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The Second Russian Constitutional Court: An 11-Year Assessment of Its Role in Center-Regional Conflicts

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Abstract

This paper considers the role of the Second Russian Constitutional Court in resolving center-regional conflicts from 1995 to 2005. Previous work by this author indicated that the central central government and individual actors were favored over regional actors in center-regional conflicts between 1995 and 2003. This study expands the period studied and now spans most of the Putin era, with its "verticalization" of the federal system. This study includes an analysis of basic statistics on number of cases brought before the Court and what actors as well as binomial regressions to test the effects of time on potential favoritism by the Court. In a departure from previous work, additional analysis is included to determine the actual probability of the Court favoring specific actors in center-regional conflicts.

Introduction

Judicial independence is a widely debated (and some would say, oxymoronic) concept in both legal studies and political science research; this is because many would argue that with no independent enforcement capacity, the judicial branch of any government cannot be truly independent. The executive branch serves as the actual enforcement power behind courts and the

various interests involved in cases must either be coerced into accepting the rulings of courts by the executive, or already accept that a court has legitimate authority and adopt the principles of the decision. But if the executive branch refuses to enforce decisions or outside interests feel that they can ignore the decisions, the court's independence and authority vanishes. Are courts really independent entities under these conditions? Many researchers still say yes, and how courts establish independence and legitimacy is a question of long standing in both theory and research literature.[1] Due to recent changes in the political landscape since the end of the Cold War, this question has again become controversial as a number of potential "test cases" for theories of independence have surfaced.

The "Third Wave" of democratization in the former Soviet republics, Eastern Europe, Asian and South American countries (see Huntington 1991) has given rise to a corresponding wave in research on establishing the independence and legitimacy of new courts, particularly *constitutional courts*. Constitutional courts are vital in establishing democratic regimes due to their commitment to protecting constitutions and basic laws that are the foundation of the rules and structures of the new regime. Many of these "Third Wave" countries have limited experience with rule of law, giving constitutional courts an even more important position in these countries than in long-standing democracies. But coupled with this important job is the issue of establishing the legitimacy and authority to hand down decisions in the first place. If this legitimacy is not established, there is little possibility of protecting the constitution and basic law against challenges. Consequently, courts in these societies are between a "rock" of needing to protect the foundations of a new regime and a "hard place" of gaining legitimacy from outside interests that may have reasons for ignoring the rules and structures of the new order. Research has focused on what processes could create legitimacy under these circumstances.

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[1]. Much of this research tends to be divided between the school focusing on the development of the U.S. Supreme Court and its judicial branch (a common law approach), and the school focusing on the development of European courts (a civil law approach). For an example of the former, please see Kermit Hall and Kevin T. McGuire, eds. The Judicial Branch (New York, NY: Oxford University Press, 2005); for a good summary of Gelsenian theory and its effects on European courts, please see Alec Stone Sweet's Governing with Judges: Constitutional Politics in Europe (Oxford, UK: Oxford University Press, 2000).

The research on establishing legitimacy and independence of new courts has tended to fall into two camps. The first camp focuses on the *formation* process of new courts including which interests were involved in creating the courts; powers assigned to the courts such as abstract review, concrete review, or both; and who has standing to approach the court, when and on what issues (see Brzezinski 1993, Halmai 1995, O'Malley 1996, van Huyssteen 2000, Schiemann 2001, Smithey and Ishiyama 2000, 2002; Herron and Randazzo 2003, Thorson 2004). The formation literature has been extremely useful for determining the initial legitimacy of courts; as noted by Schiemann 2001, interests that were involved in the formation process of Hungary's Constitutional Court were highly convinced of the legitimacy and impartiality of the resulting institution. This led to the Court's first incarnation being used as a major forum for the resolution of conflicts within central institutions and between the executive and legislative branches in particular. However, this was the first Hungarian court and later incarnations of the court showed much less independence or perceived legitimacy; most of the initial justice appointments had termed out by the late 1990s and the later incarnations of the court were much less inclined to make strong decisions that went against state interests (Schepple 2003). While formation has definite usefulness for explaining the beginning years of constitutional courts, it has not been as useful for considering independence and legitimacy later in a court's tenure.

The second camp of literature on this issue has considered the *functions* or *actions* of courts in detail after courts are formed (see Sharlet 1993, Hausmaninger 1995, Dickson 1997, Langa 1997, Barry 2001, Epstein, Knight and Shvetsova 2001, Schepple 2002, 2003; Herron and Randazzo 2003, Klug 2002, Thorson 2003, Treygar 2004, Berat 2005, Smithey 2006; Trochev 2004, 2006; Pinnell 2005, 2006, 2007; Ruibal 2008). The literature in this section has naturally taken time to develop given the newness of these courts and the need to allow them to become institutionalized and make decisions. But this literature is probably better adapted to answering the ultimate question of how new courts in new regimes gain legitimacy, given the fluidity of all institutions in these societies and the competition of interests. It takes time for institutions to become entrenched in a society and the intended powers and objectives of constitutions and basic laws will change during that time, for reasons of political expedience, economics and other issues. As noted above with the Hungarian Constitutional Court, the powerful court changed radically over time as judges termed out and were replaced with justices that felt more politically

dependent on the interests that appointed them to the bench (Schepple 2003, 227). Because time and interaction of courts with outside interests may be vital to their ultimate independence and authority, research has focused on issues such as judge appointments over time, the types of cases brought to the court, whether or not they were accepted, and the ultimate decisions; and acceptance and implementation of the decisions by other branches of government or the public after they were issued. This research has shown that along with the Hungarian case, many new courts have gained or lost legitimacy and independence as they function over time.

