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Democratic Citizenship, Sexual Difference and the Postcommunist Russian State

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The focus of this paper is on the potential of law to act as a conduit for democratic citizenship in post-Soviet Russia.¹ For the purposes of the current work, I conceptualize the relationship between law and democratic citizenship in two ways. In the first way, “law” operates as a set of juridical institutions (legal codes, courts, legal professionals, etc) that negotiate relations between the citizen and state, between citizens, and between a mix of other types of actors (such as business and non-governmental entities). Scholarship in this area of research focuses on key issues such as the development of an independent judiciary, the reformulation of courts (such as the institutionalization of Constitutional and Arbitraz courts), the re-introduction of trial by jury, and the practice and enforcement of law, or *Rechstaat* (Flanagan 2001; Hendley 1996; Kahn 2002; Sharlet 2001; Smith and Danilenko 1993; Solomon 1997; Solomon and Foglesong 2000; Trochev 2004). Thus, the relationship between “law” and democratic citizenship can be characterized by the question of if and how law matters to citizens of the Russian state.

In another sense, “law” plays a key role in constructing the symbolic meaning of democratic citizenship.² Legal ideals, such as equality before the law, help constitute the contours of the “common good,” which in turn provides a normative and legitimating function for state-society relations. We can view the relationship between citizens and the state as based on foundational ideas and one which rests on a symbolic understanding of the purpose and parameters of the state,

¹ I focus on the role of law as opposed to the role of electoral politics to analyze the character and quality of democratic citizenship in Russia. As one of the central acts of democracy, it is understandable that electoral politics (from voter and institutional perspectives) predominate current research on democracy in the region. A sample of recent research on electoral politics includes, Marsh, Christopher. 2002. *Russia at the Polls: Voters, Elections, and Democratization*. Washington, D.C.: CQ Press, Matland, Richard E., and Kathleen A. Montgomery, eds. 2003. *Women's Access to Political Power in Post-Communist Europe*. Oxford: Oxford University Press, Moser, Robert G. 2001. *Unexpected Outcomes: Electoral Systems, Political Parties, and Representation in Russia*. Pittsburgh: University of Pittsburgh Press, Nechemias, Carol. 2000. "Politics in post-Soviet Russia: Where are the Women?" *Demokratizatsiya* 8, Rueschemeyer, Marilyn, ed. 1994. *Women in the Politics of Postcommunist Eastern Europe*. Armonk, New York: M.E. Sharpe.

² By the term symbolic, I do not mean that there is no material consequence. Rather, the symbolic function of law is rooted in ideas and ideals that have material effects but are not reducible to them. For example, the official Soviet statement that the USSR was as “workers’ state” was reflected in laws and practices that had an impact on individual lives. However, at the same time, the legal concept of a “workers’ state” provided a symbolic function as the central normative principle of the Soviet “common good.” On the normative (ethical) foundations of Soviet Marxism see, Marcuse, Herbert. 1961. *Soviet Marxism: A Critical Analysis*. New York: Vintage Books.

particularly in its role in protecting the “common good.”³ Scholarship in this area is limited, but there is general acknowledgement of the role legal consciousness (*pravosoznanie*) plays in the development of the rule of law (Priban 2002; Stoecker 2003). The connection between legal consciousness and the incorporation and politicization of human rights is strengthening, particularly as the institutional efficacy of Russian law weakens (Flanagan 2001; Mendelson 2002; 2004; Weiler 2004). My understanding of the symbolic character of law goes beyond a strictly functional view (i.e., do Russian citizens believe in law as an idea) to encompass a normative function as well. For example, what are the substantive contours and meanings assigned to Russian citizenship and the role of the state held within the beliefs (or non-beliefs) about law?

In this paper I wrestle with the question of whether (and how) “law” works as a conduit for democratic citizenship from both of these perspectives: institutional and symbolic. I focus on the specific case of women’s democratic citizenship and the legal question of sexual harassment in order to provide a closer, albeit single, read on a considerably large question. I have two sets of arguments that I advance. In the specific case of women’s democratic citizenship, I argue that in the context of liberal legal reforms, the legacy of a strong administrative (bureaucratic) role of law regulating women’s labor rights provides a double burden for women. At a time when women need the administrative intervention of the state, the official re-conceptualization of the state privileges a new constitutional order that has dismantled sub-legal structures which once adjudicated many women’s issues. At the same time, the new constitutional order has had a limited impact on women’s labor rights in part because of the interconnection between the now dismantled sub-legal administrative structures (such as labor unions and comrade’s courts) and women’s issues. However, this double bind could also suggest that because of the indigenous roots of sub-legal and

³ On thinking about the state as an idea, rather than just an institution, see Bourdieu, Pierre. 1994. "Rethinking the State: Genesis and Structure of the Bureaucratic Field." *Sociological Theory* 12 (1):1-18.

administrative forms of justice, such avenues could be developed for actualizing democratic citizenship, even in the shadows of a superpresidential state and unresponsive judicial system.

The second argument that I advance suggests that the symbolic understanding of women's citizenship in the new Russia has produced a tension. I contend that the Soviet "woman question" (as it was embodied in political discourse and law) continues to frame how women's difference is constituted in law—namely, through a protective (paternal) approach to women's rights. This symbolic understanding of women's rights and the role of law is in tension with the (liberal) standards used to revise the current legal order. This tension is evident in the case of sexual harassment law. My conclusions regarding the potential of the symbolic function of law in the development of democratic citizenship is more speculative. I suggest that the issue of sexual harassment, despite its prevalence in the post-Soviet Russian workplace, will not garner sufficient support or politicization unless the competing standards of the woman question and liberal gender neutrality are reconciled. This reconciliation could be achieved by re-conceptualizing "sexual harassment" as a by-product of neoliberal economic reforms and thus, not simply a complaint of Western-style feminism.

