Reforming Criminal Justice in Russia: Progress Report for the Twenty-First Century

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The Soviet criminal justice system was barbaric. Citizens suffered degradation, humiliation, deprivation, and outright torture.1 The government, in the name of national security, limited the movement of citizens and monitored their activities.2 Government agencies and officials identified criminals based not only on actions but also on party quotas. Once identified, criminals were arrested, interrogated, and sentenced with little or no opportunity to put on a defense.4 This Comment considers and critiques the efforts to reform the criminal justice system of post-Soviet Russia and considers prospects for future development of the rule of law.


2. See infra notes 53-57 and accompanying text (examining the power of the Committee of State Security (KGB) under Gorbachev). See also COLEMAN, supra note 1, at 103 (describing the sophistication of KGB listening devices and citizens attempts to maintain their privacy). "State Security was so pervasive that no one could organize even the smallest protest demonstration without the KGB knowing in advance and positioned to bust it up in the opening moments." Id.

3. See COLEMAN, supra note 1, at 164-73 (criticizing the KGB and considering the history of the secret police in Imperial Russia and the Union of Soviet Socialists Republics (USSR)). When Lavrenty Beria ran Stalin's secret police, he liked to refer to anyone hauled in for questioning as "the accused." One hapless victim actually worked up the courage to object. "I'm not the accused," he complained to Beria. "There has been no indictment. I'm only the suspect." With exaggerated patience, Beria escorted the poor creature over to the window of his office atop Lubyanka prison and pointed nine floors below to the ordinary citizens of Moscow walking around Dzerzhinsky Square outside. "Down there are the suspects," Beria explained. "Up here, you are the accused." Id. at 164 (emphasis added).

4. See id. at 105-07 (relating the arrests, detention, and trials of three dissidents). On January 4, 1977, the police conducted an eleven-hour search of Yuri Orlov's home. See id. Before the search was even complete the Soviet government's news agency reported that evidence had been found tying Orlov and other dissidents to an anti-Soviet organization. See id. Despite the fact that the search uncovered no such evidence, Orlov and two others were quickly arrested. See id. They were held for investigation for more than a year then "sentenced in closed trials on absurd charges." See id. at 105-06; see also SERVICE, supra note 1, at 210-35 (discussing the years of terror under Stalin).

[Stalin's] method was systematically arbitrary; for the Politburo decision of 31 July 1937 assigned arrest-quotas to each major territorial unit of the USSR... [It] was laid down that 72,950 of victims—twenty-eight per cent—should be shot and the rest given "eight to ten" years in prison or labour camp.

Id. at 221-22. But see Bassiouni & Savitski, supra note 1, at 67 (describing the rights of a criminal suspect under Soviet law).
In the 1980s, under the guidance of General Secretary Mikhail Gorbachev, the government instituted a series of reforms, called perestroika, in an attempt to address the socio-economic problems plaguing the union. In the final years of their control, Soviet leaders incorporated reforms to the criminal justice system into perestroika. However, reform efforts failed to solve the economic and social problems of the country, and the USSR collapsed in 1991.

Throughout the 1990s, the government of the Russian Federation continued the reform efforts of the late Soviet period. These measures significantly affected the process available to citizens subjected to the criminal justice system. Ongoing reform efforts instituted changes in pre-trial investigation, detention, and trial procedures. However, the question remains whether enough was done to end the reign of terror and develop a rule of law.

This Comment focuses on the post-Soviet reforms designed to end terror and prioritize the rule of law within the Russian criminal justice system. To lay the groundwork for this material, Part II evaluates the Soviet criminal justice system as a foundation for reform. Part II then considers two specific areas of the Soviet system that contributed to the reign of terror:

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5. Gorbachev was General Secretary from 1985-1991. See Coleman, supra note 1, at ix. See generally id. at 217-361 (following Gorbachev’s rise to power and his fall as the USSR collapsed).


7. See Schroeder, supra note 6, at 187-91 (discussing the incorporation of criminal law into perestroika); see also Martin Fincke, Rebuilding Soviet Criminal Procedure, in The Emancipation of Soviet Law 199, 204 (FJM. Feldbrugge ed., 1992) (describing the transition to rule of law as the goal of Gorbachev’s reforms); see also infra notes 76-94 and accompanying text (discussing perestroika and specific reforms affecting the criminal justice system).

8. On December 8, 1991, following months of debate over Gorbachev’s proposal for a new Union Treaty, the USSR officially dissolved. See Russia and the Independent States 386-91 (Daniel C. Diller ed., 1993) (chronicling significant events of 1991); see also Coleman, supra note 1, at 325-57 (considering political events leading up to the coup of 1991 and the collapse of the USSR); see also FJM. Feldbrugge, Russian Law: The End of the Soviet System and the Role of Law 132-38 (1993) (examining the transition from the USSR to the Commonwealth of Independent States).

9. See infra notes 103-264 and accompanying text (discussing post-Soviet reforms).

10. See, e.g., Tamara G. Morshchakova, The Chechen War Case and Other Recent Jurisprudence of the Russian Constitutional Court, 42 St. Louis U. L.J. 743, 746-50 (1998) (discussing individual rights of Russian citizens); see also Todd Foglesong, Habeas Corpus or Who Has the Body? Judicial Review of Arrest and Pretrial Detention in Russia, 14 Wis. Int’l L.J. 541 (1996) (discussing implementation of the 1992 law that gave the judiciary power to review legality of arrest and pretrial detention); see also infra notes 95-206 and accompanying text (discussing the Russian criminal justice system).

11. See infra notes 209-61 and accompanying text (evaluating various roles to be played in criminal proceedings).

12. See infra notes 103-261 and accompanying text (presenting an overview of the structure and function of the criminal justice system).

forces, and (2) the treatment of "criminals" in the Soviet prison and corrective labor systems. Finally, this section reviews Soviet reforms during the period of perestroika. Part III first considers the role of the Soviet Constitution, Code of Criminal Procedure, and Criminal Code in the transition to the rule of law. This section also evaluates the dissolution of the KGB and the diffusion of the KGB's responsibilities to Russian security agencies. Part III concludes by examining reforms to the Procuracy and prisons.

Part IV studies the criminal justice system at work in Russia at the dawn of the twenty-first century and considers the extent of the transition from terror to law. This section evaluates pre-trial arrest and detention, and the right to counsel afforded criminal suspects before trial. Part IV also assesses the trial procedures of Russia as they exist a decade after the collapse of the Soviet Union, highlighting in particular the roles of defendant and defense counsel, prosecutor, victim, judge, and jury.

Part V contemplates the prospects for the achievement of Russia's ultimate goal of creating a society ruled by laws in the twenty-first century. Of particular significance are the changes in leadership that occurred in the last days of 1999 and the resulting changes in the political environment in Russia. Part V examines these changes and their possible influence on the role of existing laws in the administration of criminal justice and the future prospects for the adoption of proposed Code of Criminal Procedure and other legislation.

14. See infra notes 34-52 and accompanying text (discussing unrestrained power of the Ministry of Internal Affairs (NKVD) and the KGB).
15. See infra notes 53-75 and accompanying text (evaluating prison conditions and the use of corrective labor).
16. See infra notes 76-94 and accompanying text (examining Soviet criminal justice reforms).
17. See infra notes 103-53 and accompanying text (considering the effectiveness of the Constitution, the Code of Criminal Procedure, and the Criminal Code).
18. See infra notes 154-78 and accompanying text (describing functions and power of police in Russia).
19. See infra notes 179-97 and accompanying text (remarking on the role of the Procuracy in criminal justice).
20. See infra notes 198-206 and accompanying text (looking at the effects of reform measures on the prison system).
21. See infra notes 209-24 and accompanying text (discussing the pre-trial process).
22. See infra notes 225-61 and accompanying text (explaining the various roles played in a criminal trial).
23. See infra notes 262-339 and accompanying text (describing the political structure of Russia and the goals and measures taken by recently elected President Vladimir Putin).
24. See infra notes 340-61 and accompanying text (considering the possible implications of recent politics on the criminal justice system).
II. SOVIET JUSTICE AS A FOUNDATION FOR REFORM

After eliminating all pre-revolutionary laws, Soviet leaders spent several years creating a new legal system. The Soviet system, used law "as a one more device to discipline society and to accomplish [the government's] various political and economic goals." Fundamental to Soviet criminal law was the protection of certain social values. It protected "the social system of the USSR, its political and economic systems, socialist ownership, the person and rights and freedoms of citizens, and the entire socialist legal order against criminal infringements."
Accordingly, the purposes of punishment were "chastisement for crime," "reform and re-education of convicted persons," and "prevention of the commission of new crimes." While the broad purposes of the Soviet system were the same as many other criminal systems, the Soviets overlooked justice in writing and enforcing their laws, and instead used fear and brutality to control the citizenry.

This section focuses on two aspects of the Soviet rule of terror that precipitated and formed the foundation for post-Soviet Russian reforms. The first of these factors is the omnipresent role and unfettered power of police in Soviet society. The second is the inconsistent, illegal, and savage treatment of prisoners. In conclusion, this section reviews reforms to the system initiated in the final decade of Soviet control.

A. Soviet Security Agencies

The People's Commissariat of Internal Affairs (NKVD), later renamed the Ministry of Internal Affairs (MVD), and the Commissariat for State Security (NKGB), later renamed the Ministry of State Security (MGB), were the dominant police agencies in the Soviet Union from 1934 to 1954. The MGB conducted extensive purges of those who opposed the Communist government under Stalin.
Extra-judicial repression of persons who were regarded as potential enemies of the regime had already been instituted by Lenin. It proved itself to be one of the main devices in building a totalitarian system, reaching full maturity under Stalin. Vast numbers were executed or sent to labour camps for long terms...  

Following Stalin’s death, Party leaders merged the MGB into the MVD. In 1954, General Secretary Nikita Khrushchev, in an attempt to distance himself and the country from Stalin’s atrocities, replaced the MVD with the KGB. The KGB’s primary responsibility was “to ensure loyalty to the regime and to suppress all expressions of political opposition.” Khrushchev intended to stop the terror without destroying the Soviet system. He permitted a certain level of privacy and independence not tolerated by Stalin. But for the citizens, the improvements were not enough: “life in general remained hard and the political, economic and cultural order was still extremely authoritarian.” This is because, no matter what Khrushchev intended, the purpose of the KGB was to protect the security of the

36. FELDBRUGGE, supra note 8, at 202. “In the Stalinist system of repression, there simply were no restraints on secret police powers.” COLEMAN, supra note 1, at 164. The NKVD “operated as the terror courts of the security police from the end of 1938 on.” See van den Berg, Quantitative Aspects, supra note 34, at 100.

The impact of the Great Terror was deep and wide and was not limited to specific political, administrative, military, cultural, religious and national groups. Even a harmless old Russian peasant woman muttering dissatisfaction with conditions... or... complaints about housing standards would be dispatched to the horrors of the Gulag. No trace of 'anti-Soviet agitation' was meant to survive. Casual jokes against Stalin, the communist party or the Soviet state were treated as the most heinous form of trea son. In this fashion practically all Soviet citizens were exterminated who had displayed an independent mind about public affairs.

37. See TERRILL, supra note 34, at 309. The two were again separated a few years later. Id.

38. See id. Khrushchev held the position of First Secretary from 1953 to 1964. See Curtis, supra note 34, at 86, 91; see id. at 56, 85-91, 113, 440, 481, 495, 555-56 (discussing Khrushchev’s rise to power, foreign policy, domestic reform efforts, and his role in internal security); see also COLEMAN, supra note 1, at 3-63 (considering Khrushchev’s reform efforts and the politics of the era); see also SERVICE, supra note 1, at 334 (considering division of the Ministry of Internal Affairs (MVD) into two divisions). The new MVD is responsible for ordinary crimes and the KGB is responsible for “protection of the USSR’s internal and external security.” See id.; see also Curtis, supra note 34, at 555-56. The Chairman of the KGB was appointed by the Politburo, the chief executive body of the Soviet Union. See id. at 556. Important decisions regarding security were made by the KGB Collegium, which included the highest ranking KGB officials, as well as “selected republic and departmental chiefs.” See id.

39. General KGB duties included the following: protection of Soviet leaders, suppression of political dissent, protection of Soviet borders, and perpetuation of pro-Communist propaganda. See Curtis, supra note 34, at 556-58. To carry out this mission, the KGB had offices in every city in the Soviet Union. See id. at 556. (discussing the organization of the KGB and the role it played in the various republics).

40. See SERVICE, supra note 1, at 340 (postulating that Khrushchev’s denouncement of Stalin’s purges was to bring about an end to arbitrary punishments while permitting repression of “alternative ideologies”).

41. See id. at 557 (evaluating increased personal liberties during this time); see also Lien, supra note 25, at 76-79 (considering the effects of Khrushchev's reforms on individual rights).