Research on the legitimacy of new courts has also led to overarching theories of how courts should behave in new regimes if they have the goal of creating legitimacy and independence. Two examples are worth mentioning here. Filippov, Ordeshook and Shvetsova's 2004 theoretical work on federalism sketches out a theoretical scenario where central courts would exist primarily to coordinate interests in a new federal system and establish equilibria between these interests. Strict constitutional protection may therefore not be the primary objective for these courts given their need to establish legitimacy with outside interests. Working with this understanding, I created a theoretical model in 2007 to test the idea that constitutional courts would take outside interests into account in making decisions, with the ultimate goal of increasing their legitimate authority with these interests (see Pinnell 2007). The conclusion of this research was that the actions of courts (decisions) did ultimately affect their legitimacy and authority, and did so more than the initial formation of these courts. The results of this study also showed that courts could increase or decrease their authority with their actions over time.[2]

These two pieces of research are important in that they make explicit assumptions about court behavior. First, courts will not be impartial in their initial stages of existence, but deliberately favor some interests over others in making decisions. For example, courts would favor central government interests over regional interests when division of powers and federalism are issues. Second, over time, courts may begin to alter this behavior by ruling

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[2]. The cases of courts tested with this model included the First and Second Russian Constitutional Courts, the South African Constitutional Court, and the Hungarian Constitutional Court. See Sabrina Pinnell, "The Russian Constitutional Court: An Analysis of Its Evolution Within a Developing Federal System." Ph.D. diss., University of California, Santa Barbara, 2007.

against outside interests, even the most powerful ones that enforce court decisions; this could be an indication of greater independence and that the court is confident that it has legitimacy in society. By explicitly assuming favoritism in courts, it may be possible to consider not how well courts protect constitutions and basic law, but how they gain the legitimacy to do so in the first place.

This brings us to the research question for this paper. Is it actually possible to measure favoritism in court decisions towards particular interests? If favoritism arises in new court decisions, who will be favored? I have focused on federalism as an issue in my research because of its heavily political nature, the various interests and positions of power involved (central executives and legislatures, regional executives and legislatures, citizens and groups) and because theses for how favoritism will surface can be easily generated. Simply put, the court will favor the more powerful interest in a dispute; in federalism, this tends to be the central government. The next question is how to test this thesis, and I do so here using a quantitative analysis of court decisions from the Second Russian Constitutional Court during the first eleven years of its existence (1995-2005). This period of time includes most of the tenure for presidents Boris Yeltsin and Vladimir Putin and covers significant fluctuations in power between the central and regional governments in the Russian Federation.

Before considering the research, some background on the Russian Federation and how the Second Constitutional Court has functioned within it would be helpful. This information is in the next two sections. After this background, I outline the research done for this paper by describing the data and the models used for testing whether or not favoritism figures in court decisions. Finally, I conclude with some discussion of the research and its implications.

Russia and Its Evolving Federal System: 1992-2005

The evolution of federalism in Russia began with the dissolution of the republics under the USSR from 1990-1991. During this period, not only did the Baltic and Caucasian republics assert their sovereignty and independence, but several "autonomous republics" (ASSRs) within the Russian Federated Soviet Republic (RSFSR) did as well. This latter trend was actually encouraged by Boris Yeltsin, who as the newly-elected president of the Russian Republic

encouraged regions within Russia to assert sovereignty to put pressure on USSR President Mikhail Gorbachev to give all of Russia greater autonomy (Shlapentokh, Levita and Loiberg 1997). After the collapse of the USSR many of these regions within Russia did not end their calls for greater autonomy, but pushed even harder for independence or at least greater control over their internal affairs. To maintain territorial integrity within the new Russian Federation, Yeltsin and the governments of the republic-level, oblast-level and okrug-level regions signed a series of agreements in 1992, now known as the Federation Treaty. This set of agreements maintained the three types of regions and gave republic-level regions with titular national groups greater control over ethnic and minority rights, natural resources, and fiscal matters than they had as parts of the USSR. But not all regions were willing to sign the Treaty; notably, Tatarstan, one of the loudest proponents of independence, refused to sign the treaty and instead held a referendum for independence which passed by a wide margin. The response by the Yeltsin Administration was to negotiate a separate, bilateral treaty with Tatarstan, giving it greater powers than the republics in the Federation Treaty (Kahn 2002, 151-157). Seeing the greater advantages given to Tatarstan, other regions began to push for their own bilateral agreements. A federal structure was created out of these agreements that was asymmetrical, with regions having different powers in relation to the center, and different powers in comparison with each other.

Compounding the problems of this new federal system was a weak central government, which could not pass federal legislation in any expedient fashion from 1995-2000. Federal constitutional laws setting the foundation for treatment of natural resources, environmental protection, minority rights and other vital issues waited while a State Duma made up of several parties and groups and a regionally-controlled Federation Council either could not or would not agree on legislation. While this occurred, regional governments passed their own charters and legislation on these issues. By the late 1990s, conflicts between federal legislation that was passed and older regional legislation led to what was called the "War of Laws;" the federal government began to protest to regions that they needed to bring regional charters and laws in line with the Russian Constitution and federal legislation, but the regions argued that their laws held precedence and often ignored the federal demands for reform (Kahn 2002, 174-176). A major crisis in the federal system existed at this point, between regions, who supported the Federation Treaty, bilateral agreements and their regional laws and the federal government, whose understanding of the federal system depended upon the constitution, federal laws that

were now being passed, and the principle of supremacy of federal over regional law.[3]

The Russian Constitutional Court (CC) largely refrained from being involved in the conflict between the federal center and the regions until the late 1990s, when particular cases brought to the CC allowed consideration of this question. Because of its particular requirements on standing to approach the CC, the Court could not consider this question until either the regions or part of the central government brought a case.[4] The ability to enforce the decisions of the Court was also a major factor in why only a few cases were considered during the "War of Laws." The federal government was fiscally and structurally weak in comparison with many of the regions that refused to conduct legal reforms, and did not have the necessary "sticks" to force change. This situation would change in 2000.

