

Judicial Institutionalization and Business Elite Trust in the Post-Communist Courts

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Received: March 3, 2015 Accepted: March 24, 2015 Online Published: May 27, 2015

doi:10.5539/jpl.v8n2p70

URL: <http://dx.doi.org/10.5539/jpl.v8n2p70>

Abstract

The existing survey research in post-communist societies focuses disproportionately on the mass citizenry and largely ignores questions about elite support for judicial institutions. This study examines business elite's confidence in the post-communist legal systems and assesses the effects of judicial institutionalization on their perceptions. It argues that as post-communist constitutional courts develop, their institutionalization helps generate positive elite perceptions of the country's legal system. This study tests hypotheses regarding business elite confidence in the legal system with the Business Environment and Enterprise Performance Survey data. The results show that the level of constitutional court institutionalization is an important determinant of business elite's perceptions of the legal system. During the 1999-2005 period, businesspersons in countries with highly institutionalized constitutional courts are on average 23.5% more likely to express high level of confidence in their legal systems relative to businesspersons in countries where constitutional courts are weakly institutionalized.

Keywords: constitutional courts, diffuse support, elite attitudes, institutional trust, post-communist judiciary

1. Introduction

Well-functioning legal and judicial institutions are critical to economic growth and democratic consolidation in transitioning societies. They define the rules by which markets function, and they provide a means to resolve disputes, protect economic, political, and social rights, and hold governments accountable for their actions. The transition from communism to democracy and capitalism in Eastern Europe and the former USSR has required a fundamental reorientation of legal and judicial institutions: heightened independence from the executive; new roles and skills for judges, lawyers, and other personnel; and a rapid increase in institutional capacity to handle legal cases efficiently and effectively.

Early judicial reforms in the post-communist region tended to focus on creating an independent and depoliticized judiciary, free from state control, which could act as a bulwark for newly-won political and civil rights. In addition to drafting and adopting constitutions that enshrined the idea of an independent judiciary, the post-communist transition countries also created new, specialized constitutional courts staffed with new judges (mainly scholars and academics) to hold governments accountable and institutionalize the protection of civil and political rights. However, more detailed procedural and organizational changes that could make the courts work "better" by making them more capable, efficient, and accessible were usually not included in the early judicial reform efforts.

By the mid 1990s, the need to improve the structural and operational independence, efficiency, accountability, and enforcement capacity of judicial institutions was apparent. Regional experts repeatedly pointed to the weaknesses in the post-communist legal systems, particularly the lack of capacity in the judiciary, as key constraints to the democratic consolidation process and economic reform. The European Union, the European Bank for Reconstruction and Development (EBRD), the World Bank, and other international agencies began to encourage post-communist countries to use more resources toward increasing the efficiency and effectiveness of legal institutions, including the introduction of modern court facilities, case management practices, information sharing, training of judges and other court personnel, stronger mechanisms to ensure transparency and

accountability, and allocation of bigger budgets. Put differently, the international community encouraged post-communist countries to invest in the institutional development of their courts and legal systems.

The logic behind these prescriptions for increasing the institutional capacity of the judiciary is straightforward. As Keohane (1969, p. 893) pointed out four decades ago, “Institutionalization is worth studying primarily because of the importance it may have for an organization’s impact on its environment.” In theory, judicial institutionalization should be reflected in the improvements in the societal perceptions of legitimacy, trustworthiness, and indispensability of the courts and the legal system. Viable (i.e., institutionally-developed) courts should not only act differently, but also be viewed differently from the courts characterized by low levels of institutional development; their stability and value – in fact, their very existence – depends on it (see McGuire, 2004; Thorson, 2004; Bumin, Randazzo, & Walker, 2009). As the courts develop, rising levels of institutionalization should be reflected in the rising levels of public confidence in the judiciary and the country’s legal system. While the legal systems and judiciaries can vary markedly among countries in their structure, functions, and degree of formality, they must be seen as legitimate and relied upon by the citizenry if they are to play an effective role in an economy and society (see Gibson, Caldeira, & Baird, 1998).