42. SERVICE, supra note 1, at 358; see also id. (considering Khrushchev’s declining popularity).
USSR from within by deterring dissent among Soviet citizens. More importantly, Khrushchev's peers in the government saw him as a weak leader and a threat to Soviet authority. Consequently, Khrushchev was forcibly ousted in October 1964.

Leonid Brezhnev revived the fear of Stalinistic rule by keeping the KGB above the law. Secret research by a government employee uncovered documents that indicated "people were tortured, that their tongues were burned with cigarettes, etc."
[and] people were forced to stand sixty hours in a row just facing a wall. Prisoners were beaten so badly that they had to be carried to the firing squad."

Even under Mikhail Gorbachev, the KGB went unchecked. "The KGB ... continued to infiltrate every workplace, church, artistic union, and political group in the Soviet Union. ... 'It's got a new image, but it's the same old horse. ... The KGB is everywhere. ...'" Gorbachev's motivation to acquiesce to the KGB seemed to stem from political pressures within the party and his desire to hold on to his position as General Secretary. Regardless of his reasons for acting the way he did, Gorbachev's weakness resulted in Soviet citizens living in constant fear for their lives and their freedom.

47. REMNICK, supra note 1, at 34; see also id. at 31-35 (describing the remarkable secret research projects of Dmitri Yumasov).

48. Between Brezhnev and Gorbachev, two men held the position of General Secretary. Yuri Andropov, 1982-1984, and Konstantin Chernenko, February 1984 - March 1985. See REMNICK, supra note 1, at 191-93; see also SERVICE, supra note 1, at 428-35 (commenting on the three years under Andropov and Chernenko).

49. See COLEMAN, supra note 1, at 166-70 (examining Gorbachev's submission to the KGB). When Gorbachev became General Secretary, there were over 200,000 officers in the KGB. See id. at 166. Additionally, the KGB had little difficulty persuading almost anyone among the Soviet Union's 280 million citizens to do its bidding, at home or abroad. No Soviet, for example, could get a visa for a trip abroad without agreeing in advance to cooperate with the KGB during the trip and afterward, at the very least in supplying requested information. Within the USSR, it was no harder to pressure any Soviet into doing what the KGB asked, from spying on a neighbor to testifying falsely against a relative, or virtually anything else. The threat of arrest or worse was always there, but rarely needed. Usually it was enough for an agent to suggest that failure to help the secret police would mean loss of a job and no prospect of future work, or loss of a residence permit to live in a major city where food supplies were better, or, if that didn't work, the KGB could always hint at the danger of an unfortunate accident crossing a street.

Id. at 166-67.

50. REMNICK, supra note 1, at 354-55. But see SERVICE, supra note 1, at 480 (stating that the KGB "was no longer arresting citizens for lawful acts of political dissent.").

51. See REMNICK, supra note 1, at 47-51 (considering the controversy relating to the content of Gorbachev's national speech on November 2, 1987); see also id. at 194 (quoting Yeltsin's critique of Gorbachev: "Why has Gorbachev been unable to change this? I believe the fault lies in his basic cast of character. He likes to live well, in comfort and luxury."). Gorbachev undoubtedly remembered Brezhnev's overthrow of Khrushchev only a few decades earlier. See id. at 62; see also supra notes 38-44 and accompanying text (considering Khrushchev's reform efforts and his fall from grace).

52. See COLEMAN, supra note 1, at 44-46 (recounting the story of one citizen who was tormented by the system for over thirty years); see also id. at 101-03 (commenting on political dissent and government response); see also id. at 97-101 (discussing the trial of Andrei Sinyavsky and Yuli Daniel, writers who dared to criticize the Communist government, and the beginnings of organized dissensions). Individuals seen as threats to the government were prevented from leaving the country and were often denied employment. See id. at 101-02 (citing the case of Vladimir Slepak as an example of government treatment of perceived threats). However, it was also against Soviet law to be unemployed. See id. There was always the possibility of arrest and exile to Siberia. See id. at 101-12 (following the stories of three well known dissenters: Orlov, Ginzburg, and Shcharansky). Government reactions to the dissenters included arrest, exile, prohibitions on travel, and forced emigration. See id. Despite the horror, "[t]he barbaric suppression of dissent never killed [the dissident movement]. On the contrary, the repressions only increased the demands for reform until they at last toppled the Soviet system." Id. at 112.
B. Punishment Soviet Style

Officials had a broad range of options, both legal and otherwise, at their disposal when determining punishments. Enemies of the state could be sent to prison, labor camps, psychiatric hospitals, or sentenced to corrective labor, exile, or deportation.\textsuperscript{53} Sentences to deprivation of freedom, served either in prisons or corrective labor camps,\textsuperscript{54} ranged from three months to fifteen years.\textsuperscript{55} In theory, a sentence to a labor camp was determinate, but the government could easily prolong detention past the designated release date.\textsuperscript{56} In fact, some individuals were sent to labor camps where never heard from again.\textsuperscript{57}

Soviet leadership preferred the use of labor camps over traditional prisons.\textsuperscript{58} The labor camps consisted of a quadra-tiered system ranging in the degree of severity.\textsuperscript{59} Jobs performed by inmates were increasingly difficult and demanding and rations were more scarce at the camps higher up in the system.\textsuperscript{60} Life as a prison or labor camp inmate began with a month long train ride in cattle cars to the outer edges of

\begin{itemize}
  \item \textsuperscript{53} See SERVICE, \textit{supra} note 1, at 412 (recounting the story of a dissident who faced multiple punishments, including hospitalization, conviction for parasitism, and forced emigration).
  \item \textsuperscript{54} See BUTLER, \textit{supra} note 25, at 329 (categorizing correctional institutions as correctional labor colonies, prisons, and educational labor colonies).
  \item \textsuperscript{55} See Gorle, \textit{supra} note 26, at 255. A deprivation-of-freedom sentence could be a "condition," indicating suspension of the confinement portion of the sentence but still subjecting the individual to forced labor for the period of the sentence. See \textit{id.; see also BUTLER, supra} note 25, at 331 (describing the terms of conditional sentences).
  \item \textsuperscript{56} See van den Berg, \textit{Quantitative Aspects, supra} note 34, at 104-05 (defining the basic terms relating to corrective labor and differentiating between "camp inmates" and "deported persons"); see also SERVICE, \textit{supra} note 1, at 251 (commenting on the origination of "voluntary-compulsory retention").
  \item \textsuperscript{57} See REMNICK, \textit{supra} note 1, at 22 (citing just one example of the disappearance of a perceived political enemy).
  \item \textsuperscript{58} See Curtis, \textit{supra} note 34, at 582. During the 1980s about 99\% of criminals served time in labor camps as opposed to prisons. See \textit{id.}; see also COLEMAN, \textit{supra} note 1, at 183-86 (discussing the city of Perm and the Gulag prison camps named after the city); see also GER P. VAN DEN BERG, \textit{THE SOVIET SYSTEM OF JUSTICE: FIGURES AND POLICY} 109-36 (1985) (hereinafter VAN DEN BERG, \textit{THE SOVIET SYSTEM}) (defining and explaining corrective labor statistics from 1930-1980). Although the numbers cannot be confirmed, estimates of the population of corrective labor camps under Stalin range from 5 million to over 2 million. See van den Berg, \textit{Quantitative Aspects, supra} note 34, at 103; see also id. at 106-41 (attempting to calculate the possible population of labor camps from 1928-1938). The preference for corrective labor found its roots in the overcrowding of prisons following the Revolution and Civil War. See \textit{van den BERG, THE SOVIET SYSTEM, supra} at 87. A decree adopted on March 26, 1928 urged the use of corrective labor in place of short term prison sentences. See \textit{id.} Another factor supporting the use of corrective labor was the New Economic Policy established in 1929, which called for prisons and labor colonies to be self-sufficient. See \textit{id.} at 88; see also SERVICE, \textit{supra} note 1, at 123-49 (discussing the New Economic Policy and its effects).
  \item \textsuperscript{59} See Curtis, \textit{supra} note 34, at 589.
  \item \textsuperscript{60} See \textit{id.} at 588-91 (explaining the structure of and conditions in labor camps). Inmates in labor camps were confined to the camp, where they lived separate from the rest of society; however, their work could be inside or outside the camp or even in businesses where camp management contracted to provide free labor. See \textit{van den Berg, Quantitative Aspects, supra} note 34, at 104.
\end{itemize}
the country. Once they reached their destination, inmates suffered in "prisons and labor camps [that] were notorious for their harsh conditions, arbitrary and sadistic treatment of prisoners, and flagrant abuses of human rights." 62 They received barely enough food to sustain a sedentary lifestyle yet were constantly forced into physical labor. 63 Besides the inadequacy of food supplies, inmates received limited clothing and medical treatment. 64 Inmates were deprived of any hint of human respect. Sometimes inmates were moved from camp to camp just to keep them from getting comfortable and having any kind of stability in their lives. 65

The use of corrective labor, beyond the camp system, became prevalent in the 1970s. 66 Courts and administrative agencies could sentence individuals to the performance of "corrective tasks" at any location as long as the individual could get back to his own home at the end of the day. 67 The Soviet government also used psychiatric hospitals as prisons. 68 Political dissidents often spent years in these hospitals. 69

The Soviet government also relied heavily on internal deportation to control citizens perceived to be enemies of the social state. 70 Although families sometimes accompanied a deported person, relocation was forcible and the individual was responsible for finding his or her own employment in the "administrative region." 71 Courts or administrative agencies could issue deportation sentences. 72

61. See REMNICK, supra note 1, at 121-23 (analogizing the lives of inmates to those of slaves and livestock); see also SERVICE, supra note 1, at 223-24 (remarking on the secrecy of these journeys and their abhorrent consequences).

62. See Curtis, supra note 34, at 589. Inmates were victims of "venal and brutal" guards. See SERVICE, supra note 1, at 382.

63. See SERVICE, supra note 1, at 224.

64. See id.

65. See REMNICK, supra note 1, at 108. The government also wanted to prevent dissidents from spreading "anti-Soviet ideas." See id. The KGB also tried to get prisoners to repent their dissident ideas. See SERVICE, supra note 1, at 382.

66. See VAN DEN BERG, THE SOVIET SYSTEM, supra note 58, at 98-99 (relating the use of "exile labor" as an alternative to labor camps). A sentence to exile labor resulted in having to work wherever one was sent by police. See id. This allowed the government to fully utilize forced labor without having to expend the resources to support another prisoner. See id. at 98; see also BUTLER, supra note 25, at 331-32 (comparing correctional confinement to correctional tasks).

67. See van den Berg, Quantitative Aspects, supra note 34, at 105; see also Gorle, supra note 26, at 255.

68. See REMNICK, supra note 1, at 57. "Medicine became an arm of coercive state control as doctors were instructed to expect an influx of cases of 'paranoid schizophrenia' shortly before public festivals..." See SERVICE, supra note 1, at 382.

69. See SERVICE, supra note 1, at 382.

70. See Gorle, supra note 26 at 255 (distinguishing between exile, requiring the individual to live in a particular area, and banishment, prohibiting an individual from living in a certain area); see also BUTLER, supra note 25, at 331 (discussing exile and banishment).

71. See van den Berg, Quantitative Aspects, supra note 34, at 105.

72. See id. Courts could only issue determinate sentences but "administrative deportation orders could also be issued without a time limit." Id.
Worse than the legal options available for sentencing of convicted persons were the extra-legal punishments utilized. The power held by the government resulted in constant fear on the part of Soviet citizens. They never knew when the police might come for them or when they would see an arrested loved one again. "In making a secret of history, the Kremlin made its subjects just a little more insane, a little more desperate." Dissatisfaction with the government grew among the general populous and the government began to recognize that something had to be done.

C. Perestroika

Perestroika began with a broad idea "that some things could be improved: more democracy, elections, more in the newspapers—limited, but slightly more open—the management system should be improved, centralization should be less strict, power should be redistributed somewhat, maybe functions of the Party and the government should be divided." In the beginning, the goal of perestroika was to reduce economic waste, not to change to the fundamental system of communism; however, the system could not withstand the whirlwind of change it initiated.

One year after taking office, Gorbachev initiated reforms to the Procuracy that focused on the individual rights of citizens. Later, he expanded the individual right to judicial review and strengthened judicial independence. Gorbachev also established the Committee of Constitutional Supervision (CCS). The CCS was the first institution in Russian history responsible for reviewing the constitutionality of...
government actions.\textsuperscript{80} While perestroika led to unprecedented protections of individual rights within the Soviet Union, the government "still disregarded these rights if their exercise conflicted with the political interests of the state."\textsuperscript{81}

Although Gorbachev officially incorporated criminal law into perestroika in 1987,\textsuperscript{82} perestroika was significant not because of its effect on criminal justice but because it was at the core of the controversy that finally brought down the entire Soviet system.\textsuperscript{83} The 1990 removal of the constitutional provision that gave the Communist party the "leading" role in the government of the USSR was among the contested changes made during perestroika that foreshadowed the collapse of the Soviet system.\textsuperscript{84}

\footnotesize

\textsuperscript{80} Id. at 85. CCS is responsible for "ensuring the protection of constitutional rights, and keeping the republics in line with the central authorities' policy in legal matters." See Peter B. Maggs, The Russian Courts and the Russian Constitution, Address Before the Association of the Bar in the City of New York (Spring 1997), in 8 IND. INT'L & COMP. L. REV. 99, 101 (1997).