In 2000, three major changes in federal legislation supported reforms to bring regional laws in line with the Russian Constitution and federal law. First, the membership of the Federation Council (the upper house of the central legislature) was changed from the regional governors and leaders of the regional legislatures to representatives appointed by these persons. This change was significant for two reasons: it removed the leaders from directly affecting the passage of federal legislation as well as stripped them of immunity against prosecution if they refused to implement federal laws (Remington 2001, Hyde 2001). Second, legislation was passed that allowed the Federation president to remove regional governors from power if suspected of criminal activities, including refusal to implement federal laws (Reddaway 2001, Sharlet 2001). This second law also enabled the State Duma (the lower house of the central legislature) to dissolve regional legislatures if the latter controverted federal laws and rules (Hesli 2007). With these new tools to force regions to comply, the Putin Administration's representatives to the regions pressed these governments to enact the necessary changes. This process took several years, but the federal system became more legally and structurally coherent as a result.

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[3]. The Russian Constitution, passed in 1993 (a year after the Federation Treaty) states that all regions are equal in terms of status and in relationship with the central government. It is not surprising that the regions wanted to stay with the relations created by the Federation Treaty, which had varying powers and relations with the center.

[4]. This reflects a change in the powers of the CC after the first court was dissolved; the First CC was able to instigate cases but after its role in the 1993 attempted coup, this power was removed from the Court. See Sharlet 2001.

While many observers believe that the changes from 2000-2003 were necessary to create a functioning federal system, concerns were raised that these changes also elevated central government powers to ways that could be abused (Hyde 2001, Reddaway 2001). Further concerns surfaced after 2004, when the Beslan school crisis[5] gave the Putin Administration a foundation to push for further centralization of the federal system. Claiming that the crisis required a more coherent executive structure across the federal system, Putin pushed for a set of legal changes that included allowing the Federation president to nominate regional governors; regional legislatures, not regional citizens, would then elect or reject these persons (The Moscow Times, 9/14/04). The central legislature, now dominated by the United Russia party in both houses, easily passed the changes in 2004. Bureaucratization of the Federation has also increased, with the central government passing legislation in the last five years to centralize policy making on issues such as welfare, but leaving implementation up to the regional governments. It is now an open question whether or not the Russian Federation truly exists as a federation.

Russia's Constitutional Court and Federalism

The Russian Constitutional Court played relatively little role in resolving the dispute between regional governments and the central government over federalism until 1998, when the Forest (Timber) Code case was presented to the CC by the regional governments of Karelia and Khabarovsk.[6] The Forest Code was the first major piece of federal legislation to regulate natural resource use, and the code's principles on ownership and use of public lands were seen by the regions as controverting regional controls over land use established by the Federation Treaty.

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[5]. This was an attack by Chechen and multinational terrorists upon a school in Beslan, North Ossetia in September 2004. A public outcry followed this event, focusing on flaws in both the regional and central administrations that could have prevented the event.

[6]. The First Russian Constitutional Court had considerably more powers of abstract and concrete review than the Second CC, including the ability to instigate constitutional review of legislation and executive decrees. After playing a role in the 1993 coup attempt by the Russian Congress of People's Deputies that sided with the Congress against the president, the Court was dissolved and re-formed under the new constitution. The new Court lost its ability to instigate cases and was forced to wait from then on for outside parties to bring cases to the Court. For more information, see Thorson 2004.

The CC sided with the federal government in its decision, citing the fact that natural resources were an issue of joint control between the federal government and regions, but that the actual legal regime to control land and resource use had to be set at the federal level (CCRF 1998). The justifications for the CC's decision were clearly based on the supremacy of federal law, but there was also an implicit message: in spite of the Federation Treaty's precedence, the Russian Constitution was the ultimate foundation of law in the Russian Federation.[7] This answered the question of whether or not the Federation Treaty had any real power as far as the central government was concerned.

The next major question concerned the ability of regional governments to pass charters based on the principles of the Federation Treaty and bilateral agreements. This issue was a more delicate one, as regions that had tried for real independence from the Federation (such as Tatarstan and Chechnya) were directly affected by this issue. Except for Chechnya, none of these regions by the end of the 1990s showed serious intentions to secede, but the charters of these regions clearly infringed upon federal authority. Tatarstan's constitution, for example, explicitly stated that the region was a sovereign nation, that regional laws held supreme authority in this territory, and that Tatarstan had the ability to establish diplomatic ties with other countries (CCRF 2000b, Kahn 2002). In order to reform relations between the center and regions and bring regional laws into coherence with the federal constitution, these charters needed to be changed, by force if necessary. The Constitutional Court played a vital role in the process, serving to legitimize the process by providing the legal foundations for the supremacy of the federal constitution and later laws.

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[7]. The 1993 Constitution actually states that the Federation Treaty is part of the constitution, but the principles in the 1993 document clearly contradict the 1992 agreement on division of powers and the status of republic, oblast and okrug-level regions.

The cases to start the charter reform process did not surface until 2000, and the impetus for the cases came from the regions, and not the federal government.[8] The president of the Altai Republic appealed first to the Russian State Duma, and then to the CC for a review of the Altai constitution over the issue of executive versus legislative powers. The case that ultimately was accepted by the CC, because of the State Duma's role in the dispute, considered not just separation of powers between regional branches of government in the case, but also the areas of the Altai constitution regarding sovereignty, dominion over use of natural resources, control over storage of atomic materials, and other issues. The CC ultimately sided with the federal government's contention that the Russian people were the foundation of sovereignty in the Federation, and that the federal government was their representative body. Regions could not claim separate sovereignty. Using the 1998 Forest Code case and others as precedent, the CC noted that any issues regarding concurrent powers such as control over natural resources were to be decided through federal legislation (CCRF 2000a). The decision in this case served as the basis for another decision that quickly followed which considered the constitutions of six other regions including Tatarstan and Bashkortostan, two of the most recalcitrant republics on the issue of regional autonomy and powers in the federal system. This time, the State Duma made a direct appeal to the CC with a satisfactory conclusion as the Court struck down all provisions of the regional charters on the issues of sovereignty, diplomatic relations with other countries and supremacy of regional laws over federal ones in the regions (CCRF 2000b). Although there were questions as to the procedure on this particular case,[9] this decision gave the legal support Putin needed to press for changes in regional law through his presidential representatives.