Furthermore, the democratic consolidation presupposes a certain level of acceptance and support for the judiciary and other institutions by *both* the masses and the elites (Miller, Hesli, & Reisinger, 1995, 1997; Steen, 1996, 2001). While mass confidence in state and societal organizations is often considered hallmark of democratic governance, elite support for these organizations is less studied. The existing research in transitioning societies continues to focus disproportionately on the mass citizenry and largely ignores the question of whether the support for democracy and its institutions is similar among ordinary citizens and social, economic, or political elites. It is undeniable, however, that the elites play an extremely important role in both creation and survival of democratic institutions (see Huntington, 1991; Bunce, 1999; Miller et. al, 1995, 1997). Thus, the support for newly-created legal systems should be analyzed from both the mass public and elite perspectives.

The goal of this study is to begin the analysis of the elite perceptions of the reforms of legal and judicial systems in the post-communist countries. I do so by examining whether perceptions of the business elites about their country’s legal system are contingent on the institutional development of their constitutional courts, the most visible of all domestic courts. For the purposes of this study, I define business elites as persons who normally represent a business enterprise or a financial company (either state-owned or private) for official purposes, that is, the individuals who normally deal with banks or government agencies. Such persons occupy the position of a general director/manager, financial manager, and/or the owner of a business enterprise.

I argue that as the post-communist constitutional courts develop (i.e. acquire institutional viability through accretion of different measures of durability, autonomy, and differentiation), their institutionalization helps generate more positive elite perceptions of the country’s overall legal system. I test hypotheses regarding business elite confidence in the legal system with the Business Environment and Enterprise Performance Survey (BEEPS) data compiled by the European Bank for Reconstruction and Development (EBRD). The results of this analysis show that the level of constitutional court institutionalization is an important determinant of business elite’s perceptions of the legal system. During the 1999-2005 period, businesspersons in countries with highly institutionalized constitutional courts are on average 23.5% more likely to express high level of confidence in their legal systems relative to businesspersons in countries where constitutional courts are weakly institutionalized.

Although I consider a number of other important influences on elite confidence in the legal system throughout the study, my interest in these is secondary. It is undeniable that factors other than institutional development matter, but my primary objective – one that distinguishes my study from others – is to show that the institutional design of the constitutional courts and its subsequent development has a distinct, independent, and systematic role in explaining business elite confidence in the post-communist courts and legal systems.

2. The Impact of Constitutional Court Development on Public and Elite Confidence in the Legal System

A number of studies argue that the choice of institutional designs has real consequences for government performance and for public confidence in institutions (e.g., Lijphart & Waisman, 1996; Magalhães, 1999; McGuire, 2004; Thorson, 2004; Anderson, Bernstein, & Gray, 2005). In transitional polities, in particular, the design of institutions could matter for public confidence as much as their policy outputs. Huntington (1991) maintains that, while the legitimacy of an authoritarian regime is based mainly on performance, the legitimacy of a democratic regime and its institutions rests more on acceptance of procedures and institutions as vital and proper. Steen (1996, p. 37) similarly argues that “trust has more to do with general confidence in political symbols than with policy products.” Accordingly, confidence means that people have trust in basic structures and

processes that by their very nature sustain vital governance functions or have the potential to do so. Moreover, since all institutions experience periods when they are unable to fulfill expectations, confidence results more from a general adherence to political and societal symbols than from satisfaction with policy outputs or popular leaders.

In applying this perspective to the analyses of the judiciary, some scholars find that the public is in fact sensitive to the potential effects of institutional designs and views some designs more favorably than others. For example, Benesh (2006) finds that the American public professes greater confidence in the state courts with institutional design features that enhance judicial independence and less confidence in institutional designs that expose judges to external influences and pressures (e.g., partisan elections).

Building on these insights, I hypothesize that the institutional design of constitutional courts and, in particular, their institutional development over time, has far reaching consequences for public confidence and support. Constitutional court institutionalization should not only affect the levels of public confidence in the court itself, but also generate more diffuse and positive public perceptions of the country's legal system as a whole. There are several reasons why this theoretical proposition should hold. First, constitutional courts are the most visible courts in most if not all countries (see Gibson et. al, 1998; Schwartz, 2000; Stone Sweet, 2000; Shapiro & Stone Sweet, 2002) and therefore the successes and failures of these courts' institutional growth should affect public confidence in the legal system. In making this argument, I do not want to suggest that the perceptions of individuals about a country's legal system are affected solely by the status of the constitutional courts. However, the visibility and the stature of the constitutional courts cannot be neglected in analyses of public perceptions of the judiciary and the legal system.

