Introduction

This book focuses on one type of Russian jurist, the advocate (*advokat*). Advocates are practising lawyers who represent clients in court and provide legal and written advice. They are the only practising lawyers whom the Constitution of 1993 obliges to protect the rights and fundamental freedoms of Russia's citizens. Their profession is called the *advokatura*, which is translated here as the Russian bar.

Like many countries in Continental Europe, Russia lacks a unified legal profession. Now, as during the Soviet era, jurists must earn law degrees, but after graduation they branch out into a set of separate legal occupations and identities. Two categories of jurists other than advocates – jurisconsults (*iuriskonsul'ty*) and so-called private jurists – are also practising lawyers. Jurisconsults act as in-house counsel for enterprises and government agencies. Private jurists specialize in for-profit business transactions, although both private jurists and jurisconsults may represent clients in court in certain types of cases. The remaining categories of jurists include judges (*sud'i*); procurators (*prokurory*), who both supervise the implementation of laws and act as criminal prosecutors; criminal investigators (*sledovateli*); justice officials; and legal scholars.

This is the first full-length study of the advokatura written in English that encompasses the institution's entire development – from the tsarist to the early post-Soviet era (1864-2003). It complements previous studies of the Russian and Soviet bars in its emphasis on why certain historical legacies persisted in the early post-Soviet period – such as the state's interference in the advokatura's professional program – and how advocates, working within these constraints, still managed to gain more autonomy as legal practitioners and began asserting the rights and interests of their clients more strongly.[1] I argue that advocates, who numbered approximately 49,000 in 2003, played a meaningful role in promoting constitutional rights in post-Soviet Russia. Before focusing on the advokatura, however, this introduction first places the Russian bar within a broader context.

Historical Institutionalism

I examine the advokatura through the prism of a neo-institutional approach called historical institutionalism. Neo-institutionalists do not view institutions as static entities acted upon by individuals; rather, they emphasize how the histories, rules, procedures, cultures, and structures of institutions, including the courts, influence the choices of decision makers. As two pioneers of this approach argue, human rationality is "bounded," or constrained, within bureaucracies and organizations.[2] In simple terms, an individual's range of choices, interests, and goals is shaped by his or her environment.

Neo-institutionalists differ, however, over the extent to which human rationality is bounded. Historical institutionalists occupy the middle ground between rational-choice institutionalists and many sociologists.[3] They use the comparative method to explain how intermediate state and societal institutions "shape how political actors define their interests and structure their relations of power with other groups."[4] In their opinion, institutions are dynamic arrangements that are not necessarily defined by the same rules, norms, or customs. These factors often change over time. The strength of this approach, which is known as historical institutionalism, is its analysis of institutional development and policy making. It allows social scientists to explore the general patterns of an institution's political history and the relations between members of that institution and other institutions with which it must interact. Moreover, at critical points, an influx of new ideas, values, interests, and attitudes can lead to major institutional reforms.

Historical institutionalists also look at relations between the state and groups in civil society, viewing these relations as mutually transformative processes.[5] A civil society is often defined as a separate sphere of group activity that operates independently from the state. In a country with a mature democracy and civil society, state agencies normally do not dictate solutions but, rather, work together with non-governmental organizations to address problems and implement solutions. In his work on civil society in postcommunist countries, Marc Morjé Howard refers to Theda Skocpol's general description of civil society as a "source of considerable popular leverage."[6] "According to this historical institutional argument," Howard writes, "the organizations of civil society, which represent aggregate opinions, interests, and preferences of their members, can protect citizens from potentially unjust laws and policies, as well as exert a positive influence on legislation that concerns them."[7]

Defending Rights in Russia is about an organization in a postcommunist country that is in some ways anchored to civil society, which, in Russia, is often called the "third sector," and in other respects tied to the state. In the 1990s historical legacies from the Soviet period, which historical institutionalists broadly refer to as "path dependencies," influenced the advokatura's organizations and advocates' practices. These legacies include the state's

continuing interference in the advokatura's professional program. Historical institutionalism also allows me to emphasize the dynamic interaction between the state and advocates (autonomy, cooperation, and how they relate to the growth of civil society), advocates and clients (the protection of new civil rights), and among advocates (their struggle to achieve a unified set of professional identities and goals).