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[8]. There are various explanations for this, including the need to protect the integrity of the Russian Federation in the early years of its existence, the weakness of the central government versus many of the regions until 2000, and the desire by the federal government to get regional leaders to approach the CC; a completely federal-led case might look one-sided. Altai's president had a personal stake in the case, as the issue of executive recall and the role of the legislature in the process was a major reason for his approaching the CC. See Pinnell 2006.

[9]. Justice Victor Luchin wrote a notable dissenting opinion on the case, citing that this decision was a *opredeleniye* (determination), and not a *postanovleniye* (finding or decree), which would have required a more open hearing with statements from all parties involved, including the various regions. As a result, he had concerns with how legitimate the regions would find the ruling (Luchin 2000).

The Court's position on legal reforms did not always support the federal center; there were occasions when, for the sake of regulating the role of the judiciary in the reform process, the CC ruled in favor of the regions to keep legal disputes in the courts, specifically regional constitutional courts and the CC. In 2003, Tatarstan and Bashkortostan approached the CC to petition denying courts of general jurisdiction (as opposed to regional constitutional courts, and the federal Constitutional Court) the right to strike down regional laws not in line with the Russian Constitution. The CC sided with the regions, stating that given the system of constitutional courts in Russia, the regions were within their rights to require conflicts over regional vs. federal laws to be resolved within constitutional courts as opposed to other legal institutions (CCRF 2003a, Pinnell 2006). Bashkortostan later approached the CC to test the limits of regional authority in the federal system where areas of exclusive regional powers existed; the Court agreed with the region that in areas of regional authority, if there were no federal constitutional principles being infringed, regional law did take precedence over federal law. Any disputes over regional versus federal laws should be resolved by appealing to the central executive, or to the appropriate courts (CCRF 2003b). These rulings certified the role of regional and federal constitutional courts in the legal reform process and aided in reform.

The Second Constitutional Court has been largely on the side of the federal government in most of the significant cases regarding federalism. This trend has been especially true in the last four years, as many policies instigated by the center to "verticalize" the federal system have been supported by the CC. In 2004, the CC sided with the federal government over the issue of language instruction and usage in the regions, ruling against Tatarstan's policies of teaching both Tatar and Russian in public schools as well as its use of Roman letters instead of Cyrillic for written Tatar materials (CCRF 2004). This ruling is significant in that it probably aided passage of a 2008 federal law allowing suspension of secondary language instruction in schools if individual schools decided to abandon the classes (RFE/RL Reports 4/23/09). In regions where titular minorities may be equal to or less than the number of ethnic Russians, this could lead to suspension of language teaching and usage despite constitutional protections. The 2005 CC decision supporting the presidential nomination of governors also showed a clear inclination to support the "Power Vertical" as it was developing in the federal system, supporting the idea of an unified, largely appointed and bureaucratized executive branch from the central government

to the regions. The 2005 decision was particularly controversial in that it appeared to overturn a 1996 CC precedent supporting direct election of governors as a necessary part of the federal system (CCRF 2005; see minority opinions of Justices Yaroslav'tsev and Kononov).

The current Constitutional Court appears to be withdrawing from direct participation in political matters, even going so far as a move from Moscow to St. Petersburg this year. Although petitions to the Court from regional representatives and citizens continue to increase,[10] its position supporting the federal center seems unlikely to change.

This section has introduced the position of the CC on federalism by examining significant cases. This is not an uncommon way to approach the issue of the CC (see Pinnell 2006, Trochev 2006), but it could be contested that this survey might be too selective and not show overall trends in decision making by the Court. This is the reasoning behind the research project for this paper, where I turn to next.

A Quantitative Study of Russia's Second Constitutional Court and Its Decisions on Center-Regional Disputes

An Outline of the Study

This paper focuses on whether or not the Second Russian Constitutional Court favored particular interests over others when deciding cases involving center-regional relations, division of powers, or the observance of civil rights in Russia's regions. While the number of cases accepted by the Second Russian Constitutional Court for the period 1995-2005 was relatively small[11], many of these cases involved multiple issues or multiple players (various regions, the central legislature or central executive, citizens and groups). Thus, this study actually focuses on individual issues in cases and how they were decided. The dataset developed for this study codes each issue for interest that brought the matter to the CC (central government, regional

[10]. The 2005 case involving appointment of governors was actually based on a series of citizen appeals to the CC, not regional applications. See CCRF 2005.

[11]. According to Trochev 2006, the CC considered 585 petitions from various interests regarding federalist issues between 1995-2004. But the Court refused more than 80% of these, and the CCRF's official statistics state that the Court actually decided close to 100 federalist cases between 1995-2005. My dataset includes local government as well as some civil rights cases, so the actual number of cases covered in this study is higher than that (186).

government, local government or citizens/groups), the type of issue involved (center-regional disputes, regional-local disputes, or civil rights in regions), and the decision of the CC on the individual matter (did it support the interest that brought the case, or decide against it). This type of coding was used by Treyger (2004), who coded for the reasoning behind court decisions in order to analyze them quantitatively. The dataset I devised differs from her research in that each observation ("issue") in the dataset exists because coding takes into account the different interests involved in cases and the fact that some interests will benefit from a court's decision than others.[12]