Moreover, to the extent that a constitutional court is institutionalized and becomes a salient and viable policymaker, it has probably made decisions of interest and concern to the citizens. Although it is unreasonable to think that the public is intricately aware of all (or even most) constitutional court decisions, it is far more likely that an average citizen is more aware of the constitutional court rulings than she is of the rulings of the lower courts and would base her confidence in the legal system, at least in part, on her assessments of the salience and viability of the constitutional court. Thus, another reason why institutional growth of the constitutional courts should influence the ordinary citizens' confidence in their legal systems is that these high courts make decisions that greatly affect the public at large (or at least have the potential to do so) while the lower courts have far narrower and less significant effects on public life.

Additionally, beyond their great visibility and potential importance of their rulings to the general public, constitutional courts are constitutionally required to protect the independence, immunity, and status of all other judges and courts. Their institutional development is a necessary (albeit not sufficient) condition for the development of the regular judiciary and for these lower courts' ability to provide independent and impartial resolution of disputes. Of course, constitutional courts may not always protect the independence or powers of the lower court judges, but without institutionally viable and developed constitutional courts, the government and/or the Ministry of Justice will likely interfere in the judicial affairs and subjugate the judiciary to their own needs. In turn, if the constitutional courts and the ordinary judiciary are subservient, the general public will not express much confidence in the legal system. Institutional development thus enables constitutional courts to protect and promote the power of the ordinary judiciary, which in turn may have a significant impact on public perceptions of the legal system.

Finally, as Mishler and Rose (1997, p. 437) argue, "Given the repressive legacy of the past, the role of the [post-communist] government in securing individual liberty may provide an especially important political basis by which citizens evaluate institutions." Post-communist constitutional courts were established during the region's transition to democracy as part of the wave of anti-authoritarian reforms. Those politicians who backed the creation of capable and independent constitutional courts endowed with the extensive powers of judicial review signaled their commitment to the rule of law, strengthened their democratic credentials in the eyes of the public, and thus differentiated themselves from other politicians. In this sense, the public and elite confidence in the legal system is in part contingent upon their assessment of how committed the elected branches are to the principle of constitutional justice in general and institutional development of constitutional courts in particular.

In sum, I theorize that the institutionalization of the constitutional courts will generate positive public perceptions of the country's legal system as a whole because viable constitutional courts are highly visible, make rulings that affect the general welfare and rights of citizens, have capacity and the means to protect and promote the independence of the ordinary judiciary, and represent the commitment of the elected officials to the rule of law and constitutional justice.

3. Confidence in the Legal System from the Performance Perspective

In contrast to the theory presented above, some scholars view political trust as a form of specific support that is contingent primarily upon assessments of contemporary institutional performance. From this so-called performance perspective, trust and confidence depends upon individual evaluations of the success with which government institutions provide valued social, economic, and political benefits – trust is something that institutions have to earn (see Rogowski, 1974; Anderson, 1998; Rothstein, 2003). In regard to the post-communist states, in particular, proponents of this perspective argue that value-related explanations take on a subordinate role for legitimacy and support, and short-term performance considerations are of primary importance to the post-communist publics (Mishler & Rose, 1997). Thus, if people are dissatisfied with the immediate outputs of the legal system, their confidence will be low.

According to this view, then, the hypothesized impact of the courts' institutional design and institutionalization on public and elite trust will be mediated by the respondents' perception of and satisfaction with the actual performance of the legal system (e.g., the extent of judicial corruption, ease of access to the courts and legal information, legal system's ability to enforce its decisions), as well as more "objective," national/macro-level economic and political conditions (e.g., performance of the economy, regime's respect for political and civil rights). I explore this possibility in this study.

4. Do Elites Evaluate Institutions Differently Than the Mass Public?

While institutional theories of trust apply to the masses and the elites, some differences between the two societal segments have been noted. Steen (2001, p. 715) points out that while the masses evaluate institutions primarily in terms of their outputs, the elite may be more attracted by the "intrinsic value" of institutions and regard them as valuable because of "their potential collective and integrative functions, independent of leaders and outcomes." For the elite, then, the immediate benefits may not be as closely related to the value of institutions and the newly-created post-communist political institutions may be expected to enjoy more support among the members of the elite than among the mass public. If we apply Steen's arguments to the post-communist legal systems and courts, it is reasonable to hypothesize that the elites may regard these institutions as valuable because of their *potential* benefits and focus less than the masses on the immediate performance of the courts.

