172 (*Perepiska...*).

⁸⁰⁰ *TsIAM*, f. 50, op. 5, d. 12153 (Faleeva) (1851).

argued that this aspect of the litigation constituted a punishable delay, enabling him to collect extra interest and a fine (*volokity*). Kamenskii's argument that a successful appellate proceeding could constitute a delay, of course, sounds strange to us, and would normally be, in turn, overturned on yet another appeal, except for the fact that the amount of fine was under 30 rubles and thus not subject to appeal. Considering that the amount of just over twenty rubles was not sufficiently large to cause Faleeva to launch an entirely separate phase of the litigation, she could only have been motivated by her desire to resist her opponents on every small issue possible.

There is no denying that some legal cases in pre-reform courts could last a very long time, sometimes decades. However, there were relatively few such cases, mostly involving complicated property arrangements by very wealthy families. There are two things that should be noted about these cases, which put this feature of the pre-reform system into better perspective. First, such cases should not be regarded as an ordinary legal case like those of Nikitin or Blagin. Rather, they involved complicated counterclaims, property restructuring and bargaining among the parties, for which actual court proceedings were but a backdrop, as in the cases of Kolosov or Faleeva. In other words, what appears to us as delay is most likely evidence that the main "events" in that lawsuit took place outside the courtroom. In any event, such extra-long cases challenge our understanding of what a "legal case" is, since they involved several spurts of court activity separated by many years' intervals. The second point is that at least some of this delay cannot be explained merely by the seemingly obvious fact that debtors wanted to avoid payment. Other factors were also important, such as a defendant's status as a civil servant saving him from personal arrest for debt (Tvorogova), the law's provisions to discourage delay by imposing large penalties raised the stakes for litigation and could cause the parties to

procrastinate with the resolution (Strekalova), plaintiffs' own hesitation to speed up the trial due to a weak legal position (Tvorogova), as well as a sense of hubris and maybe even a desire to injure one's opponent (Sumgalter or Faleeva). The fact that these motives could plausibly affect court proceedings thus enables us to adopt a more multifaceted view of pre-reform legal culture that vests individual litigants with more agency than previously allowed.

Out-of-Court Settlements

One of the major insights underlying this study is that pre-reform civil law was not merely a matter of individuals dealing with a monolithic Nicholaevan bureaucracy, but rather that the legal process involved intensive interpersonal communication and negotiation. Given that litigation was (as it always is) time consuming, unpredictable, and expensive, it is only to be expected that the legal process involved much private negotiation and that many cases would never reach judgment. This section argues that out-of-court settlements were common in pre-reform legal culture. Though settlements were by no means always fair, they represent another way in which individuals were able to assert their will when the legal system did not prove fully satisfactory as a means of resolving debt-related disputes.

In the United States today, it is rather commonplace to note that an overwhelming majority of cases are settled out of court. This is, of course, far from a recent phenomenon, as one article on a seventeenth-century local court in England has shown.⁸⁰¹ Robert Mnookin and Lewis Kornhauser, in their paper on U.S. divorce law from which I have borrowed this section's title, have emphasized the continuity between the social processes of negotiation and adjudication, viewing law "not as imposing order from above, but rather as providing a framework ... [to]

⁸⁰¹ Craig Muldrew, "Credit and the Courts: Debt Litigation in a Seventeenth-Century Urban Community" *The Economic History Review*, New Series, Vol. 46, No. 1 (Feb., 1993), pp. 23-38.

determine ... rights and responsibilities.” The court’s function in some cases could be limited to merely approving, even rubber-stamping private negotiations.⁸⁰² These authors point out that despite the advantage of reducing costs by settling, some cases will still be litigated for many possible reasons, such as the desire to punish the other party rather than increasing one’s net worth, the distaste for negotiation or distrust of the opponent, calling the bluff on the party that makes excessive threats, overestimating one’s chances of winning, or the impossibility of dividing the object of dispute. Other scholars have also noted that legal considerations, in turn, affect private negotiations; for example, Herbert Jacob has argued that the effect of a law depends on the way a claim is framed (i.e., whether people articulate their problems in legal terms), on the involvement of intermediaries, and on claimant use of informational networks (i.e., whether one’s friends and relatives promote legalistic thinking). For example, Jacob found that debtors in the United States who knew others who had gone through bankruptcy were more likely to avail themselves of that procedure, while in divorce cases bargaining may occur with little awareness or concern about law.⁸⁰³

While in modern Anglo-American law out-of-court settlements are something worked out in practice, law in imperial Russia explicitly promoted dispute settlement outside the regular court structure. Even under the post-1864 civil procedure, a judge was required to exhort the parties to resolve their differences amicably before beginning the trial. Interestingly, the pre-reform legal system was even more explicit in its encouragement of settlement. Pre-reform code of civil procedure, found in Volume X, part II of the Digest of the Laws, included detailed provisions for

⁸⁰² Mnookin and Kornhauser, “Bargaining in the Shadow of the Law.” (cites Eisenberg on private ordering through negotiation).

⁸⁰³ Herbert Jacob, “The Elusive Shadow of the Law,” *Law & Society Review*, Vol. 26, No. 3 (1992), pp. 565-590.

out-of-court settlements (*mirovaia sdelka*), arbitration (*treteiskii sud*), and arbitration commissions that could be established for indebted gentry landowners (*posrednicheskaia komissia*). It appears that the pre-reform legal system was structured similarly to the system described by Mnookin and Kornhauser, namely, as a framework for individuals to resolve those disputes that could not be solved through negotiation and arbitration.⁸⁰⁴

While it is impossible to identify from court records the disputes that were settled before a case was filed, it was a routine matter to settle *after* beginning litigation (especially given the rather lengthy turnaround time in pre-reform courts). One very typical example is the debt case of Collegiate Registrar **Nikolai Dolbinin** that was begun in 1856 by the Moscow *meshchanin* Lev Spiridonov, who wanted to collect 4,950 rubles in bills of exchange issued by the Vladimir *meshchanin* Kornil Medvedkin, who claimed that he never issued them.⁸⁰⁵ The bills were traced to Dolbinin (who served at the Moscow Admiralty) who claimed that he did get them from Medvedkin, which was confirmed by Medvedkin's coachman but not confirmed by handwriting analysis. The rather confusing investigation of who owed what to whom continued for almost ten years, until in 1864 Spiridonov petitioned the court that he wanted to discontinue the claim because he had a "reckoning" (*raschet*) with Dolbinin. The Criminal Chamber (which handled the case because it involved a denial of signature on the bill of exchange) closed the case in 1867 because of the mutual reconciliation. Another case that is indistinguishable in all aspects began in January, 1859 when a Moscow merchantess, **Irina Vorobiova**, submitted a debt claim for

⁸⁰⁴ Similar – to the way late imperial Chinese law is described in the book about litigation masters: a small and cheap legal system designed to resolve those few disputes that could not be settled by other means. See Melissa Macauley, *Social Power and Legal Culture: Litigation Masters in Late Imperial China* (Stanford, 1998).

⁸⁰⁵ *TsIAM*, f. 50, op. 4, d. 8859 (Dolbinin) (1856-67).

1,112 rubles against another Moscow merchant, Ivan Isaev.”⁸⁰⁶ A literate 48-year-old who “knew the laws of the Russian state” claimed that he did not know or have any dealings with Vorobiova but did borrow 400 rubles from her sons. Then on March 30 Vorobiova and Isaev submitted a joint petition to close the case because, upon a mutual accounting, this debt ended up being “void.” The Chamber was happy to oblige, although it took until 1867 to issue the final ruling that was obviously not high on its priority list. In this and other similar cases it is interesting that the courts chose not to assert their privilege of pursuing a potentially criminal case of forgery regardless of whether the parties reconciled.⁸⁰⁷ But the settlement could be reversed, as, for example in the case of **Sumgalter** discussed above, where creditor was offered a partial payment by debtor’s father-in-law, but apparently was unwilling to forgive the remainder of the debt, for which reason the payment was revoked and the litigation continued.

In any event, it is clear that actual court action was only incidental to the process of mutual negotiation and accounting among the parties to the dispute. This kind of settlement could happen even after many years of litigation, as for example in the **Tvorogova** case already discussed, which involved a debt claim against the highly ranked Prince Dolgorukov who for many years successfully delayed Tvorogova’s claim. In 1859, seventeen years after the suit began, Tvorogova’s property was taken under trusteeship (presumably because of her old age), and her son (a former cavalry officer), no doubt realizing that he was unlikely to win in court against one of the most important bureaucrats of the empire, and reached an agreement with Dolgorukov to discontinue their suit: Tvorogov would not demand payment of the debt and

⁸⁰⁶ *TsIAM*, f. 50, op. 4, d. 8836 (Vorobiova) (1866-67).

⁸⁰⁷ The Criminal Code permitted settlements in criminal cases (Art. 169 and 171).