A couple of examples of cases coded for this dataset may help to explain how the coding works. The 1998 Forest Code case, mentioned above, was brought to the CC by two regional governments (Karelia and Khabarovsk) for constitutional review. The CC decided against the regions' arguments that the Federation Treaty and its division of powers took precedence over the federal law (CCRF 1998). This case was coded once in the dataset, as regional interests brought the case to the CC and the decision went against their arguments (loss). The 2000 CC decision which ruled the constitutions of six regions federally unconstitutional was brought to the CC by the Russian State Duma; as the decision went for the interests bringing the petition, it was coded once for the central government with the Court siding with their argument (win) (CCRF 2000b). The 2004 case regarding language education and usage in Tatarstan actually concerned two different interests. The Tatarstan government argued that it had the right to teach Tatar as a secondary language and use Roman lettering for written Tatar literature. A second petition added to the case was from a citizen who felt regional laws on Tatar language teaching were forcing his child to learn the language (CCRF 2004). Using the reasoning provided by the CC, it appears that the CC went against both petitioners in their decision; consequently, the case was coded twice in the dataset, once as a loss for the regional government and once for the citizen petitioner.

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[12]. An nine-year form of this dataset was used in Pinnell 2005, 2007. This expanded dataset covers more of the Putin era. The total number of case issues currently in the dataset is 284, including all center/regional, regional/local, and civil rights disputes.

Coding cases in this way does expand the dataset to a larger number of observations for the issues studied, but there are some problems with the resulting dataset that could hamper data analysis. The major problem is the possibility of collinearity in the analysis: if a region loses on an argument in a case but the central government wins on a different argument in the same case, a statistical analysis could treat these issues as examples of "perfect variance" and throw the issues out of the analysis. For this reason, models using this data often focused on one of the three issues studied and not all the issues at once. This led to a separate problem, the issue of shrinking observations. The total number of observations in the dataset was well over 280, but analyzing data by issue shrunk the number of observations to less than 100 in several analyses. For this reason, several different types of analysis have been used including crosstabulations and binary logistic regression to better describe associations and variation in the results.

Models that showed clear and significant differences between interests and whether or not they "won" cases before the Second Russian Constitutional Court were then tested again using a stochastic simulation program (Clarify) which used the information from the case issues in the dataset to simulate additional observations (up to 1000) in order to project probabilities for specific situations posited by the researcher. This program was only run for models where the results showed significance in order to calculate the probability that particular interests had of winning issues before the CC; since favoritism appeared to show in the actual data, using a simulation to project what actual probabilities for success before the CC would be makes sense. Simulations were not run for models where the results showed lack of significance due to a small number of observations or no clear difference between interests.

Hypotheses, Variables and Models for This Study

This research is focused on determining whether or not the Second Russian Constitutional Court shows favoritism towards particular interests in decisions on issues of federalism. The study tests the following specific hypotheses:

1) For the period 1995-2005, the CC will show greater favoritism towards the most powerful political player in a dispute (examples: central government over regional government, regional government over local government, all levels of government over citizen interests).
2) Favoritism towards the most powerful interest in federalism disputes will

> increase during the Putin era as opposed to the Yeltsin era, given that the Putin era was a political environment where the federal system became more centralized.

Hypothesis 1 arises from research on federalism and how courts are anticipated to behave in federal systems in general and new federal systems in particular. Riker (1964) was the first to hypothesize that in federal systems, given their lack of independent enforcement power, constitutional courts would have to defer to the central executive in decisions regarding federalism given that the central executive enforces all constitutional court decisions. Siding with other interests in disputes where the central executive is involved would not be pragmatic. Sawer (1969) disputes this view by claiming that a constitutional court can rely on the concept and principles of the regime as the legitimate authority for its decisions, and does not have to worry about the central executive. Filippov, Ordeshook and Shvetsova (2004) see new courts as fora for resolving disputes regarding federalism, but ones that always have to take the impact of the decisions they make on their ultimate legitimacy; decisions could hurt the relationships of courts with outside interests and ultimately affect their authority with these interests.

Citizens are included as political interests in this dataset because there is research that hints that these interests may also be favored by new courts in order to establish legitimacy. Vanberg (2001) and Gibson and Caldeira (2003) indicate that courts do take the impact of decisions upon the public in consideration when making these decisions: Vanberg notes that courts may enlist public support for a decision to put pressure on the state to enact it, and Gibson & Caldeira show that lack of public support for particular decisions can hurt the acceptance and enforcement of the decisions.

Hypothesis 2 takes the political setting surrounding decisions into account. The Yeltsin era encompassed the period of the Federation Treaty and bilateral agreements as well as the "War of Laws," when regional and central power in the federal system were in flux and individual regions were often more politically cohesive and stronger than the center. The Putin era was one of centralization in the federal system, reducing the power of the regions. It would make sense for decisions to be more favorable towards the center during the Putin era than the Yeltsin period if the relative strength of interests were the only consideration in making decisions. However, it is also possible that the CC would feel that after several years of institutionalization, it might be able to make decisions that go against more powerful interests,

including the central government. This hypothesis is also a good one to test.

This dataset is coded with two dependent variables, Decision and Most Powerful Interest. The Decision variable is a dummy nominal variable coded as 0 if the CC finds against that interest's argument ("loss"), 1 if they side with it ("win"). The Most Powerful Interest variable is coded 0 if the Court goes against the more powerful interest in a particular dispute, 1 if the Court sides with it. A case brought by a region to the CC regarding center-regional relations that goes against the region, for example, is coded 1 because the region lost, and the more powerful central government won by default.

The major independent variable for this dataset is Brought_App, an ordinal variable coded 1 for Central Government, 2 for Regional Government, 3 for Local Government, and 4 for Citizens/Groups. This coding is meant to order interests in terms of power and influence within the political system, although coding citizens at the other part of the spectrum may have an impact on the results; as noted above, the power of the public through public opinion and pressure is different from state power.[13]

Intervening variables to test include Era, which differentiates between the periods of the Yeltsin and Putin admininstrations through a dummy variable (0 = Yeltsin, 1 = Putin); Donor, or classification of regions as donor regions (those giving more money to the center than receiving, an indicator of possible independence), neutral, or recipients (receiving more money from the center, an indicator of possible dependence); and Precedent, a dummy variable indicating whether or not the Court used previous court decisions to justify their current decision. This last variable could indicate greater independence if the Court is relying on past decisions to justify its current position, rather than siding with interests directly.