Furthermore, Miller et al. (1997) show that the Russian and Ukrainian elites take "democracy" to mean order, restraint, and legal institutions. According to the authors, the modal feature of the mass public's understanding of democracy was the freedom to express oneself without the fear of government repression. The elites, on the other hand, gave far more emphasis in their definitions of democracy to the rule of law, protection of private property and economic opportunities, protection of individual rights and respect for the rights of others, and checks and balances. Based on these findings, Miller et al. (1997) concluded that post-communist elites and masses hold fundamentally different conceptions of democracy.

If this is the case, then the critically low levels of confidence in the courts among the post-communist publics reported in the 1990s and early/mid-2000s by other studies (e.g., Mishler & Rose, 1997, 2001; Trochev, 2005) may be compensated by higher levels of confidence in the elite segment of these societies. Business elites, in particular, depend greatly on the judicial protection of private property, contract enforcement, and fair taxation standards, and may therefore be willing to express higher confidence in the legal system than the masses and value judicial institutions, because they realize the intrinsic value and necessity of such institutions in a free market capitalist economy and newly-established democratic regime. It is therefore interesting to know if business elites are more likely to value judicial institutions for what they are, not just for what they do.

Furthermore, it is likely that business elites – by virtue of their education and profession – will be more attentive to the constitutional court and more aware of its actual levels of institutionalization and activity than the mass public. Gibson et al. (1998, p. 345) argue that "Greater awareness is associated with the perception that judges are different, that they rely on law not values in making decisions, that they are 'objective.' Greater awareness of the institution thus... contributes mightily to the legitimacy of the courts." If this is the case, the effects of constitutional court institutionalization may be more pronounced on the business elites' attitudes and the development of constitutional courts could be closely linked to the rising (or falling) levels of elite confidence in the country's legal system.

5. Mapping Confidence in the Legal System

I test hypotheses regarding business elite confidence in the legal system with the Business Environment and Enterprise Performance Survey (BEEPS) data. BEEPS is a joint initiative of the European Bank for Reconstruction and Development (EBRD) and the World Bank Group. The survey examines the quality of the

business environment as determined by a wide range of interactions between firms and the state. I use surveys conducted in 1999, 2002, and 2005. BEEPS 1999 surveyed 4,104 enterprises and covers 24 post-communist states: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Macedonia, Moldova, Poland, Romania, Russia, Slovak Republic, Slovenia, Ukraine, and Uzbekistan. BEEPS 2002 covers 6,667 enterprises in 26 countries: BEEPS 1999 countries, plus Serbia-Montenegro and Tajikistan. BEEPS 2005 covers 9,655 enterprises in the same 26 countries as BEEPS 2002. Country samples were carefully constructed to be representative of different industry sectors, enterprise sizes, geographic location, and ownership (private and state-owned). Due to missing observations on the explanatory variables and the exclusion of “don’t know” responses for the dependent variable, the actual number of observations (enterprises) considered in the analysis is 2,852 in 1999, 4,420 in 2002, and 6,492 in 2005. In this study, the average number of firms surveyed per country was 119.5 in 1999, 176.3 in 2002, and 256.2 in 2005.

At each enterprise, face-to-face interviews were conducted with the “person who normally represents the company for official purposes, that is who normally deals with banks or government agencies/institutions.” All respondents fell into one of the following categories: chief executive/president/vice president, owner/proprietor, partner, director, general manager, manager, or finance officer. If one of these persons could not be interviewed at the time, the interviewer did not administer the questionnaire. The dependent variable and most of the explanatory variables used in this study were extracted from the BEEPS dataset.

The dependent variable is based on the following question: “To what degree do you agree with this statement? ‘I am confident that the legal system will uphold my contract and property rights.’” The respondent was offered the following scale of responses: (1) = strongly disagree; (2) = disagree in most cases; (3) = tend to disagree; (4) = tend to agree; (5) = agree in most cases; (6) = strongly agree; (7) = don’t know. I then recoded the variable in the following manner: (1) = strongly disagree/disagree in most cases; (2) = tend to disagree; (3) = tend to agree; (4) = agree in most cases/strongly agree. The “don’t know” category was recoded with missing values to drop these observations from the data (see Appendix B for descriptive statistics and the differences between the original and recoded variable). Any anxious readers should know that I also estimated the statistical model with the original variable and found that recoding does not impact any of the substantive results reported below, but helps streamline the presentation and interpretation of changes in the predicted probabilities.

