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The Role of Courts & Police in the Development & Suppression of Human Rights in the Post-Soviet World

**Topic of research**  
The process of democratization in the post-Soviet world has proven to be more troublesome than most scholars had hoped. Only some aspects of human rights have improved while many others have worsened after the collapse of the Soviet Union. While the rights of women are being protected more furiously in the courts of Ukraine, the judges of Central Asia and the Caucasus tend to discourage women from filing complaints against brutality at the hands of their husbands. In Tajikistan and Azerbaijan the judges look only at cases of severe damage to women’s health and aim at resolving other conflicts by convincing women against “destroying the family.”

In civil liberties cases, the courts across the post-Soviet world are far more likely to support journalistic freedoms than the rights of religious minorities. Even in the countries where the courts are severely restricted by their governments, they often support journalistic freedoms by assigning much lesser penalties than ones envisioned by the state. On the other hand, the courts in these countries have shown a strong tendency to rule against minority religious groups, denying them the right to acquire property, or simply banning their registration, making them non-legal entities.

Starting with the late 1990s the courts in former Soviet countries often ruled in support of journalistic freedoms and contrary to harsh state policies, which tended to limit press freedom. For example, in 2003 the judges of the Ukrainian Constitutional Court issued a resolution, which distinguishes between public and private figures allowing journalists to criticize government without being penalized for libel (ASAD 2003, p.10).
While the courts in other states seem to be more restricted by their governments, they often support journalistic freedoms by assigning much lesser penalties than ones envisioned by the state. For example, courts will often deny state requests to jail journalists.

In an interesting empirical contrast to judicial decisions favoring journalists, the courts in all of the former Soviet countries have shown a strong tendency to rule against minority religious groups. Courts in former Soviet countries consistently declined the rights of minority religious groups, denying them the right to acquire property, or simply banning their registration, making them non-legal entities. These prohibitions of basic civil liberties are in sync with governments’ policies limiting religious freedom by distinguishing between religious organizations and ‘sects’ and, thus, stripping the latter groups of rights given to the former ones (Religious Freedom Reports 2005, Freedom House Reports 2005).

Why are courts so fickle when it comes to human rights? Why are women’s rights supported in some countries and not in others, and why are press freedoms taken into account while members of religious minorities don’t stand a chance in courts? In my dissertation project I examine the reasons behind such a discrepancy in judicial decisions in Tajikistan, Azerbaijan and Ukraine. I argue that local norms, i.e. different levels of support for these rights among the populace, have a vital role in determining judicial rulings. In other words, while press freedoms are viewed by the people as a necessary and vital part of a functioning democracy in these countries, religious minorities are often seen as an obstacle to national unity and, thus, the expansion of their rights are not supported by the majority. Similarly, rulings regarding women’s rights in the courts are
determined by local beliefs toward the social role of women in those countries. I perform a comparative, cross-national analysis of the reasons behind judicial activism and the role of court decisions in the countries of Ukraine, Azerbaijan and Tajikistan. Thus, the research strikes at the core of the democratization process in the area, exploring the development of civil liberties, formation of civic groups to defend their rights in courts and the practice of judicial independence in the semi-authoritarian regimes of Eurasia.

This project represents the first empirical study to systematically measure and empirically test societal factors, such as public opinion and press coverage, affecting judicial behavior across Eurasia, and examines the role of the courts as mediators between the populace and a scarcely accessible state in hybrid regimes¹ (Lewitsky and Way 2002). The results of the project will contribute not only to the democratization and public law literature of political science, but also will be useful to civic groups, which use legal mobilization as a strategy for policy transformation or as a forum for grievances, as well as to the U.S. government and non-profit organizations that aim to assist the development of democratizing policies and civic engagement. My preliminary findings suggest additional strategies, i.e. the need to approach public opinion through media and other sources, in the attempt to influence judicial decisions.