The ideas and arguments that I explore are premised on an evaluation of Soviet law and how women's rights and citizenship were conceived of in that legal system. As such, the first part of this essay provides a short analysis of the institutional and symbolic contours of women's labor rights. I use that analysis as the basis for my examination of post-Soviet law and citizenship.

Women's Labor Rights and Soviet Law

Historians of Russia claim that a fear of *Rechtsstaat* hindered the development of codified civil law in Russia (Pipes 1974; Raeff 1994; Wagner 1994; Whisenhunt 2001). In eighteenth century Europe, positive law was used to the advantage of monarchical power, whereas Russian Tsars held onto their trepidations and suspicions that a social contract could work against their favor. As

a result, judicial independence and a coherent system of codified law only slowly and incrementally developed. The Bolshevik revolution that eventually brought down Russian autocracy gave life to a new set of philosophical and political suspicions regarding civil law (or bourgeois law) (Juviler 1976). In his *State and Revolution*, Lenin expressed his abhorrence for the state and its legal arm which submitted citizens to tyrannical rule. Justice could be served by other means, and in the early years of Soviet one-party rule, tribunals and popular courts were installed across the country.

Administrative and sub-legal forms of law were a key component of “law” and justice during the Soviet period.⁴ A combination of factors contributed to the peculiarities of the Soviet legal system, including: the Leninist-Marxist philosophical principle of the “withering away of the state and law” that privileged community-based justice over state courts (particularly regarding issues relating to communist ethics); economic pressures and imperatives that intensified government intervention in the structuring of economic and private life; and the rise of Soviet totalitarianism which used legal and sub-legal forms of law to manipulate, persecute and control citizens. The peasant customary law tradition, which emphasized a form of community-led justice, also served as a sub-text to the development and character of Soviet law (Frank 1987; Sergeevich 1903; Sigel 1974; Worobec 1991). The current post-Soviet relevance of the Soviet legal system, I believe, is rooted in the institutional and cultural impact of administrative and sub-legal forms of law. While many of these mechanisms are now defunct or dismantled, they may serve as an avenue for contemporary Russian citizens to activate their newly gained democratic citizenship. I believe this is particularly the case regarding legal issues that were associated with ethical conduct in the

⁴ The distinction I am making between legal, sub-legal and administrative forms of law draws on the philosophical distinction made by the Soviet Communist Party. “Law” as such exists as an arm of the state and is outlined in the Soviet Constitution and legal codes. By administrative law I am referring to the plethora of agencies set-up by the CP to administer communist morality and socialist economic life. These agencies were governed by socialist principles (only some of which were codified in legal codes). Sub-legal forms of law refer to the institutions that were developed in order to facilitate communist self-rule. If the state and law were to wither away, mechanisms for self-rule needed to be in place. See, Hazard, John, William Butler, and Peter Maggs. 1977. *The Soviet Legal System, Third Edition*. Dobbs Ferry, NY: Oceana Publications.

past. The case of women's labor rights and sexual harassment is an example of this potential. A brief sketch of the Soviet historical context is necessary for this discussion.

Under the Soviet legal order, the "woman question" framed how law and the state conceptualized women's citizenship. In 19th and early 20th century Russia, the answer to the "woman question" varied between liberal, radical and socialist positions (Stites 1990). However, the quandary that women posed to the state and future societal development rested on similar debates regarding women's proper social roles and the meaning of citizenship for all members of society. In Imperial Russia, some sought to reform family law in order to allow women to divorce and receive inheritance. These advancements would free women from their dependence on husbands but also challenged the lack of independence of all citizens under absolutism. Others sought to allow women into higher education and declared the importance of women's intellectual development. Again, these advancements for women were intricately tied to a broader criticism of the absence of intellectual freedom and freedom of speech in Tsarist Russia. One important characteristic of the "woman question" is how it functions as a categorical and societal, and rarely as an individual, lens. Despite the Soviet promulgation of "rights" for women as a solution to the "woman question," these rights were grounded in categorical and societal understanding of women and were not understood as individual rights.⁵

Official Leninist-Marxist ideology located the source of women's inequality in the economic structure of capitalism. Women were dependent on husbands for economic security which confined them to the whims of their conjugal masters. For working women, their burdens were doubled since their paid work was controlled by the bourgeois class and their unpaid work was under-

⁵ "Women" comprised a class of citizens whose oppression and emancipation were analyzed through a communist world view that de-emphasized gender as an independent analytic component of inequality. That is, the oppression that women experienced was because of economic alienation not because of gender hierarchy. My argument is that the rights assigned to women in the Soviet legal system do not correlate to "women's rights" in the liberal social contract sense. "Women" comprise a class of citizens whose importance relates to the advancement of a socialist state rather than as particular individuals making claims for abstract individual rights.

appreciated and chained them to domesticity. The solution to women's subordination required a reconfiguration of their economic status. In contrast to the common liberal feminist argument, Soviet ideology did not locate the lynchpin of women's second-class status to social beliefs about women's natural sexual difference from men.⁶ Sexual difference was not challenged by Leninist-Marxist thinking; what the Soviet state and law attempted to do was configure a social and economic system that would not translate sexual difference into class inequalities. Social norms about the proper roles for men and women (gender) were not the problem, rather, the lack of socialism was the problem. The "woman question" symbolizes this conceptualization of sexual difference. Indeed, I argue that the "woman question" further institutionalized cultural beliefs about essential sexual difference and the pre-ordained (almost world-historical) role of women in society (Voronina 1993; 2002).

Soviet laws and institutions regarding women's labor exhibit the normative meanings of the woman question. The fundamental principles declared in the Soviet constitution stated that,

women and men have equal rights in the USSR. Exercise of these rights is ensured by according women equal access with men to education and vocational and professional training, equal opportunities in employment, remuneration, and promotion, and in social and political, and cultural activity, and by special labor and health protection measures for women (Belyakova et al. 1978, p.28).