To test these variables, binomial logit regressions were used for the Decision and Most Powerful Interest dependent variables. These models can indicate direction and significance of relationships regarding possible favoritism of the Court in decisions with particular interests.

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[13]. I believe that having Local Government and Citizens as different (and higher) categories of an ordinal variable did affect the results; see below.

However, these models are not as useful for quantifying actual probability of the Court siding with particular interests; logit results show associations but are not very applicable for real-world situations. For this reason, I also employed Clarify, a stochastic probability simulation program, to project what the likely chances were of one interest or another "winning" in a given dispute.[14] This program uses simulation to expand the number of given observations to 1000, using the trends in the actual data to generate additional observations; probability is then estimated using the expanded data. With the results of this program, it is possible to estimate chance of victory as a percentage of 1, which is much easier to understand and apply to particular situations where one could posit the chances of the central government or another interests winning a dispute. If a particular interest has a higher probability of winning with the Court, this could be an indication of favoritism.

Results

Problems with this dataset in the past (see Pinnell 2005) due to collinearity issues prompted me to separate out data by issue (center-regional disputes, regional-local disputes, and civil rights) and run separate models in this particular study. Unfortunately, the regional-local disputes and civil rights disputes run separately did not show significant results, not surprising given the great decrease in observations for these separate issues (below 75 on each). However, the center-regional issue did have a reasonably large number of observations (128) to show significant results. Therefore, the results given below are for disputes between all four interests but only involving issues where center vs. regional division of powers are concerned. Models were run for each of the two dependent variables.

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[14]. The Clarify software was created by Gary King, Michael Tomz, and Jason Wittenberg. For more information, please see Michael Tomz, Jason Wittenberg and Gary King, CLARIFY: Software for Interpreting and Presenting Statistical Results. Version 2.0 C~~ambridge, MA: Harvard Univ~~ersity, June 1 (http://gking.harvard.edu), and Gary King, Michael Tomz, and Jason Wittenberg (2000), ``Making the Most of Statistical Analyses: Improving Interpretation and Presentation." American Journal of Political Science 44, no. 2 (April 2000): 347-61.

Does the CC Show Favoritism Towards Particular Interests?

As shown in the binomial probit results in Table 1, the higher the category of the Brought-App variable, the more likely the CC is going to support this interest. To bring this back to the Hypothesis 1, this means that the hypothesis is actually not supported; we would expect a negative relationship as the higher categories of this variable are considered the less powerful interests, with Citizens in the top category. This result apparently indicates that the lower the power of a particular interest, the more the CC apparently is willing to support it.

Table 1

Binomial Logit Results (Decision as Dependent Variable, 0 = Loss, 1 = Win)

Log Likelihood: -76.326**
N = 128 (case issues)

	Coefficient	Standard Error	Confidence Interval	
Brought_App	.511**	.203	.112	.909
Era	-1.119**	.466	-2.033	-.204
Precedent	.950*	.435	.097	1.803
Donor/Neutral/Recipient Region	-.059	.312	-.282	.347
Constant	-1.150**	.618	-2.720	-.296

*Significant at p<.05.
**Significant at p<.01

This is a surprising result, but needs to be put into context. Although not as powerful as regions or the central government, a CC may well have reasons to support these interests. As noted above, citizens have political power independent of the state in terms of public opinion and the ability to pressure the state into compliance. Legitimacy of the Court in the eyes of the public can be just as important as gaining legitimacy from the state. Thus, it is possible that the upper categories of this variable may be affecting the results in a way not anticipated.

Previous work with part of this data (Pinnell 2005) showed that regions tended to have a disadvantage with both Center and Citizen interests during the period 1995-2003. Appendices 1 and 2 show the overall data for the period 1995-2005, with regions having more losses than victories. Taking these data into consideration, the result in this study may be concealing the disadvantage experienced by the regions with the victories experienced by the upper categories.

The Era variable shows a negative relationship with the Decision variable, indicating that the Putin era may be a period where the Court is less inclined to support any interest in its decisions. The Putin era was one of centralization in the federal system, and many appeals were made by the regions, local government and citizenry about the "verticalization" of the system; this result appears to indicate that the Court might not have supported these claims.

The probability simulation shows interesting results in Table 2, with the CC showing greater favoritism with less powerful interests in a way that can be understood more easily than with the logit results. Keeping in mind that these are percentages of 1, it appears that a central government interest during the Yeltsin era, for example, has a 35% chance of victory in a dispute; a citizen has a 69% chance. Again, the categories of the variable could be a factor. But comparing the two eras studied here, Yeltsin and Putin, shows that for all interests bringing disputes to the CC, there is actually less chance of a win in the Putin era. A central government interest has only a 15% chance of a win during this period, and a citizen a 44% chance. The Court's attitude in its decision making may be experiencing a shift in the Putin era, one that is less congenial to those who approach it.

Table 2

Probability simulations projecting chance of a win (Decision = 1 for Win, 0 = Loss) in center-regional disputes for Central Government, Regional Government, Local Government or Citizens/Groups during the Yeltsin and Putin Administrations (N is initially 128; simulation expanded N to 1000)

Yeltsin Administration

	Chance of Win	Std. Err.	95% Confidence Interval	
Center	.350	.089	.193	.539
Region	.469	.082	.308	.635
Local Govt.	.591	.091	.397	.761
Citizen	.699	.104	.480	.872

Putin Administration

	Chance of Win	Std. Err.	95% Confidence Interval	
Center	.156	.056	.070	.296
Region	.228	.051	.137	.348
Local Govt.	.328	.057	.221	.444
Citizen	.447	.088	.283	.622

Because past research (Pinnell 2005) indicated that regions had a disadvantage in the federal system using a smaller version of this dataset, a more specific logit and probability simulation, using a recoded Brought_App variable that excluded the local government and citizen interests, was done to test if regions did indeed have an advantage with the expanded dataset. The results show that in center-regional disputes entirely between central government and regional interests, regions have in fact a significant disadvantage. The total number of observations was reduced to 91, but still showed significance with Brought_App as an independent variable (coefficient for this variable changed to -1.158, $p < .05$). The simulation results in Table 3 indicate that regions would have much less success with the Court than central government interests, during both the Yeltsin and Putin administrations.