Legal Professions as Institutions

An ideal-typical profession is an institution, largely anchored in society, whose members share a common vocational identity, forged by a shared education, set of goals, rules for entrance and dismissal, and norms of behaviour. Professional identity is developed and maintained through institutional structures such as universities, corporate bodies, informal groups, and professional journals.[8]

It is important to note, though, that not all scholars of professions agree on what the unique characteristics and aims of professions are, particularly when taking into account cross-country variations. Nor do all scholars acknowledge that all members of a profession share the same goals and outlooks. There are two opposing camps in this debate: the functionalists and the critical analysts. Members of the functionalist group argue that professions are validated through their special expertise and service-oriented goals and that they seek to avoid state intervention.[9] They tend to assume that the legitimate goals (ideal types) of professionalization are a highly specialized and advanced education, an ethical code of conduct, altruism and public service, a rigorous approach to examination and licensing, high social prestige, high compensation, a set career pattern, monopoly over the services market, and autonomy.[10] Autonomy from the state is the most cited and debated goal, particularly when factoring in the level of bureaucratization of some professions.[11]

The functionalists' critics, who are referred to as critical, power-oriented, or market-control analysts, focus on how professions try to dominate the market for services, manipulate the state in order to achieve their goals, constantly improve their status, and avoid societal interference.[12] Functionalists typically use recent empirical data to support their arguments about ideal types, while power-oriented analysts tend to use critical historical methods. In general, the power-oriented analysts downplay the importance of expertise and public service in the development of professions.[13] They tend to question whether many of the professional goals functionalists emphasize are realistic or even desirable. For example, Richard L. Abel argues that, "Despite its emphasis on autonomy, [a legal] profession necessarily derives its regulatory power from the state" due to legislative statutes defining the profession's functions, organizations, and boundaries of practice.[14] In their study of the Italian legal profession, two power-oriented analysts, Vittorio

Olgiati and Valerio Pocar, draw on Gramsci's critical analysis of professions.[15] Gramsci, they write, argues that all professions are organically dependent on "the bureaucratic administrative apparatus of the state."[16] Olgiati and Pocar further explain that the so-called free professions (lawyers, physicians, and engineers) "are historical products of the *institutional* upheavals that occurred in each nation" (emphasis mine).[17]

Other scholars of professions have offered possible compromises between the two camps. For example, Eliot Freidson urges analysts to treat a profession "as an empirical entity about which there is little ground for generalizing as a homogenous class or logically exclusive conceptual category. The task of a theory of professions is to document the untidiness and inconsistency of the empirical phenomenon and to explain its character in those countries where it exists."[18] Similarly, according to W. Wesley Pue, "There is no 'base,' no bedrock professional core which is unmoved by the currents of time ... Structures and cultures influence each other through innumerable feed-back mechanisms."[19] Pue and other contributors to *Lawyers and Vampires: Cultural Histories of Legal Professions* find common tendencies across several Continental European and Anglo-American legal professions in terms of "the heterogeneity of most national legal professions, and their preoccupation with order, status (as well as economic self-interest), social exclusiveness, masculinity, legal learning and ritual."[20] These more fluid approaches are crucial to examining legal professions in particular, where factors such as the regime type and legal traditions strongly influence their development.

While taking a similar approach in my own analysis of a Russian legal profession, I argue that, in many cultural contexts, there are two broad goals of professionalization. The first goal is as political as it is professional: constructing and maintaining a corporate identity that is relatively autonomous from that of the state. This involves educating new members, re-educating older ones when conditions change, and enforcing standards of behaviour. Autonomy refers to the preference of the profession's members to set their own goals and entrance criteria, and to enforce standards of behaviour through their own management structures. It also assumes that lawyers strive to be autonomous actors within the legal system. However, autonomy from the state is necessarily limited by particular political and socioeconomic conditions. In addition, as Harley Balzer suggests, there may be a "range of relationships between professions and the state in any national context that are subject to change over time."[21]

The second goal of professionalization is to ensure that the profession's expertise holds economic value. Economic value, whereby one's expertise may translate into increased earning power and social prestige, is established in two interconnected ways. First, it is created through effective entrance barriers erected both by professional organizations and the state. In

many countries, legislatures adopt statutes barring anyone without the proper credentials from practising. Second, economic value is developed by converting expertise into what is considered to be a public good (i.e., legal assistance provided only by "qualified" professionals).

In some contexts, particularly in authoritarian systems, the goals of being relatively autonomous from the state and achieving economic value may conflict. During the Soviet period, for instance, the term "professional" was generally closely aligned with the ways in which certain workers followed the state's dictates in executing their specific tasks. Political authorities, often mid-level government and Communist Party (CPSU) officials, controlled access to the professions, defined their main objectives, and monitored their members' behaviour. Professionals were economically rewarded if they fulfilled the state's goals.

According to Louise Shelley, the power of jurists was derived from their proximity to the Soviet state rather than from any valuation in their particular forms of expertise.[22] Unlike other jurists, though, the Soviet advokatura gained limited corporate autonomy. Judicial and CPSU officials tended to allow bar associations, called colleges of advocates (*kollegii advokatov*), and their offices, called legal consultation bureaus (*iuridicheskie konsul'tatsii*), a semblance of self-regulation in order to maintain a semi-autonomous legal services market. When Soviet advocates described their particular type of legal institution, they used such words as *professiia* (profession) and *korporatsiia* (corporation), but these terms connoted more than just a fulfillment of state dictates. They also represented the shared aspirations of many advocates to maintain a professional identity first constructed by their tsarist-era predecessors, sworn attorneys. However, this "otherness" (which the criminal defence attorney best symbolized) came with a high price: most members of the advokatura were never as prestigious or economically rewarded as were members of the Procuracy, a state institution whose mandate to prosecute enemies of the state was central to guarding the regime.