In the sphere of economics, and to some extent in the sphere of politics, the dictates of ensuring women's equality maintained and furthered the political representation of women as necessarily different from male citizens. Soviet equality emphasized women's natural difference (from men) which translated into laws geared toward protecting that difference. Sexual (and to some extent

⁶ In written correspondence between German Marxist Clara Zetkin and V. Lenin the "pecking order" for the causes of women's oppression was a source of debate. In Zetkin's memoir, she speaks of Lenin's antagonism towards "women's issues" despite his support of women's legal equality. Paraphrasing Lenin on his remarks regarding a Party discussion, Zetkin writes, "It is being recommended and disseminated instead of being criticized. Why is the approach to this problem inadequate and un-Marxist? Because sex and marriage problems are not treated as only part of the main social problem. Conversely, the main social problem is presented as a part, an appendage to the sex problem. The important point recedes into the background. Thus not only is this question obscured, but also though, and the class-consciousness of working women in gender, is dulled." Quoted from Zetkin, Clara. 1975. "Dialogue with Clara Zetkin". In *The Lenin Anthology*, edited by R. Tucker. New York: W.W. Norton & Company. p. 689-90

ethnic) equality in the USSR established a legal and political framework that brought the fact of difference to the fore rather than attempting to establish sameness. The problem of difference that women present to the polity has historically been addressed in Russia by emphasizing sexual difference, whereas in the Western liberal state, there has historically been an emphasis on establishing legal and political sameness.⁷ In Soviet law, women comprise a “special” class of citizens with special needs and protections.

The primary way in which women are identified as a special class of citizens in need of protection is in the recognition of women as mothers. Soviet labor law declares women’s right to work and equal pay. Yet, the organizing principle for the legal recognition of unequal treatment is entirely focused on motherhood. To give voice to proclamations of maltreatment or unequal treatment thus requires that women make a claim based on their essential role as mothers. Soviet Labor Codes protect this kind of equality in numerous ways. Women could not be fired because of a pregnancy or because of their increased mothering duties for a newborn. Women who were breastfeeding were allowed time during work to feed their babies and in some instances, facilities for feeding were required at the workplace. Employers could not hire women for hard manual labor or late-night shifts which could either damage their reproductive capacities or keep them from their hearth. These and many other pronatalist laws and policies are at the crux of Soviet sexual equality (Goldman 1993; Hoffmann 2000).

In conjunction with the paternalistic and pronatalist ideology that frames women’s equality in labor law, the case of sexual harassment reveals additional normative understandings of the woman question. The emergence of the legal recognition of sexual harassment in the United States is rooted in a political and cultural context where women’s access to work in the public sphere

⁷ The characterizations that I depict here, between “equality as sameness” and “equality as difference,” are not intended as blanket statements about liberal or Soviet society. I find these categorizations useful in expressing the tendencies that I see in law and cultural practices.

provides a critical tension in the development of women's democratic citizenship. In the particular constellation of American politics, and as it has developed as an international legal concept, sexual harassment is a labor rights issue. Soviet (and pre-Soviet) law recognized similar behaviors that are currently associated with sexual harassment but not through the framework of labor law and rights.⁸ Rather, the Soviet crime of compulsion (*ponuzhdenie*) is a sexual crime located in criminal law.⁹ Statute 169a of the 1924 RSFSR Uголовnyi Kodeks (*UK*) states that, "the compulsion of a woman to enter into sexual relations with a person upon whom she is dependent financially or by reason of her employment is punishable with the penalties prescribed in statute 169" (which refers to the statute on rape).¹⁰ The crime of compulsion remained in Soviet Criminal Law, with minor alterations, until the statute went through considerable modification with the 1996 Criminal Code of the Russian Federation.

In the legal recognition of compulsion, women's sexual difference is not centered on their status as mothers but on their status as socially and economically vulnerable citizens. No set of behaviors are tenable as legal crimes until those behaviors are tied to localized meanings and practices. In other words, the statutory development of "sexual harassment" in Russia is embedded in indigenous beliefs about sexual difference. The character of the Soviet crime of compulsion emphasizes two key beliefs about sexual difference. First, in a continuation of the pre-Soviet statute on seduction (*obol'shchenie*), the Soviet crime of compulsion maintains a sense of women's moral

⁸ In my dissertation I explore the legal and cultural roots of the Soviet crime of compulsion in pre-Soviet law. I argue that Imperial statutes regarding the protection of women's honor provided the precedent for the legal recognition of compulsion in Soviet law.

⁹ In a 1923 decision of the All Russian Central Executive Committee (VtsIK), the crime of compulsion was added into Criminal Law. *Sbornik Uzakonii i Rrasporiazhenii Rabocheho i Krest'ianskogo Pravitel'stva Narodnym Komissariatom Iustitsii*. No. 48, July 25, 1923, st. 479.

¹⁰ *Sobranie Kodeksov RSFSR*. 1925. Moskva: Gosudarstvennoe Izdatel'stvo Iuridicheskoi Literaturi. I will refer to the criminal code as *UK* and give specific dates to clarify versions.

difference.¹¹ To sexually or morally “insult” a woman is more egregious than if done to a man. Indeed, historically in Russia, sexual violence against men has only been recognized as either a crime of homosexuality (voluntary or involuntary sodomy between adult males) or a crime of pederasty (sexual acts with a minor).¹² The Soviet statutes on sex crimes emphasize proper sexual conduct with a special emphasis on women, minors and homosexuality (in the strict case of male homosexuality).