\textsuperscript{81} Lien, supra note 25, at 87-88. Despite his dedication to reform, Gorbachev, like all Soviet leaders, "attempted to censor criticism of his regime." Id. at 88.

\textsuperscript{82} Reforms of this period focused on controlling crime, not the abuses suffered by the system's victims. See Shelley, Criminal Law and Justice, supra note 77, at 189-96 (highlighting a few of Gorbachev's campaigns against crime and the increasing severity of criminal penalties). One positive change expanded the right to counsel. See Foglesong, supra note 10, at 557. Gorbachev also repealed laws against "anti-Soviet agitation" and "anti-Soviet propaganda." See Anatolyi V. Naumov, The New Russian Criminal Code as a Reflection of Ongoing Reforms, 8 CRIM. L.R. 191, 193 (1997). There were also reforms from within the court system. In December 1996, the Supreme Court issued a decree entitled "On the Further Strengthening of Legality for the Realization of Justice," for the purpose of eliminating "serious shortcomings and omissions" of the judiciary. See RAND, supra note 1, at 28. Discussions regarding draft revisions of the USSR Fundamental Principles of Criminal Law began in 1988, but the Supreme Soviet (the Soviet Parliament) did not accept the draft as a replacement for the previous provisions until July 2, 1991. See William E. Butler & Jane E. Henderson, Introductory Note to the Criminal Code of the Russian Federation, in RUSSIAN LEGAL TEXTS 593 (William E. Butler & Jane E. Henderson eds., 1998) [hereinafter Introduction to the Criminal Code]. The Supreme Soviet passed the Fundamental Principles in 1991, but the change was not scheduled to take effect until July 1992. However, the USSR dissolved in the interim; thus, the Principles never became effective. See id. The coup in August 1991 and the subsequent breakup of the USSR also prevented legislation from taking effect that would have created the first Soviet juries. See Duncan DeVille, Combating Russian Organized Crime: Russia's Fledgling Jury System on Trial, 32 GEO. WASH. J. INT'L L. & ECON. 73, 78 (1999); see also Schroeder, supra note 6, at 187-91 (considering the incorporation of criminal law into perestroika); see also Shelley, Criminal Law and Justice, supra note 77, at 189-204 (considering criminal law under Gorbachev).

\textsuperscript{83} In fact, the only amendment was to the chapter of the Constitution dealing with fundamental rights. See Feldbrugge, supra note 8, at 215. There was actually a movement away from the liberation of the criminal justice systems around the end of 1989. See RAND, supra note 1, at 84-93 (examining the effects of perestroika on crime and the criminal justice system).

\textsuperscript{84} See Hiroshi Oda, Recent Developments in Party Control Over the Courts and the Procuracy, in THE EMANCIPATION OF SOVIET LAW 239, 239-48 (F.J.M. Feldbrugge ed., 1992) (explaining the fundamental changes within the government of the Soviet Union during 1988 and 1989) [hereinafter Oda, Recent Developments]. The 1990 constitutional amendment made the Communist Party equal to other political parties. See Feldbrugge, supra note 8, 104-05; see also id. at 63, 126 (crediting Gorbachev with significant reforms to the system of government in the Soviet Union). However, the Party maintained its control over the country for a short time following the 1990 amendment. See REMNICK, supra note 1, at 514-15.
Creation of the position of President of Russia also signaled movement away from the traditional totalitarian system of the USSR. In March 1991, Boris Yeltsin, then chairman of the Republican Parliament of Russia, added a question to Gorbachev's referendum regarding the unity treaty on the issue of direct elections for the Russian President. In June of 1991, Russia held its first free Presidential election. Russia's exercise of its independence in this way is an indication of the insolvency of the USSR and all it stood for.

Reforms of the era "played an important role in establishing and strengthening mechanisms that ensured the legality of governmental conduct. However... they did not fully protect the rights guaranteed by the Constitution." Lack of universal support among Party members for political and economic goals partially explains the weakness in perestroika. Gradually, politics ate away at Gorbachev's dedication to broad reforms. The dilution of reform cost the Party millions of members. The country was being torn in two directions. It could not survive the calls for both totalitarianism and democracy. This fight consequently destroyed the Soviet Union. The Congress of People's Deputies of the USSR met for the last time in September 1991.

III. OVERVIEW OF THE RUSSIAN CRIMINAL JUSTICE SYSTEM

After the dissolution of the Soviet Union in 1991, the independent Russian government had to decide how to reconcile the ideology of freedom with the...
outraged criminal justice system of the Soviet republic. This section considers the legislative basis of the criminal justice system of Russia, reviews the reallocation of power to post-Soviet security agencies, evaluates post-Soviet changes to the Procuracy and its complicated role in the Russian criminal justice system, and examines reforms relating to the treatment of prison inmates.

A. Constitution and Codification of Criminal Laws


1. Constitution

On September 21, 1993, President Yeltsin, frustrated by the constant conflicts between himself and the Parliament, issued Edict 1400, “On the Step by Step Constitutional Reform of the Russian Federation.” The first step in the President’s reform plan was to dissolve the Parliament. He then adopted, on October 1 and 15 respectively, edicts calling for elections of a new Federal Assembly and a referendum to adopt a new Constitution.

95. See Introduction to the Constitution, supra note 87, at 1. One of the first steps taken by President Yeltsin was to outlaw the Communist party and seize its property in the fall of 1991. See REMNICK, supra note 1, at 504; see also SERVICE, supra note 1, at 505. However, it is important to note that members of the Party continued to hold positions in the government without denouncing the ideas of the Party. See REMNICK, supra note 1, at 504-05.

96. See infra notes 103-53 and accompanying text (commenting on the Constitution, the Criminal Code, and the Code of Criminal Procedure).

97. See infra notes 154-78 and accompanying text (discussing the structure and power of Russian security agencies).

98. See infra notes 179-97 and accompanying text (mentioning reforms affecting the Procuracy).

99. See infra notes 198-206 and accompanying text (discussing treatment of inmates and sanitary conditions in prisons).

100. See infra notes 103-13 (considering the adoption and effect of the Constitution).

101. See infra notes 114-27 and accompanying text (expressing the need for a new criminal procedure code).

102. See infra notes 128-53 and accompanying text (commenting on the political debates surrounding the Criminal Code and comparing the Code to Soviet law).

103. See Introduction to the Constitution, supra note 87, at 1 (considering the discord between the President and the Parliament). For a further explanation of the conflicts between the President and the Parliament, and the role of the Constitutional Court, see Lien, supra note 25, at 89-103. See generally Herbert Hausmaninger, Towards a “New” Russian Constitutional Court, 28 CORNELL INT’L L.J. 349 (1995) (evaluating the role of the Constitutional Court throughout the 1990s).

104. See Introduction to the Constitution, supra note 87, at 1.

105. See id. Both edicts called for voting to take place on December 12. See id. The Constitution was drafted during the summer of 1993 and published for discussion on November 10, one month after the edict calling for the referendum. See id. Drafts for a new Constitution were already in circulation before Yeltsin’s edicts. See Lien, supra note 25, at 104-07.
In some ways, the Constitution resembles those of the Soviet regime by creating a strong executive branch "to an extent that will render meaningless any constitutional limitations in the presence of an executive who chooses to disregard them." Among the President's powers are the rights to "dissolve and call elections for the State Duma" and "use dispute-settlement procedures to resolve differences between other organs of state power." Legislative and judicial review of presidential actions is severely limited by the Constitution.

However, a more detailed comparison between the 1993 Constitution and its Soviet predecessors shows that the new Constitution denounces old Soviet ideas in many respects. "Whereas constitutions of the former Soviet Union spoke of citizen's rights, in reality rights were vested in the state and citizens were accorded a series of obligations. With this Constitution the roles are reversed." The new Constitution gives citizens the right to travel abroad and legally return to Russia, as contrasted with the previous Soviet system; furthermore, the new Constitution permits citizens to travel freely within the country and live where they choose. Additional rights include freedom of speech, freedom of the press, free association, and the right to assemble. The Constitution also addresses judicial procedures...
relevant to criminal defendants, creating the right to a jury trial in certain circumstances to be defined in later legislation, extending the right to counsel to pre-trial detention, providing for the presumption of innocence, and prohibiting self-incrimination and double jeopardy.113

2. Code of Criminal Procedure

Russia is still operating under the Code of Criminal Procedure adopted in 1960 as Khrushchev attempted to rid the country of Stalin's violent oppression.114 The Code, which is organized to follow the course of a criminal case, has eight sections: (1) general provisions, (2) initiation of the case, (3) investigation, (4) trial court proceedings, (5) appellate proceedings, (6) execution and judgment, (7) review of judgements and rulings that have taken effect, and (8) proceedings against minors.115

Gorbachev and Yeltsin frequently amended the Code in the late 1980s and throughout the 1990s. The amendments reflected changes in societal attitudes. One such change was the movement away from oppressive totalitarianism in government, which led to amendments that "make criminal proceedings more democratic and more respectful of the basic civil rights of the accused."116 At the same time, "the general destabilization of society and the concomitant rise in crime required the introduction of more effective procedural institutions."117 As a result, the Code remained decidedly prejudiced in favor of the prosecution in that "[it] denied the defendant a shield against prosecutorial abuse and guaranteed the government an advantage once the trial got under way."118

Despite over four hundred amendments to the Code, articles addressing arrest and detention are essentially the same as those originally adopted in 1960.119

Article 122 of the Code, which spells out the circumstances under which an arrest (zaderzhanie) of a suspect can be made, gives considerable discretion to the officials and agencies authorized to make such arrests. In addition to the grounds for warrantless arrests that exist in most countries ... the Code also empowers police to arrest citizens when they possess "other
Thus, the Code remains inconsistent with the Constitution. For instance, Article 22 of the Constitution limits the time a criminal suspect can be detained without review of the case, but the Code permits the same agency, the Procuracy, to order and review detention. Secondly, even though there is now a constitutional right to counsel from the moment of arrest, the Code does not require the investigating officer notify the suspect of this right until the decision to prosecute is made. Finally, the prosecutor has the right to appeal acquittals which may violate the double jeopardy clause of the Constitution.

The Duma passed a new Code of Criminal Procedure in the summer of 1997. However, President Yeltsin vetoed that Code. Yeltsin and the Assembly never agreed on a new Code, thus leaving the adoption of a new Code of Criminal Procedure to the new administration.

120. Id. Additional reasons for warrantless arrests include lack of a permanent residence and inability to provide proof of identity. See id. at 553.

121. See Maggs, supra note 80, at 100-11 (comparing application of the Constitution and the Code of Criminal Procedure). Consider the following concerns about applying various protections of the Constitution:

Article 15 states: "Bodies of state power, bodies of local self-government, officials, citizens and associations of citizens, must observe the Constitution of the Russian Federation and the laws." Article 46 proclaims: "Everyone is guaranteed judicial protection of his or her rights and liberties." Article 49 indicates: "Everyone accused of committing a crime is presumed innocent until his or her guilt has been proved according to the procedure stipulated by federal law and established by a court verdict that has entered into force. An accused person is not obligated to prove his or her innocence." Finally, Article 50 assures: "No one may be convicted more than once for the same crime." Some of these constitutional rights are strikingly similar to the protections enunciated in the old Code of Criminal Procedure of the RSFSR. As a result, there is some uncertainty as to whether the agents of the justice system will display a deference toward these constitutional rights. At issue is whether the agents of the justice system have accepted the principle of government by rule of law.

122. See TERRILL, supra note 34, at 349 (comparing application of Article 122 of the Code and Article 22 of the Constitution).

123. See id. at 351 (commenting on Article 46 of the Code and Article 48 of the Constitution); see also infra notes 216-22 and accompanying text (discussing the pre-trial right to counsel).

124. See Stephen C. Thaman, Europe's New Jury Systems: The Cases of Spain and Russia, 62 SPG LAW & CONTEMP. PROBS. 233, 248 (1999) [hereinafter Thaman, Jury Systems]; see also Boylan, Judicial Reform, supra note 26, at 1340-41 (contemplating whether prosecutorial appeals violate the double jeopardy clause). Acquittals were almost unheard of during the Soviet years. See RAND, supra note 1, at 2. Moreover, because the currently applicable Code is merely an amended Soviet Code, "there is skepticism regarding the ability or willingness of agents of the Russian justice system to comply with [the Code's] procedural protections." See TERRILL, supra note 34, at 349.