Legal Orders and Legal Traditions

In studying the role of law and the way it has helped order Russian society, I have also incorporated the broader meaning of the state, its authority, and its use of law to meet certain ends (whether to coerce and maintain obedience or to resolve conflicts and increase public participation in policy making). On one extreme are bureaucratic authoritarian states whose agencies use highly coercive means to gain their own ends – the former communist regimes of Eastern Europe and the USSR are past examples. In these states repressive legal orders are the norm. On the other extreme are liberal, "rule-of-law" states, particularly those of Western European and Anglo-American countries. They strive for legitimization, procedural fairness, universal

adherence, and legal constraints. In these states law is supposed to be independent of politics.

It should be stressed from the outset, though, that the rule-of-law state is an ideal type. In Canada and the United States, for example, law is clearly not yet divorced from politics.[23] Under rule of law the judiciary is supposed to be relatively autonomous from ruling politicians. The state's actions are proscribed by laws that are not arbitrarily implemented. Also, the state is accountable to its citizens, whose basic rights are protected from encroachment. Group pluralism necessarily exists in some form, and there must be some kind of reliance on higher law (i.e., self-evident truths that uphold individual liberties). It also assumes that citizens view the state as legitimate and permit it somewhat to proscribe their own actions.[24]

This notion of rule of law is central to *Defending Rights in Russia* precisely because it is a goal of many Russian legal reformers today: it is relevant because it is perceived as a potential public good. According to Aleksandr M. Yakovlev, a renowned Russian legal scholar, "In a situation where law is equated only with the power of a tyrannical state, where the law is not respected but only feared, the idea of fairness is contrasted to existing laws."[25] Many Russian legal reformers or defenders argue that their country needs to adopt procedural fairness and regularity if it is ever to become a liberal democracy.

Like regime types, common law or civil law traditions influence legal professions. No country has adopted a purely civil law or purely common law approach but, rather, has inclined towards one or the other. Theories about professions tend to emphasize Anglo-American, or common law, traditions, despite the fact that most countries are a part of, or have partially adopted, the civil (Continental) law tradition.[26] For example, countries with civil law traditions include France, Germany, and Italy as well as the former Soviet-bloc countries. The two traditions are different in terms of the structure of their laws, procedural orientations, and the extent to which the state regulates legal institutions. Within the Continental law context, laws tend to be strictly codified, and the judiciary is responsible for applying them. Within the common law tradition, as the name implies, judges' rulings set precedents; thus they have more discretion and are themselves de facto lawmakers. Procedural orientations differ between these two traditions as well. In common law systems criminal trials feature an adversarial approach, whereby a "neutral" court resolves conflicts between two opposing sides. The adversarial system first emerged in England "as advocates developed concrete responses to the exercise of state power."[27] Under the adversarial system defence attorneys publicly oppose state interests and unambiguously defend their clients, regardless of their culpability. Conversely, in civil law systems criminal procedure is described as inquisitorial: court actors search for the truth, beginning in the crucial prelimi-

nary investigation, and the contest between the sides at trial is a less important dynamic than it is in common law systems.

In countries where the common law tradition is influential, voluntary and autonomous bar associations often govern the activities of practising lawyers. For example, in each province of Canada a law society educates and licenses lawyers (barristers and solicitors) and regulates their conduct. Law societies, which are created by provincial statute, are self-governing organizations whose boards are composed almost exclusively of practising lawyers. Therefore, although law societies have a legal obligation to fulfill, they are also autonomous institutions (i.e., they are not supervised by state agencies).

By contrast, in countries where the civil law tradition is prevalent, state agencies typically have regulatory control over bar associations, and lawyers are often identified as state employees. State agencies tend to institute and fund education programs, set curricula, conduct entrance examinations, arrange apprenticeships, and establish and regulate professional organizations.[28] As a general rule, in civil law countries the state, to a certain extent, also traditionally controlled attorneys' forms of practice (dominated by solo practitioners).

Attorneys in civil law countries are typically required to belong to local bar associations and to receive licences from the state, although not all civil law countries require applicants to pass qualifying exams (e.g., most Latin American countries do not hold bar exams). In France, where *avocats* have vocally supported more autonomy, they still must belong to colleges.[29] In Italy since the late 1800s the state has used the Ordine (regional bar association) "to impose limits on professional self-regulation and practice," a policy that "reflected the political urge to circumscribe a status role that would conform to the political program of the ruling class."[30] The policy also undermined the pre-Unification tradition of "free law societies, colleges, associations, chambers, and councils."[31]

However, this dichotomy between common law and civil law countries cannot entirely explain evolving relations between the state and lawyers. In some cases the state's interference has not contradicted the interests of legal professions.[32] In the Federal Republic of Germany professions have generally not perceived the state's interference as being against their interests.[33] Professions have requested that the state enforce higher standards of admission in order to ensure that candidates are well qualified. Charles McClelland argues that cooperation between the German state and professions actually heightened while neither side particularly benefited at the cost of the other.[34]