In addition to the moral component of sexual difference contained within the legal concept of compulsion, there is also an economic component to how sexual difference is framed. It is in this economic sense that the statute on compulsion differs from its pre-Soviet predecessor. The harm identified by the crime of compulsion centered on the vulnerable economic status of women. As an employer or student, a woman working (or studying) under a man runs the risk of sexual exploitation. Therefore, women do not possess an individual right to work free from harassment, but have a “right” as a Soviet citizen to economic duties. The statute on compulsion recognizes this and protects the sexually vulnerable status of women who work. Contrary to the common American conceptualization of sexual harassment as a crime of power, the Soviet legal concept of compulsion is a crime of sex by economic means. I will address how the statute on compulsion has changed since the re-writing of Russian criminal law later in this essay.

The labor rights granted women under the Soviet legal order and the specific crime of compulsion (sexual harassment) exhibit the normative implications of the woman question. To summarize, I have argued that sexual difference (as expressed through the woman question) during the Soviet period framed women and their “rights” as a special interest and special class of citizens.

¹¹ This moral distinction is evident in the division of sex crimes by gender. Rape and compulsion have historically been made separate crimes (at times with different penalties) from other forms of forced sexual contact when there is a male victim. Both women and children are treated as special (different) subjects of sex crimes in Russian law.

¹² On the legal treatment of homosexuality in Russia see, Engelstein, Laura. 1992. *The Keys to Happiness: sex and the search for modernity in fin-de-siecle Russia*. Ithaca: Cornell University Press, Healey, Dan. 2001. *Homosexual desire in Revolutionary Russia: the regulation of sexual and gender dissent*. Chicago: University of Chicago Press, Kon, Igor S. 1997. *Seksual'naia Kul'tura v Rossii*. Moskva: OGI.

Soviet equality translated into a legal emphasis on women's natural difference from men, particularly as mothers (or potential mothers) and separate moral beings. The symbolic function of law that I will analyze in the post-Soviet period is intricately tied to the continued pertinence of the "woman question." With the incorporation of gender research and gender studies programs in Russia and the FSU, some may suggest that the "woman question" is an anachronistic concept for postcommunism. However, I argue that the specific meanings regarding sexual difference that were constituted by the political and legal discourse of the "woman question" continue to operate, and are in tension with the liberal ideals incorporated into revised statutory law. I will continue to focus on the example of sexual harassment law and will look at the adoption of gender neutral language in post-Soviet criminal law in the next section.

Before I turn to the post-Soviet landscape, I will briefly finish the contextual work necessary for contemporary analyses of democratic citizenship and law. In addition to Soviet "law" holding normative implications for the meaning and contours of women's rights, "law" also negotiates democratic citizenship by providing the institutional mechanisms to actualize the substantive meaning of citizenship. As I mentioned earlier, sub-legal and administrative institutions were prevalent during the Soviet period. In relation to women's rights and specifically labor rights, these institutions were instrumental for the actualization of abstract Soviet women's labor rights. The institutions set-up to process complaints (or to actualize abstract rights) were considerably devolved from the center of institutional power in part because women's issues were not top priority and because the legal extension and adjudication of women's rights were viewed as minor in comparison to other themes.

For example, until 1930 the Women's Department of the Communist Part (*Zhenotdel*) operated as an important organization that gave voice to women's complaints. Workers, peasants, housewives and servants participated in local *Zhenotdel* meetings and Women's Congresses. The

issue of discrimination and unemployment preoccupied the thousands of women without work in the economically lean times of the NEP (Goldman 1993). Women were more likely than men to be fired, less likely to be hired and comprised a significant pool of unemployed workers. Bolshevik rhetoric of a “workers’ state” emboldened women to declare their right to work despite the discrimination and barriers they faced. Some political pressure was exerted by the work of the *Zhenotdel* which may have altered the behavior of union leaders and factory bosses (Goldman 1993). For example, *Kommunistka*, the newspaper associated with the *Zhenotdel*, published complaints and editorials by women which helped to politicize the particular concerns of women workers. However, the point that I am concerned with is that this administrative agency served as an avenue for women to activate, by way of participating in meetings and voicing their complaints, their citizenship rights. That there was a disparity between the rights written on paper and reality is well documented. However, the significance of this disparity is that groups of citizens saw this as a problem and used a variety of methods to make Soviet rhetoric into reality.

The *Zhenotdel* was dismantled in 1930 when Stalin declared the “woman question” to be answered. Stalin’s decision rested partly on the fact that women had achieved legal equality (their issues were fully represented in formal law). However, the tensions and problems that women faced did not cease to exist after 1930. Several other administrative and sub-legal institutions were used to actualize, even if in a small way, the abstract rights of Soviet citizenship. Lisa Granik’s archival work shows that women used the complaint department (*biuro zhalob*) of the Workers’ and Peasants’ Inspectorate (*Narodnyi Komissariat Raboche-Krest’ianskoi Inspektsii* [RK] or *Rabkrin*) to file their complaints about sexual discrimination at work (Granik 1997).¹³ While the *biuro zhalob* could respond to complaints by pursuing investigations, the process of complaining through the

¹³ Rose Glickman’s work on pre-Soviet factory women shows that women made complaints about sexual harassment as well. This suggests that the concern, even if not the language, for sexual harassment existed in Russia prior to the politicization of “sexual harassment” in the West and in international rights documents. Glickman, Rose. 1984. *Russian Factory Women: Workplace and Society, 1880-1914*. Berkeley: University of California Press. p.143-166.

agency directly or through other avenues (such as newspapers, Party offices or the People's Commissariat of Labor) expanded the original function of the agency to address the concerns of female workers. According to Granik, the intended function of the *biuro zhalob* was to address the abuse or improper activity on the part of soviet organs, thus, fitting sexual harassment claims (understood as disparaging behavior or *prenebrizhitel'noe otnoshenie*) into the parameters of the agency reflected an ideological concern with proper Soviet attitudes and behavior (Granik 1997, p.140).