Courts in Authoritarian Regimes

My project engages a diverse body of literature on judicial behavior in both democratic and authoritarian regime types as well as literature on post-Soviet and East European political and social development, which allows me to construct a model of judicial activism in the countries of the former Soviet Union. This model will test social factors (norms) and political factors (likelihood of the current administration to remain in

¹ For discussion of hybrid regimes, see Lewitsky and Way 2002.
power, state pressure on the courts’ decision-making process) and their effects on judicial behavior in Ukraine, Azerbaijan and Tajikistan. In constructing this model, I engage the following literature.

First, my research tests the dominating assumption in political science regarding the inability of judicial actors to challenge the authority in authoritarian countries and, more specifically, in the countries of the former Soviet Union (Schwartz 2002, Sadurski 2002). More importantly, the model puts to the test the major theories developed to explain the likelihood of judicial activism in these regimes.

Joel Verner presents a survey of the works which discuss the factors behind judicial independence or a lack thereof in the countries of Latin America (1984). For Verner, judicial independence involves the ability of courts “to decide cases on the basis of the established law and the ‘merits of the case,’ without substantial interference from other political or governmental agents (1984 p.463). His analysis shows that most of the literature on the topic asserts that courts in the area are “dependent, weak, parochial, conservative, and decisionally unimportant” (p. 468) due to the following factors: (1) executive dominance which interferes and neglects judicial proceedings (Needler 1964, Duncan 1979, Lambert 1967, Moreno 1970), (2) political instability, such as civil unrest and political violence, which undercut constitutional norms necessary for judicial activity (Alba 1969), (3) the nature of the code law system which gives courts little support for judicial review (Wiarda and Kline 1979), (4) structural complexity of the judicial systems which prevents populations from understanding and using them (Duncan 1979, Von Lazar 1971), (5) lack of public support/trust in judiciary due to heavy executive intervention in court affairs as well as poverty and high illiteracy rates (Duncan 1979,
Pierson and Gill 1957), and (6) limiting institutional provisions, such as tenure, appointment, and impeachment provisions which allow for significant influence by the executive and legislative forces (Clagett 1952).

Verner states that while a handful of scholars note some cases of judicial independence in the countries of Latin America (Von Lazar 1971, Wiarda and Kline 1979), there are no systematic studies which would explain the varying levels of judicial independence. Verner suggests a testable hypothesis regarding courts’ independence and role in policy-making, arguing that it might depend on the advancement and economic stability of a given country (1984). Although this theory might explain a variation in the level of judicial independence in Latin America, it would not account for a variation in the countries of the former Soviet Union for the following reasons. The courts in former Soviet states which are presently more economically stable, such as Azerbaijan, Belarus and Russia, are much less independent that the courts in Ukraine and Moldova where economic success and stability fall far behind (World Bank Reports 2007). More importantly, Verner’s hypothesis would not explain why judges would support the rights of some social groups but not others.

My thesis also tests the theory by Gretchen Helmke, who asserts that judges are likely to issue antigovernment decisions only at the end of weak dictatorships and weak democratic governments to avoid potential threat from the incoming government (2002). She looks at judges as rational decision-makers who are constrained by institutional actors. Helmke argues that since, in many developing countries, judges face great threats from both the executive and the legislature, they have a strong incentive to engage in strategic behavior (greater than in democratic countries). Additionally, since potential
threats from the incoming government may be even greater than from the incumbent one, judges, who lack institutional security, are likely to defect rather than the support the existing government. Due to this threat, Helmke claims, as the potential of the current government to lose power increases, the judges will rule against the current government, especially if the rulings would appear to be helpful to the incoming government (2002). This theory contributes greatly to the study of judicial activism, however it does not (1) explain varying levels of judicial support for certain civil rights. Moreover, (2) my intended research involves countries, such as Azerbaijan and Tajikistan, where anti-government judicial decisions were issued while it was clear the ruling elite will remain in power.