Abel stresses that, "like all social institutions, legal professions experience long eras of relative stability punctuated by short bursts of rapid change."[35] Periods of political crisis in particular are "the times at which the claims of 'professionalism' might be best tested, as too might the assumption of

homogeneity amongst members of the profession."[36] The past three decades, which have witnessed major political changes in Europe and the intensification of economic globalization, have marked periods of significant changes to the ways in which European legal professions are organized and regulated – changes that weaken aspects of the common law/civil law dichotomy and encourage a more contextual approach to studying legal professions. For example, local bar associations and national bar associations in civil law countries such as Germany have begun to assert their corporate demands even further.[37] Second, attorneys in both systems are faced with competition outside the established bar, a development that underlines how precarious the aim of monopolization is for any legal profession.[38] Third, competition also developed among attorneys themselves over determining boundaries of practice. Due to European Union regulations and the effects of globalization on legal-services markets, bars in many European countries, including in unified Germany, are experiencing a marked increase in functional differentiation and segmentation, particularly with the growth in the numbers and influence of corporate lawyers whose work concerns international law.[39]

Despite popular assumptions to the contrary, few Western bars are unified professions that have consolidated as institutions, that enjoy a complete monopoly over their services (with the exception of court representation), and that uniformly pursue the goal of total independence from the state. In recent decades bar organizations and different segments of legal professions have both reacted to powerful external forces and, with the help of the state, have initiated their own structural reforms. In terms of the Russian bar, advocates' professional structures and work life were partly influenced by the civil law tradition, but many other internal and external factors – particularly political turmoil, political culture, and the influence of state agencies – combined to play an even more significant role in structuring the advokatura.

Lawyers as Practitioners

Over the past three decades, many scholars – legal historians, sociologists, and political scientists included – have published a number of works on the roles of lawyers in society. This renewed interest in lawyers was a result of their increased efforts in Continental Europe to organize independently from the state and to redefine their boundaries of practice. Interest also grew as scholars sought to explain the rise of rights politics in certain societies and the ways in which lawyers have represented various and conflicting interests.[40] The work of legal professionals, particularly in liberal democracies, has involved placing constraints on governments and asserting the rights of citizens and groups. Dietrich Rueschemeyer argues that, "of all the professions, the legal profession is most likely to participate in the exercise of power in any modern society."[41]

Practising lawyers – namely, those who call themselves "advocates" (or an equivalent term) – have formal credentials that permit them to represent clients in courts and to counsel them in the law. The term also connotes public service and independence from the state.[42] The work of practising lawyers contains a necessary element of personal autonomy as this is needed in order to enable them to earn the trust of their clients and to appear as a separate side in court.[43] In European civil law countries, the state may regulate bar associations, but it tends to allow lawyers wide latitude as practitioners, particularly as criminal defence attorneys.[44]

Lawyers act as conduits between state and societal forces. They help to restructure relations between individuals and the state, to define and implement how the state intervenes in social relations, and to draw the line between public and private space.[45] Lawyers' work in democracies has served to strengthen the viability of groups in civil society as well as to mediate between state prerogatives and individual or group interests.

Lawyers' expertise encompasses several distinct areas, including the following: knowledge about the law; knowledge about and contacts with influential people; an ability to speak for clients; an ability to use rhetorical skills and technical knowledge to address adversaries, negotiating partners, judges, legislators, and administrators; an ability to counsel clients; an ability to perform formulaic acts in order to produce legal results; an ability to construct narratives; an ability to shape clients' objectives and strategies by telling them what they can achieve through the legal system; an ability to intensify or moderate legal conflict or encourage clients to comply with or evade the law; and an ability to define problems narrowly or broadly.[46]

Scholars who study law and society relations argue that the types of lawyers' expertise correspond specifically to contexts – the actors, structures, and circumstances – within which they work. Recent debates about lawyers' functions have centred on how they directly affect society.[47] To many, lawyers sell unique language skills and techniques.[48] Critical analysts often argue that, in using these skills, lawyers play a major role in maintaining existing power structures.[49] For instance, Olgiati and Pocar argue that, "if the legal system is both a means of social control and a structure of symbolic communication, then lawyers are both 'collaborators' within it and transmitters of information."[50] Many critical analysts fault the functionalist approach for assuming that lawyers' expertise simultaneously maintains the rule of law, protects private interests, and leads to the acquisition of professional power. Moreover, they doubt whether the particular interests of a client and a political system can actually be defined.[51]