Dolgorukov would not ask for the damages, fees and penalties that would be due to him had he won the case. However, Tvorogova's trustee, a civil servant named Kuz'min, would not agree to stop the suit, petitioning the court that his case was "righteous" (*pravoe*) and that he could not see what kind of damages Dolgorukov might have suffered in the case. Both the Noble Trustee Board and the courts agreed, and as of 1863 the case was still ongoing.

In addition to this kind of mutual accounting and negotiation, another important aspect of settlement involved debt forgiveness. Cases involving it in some way were extremely numerous and typically included representatives of fairly humble ranks of society. One notable exception was the 1871 case of Colonel **Nikolia** (a Russian calque of the French Nicolas).⁸⁰⁸ A well-off engineer and entrepreneur, he became utterly bankrupt, but his creditors, impressed by his new patent for using old rails to construct bridges and other buildings (apparently reinforced concrete), were willing to free him from "all consequences of insolvency" in exchange for 3,000 rubles in five years, 40% of profit from the patent, and the eventual 100% payment of all debts (without interest). One of the creditors, however, protested, citing Nikolia's previous business failures, and proposed to continue the operations of his bankruptcy board. Seemingly it could be a bad idea to be a hold out: for example, in 1865 the old Count Tolstoi bought up his son Dmitrii's debt and had his insolvency case closed, although some of the Moscow usurers resisted. The last one to hold out had to eventually settle with the Count instead of selling their claims.⁸⁰⁹

⁸⁰⁸ *TsIAM*, f. 142, op. 4, d. 64 (Nikolia).

⁸⁰⁹ *TsIAM*, f. 81, op. 18, d. 1259 (Tolstoi) (1863-5).

Many more cases of debt forgiveness involved impoverished debtors who were clearly unable to repay. The peasant Voronov forgave the debt of one of his workmen, *meshchanin* **Viktor Lebedev**, “because of his poverty.”⁸¹⁰ A “trading” peasant woman **Mavra Bubentsova**, who made a living by selling fish, became insolvent and her daughter (also a trading peasant) offered to pay one percent of her debt as a settlement. However, the creditors “condescended” to her “ruined and impoverished condition” and discontinued “all collection” against her.⁸¹¹ A 52-year old Moscow merchantess **Sofia Tepfer** was indicted for selling off her late husband’s movable property (worth 149.62) instead of turning it over to his creditors.⁸¹² She claimed to have done it out of necessity to feed her children and her “extreme poverty.” She submitted a special certificate of her poverty from the senior Lutheran pastor in Moscow. The Magistrate sentenced her to a year in the workhouse, but ruled “to pass no judgment on this matter” because the creditors had discontinued their claims against her. *Meschanka* **Maria Lebedeva**, who claimed to be a music teacher, rented pianos from various Moscow music shops, and then proceeded to pawn them, was freed from responsibility by one of the pawnbrokers who was forced to give back the piano because of his consideration for her repentance of and because she had small children.⁸¹³

Despite these and other similar cases, it would not be accurate to conclude that “settlement” usually meant that a debtor was able to avoid paying the full amount or that Russian courts were slanted in the debtor’s favor. Just the opposite kind of situation was also common, when a

⁸¹⁰ *TsIAM*, f. 81, op. 16, d. 1171 (Lebedev) (1861).

⁸¹¹ *TsIAM*, f. 78, op. 4, d. 275 (Bubentsova) (1869-70).

⁸¹² *TsIAM*, f. 50, op. 4, d. 5022 (Tepfer) (1858-59).

⁸¹³ *TsIAM*, f. 81, op. 18, d. 1322 (Lebedeva) (1865) (this case is also discussed in Chapter Five). Maybe discuss also 142.4.1446 (Dzhakson) (1872).

creditor had considerable leverage vis-à-vis his debtor and forced him to enter into a clearly disadvantageous settlement. For example, Collegiate Secretary **Semen Briukhatov**, apparently a well-known Moscow usurer, was indicted in criminal court for defrauding a Tiraspol' nobleman Nikolai Avramov.⁸¹⁴ Briukhatov apparently purchased the estate of Avramov's uncle without paying the promised amount. In revenge, Briukhatov had Avramov put in the debtors' prison in Moscow for his 15,000 ruble debt. After about six months, in March of 1866, Avramov and Briukhatov submitted a joint petition to the Moscow Governor General, asking him to discontinue all prosecution of Briukhatov. Avramov emphasized that this case was basically civil in character and that "a peaceable settlement is permitted not only in civil cases, but also in criminal ones." He asked that all the relevant documents be returned to Briukhatov, that the interdiction be removed from his property, and that he be allowed to go abroad for medical treatment. However, only six days later Avramov submitted another petition to Governor Dolgorukov, claiming that "[b]eing deprived of freedom, which is extremely necessary to me because of my other affairs, devastated morally by my misery, with my health completely ruined, I was in desperate circumstances and hardly in possession of my reason. [...] Briukhatov, having learned that the investigation of his actions was taking an unfavorable turn, suggested to me to stop the case by settlement. Excited simply by the thought of freedom [...], I gladly accepted Briukhatov's offer [...]." In exchange for dropping his claims, Avramov would be freed from prison and get back the formal purchase agreement for the land Avramov was selling, as well as the moneyless bill of exchange that was in Briukhatov's possession. However, Briukhatov did none of these things, for which reason Avramov asked to consider the settlement as void.⁸¹⁵ A

⁸¹⁴ *TsIAM*, f. 50, op. 3, d. 8323 (Briukhatov) (1865-66).

⁸¹⁵ It is unclear how the case ended, except that by July of that same year Briukhatov was dead.

similar impasse occurred in the case of nobleman Vladislav Khlopetskii, who was trying to collect money from the university student **Ivan Chulkov**.⁸¹⁶ The debtor turned out to have been a minor, thus making the debt void. However, Chulkov himself was going to be prosecuted for fraudulently misrepresenting his age, and it turned out to be more worthwhile for the two of them to settle: in the end Chulkov paid the debt and both parties petitioned the court to close the case because it was all a “misunderstanding which cleared up at our personal meeting.” The police and the Aulic court accepted this story and closed the case.

Pressure to settle a lawsuit could also occur largely outside of the legal framework and involve “peer” pressure from far more respectable individuals. An example is the case of the young Prince Nikolai Obolenskii, who owed 14,500 silver rubles to major general’s wife **Anna von Bussau**.⁸¹⁷ As discussed in Chapter Four, it is unclear whether this was a genuine debt (according to von Bussau) or whether Obolenskii was induced to sign the debt note by his guardian as some part of a complicated noble inheritance arrangement. Eventually, the debt collection case included the following curious document:

Certificate:

We, the signatories below, certify, according to our conscience and honor, that Lieutenant Prince Nikolai Obolenskii, at the apartment of Anna Pavlova, Major General’s widow von Bussau, on the sixteenth day of this August, 1863, in our presence, brought his apology for still not paying her his debt pursuant to the promissory letter for 15,000 rubles, and, inviting us to be witnesses of his words, offered her to pay in the beginning of this September, 1863, nine thousand rubles, promising in the name of his honor to pay the other six thousand rubles at the first opportunity. In certification of which we issue this certificate which includes our stamped coat of arms (*pechat’*) and our signature. Saint Petersburg, August 20, 1862 [1863? – S.A.]. Signed: Major-General Maleev, Gubernial Secretary A. Kametetskii, Major De Galet.⁸¹⁸

⁸¹⁶ *TsIAM*, f. 81, op. 16, d. 1998 (Khlopetskii) (1864-66).

⁸¹⁷ *TsIAM*, f. 81, op. 18, d. 1277 (von Bussau).

⁸¹⁸ *TsIAM*, f. 81, op. 18, d. 1277, l. 162 (von Bussau).

Von Bussau clearly enrolled the help of her kinship/acquaintance network to tie down her elusive debtor. However, this solemn ritual seems to have had little influence on Obolenskii's desire to avoid paying such a huge amount (his family's affairs were in disarray, forcing him to retire from a prestigious cavalry regiment only a few years previously). On November 22 of that same year von Bussau petitioned the Aulic court, claiming that Obolenskii had visited her, asked to finish this affair "peaceably" (*poliubovno*), and offered settlement conditions, which she rejected because she no longer believed his promises. She attached the draft settlement agreement brought to her by Obolenskii:

We belowmentioned have concluded between us a peaceful resolution in regard to the property division between me and my sister [...], according to which my part is to include ____ [serf] souls in the Beltsy County of Tver province, which souls with their apportioned land have been already submitted for redemption. The redemption certificates that are to be received I will turn over to von Bussau to satisfy [my debt] ... the rest of the money will come from a "merchant's veksel" for ten years.⁸¹⁹

This note suggests that Obolenskii intended to take advantage of the impending liberation of the serfs and pay her with the redemption certificates issued by the government to serfowners as payment for the serfs they were losing. Von Bussau's problem with that was that redemption certificates were to be redeemed by the government only in the remote future, and meanwhile if she wanted to benefit from Obolenskii's payment, she would have to sell them at a considerable discount.