The region-wide average level of business elite confidence in the legal system (“tend to agree” and “strongly agree” responses) is not particularly low. 54.1% of the post-communist business elites express some or a great deal of confidence in the legal system in 1999. In 2002, the positive responses drop by 0.3%, with 53.8% of the elite respondents expressing confidence. In 2005, 55.4% trust the legal system and 44.6% do not. Thus, looking across the region, the levels of confidence remain relatively stable over the six-year period, with a slim majority expressing some or a lot of confidence in the legal system.

Notable differences do exist across countries, however (see Figures 1, 2, and 3 in Appendix A). Across the six-year period, in only two countries – Moldova and Russia – are the business elites distrustful of the legal system by an overwhelming margin. In Moldova, 76.3% of the business elites actively distrust the legal system in 1999, 70.2% distrust it in 2002, and 64.3% in 2005. In Russia, 72.7% lack confidence in the legal system in 1999, 65.3% in 2002, and 63% in 2005. Although these numbers are disturbing, there is a positive trend over time – In both countries the levels of distrust decline by 10% or more within the six-year period.

Looking broadly across the three surveys, one finds that in nine of the 26 countries surveyed by BEEPS (Belarus, Croatia, Georgia, Kazakhstan, Kyrgyzstan, Lithuania, Moldova, Russia, and Ukraine), the level of business elite confidence has improved over time. In eight countries (Albania, Armenia, Azerbaijan, Czech Republic, Latvia, Macedonia, Romania, and Tajikistan), the levels of confidence remain essentially the same over time with no more than 3% up or down movement observed between 1999 and 2005 confidence levels. In the remaining nine countries (Bosnia, Bulgaria, Estonia, Hungary, Poland, Slovakia, Slovenia, Uzbekistan, and Serbia-Montenegro), one can observe declining levels of business elite confidence over time, although with the exception of Bulgaria (where only 43.3% of elites trust the legal system in 2005), the majority of respondents remain trustful of the legal system and the 2005 levels of confidence are very high in Estonia (70.4%) and Slovenia (65.6%). It is also worth noting that BEEPS 2005 data show that 55.4% of the region’s business elites actively trust their legal systems. Out of the trustful elites, almost half said that they “strongly agree” with the statement that “I am confident that the legal system will uphold my contract and property rights.”

Taking into account these observations, what explains the variation in business elite confidence in the legal system across countries and over time? Why are business elite relatively trustful of their judiciaries? And, is the

level of constitutional court's development systematically related to the business elite confidence in the legal system? With these questions in mind, I now proceed with a discussion of the explanatory factors used in this analysis.

6. Explanatory Variables

I hypothesize that institutional development of the constitutional courts contributes positively to the business elite confidence in the legal system. I also expect that the impact of the constitutional courts' institutional development on business elite trust may be mediated by respondents' perception of and satisfaction with actual performance of the legal system, and national economic and political environment. Below, I outline the hypotheses regarding each of these factors.

6.1 Constitutional Court (CC) Viability

The theory presented above posited that as the constitutional courts develop, their institutionalization will positively impact the perceptions of post-communist business elites of their legal system. In this study, I follow previous research by Bumin et al. (2009) and define institutional development of constitutional courts as *the process by which courts become differentiated, durable, and autonomous*. The authors argue that of the three chief dimensions of institutional development, differentiation refers to the distinctiveness of the court's identity and mission from its surrounding political environment; durability depends on the court's capability to adapt to changes in its environment; autonomy reflects the relationship between judicial capabilities to make independent decisions and external pressures. Bumin et al. argue that incremental increases in the court's autonomy, durability, and differentiation levels are reflected in the rising overall level of judicial institutionalization (also see Polsby, 1968; Keohane, 1969; Ragsdale & Theis, 1997; McGuire, 2004). The development of each dimension is important on its own right because each contributes differently to the development of a viable constitutional court (i.e., they tap into different qualities of a viable institution in ways exclusive to each dimension). Yet, the authors stress that they become meaningful only conjointly; while specific processes and components should still be analyzed, it is the nesting of these processes into the whole that gives them institutional meaning.