Table 3

Probability simulations projecting chance of a win for Central Government or Regional Governments in center-regional disputes during the Yeltsin and Putin Administrations (N is initially 91; simulation expanded N to 1000)

Yeltsin Administration

	Chance of Win	Std. Err.	95% Confidence Interval	
Center	.556	.122	.319	.780
Region	.293	.090	.138	.497

Putin Administration

	Chance of Win	Std. Err.	95% Confidence Interval	
Center	.417	.135	.182	.700
Region	.185	.053	.097	.301

The original Brought_App variable categories appear to be skewing the results by including local government and citizens, but the way this variable is categorized is still useful for testing the hypothesis; it indicates that when local government and citizens, both less powerful than regions or the central government are included, the Court may side with these interests. Favoritism appears to be going on, just not in the way expected.

Will the CC Side with the More Powerful Interest in Disputes?

Table 4 summarizes the binomial logit results for More Powerful Interest as the dependent variable. The results appear to support the first hypothesis, with lower categories of the Brought_App variable (the higher levels of government) being associated with deciding for the more powerful interest. There is also an interesting result for Era: there is a higher tendency to support more powerful interests in cases during the Putin era compared to the Yeltsin era. Given that the Putin era was one of centralization of the federal system, these results could indicate that the Court in general would probably support the interests of the central government during this period, even if the central government was not the instigator of cases.

Table 4

Binomial Logit Results (Most Important Interest as Dependent Variable, 0 = Against, 1 = For)

Log Likelihood: -74.615**
N = 127 (case issues)

	Coefficient	Standard Error	Confidence Interval	
Brought_App	-.645**	.212	-1.062	-.229
Era	1.261**	.462	.355	2.168
Precedent	-.029	.438	-.889	.831
Donor/Neutral/Recipient Region	-.102	.315	-.720	.514
Constant	1.542*	.627	.312	2.772

*Significant at p<.05.
**Significant at p<.01.

The probabilities of the Court supporting the more powerful interests when particular interests approach the court are in Table 5. A general trend shows in these results, with the central government interests having the most chance of surfacing in cases where the most powerful interest is favored. But regional interests also appear to be supported in these results. Again, the categories of the Brought_App variable could be affecting the results, although the overall trend is intriguing. The possibility for running a shorter dataset with only central government and regional interests was considered and attempted, but the smaller number of observations did not give significant results for any of the variables in a logit model; the next step of running a probabilities simulation for this smaller number of observations was not attempted given the logit results.

Table 5

Probability simulations projecting chance of a decision siding with the Most Powerful Interest (1 = For, 0 = Against) in center-regional disputes for Central Government, Regional Government, Local Government or Citizens/Groups during the Yeltsin and Putin Administrations (N is initially 127; simulation expanded N to 1000)

Yeltsin Administration

	Chance of Win	Std. Err.	95% Confidence Interval	
Center	.683	.085	.504	.833
Region	.537	.082	.371	.696
Local Govt.	.383	.089	.219	.568
Citizen	.255	.098	.104	.476

Putin Administration

	Chance of Win	Std. Err.	95% Confidence Interval	
Center	.879	.048	.765	.952
Region	.801	.048	.692	.885
Local Govt.	.682	.056	.564	.783
Citizen	.532	.088	.363	.699

Overall, the results for the More Powerful Interest variable support the hypothesized conditions and indicate a stronger tendency to side with powerful interests during the Putin era. These results show that despite the existence of the Second Russian Constitutional Court for over a decade, the Court still sides with more powerful interests in decisions, even increasing in favoritism. If continually siding with powerful interests over others is an indication that a court is not feeling independent or legitimate enough to decide against the powers that enforce its decisions (the central executive), these numbers may indicate a lack of independence for the Court, at least in terms of federalism.

A question could be raised over why the two logit and corresponding probability simulations appear to show that less powerful interests could be favored in one case (the Decision variable) but not in the other (the Most Powerful Interest variable). The reason for the two different sets of results is that the two dependent variables actually measure different concepts. The Decision variable measures a straight “win”or “loss,” and relations between

interests in the Brought_App variable therefore show whether or not one of these interests would be likely to win or lose. But the Most Powerful Interest variable is not a "win" or "loss" variable in the same sense; this variable measures whether the win favored the most powerful interest, and the most powerful interest may not have brought the case to the Court. Two examples will help to explain this. In the first example, assume a central government interest brings a case to the CC and wins; this is coded as a 1 for both the Decision and Most Powerful Interest variables. In the second, assume a regional government brings a case to the CC and loses; this is recorded as a "loss" (0) for the Decision variable, but a "win" (1) for the Most Powerful Interest variable. As shown in the Appendix, regions have approached the CC more than any other interest in the period studied, but have lost many of their arguments to the Court; if these were cases that involved the central government, then this means that the two dependent variables will be affected differently, with one showing more "losses" and the other more "wins." It is therefore not surprising that the Decision model shows decidedly different results than the Most Powerful Interest model.