My study also tests Tamir Moustafa’s argument that Egypt’s government complied with the Constitutional Court’s human rights rulings to keep its image of legitimacy among foreign investors (2003). His analysis showed that over two decades, the Court continued to expand its powers and the government complied with its human rights rulings in order to keep its image of legitimacy (2003). Interestingly, Moustafa’s suggestion somewhat contradicted Helmke’s conclusion that judicial activism is more likely due to institutional instability, as he states that it is exactly because authoritarian Egypt has a secure hold on power, that its government has been allowed long-time horizons and therefore has supported institutions which promote economic activity: “such rulers have a greater incentive to establish institutions that promote the security of property rights, both among contracting parties in society and vis-à-vis the state itself” (p. 887). While the Egypt Constitutional Court’s independence could work only to a certain extent, it still showed the possibility of strong judicial activism under authoritarian rule.
Similarly, this theory does not account for judicial selectivity to support some anti-governmental rulings and not others, as found in my case studies; therefore, my project will contribute to the literature by testing the role of public opinion in the judicial decision-making process in authoritarian states and weak democracies.

*Courts in the Post-Soviet World*

With the collapse of the Soviet Union, interest in testing theoretical explanations of institutional development, including the judiciary, and hope for the democratization process in the newly independent states continued to grow. First accounts of judicial reforms in the area remained skeptical: despite the introduction of such institutions as the Constitutional Court, the Council of Judges and empowering of *arbitrazh* courts (which solved disputes among business firms and officials) in post-Soviet Russia, “both power and culture remain critical impediments to the development of legal order” (Solomon 1997). Soviet legacies of a cynical and condescending attitude toward law on the part of the public as well as officials, and the habit of conducting business outside of law, were seen as serious obstacles to strengthening the rule of law in the post-Soviet world (Solomon 1995, Sharlet 1995).

The mixed nature of post-Soviet regimes which encompassed democratic-type institutions with administrative pressures and public cynicism was captured in Levitsky and Way’s work on hybrid regimes (2002). Competitive authoritarianism is a type of hybrid regime which, while meeting basic standards of democracy, such as regular elections free of *massive* fraud, nevertheless are known for routine abuse of state resources by incumbents, harassment and – less frequently – exile of the opposition candidates, journalists and other government critics (2002 p. 53). While the judiciary provides for one of the potential arenas of political contestation in these regimes,
governments routinely attempt to subordinate judges through “bribery, extortion and other mechanisms of co-optation” (2002 p. 56).

The judiciary in the post-Soviet world of the 1990s remained of mixed, and unpredictable nature. While in some instances incomplete control by the executive can allow for such bold decisions as Ukraine’s Constitutional Court prevention of presidential expansion of powers through a referendum, it was not surprising to find Yeltsin dismantling Russia’s Constitutional Court when it declared his actions unconstitutional (Levitsky and Way, 2002 pp. 56-57). The presence of democratic rules, overall, seemed to have provided courts in these regimes with a certain measure of power to rule against officials. Peter Solomon noted an increasing ability of courts of general jurisdiction, arbitrazh courts, and military courts to rule against the government in tax cases, electoral disputes, and the legality of lower governments’ regulations, through the late 1990s (2004).

Similarly to Solomon, Kathryn Hendley, Peter Murrell and Randi Ryterman provided an optimistic view for the development of the rule of law in Russia. On the basis of survey data, they examined interactions between business enterprises and legal institutions in the country (Hendley et al 1999). She found that the institutional environment rewards enterprises who work on contractual matters, possess a large amount of legal human capital and reorient themselves to new legal opportunities (1999 p.33). They concluded that law and legal institutions add a significant value to the Russian economy and provide benefits for trading partners. A profound analysis of the arbitrazh courts is also seen in Hendley’s further work (2005). Her studies suggest the strength of the Russian legal-economic institutions, which are likely to support a growing
set of improvements in banking, tax policy, and other elements of the Russian economy (1999 pp.33-34). While insightful, the study does not shed light on the judicial advocacy or role in the further suppression of the human rights.