This section intended to show that out-of-court settlements could be effected by individuals from all social strata and in a variety of circumstances and power arrangements, and that they could favor either debtor or creditor, or both. A settlement could signify a commercial arrangement, a charitable debt forgiveness, and it could reveal either a legal impasse, or, to the

⁸¹⁹ *TsIAM*, f. 81, op. 18, d. 1277, l. 112 (von Bussau).

contrary, a realization by one of the parties that he or she could not win the dispute. Settlements thus reveal another, less formal aspect to pre-reform legal practice, showing that the organizational structure introduced by Catherine II in 1775, which delegated an important role to the less formal dispute resolution mechanisms, found its manifestation in actual court practice, and that pre-reform civil law, in this important sense, could serve as merely a background framework for private negotiation and debt restructuring.

Conclusion

This section has examined one of the most common observations about pre-reform legal procedure, that it was greatly handicapped by Peter the Great's rejection of adversarial proceedings in favor of the inquisitorial system that involved greater control on the part of the courts over the direction of the trial and generally implied secret and written procedures. As actual court cases show, practical implementation of this system turned out in several respects the opposite of the envisioned well-oiled mechanism for shuffling paperwork between the courts. While pre-reform courts arguably had greater control over the proceedings at the final, trial stage, since it could not be easily swayed by the arguments of lawyers or the public, the reverse side of the coin was that at the pre-trial stage – which involved the often-prolonged exchange of written arguments – courts largely lacked that sought-after control precisely because of the use of written procedures that the tsars and their advisors were unwilling or unable to regulate effectively. Thus, while Russian law *was* inquisitorial in many important senses, in actual practice it retained some important features of adversariality.

Another way in which the active role of individuals is revealed in the pre-reform legal process is shown by the variety of factors and circumstances that led them to delay the

proceedings or, to the contrary, to bring them to an end through an out-of-court settlement. This very variety of situations makes it impossible to state conclusively that the pre-reform system was either pro-creditor or pro-debtor; it is only possible to make a banal observation that procedural rules benefited the litigant with the most time, money, and social status and connections.

Finally, both the cases that were decades-long, as well as those that were at some point settled, represent pre-reform law in a different light (from the commonly accepted view of a rigid and hopelessly corrupt system), which was in some way contemplated by the 1775 statute establishing the province-based court system: namely, as a system that did not seek to be overbearing with respect to a population that was expected to retain and utilize more informal mechanisms of dispute resolution. Instead, the courts were to serve as the final arbiter. This system thus allowed considerable space in which litigants might (and did) maneuver, and the 1864 reform took away some of that space, filling it instead with more elaborate court rituals.

CONCLUSION

I argue throughout this study that the informal and overwhelmingly personal links of mutual trust and dependence that pervaded imperial Russia's culture of debt were diverse enough and extensive enough to illuminate several poorly understood aspects of Russian history.

Credit relations bring out the relationship between imperial Russia's formal structure of legal estates and the formation of its propertied "middling" classes. The often emphasized lack of political activity and ambition of this group at the end of the imperial period is beyond the scope of this work. However, debt cases and other legal documents reveal Russia's various propertied groups – including gentry, merchants, townspeople, and even some clergy and better-off peasants – not only to be integrated in a web of debt relations that transcended social and estate boundaries, but also showed that this group as a whole was more active in defining, protecting, and promoting its propertied interests than is often assumed. This was done in part through interpersonal negotiation and cooperation, and in part through the use of legal and administrative channels, including legal formalities, litigation, and interaction with various officials. Debt-related documents thus reveal the law not as some kind of "fiction" neglected and even despised by the population, but rather as a tool that was actively used for all of its actual and phantom imperfections, and often adapted in practice – as is any other law – to suit actual individuals' strategies and interests. Tsarist officialdom, in turn, appears not so much as a monolith imposing itself on the subjects but increasingly as a provider of services to the population (or at least to its propertied part).

Traditional structures on which the culture of debt was based continued to be important in the mid-nineteenth century, before the age of large banks and other formal credit-related institutions.

Many borrowers and lenders liked to deal with friends and relatives, or at least with others of the same social group. Kinship and family structures were related to the culture of debt in important and complicated ways. However, these traditional structures of personal acquaintance, kinship, or community were no longer sufficient. The demand for credit was growing, while the supply was at the same time heavily concentrated in Moscow (for merchants) and rather diffuse (for non-commercial borrowers). Loan transactions involving intermediaries were not uncommon, nor were transactions between completely unacquainted persons. One consequence of this fact was that reliance on trust and reputation enabled the types of fraud and embezzlement described in this study that were based on the abuse of reputation and respectability (in its many guises).

Another consequence of the growth and diversity of Russia's credit network was the increased importance of the legal system. Russia's legal system before the reform of 1864 combined paternalism and reliance upon individual discretion, much like the Nicholaevan economy (which limited the government's direct involvement) and society (which delegated considerable authority to heads of household and serfowners). The rules regulating the form of debt documents left much of the transaction's structure to the parties' discretion, while reserving special safeguards for certain types of loans and protecting certain types of borrowers. The institutions of debt imprisonment and bankruptcy conceded considerable authority to individual creditors who were free to imprison individuals for up to five years, could grant bankruptcy discharge, and even commit individuals for criminal trial. At the same time, the government strove to prevent the abuses of the debt prisons such as those that existed in England, as well as attempted to regulate bankruptcy proceedings.

Legal cases in pre-reform courts, as is well known, did not involve the public and oral trial between two freely competing sides that was introduced by the reform of 1864. Nonetheless, pre-reform court procedure left much initiative and discretion to individual litigants (arguably, too much), who controlled the exchange of pleadings, employed legal counsel of varying competence, and had access to the all-important case summary used by the judges to make their rulings. Those litigants who had the means to do so commonly used dilatory tactics, which should hardly be attributed to the courts' corruption (since the overworked court staff was motivated to conclude the case and move on to the next one with its own opportunities for enrichment, rather than to delay and risk the displeasure of the higher-level court).

While administrative authorities continued to be able to affect legal proceedings in several ways, they did so indirectly and without compromising the courts' relative autonomy (subject to the Minister of Justice) from other provincial officials (who were subject to the Minister of Interior). Administrative meddling and lower-level bribery and other types of corruption were nothing unusual, but should be understood within the context of substantive and procedural legal rules, which corruption does not appear to have replaced. Whenever possible, officials avoided interfering with individuals' property rights, despite their distrust of moneylending (which was also shared by the public). During the trial itself, judges followed Russia's rigid law of evidence based on the archaic system of formal proofs, although I suggest that "circumstantial" arguments were more influential than was explicitly acknowledged. Moreover, one type of evidence that was most important in debt cases, i.e., handwriting comparison and document analysis, inevitably involved discretionary judgments by the judges because of the way it was conducted in mid-nineteenth century Russia.

In sum, there is much in pre-reform legal practice that appears as peculiar and anachronistic to the modern reader, but better-off individuals, at least, were able to use the law to settle conflicts and protect their property rights without, however, necessarily enjoying a pleasant courtroom experience or invariably receiving a “fair” trial.

At the time of this writing, on the wake of the predictably depressing outcome of the latest Khodorkovsky trial, it becomes obvious that Russia’s legal system in the near future is not going to precisely fit western standards of the rule of law, despite all the rhetoric of the Russian authorities about exterminating the population’s “legal nihilism.” Therefore, Russia’s culture of bureaucratic legality that flourished before being successively challenged and altered by the liberal and socialist legal models, becomes once more crucial for understanding Russia’s legal development, its legal culture and legal practice.

BIBLIOGRAPHY

Archival Materials

Tsentral'nyi Istoricheskii Arkhiv Moskvyy

- fond 16 Upravlenie moskovskogo general-gubernatora*
- fond 45 Moskovskii gubernskii magistrat*
- fond 49 Kantseliariia moskovskoi uezdnoi dvorianskoi opeki*
- fond 50 Moskovskaia Palata grazhdanskogo suda i Moskovskaia Palata ugolovnogo suda*
- fond 78 Moskovskii kommercheskii sud*
- fond 81 Moskovskii nadvornyi sud*
- fond 84 Moskovskii slovesnyi sud*
- fond 91 Moskovskii sovestnyi sud*
- fond 92 Moskovskii uezdnyi sud*
- fond 105 Moskovskaia uprava blagochiniia*
- fond 131 Moskovskaia sudebnaia palata*
- fond 142 Moskovskii okruzhnoi sud*
- fond 371 Pervaia moskovskaia muzhskaia gimnazia*
- fond 424 Moskovskaia sokhrannaia kazna pri Moskovskom Vospitatel'nom dome*
- fond 1581 Moskovskii popechitel'nyi o tiurmakh komitet*

Gosudarstvennyi Arkhiv Rossiiskoi Federatskii

- fond 123 Obshchestvo popechitel'noe o tiur'makh*

Pre-Soviet Published Sources

- Entsiklopedichskii slovar' Brokgauza i Efrona* (Moscow, 1890-1907).
- Materialy dlia geografii i statistiki Rossii, Khersonskaia guberniia*, part 1 (St. Petersburg, 1863).
- Moskva ili istoricheskii putevoditel' po znamenitoi stolitse Gosudarstva Rossiiskogo* (Moscow, 1827).
- Polnoe Sobranie zakonov Rossiiskoi imperii, 1649 – 1913* (St. Petersburg, 1830 – 1916).
- Statisticheskie tablitsy Rossiiskoi imperii za 1856 god* (St. Petersburg, 1858).