In addition to giving voice to women's complaints, these sub-legal and administrative institutions solidified the association between "women's issues" and these types of institutions. According to Wendy Goldman's work, women approached the administrative agencies (rather than formal judicial courts) in increasing numbers particularly because of there widened jurisdiction. For example, the bureau of statistics, known as ZAGS, processed marriage, divorce and family law in general (such as the distribution of assets and alimony). This administrative agency was very important for women and their claims to equality in family legal matters. Thus, women's issues "played out" on this localized and sub-legal area. This was particularly the case regarding "women's issues" that related to family law or proper communist conduct.

Although there is no research on sexual harassment or discrimination claims in Comrade's Courts during the Soviet period, it is still important to raise the possibility that such claims were made. We do know, however, that the ideological intension of Comrade's Courts was to serve as a venue for common law to replace state law (the actual laws were Soviet codes and dictates, but the administration of those laws were "common" or localized). In addition to the fantasy that the state would eventually whither away, Comrade's Courts provided a legal safety net and extended to reach of Soviet law into all areas of the USSR. The convenience of these courts was that local people could run them and while there were guidelines, formal legal training was not required to sit as a

judge. In areas of the law that were believed to be of less importance, such as women's issues, petty property issues or moral conduct, Comrade's Courts alleviated a considerable burden from the gigantic bureaucratic weight of the Soviet legal system.¹⁴

To briefly summarize my points before I move on to the current legal landscape: women's rights have traditionally been framed in law through a paternalistic understanding of sexual difference (equality as difference) and the expression of those rights can be seen in the adjudication of "women's issues" by extralegal institutions.

Women's Democratic Citizenship?: sexual harassment in post-Soviet Law

The concept of humanism, as it is embodied in a variety of international standards of law, has played a role in the reformulation of criminal law in contemporary Russia. Russia's history of repression and the international rhetorical omnipotence of human rights are both key points of concern within political and professional discourses (Lukasheva 1996; Mironov 2001; Naumov 1999). In his history of criminal law, Naumov writes that, based upon the principles of the Declaration of rights and freedoms of the individual and citizen, the development of humanism within the area of criminal law is growing (Naumov 1999, p.81). Since 1991, for example, important changes to the death penalty show how Russian norms are changing.¹⁵ In addition to the reforms made to the death penalty, criminal procedure has adopted the principle of "equality before the law" which stipulates that nationality, religion, sex, among other distinguishing marks, should not be taken into consideration when facing a court of law. The re-introduction of the principle of presumption of innocence and the jury trial also signals what many professionals argue are the humanistic developments in Russian law.

¹⁴ On Soviet Comrades' Courts see, Butler, W.E. 1997. "Comradely Justice Revised." *Review of Socialist Law* 3 (3):325-334, Gorlizki, Yoram. 1998. "Delegalization in Russia: Soviet Comrades' Courts in Retrospect." *American Journal of Comparative Law* 46:403-425.

¹⁵ For example, crimes against property are no longer punishable by death and all women and some men (those over the age of 65) are exempt from the death penalty.

The effects of the ideological shift in jurisprudence and criminal legislation since 1991 is evident in the section of the Criminal Code (*UK*) that concerns sexual crimes. Chapter Eighteen designates “crimes against the sexual inviolability and sexual freedom of persons.” The language of sexual inviolability and sexual freedom is entirely new to Russian statutory law. The abstract subject of the five statutes that comprise this chapter is grounded in a belief in the protection of a person’s sexual bodily integrity, especially in the case of minors (Table I). In comparison to previous Russian criminal codes of the pre-Soviet and Soviet periods, the most significant alteration to the statutes on sex crimes is the implementation of gender neutral language. With the exception of rape, the remaining statutes recognize that the victim and perpetrator of a sexual crime can be either a man or woman. This change to the language of the statutes can be viewed as a progressive step in the development of criminal law.

Table I: Listing of statutes under Chapter 18 of Russian Criminal Code

<i>Statute</i>	<i>Title</i>	<i>Changes and/or Important Notes</i>
Statute #131	Rape	Victim can only be female, perpetrator only male. The legal understanding of rape solely pertains to vaginal penetration of male sexual organ. Punishment of rape lessened to three to six years of prison. Supreme Court retracted all previous understandings of compulsion to rape as it was previously linked to seduction (i.e., false marriage proposals).
Statute #132	Violent acts of a sexual nature	Any forced sexual acts that apply violence or threats to apply violence or that take advantage of the helpless position of the victim. Male and female persons can be either victim or perpetrator, including same-sex instances. While homosexual relations are not criminalized, the statute uses the language of sodomy. In addition, the term “lesbianism” is used for the first time. Punishment is the same as for rape (three to six years).
Statute #133	Compulsion to perform acts of a sexual nature	Substantially revised from Soviet period. Statute now specifies any sex as the tenable victim of compulsion with no special mention of women. Compulsion is feasible in cases of blackmail, with the use of threats to property or by using the material or dependent state of the victim. No specific mention is made regarding work or the power differentials between a boss and worker or student and teacher. Punishment is by monetary compensation (two to three times worker’s pay) or two to three months in prison.
Statute #134	Copulation or any actions of a sexual nature with a minor	Like previous criminal codes, this statute protects minors under the age of fourteen regarding any sexual activity with an adult (18 years). Punishment is either restrained freedom up to three years or up to four years in prison.
Statute #135	Depraved Acts	Carrying out of depraved acts, without the use of violence, with a minor under the age of fourteen. Punishment ranges from a monetary fine to three years in prison.

Prior to the language change of the statutes, the criminal code was unable to acknowledge, outside of the criminalization of homosexuality, that victims of sexual violence could be adult males or that the perpetrators of sexual violence could also be female. Legal commentary on the statutes recognizes this alteration in language as a positive step (D'iachenko 1995; Kibal'nik and Solomonenko 2001; Koneva 2002; Radchenko 1996; 2000). Similarly, self-described “gender expertise” analysts also find that the inclusion of gender neutral language in the statutes is a step toward gender symmetry in criminal law (Polubinskaia 2001). The move toward gender neutral language is a considerable adaptation from previous codes particularly given that these statutes were generally focused on the protection of women and children. The incorporation of gender neutral language is a shift away from the tradition of viewing women as legally different. However, while gender neutrality signifies a kind of contemporary liberal standard, the implementation of it into the sex crime statutes has mixed results. Regarding statutes #132 and #133, gender neutrality allows for a broader conceptualization of sexual violence, which more accurately reflects the reality of society. At the same time, keeping the overall history of these statutes in mind, gender neutral language also drops previous connotations of the law that had local meaning for women.