Recent studies of judiciaries in Russia and Central Asian states demonstrate a continuous loss of judicial independence. Thus, Maria Popova in her study of the Russian judiciary’s role in the resolution of electoral disputes asserts that while the courts became a common appeal venue; Russian judges were subject to pressure from regional authorities (2006). Eric McGlinchey, who accounts for patronage networks in Central Asia, which contributed to the maintenance of authoritarian rule by drawing on natural resources and oil companies, notes that courts became simply a mechanism of dictatorial control (2003). These and similar accounts testify of continuing government control and lack of possibilities for the expansion of the role of judiciary.

While contributing greatly to our understanding of post-Soviet development and the role of courts in the area, scholarly works as well as freedom ratings examine the development of judicial independence (or its possibilities) as a uniform phenomenon. In other words, it can be present or absent, strong or weak depending on the area and time frame only. This led the scholars of the post-Soviet world analyze judicial activity mostly as a function of power. Similarly, when public opinion was considered, it was seen as a variable that affects judicial independence overall. This tendency led the scholars to overlook the disparity between judicial rulings, which can be anti-governmental in some instances and supportive of state policies in others. I argue that an in-depth scrutiny of this disparity would provide us with a much better understanding of the judicial decision-making process.
Courts and Norms

While the works on judicial activity in hybrid regimes does not account for the importance of norms, law and society literature developed on the basis of American studies examines this question thoroughly. The concept of the law as a product of cooperation/struggles between the state and social groups is examined in the work by Mather and Yngvesson, who emphasize the vital role that social context plays in affecting disputing (1980-81). They found that publics and audiences, allies of the disputants, lawyers and other spokesmen, as well as third parties and disputants themselves are vital in providing a new balance and a new result in the disputing process. More importantly, they showed that invoking the support of a larger public could be an important variable in transforming the dispute and consequently affect the existing legal framework.

One of the cases in their study is the legal dispute between the state and an Amish group which ultimately won the right to maintain their own schools. The authors argue that the victory was in most part due to the engagement of wider audiences in Iowa and elsewhere in the nation, which resulted in the formation of an organized lobbying group, government committee, etc. Additionally, the work by Ewick and Silbey *Narrating Social Structure*, describes the process of development of legal consciousness through the individual story telling of resistance to the authorities which, as authors argue, provide instructions for potential standing up to the state authorities. This storytelling process among society builds a “consciousness of opportunity” and transforms individual acts in the societal realization of their power and the ability to use the law to resist. These accounts help us realize the role that society at large plays in the transformation of rights and the meaning of law overall.
Theory Development

To understand the causes for judicial anti-government decisions, I construct a model that sees the courts’ decision-making process as conditioned by public support. As mentioned above, the strongest arguments for judicial independence in authoritarian regimes and weak democracies do not distinguish between the areas of the policies that the courts administer. As a result, this limits the analysis of the conditions affecting the courts’ rulings since the courts are seen only as supporters or non-supporters of government policies in particular countries.

My model differentiates between categories of rulings, allowing it to analyze why, within the same country, some civil liberties are supported by the courts and others are not. All three chosen cases, Ukraine, Azerbaijan and Tajikistan, reflect a phenomenon found throughout the countries of Eurasia: the courts are more likely to support journalistic freedoms rather than the rights of religious minorities. While the types of court rulings in favor of journalistic freedoms differ depending on the level of authoritarianism in a given country, judicial decisions nevertheless tend to support press freedoms either through developing a public figure doctrine (as in Ukraine) or limiting the punishment for libel (as in Azerbaijan and Tajikistan). The rights of religious groups, on the other hand, are continually restricted in these countries and are rarely supported by the courts. Various evangelical, Jehovah’s Witness and LDS (Mormon) groups face restrictions on property ownership, rights to assemble and preach in all of the countries of the former Soviet Union. Attempts to appeal those restrictions fail in local as well as higher courts throughout the region.
I argue that the discrepancy between judicial decisions to support some aspects of human rights and not others can be best explained by the different levels of support for these rights among the populace. In other words, while press freedoms are viewed by the people as a necessary and vital part of a functioning democracy in the countries of the former Soviet Union, religious minorities are often seen as an obstacle to national unity and, thus, the expansion of their rights are not supported by the majority. These public norms are a function of certain historical developments in the countries, which determine the suppression of some beliefs and maintenance of others. The decisions also encourage further litigation by the groups whose rights were successfully supported in courts. The theory can be summarized in the chart below:

By researching legal disputes – the arena where these norms manifest themselves and compete against each other – I will study the ways societal norms affect adjudication; and how judicial decisions, in their turn, affect norms and identities, and attempts by the courts to establish partial judicial independence through interpretation of the normative world instead of strictly following state expectations. This approach is inspired by the work of John Bowen, who traced the diversity of norms in Indonesian society, where tribal heritage, Islam and the newly acquired taste for modernity compete in judicial disputes. Bowen identifies the power of the courts to balance claims made in the name of Islam or that of local customs and, thus, affect social life in a semi-authoritarian state. Similarly, Ukraine, Azerbaijan and Tajikistan offer the perplexity of competing norms,
and since these authoritarian states lack the power to control all of the judicial decisions, it allows the courts and civil society to empower each other in their struggle against authoritarian pressures.

On one hand, analyzing Ukraine, Azerbaijan and Tajikistan, which have different cultural bases and developed radically different political systems (despite sharing a Soviet legacy), allows me to ascertain the strength of the causal variable. In other words, I argue that if in all three countries there exists public support for expansion of press freedoms but not the rights of religious minorities, that judicial decisions will be supportive of the former and not the latter. This will be true in all countries regardless of the type of political systems or cultural backgrounds. On the other hand, in order to demonstrate that the norms constitute the base and the cause of the judicial decisions, I will provide a detailed account of the interactions between the public, social groups, and courts. Finally, through the analyses of judicial rulings and interviews with the NGOs, the judges and the police, I examine the effects of historical developments on public norms.²

This project involves the analysis of the following countries: Ukraine, Azerbaijan and Tajikistan. The choice is consistent with Przeworski and Teune’s “most different systems” case selection method (1970). This approach targets comparing political systems which differ fundamentally in their institutional designs and settings but share the dependent variable of the study. The aim of the strategy is to show that the relationship between the dependent and independent variables remains under very different circumstances. This method allows one to rule out irrelevant explanatory

² The strengths of process tracing and historical method approaches will be discussed in the methodology section of the paper.
variables: ‘[t]he most different systems designs eliminate factors differentiating social systems by formulating statements that are valid regardless of the systems within which observations are made’ (Ibid p.39).

My research involves court cases in three different countries, ranging in level of regime repressiveness, and, consequently, with varying levels of restriction of civil liberties by government policies as well as varying levels of civic mobilization to challenge these policies through the courts. In each of these countries, I analyze the court decisions in a variety of regions as well as on different court levels (high courts and local courts) to widen the pool of data.

A comparison of the judiciaries and their role in the development of human rights across the post-Soviet world has not been previously performed and will expand significantly current understandings of the role of religious and ethic norms in the area. This project challenges the prevailing view of courts as a function of state pressure in authoritarian regimes and provides the basis for reinterpreting the significance of cultural norms and Soviet legacy in the development of human rights.

**Research methodology**

To understand the causes for judicial anti-government decisions, I construct a model that sees the courts’ decision-making process as conditioned by public support. As mentioned above, the strongest scholarly arguments for judicial independency in authoritarian regimes and weak democracies don’t distinguish between the areas of the policies that the courts administer. As a result, this limits the analysis of the conditions affecting the courts’ rulings since the courts are seen only as supporters or non-supporters of government policies in particular countries. My model differentiates between
categories of rulings allowing it to analyze why, within the same country, some civil liberties are supported by the courts and others are not.