Depending on the constraints placed on them by the structure and traditions of a particular state and its legal system, however, lawyers are sometimes given more or less creative licence in their daily practices. In capitalist societies lawyers facilitate private transactions and other efforts to mobilize

law to fulfill their clients' expectations.[52] In contrast, in command economies, lawyers' roles are limited to technical, routine functions because market mechanisms are generally non-existent and because the state controls most business transactions. Evaluating the general effectiveness of lawyers in a legal system is quite difficult. Researchers often cannot observe their work in certain contexts (such as confidential meetings with clients), and it is difficult to establish a direct causal link between the performance of an attorney in court and a trial's outcome. Often a lawyer's performance, particularly in criminal court, has been evaluated on the basis of what was deemed to be in the best interests of society.[53]

Many lawyers in Western countries specialize as much in clients as in practice.[54] American lawyers in particular distinguish themselves by their specialties and clients. Many studies of American attorneys in civil practice focus on their role as corporate lobbyists in governmental organs.[55] It has been found that these attorneys tend to have a good amount of leeway in making policy (translating the demands of clients into legal discourse) and in inventing relationships and even new institutions for their clients, from multinational corporations to the World Trade Organization.[56]

Conversely, legal discourse and court procedure are usually underdeveloped in the areas that affect the lives and interests of less economically advantaged people. In other words, relations between capital (private property) and law are more elaborately defined and, consequently, protected than are relations between the poor and the law.[57] In response to this discrimination, some legal systems enable the disadvantaged to seek redress, whether as consumers or as victims of maligned actions of state officials. In the 1960s and 1970s supporters of the public interest law movement and poverty law movement in several Western countries tried to expand public access to lawyers as a way to "democratize politics through law."[58] In making law more accessible to certain clients, lawyers have acted as gatekeepers to the legal process.[59] Their work has supported an alternative form of political participation for people who otherwise may have lacked a voice.[60]

In many former Soviet-bloc countries, as in most developing countries, access to justice and, in particular, to the protection of the right to legal aid, is not being fulfilled; often states lack the will and resources. According to the European Forum on Access to Justice (EFAJ), "In both criminal and civil cases, lack of access to justice results in a reduced public confidence in the legal system."[61] For example, EFAJ found that, in some legal systems, legal aid in criminal cases is limited through the mechanism of mandatory defence. Mandatory defence, codified in Russian criminal procedure until 2002, limits guarantees for right to defence counsel to certain categories of people. In many Eastern European countries courts lack transparency in how they choose defence counsel, and there is a dearth of guarantees to ensure that

counsel will be present in pre-trial stages, when their participation is vital to defending the rights of the accused.

Defending Rights in Russia focuses on how, in the early post-Soviet era, Russian advocates helped their clients assert new constitutional rights as criminal defendants. During the Soviet era the majority of advocates' daily matters fell into the civil sphere, involving housing issues, family law, labour complaints, pensions, patents, inheritance, and residency permits (*propiski*). Yet the majority of the court cases in which Soviet advocates participated were criminal. In the Gorbachev era (1985-91), defence attorneys gained early access to their clients and case materials. In an attempt to limit executive power (represented by law enforcement agencies), post-Soviet Russian legal reformers injected more elements of adversarialism into criminal procedure, first by the introduction of jury trials in a handful of regional courts in the 1990s and then by adding specific measures to the Criminal Procedure Code of December 2001.

Finally, the collapse of the Soviet regime enabled advocates to identify more closely with their clients' interests and to pursue more lucrative careers – to the detriment of the bar's original cohesiveness and to advocates' official duties to provide free legal assistance. One particular controversy concerns what obligation advocates have to accept state-appointed criminal cases and to offer pro bono assistance in civil matters. As the number of business clients has grown, advocates have acquired more incentives to work for them than for their traditional clientele (i.e., citizens from the lower and middle classes). Many advocates in the early post-Soviet era were not wealthy or well connected but, rather, struggled to make financial ends meet, as did most Russians. My work explores why, in the 1990s, some advocates (particularly those living in Moscow and St. Petersburg) were motivated to change their work patterns and forms of organization, while most preferred to maintain the old order.

Lawyers and Social and Political Change

During significant political transitions the rules of the game are not defined: the institutional framework is fragile, laws are constantly revised, and public space is redrawn. Under such conditions, professionals – the organized experts of society – have sometimes acted as dynamic forces. In some political transitions and nation-building projects lawyers have played a central role because of their special expertise in law and their proximity to certain kinds of political elites.[62]

Scholars have already examined lawyers' involvement in rapid political and socioeconomic change in Western Europe, the United States, and Canada. Halliday and Karpik argue that "the autonomy of legal professions as a political project is reciprocally tied to the rise of liberal political

systems."[63] Autonomy from the state, which results from lawyers' collective action, is strongest when a legal profession is unified and there is judicial independence. But the authors also stress that the liberalism most lawyers in Britain, France, Germany, and the United States historically tended to support was more often related to procedural rights, such as championing certain institutional arrangements, than substantive rights, such as achieving specific political, social, or minority rights (with the exception of France during the Revolution or the civil rights movement in the United States). In other words, it was a bounded liberalism, one tempered by politically moderate values.[64]