127. See infra notes 262-333 and accompanying text (discussing changes in leadership and what President Putin has done since he took office).
3. Criminal Code

The Criminal Code of the RSFSR, adopted on October 27, 1960, elaborated on the 1958 Fundamental Principles of Criminal Law of the USSR.128 Political discussions regarding passage of a new criminal code began in the late years of the Soviet era.129 In that direction, the Criminal Code underwent extensive revisions between 1989 and 1992. A number of "crimes" were completely removed from the Criminal Code during this transition, many of which closely related to the oppressive nature of Soviet totalitarianism.130 However, the structure and approach to criminal law remained the same.131

In 1995, the Russian government began to actively pursue adoption of a new criminal code.132 This section reviews specific provisions of the Code that became effective on January 1, 1997133 and evaluates some of the issues that may prevent the Code from effecting real reform.134

128. See Introduction to the Criminal Code, supra note 82, at 593; see also Curtis, supra note 34, at 583; see also Hiroshi Oda, Criminal Law Reform in the Soviet Union Under Stalin, in THE DISTINCTIVENESS OF SOVIET LAW 77 (F.J.M. Feldbrugge ed., 1987) [hereinafter Oda, Criminal Law Reform] (recounting attempts to amend the Soviet Criminal Code from 1927 to 1944).

129. See Introduction to the Criminal Code, supra note 82, at 593. "The adoption of a Criminal Code appropriate to market social and economic conditions was regarded as an essential step in the transition to a market economy. Discussions of fundamental reforms of the criminal law were well advanced by 1988, when..." See Fundamental Principles of Criminal Legislation [was] published."Id. Efforts expended on the Fundamental Principles served as the foundation for the Criminal Code of the Russian Federation. See id.

130. See Feldbrugge, supra note 8, at 309 (citing anti-Soviet propaganda, private enterprise, and "crimes against the separation of church and state" as a few examples).

131. See id.

132. See id. Two drafts of the new code were submitted to the Duma in 1994, one by the Office of the President and one by Duma deputies. See id. The Duma created a working group to reconcile the two drafts, and on July 19, 1995, the Duma adopted the working group's version. See id. The Duma then sent the adopted code to the Council of the Federation for its approval. See Introduction to the Criminal Code, supra note 82, at 593; see also Naumov, supra note 82, at 197-98. While the Council was still considering the Code, the Duma sent it to the President for his signature, but President Yeltsin refused to sign it "on the grounds that the original text was with the Council of the Federation and he was not authorized [sic] to sign a 'copy.'" See Introduction to the Criminal Code, supra note 82, at 593. The Council finally acted by rejecting the Code on October 4, 1995. See id. However, during the three months between the time the Council received the Code and the time it rejected the Code, the time limit imposed by the 1993 Constitution lapsed and "the Council was deemed to have approved the bill." See id. Following rejection by both the Council and the President, the Duma reconsidered the Code. See id. On November 2, 1995, the Duma again voted to adopt the Code, but on December 6, 1995, President Yeltsin again refused to sign it. See id. This time he said it was not sufficiently linked to the Code of Criminal Procedure and that it was missing vital provisions. See id. at 593-94; see also Curtis, supra note 34, at 583. It is useful to know that the MVD opposed the Code. See id. at 583 (hypothesizing that the President's vote was at least partially based on political pressure from MVD officials). A conciliation commission was established to revise the Code. See Introduction to the Criminal Code, supra note 82, at 594. The Duma received and adopted the revised draft on May 24, 1996, and the Council approved it less than a month later. See id. President Yeltsin finally signed the Code into law on June 13, 1996. See id.

133. See infra notes 135-46 and accompanying text (describing the Code).

134. See infra notes 147-53 and accompanying text (comparing the Code to Soviet practices).
The Criminal Code is divided into two main parts, the General Part and the Special Part.\textsuperscript{135} The General Part focuses on defining concepts and types of criminal responsibility and punishments.\textsuperscript{136} As might be expected, the Special Part then breaks down specific criminal acts and their corresponding punishments.\textsuperscript{137}

The General Part begins with Section I which details the tasks, principles, and operations of the Code.\textsuperscript{138} Sections II and III then define concepts and types of criminal activity, and concepts and assignment of punishments.\textsuperscript{139} Finally, Sections IV through VI deal with relief from criminal responsibility and punishment and include specific provisions regarding minors and individuals who are mentally incompetent.\textsuperscript{140}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{135} See generally Criminal Code of the Russian Federation, in RUSSIAN LEGAL TEXTS 594-766 (William E. Butler & Jane E. Henderson eds. 1998) [hereinafter Criminal Code].
\item \textsuperscript{136} See id. at 594-642. The General Part is further divided into 6 sections and 104 articles. See id.
\item \textsuperscript{137} See id. at 642-766. The Special Part includes 12 sections and 256 articles. See id.
\item \textsuperscript{138} According to Article 2(1), the purpose of the Code is the “protection of the rights and freedoms of man and citizen, ownership, public order and public security, the environment, and the constitutional system of the Russian Federation against criminal infringements, ensuring the peace and security of mankind, and also the prevention of crime.” Id. at 594. The Code goes on, in Article 6, to say that punishment must be “just.” See id. at 595 (defining just punishments as those that “correspond to the character and degree of social danger of the crime, the circumstances of committing it, and the personality of the guilty person.”). Article 7(2) further requires that punishments “may not have as their purpose the causing of physical sufferings or the demeaning of human dignity.” Id.
\item \textsuperscript{139} Article 14 defines criminal conduct as “[a] socially dangerous act committed guiltily which is prohibited by the present code under threat of punishment . . . .” Id. at 598. However, “an action (or failure to act), although formally containing indicia of any act provided for by the present Code but by virtue of insignificance does not represent a social danger, that is, has not caused harm nor created a threat of causing harm to the person, society, or the State, shall not be a crime.” Id. at 598. Article 38 specifically focuses on the liability that attaches for harming a criminal suspect in custody, causing liability to attach only if the harm caused “was clearly excessive and not called for by the situation” and then only if the harm was caused intentionally. See id. at 608-09. Article 44 lists the possible punishments:
\begin{itemize}
\item (a) fine;
\item (b) deprivation of the right to occupy determined posts or to engage in a determined activity;
\item (c) deprivation of special, military or honorary title, class rank, or State awards;
\item (d) obligatory tasks;
\item (e) correctional tasks;
\item (f) limitation in military service;
\item (g) confiscation of property;
\item (h) limitation of freedom;
\item (i) arrest;
\item (j) confinement in disciplinary military unit;
\item (k) deprivation of freedom for determined period;
\item (l) deprivation of freedom for life;
\item (m) death penalty.
\end{itemize}
Id. at 610-11. Article 60 requires that punishments of the least necessary severity should be used and that the circumstances of the crime should be considered in deciding the punishment. See id. at 618.
\item \textsuperscript{140} Articles 75-78 set forth a number of conditions that under certain circumstances, can relieve an individual of criminal responsibility. See id. at 627-28 (establishing the circumstances in which repentance, reconciliation, change in situation, or statutes of limitations relieve an individual from criminal responsibility for otherwise criminal conduct). Relief from punishment is also possible under Articles 79-83. See id. at 629-32 (allowing conditional early relief or reduction of punishment if the current severity of punishment is no longer necessary for rehabilitation).
\end{itemize}
\end{footnotesize}
The Special Part of the Criminal Code separates criminal activity into six main categories: (1) crimes against the person, Section VII; (2) economic crimes, Section VIII; (3) crimes against public security and order, Section IX; (4) crimes against state power, Section X; (5) crimes against military service, Section XI; (6) and crimes against peace and security of mankind, Section XII.

The Code "represents a major effort at discarding a lawless and repressive Soviet legacy and joining the mainstream of progressive penological cultures." The basic values of the Russian Code are different from those of its Soviet predecessor:

[The new Code] rejects the priority of governmental interests over the interests of the individual. ... [it] puts interests of the individual, above all his life, liberty and autonomy, at the top of the hierarchy of values. Consequently, the new code is pervaded by the ideology of human rights and makes their protection its central concern.

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141. Article 117 prohibits torture. See id. at 647. Crimes against freedom, honor, and dignity are described in Articles 126-30. See id. at 651-54. Articles 136-49 focus on the constitutional rights of Russian citizens. See id. at 655-63. Article 138(1) allows individuals to maintain secret communications. See id. Articles 141-42 protect free elections. See id. at 659. Article 144(1) prohibits officials from compelling or refusing to allow professional journalists to disseminate information. See id. at 660-61. Article 149 additionally forbids government officials from interfering in otherwise legal demonstrations. See id. at 662.

142. See generally id. at 666-94 (defining economic crimes).

143. Crimes against public security are defined in Articles 205-27. See id. at 694-729. The organization of "mass disorders" is prohibited by Article 212. See id. at 698. Flagrant violations of public order "expressed by a clear disrespect for society accompanied by the application of force to citizens or by the threat of the application thereof" are prohibited by Article 213. See id.

144. Section X has four chapters: (1) Crimes Against Foundations of Constitutional System and Security of State, Articles 275-84; (2) Crimes Against State Power, Interests of State Service in Agencies of Local Self-Government, Articles 285-93; (3) Crimes Against Justice, Articles 294-316; and (4) Crimes Against Administrative Order, Articles 317-330. See id. at 730-55. These chapters focus respectively on the protection of the post-Soviet democracy from citizens who may act against it, the government from corrupt officials, the fair administration of justice, and the administration of order. See id.

145. See generally id. at 755-64 (focusing on regulation of individuals involved in military service).

146. See generally id. at 764-66.

147. Pomorski, supra note 125, at 376.

[The Soviet state subordinated the rule of law to politics, which was determined by the Communist Party. The Party was ultimately responsible for establishing the policy and directives for the various law enforcement systems. Each force, in its own way, was concerned with assuring obedience to the collective social rights and obligations of the citizenry. The extrajudicial powers afforded the police, in particular state security force, enabled them to perform their responsibilities and claim that it was being accomplished within the context of the Constitution of the USSR and the laws of the Soviet state. The Soviets permitted violations of a person's civil rights ... if it would achieve obedience to the collective social rights and obligations.

TERRILL, supra note 34, at 318.

148. Pomorski, supra note 125, at 378; see also Naumov, supra note 82, at 202 (stating that the new Code revised the hierarchy of values, placing the person above the state). But see id. at 389 (stating that "[x]cessive severity, one of the outstanding characteristics of Soviet criminal law, has by no means been overcome in post-Communist Russia; in fact, the situation seems to have deteriorated.").
The Russian Code introduces "the principles of legality (article 3), equality of all citizens (article 4), culpability (article 5), justice (article 6), and humanism (article 7)" into Russian law for the first time. 149 The Code also eliminates punishments such as banishment and exile that the Soviets used extensively. 150

Whether the effort to establish the rule of law has been successful is debatable. The Code does not address weaknesses of the Soviet system, such as the general definition of crime as a "socially dangerous act." 151 Furthermore, the system of government established by the 1993 Constitution does not rectify the problem faced by the Soviets of having multiple branches of government with the ability to promulgate law. 152 Not only does the Assembly pass laws, Article 84 of the Constitution permits the President to introduce legislation to the Duma, and Article 90 gives him the authority to unilaterally issue edicts that have the force of law. 153

B. Security Agencies in Post-Soviet Russia

The Soviet government was based on the "dictates of the Communist Party," not the rule of law. 154 State security was more important to the government than "ordinary police functions." 155 "The state was vested with all rights, while the people were subservient to the obligations of the state. Under this system, police considered themselves above the law . . . ." 156

The KGB was such an elite organization that regulations over its operations were never published or even acknowledged. 157 Finally, in May 1991, the government published the "Law on the Organs of State Security in the USSR" detailing the activities of the KGB. 158 This was the beginning of the end for the KGB. 159 Scrutiny of the KGB increased after the coup in August 1991. On December 3, 1991, as government authority shifted from the Soviet government to the Russians, the Parliament passed "A Law Reforming the Functions of the

149. Naumov, supra note 82, at 202.
150. See TERRILL, supra note 34, at 347.
151. See id. at 346.
152. See id. at 344 (commenting that one of the causes of ambiguity in Soviet law was the number of branches that can enact law).
153. See, e.g., TERRILL, supra note 34, at 302; see also Constitution of the Russian Federation, in RUSSIAN LEGAL TEXTS 3 (William E. Butler & Jane E. Henderson eds. 1998) [hereinafter Constitution]; see also infra notes 271-90 and accompanying text (discussing the structure and functions of the Russian government). Regional legislatures also pass laws that are binding only in that region. See TERRILL, supra note 34, at 344.
154. TERRILL, supra note 34, at 306-07 (comparing ideals of the Soviet government to those of a democratic government).
155. See FELDBRUGGE, supra note 8, at 212.
156. TERRILL, supra note 34, at 307.
157. See id.
158. See id. This law began to cut-back the previously unlimited powers of the KGB. See id.
159. See id.
KGB." This law disseminated KGB functions to other government agencies and started the difficult process of adapting Soviet police systems to the needs of post-Soviet Russia. This section discusses the distribution of power between a few of Russia’s security agencies.