My research offers a causal explanation for the following dependent variable: the likelihood of courts to support civil liberties over government policies, which aim to restrict them. My research involves court cases in three different countries, which range in level of authoritativeness of regime, and, consequently, the level of restriction of civil liberties by government policies as well as the level of civic mobilization to challenge these policies through the courts. My research hypothesis is as follows:

**As popular support for specific infringed rights increases, the likelihood of judicial support for groups seeking these rights will increase.**

I am employing the method used in the work of John Bowen, who traced the diversity of norms in Indonesian society, where tribal heritage, Islam and the newly acquired taste for modernity compete in judicial disputes. Similarly, all three countries in the study present a complex heritage of religious norms, newly discovered identities and the legacy of Soviet bureaucratization. Through my analysis of judicial rulings and interviews with judges, I aim at tracing judges’ concepts of justice, rights and their role in the process. Thus, my interviews with judges in Tajikistan and Azerbaijan displayed that they understand their role as those who pacify and maintain family units, rather than those who support individual rights. A comparison of these countries will clarify the ways in which pre-Soviet norms and Soviet practices and institutions converged and resulted in judicial preferences of some rights over others; and sustaining of individual rights in some aspects of human life while preferring the interests of community in others.

My ability to communicate and work directly in Russian, Ukrainian and Tajik languages (and hiring interpreters to translate Azeri legal documents) offered a
comparison unprecedented in social studies. Research sites included the cities of Khujand and Dushanbe in Tajikistan; Baku in Azerbaijan; Kiev and Uzhgorod in Ukraine. I have completed fieldwork in all three countries and have gathered: court documents and prosecutors’ orders regarding all three aspects of human rights in my study, records compiled by women’s crisis centers, and census materials, which represent an archive to scholars working in English. Additionally, I have gained access and interviewed politicians, judges, policemen, journalists, attorneys, members of religious minority groups and NGOs in Tajikistan, Azerbaijan and Ukraine during my fieldwork, conducted between August 2007 and February of 2008. These sources in combination offer evidence for the vital role of newly constructed norms in each of these countries and their effect on judicial decision-making.

**A brief summary of research findings and preliminary conclusions**

In my interviews with journalists and religious minorities in Tajikistan and Azerbaijan, and analyzing court documents, I was able to determine that, indeed, even in these more authoritarian regime types there have been a limited number of cases where the courts were able to support **journalistic rights**. This was possible when, first of all, these cases involved low-ranking politicians and, thus, the courts did not have apparent pressure from the presidential administration (e.g., cases which involved the *Neruj Sokhan* newspaper in Tajikistan and *Azadlig* newspaper in Azerbaijan). Secondly, the high courts seem to respond to international news coverage of the journalists’ imprisonment, e.g. the case of the journalist Talibov in Tajikistan (however, again, the case did not involve high-ranking politicians). One of the interesting findings of my research was the importance of the Soviet legacy of prosecutors’ dominance (in addition to that of the presidential administration) over the courts, which constricts judges and
their ability to support even those civil liberties which they may deem worthy. Another constraining variable on the courts in Azerbaijan has appeared to be the growing independence of the state from international pressure due to the increase in oil prices, which seems to have resulted in the arrest of eight journalists during the last twelve months.

In the case of Ukraine, where the rights of journalists have significantly improved since the events of the Orange Revolution of 2004, the judges are similarly more supportive of press freedoms rather than the rights of religious minorities. In fact, in the past several years, Ukraine has witnessed considerable transformation in the arena of law suits concerning press freedom. Firstly, statute 49 of the Ukrainian Law “On Information,” which states that government organizations can not demand moral reimbursement from the press for damaged reputation, has been widely supported by judges, who currently limit case rulings to require only the rebuttal of published information that it is found to be false/damaging. While single politicians may still appeal for award for the damage to their reputation, the courts are still more likely to rule simply to rebut the information rather than assign monetary damages.

While there were decisions in support of journalistic freedoms, there, indeed, has not been a single court case supporting the rights of religious minorities neither in Tajikistan nor in Azerbaijan. In these countries the courts often refused to allow registration (at times even contradicting state laws) and even jailing some members on false grounds (e.g. Jehovah’s witnesses in Tajikistan and Baptists in Azerbaijan). Additionally, there have been a number of police assaults on the members of Protestant groups, especially on the natives of these countries who have been converted to these
religions, which only supports the thesis that cultural beliefs affect the conduct of state officials.