Some scholars who focus on the last democratization wave (beginning in the early 1970s) have also made lawyers the objects of their study. In some of these contexts legal professionals were actually championing substantive rights. For example, Carl F. Pinkele and Carlos Viladás Jene focus on how, in Spain at the end of Franco's rule, lawyers and judicial elites acted as a dynamic force in hastening his political demise.[65] The Colegios (bar associations) of Madrid and Barcelona in particular became "platforms of opposition" to Franco from the late 1960s until the end of his regime.[66] In discussing transitions from authoritarianism in Latin America, Guillermo O'Donnell and Philippe Schmitter show how, in some of these countries during the 1970s and 1980s, professions – including lawyers' associations – were given the opportunity to redefine their functions and relations to state officials as processes of liberalization unfolded.[67] In Brazil the national bar association criticized military rule and became a force for democratization.[68] In discussing South Africa in the early 1990s Wilfred Schärf recounts how paralegals working in black townships assisted victims of apartheid in undermining white-majority rule through legal means.[69]

As Soviet-type regimes began to democratize and eventually to collapse at the end of the 1980s, the legal profession–state relationship sometimes underwent a similar "Western Europeanization" as professional organizations gained more autonomy from the state.[70] In Hungary advocates played a visible role in supporting a transition to democracy. They were more politicized on the whole than were their counterparts in the USSR, and they could draw from pre-communist experience, when lawyers were better established as a free profession.[71]

As the Soviet Union began to liberalize in the late 1980s, CPSU general secretary Mikhail Gorbachev and some of his close advisors estimated that professions could potentially act as agents of transformation because of their expertise in law, science, technology, and administration.[72] But Gorbachev, like some of his Eastern European counterparts, had not anticipated that some professionals would independently restructure their organizations. Using their existing organization, special rhetorical abilities, and contacts with reformers within the regime, the media, and academe, Soviet advo-

cates seemed particularly poised to challenge the boundaries the Soviet state had imposed on them.

Yet they did not act as a major political opposition group against the Soviet regime; their focus was on promoting procedural rights and freedom of association. In addition, in contrast to national legislatures in Canada and the United States, where a law degree is seen as excellent training for a political career and legislative drafting, only a small percentage of deputies (less than 10 percent) in post-Soviet Russia's State Duma have been jurists.[73] Within the post-Soviet context such objective qualifications as educational background and vocation matter less to achieving electoral success than do one's personal ties to powerful and wealthy political and economic actors (i.e., Kremlin officials, business oligarchs, regional leaders).

During the transition from Soviet communism the Russian advokatura began to lose its organizational cohesiveness and to divide along generational and locational lines as well as along lines of specialization and ideology. In the 1990s several national bar associations and new colleges and law offices formed. As my work shows, in the first decade after the USSR's collapse the advokatura struggled to find a new unifying vision that effectively guarded against encroaching outside competition and a resurgence of state interference. Part of that vision included supporting new constitutional rights. For example, Genri Reznik, president of the Moscow Chamber of Advocates, argues that "the *advokatura* is an institute of civil society. Its main goal, and the reason why it was created, is to defend private persons in legal disputes with the government."[74]

However, the advokatura is not solely an institution of civil society; rather, both state officials and social forces dictate advocates' functions in the post-Soviet era. Russian officials, including most recently President Vladimir Putin, have stressed that the Russian bar has constitutional and statutory duties, which state agencies monitor. While advocates were redefining their organizational structures and modes of practice, they were also responding to revisions in legal codes, judicial reform, presidential decrees, and economic liberalization. State agencies, such as the Ministry of Justice and the president's State Legal Administration, competed to gain wider jurisdiction over legal reform and, consequently, the regulation of the advokatura.[75] The increasing attempts of state officials to control aspects of the advokatura's professional program paralleled the state's efforts, particularly under Putin, to monitor independent organizations (including human rights advocacy groups and think tanks) that publicly voice their opposition to government actions.[76]

Within the larger domestic context, Russian civil society remains weak. Many average Russians are not interested in joining voluntary groups and, instead, continue to rely on informal social networks for support.[77] Marc Morjé Howard explains that, "in post-communist countries ... – where

people's organizational experiences originated predominantly in the forced mobilization of the communist regime – the negative memory of mandatory participation leads most people to eschew organizational activity today."[78] Similarly, most advocates tend not to belong to voluntary organizations; the organizations they do join, regional chambers of advocates, are mandatory under federal law. As a result of this widespread apathy towards civic participation, voluntary organizations have little political leverage in Russia. The growth of a civil society is further hampered by the fact that the Russian state, particularly its administrative capacities, is weak.[79]

Legal culture also shapes the opportunity structure for advocates. Jane Burbank explains that "a legal culture cannot arise from rules alone, but only after a lengthy experience with judicial institutions, through which people learn that law can serve their interests, both individual and public."[80] Many observers describe Russia's legal culture as underdeveloped. They blame this condition on a combination of two major factors: (1) the weakness of new institutional arrangements that failed to contain the spread of corruption and organized crime and (2) the Soviet legacy. In the Soviet period political leaders used law as an instrument of power; they applied it arbitrarily, and citizens routinely appealed to Party organs for solutions to their problems rather than to the courts.