Svod zakonov Rossiiskoi Imperii (St. Petersburg, 1832, 1842, 1857).

Voenno-statisticheskoe obozrenie Rossiiskoi imperii, vol. VI, part 1 (St. Petersburg, 1853).

Voenno-statisticheskoe obozrenie Rossiiskoi imperii, vol. III, part 1 (St. Petersburg, 1851).

Zakon ob otmene lichnogo zaderzhaniia neispravnykh dolzhnikov (Moscow, 1879).

Anonymous (I.S. Aksakov). *Prisutstvennyi den' ugovnoi palaty. Sudebnye stseny iz zapisok chinovnika ochevidtsa* (Leipzig, 1874).

Aksakova, V.S. *Dnevnik, 1854-55* (Moscow, 2004).

Bantysh-Kamenskii, D.N. "Shemiakin sud v XIX stoletii," *Russkaia starina*, Vol. VII (1873), pp. 735-84.

Blinov, I.A. "Sudebnyi stroi i sudebnye poriadki pered reformoi 1864 goda" in *Sudebnye ustavy 20 noiabria 1864 g. za piat' desiat let*. Vol 1 (Petrograd, 1914), pp. 3-101.

Bochkarev, B. "Doreformennyi sud" in N.V. Davydov and N.N. Polianskii, eds. *Sudebnaia reforma*, pp. 205-241.

Bolotov, A.T. *Zhizn' i prikliucheniia Andreia Bolotova, 1738-1793* (Moscow, 1931).

Burinskii, E.F. *Sudebnaia ekspertiza dokumentov: proizvodstvo i pol'zovanie eiu* (St. Petersburg, 1903).

Chikhachev, A.I. "O dolgakh." *Zemledel'cheskaia Gazeta* (Sept.6, 1846).

Dmitriev, F.M. *Istoriia sudebnykh instantsii i grazhdanskogo apelliatsionnogo sudoproizvodstva ot Sudebnika do Uchrezhdeniia o guberniiakh* (Moscow, 1859).

Dmitriev, M.A. *Glavy iz vospominanii o moei zhizni* (Moscow, 1998).

Dolgorukov, I.M. *Povest' o rozhdenii moiom, proiskhozhdenii i vsei zhizni*, 2 vols. (St. Petersburg, 2004)

Dzhanshiev, G.A. *Epokha velikikh reform*, 2 vols. (St. Petersburg, 1905).

Filimonov, D. "Kreditnye uchrezhdeniia Moskovskogo vospitatel'nogo doma." *Russkii Arkhiv*, Vol. XIV, kn. 1 (1876), pp. 265-275.

Foinitskii, I.Ia. *Moshennichestvo po deistvuiushchemu russkomu pravu* (St. Petersburg, 1871).

Gartung, N. *Istoriia ugovnogo sudoproizvodstva i sudoustroistva Frantsii, Anglii, Germanii i Rossii* (St. Petersburg, 1868).

Gessen, I.V. and Kaminka, A.I. eds. *Velikie reformy shestidesiatykh godov v ikh proshlom i nastoiashchem* (St. Petersburg, 1905).

- Gessen, I.V. *Istoriia russkoi advokatury* (Petrograd, 1914)
- Gol'msten, A.Kh. *Istoricheskii ocherk russkogo konkursnogo protsessa* (St. Petersburg, 1888).
- Gol'msten, A. Kh. *Uchenie o pravakh kreditora oprovergat' iuridicheskie akty, sovershennye dolzhnikom v ego ushcherb, v sovremennoi russkoi literature* (St. Petersburg, 1893).
- Grinevich, A. "O lichnom zaderzhanii v grazhdanskom protsesse." *Zhurnal grazhdanskogo i ugolovnogo prava*, No. 1 (1873), pp. 55-102.
- Kolmakov, N.M. "Staryi sud," *Russkaia starina*, Vol. 52, No. 11 (1886), pp. 511-544.
- Malyshev, K.I. *Istoricheskii ocherk konkursnogo protsessa* (St. Petersburg, 1871).
- Markov, A.N. *Pravila advokatskoi professii v Rossii* (Moscow, 2003) (orig. 1913).
- Meier, D.I. *Iuridicheskii sbornik* (Kazan, 1855).
- Nefediev, Ye.A. *Souchastiie v grazhdanskom protsesse* (Kazan', 1891).
- Nevolin, K.A. *Istoriia rossiiskikh grazhdanskikh zakonov* (St. Petersburg, 1851).
- Nol'ken, A. *Ustav o Vekseliakh: Prakticheskoe rukovodstvo* (St. Petersburg, 1902).
- Pikhno, D.I. "Istoricheskii ocherk mer grazhdanskikh vzyskanii po russkomu pravu", *Kievskie Universitetskie Izvestiia*, Nos. 8-10 (1874).
- Pobedonostsev, K.P. *Kurs grazhdanskogo prava*, 3 vols. (St. Petersburg, 1868–1880).
- Polovtsov. A.A. *Russkii biograficheskii slovar'* (Moscow, 1994-2000 reprint).
- Rozenzweig, G.O. *Iz zaly suda. Sudebnye ocherki i kartinki* (St. Petersburg, 1900).
- Sergeevich, V.I. *Leksii po istorii russkogo prava* (St. Petersburg, 1890).
- Shershenevich, G.F. *Kurs torgovogo prava*, 4th edn, 4 vols. (St. Petersburg and Moscow, 1908–1912).
- Shershenevich, G.F. *Nauka grazhdanskogo prava v Rossii* (Kazan', 1893).
- Skrebitskii, A.I. *Krestianskoe delo v tsarstvovanie imperatora Aleksandra II*, 4 vols. (Bonn, 1862 - 1868).
- Sveshnikov, N.I. *Vospominaniia propashchego cheloveka* (Moscow, 1996).
- Talberg, D.G. "Obshchestvo popechitel'noe o tiur'makh" in *Zhurnal grazhdanskogo i ugolovnogo prava*. Vol. 19, No. 5 (1878).
- Troinitskii, A.G. *Krepostnoe naselenie v Rossii po 10-i narodnoi perepisi* (St. Petersburg, 1861).
- Varentsov, N.A. *Slyshannoe. Vidennoe. Peredumannoe. Perezhitoe* (Moscow, 1999).

- Vas'kovskii, Ye.V. *Organizatsiia advokatury* (St.Petersburg, 1893).
- Vladimirskii-Budanov, M.F. *Obzor istorii russkogo prava* (Kiev, 1908) (reprint Moscow, 2005).
- Vodovozova, Ye. N. *Na zare zhizni* (St. Petersburg, 1911 and Moscow, 1987).
- Voltke, Grigorii. *Pravo torgovli i promyshlennosti v Rossii v istoricheskom razvitii (xix vek)* (St. Petersburg, 1905).
- Zakhar'in, I.N. "Rasskazy iz prezhnei sudebnoi praktiki." *Russkaia starina*, Vol. IV (1874), pp. 777-780.
- Zavadskii, S.V. *Kassatsionnaia praktika po obscheimperskomu konkursnomu pravu i protsessu* (St.Petersburg, 1913).
- Zavadskii, S.V. *Svod obscheimperskikh zakonopolozhenii o torgovoi i netorgovoi nesostoiatel'nosti i ob administratsiakh* (St. Petersburg, 1914).

Historiography of Imperial Russia

- Ananich, B.V., ed. *Kredit i banki v Rossii do nachala XX veka: Sankt-Peterburg i Moskva* (St. Petersburg, 2005).
- *Bankirskie doma v Rossii, 1860 – 1914: ocherki istorii chastnogo predprinimatel'stva* (Leningrad, 1991).
- Babrowski, Jörg. *Autokratie und Justiz: Zum Verhältnis von Rechtsstaatlichkeit und Rückständigkeit im ausgehenden Zarenreich 1864-1914* (Frankfurt am Main, 1996).
- Balzer, Harley, ed. *Russia's Missing Middle Class: The Professions in Russian History* (Armonk, 1996).
- Becker, Elisa Marielle. "Medicine, Law and the State: The Emergence of Forensic Psychiatry in Imperial Russia", Ph.D. dissertation, University of Pennsylvania (2003).
- Bhat, Girish N. "Trial by Jury in the Reign of Alexander II: A Study in the Legal Culture of Late Imperial Russia, 1864-1881." Ph.D. dissertation, University of California at Berkeley (1995).
- Blum, Jerome. *Lord and Peasant in Russia: From the Ninth to the Nineteenth Century* (Princeton, 1961).
- Borovoi, S.Ia. *Kredit i banki Rossii (seredina XVII v.–1861 g.)* (Moscow, 1958).
- "Rostovshchичество, kazennye ssudy i gosudarstvennyi dolg v protsesse pervonachal'nogo nakoplenia v Rossii." In *K voprosu o pervonachal'nom nakoplenii v Rossii (xvii – xviii vv.)*. *Sbornik statei* (Moscow, 1958).
- "Kreditnaia politika tsarisma v usloviakh razlozheniia krepostnichestva." *Voprosy Istorii* (Feb., 1954), pp. 129-138.