In Ukraine the rights of religious minorities have not improved since the liberalizing effects of the Orange Revolution, to the contrast of the rights of journalists. On the contrary, federal state agencies have continually aimed at restricting various religious groups’ right to freely proselyte; while local agencies often go as far as preventing the registration of the churches in their areas. Interestingly, the minority religious groups which tend to be ethnically bound, such as Jews and Muslims, have not encountered as much suppression. This seems to be explained by the fact that ethnically bound religions are less likely to threaten a transformation of national identity, since they do not aim at affecting the religious and behavioral habits of the general populace.

The analysis of women’s rights through the legal spectrum also provided a number of important insights since they (1) are addressed in courts more abundantly and (2) are less repressed by the state. The latter allows the courts considerable liberty in making decisions, which makes them a vital actor in promoting or limiting human rights. In Ukraine, where women’s relative equality has been accepted in society for generations, courts and police provide immediate response to cases of family violence by arresting the violators and assigning fines after the first complaints, aiming to protect the individual rights of women.

Through my analysis of judicial rulings regarding family violence against women, and interviews with judges, I aimed at tracing judges’ concepts of justice, rights and their role in the process. Thus, my interview with judges in Tajikistan and Azerbaijan displayed that they understand their role as those who pacify and maintain family units,
rather than those who support individual rights. In other words, the police as well as the judges tend to discourage women from filing complaints against the brutality of their husbands. The court cases involve only cases of severe damage to women’s health and aim at resolving other conflicts by convincing women against “destroying the family.” In Azerbaijan, the courts assign short prison terms when husbands murder their wives on grounds of jealousy and do not penalize underage marriages, reflecting the dominating local norms.

I believe that one of the most important contributions of my project is the study of a connection between the conduct of state officials and the cultural norms that have been preserved from the pre-Soviet era. These norms encompass the analysis of rights on the level of family units over individuals. This results in the violation of individual rights from the point of view of the Western scholar, while the judges of these countries may genuinely believe that they act in the people’s best interests. This conclusion will be an important contribution to scholarly work on the judicial decision-making process in developing countries; since the latter analyzes the possibility of human rights expansion through courts and ignores the fundamental differences between the norms of modern and traditional societies.

The findings of my fieldwork research demonstrate that, on one hand, there is a significant desire on the part of women to voice their concerns and attempt to address the issue of family violence and, on the other hand, there is considerable reluctance on part of the courts to support individual women’s rights. However, on the basis of the interviews with judges – which will be discussed below – it is evident that their choice of focusing
on maintaining of family units rather than supporting individual rights stems from beliefs of judges that they are doing what is ‘better society.’

The continuation of the paternalistic practices is usually associated with traditional societies, following either Weberian or modernization theory dichotomy between tradition and modernity (first assuming charisma-driven transition and second assuming industrialization-driven transformations). Both frameworks assume a transition from agrarian to industrial economy and a switch from paternalistic to individualistic societal relationships. However, the development processes of Azerbaijan and Tajikistan challenge these assumptions since both countries experienced rapid industrialization of the economic structure, massive education and bureaucratization of the political structures. Both regions experienced high literacy (97% in both countries), high level of university education among both men and women, high representation of women in the workplace. Nevertheless, during the entire Soviet rule these societies maintained paternalistic family relations and societal beliefs which polarize the roles for men and women.

Moreover, currently in both Azerbaijan and Tajikistan an even further ‘paternalization’ can be noted; this can especially be seen in a reduction of school education for girls, return to a more conservative attire for women in Tajikistan, etc. This suggests that we should not view judicial behavior solely as a factor of traditionalism, since the countries have experienced industrialization and massive literacy, as well as relative liberalization of women – and modernization theory does not account for reversible trends. While judges claim that they strictly follow the civil code, in practice
they constantly advise women to reevaluate their complaints and maintain their family regardless of violence persisting in their household.