Specifically with the case of statute #133, which under Soviet law protected only women, compulsion loses its juridical connection to the framing of women’s citizenship as in need of special protections because of their sexual difference. The effort to broaden the meaning of the sex crimes by using gender neutral language has the potential to weaken the overall impact of the statutes for women in contemporary Russia. This is the case for two reasons.

First, despite the introduction of gender inclusive language, statute #131 on rape is clearly solely in reference to the penetration of a female victim by a male perpetrator.¹⁶ Outside of the

¹⁶ In his commentary on the 1996 *UK*, Radchenko states that “rape refers to the sexual relations of a man with a woman in a natural form with the use of physical or psychological violence to the victim [female declination]” (Radchenko 2000, p. 265). By natural form he means vaginal penetration by the man’s sexual organ. No other forms of sexual

reproductive sexual act, the description of rape is not used. Rather, statute #132 regarding violent acts of a sexual nature, is intended to cover all other instances of sexual violence. Despite the identical penalties for statutes #131 and #132, the sexual violence defined as rape is made separate from other forms. In this way, women maintain a separate legal categorization and indeed, the law tacitly acknowledges a distinction between types of sexual violence. This is also exemplified by the language of statute #132 where it declares which forms of sexual acts are to be included within the jurisdiction of the statute, which include “sodomy, lesbianism or other acts of a sexual nature.” This language both introduces a legal concern for forms of sexual acts not previously differentiated outside of the criminalization of homosexuality. Consequently, this language clouds the juridical object of the sex crimes. Sexual violence is one of the stated objects of these statutes, but by distinguishing types of sexual acts, that object is obscured by sexological and potentially moralistic clamor. And, indeed, legal commentary has had to clarify what lesbian sexual acts are and what defines sodomy (Kibal'nik and Solomonenko 2001; Koneva 2002; Radchenko 2000). With the use of gender inclusive language, sexual violence in same-sex instances is already clearly demarcated. Thus, the language of “sodomy, lesbianism and other sexual acts” looks awkward in the context of the changes to the statutes on sex crimes, including the de-criminalization of homosexuality in 1992.

I see two effects of the separation of and language of statutes #131 and #132. One deals with preserving gender norms, the other with preserving sexual norms. Rape is a crime confined to the traditional form of heterosexual sex, which can make it difficult to make a claim for sexual violence against women outside of that form. Or, in the overall scheme of things, it can complicate a case where the focus should be on the use of sexual violence and not on the particular acts. For example, in a 1998 case regarding the beating and rape of a Kalingrad woman, the General

violence are within the jurisdiction of rape. Later he further clarifies that the victim of rape can only be a woman (a person of the female sex).

Procurator and Supreme Court of the Russian Federation got involved because of a complication around whether both statutes #131 and #132 were applicable to the case. From an abstract of the case, it is explained that the perpetrator Larin, under a drunken state, came upon a woman in a park. He beat her severely (*izbit'*), “raped” her (meaning sexual copulation), threatened to kill her and then “laid her on the ground and again performed horrible violent acts of a sexual nature” (Lebedev and Borodin 2001).

From the vagueness of the later part of this account, and given the clear understanding that rape refers only to vaginal penetration, we can assume that the additional sexual violence inflicted on the victim involved forced anal and/or oral sex. The decision of the court of first instance (Oktiabr'skii district court) found Larin guilty of both rape (#131, 2.b) and violent acts of a sexual nature (#132, 2.a,b). After the decision was considered by the Kaliningrad regional court, the General Procurator of the Russian Federation and the Supreme Court of the Russian Federation, it was altered to find that Larin was guilty under statute #132, 2.a. This section of the statute refers to repeatedly performing violent acts of a sexual nature (but in one criminal instance) or with a person who was previously raped (Radchenko 2000, p. 271).

Regarding Larin's case, it is unclear whether or not the considerable juridical machinations that occurred resulted in a greater or lesser prison sentence. As the criminal code reads, the punishment provided by the original court judgment is identical to the revised judgment (4-10 years). Furthermore, in all their decisions, the courts recognized that the case was dealing with an aggravated form of sexual violence because Larin had committed multiple acts upon his victim. The discourse surrounding this case suggests that the separation of statutes #131 and #132 reflects the laws continued (from pre-Soviet and Soviet days) concern for proper sexual contact which in turn regulates the recognition of sexual violence. In other words, the emphasis on distinguishing (and judging) forms of sexual violence outside of single or multiple acts, suggests that there is a

hierarchy of acceptable sexual acts. When those acts are performed by the use of force, their legal meaning is rendered differently. The Larin case suggests that the sexual deeds rather than the overall fact of sexual violence is the organizing principle for these two statutes.

For women, who are the primary victims of sexual violence, this translates into a cultural battle over proper morality. This problem with statutes #131 and #132 also suggests an underlying awkwardness with recognizing sex outside of heterosexual copulation. In essence, the gender neutral language is primarily a vehicle for recognizing what the law understands to be immoral forms of sex—"sodomy, lesbianism and other sexual acts." While the law may allow for women and men both to be victims and perpetrators as well as recognize same-sex instances, the overall effect of the language is a continued fixation with forms of sexual activity, and proper sexual activity, rather than sexual violence.¹⁷ In other words, the sexual inviolability of individuals is undermined by the legal ordering and deciphering of sex acts.