- “*K voprosu o skladyvanii kapitalisticheskogo uklada v Rossii XVIII veka.*” *Voprosy Istorii*, (May, 1948), pp. 67-77.
- Bovykin, V.I., et al., eds. *Istoriia predprinimatel'stva v Rossii* (Moscow, 1999).
- Bovykin, V.I. *Formirovanie finansovogo kapitala v Rossii* (Moscow, 1984).
- Bugrov, A.V. *Ocherki po istorii kazennykh bankov v Rossii* (Moskva, 2003).
- Burbank, Jane. *Russian Peasants Go to Court: Legal Culture in the Countryside, 1905-1917* (Bloomington, 2004).
- “Discipline and Punish in the Moscow Bar Association,” *Russian Review* 54, no. 1 (January 1995), pp. 44-64.
- Clowes, Edith, et al., eds. *Between Tsar and People: Educated Society and the Quest for Public Identity in Late Imperial Russia* (Princeton, 1991).
- Cherkasova, N.V. *Formirovanie i razvitie advokatury v Rossii: 60–80 gody XIX v.* (Moscow, 1987).
- Crisp, Olga and Edmondson, Linda, eds. *Civil Rights in Imperial Russia* (Oxford, 1989).
- Dulov, A.V. and Krylov, I.F. *Iz istorii kriminalisticheskoi ekspertizy v Rossii: ekspertiza dokumentov* (Moscow, 1960).
- Domar, Evsey D. and Machina, Mark J. “On the Profitability of Russian Serfdom.” *The Journal of Economic History*, Vol. 44, No. 4 (Dec., 1984), pp. 919-955.
- Efremova, N.N. *Sudoustroistvo Rossii v XVIII-pervoi polovine XIX vv. (istoriko-pravovoe issledovanie)* (Moscow, 1993).
- Emmons, Terence. *The Russian Landed Gentry and the Peasant Emancipation of 1861* (Cambridge, 1968).
- Engel, Barbara Alpern. *Breaking the Ties that Bound: The Politics of Marital Strife in Late Imperial Russia* (Ithaca, 2011).
- Field, Daniel. *The End of Serfdom: Nobility and Bureaucracy in Russia, 1855–1861* (Cambridge, 1976).
- Frank, Stephen. *Crime, Cultural conflict, and Justice in Rural Russia, 1856-1914* (Berkeley, 1999).
- Freeze, Gregory L. “The *Soslovie* (Estate) Paradigm and Russian Social History.” *The American Historical Review*, Vol. 91, No. 1 (Feb., 1986), pp. 11-36.
- Gindin, I.F. *Banki i ekonomicheskaiia politika v Rossii (xix-nachalo xx v.)* (Moscow, 1997).

- Grant, Jonathan. *Big Business in Russia: The Putilov Company in Late Imperial Russia, 1868-1917* (Pittsburgh, 1999).
- Gernet, M.N. *Istoriia tsarskoi tiur'my*, 5 vols, 3rd ed., (Moscow 1960-3).
- Hellie, Richard. *Enserfment and Military Change in Muscovy* (Chicago, 1971).
- *Slavery in Russia, 1450-1725* (Chicago, 1982).
- Hoch, Stephen L. “The Banking Crisis, Peasant Reform, and Economic Development in Russia, 1857-1861,” *The American Historical Review*, Vol. 96, No. 3 (June, 1991), pp. 795-820.
- Hollingsworth, Barry. “John Venning and Prison Reform in Russia, 1819-1830.” *The Slavonic and East European Review*, Vol. 48, No. 113 (Oct. 1970), pp. 537-556.
- Ignatovich, I.I. *Pomeshchich'i krestiane nakanune osvobozhdenia* (Leningrad, 1925).
- Ivanov, P.D. and Pidzhakov, A.Iu. *Stanovlenie i razvitie instituta bankrotstva v Rossii i stranakh Zapadnoi Evropy* (St. Petersburg, 2003).
- Kaiser, Daniel H. “‘Forgive Us Our Debts’: Debts and Debtors in Early Modern Russia.” In *Forschungen zur osteuropaischen Geschichte*, pp. 155-193 (Berlin, 1995).
- Kaiser, Friedhelm Berthold. *Die Russische Justizreform von 1864: Zur Geschichte der Russischen Justiz von Katharina II bis 1917* (Leiden, 1972).
- Kamenskii, A.B. *Povsednevnost' russkikh gorodskikh obyvatelei: istoricheskie anekdoty iz provintsial'noi zhizni XVIII veka* (Moscow, 2006).
- Kelly, Catriona. *Refining Russia: Advice Literature, Polite Culture, and Gender from Catherine to Yeltsin* (Oxford, 2001).
- Kollmann, Nancy Shields. *By Honor Bound: State and Society in Early Modern Russia* (Ithaca, 1999).
- Korotkikh, M.G. *Sudebnaia reforma 1864 goda v Rossii: Suschnost' i sotsial'no-pravovoi mekhanizm formirovaniia* (Voronezh, 1994).
- Kosheleva, O.Ie.. *Liudi Sankt-Peterburgskogo ostrova Petrovskogo vremeni* (Moscow, 2004).
- Krylov, I.F.. *Sudebnaia ekspertiza v ugovnom protsesse* (Leningrad, 1963).
- Kucherov, Samuel. *Courts, Lawyers, and Trials under the Last Three Tsars* (New York, 1953).
- LeDonne, John. *Absolutism and Ruling Class: the Formation of the Russian Political Order, 1700-1825* (New York, 1991).
- Levin-Stankevich, Brian. “The Transfer of Legal Technology and Culture: Law Professionals in Tsarist Russia” in Harley D. Balzer, ed., *Russia's Missing Middle Class: The Professions in Russian History* (Armonk, NY, 1996), pp. 223-249.

- Litvak, B.G. *Russkaia derevnia v reforme 1861 goda: Chernozemnyi tsentr, 1861-1865 gg.* (Moscow, 1972).
- Manning, Roberta. *The Crisis of the Old Order in Russia: Gentry and Government* (Princeton, 1982).
- Marrese, Michelle Lamarche. *A Woman's Kingdom: Noblewomen and the Control of Property in Russia, 1700–1861* (Ithaca, 2002).
- Mironov, B.N. *Sotsial'naia istoriia Rossii perioda imperii (XVIII–nachalo XX v.)*, 2 vols. (St. Petersburg, 1999).
- Morozan, V.V. *Istoriia bankovskogo dela v Rossii: vtoraia polovina XVIII – pervaiia polovina XIX v.* (St.Petersburg, 2001).
- Nefedov, S.A. *Demograficheski-strukturnyi analiz sotsialno-ekonomicheskoi istorii Rossii: konets xv – nachalo xx veka* (Ekaterinburg, 2005).
- Nethercott, Frances. *Russian Legal Culture Before and After Communism. Criminal Justice, Politics and the Public Sphere* (London, 2007).
- Neuberger, Joan. *Hooliganism: crime, culture, and power in St. Petersburg, 1900-1914* (Berkeley, 1993).
- Oda, Hiroshi. "The Emergence of *Pravovoe Gosudarstvo* (*Rechtstaat*) in Russia," *Review of Central and East European Law* Vol. 25, No. 3 (1999): pp. 373–434.
- Owen, Thomas. *The Corporation under Russian Law, 1800–1917* (Cambridge, 1991).
- *Capitalism and Politics in Russia: A Social History of the Moscow Merchants, 1855-1905* (Cambridge, 1981).
- Patrikeev, D.I. *Krupnoe krepostnoe khoziaistvo xvii v.* (Leningrad, 1967).
- Pavlenko, N.I. "O rostvshchichestve dvorian v XVIII v. (k postanovke voprosa) in N.I. Pavlenko, ed., *Dvorianstvo i krepostnoi stroi v Rossii XVI-XVIII vv.* (Moscow, 1975).
- Peterson, C. *Peter the Great's Administrative and Judicial Reforms: Swedish Antecedents and the Process of Reception* (Stockholm, 1979).
- Pintner, Walter. *Russian Economic Policy under Nicholas I* (Ithaca, 1967).
- Pomeranz, William E. "Justice from Underground: The History of the Underground Advokatura." *Russian Review* Vol. 52 (1993), pp. 321-40.
- Popova, A.D. "Pravda i milost' da tsarstvuiut v sudakh" (iz istorii realizatsii sudebnoi reformy 1864 g.) (Riazan', 2005).
- Raeff, Mark. "The Empress and the Vinerian Professor." *Oxford Slavonic Papers*, vol. 7 (1974), pp. 18-40.