The Ministry of Security (MB) was the largest of the KGB successor agencies with over 137,000 employees. In the fall of 1993, President Yeltsin, upset that MB leadership would not support him in his political struggle with the Parliament, fired the Minister of Security and disbanded the agency. Yeltsin created the Federal Counterintelligence Service (FSK) in January 1994 to replace the MB. However, the legislation creating the agency was too ambiguous in both its description of and limits on the agency powers. In April 1995, with the passage of the “Law on Organs of the Federal Security Service,” the Federal Security Service (FSB) replaced the FSK. The FSB is the agency primarily responsible for Russian security and counter-intelligence. The FSB also participates in criminal investigations and maintains a pre-trial detention center.

The Ministry of Internal Affairs (MVD) is responsible for the majority of police functions in Russia. The MVD is organized into national and local agencies to

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160. See id.; see also Curtis, supra note 34, at 559. The demise of the KGB was seen as a sign of democracy by many observers. See id.

161. See Curtis, supra note 34, at 559; see also COLEMAN, supra note 1, at 386; see also TERRILL, supra note 34, at 307. Yeltsin also changed the daily functions of security agencies from monitoring the political activities of individual citizens to (1) supporting him against “high-level political opponents”; (2) battling domestic problems of “ethnic separatism, terrorism, labor unrest, drug trafficking, and organized crime”; and (3) carrying out counterintelligence against foreign interests in Russia. See Curtis, supra note 34, at 559 (highlighting President Yeltsin’s main objectives for internal security services).

162. See generally Curtis, supra note 34, at 559-67 (describing the power distribution among those agencies which replaced the KGB). The five agencies that replaced the KGB in Russia are: the Ministry of Security (MB), the Main Guard Directorate (GUO), the Ministry of Internal Affairs, the Federal Border Service and Border Security, and the Federal Agency for Government Communications and Information (FAPSI). See id. at 559-67. Functions of the Federal Border Service and FAPSI take them outside the substance of this Comment and will not be discussed.

163. See id. at 560 (explaining the transition of power from the KGB to the MB). Primary functions of the MB were military and political counterintelligence, “transportation security,” political security in Russia, investigation of government corruption and economic crimes, and general surveillance. See id.

164. See id. at 551-62 (discussing Yeltsin’s increasing disappointment with MB leaders).

165. See id. at 562.

166. See id. “The original outline of the FSK’s powers eliminated the criminal investigative powers of the Ministry of Security, retaining only powers of inquiry. But the final statute was ambiguous on this issue assigning to the FSK the task of ‘carrying out ... criminological and other expert assessments and investigations.’” Id.

167. See id. at 553. Under this law, the FSB was granted complete investigative authority and control over prisons and special military detachments. See id. (comparing FSB powers to those of the KGB). The law explicitly gave the FSB power to enter homes as long as there was “sufficient reason” to believe that a crime was being committed or individuals being pursued were in the home. See id. at 564 (discussing FSB authority and limits).

168. See FELDBRUGGE, supra note 8, at 213.

169. See TERRILL, supra note 34, at 313. The Procuracy no longer supervises investigative functions. See id.

170. See Curtis, supra note 34, at 578. In addition to the traditional police functions of conducting criminal investigations and generally maintaining order, the agency is responsible for firefighting, traffic control, vehicle registration, transportation security, issuing visas and passports, and the running of most prisons and labor camps.
facilitate operations. The militias are divided into security and criminal divisions, with the criminal divisions further divided by types of criminal activities. Two significant divisions of the MVD are the Special Forces Police Detachment (OMON) and the Internal Troops. OMON deals with emergency situations, such as hostage crises, large-scale public disturbances, and terrorist threats. Soviet leaders also use OMON to put down rebellions in the republics. Functions of the Internal Troops include protection of public order and guarding of key state installations. In 1996, a proposed plan to reorganize the MVD placed added emphasis on law enforcement. Unfortunately, there were insufficient funds to provide for the proposed addition of ninety-thousand police officers.

C. The Procuracy

Created by Lenin on May 28, 1922, the Procuracy was the agency primarily responsible for the observance of the law in the USSR. There were two categories of Procuracy duties: general supervision of government agencies and supervision of the administration of criminal justice. General supervisory duties included monitoring of other government agencies, officials, and individual citizens to ensure strict and uniform observance of the law. As supervisor of the administration of criminal justice, the Procuracy supervised pre-trial investigations, prosecution of criminal trials, and execution of sentences. According to the Constitution, the Procuracy was independent, but in actuality the Party exercised complete control.
over the agency. Furthermore, Party members held most of the key positions in the Procuracy.

Ordinary crimes such as robbery, bodily injury, vandalism, and murder composed the majority of prosecutions. The minority of cases, those based on political motives, were subject to the most critical evaluations of Soviet criminal proceedings. Current Party policy determined the handling of each of these cases. The administration of justice in political cases differed significantly from cases involving ordinary crimes. The Party oversaw the administration of political cases and frequently violated legal norms in the interest of the Party. In these cases corruption of socialist principles was not permitted, and legal counsel was of little assistance. Soviet leaders found violations of suspects' rights inconsequential compared to the interest of social order served by the expedient handling of cases.

In the post-Soviet decade, the procuracy retained its functions of administering "judicial oversight" and investigating crime. As part of its responsibilities of overseeing police agencies, the procuracy is expected to solve crimes by successfully prosecuting criminals. The procuracy "is powerful and prestigious and wields enormous influence over courtroom proceedings and... over courtroom judges." On average, procurators supervise fifteen to twenty investigators, each

183. See Hiroshi Oda, The Communist Party of the Soviet Union and the Procuracy, in LAW AND THE GORBACHEV ERA 127, 132 (Donald D. Barry ed., 1988) (hereinafter Oda, The CPSU and the Procuracy); see also id. at note 26. Judges' careers depend on their conviction rates: "[J]udges who tend to acquit frequently or tend to give lenient sentences are not likely to obtain the recommendation of the Party at the next election." Id. at 133.

184. See id. at 137.

185. See TERRILL, supra note 34, at 322; see also Shelley, Structure and Function of Soviet Courts, supra note 175, at 206. Even in these routine cases, private individuals or government officials could intervene in the proceedings to "achieve their objectives." See id.

The presumption of innocence has not been laid down expressis verbis in Soviet law. At one time it was stamped as a "worm-eaten dogma of bourgeois doctrine[.]" Although the Soviet Union ratified in 1973 the International Covenant of Human Rights, which in article 14(2) adopts the presumption of innocence, the 1977 Constitution fails to mention it. Gorle, supra note 26, at 263 (italics in original).

186. "Political offenses represent less than one percent of the total criminal cases but they are considered of extreme importance because the offenders have violated the political order of the state." Shelley, Structure and Function of Soviet Courts, supra note 180, at 211.

187. See id. at 206.

188. See id.

189. See id. at 211.

190. See id. "Legal norms are intentionally violated either as a result of individual or party intervention in the legal process." Id. at 214.

191. See id. at 211-12 (defining corruption as primarily bribery of investigators and court officials).

192. See id. (describing a political prosecution).

193. See Curtiss, supra note 34, at 582. The procuracy is responsible for both prosecution and judicial findings. See id. Allegations of corruption and inefficiency have been levied against the procuracy, but proposed reforms in 1995 and 1996 were voted down. See id.

194. See Foglesong, supra note 10, at 551 (evaluating factors in violations of law by police and suggesting that the procuracy overlooks these violations "if they contribute to the impression that the war against crime is being waged successfully.").

195. RAND, supra note 1, at 3.
of whom is conducting about fifteen investigations.\textsuperscript{196} The Procuracy supervises every part of a criminal proceeding, from the preliminary investigation to execution of the judgment.\textsuperscript{197}

D. Prisons

While the procuracy supervises criminal proceedings, the MVD exercises control over most prisons and camps.\textsuperscript{198} Health and sanitary conditions in prisons and camps continue to be deplorable.\textsuperscript{199} In fact, conditions worsened throughout the 1990s due to the increase in imprisoned individuals without a corresponding increase in prison facilities.\textsuperscript{200} Prisons are old, employees are undertrained and underpaid, and there is not enough food to go around.\textsuperscript{201} Prison authorities may not be entirely to blame for the poor sanitary conditions, considering that Russia as a whole is struggling to feed and clothe its population.\textsuperscript{202}

Treatment of prisoners by prison and camp officials is considerably better than under the Soviet regime.\textsuperscript{203} Prisoners are no longer denied mail or visitors, subjected to physical abuse, or deprived of religious freedom.\textsuperscript{204} At Perm 35, prisoners “still lived inside barbed-wire fences under the watchful eyes of armed soldiers in guard towers. But prisoners’ heads were no longer shaved. They wore name tags instead of numbers. They ate meat or fish instead of watery gruel.”\textsuperscript{205} Inmates may also wear athletic clothes and shoes, use their own bedding from home, own watches, and make purchases from prison stores.\textsuperscript{206}

IV. RUSSIAN CRIMINAL JUSTICE SYSTEM AT WORK

This section considers the relationship between reforms and the functioning of the criminal justice system in post-Soviet Russia. This section begins with an evaluation of issues relating to pre-trial arrest and detention, including the right to

\begin{enumerate}
\item See Foglesong, supra note 10, at 552.
\item See infra notes 209-24, 234, 250 (discussing the procuracy’s role in criminal proceedings).
\item See Curtis, supra note 34, at 589.
\item See id. This statement refers to health and sanitary conditions, not to the treatment of prisoners by prison personnel.
\item See id. “With AIDS and tuberculosis raging among prison populations, [even a short sentence] may actually be more like a life (or death) sentence.” Christopher Lehmann, Defending Sergei: Today’s Post-Soviet Ukrainian Criminal Justice System, 14 FALL CRIM. JUST. 12, 31 (1999).
\item See TERRILL, supra note 34, at 370.
\item See id. at 370 (crediting the government for being sincere in its desire to improve prison conditions).
\item See Curtis, supra note 34, at 590.
\item See id.; see also COLEMAN, supra note 1, at 185-86 (considering reforms at Perm 10 and Perm 35 as seen by the author during a visit in 1992).
\item COLEMAN, supra note 1, at 185. However, contrary to statements by prison officials, one prisoner held at Perm10 reported that “[p]risoners are still sent to punishment cells where they are beaten, tortured, and sometimes killed.” See id. at 185-86.
\item See TERRILL, supra note 34, at 371.
\end{enumerate}
counsel during this time. Next, it examines the components of the trial process, including the roles of the defendant and defense counsel, prosecutor, victim, judge, and jury.

A. Arrest, Detention, and Pre-Trial Right to Counsel

As part of its duties to administer justice, the procuracy supervises the investigation of crimes and issues arrest decrees, but the police and the courts also have the authority to issue a decree initiating a criminal investigation. Issuance of the decree initiates the preliminary investigation. Investigations are supposed to be completed within two months, but extensions can be granted.

Contrary to the law, suspects often remain in custody for lengthy periods of time while the procuracy investigates the charges. The overcrowding and unsanitary conditions in pre-trial detention facilities are inhuman. Thousands of detainees die awaiting trial. Pretrial detention conditions can be seen as torture, continuous

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207. See infra notes 209-24 and accompanying text (discussing pre-trial investigation and right to counsel).
208. See infra notes 225-61 and accompanying text (examining trial procedures).
209. See TERRILL, supra note 34, at 349; see also FELDRUGGE, supra note 8, at 206; see also Marshchakova, supra note 10, at 747; see also supra notes 179-97 and accompanying text (considering the general role of the procuracy in the Russian criminal justice system). However, the procuracy has the power to vacate a decision by the police. See TERRILL, supra note 34, at 349.
210. See TERRILL, supra note 34, at 349 (explaining that either the police or procuracy can conduct the investigation, but the procuracy is responsible for oversight).
211. See id. at 350.
212. See Lehmann, supra note 200, at 14-16 (considering the pre-trial process); see also Scott P. Boylan, Coffee from a Samovar: The Role of the Victim in the Criminal Procedure of Russia and the Proposed Victims Rights Amendment to the United States Constitution, 4 U.C. DAVIS Int'l L. & POL'y 103, 114 (1998) [hereinafter Boylan, Coffee from Samovar] (commenting that the use of bail is rare); see also Boylan, Judicial Reform, supra note 26, at 1342-43 (stating that detainees can be held for months or years while their case is investigated); see also Foglesong, supra note 10, at 554-55 (discussing agency discretion on issues of pre-trial detention). The absence of effective plea-bargaining or bail systems contribute to this problem.
213. See supra note 212 and accompanying text (discussing the length of time detainees are held and the rare use of bail).