Women in both Tajikistan and Azerbaijan are faced with a number of constraints when attempting to reach the courts to solve their problems of family violence. First of all, it is a lack of trust in the local system of justice, police and courts including. Secondly, in order to bring a case of woman battering into the court, the rules require the matter to be passed through the police. In other words, in an occurrence of an attack, the woman must report to the police, from where [if deemed necessary] she is referred to the medical expertise, where the level of physical damage is determined. According to the civil code of both countries, only in the case of some damage to a person’s health (from light to severe), can she appeal to the court. Often, police officers discourage women to take the matter to the courts and, rather, tell them to solve this ‘in a family circle.’ Thirdly, the court environment is just as discouraging for women to file their complaints: judges, in fact, admitted in their interviews that they violate the procedural code, which instructs to be uninvolved, and continually ‘consult’ women to rethink and withdraw petitions. Moreover, analysis of the judicial decisions showed that the judges penalize women batterers only in the cases of severe damage to women’s health and disregard the other petitions.

In both countries the judges distinguished between the official way of accepting the claims and the ‘slight procedural modifications’ they allow themselves to practice. Thus, they pointed out that in the cases of divorce the civil code instructs the judges to be impartial, conduct no discussions and just provide 2 weeks for a possibility of reconciliation. In both countries, all interviewed judges described the lengthy
negotiations they carry out in order to appease the plaintiffs. In fact, this is something they take pride in: one of the judges said she is known in her district court as the best one to reconcile the arguments between the spouses. The judges described that when wives bring their complaints against their husbands, they always ask women whether they want their husband to go to jail, whether they want their children to grow up without a father, whether it is wise to make him pay a fine out of a family budget which affects everybody, etc.

That is not to say that the judges in these countries disregard women’s rights overall. The judges noted that they vigorously try to protect women against cruelty of their husbands, that is, if the damage to the women’s health is severe, they punish the offender according to the criminal statute. Thus, the cases which actually get to the courts are those dealing with considerable damage to women’s health: the ones that I was able to access included a severe beating which resulted in a loss of an unborn child in one case, considerable scarring on a woman’s face in another, and breakage of a woman’s leg in yet another case. Notably, in the court cases which involve the division of property, the judges are upholding women’s rights to keep possessions which were acquired during joint life, even – notably – if the marriage was not registered by the state agency and only as a religious ceremony (which is not considered a marriage by the civil code; neither is civil marriage introduced into the legal language).

A number of cases in both countries involved a woman left with no place to live when a former husband would remarry/bring a new woman and simply would make the previous one to leave the place. In both countries, in practically all of the cases I examined the courts would grant the women the right to live in the previous
house/apartment according to the civil code which guarantees everyone a right for a living space. Thus, the judges can not be viewed as those who continually suppress women’s rights, rather as those who do not view wife battering as an issue worthy of courts’ attention.

**Suggestions for future research**

I suggest that the relationship between the conduct of state officials (their support or repression of human rights) and the pre-Soviet era cultural norms should be studied further. A comparison within regions with similar cultural norms should be done to identify additional variables, which could affect the development of women’s rights. For example, a comparative study of the legal norms in Armenia, Georgia and Azerbaijan can be done to identify the importance of identity (pro-Western in Georgia and pro-Turkish in Azerbaijan) for possible transformations of women’s rights. A closer look at the minority religious groups in Ukraine can clarify the importance of power struggle on local as well as federal levels for the development of religious freedoms in the area.

The results of the project will be useful to the U.S. government and non-profit organizations that aim to assist the development of democratizing policies and civic engagement. My observations suggest the necessity to approach public opinion through media and general public education, in the attempt not only to influence judicial decisions and but also introduce the concept of promoting individual human rights (such as women’s rights in Central Asia and the Caucus region). The study is showing that it is important to continue investing in the local NGOs, which specifically assist in interaction between women and state officials to help avoid harassment of the women by police. It is important to note that legal help in cases of women’s rights was offered mostly by NGOs
sponsored by Western states, since the local norms prevented engagement in family matters and, thus, it will be vital to continue this aid.
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