- Rakhilin, V.K. "Lotereia: chto eto?" *Numizmaticheskii almanakh*, 1998, No.1, pp. 25-29; www.bonistikaweb.ru (accessed 02/13/2010).
- "Pervye rossiiskie gosudarstvennye loterii." *Numizmaticheskii almanakh*, No.2, pp. 29-31, No.3, pp. 25-27, and No.4, pp. 38-42 (1998); www.bonistikaweb.ru (accessed 02/13/2010).
- Ransel, David L. *A Russian Merchant's Tale: The Life and Adventures of Ivan Alekseevich Tolchënov, Based on His Diary* (Bloomington, 2009).
- Rashin, A.G. *Naselenie Rossii za 100 let (1813-1913). Statisticheskie ocherki* (Moscow, 1956).
- Riazanovskii, Nicholas. *Nicholas I and Official Nationality in Russia, 1825-1855* (Berkeley, 1967).
- Rieber, Alfred. *Merchants and Entrepreneurs in Imperial Russia* (Chapel Hill, 1982).
- Review of Elise Kimerling Wirtschafter, *Structures of Society*. *Russian Review*, Vol. 55, No. 1 (Jan. 1996), p.125.
- Rudolph, Richard L. "Agricultural Structure and Proto-Industrialization in Russia: Economic Development with Unfree Labor," in *The Journal of Economic History*, vol. 45, No. 1 (Mar., 1985), pp. 47-69.
- Salomatina S.A.. *Kommercheskie banki v Rossii: dinamika i struktura operatsii, 1864-1917* (Moskva, 2004)
- Schrader, Abby M. *Languages of the Lash: Corporal Punishment and Identity in Imperial Russia* (Dekalb, 2003).
- Serov, D.O. *Sudebnaia reforma Petra I* (Moscow, 2009).
- Shepelev, L.V. *Aktsionernye kompanii v Rossii* (Leningrad, 1973).
- Solomon, Peter. *Reforming Justice in Russia, 1864–1996: Power, Culture, and the Limits of Legal Order* (Armonk, NY, 1997).
- Troitskii, N.A. *Advokatura v Rossii na politicheskikh protsessakh 1866-1904 gg.* (Tula, 2000),
- Ulianova, Galina. *Female Entrepreneurs in Nineteenth-Century Russia* (London, 2009).
- Voropanov, V.A. "Izmeneniia v soslovnoi kompetentsii sudei na Urale i v Zapadnoi Sibiri v 1780-1866 godakh," *Izvestiia Cheliabinskogo nauchnogo tsentra*, vyp. 3 (2003), pp. 96-101.
- Wagner, William. *Marriage, Property, and Law in Late Imperial Russia* (Oxford, 1994).
- Weickhardt, George G.. "The Pre-Petrine Law of Property." *Slavic Review*, Vol. 52 (1993), pp. 663-679;
- "Due Process and Equal Justice in the Muscovite Codes." *Russian Review*, Vol. 51 (1992), pp. 463-480.

- Wirtschafter, Elise Kimerling. "Russian Legal Culture and the Rule of Law." *Kritika: Explorations in Russian and Eurasian History*, vol. 7, No. 1 (Winter, 2006), pp. 61-70.
- "Legal Identity and the Possession of Serfs in Imperial Russia." *The Journal of Modern History*, vol. 70, No. 3 (September 1998), pp. 561-587.
- *Social Identity in Imperial Russia* (DeKalb, 1997).
- *Structures of Society: Imperial Russia's "People of Various Ranks."* (DeKalb, 1994).
- Wortman, Richard. *The Development of a Russian Legal Consciousness* (Chicago, 1976).
- "Russian Monarchy and the Rule of Law: New Considerations of the Court Reform of 1864." *Kritika: Explorations in Russian and Eurasian History* Vol. 6, No. 1 (Winter 2005), pp. 145–170.
- "Moscow and Petersburg: The Problem of Political Center in Tsarist Russia, 1881 – 1914" in Sean Wilentz, ed., *Rites of Power: Symbolism, Ritual, and Politics Since the Middle Ages* (Philadelphia, 1985), pp. 244-271.
- "Peter the Great and Court Procedure," *Canadian-American Slavic Studies* (Summer, 1974), pp. 303-310.
- Yeroshkin, N.P. *Istoriia gosudarstvennykh uchrezhdenii dorevoliutsionnoi Rossii* (Moscow, 1968).
- Zakharov, V.V. *Sposoby prinuditel'nogo ispolneniia v russkom prave XI – nachala XX veka: preemstvennost' i innovatsiia*. <http://scientific-notes.ru/pdf/saa22.pdf> (accessed 02.11.2010).
- "“Sud po forme” kak osobyi poriadok rossiiskogo grazhdanskogo sudoproizvodstva v pervoi polovine XIX stoletii: normativnaia model i ee prakticheskoe osushchestvlenie.” *Uchenye zapiski. Elektronnyi zhurnal Kurskogo gosudarstvennogo universiteta*, No. 2 (2008). <http://scientific-notes.ru> (accessed 02.11.2010).
- Zakharova, L.G., et. al., eds. *Velikie Reformy v Rossii 1856–1874* (Moscow, 1992).
- Zhivov, V.M. *Razyskaniia v oblasti istorii i predystorii russkoi kul'tury* (Moscow, 2002).
- Zorin, A. L. *Kormia Dvukhglavogo Orla... Literatura i gosudarstvennaia ideologia v Rossii v poslednei treti xviii – pervoi treti xix veka* (Moscow, 2001).

Western Historiography

- Atiyah, P.S. and Summers, R.S. *Form and Substance in Anglo-American Law* (Oxford, 1987).
- Baker, John. *The Law's Two Bodies: Some Evidentiary Problems in English Legal History* (Oxford, 2001).
- *An Introduction to English Legal History*, 4th edn. (Oxford, 2005).
- Balleisen, Edward J. *Navigating Failure: Bankruptcy and Commercial Society in Antebellum America* (Chapel Hill, 2001).
- Banner, Stuart. "Written Law and Unwritten Norms in Colonial St. Louis." *Law and History Review*, Vol. 14 (1996), pp. 33-80.

- Barry, J. and Brooks, C. eds. *The Middling Sort of People: Culture, Society and Politics in England, 1550-1800* (Basingstoke, 1994).
- Beattie, J.M. "Scales of Justice: Defense Counsel and the English Criminal Trial in the Eighteenth and Nineteenth Centuries." *Law and History Review* 9 (1991), pp. 221-268.
- Berenson, Edward *The Trial of Madame Caillaux* (Berkeley, 1992).
- Bourdieu, Pierre. *Outline of a Theory of Practice*, trans. Richard Nice (Cambridge, 1977).
- Bracey, Dorothy H. *Exploring Law and Culture* (Long Grove, IL 2006).
- Breen, T.H. *Tobacco Culture: The Mentality of the Great Tidewater Planters on the Eve of Revolution* (Princeton, 1985).
- "Baubles of Britain: The American and Consumer Revolutions of the Eighteenth Century." *Past and present*, No 119 (1988), pp. 73-104.
- Brooks, C.W. *Pettifoggers and Vipers of the Commonwealth: The 'Lower Branch' of the Legal Profession in Early Modern England* (Cambridge, 1986).
- Calder, Lendol. *Financing the American Dream: A Cultural History of Consumer Credit* (Princeton, 1999).
- Cohen, Jay. "The History of Imprisonment for Debt and its Relation to the Discharge in Bankruptcy", *The Journal of Legal History*, Vol. 2, No. 2 (1982), pp. 153-171.
- Coleman, Peter J. *Debtors and Creditors in America: Insolvency, Imprisonment for Debt, and Bankruptcy, 1607 – 1900* (Madison, 1974).
- Cornish, W.R. and Clark, G. de N. *Law and Society in England, 1750-1950* (London, 1989).
- Damaska, Mirjan. "Presentation of Evidence and Factfinding Precision." *University of Pennsylvania Law Review*, Vol. 123 (1975), pp. 1083-1105.
- *The Faces of Justice and State Authority* (New Haven, 1986).
- Duffy, Ian. *Bankruptcy and Insolvency in London During the Industrial Revolution* (New York, 1985).
- Ehrmann, Henry W. *Comparative Legal Cultures* (Englewood Cliffs, 1976).
- Engelmann, Arthur. *A History of Continental Civil Procedure* (Boston, 1927).
- Esmein, A. *A History of Continental Criminal Procedure, with special reference to France* (Boston, 1913).
- Evans, Emory G. "Planter Indebtedness and the Coming of the Revolution in Virginia." *William and Mary Quarterly*, Series 3, Vol. 19 (October, 1962), pp. 511-533.