Discussion

This study is a quantitative test of whether or not the Second Russian Constitutional Court has favored particular interests over others in deciding center-regional conflicts. Although some problems surfaced with the data and analysis, there are results here which may contribute to an understanding of how the CC interacts with outside political interests. Federalism is an inherently political issue, and constitutional disputes over this particular area of policy have far-reaching implications for the stability and functioning of a political system. This area of politics also may affect courts and how they become established in a political system: making decisions on this particular issue may directly affect the court's ability to establish legitimacy with outside interests and overall independence. The results in this study show a very complex picture with regards to the Russian Constitutional Court and its interactions with other players in politics; the Court definitely favors the central government and has increased this favoritism under Putin, but also appears to favor lower levels of government and citizens as well. More directed research would help to establish the specific conditions when the Court might go against the most powerful interest (the central government) in disputes.

Quantitative studies are always difficult to run with small numbers of observations and this study was no exception to the rule. To avoid collinearity issues with the data, separating out issues and running them as separate models gave little in the way of conclusive results for two of the issues. I have focused on the center-regional issue and the results from testing its data because it had a reasonably large number of observations from the original dataset and thus was the most testable issue of the three in the dataset. Fortunately, this issue provided results which not only show relationships between variables, but also probabilities of interests winning or being favored in specific situations. The probability results are helpful for understanding the real chances a particular interest would have in a case before this Court.

Although the results for the Decision variable may indicate that political interests aside from the central government (such as citizens) might wish to approach the CC to resolve disputes, the trends shown in the Most Powerful Interest results indicate that this may actually be an bad option for many outside interests. The results, when divided by political admininstration, show that the Court is less supportive of petitions in general in the Putin era (2000-2005), and that less powerful interests are definitely not favored. Petitions from interests such as regions may not have decreased in the Putin era (see Appendix 1), but the chances of their winning have clearly decreased.

Looking at specific cases from the Putin era, it appears that political interests such as regions have begun to acknowledge the fact that they might not succeed in winning a dispute in the Constitutional Court: while 2003 saw significant victories for the regions in terms of restricting the central government in forcing changes (2003a, 2003b), losses in 2004 and 2005 may have convinced regions to approach the Court less. The two most significant cases of 2005 regarding division of powers between center and regions were not brought to the Court by the regions, but by citizens. The 12/21/05 case concerning the nomination of regional governors was largely dismissed by the CC, because it was brought by a group of citizens who did not have standing to request a constitutional review regarding possible infringement of division of powers. The Court refused to consider this issue, dismissed this part of the petition and instead focused on civil rights in the case, specifically the question of whether or not direct election of regional governors was such a right (2005a). An earlier case in 2005 regarding the changed federal Law on Political Parties also included division of powers between center and regions as part of the case, but the applicants were a regional political party. The division of powers portion

of the case was therefore dismissed on standing grounds because the party was not a government entity; the matter then became one of civil rights (2005b). Regions may be resolving disputes in other ways, but not before the Constitutional Court.

Putting the results of this study into context with what is known about constitutional courts shows a picture of a Constitutional Court that may be losing ground as a political presence in federalism. Although the Second Russian Constitutional Court receives a number of petitions each year and this number is consistently expanding, the number of cases it hears on federalism is relatively small and does not seem to be expanding in relation to other issues.[15] Disputes regarding center-regional relations have often been resolved in Russia on an informal basis between presidents and governors, but with a federal system now largely centralized and bureaucratized between the center and regions, disputes may be few and will never reach the need for outside intervention. If the trends shown in this study are any indication, using the Constitutional Court to resolve these conflicts may not be the best option even if outside intervention is necessary.

[15]. In 1995, the CC heard 158 cases. In 2005, 534. But between 1995-2003, no more than 10% of these cases for any year were on federalist issues. See Pinnell 2007.

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Appendix 1

Crosstabulations of Wins/Losses for Center-Regional and Regional-Local Government conflicts for 1995-2005, by interest (Central Government, Regional Government, Local Government and Citizens/Groups)

1995

	Win	Loss	Total
Center	0	2	2
Region	2	4	6
Local Government	0	1	1
Ctizens/Groups	0	0	0
Total	2	7	9

1996

	Win	Loss	Total
Center	0	1	1
Region	1	2	3
Local Government	1	0	1
Ctizens/Groups	0	0	0
Total	2	3	5

1997

	Win	Loss	Total
Center	3	3	6
Region	6	3	9
Local Government	0	0	0
Ctizens/Groups	3	3	6
Total	12	9	21

1998

	Win	Loss	Total
Center	2	4	6
Region	0	12	12
Local Government	0	0	0
Ctizens/Groups	0	3	3
Total	2	19	21

1999

	Win	Loss	Total
Center	2	0	2
Region	1	5	6
Local Government	0	0	0
Ctizens/Groups	3	0	3
Total	6	5	11

2000

	Win	Loss	Total
Center	4	1	5
Region	0	7	7
Local Government	0	0	0
Ctizens/Groups	6	0	6
Total	10	8	18

2001

	Win	Loss	Total
Center	1	0	1`
Region	2	10	12
Local Government	0	0	0
Ctizens/Groups	3	3	6
Total	6	13	19

2002

	Win	Loss	Total
Center	0	1	1
Region	3	3	6
Local Government	0	0	0
Ctizens/Groups	5	2	7
Total	8	6	14

2003

	Win	Loss	Total
Center	1	1	2
Region	2	3	5
Local Government	0	2	2
Ctizens/Groups	3	0	3
Total	6	6	12

2004

	Win	Loss	Total
Center	0	1	1
Region	4	7	11
Local Government	0	5	5
Ctizens/Groups	1	5	6
Total	5	18	23

2005

	Win	Loss	Total
Center	0	0	0
Region	0	18	17
Local Government	0	2	2
Ctizens/Groups	0	11	9
Total	0	31	31

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Appendix 2

Total Number of Wins/Losses for 1995-2005

	Win	Loss	Total
Center	13	14	27
Region	21	74	94
Local Government	1	10	11
Ctizens/Groups	24	27	49
Total	59	125	184