I use the measure of institutional development of the post-communist constitutional courts developed by Bumin et al. (2009). This measure is available for all post-communist constitutional courts (from the first year of the country's transition through the year 2005) and consists of eleven indicators of institutional development across the three conceptual dimensions outlined above. Higher values on this variable are hypothesized to lead to more positive evaluations of the legal system.

H1: As the constitutional court becomes more institutionalized, business elite opinion of the legal system will improve.

6.2 Performance Perceptions (Micro-Level Institutional Performance)

Institutional theories emphasize that political trust and distrust are rational responses by individuals to the performance of institutions (March, 1988; Anderson, 1998; Mishler & Rose, 2001; Rothstein, 2003). According to this perspective, post-communist economic and political institutions that perform well will generate trust and poor performers will generate skepticism and distrust. Micro-level strand of institutional theories further points out that individuals living in the same society will manifest very different levels of trust because they differ either in their personal experiences or in the priorities they assign to common, country-wide institutional circumstances (Mishler & Rose, 2001). Thus, I hypothesize that business owner's/manager's level of confidence in the legal system will be related to her perceptions of judicial performance. Accordingly, the legal systems that perform well will generate more positive responses.

First, I hypothesize that a respondent's perceptions of the legal system will be based in part on his assessments of the legal system's transparency. I assume that the ease with which a businessperson can access legal information affecting his firm is one measure of transparency. Thus, if a respondent has difficulty obtaining information on laws, bureaucratic regulations, and court rulings which have impact on his business, he is not likely to view the legal system as an effective performer, and will therefore express little confidence in it.

H2: Enterprise owner/manager will express higher confidence in the legal system if he perceives that information on the laws, court rulings, and regulations affecting his firm is easy to obtain.

Second, I use respondents' perceptions of judicial corruption as another measure of the legal system's performance. Numerous scholars argue that corruption systematically undermines democratic principles and performance of political and economic institutions, and, as a result, diminishes people's faith in the political process (e.g., Anderson and Tverdova, 2003). If a businessperson has to constantly rely on gifts and bribery to receive fair treatment by the courts, he is not likely to respond with high level of confidence in the legal system.

H3: Enterprise owner/manager will express higher confidence in the legal system if he perceives that no payments and gifts are necessary to deal with the courts and court officials.

As Benesh (2006) argues, experience with courts should independently weigh on one's confidence in the legal system. She further points out that level of confidence will be affected by the specific type of experience (i.e., whether an individual appears in the capacity of defendant, plaintiff, or juror). Benesh also finds that, in comparison to jurors, defendants and plaintiffs have less control over the outcome of their case while simultaneously having the highest of stakes in that outcome; therefore, defendants and plaintiffs would be less supportive of courts and express relatively low levels of confidence. She also notes that "Winning or losing is not determinative of experience's effect on court support. Rather, the role in which the respondent experiences the court ... colors his or her judgment about them" (Benesh 2006, p. 699). Yet, she does not differentiate between plaintiff and defendant experience (due to the question wording in the survey) and therefore does not assess how the two might differ in their confidence levels. Since there are no comparative studies that look at this issue either, I am left with a more or less clean slate.

However, the manner in which BEEPS asks about respondent's experience with the courts provides a possibility to differentiate between defendants and plaintiffs in their levels of confidence in the legal system. BEEPS asks respondents how many times they appeared as plaintiff and then repeats the question in relation to the respondent's experience as a defendant. I hypothesize that the owners/managers of firms that petition the court on multiple occasions in the plaintiff's role, are more confident of the legal system than those that rarely use the courts in the plaintiff capacity. On the other hand, if a firm owner/manager appears as a defendant on multiple occasions, I hypothesize that this individual is not likely to be supportive of the courts. Clearly, defendant's perceptions of the legal system would also be affected by the number of times he/she won (relative to the number of times he/she appeared in a case as a defendant), but since data does not provide an opportunity to test for this possibility, I focus only on the "psychological comfort level" argument posited by Benesh. This discussion yields the following hypotheses.

H4a: Enterprise owner/manager will express higher confidence in the legal system if his enterprise participated in many cases as a plaintiff.

H4b: Enterprise owner/manager will express lower confidence in the legal system if his enterprise participated in many cases as a defendant.