- “Private Indebtedness and the Revolution in Virginia, 1776 to 1796,” *William and Mary Quarterly*, Series 3, Vol. 38 (July, 1971), pp. 349-374
- Feldman, Stephen M. “An Interpretation of Max Weber’s Theory of Law: Metaphysics, Economics, and the Iron Cage of Constitutional Law.” *Law & Social Inquiry*, Vol. 16 (1991), pp. 205-248.
- Fenn, Paul and Rickman, Neil. “Delay and Settlement in Litigation.” *The Economic Journal*, Vol. 109 (1999), pp. 476-491.
- Finn, Margot. *The Character of Credit: Personal Debt in English Culture, 1740-1914* (Cambridge, 2003).
- “Women, Consumption and Coverture in England, c. 1760-1860,” *Historical Journal* 39 (1996), pp. 703-722.
- Fontaine, Laurence “Antonio and Shylock: Credit and Trust in France, c. 1680-1780.” *Economic History Review*, vol. 54 (2001), pp. 39-57.
- Friedman, Lawrence. *A History of American Law*, 3rd Edition (New York, 2005).
- “Legal Culture and Social Development.” *Law & Society Review*, Vol. 4 (1969), pp. 29-44.
- “Concept of the “Trader” in Early Bankruptcy Law.” *Saint Louis University Law Journal*, Vol. 5 (1958), p. 223 - .
- “On Legalistic Reasoning – A Footnote to Weber.” *Wisconsin Law Review* (1966), p. 148 - .
- Gibson, Margaret A. “Comment: The Intractable Debt/Equity Problem: A New Structure for Analyzing Shareholder Advances.” *Northwestern University Law Review*, Vol. 81 (Spring, 1987), pp. 452-491.
- Cyril Glasser, “Civil Procedure and the Lawyers – The Adversary System and the Decline of the Orality Principle.” *The Modern Law Review*, Vol. 56 (1993), pp. 307-324.
- Mark Granovetter, “The Strength of Weak Ties.” *American Journal of Sociology*, Vol. 78 (1973), pp. 1360–80.
- Gross, Karen, et.al. “Ladies in Red: Learning from America’s First Female Bankrupts.” *The American Journal of Legal History*, Vol. 40, No.1. (Jan., 1996), pp. 1-40.
- Haller, Mark H. and Alviti, John V. “Loansharking in American Cities: Historical Analysis of a Marginal Enterprise.” *The American Journal of Legal History*, Vol. 21, No. 2 (Apr. 1977), pp. 125–156.
- Handler, Phil. “Forgery and the End of the ‘Bloody Code’ in Early Nineteenth-Century England.” *The Historical Journal*, vol. 48, 2005, pp. 683-702.

- Hobson, Charles F. "The Recovery of British Debts in the Federal Circuit Court of Virginia, 1790-1797." *Virginia Magazine of History and Biography*, Vol. 92, No. 2 (1984), pp. 176-200.
- Habakkuk, H.J. *Marriage, Debt, and the Estate System: English landownership, 1650-1950* (Oxford, 1994).
- Hunt, Margaret. *The Middling Sort: Commerce, Gender, and the Family in England, 1680-1780* (Berkeley, 1996).
- Ingrassia, Catherine. *Authorship, Commerce, and Gender in Early Eighteenth-Century England: A Culture of Paper Credit* (Cambridge, 1998).
- Jacob, Herbert "The Elusive Shadow of the Law." *Law & Society Review*, Vol. 26, No. 3 (1992), pp. 565-590.
- Jolowicz, J.A. "Adversarial and Inquisitorial Models of Civil Procedure." *The International and Comparative Law Quarterly*, Vol. 52 (2003), pp. 281-295.
- Johnson, Paul. "Credit and Thrift and the British Working Class, 1870-1939," in Jay Winter (ed.), *The Working Class in Modern British History* (Cambridge, 1983).
- Kahn, Paul W. *The Cultural Study of Law: Reconstructing Legal Scholarship* (Chicago, 2000).
- Kellock, A. "London Merchants and the pre-1776 American Debts." *Guildhall Studies in London History*, Vol. 1, No. 3, (October, 1974), pp. 109-149.
- Kessler, Daniel. "Institutional Causes of Delay in the Settlement of Legal Disputes." *Journal of Law, Economics & Organization*, Vol. 12, No. 2 (Oct., 1996), pp. 432-460.
- Kessler, Amalia Deborah. *A Revolution in Commerce: The Parisian Merchant Court and the Rise of Commercial Society in Eighteenth-Century France* (New Haven, 2007).
- "Our Inquisitorial Tradition: Equity Procedure, Due Process, and the Search for an Alternative to the Adversarial." *Cornell Law Review*, Vol. 90, No. 5 (2005), pp. 1181-2005.
- Kevelson, Roberta. *The Law as a System of Signs* (New York, 1988).
- Korobkin, Donald R. "Bankruptcy Law, Ritual, and Performance." *Columbia Law Review*, Vol. 103, No. 8 (Dec., 2003), pp. 2124-2159.
- Kronman, Anthony. *Max Weber* (Stanford, 1983)
- Landsman, Stephan. "From Gilbert to Bentham: The Reconceptualization of Evidence Theory." *The Wayne Law Review* 36 (1990), pp. 1149-53.
- Langbein, John H. *Prosecuting Crime in the Renaissance: England, Germany, France* (Cambridge, 1974).

- “Historical Foundations of the Law of Evidence: A View from the Ryder Sources.” *Columbia Law Review*, Vol. 96 (1996), pp. 1168-1202.
- “The Criminal Trial before the Lawyers.” *University of Chicago Law Review*, Vol. 45 (1978), pp. 263-72.
- Lester, V. Markham. *Victorian Insolvency: Bankruptcy, Imprisonment for Debt, and Company Winding-up in Nineteenth-Century England* (Oxford, 1995).
- Locker, John P. “‘Quiet thieves, quiet punishment’: private responses to the “respectable” offender, c. 1850-1930.” *Crime, histoire & societes*, vol. 9, (2005), pp. 9-31.
- LoPucki, Lynn M. and Weyrauch, Walter O. “A Theory of Legal Strategy.” *Duke Law Journal*, Vol. 49, No. 6 (Apr., 2000), pp. 1405-1486.
- Macauley, Melissa. *Social Power and Legal Culture: Litigation Masters in Late Imperial China* (Stanford, 1998).
- Mann, Bruce H. *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge, 2002).
- McGowen, Randall. “From Pillory to Gallows: the Punishment of Forgery in the Age of the Financial Revolution.” *Past and Present*, No. 165 (1999), pp. 107-140.
- “The Bank of England and the Policing of Forgery, 1797-1821.” *Past and Present*, No. 186, pp. 81-116.
- “Review: Credit and Culture in Early Modern England.” *The Journal of British Studies*, Vol. 41, No. 1 (Jan., 2002), pp. 120-131.
- Merryman, John. *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*, 3rd edn. (Stanford, 2007).
- Miller, F. Thornton. *Juries and Judges Versus the Law: Virginia’s Provincial Legal Perspective, 1783-1828* (Charlottesville, 1994).
- Mnookin, Jennifer L. “Scripting Expertise: The History of Handwriting Identification Evidence and the Judicial Construction of Reliability.” *Virginia Law Review*, vol. 87 (2001), pp. 1723-1845.
- Mnookin, Robert H. and Kornhauser, Lewis. “Bargaining in the Shadow of the Law: The Case of Divorce.” *The Yale Law Journal*, Vol. 88 (1979), pp. 950-997.
- Moore, Sally Falk. *Law as Process: An Anthropological Approach* (London, 1978).
- Muldrew, Craig. *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England* (London, 1998).

- “‘Hard Food for Midas’: Cash and Its Social Value in Early Modern England.” *Past & Present*, No. 170 (Feb., 2001), pp. 78-120.
- “Credit and the Courts: Debt Litigation in a Seventeenth-Century Urban Community” *The Economic History Review*, New Series, Vol. 46, No. 1 (Feb., 1993), 23-38
- Nelken, David, ed. *Comparing Legal Cultures* (Aldershot, England, 1997).
- Priest, George L. and Klein, Benjamin. “The Selection of Disputes for Litigation.” *The Journal of Legal Studies*, Vol. 13, No. 1 (Jan, 1984), pp. 1-55.
- Rappaport, Erika. *Shopping for Pleasure: Women in the Making of London’s West End* (Princeton, 2000).
- Resnik, Judith. “Managerial Judges.” *Harvard Law Review*, Vol. 96 (1982), pp. 374-448.
- Risinger, D. Michael et al. “Exorcism of Ignorance as a Proxy for Rational Knowledge: The Lessons of Handwriting Identification ‘Expertise’.” *University of Pennsylvania Law Review* vol. 137 (1989), pp. 731- .
- Robb, George. *White-collar crime in Modern England: financial fraud and business morality, 1845-1929* (Cambridge, 1992).
- Roeber, A.G. *Faithful Magistrates and Republican Lawyers: Creators of Virginia Legal Culture, 1680-1810* (Chapel Hill, 1981).
- Saks, Michael J. “Merlin and Solomon: Lessons from the Law’s Formative Encounters with Forensic Identification Science.” *Hastings Law Journal*, vol. 49 (1998), pp. 1069 - .
- Shapiro, Barbara. *Beyond Reasonable Doubt and Probable Cause* (Berkeley, 1991).
- Schneider, Daniel M. “Characterization and Assignment of Corporate and Shareholder Income.” *Northern Illinois University Law Review*, vol. 14 (Fall, 1994), pp. 133-189.
- Sindall, Rob. “Middle-Class Crime in Nineteenth Century England.” *Criminal Justice History*, vol. 4, (1983), pp. 23-40.
- Sloan, Herbert. *Principle and Interest: Thomas Jefferson and the Problem of Debt* (New York, 1995).
- Smail, Daniel Lord. *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264-1423* (Ithaca, 2003).
- Smail, John. “Credit, Risk, and Honor in Eighteenth-Century Commerce.” *Journal of British Studies* (July, 2005), pp. 439-456.
- Spicksley, Judith. “Usury legislation, cash, and credit: the development of the female investor in the late Tudor and Stuart periods.” *Economic History Review*, Vol. 61, No. 2 (2008), pp. 277-301.

