

**PAMELA A. JORDAN, *DEFENDING RIGHTS IN RUSSIA: LAWYERS, THE STATE, AND LEGAL REFORM IN THE POST-SOVIET ERA* (VANCOUVER: UBC PRESS, 2005)**

*By Coel Kirkby\**

The Russian advocate (*advokat*) is a specific type of Russian lawyer, representing “clients in court and provid[ing] legal and written advice.”<sup>1</sup> They are unique in having a duty, from the 1993 Russian Constitution, to protect the rights of citizens. Students of Russian legal and constitutional reform, and those interested in modern Russian politics will benefit from Pamela Jordan’s thorough study of the post-Soviet era advocate reforms. Moreover, Jordan’s work is also of value to comparative legal scholars studying the nexus of legal thought and practice. The author employs a historical institutionalism perspective to examine how the Russian bar associations (*advokatura*), as actors in this legal profession, are bound by their institution’s history.<sup>2</sup> Their choices can be seen as a function of this past, while still permitting major reforms under a powerful external influence. Jordan supplements this analysis with a decade’s worth of empirical evidence collected from select locales across Russia. While not extensive enough to draw rigorous conclusions, her interviews and surveys help contextualize statutory reforms and the concerns of individual *advocates*.

The history of the Russian and Soviet Bar Association is not one of independence. In 1864, the Tsar Aleksandr II reformed the nation’s dubious legal system to introduce a bar for sworn attorneys. A few attorneys would rise to prominence in high-profile civil rights cases to become, in V.D. Spasovich’s words, “the knights on the living world.”<sup>3</sup> Despite rare individuals, however, the Tsarist bar never became a unified force. When the Bolsheviks came to power in 1917, they quickly dissolved the bar. Thereafter advocates had a peculiar relationship with the Communist government lasting 80 years. Advocates suffered purges, ostracism, beatings or prison, until Khrushchev’s 1960s reforms incorporated them into the Soviet legal system. Their marginal role in Soviet-style justice continued until Gorbachev’s reforms in the late 1990s introduced basic rule of law principles, such as (limited) judicial independence and adversariness (*sostizatel’nost’*).<sup>4</sup> Other important reforms included a new independent union of advocates, the “legal right to counsel from the moment of seizure, arrest, or presentation of charges”<sup>5</sup>, and a shift in self-perception from defending society to defending clients’ rights.

Conservative *perestroika* fell to chaotic reform from 1991 to 2002. The Bar

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<sup>1</sup> Pamela A. Jordan, *Defending Rights in Russia: Lawyers, the State, and Legal Reform in the Post-Soviet Era*, Vancouver, UBC Press, 2005 at 1.

<sup>2</sup> *Ibid.* at 2-3.

<sup>3</sup> *Ibid.* at 19.

<sup>4</sup> *Ibid.* at 48-50.

<sup>5</sup> *Ibid.* at 51.

Association, like most everything in the new Russian Federation, saw rapid, massive change and adapted with mixed results. By the late nineties, most advocates belonged to one of two competing national bar associations. The first, the Federal Union of Advocates, was linked to the Soviet-era colleges, which tended to focus on criminal defence and other traditional advocate-roles. The other, the Guild of Russian Advocates, comprised of the new “parallel” colleges, often more progressive and entrepreneurial, recently registered by the Ministry of Justice to meet the demand for legal professionals. The two main national bar associations suffered an immediate blow when new private and international law firms captured high-end corporate clients and they were denied a monopoly over some more common and mundane legal work. Jordan shows how the bar associations adapted, or failed to, given a three-fold increase in their number from 1987 to 2002.<sup>6</sup> As a whole, advocates opted for a conservative approach as they remained in Soviet-style local consultation bureaus with practices based on both limited fee for service and free consultations for indigent clients.

The Russian state did little to encourage a strong, independent bar. After a brief flourish of experimentation, the Ministry of Justice pursued conflicting goals of controlling advocates and creating an adversarial legal system. National bar associations and colleges introduced some training programs for their advocates, but their impact is uncertain. Jordan observes the growing influence of a patronizing Ministry of Justice on advocates through the nineties. Most notably, the Ministry meddled with bar entrance rules and discipline of advocates, while, in return, ensuring tax-free buildings for local bureaus. This dependent relationship was strengthened, in part, by the 2002 advocate law creating a federal union of advocates, regional chambers of advocates, and setting their entrance criteria. Advocates must also choose one of four types of practice: advocate office, advocate bureau, college, or legal consultation. Thus the law ordered the chaos of the nineties but this stability came at the cost of limiting the bar associations' independence.

Modern Russian criminal trials have an ambivalent relationship with justice. Defence attorneys must now be present at pre-trial inquiries and can file complaints for unlawful arrests similar to habeas corpus. They also have greater access to evidence and case material. However, most defence attorneys surveyed by the author let transpire an accusatorial bias in the courts. Investigators still loath to satisfy advocates' petitions and judges undermined the adversarial ethos by dominating courtroom questioning (often because prosecutors were inexperienced and/or incompetent). She recounts a telling trial she witnessed in 2003 involving a drunken stabbing.<sup>7</sup> The state-appointed attorney (different from the pre-trial lawyer) received the file a day before trial. He rejected an adversarial approach and only sought to lower his client's likely six-year sentence. Both he and the state prosecutor left half-way through, leaving the judge alone to decide the accused's fate.<sup>8</sup> This anecdote

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<sup>6</sup> *Ibid* at 99.

<sup>7</sup> *Ibid.* at 170-71.

<sup>8</sup> *Ibid.* (the judge ultimately found the defendant guilty and sentenced him to five years and four months in prison).

supports Jordan's general finding that the nominally more adversarial system hasn't yet been internalized by the legal actors conditioned by Soviet-era justice. Civil justice, in contrast, has adapted better. Although advocates participate in far more criminal than civil cases, especially in the provinces, judges have proven more sympathetic to diligent defendants in civil cases. This is especially true of consumer rights cases, where "advocates were [...] helping groups of consumers to challenge the patterns of long-term neglect that state agencies [...] had fallen into when it came to the production of durable consumer goods."<sup>9</sup>

In her final chapter, Jordan quotes a presidential official who proclaims, "[t]he *advokatura* will become the most important element in strengthening justice in Russia."<sup>10</sup> This promise, as she makes clear, is wishful thinking at best and a dangerous chimera at worse. After over a decade of reform, the Bar Association is on the whole no more free from state control. The chaotic nineties ended with a calculated move by Putin's government to once more rein in the dissent advocate by statutory hook and financial crook. This cynical move, echoing the Tsar's volte-face a century earlier, might make the Bar Association yet another element in strengthening autocracy in Russia. But the author's compassionate study reveals a new breed of advocates committed to defending the rights of Russia's most vulnerable. Knights of the world they may not be, but the *advokatura* today are indeed the vanguard of a nascent rule of law in Russia.

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<sup>9</sup> *Ibid.* at 189.

<sup>10</sup> *Ibid.* at 196.