A second way in which the adaptation of gender neutral language presents mixed (if not also confusing) consequences is that it does not run throughout statutory law. In the Constitution of the Russian Federation, it is stated that citizens are to be treated equally despite differences of religion, ethnicity and sex and it is this principle of equality that supports the gender inclusive language implemented in statutory law. Therefore, it is instructive to see the areas where women retained their special legal classification. In criminal statutory law some examples include: since 1992, the state is no longer allowed to commit a woman to the death penalty; the murder of a pregnant woman or a woman with a newborn child receives harsher punishments (statute #105 and #106); the abduction of and stealing from a pregnant woman receives harsher punishments (statute #126 and

¹⁷ A St. Petersburg city court decision regarding a rape case was altered in 1998 in order to further distinguish statutes #131 and #132. The decision states that "violent imitations of the sexual act [i.e. copulation] do not qualify as rape." Rather, they qualify as violent acts of a sexual nature. The case was in reference to forced oral sex. *Iuridicheskii Praktika* No.1(16) 1999, p.39

#127); and the denial of work for pregnant women or women with children under the age of three is separated in the criminal statutes regarding the protection of constitutional rights (statute #145).

In the new labor code, women retain most of the protective legislation implemented during the Soviet period, including prohibiting women from forms of physical labor that may impede their reproductive capacities or from work that keeps them away from home in the evenings. The question that these examples raise is not simply to show an inconsistency. As debates regarding women's rights show, there are times when women are better served by being viewed as different as well as the same as men. Interestingly, given the cultural preponderance of "women's difference" in the Russian context, and the international language of humanism now flowing through Russian legal discourses, it is odd that women are not made into special legal subjects more in the criminal code statutes regarding sex crimes. I argue that the gender neutral language, in part, defeats the potential that the traditional "woman question" frame could have for contemporary Russian women—particularly in the context of marketization, a reduced welfare state and the growing representation of women as sexualized subjects.¹⁸

The tension between the introduction of gender neutral language into the criminal code and the indigenous relevancy of the "woman question" is apparent especially in the case of statute #133. Under previous Soviet law, this statute exclusively protected women in cases where they were compelled into sexual relations for fear of losing property or work related possessions. The recognition of compulsion reflected the legal constitution of sexual difference, presenting women as socially vulnerable and in need of special protections. In fact, according to Soviet ideology, the equality that Soviet women enjoyed was due to the many respects in which the state deciphered her as a distinct citizen in the polity. Furthermore, the Soviet crime of compulsion also focused on a work-related scenario which reflects an underlying principle of communist law—the protection of

¹⁸ On the sexualized female subject in post-Soviet Russian society see, Berry, Ellen E., ed. 1995. *Post-communism and the Body Politic*. New York: New York University Press.

work which is necessary for the fulfillment of the state economic plan. With the post-Soviet 1996 *UK*, women are no longer the primary concern nor is work given special attention. Just when the post-Soviet economic context made the relevancy of sexual harassment more acute, the crime of compulsion was re-written to obscure women's particular experience.

Certainly men as well as women can be the victims and perpetrators of compulsion. However, the problem with the new language of statute #133 is that it does not retain the particular instance of sexual compulsion against women and in effect dilutes the applicability of the statute to cases of sexual harassment. Keep in mind that in terms of sexual violence, female victims continue to be seen as different in cases of rape. Retaining some gender asymmetry in this instance would not be inconsistent if it was extended to compulsion as well. In addition, during the period when the special committee was working on re-drafting the criminal code, the language of sexual harassment had already been solidly institutionalized as a norm for adjudicating women's equality. Given the concern legal scholars and politicians were showing for meeting international standards of human rights (for example, restricting the reach of the death penalty and the re-introduction of jury trial), it is ironic that the decision to retract special recognition of women in cases of compulsion was made. Despite Constitutional declarations of gender equality and the rights of citizens to work without infringements, these values ultimately came up short when they were grafted onto statutory law.

Law in post-Soviet Russia: A Conduit for Women's Democratic Citizenship?

My research on sexual harassment law in Russia suggests that the "woman question" framework of sexual difference still has symbolic and substantive meaning in Russia. In the case of reforming criminal law (and sex crimes in particular), this indigenous proclivity sits awkwardly with the implementation of gender neutral language. In this instance, I see the potential of law to act as a conduit for women's labor rights as quite limited. If the law and its practitioners are mixed regarding the meaning and object of compulsion, it is unlikely that women or women's groups will

be able to incite “compulsion” as the Russian version of sexual harassment. Furthermore, the native meanings associated with compulsion also may hinder the politicization of “sexual harassment” because of the ways that Russian law frames sexual difference. If sexual harassment is largely understood as a failure to treat workers the *same*, then the very legal category of sexual harassment may be a problematic tool for politicizing the real sexism that women face in the current labor force.

A complex political climate has grown out of the tensions between the liberal gender neutral framework and of the “woman question” framework for conceiving sexual difference. Clarification of the meaning of the compulsion statute is unlikely to occur in this climate because the legitimacy of both compulsion and sexual harassment are questioned in this context. In terms of the symbolic role of “law” in politicizing a central issue facing women’s access to labor rights, I argue that choosing between the liberal or traditional views is not the central dilemma. Rather, the core predicament for women’s groups and regular citizens is filtering their experiences through this current legal-cultural hybrid. To that end, my research suggests that the particular ways in which women experience sexism in the workplace may more effectively be politicized through the legal concept of labor rights. In this way, sexual harassment is not simply a response to sexist men or treating women differently, but a response to larger economic and social hierarchies. Specifically, as the effects of neoliberal economic policies and privatization continue to play out in Russia and the region, the legal concept of labor rights may have more resonance with various populations most affected by this transition (such as women, the disabled, the elderly, and rural communities).