- Summers, Robert S. "The Formal Character of the Law." *The Cambridge Law Journal*, Vol. 51, No. 2 (Jul. 1992), pp. 242-262.
- "Formal Legal Truth and Substantive Truth in Judicial Fact-Finding: Their Justified Divergence in Some Particular Cases." *Law and Philosophy*, Vol. 18, No. 5 (Sept., 1999), pp. 497-511.
- Sutherland, Edwin H. *White Collar Crime* (New York, 1949).
- "White-Collar Criminality," *American Sociological Review*, Vol. 5, 1940, pp. 1-12.
- Tabb, Charles J. "The Historical Evolution of the Bankruptcy Discharge." *American Bankruptcy Law Journal*, vol. 65 (1991), pp. 325 - .
- Tebbutt, Melanie. *Making Ends Meet: Pawnbroking and Working-Class Credit* (Leicester, 1983).
- Thompson, F. M. L. *The Rise of Respectable Society* (London, 1988).
- Thompson, Tommy R. "Personal Indebtedness and the American Revolution in Maryland." *Maryland Historical Magazine*, Vol. 73 (1978), pp. 13-29.
- Trubek, David M. "Reconstructing Max Weber's Sociology of Law." *Stanford Law Review*, Vol. 37 (1985), pp. 919-936.
- Turk, Austin T. "Law as a Weapon in Social Conflict." *Social Problems*, Vol. 23 (1976), pp. 276-291.
- Vickery, Amanda. *The Gengleman's Daughter: Women's Lives in Georgian England* (New Haven, 1998).
- Watson, Alan. *Legal Transplants: An Approach to Comparative Law* (Charlottesville, 1974).
- Weber, Max. *Economy and Society*, vol. 2.
- Welsh, Alexander, *Strong Representations* (Baltimore, 1992).
- White, James Boyd. *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law* (Madison, 1985).
- Wilson, Kathleen, *The Sense of the People: Politics, Culture, and Imperialism in England, 1715-1785* (New York, 1995).
- Woodfine, Philip. "Debtors, Prisons, and Petitions in Eighteenth-Century England." *Eighteenth-Century Life*, Vol. 30, No. 2 (Spring, 2006), pp. 1 – 31.
- Wyatt-Brown, Bertram. *Southern Honor: Ethics and Behavior in the Old South* (New York, 1982).
- Zelin, Madeleine, et.al, eds. *Contract and Property in Early Modern China* (Stanford, 2004).

Zelin, Madelein. *The Merchants of Zigong: Industrial Entrepreneurship in Early Modern China* (New York, 2005).

- “The Structure of the Chinese Economy During the Qing Period: Some Thoughts on the 150th Anniversary of the Opium War,” in Kenneth Liberthal et al., eds. *Perspectives on Modern China, Four Anniversaries* (Armonk, 1991).

Appendix A: Glossary of Russian Terms

<i>Chinovnik</i>	A civil servant classified under the Table of Ranks.
<i>Dvoriaskaia opeka</i>	Province- and county-level noble trusteeship board. Appointed trustees over the estates of those nobles who were legally prohibited from controlling their property, such as minors, the legally insane, and spendthrifts.
<i>Gosudarstvennye krestiane</i>	State peasants. Tied to the land like the serfs but not subject to a landlord's authority. Had to pay higher taxes.
<i>Konkurs</i>	Bankruptcy proceedings conducted by "curators" selected from among the creditors and supervised by an official appointed by the Commercial Court.
<i>Kupets</i>	A merchant enrolled in one of the three guilds according to the size of his or her declared capital. Membership in the first two guilds bestowed considerable legal privileges.
<i>Magistrat</i>	Before the court reform of 1864, a first-tier estate-based trial court for merchants and townspeople.
<i>Meshchanin</i>	A townsman (townswoman – <i>meshchanka</i>). Liable for military conscription and other duties but personally free and allowed to own property and engage in commerce.
<i>Nadvornyi sud</i>	Before the court reform of 1864, first-tier estate-based trial courts in St. Petersburg and Moscow for military officers and civil servants who did not own property in those cities, as well as for <i>raznochintsy</i> (individuals who did not belong to a specific legal estate). The Board of Trustees of Moscow and St. Petersburg Imperial Orphanages, administering their credit institutions.
<i>Palata Ugolovnogoi/ Grazhdanskogo suda</i>	Province-level appellate court that serviced all estates and was staffed by professional judges.
<i>Pochetnyi Grazhdanin</i>	Honorary citizen. A member of a privileged urban and commercial estate (could be hereditary or personal), a thin layer between merchants and nobles. Designed to protect the nobility from infiltration by the lower classes, and to protect the merchants who for some reason could not declare the necessary capital to enroll in a guild.

<i>Poruchitel'</i>	Surety, a person guaranteeing someone else's debt.
<i>Poverennyi</i>	An agent with a power of attorney
<i>Prikaz obshchestven-nogo prizreniia</i>	Provincial Office of Public Welfare. Served as a small-scale mortgage bank to the nobility.
<i>Prisutstvennye mesta</i>	Province- or county-level administrative offices, typically housed in the same building.
<i>Rostovshchik</i>	A usurer.
<i>Slovesnyi sud</i>	Province-level "Oral" court. Employed simplified oral procedures but was not widely used.
<i>Senat</i>	The Senate served as the court of appeal. Before the reform of 1864 was divided into St. Petersburg, Moscow, and Warsaw departments.
<i>Sokhrannaia kazna</i>	The "Deposit Treasury" of Moscow and St. Petersburg Orphanages. In pre-reform Russia served as the two principal mortgage banks for the nobility.
<i>Sokhrannaia raspiska</i>	"Safekeeping deposit receipt," used in pre-reform Russia as a debt document.
<i>Sovestnyi sud</i>	Equity court. In pre-reform Russia had jurisdiction over several types of cases, most importantly, civil cases between parents and children and criminal offenses by minors and insane persons.
<i>Ssudnaia kazna</i>	The "Loan Treasury" of the Moscow and St. Petersburg Orphanages. State-owned pawnshop that accepted mainly jewelry and furs.
<i>Tabel' o rangakh</i>	A document dating to 1722 establishing the ranks of military, naval, and court officers and civil servants.
<i>Tsekhovoi</i>	Craftsman. A stratum of urban inhabitants similar to <i>meshchane</i> .
<i>Uezdnyi sud</i>	Before the court reform of 1864, a first-tier estate-based trial court for nobles and free peasants.

<i>Veksel'</i>	A bill of exchange. Until 1862 only permitted to merchants.
<i>Veriushchee pis'mo</i>	Power of attorney.
<i>Vremennaia tiur'ma</i>	Provisional Prison. Debtors' prison in Moscow
<i>Zaiom (zaim)</i>	Loan
<i>Zaiomnoe pis'mo (krepostnoe or domovoe)</i>	Loan letter. The basic kind of debt document. "Registered" loan letters enjoyed greater legal protections compared to "private" ones.
<i>Zaklad</i>	Collateral of movable property.
<i>Zakladnaia krepost'</i>	Mortgage note.
<i>Zalog</i>	Collateral of real property.
<i>Zapiska (or vypiska)</i>	Court-prepared summary of the legal case (civil or criminal) used by judges to make their decisions.

Appendix B: The Table of Ranks (as of 1850-1870)

Class	Civil Service	Army
I	Chancellor	General-Fieldmarshal
II	Actual Privy Councilor	General
III	Privy Councilor	Lieutenant-General
IV	Actual State Councilor	Major-General
V	State Councilor	(abolished)
VI	Collegiate Councilor	Colonel
VII	Aulic Councilor	Lieutenant-Colonel
VIII	Collegiate Assessor	Major
IX	Titular Councilor	Captain
X	Collegiate Secretary	Staff Captain
XI	abolished	(abolished)
XII	Gubernial Secretary	Lieutenant
XIII	Senate Registrar	Second Lieutenant
XIV	Collegiate Registrar	Subaltern (<i>praporshchik</i>)

Note: Between 1845 and 1856, the rights of hereditary (as opposed to personal) nobility were attained by reaching Class VIII on the Table. After 1856 the barrier was raised to Class VI in the army and Class IV in the civil service.

Ranks I through IV were referred to as *generalitet* (generals); rank V was an in-between category; ranks VI through VIII were referred to as *shtab-ofitsery* (senior officers); ranks IX through XIV were referred to as *ober-ofitsery* (junior officers).