Id. at 549-50. However, the percentage of criminal suspects held during investigation decreased sharply after the initiation of perestroika. See RAND, supra note 1, at 31 (stating that in the late 1980s, less than one-third of all criminal defendants were held during the pre-trial proceedings).
214. See Boylan, Judicial Reform, supra note 26, at 1342; see also id. at 1343 (arguing for development of bail and plea-bargaining systems); see also Boylan, Coffee from Samovar, supra note 212, at 114 (commenting on the “deplorable conditions” of pre-trial detention). The absence of effective plea-bargaining or bail systems contribute to this problem. See supra note 212 and accompanying text (discussing the length of time detainees are held and the rare use of bail).
torture. Cells are overcrowded three times: people are compelled to sleep in turn, in
three shifts—they spend months, years in a tram-like closeness ....<sup>215</sup>

Upon arrest, individuals have the right to an attorney.<sup>216</sup> This is a significant
change from the Soviet period when attorneys had no right to be present for
interrogations or line ups.<sup>217</sup> In fact, defendants had no right to an attorney until the
police completed the investigation, no matter how long it took.<sup>218</sup> In most cases,
criminal defendants did not receive the assistance of counsel until after the
preliminary hearing.<sup>219</sup> During perestroika, laws were passed giving suspects the
right to counsel at the time of their arrest.<sup>220</sup> The extent to which defense counsel
could conduct an investigation also expanded during perestroika.<sup>221</sup> These changes
were made to strengthen the attorney's ability to protect the interests of the client
and put the defendant on more equal footing with the prosecutor.<sup>222</sup>

Upon completion of the preliminary investigation, a procurator reviews the
investigator's recommendation and determines whether to indict the suspect or
terminate the case.<sup>223</sup> Assuming the decision is to indict, the case is then assigned to
a particular court for trial.<sup>224</sup>

**B. Trial Procedures**

This section evaluates trial procedures. The various roles of the defendant,
defense counsel, prosecutor, victim, judge, and jury are accordingly discussed.

A preliminary hearing is held in which the judge reviews the entire investigation
file and determines whether to dismiss the charges, proceed to trial, or return the
case for additional investigation.<sup>225</sup> At the preliminary hearing, the defendant is
informed of the right not to testify or make self-incriminating statements during
trial.<sup>226</sup> Unfortunately, these rights seem to be superficial. The right to remain silent

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217. See RAND, *supra* note 1, at 33.

218. See id.

219. See TERRILL *supra* note 34, at 337 (explaining that suspects were not told they had a right to legal
counsel or were discouraged from taking advantage of the right). Even after counsel was selected, investigators
often prevented actual access until trial. See id.

220. See id.

221. See id. (remarking on the limitations on defense counsel to investigate under the Soviets).

222. See id. at 338 (considering reforms pertaining to defense counsel).

223. See id. at 350.

224. See id.


226. See *id.* at 246. The preliminary hearing is used to implement the constitutional prohibition of use
evidence acquired in violation of the Constitution or the Code of Criminal Procedure. See id. Examples of these
violations include defense admissions and confessions gained through violations of the right to counsel or failure
to advise the suspect of the right to remain silent. See *id.* at 241-42. Russia also has a fruit of the poisonous tree
doctrine, which acts to suppress evidence that was improperly seized. See *id.* at 242.
is rarely invoked to the extent that invocation would "probably raise suspicions all

Criminal defendants now have the right to choose their own attorney. However, the challenge of finding an attorney to take the case may prove insurmountable because the Soviet system of state-run defense offices collapsed along with the USSR. Even if an attorney is retained, preparation for trial is difficult. Two factors complicate trial preparation for a defendant and his or her attorney. First, counsel is frequently not retained until late in the pre-trial process. Second, although defense counsel has the right to review the defendant's file, the review must take place at the courthouse and copying of information is limited to what the attorney can write down.

Circumstances during trial also complicate the work of defense counsel. First, the defendant is kept separate from the rest of the trial participants, including defense counsel. Second, there is no accurate record of trial proceedings for use on appeal. Trial begins with the prosecutor's presentation of evidence. The procurator presents the government's evidence first; then the victims, also known as private prosecutors may put on their case. Victims may present evidence of their own or cross-examine evidence presented by the public prosecutor or the defendant. One problem with having victims involved in trials in this manner is that it may "negate[] the presumption of innocence" because the victim's representative can present evidence that would not be admissible by the public

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227. See Lehmann, supra note 200, at 18. In all but one of the first 114 jury trials, the defendant waived the right to silence. See Thaman, Jury Systems, supra note 124, at 246. Some judges permitted the defendant to hear the prosecutor's case before deciding whether to testify. See id.

228. See Morshchakova, supra note 10, at 748.

229. See Lehmann, supra note 200, at 14 (comparing the Soviet and modern systems of providing defense counsel); see also Foglesong, supra note 10, at 557-59 (discussing the controversy over the expansion of the right to counsel and the lack of funding for a state-run program).

230. See RAND, supra note 1, at 32 (explaining that under the Soviet system "[e]leventh hour consultations were standard operating procedure. It wasn't that clients were lazy; it was hard to be lazy when you faced five to twelve years in a labor colony. Procrastination had its roots elsewhere: in the collective socialist psyche, which regarded defense lawyers with profound distrust.").

231. See Lehmann, supra note 200, at 16. In general, access to technology that could aid in trial preparation, such as computers, is limited. See RAND, supra note 1, at 27.

232. See Boylan, Coffee from a Samovar, supra note 212, at 113. The only way for the defendant and defense counsel to confer during the trial is to whisper through the bars of the defendant's cage. See DeVille, supra note 82, at 73-74. In some cases they cannot communicate at all because of the distance between the defendant and defense counsel. See RAND, supra note 1, at 42.

233. See RAND, supra note 1, at 41-42. A court secretary takes notes during the trial. See id. However, the secretary's notes must be taken in longhand and the record often completely passes over parts of the trial. See id.

234. See Thaman, Jury Systems, supra note 124, at 246.

235. See, e.g., id. at 243; see also DeVille, supra note 82, at 73; Boylan, Coffee from Samovar, supra note 212, at 114-15; see also RAND, supra note 1, at 73.
Juries were part of the trial process in Imperial Russia, but were abolished in 1917 following the Revolution. Article 123 of the 1993 Constitution allows for the right to a jury trial, but requires that the Assembly pass implementing legislation.
The Assembly has since permitted the use of jury trials in only nine regions of the Russian Federation. Legislation still further limits the right to a jury trial in cases "where imprisonment exceeds ten years or where execution is possible." Any citizen over the age of twenty-five who lives in the district where the trial is to take place and does not have a criminal record is eligible to serve on a jury. The procurator and defense counsel select twelve jurors from a randomly-selected list of thirty to forty prospective jurors. Jurors may participate in the questioning of witnesses by submitting written questions to the judge who then addresses the witnesses. Juries are also permitted free access to the preliminary investigation file. At the conclusion of the trial, the jury is given a list of questions to answer that will determine guilt or innocence. Deliberations are completely confidential, but the jury may ask for the assistance of the court secretary in preparing the verdict. Although juries are instructed to reach a unanimous verdict, if they have not done so in three hours, a simple majority is permitted.

Despite reform efforts, access to counsel is impaired, judges receive prejudiced files, the use of juries is inconsistent, and prosecutors can appeal...
acquittals.\textsuperscript{259} Therefore, defendants in criminal proceedings are still seriously disadvantaged.\textsuperscript{260} The transition from the Soviet system is incomplete and "opposition to judicial reform still exists and will continue as long as the legislature is controlled by Communists, former Communists, and re-labeled Communists."\textsuperscript{261}

V. POLITICS AT THE DAWN OF THE TWENTY-FIRST CENTURY

On December 19, 1999, the first Assembly of the twenty-first century was elected.\textsuperscript{262} Two weeks later, on December 31, six months before the scheduled presidential elections, President Yeltsin unexpectedly resigned.\textsuperscript{263} Russia entered the twenty-first century with Acting-President Vladimir Putin.\textsuperscript{264} According to Article 92(2) of the Constitution, elections to replace the President must be held within three months of the vacancy.\textsuperscript{265} On March 26, 2000, the Russian people chose Putin to be the country's second democratically-elected President.\textsuperscript{266} He was inaugurated on May 7, 2000.\textsuperscript{267} This section first outlines the basic structure of the Russian government\textsuperscript{268} before focusing on Putin's agenda and his relationship with the Assembly.\textsuperscript{269} Finally, this section considers the effect of the new administration on criminal justice and the possible implications for the twenty-first century.\textsuperscript{270}

\textsuperscript{259} See Thaman, Jury Systems, supra note 124, at 248; see also Boylan, Judicial Reform, supra note 26, at 1340-41.

\textsuperscript{260} See Boylan, Judicial Reform, supra note 26, at 1328. "[T]he outcome in a criminal proceeding may depend as much on well-placed bribes or payoffs as on the particular facts and circumstances of the case." Lehmann, supra note 200, at 15; see id. at 18 (criticizing ex parte contacts between the judge and the prosecutor).

\textsuperscript{261} See Boylan, Judicial Reform, supra note 26, at 1343; see also id. at 1332 (commenting that "bureaucrats, including judges, occupied their same or similar positions when the Soviet Union was intact and the Communist Party reigned supreme."). Russia's system "remains virtually unchanged from that of the Soviet Union." See Lehmann, supra note 200, at 13; see also infra notes 271-90 and accompanying text (considering the current composition of the Russian Federal Assembly).

\textsuperscript{262} See Elections in Russia (last modified Mar. 27, 2000) <http://www.agora.stm.it/elections/election/russia.htm> (on file with The Transnational Lawyer) [hereinafter Elections].


\textsuperscript{264} See Hoffman, supra note 263.

\textsuperscript{265} Constitution, supra note 153, at 31.

\textsuperscript{266} See Russia's Putin Soothes Fears Over Regional Plans, RUSSIA TODAY (May 31, 2000) <http://www.russiatoday.com/news.php3?id=164359&section=default> (on file with The Transnational Lawyer) [hereinafter Putin Soothes Fears].

\textsuperscript{267} See id.

\textsuperscript{268} See infra notes 271-90 and accompanying text (reviewing the structure and power division of the Russian government).

\textsuperscript{269} See infra notes 291-339 and accompanying text (examining Putin's political goals and considering his relationship with the Assembly).

\textsuperscript{270} See infra notes 340-61 and accompanying text (postulating that the outlook for reform is good).
A. Political Structure and Environment

The current organization of the government and the power divisions, within the Assembly and between the Assembly and the President, date back to President Yeltsin's dissolution of the prior Parliament in 1993. The Constitution describes the Powers of the Assembly. The Assembly is made up of the Federation Council (Council) and the State Duma (Duma).

The Council has 178 deputies. Two deputies are elected from each of Russia's eighty-nine regions. The Council has the power to approve the President's introduction of martial law or state of emergency, schedule presidential elections, impeach the President, and approve or dismiss the General Procurator. Certain types of legislation require the Council's approval, such as budget-related laws. The Council also has the option to vote on any law passed by the Duma. When the Council rejects a law passed by the Duma, one of two things can happen: either the Duma can override the Council with a two-thirds majority or the legislation goes to a conciliation committee.

Besides approving the Prime Minister and head of the central bank, the Duma is responsible for making laws. Except as otherwise required by the Constitution, laws are passed by a majority and then sent to the Council for action. If the Council does not act within two weeks, the Duma's legislation becomes law.

There are 450 deputies in the Duma elected to four-year terms. Duma members are elected by a complex process that requires voters to fill out two ballots. This is because half of the Duma seats are proportionately allocated to...
political parties that receive more than five percent of the vote. Individual winners for each of Russia’s 225 legislative districts get the other half of the seats. Currently, twelve different parties hold seats in the Duma. The Communist party, with 24.3 percent, holds more seats than any other single party. However, for the first time, the combined influence of pro-government parties is greater than that of the Communist party. The Communist party may now find it more difficult to effectively block legislation. There is some concern, though, that pro-government parties won too easily. Segodnya, a Russian newspaper, reported that “[t]he effective hyping of Vladimir Putin and ... [u]nity on the basis of the Chechen war alone, about which voters really knew nothing turned the situation around,” and that “given such efficiency in using administrative and information resources, anyone at all could become president.” The implication in this statement is that the Russian people are too pliable, and with the right resources, anyone could convince the public to follow a particular position.

B. President Putin: The Man and His Goals

Now that he is President, Putin faces four main challenges: rebuilding the economy, protecting Russian sovereignty, advancing the rule of law, and improving the overall quality of life of the citizenry. After presenting a brief biography on


284. See Mulvey, Balance of Power, supra note 283. These individuals can be, and often are, without any particular party affiliation. See id.

285. See Elections, supra note 262; see also Mulvey, Balance of Power, supra note 283.

286. See Elections, supra note 262. However, the number of seats held by Communists declined by about five percent. See Mulvey, Balance of Power, supra note 283. For a list of other political parties and the distribution of Duma seats, see Elections, supra note 262.