During the Yeltsin era (1991-9) public opinion about the court system was mixed. A 1994 Institute of Sociological Research study of Russian legal attitudes found that 8 percent of respondents rated the right to legal defence (*sudebnaia zashchita*) as one of the most important constitutional rights, equal to that of social security.[81] On the other hand, these results also betrayed a widespread belief in the mid-1990s that courts were more effective at fighting crime than at protecting due process rights. Respondents felt that a criminal going unpunished posed more danger than did an innocent person condemned. Average Russians were also traumatized by the sharp rise in street crime and organized crime in both urban centres and provincial settings in the 1990s.[82]

The Yeltsin era saw only partial implementation of legal reforms. Although two-thirds of a new civil code was adopted under President Boris Yeltsin, the State Duma failed to pass a new criminal procedure code, law pertaining to the advokatura, and other legislation on the legal system. Despite new laws that were meant to make courts independent from executive power, judges remained dependent on the good will of local officials for basic resources. In the meantime, courts remained underfunded and understaffed. Judges were vulnerable to violent threats from organized crime groups.

Moreover, it is also important to note that, unlike in several other former Soviet-bloc countries (such as the Czech Republic and East Germany), in

Russia there was no retributive purging (lustration) of Soviet-era legal professionals who were CPSU members.[83] Beginning in 1992 many of the same law enforcement officials and members of the judiciary who worked under socialist legality now served new laws that were structured around democratic and capitalistic principles. Russia did not adopt a lustration law for a number of reasons. First, from a practical standpoint, training a new cadre of legal professionals would have been too onerous a task for the Russian state, which lacked the financial resources for such a huge undertaking. Second, dismissing civil servants en masse, according to Eugene Huskey, "was unthinkable in light of the collective memory of the 1930s, which inoculated the system against a widespread purge of officialdom."[84] In addition, political reasons weighed heavily on the decision not to adopt such a law: influential law enforcement interests, including former officials of the Committee of State Security (KGB), strongly opposed adopting a lustration law. Also, between 1993 and 1999 the State Duma was dominated by members or supporters of the Communist Party of the Russian Federation, the CPSU's heir. Parliament voted down a draft law banning former CPSU officials from government service.[85]

Vladimir Putin became Yeltsin's successor to the presidency in January 2000. Putin's attitudes about the law, his emphasis on law enforcement rather than on due process rights, appear to have been shaped more by his experiences working for the KGB for fifteen years than by his legal training at Leningrad State University in the mid-1970s.[86] Putin's leadership objectives include centralizing control in the Kremlin, improving the economy, fighting organized crime and corruption, and achieving a "dictatorship of law." According to Jeffrey Kahn, dictatorship of law refers to Putin's goal to "recentralize authority by strengthening what he calls the 'vertical of executive power' in the Federation."[87] This concept, then, does not imply rule of law; rather, it is meant to empower the Russian state through a universal observance of federal legislation and government decrees. In a Russian public opinion poll published in 2002, 78.6 percent of respondents agreed that "many people do not resort to the courts *because they do not expect to find justice there* [emphasis in original]."[88] Therefore, Putin's vows to make justice less arbitrary and to promote a law-and-order agenda strongly appeal to many Russians.

In achieving a dictatorship of law Putin also wants to ensure qualified legal assistance. Since 2000 the Russian Duma, with a pro-Putin majority, adopted several new legal reforms, including a new law on the advokatura and criminal procedure code. Putin sees advocates as playing a role in promoting adherence to a legal order, and he sees the 2002 Law on Advocates' Activities and the Advokatura in the Russian Federation as integral to the court reform process.[89]

Research Methods

My fieldwork (conducted from October 1994 to May 1995, May to June 1997, and May to June 2003) benefited greatly from a more open political environment in Russia. I interviewed more than 100 advocates from Moscow, Ivanovo, and Petrozavodsk, and almost three dozen other Russian jurists, including judges, procurators, former investigators, legal scholars, and officials from the Ministry of Justice and the President's State Legal Administration. I observed nine trials in Moscow, one in Ivanovo, and one in Petrozavodsk. In addition, in 1995 I observed two meetings of the Duma Committee on Legislation and Legal and Court Reform. I also collected information about the advokatura in Russian-language books and periodicals housed in the social science library of the Russian Academy of Sciences (INION) as well as information gathered in the archives of the Russian Ministry of Justice and the Centre for the Preservation of Contemporary Documentation (the Russian president's archive).