The question remains whether, with a symbolic concept of law in-hand, “law” matter to regular citizens. Scholars and activists working on the issue of violence against women and advocacy around rape and domestic violence have depicted a legal, police, and administrative system overwhelmingly unresponsive to adjudicating women’s claims (Hemment 2004; Johnson

2001; Zabelina 1996). As a fundamental women's and human right, sexual inviolability is recognized by Russia in criminal and constitutional law. However, success in garnering sufficient police and legal redress for women's claims have been limited despite the growth in advocacy networks. The issue of "violence against women" has become more broadly discussed because of advocacy work, but the legal component of appropriately managing this issue is still far from ideal. Local and international organizations (such as Amnesty International) describe the procedural aspect of filing complaints for violence against women in grim detail. In an interview with a key researcher for the Moscow Center for Gender Research, I was told that Russia does not need any new laws or to reform their current laws. Rather, the key to women's rights is to make those laws matter—to mean something in the daily lives of women.¹⁹

The inefficacy of law is exacerbated by the increased centralization of legal and administrative power under Vladimir Putin's presidency (what is called superpresidentialism) (Colton and McFaul 2003; Fish 2000). For basic citizenship rights such as the right to receive wages for contracted work, the current superpresidential system, combined with the dismantling of extralegal avenues for administering and adjudicating complaints, provides little hope or encouragement for change.²⁰ At the same time, unlike many other legal systems, Russia does have a strong indigenous tradition of people's courts and forms of local justice. Furthermore, given the specific history of tying women's rights issues with sub-legal institutions, there may be cause for adjusting the entirely bleak picture depicted in the scholarship. Rule of law in the formal sense may be far from effective in regards to serving as an avenue for women to activate their rights as citizens

¹⁹ Marina Baskakova. Interview with author, January 13, 2003, Moscow Gender Center. Her position on the role of law in advancing women's rights is supported by scholars of Soviet and post-Soviet law who argue that there is a "paradox of over-legislation" (Flanagan 2001).

²⁰ On the specific case of the nonpayment of Russian workers see, Desai, Padma, and Todd Idson. 2000. *Work without Wages: Russia's Nonpayment Crisis*. Cambridge, Massachusetts: MIT Press.

of the Russian state. However, if we shift our emphasis to extralegal institutions there may be more hope.

Dianne Post's work provides evidence that this may be the case. In her work as a representative for the American Bar Association Central and East European Law Project (ABA CEELI) in Moscow (1998-2000), Post developed a program to train non-lawyers in Russian law in order to represent victims of domestic violence (Post 2001). Post found that, "lawyers who were trained under Soviet rule had a very narrow idea of the role of lawyers in society and do not conceive of law as an instrument of social change" (Post 2001, p.137). However, women who have become active in advocacy work see the need for social change and the potential of law to act as a conduit for that change. The women who are trained in the program see themselves as "social advocates" and are armed with knowledge of legal procedure and statutory law in order to guide, counsel and represent women. This work is an example of local forms of justice or a shadow system of law that could develop despite the oligarchic and superpresidential character of the Russian state.

Many women's issues and social issues regarding proper behavior are not granted a particularly important status in Russian politics. I believe that this is problematic for the human rights of Russian citizens, but it also can present an opportunity for local forms of justice to grow. A strong tradition of sub-legal forms of justice may also facilitate extra-legal avenues of justice outside of Russia, such as the European Court of Human Rights in Strasbourg.²¹ The potential of extra-legal courts, such as the European Court of Human Rights, to serve as an institutional

²¹ On September 18, 2001, the European Court of Human Rights in Strasbourg heard the first case brought against the Russian Government by a Russian individual. By the end of August 2001, 1,400 cases had been registered with the Court. "European Court of Human Rights Hears First Case Brought by Individual Russian." *International Enforcement Law Reporter*, November 2001. Individual Russians are increasingly using international courts of justice in order to protect their human rights. Alexei Mikheyev, a man from Nizhny Novgorod, filed a human rights complaint to the European Court of Human Rights in response to the brutality that he experienced by local police. Latynina, Yulia. 2004. "Police are at War with the Russian People." *Moscow Times*, August 11. Russian oligarch Mikhail Khodorkovsky has also hired a Western team of lawyers to take his case to the European Court of Human Rights. Goldhaber, Michael G. "Russian Roulette." *The American Lawyer* August 2004.

supplement depends in part on whether there is a strong symbolic role of law operating in the primary country. Cases of police brutality and failure to abide by proper legal procedures may have more success seeking re-dress outside of Russia than with the issue of sexual harassment. Typically the perpetrator of sexual harassment is not defined as an institution, rather a person or organization. Unless a case can be made that the prosecution of sexual harassment claims consistently abridge the rights of Russian citizens (which would be incredibly difficult given the dynamics I described earlier), it is unlikely that extra-legal courts would have an effect of activating women's democratic citizenship in Russia in this area.²²

Within Russia, there is also some movement towards reinstating some part of the former Comrades' Court system. In Moscow, Mayor Luzhkov may set up 628 courts. In his research on the case loads and politics of Comrades' Courts, Yoram Gorlizki argues that the primary function of such courts was to provide an alternative mode of dispute resolution (Gorlizki 1998, p. 425). In his assessment, this need has not subsided since the fall of the Soviet Union. While filling an institutional function, more research should be conducted on whether and how these "people's courts" provide an alternative route for Russian citizens to activate their citizenship rights. In the end, the normative goal of most democracy's is to establish legal and procedural recognition of such key issues within the borders of the polity. In the Russian context, where state-society relations continue to be strained, this may be a long way off.

²² There are mixed results regarding the effectiveness of international courts and law in adjudicating sexual harassment claims in other contexts as well. Aeberhard-Hodges, Jane. 1996. "Sexual harassment in employment: Recent judicial and arbitral trends." *International Labour Review* 135 (5):499-533.

- "European Court of Human Rights Hears First Case Brought by Individual Russian." *International Enforcement Law Reporter*, November 2001.
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