288. See Sudden Rise of the Unity Party, supra note 287 (commenting on the ability of the Communists in the prior regime to “mobilize [sic] their allies in other parties to block government legislation”); see also Russian Press Reflects on Election Shock, supra note 287 (quoting the Russian paper Komsomolskaya Pravda as saying the election was “an unequivocal defeat” for the Communists and that communist ideology has “no appeal to the new generation”).


290. See id.

291. See Kara Murphy, Putin and Russia: Two Scenarios, RUSSIA TODAY (Jan. 21, 2000) <http://www.russiatoday.com/features.php?id=127666> (on file with The Transnational Lawyer) (commenting on “the dramatic and terrifying disintegration” of Russia. “Since 1992, the once-powerful Soviet state has given way
Putin, 292 this section considers how he has begun to address these issues in his short time in office, how he is likely to proceed, 293 and the significance of his actions on the criminal justice system. 294

1. His Rise to Power

Putin graduated in 1975 with a civil law degree. 295 He then spent more than fifteen years in the KGB. 296 Putin said he knew the Communist system, and the USSR itself had no future, even while he was still in the KGB. 297 He once tried to resign from the agency but his “first notice of resignation got lost somewhere.” 298 After the August 1991 coup, Putin left the KGB to pursue politics. 299

In 1996, after a brief introduction to politics, he began his rise in the FSB. 300 Three years later, he returned to politics. 301 On August 16, 1999, after announcing that “law and order” were his top priorities, the Duma confirmed Vladimir Putin as Russia’s fifth Prime Minister in less than a year and a half. 302 Putin’s primary campaign promise was that he would fight corruption and the rich and powerful oligarchs who exercised considerable influence over Yeltsin
to a withered Russian replacement. Government officials have little capacity to administer state affairs, and the public looks upon its leaders with suspicion and hostility. Russians are suffering economically, physically, emotionally, and spiritually.” Id. On May 7, 2000, Putin took an oath to “safeguard human rights, defend Russian independence, and faithfully serve the people.” Putin Aims to Unite Russia, BBC News (May 7, 2000) <http://news.bbc.co.uk/1/hi/english/world/europe/newsid_739000/739974.stm> (on file with The Transnational Lawyer) [hereinafter Putin Aims]. During his inaugural address, Putin announced that he views unity of the Russian people “around common tasks” as his “sacred duty.” See id. He added that: “We want our Russia to be a free, prosperous, rich, strong and civilised [sic] country, a country of which its citizens are proud and which is respected in the world.” Id.

292. See infra notes 295-306 and accompanying text (reviewing Putin’s career in security agencies and politics).
293. See infra notes 307-39 and accompanying text (considering Putin’s political agenda and actions he has taken with respect to Chechnya and political restructuring).
294. See infra notes 340-61 and accompanying text (maintaining that continued reform is necessary and Putin is likely to succeed at instituting such reform).
295. See O’Neill, supra note 263, at 126.
297. See Hoffman, supra note 263.
298. See id. (quoting Putin).
299. See O’Neill, supra note 263, at 126 (mentioning Putin’s short time as a deputy mayor).
300. See id.; see also Hoffman, supra note 263.
301. See infra notes 302-05 and accompanying text (describing Putin’s reentry into politics).
through the creation of "a dictatorship of the law." Other than that, he refused to reveal many details about his plans for his presidency.

Putin is widely supported and even heralded as Russia's savior. Despite his popularity, human rights activists argue that Putin "is a dangerous authoritarian, handpicked by a cabal of Kremlin insiders, and levered into power by a breathtaking ruthless plot."

2. Political Goals and Relations with the Federal Assembly

Although the economy is one of Putin's major concerns, this Comment overlooks the minutia of his economic policies in favor of the larger picture of what he is doing to address issues of sovereignty and the rule of law. Because political reforms are vital to the long-term success of economic reform, Putin's main focus thus far has been restructuring the political system and cementing Russian authority. By waging war on Chechnya, Putin has shown that Russian sovereignty is one of his top priorities. The war in Chechnya illustrates the extent to which

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304. See Hoffman, supra note 263; see also Harding, supra note 303. He did, however, say that he would "combat social injustice ... and use state intervention to promote domestic industry." See Meyer, supra note 303.

305. See Harding, supra note 303; see also Mulvey, Putin, supra note 303.

306. See Harding, supra note 303; see also Mulvey, Putin, supra note 303.

307. See Despite Victory, Putin Has A Mountain To Climb, RUSSIA TODAY (Mar. 27, 2000) <http://www.russiatoday.com/features.php?i=146082> (on file with The Transnational Lawyer) [hereinafter Despite Victory] (remarking on Putin's vow to tackle poverty); see also Murphy, supra note 288 (arguing that Putin will be able to effectuate macroeconomic policies and that stability in the economy will help him ensure reelection); see also Stephen Mulvey, Analysis: Challenges ahead for Putin, BBC NEWS (Mar. 27, 2000) <http://news.bbc.co.uk/hi/english/world/europe/newsid_692000/692245.stm> (on file with The Transnational Lawyer) [hereinafter Mulvey, Challenges Ahead] (commenting on Putin's statements regarding economic reforms). This section will touch on economics as it relates to issues that are discussed, but does not attempt to explain or solve Russian economic problems.

308. See Despite Victory, supra note 307 (commenting on Russia's state of political chaos); see also Mulvey, Challenges Ahead, supra note 307 (mentioning Putin's plans to fight corruption and crime); see also Putin in His Own Words, BBC NEWS (Mar. 27, 2000) <http://news.bbc.co.uk/hi/english/world/dia_reports/newsid_667000/667634.stm> (on file with The Transnational Lawyer) (quoting Putin as saying that "while corruption goes unchecked 'there cannot be any kind of positive development in the country'.").

309. See infra notes 313-24 and accompanying text (recounting the history of conflict between Chechnya and Russia); see also Murphy, supra note 291 (hypothesizing that continuing the war in Chechnya will increase national pride). Another indication that Putin considers sovereignty a priority is the division of Russia into seven districts, each to be run by a Putin nominee. See Putin Soothes Fears, supra note 266 (explaining Putin's plans to "sho[e] up the rule of law in the vast nation").
Putin will go to protect Russian sovereignty.\(^{310}\) Thus, this section considers the war and its implications, particularly what it says about Putin’s character as it pertains to the Russian criminal justice system.\(^{311}\) It then evaluates the legislative measures Putin instituted immediately upon taking office to further his campaign for the creation of a “dictatorship of the law.”\(^{312}\)

\textit{a. Chechnya}

Chechnya was first invaded by Russia in 1783.\(^{313}\) Throughout the Soviet period, the region was treated as an enemy territory within the USSR.\(^{314}\) In 1944, Stalin deported more than 600,000 people to central Asia for allegedly collaborating with the Germans during World War II.\(^{315}\) Those who survived the exile were permitted to return home in 1957, where they found Russians occupying their homes.\(^{316}\)

Chechnya declared independence from the USSR in 1990 and chose not to sign the later federation treaty.\(^{317}\) Russia’s refusal to accept Chechnya’s desire to remain independent led to bitter battles between Russian troops and Chechen “rebels.”\(^{318}\)

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310. See Meyer, supra note 303 (quoting Putin as saying, “Russia needs a strong state power”); see also Mulvey, Challenges Ahead, supra note 307 (indicating that the situation in Chechnya is being used to generate respect for Russian authority).

311. See infra notes 356-61 and accompanying text (considering the prospects for the development of the rule of law under Putin’s guidance).

312. See supra note 303 and accompanying text (discussing Putin’s promise to create a “dictatorship of law”); see also infra notes 325-39 and accompanying text (commenting on restructuring of the Federation Council); see also Putin Expected To Win Fight With Governors, RUSSIA TODAY (June 9, 2000) <http://www.russiatoday.com/news.php3?id=167425&section=default> (on file with The Transnational Lawyer) (hereinafter Putin Expected To Win) (suggesting a relationship between the issues of sovereignty and rule of law).


314. See id. at 371-72.

315. See id. at 371; see also Key Facts About Chechnya, RUSSIA TODAY (Oct. 12, 1999) <http://www.russiatoday.com/features.php3?id=1000431> (on file with The Transnational Lawyer) (hereinafter Key Facts About Chechnya).

316. See Key Facts About Chechnya, supra note 315.

317. See Atrokhov, supra note 313, at 373.

318. See id. at 373-75. The entire Northern Caucasus region has been unstable since the collapse of the USSR. See Françoise Dehove, Trouble Spots of the Caucasus, RUSSIA TODAY (Oct. 12, 1999) <http://www.russiatoday.com/features.php3?id=100433> (on file with The Transnational Lawyer). One of the reasons Russia is so determined to hold on to Chechnya is its location. The republic’s “position is strategic in that it straddles the main highway and the only railway and oil pipeline through Russian territory between the Caspian Sea and the Black Sea.” Key Facts About Chechnya, supra note 315. Another reason is “fear of setting a precedent for other republics who may want to secede.” Dehove, supra. A third possible explanation is that the Russian government is attempting to cope with the Soviet policy of “Russification,” which resulted in transplantation of ethnic Russians into other regions of the vast USSR. See id.; see also supra note 316 and accompanying text (mentioning how Russification was effected in Chechnya). Compare Aslambek Kadiev, Opinion: A Chechen View of Russia’s War, BBC NEWS (Dec. 26, 1999) <http://news.bbc.co.uk/hi/english/world/europe/newsid_577000/577525.stm> (on file with The Transnational Lawyer) (criticizing Russia’s actions against Chechnya as political and Russian claims against Chechens as pretextual).
Russia granted de facto independence to the republic in 1996, following an almost two year war. In the peace agreement between Russia and Chechnya, both sides renounced the use of force in resolving further disputes and agreed to conduct their relations according to the standards of international law. However, this agreement did not stop Russia from again going to war in the republic following a series of apartment bombings throughout Russia in early 1999 by Chechen terrorists.

Suppressing Chechen "rebels" led Putin's agenda as Prime Minister and continues to be the mainstay for his popularity among Russian citizens. One may wonder what it is about Putin's fierce attitude towards Chechnya that makes him so popular. For many, his approach proves that he is a "strong man who will restore order at home, and lost pride on the world stage." However, not everyone supports Putin's unrelenting attacks on Chechnya. Some people are concerned about the impact on Russian citizens in the area, while others are worried that Putin's desire to revive Russia's status as a world power will lead to militaristic nationalism.

b. Restructuring and The Federal Assembly's Response

Putin initiated two levels of restructuring directed at developing the rule of law. First, in an attempt to "smooth communication" between the regions and generate a "uniform understanding of the laws at all points across the Russian Federation," Putin signed a decree dividing Russia's eighty-nine regions into seven districts. Second, he pushed legislation through the Assembly that affected the composition of the Council and expanded his authority over regional governors.

319. See Dehove, supra note 318.
320. See Kadiev, supra note 318. However, Chechnya's President Maskhadov, elected in 1997, lost much of his support and control over the last few years. See Key Facts About Chechnya, supra note 315. Maskhadov was the commander of the republic's military during the war and is the official who negotiated the peace agreement with Russia. See Dehove, supra note 318. Maskhadov now controls only part of the region, with the rest under the control of lawless warlords. See Key Facts About Chechnya, supra note 315; see also Dehove, supra note 318.
322. See O'Neill, supra note 263. Putin urges that "you must hit first, and hit so hard that your opponent will not rise to his feet." Hoffman, supra note 263.
323. Mulvey, Putin, supra note 303.
324. See id.
325. See, e.g., Putin Latest Leader to Rein in Regional Spending, RUSSIA TODAY (June 2, 2000) <http://www.russiatoday.com/news.php?id=165428&section=default> (on file with The Transnational Lawyer) [hereinafter Putin Latest Leader] (explaining the division); see also Putin Soothes Fears, supra note 266 (quoting Putin's explanation of his plan); see also Influential Russian Tycoon Boris Berezovsky Attacks Putin, RUSSIA TODAY (June 1, 2000) <http://www.russiatoday.com/news.php?id=165101&section=default> (on file with The Transnational Lawyer) [hereinafter Berezovsky Attacks Putin] (discussing Putin's decree and accusations that he is "driving Russia towards dictatorship through his plans to grab power back from the regions).
Part of Putin’s legislative package converted the Council from a part-time body to a full-time body. Regional governors and parliamentary leaders had to be removed from their positions because their regional positions prevented them from fully committing themselves to the Council. Under the new system, instead of the governors and parliamentary leaders filling the region’s seats in the Council, these officials will each nominate another person to fill those seats.

Another aspect of the legislation is that it gives Putin the power to remove and replace regional governors for certain violations of federal laws or civil rights. This change revokes the broad immunity from prosecution the governors enjoyed under Yeltsin. This is important because the broad immunity in Russia contributed to the existing corruption left behind by the Soviets. In order to make any long-term improvements on the economic and criminal justice systems, Putin must address the broad base of government corruption.