I interviewed a cross-section of advocates based on the following: membership in various bar associations in Moscow, Ivanovo, and Petrozavodsk; practices in different types of law offices; different areas of legal expertise/specialization; a selection of leadership positions in bar associations and rank-and-file members; a rough gender balance reflecting actual membership numbers; and different age cohorts. Much of my time was initially spent cold-calling advocates and following up on contacts that had been given to me by Russian and Western acquaintances. Eventually, advocates allowed me to observe various bar association meetings and sometimes invited me to their homes. Second, along with Daniel McGrory of the American Bar Association's Central and East European Law Initiative (CEELI), in 1995 I wrote and conducted surveys of advocates' opinions on the state of their profession and aspects of their criminal and civil practices. Respondents were members of the Moscow Regional College of Advocates (a sample of twenty-five respondents [total membership of MOKA was approximately 1,000 advocates in 1995]); the Ivanovo Regional College of Advocates (a sample of thirty-two respondents [total membership of IOKA was approximately 155 advocates in 1995]), and Stavropol' (twenty [total membership in 1995 is unknown]). In 1997 I surveyed only six advocates in Petrozavodsk; in June 2003 I returned there to survey twenty-five advocates (members of the Chamber of Advocates of the Republic of Karelia [total membership in 2003 was approximately 200]) using a revised survey form. My interview questions for both surveys are outlined in Appendix 1.

Used in isolation, my interview and survey data are of limited scientific value because my samples are small. Whenever I conducted an interview, I knew I was collecting opinions, impressions, and experiences that could not necessarily be extrapolated to others. Basically, my interview and

survey data act as supplements to the published research I collected: they helped me create more lively narratives about advocates' work experiences.

This three-way comparison of advocates in Moscow, Ivanovo, and Petrozavodsk allowed me to assess the extent to which environmental factors, such as monetary and political resources, determined the organizations and role of lawyers in a time of transition. My research was based in Moscow for a number of reasons (beyond matters of personal convenience). First, in the 1990s the largest number of advocates, new colleges, and law offices was concentrated in the capital. It was in Moscow that the many new laws in the economic sphere most significantly affected advocates' practices. I chose Ivanovo as a regional site because it is a typical Russian provincial city in terms of population (over 500,000 residents) and infrastructure (it was economically depressed in 1995). In addition, it was one of five initial locations for jury trials beginning in late 1993. Petrozavodsk (population around 330,000) is the capital of the Republic of Karelia, one of the few regions of Russia that has a republican-level union of jurists, with a membership that includes advocates. Its jurists are used to Western researchers' probing questions because many have participated in training programs sponsored by the Vermont-Karelia Rule of Law Project and have already met several Americans or visited the United States.

Chapter Design

Defending Rights in Russia combines a historical analysis – in which aspects of the professional identity of the tsarist, Soviet, and post-Soviet bars are compared – with case studies of contemporary transitional conditions surrounding the corporate organization of the late Soviet and early post-Soviet bar (1985-2003) and legal services provided by its members. General themes in Chapter 1, "The Russian and Soviet Bars: A Historical Perspective, 1864-1984," include the professional identity of advocates in the first two eras and how advocates' work was affected by state-profession relations, public opinion, and internecine conflict; the extent to which the tsarist and Soviet bars became politicized; and the way in which advocates used laws and legal procedure to benefit different kinds of clients. Chapter 2, "The Advokatura in the Gorbachev Period," focuses specifically on how the Soviet bar responded to legal reforms instituted from above by Party and justice officials as the USSR began to unravel.

The heart of this book lies in Chapters 3 through 7. Here I feature advocates' own stories – their everyday experiences in the field, their efforts to carve out a free profession from what remained of the Soviet one, and their general attitudes on legal reform. Chapter 3, "Chaos in the Advokatura, 1992-2002," discusses why the bar's Soviet-era institutional arrangements changed and why the professional identity of the advokatura weakened so quickly –

to the detriment of the bar's "establishment." Case studies centre on the formation histories of new national bar associations, colleges, and law offices as alternatives to the old configuration of Soviet-era colleges and legal consultation bureaus. Chapter 4, "Autonomy and Dependence: State-Bar Relations in the 1990s," details advocates' attempts to balance their financial dependence on the state with a growing need for professional autonomy. Highlights of this chapter include advocates' negotiations with state officials over a new law on the advokatura and their attempts to educate new entrants. Chapter 5, "Restructuring the Advokatura from Above, 2002-3," examines key measures in the 2002 Law on Advocates' Activities and the Advokatura and how they were implemented in the first year after the law entered into force.

In the final two chapters my attention shifts to the actual practices of Russian advocates, in light of legal reforms. Chapter 6, "Russian Criminal Defence Advocacy in the Post-Soviet Era," emphasizes how advocates defended the accused in the early post-Soviet period. It examines the reasons why, in the 1990s, many elements of criminal procedure remained in place after the USSR's collapse and how those circumstances affected advocates who were defence attorneys. It also looks at why certain reforms benefited advocates and the accused, including newly reintroduced jury trials. The final section outlines major reforms in the Criminal Procedure Code of 2001, which may have a long-term impact on the advocate's role in criminal procedure. Finally, I show in Chapter 7, "New Trends in Advocates' Practice in the Civil Sphere," how advocates began to represent emerging interests in the civil sphere as new kinds of laws, rights, demands, actors, and institutions formed in the 1990s.