Hopefully, by removing the protection of immunity from the regional governors, Putin will be more able to protect the rule of law in the regions. Although the legislation faced almost no opposition in the Duma, not everyone favored the changes. An influential businessman and Duma deputy, Boris Berezovsky, called the changes a “mistake” and compared them to the Soviet system of centralizing

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164949&section=default> (on file with *The Transnational Lawyer*) (calling Putin’s plan “the biggest shake-up of government since the break-up of the Soviet Union in 1991”).

327. *See Main Points, supra* note 326 (referring to the legislation that argued the part-time nature of the Council made it an ineffective body).

328. *See id.*

329. *See id.* The regional legislature will then vote by secret ballot on the confirmation of these nominees. *See id.*

330. *See id.* Removal is preceded by a warning. *See id.* Some, but not all, violations also require a hearing before removal. *See id.*

331. *See id.* (stating that by losing their seats in the Council, governors also lose the “immunity from prosecution that comes with those seats.”). While it is well-accepted that legislators have some degree of immunity from prosecution, the level of that immunity varies from country to country. *See generally* Scott P. Boylan and Catherine L. Newcombe, *Parliamentary Immunity: A Comparison Between Established Democracies and Russia* (Cambridge: Cambridge University Press, 1997) (hereinafter *Boylan & Newcombe*) (explaining application of the privilege in several countries). Immunity for members in Russia, and previously in the USSR, is extremely broad. *See id.* at 237-38. Like most democracies, Russian legislators are immune from prosecution for conduct performed in relation to their official duties. *See id.* at 240. Further, in Russia, the possibility exists that legislators can completely avoid prosecution for any criminal activity. *See id.* at 240-42, 244-47 (contemplating the extent of immunity and the complicated waiver procedures). Moreover, immunity extends to candidates, often motivating criminals to run for a position in order to avoid prosecution. *See id.* at 247-48.

332. *See, e.g., Murphy, supra* note 291.

333. *See id.* (wondering whether Putin is up to the challenge).

government.335 Regional governors also opposed the plan: expressing outrage, they argued that the laws "highlight the movement towards the creation of a unitary state" in violation of "democratic norms."336 Although Council members opposed Putin's plan, it received strong support from most members of the Duma.337 In fact Putin, unlike Yeltsin, enjoys broad support from the Duma.338 "The Duma has cooperated with Putin to an unprecedented degree since his election and has shrunk from challenging the Kremlin on any key legislation, approving radical economic reforms that stalled in previous governments and awarding the President direct control of the country's unruly regions."339

C. Implications for the Criminal Justice System

Within hours of being elected, Putin made several statements regarding his position on human rights.340 He said that the "rights of the specific individual, not of the crowd, should come first."341 However, he also stated that "[t]he pace of work of the security services under the previous government should 'not only be maintained but exceeded.'"342 While most Russians view Putin's past in the KGB and FSB as a sign that he will be a strong leader who is tough on crime, others fear that his stand against those who might speak out against the government is presently too strong and may become oppressive.343 Some believe that the powers Putin secured

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335. See id. Berezovsky stated at a press conference: "I am sure that personally he is not trying to become a dictator, but through his actions he is bringing that situation about." Berezovsky Attacks Putin, supra note 325.

336. Revolt Grows over Putin's Plans to Shake-Up Parliament, RUSSIA TODAY (June 8, 2000) <http://www.russiatoday.com/news.php?id=167065&section=default> (on file with The Transnational Lawyer) (quoting regional governors Leonid Roketsky and Alexei Lebed). But the governors oppose restructuring because it leaves them open to prosecution for their corrupt practices, as media reports indicate, Putin is indeed on the way to accomplishing his goal of establishing law and eliminating corruption. See Regional Chiefs Attack Putin Plan to Lift Immunity, RUSSIA TODAY (June 8, 2000) <http://www.russiatoday.com/news.php?id=167279&section=default> (on file with The Transnational Lawyer); see also Putin in Race to Force 'Through Bills, Cement His Authority, RUSSIA TODAY (June 9, 2000) <http://www.russiatoday.com/news.php?id=167481&section=default> (on file with The Transnational Lawyer) (stating that at least ten regional governors have avoided prosecution because of immunity protections); see also Putin Expected To Win, supra note 312 (saying that "some governors were afraid of losing immunity from prosecution because they would almost immediately be arrested.").

337. See Putin Expected To Win, supra note 312 (calling the Duma the more powerful house of the legislature and stating that "parties in the Duma have already been eying the possibilities that a reform of the upper house would give them.").

338. See Duma Set To Back Putin Laws To Boost Central Rule, RUSSIA TODAY (May 31, 2000) <http://www.russiatoday.com/news.php?id=164589&section=default> (on file with The Transnational Lawyer); see also Despite Victory, supra note 307 (noting that Putin's relationship "gives him both economic and political breathing space to establish something of a power base.").


340. See Putin in His Own Words, supra note 308 (recounting Putin's comments on several current issues).

341. Id.

342. Id.

343. See Mulvey, Challenges Ahead, supra note 307 (referring to Putin's attitudes toward the media and other critics). Opponents suggest it will be hard for Putin to "shed the instincts drummed into him during his KGB training." Putin Looks Bad at Home and Abroad Over Sub Deaths, RUSSIA TODAY (Aug. 22, 2000) <http://www.
for himself in the recent restructuring are signs of "his authoritarian tendencies." Others argue that these reforms are essential to the future success of economic reforms.

Recently, following the tragic loss of a nuclear submarine and the 118 sailors aboard, a French newspaper made a statement that supports these criticisms by Russian liberals. The paper critically asserted that reactions to the loss "showed that the mentality of the Russian leaders, military and civilian, starting with Vladimir Putin, is still profoundly anchored in the defects of leaden Sovietism." On the other hand, Putin’s acceptance of responsibility for and expressions of guilt over the loss show that he has "outgrown the Soviet cult of secrecy." Unlike his Soviet predecessors, Putin was not so quick to allocate blame for the incident, saying an investigation would precede any punishment.

Taken separately, involvement in Chechnya, political restructuring, and conduct surrounding the submarine crisis give both supporters and opponents grounds to argue about what kind of president Putin will be. Putin has taken a firm stand against those he considers threats to Russian stability, but is that not what every country expects of its leader? There is a big difference between a strong leader and a dictator. Putin did not use violence to accomplish his restructuring plan. He did not open fire on his opponents; rather, he used the established system to reform itself.

russiatoday.com/special/submarine_news.php?id=191180> (on file with The Transnational Lawyer) [hereinafter Putin Looks Bad].

344. See Latest Leader, supra note 325.
345. See id.
346. See Putin Looks Bad, supra note 343.
347. Id. (quoting Le Monde); see also Ekaterina Larina, Putin Political Fallout Seen Short-Lived, RUSSIA TODAY (Aug. 28, 2000) <http://www.russiatoday.com/news.php?id=193211&section=default> (recounting an interview with former chief of the Russian foreign intelligence service, Yury Kobuladze, where he said the incident was handled by Putin’s inferiors in classic Soviet style when the thinking was that: “The boss is on holiday; it’s not worth bothering him and we’ll make do somehow.”). Sociologist Alexei Grazhdankin “conceded that in this tragedy, not only the authorities had adhered to a Soviet system of values, but the people, too.” Id. He said that the people are first concerned with their own living standard and not until Russia prospers economically will they be able to express concern for human life. See id.
349. See id.
350. See supra notes 313-24 and accompanying text (relating the issues surrounding the conflict with Chechnya).
351. See supra notes 325-39 and accompanying text (explaining government restructuring initiated by Putin).
352. See supra notes 346-49 and accompanying text (mentioning the media reports of a recent submarine loss).
353. See supra notes 322, 331-36 and accompanying text (examining Putin’s approach to corruption through his stand on the Chechnya issue and corruption in the government).
354. See supra notes 325-39 and accompanying text (considering the application of Putin’s restructuring plan).
355. See id.
to investigation and punishment for the incident show he will govern more fairly than most Soviet leaders. Overall, the prospects for the development of the rule of law are at their best ever.

In his six months in office, Putin has not specifically directed reforms at the criminal justice system. However, his efforts toward reducing official corruption and statements regarding human rights indicate that he is aware of problems within the system. Furthermore, to stabilize the economy and improve national morale, Putin will need to eventually address the various issues contemplated by this Comment. Putin’s positive relationship with the Duma will facilitate reforms initiated by either the President or the Duma. Between Putin’s goals, the changed composition of the Duma, and the building blocks provided by reforms of the last decade, the next few years should generate significant development in Russia.

VI. CONCLUSION

It has been said that an effective legal system cannot exist without the enactment and publication of understandable, consistent, realistic legal rules; avoidance of retroactive legislation; sufficient stability in the law to permit compliance; and congruence between the laws as announced and their actual administration. The law “must guarantee the rights of individuals, provide for a means of an ordered society, and distribute the functions of government in a way that empowers the populace.” Russia has not yet achieved these goals.

“Despite subjecting Russia to its most sweeping changes since 1917, Yeltsin failed to push through lasting economic reforms and ultimately presided over a deeply polarized society of the few haves and the many have-nots.” By the time Yeltsin resigned, “Russia was still struggling to come to terms with the miserable legacy of decades of Soviet mismanagement as shadowy business tycoons pulled the strings of power behind the scenes.” The slow pace of change should not detract from the hopefulness that in time, the transformation to a society ruled by its laws will be complete. Reform does not suddenly happen with a change in leadership or

356. See id. (considering the effects of restructuring).
357. See supra note 341 and accompanying text (quoting Putin).
358. See supra notes 337-39 and accompanying text (commenting that Putin enjoys significant support from the Duma).
359. See supra notes 291, 308-12 and accompanying text (mentioning Putin’s goals for stabilizing the country).
360. See supra notes 285-88 and accompanying text (discussing the reconfiguration of the Duma following the December 1999 elections).
361. See supra notes 109-255 and accompanying text (evaluating post-Soviet reforms of the 1990s).
362. See Lien, supra note 25, at 45.
363. Id. at 114.
364. Meyer, supra note 303. “Organized crime flourished in the void of inadequate legislation, a proliferation of shadow economic structures and a demoralized and cash-strapped police force and army.” Id.
365. Id.
even political structure. This is especially so in Russia where the new leadership
consists of many of the same people who held positions in the USSR.366

The Russian government instituted significant reform measures in the 1990s. A
new Constitution and Criminal Code were adopted.367 Police functions received
greater scrutiny than they ever did under Soviet leaders.368 Treatment of prison and
labor camp inmates became more humane.369 Investigation and trial proceedings
expanded criminal defendants’ access to justice.370

More still needs to be done to complete the transition from the Soviet rule of
terror to the desired rule of law. A new Code of Criminal Procedure must be adopted.
Piecemeal amendments to the Soviet Code are insufficient to reconcile the
contrasting ideals of the USSR and Russia.371 Limits on police powers, consistent
with the Constitution and Codes, need to be legislated and enforced.372 Particularly
because the Russian government is still standing in the Soviet shadow, President
Putin should take a leading role in humanizing police investigations.373

Reforms to the Procuracy might include separating investigative and
prosecutorial functions to ensure more independent analysis of a pending case.374
Steps should be taken to protect a suspect’s pre-trial rights to counsel and review of
detention, and trial procedures need to be evaluated for ways to improve access to
counsel and an impartial court.375

As the first year of the twenty-first century comes to a close, Russia is in a better
position than ever before to make needed changes. Ten years have passed since the
collapse of the USSR. For the first time ever, power changed hands through
democratic elections. Finally, Russia has a young, energetic President who has a good
relationship with the Duma and has shown a desire to make changes.

366. See TERRILL, supra note 34, at 295 (predicting that “significant change in the justice system will not be
forthcoming during the early stages of the transformation” from Communism to Democracy). As products of
Communism, Russian leaders may “rely upon agents of the criminal justice system for the retention of a degree of
order... [and] condone or encourage the use of law enforcement and order maintenance methods from the past
that proved effective.”Id.
367. See supra notes 105-13, 133-50 and accompanying text (evaluating the Constitution and the Criminal
Code).
368. See supra notes 154-78 and accompanying text (commenting on reforms to security agencies).
369. See supra notes 203-06 and accompanying text (discussing improvements in treatment of prison and
labor camp inmates).
371. See supra notes 114-27 and accompanying text (criticizing the Code of Criminal Procedure).
372. See supra notes 164-67 and accompanying text (recounting frequent changes in the structure and
authority of security agencies).
373. See supra note 366 and accompanying text (explaining that current officials were also government
officials of the USSR).
374. See supra notes 193-97, 209-24 and accompanying text (examining the functions of the Procuracy
throughout investigation and trial).
375. See supra notes 212-15, 228-33 and accompanying text (discussing limits on access to counsel and the
ability to put together a defense, as well as the ways trials are prejudiced against the defendant).