Finally, trust in the legal system should be closely related to one's perceptions of the legal system's effectiveness in enforcing its decisions. It is clear that courts that rule in favor of business interests but cannot enforce their rulings will be perceived as ineffective and the firms will not turn to them to resolve disputes or to seek protection from bureaucratic encroachments. Such ineffectual courts are not likely to earn trust and firm owners/managers will express minimal confidence in the legal system if they perceive it to be unable to enforce its decisions.

H5: Enterprise owner/manager will express higher confidence in the legal system if he perceives that the court system is able to effectively enforce its decisions.

In sum, I hypothesize that individual evaluations of different aspects of judicial performance will impact business owner's/manager's confidence in the legal system. Individuals that perceive the system to work well will exhibit higher levels of confidence. The data to test Hypotheses 5 through 8 is extracted from BEEPS. The measurement of these performance variables is described in Appendix C, and the descriptive statistics appear in Appendix B.

6.3 Contextual Influences (Macro-Level Institutional Performance)

Some institutional theories argue that in post-communist societies macro-economic performance (measured by country's GDP per capita income) should be highly salient for individual perceptions of political institutions. By this logic, poor and deteriorating macro-economic conditions should lead to declining levels of confidence in the courts and other government institutions. Low levels of per capita GDP should similarly impact the perceptions of the owners/managers of business enterprises.

H6: Good macro-economic conditions (measured by GDP per capita income) result in high levels of business elite confidence in the legal system.

I also hypothesize that businesspersons are likely to value judicial institutions more in more democratic countries, which succeed in removing restrictions on individual liberties and providing increased freedoms (see Mishler and Rose, 1997, 2001, 2005). Thus, democratic consolidation should improve business elite's perceptions of and satisfaction with their courts. This study uses Freedom House's cross-national time-series data from the *Freedom*

in the *World* dataset, which measures political rights and civil liberties, to test this hypothesis.

H7: Democratic consolidation boosts business elite confidence in the legal system.

Finally, the rate of violent crime should have an important consequence on public confidence in the legal system. Caldeira (1986, p. 1216) argues that “crime provides one of the best tests of the efficacy of the legal and political processes.” Businesses depend greatly on predictable and safe environment and I therefore hypothesize that high murder rates will have a negative impact on business elite views of the legal system.

H8: Low homicide rates improve business elite’s confidence in the legal system.

The data sources and measurement of these variables are described in Appendix C, and the descriptive statistics are provided in Appendix B. To test the hypotheses outlined above, ordered logit procedures are used. This method is appropriate because the dependent variable has four possible and ordered realizations.

7. Results and Discussion

This study yields a number of interesting and new findings. Macro-level institutional variables receive only partial support. Micro-level institutional performance variables, on the other hand, receive very strong support in this analysis. Finally, theory linking constitutional court viability and business elite confidence in the legal system is also strongly supported by the data. Below, I first address the primary variable of interest, constitutional court viability and then move to the discussion of institutional performance variables. Table 1 reports ordered logit results. Table 2 reports changes in predicted probabilities.

7.1 Constitutional Court (CC) Viability

I hypothesized that as the constitutional court institutionalizes business elites will respond with greater confidence in the legal system. The results obtained from the analysis of BEEPS data fully support these expectations. Despite the fact that post-communist constitutional courts are formally separated from the ordinary judiciaries and their influence on elite opinion is filtered through multiple levels of judicial hierarchy, their levels of institutional development are strongly related to the individual perceptions of a country’s legal system.

Table 1. Business elite confidence in the legal system (ordered logit)

Variable	1999	2002	2005
<i>Constitutional court viability</i>	.619 (.204)**	.853 (.104)***	.518 (.084)***
<i>Ease of access to laws/rulings/regulations</i>	.085 (.034)*	.292 (.025)***	.249 (.021)***
<i>Frequency of bribing court officials</i>	-.258 (.034)***	-.208 (.030)***	-.196 (.024)***
<i>Plaintiff in civil/commercial cases</i>	.010 (.004)**	.010 (.005)*	.011 (.005)*
<i>Defendant in civil/commercial cases</i>	-.002 (.007)	.009 (.013)	-.012 (.009)
<i>View courts as able to enforce decisions</i>	.484 (.031)***	.440 (.026)***	.495 (.022)***
<i>FH rights and liberties (added indices)</i>	-.072 (.017)***	-.006 (.013)	-.047 (.009)***
<i>Per capita GDP income (natural log)</i>	.105 (.207)	.042 (.058)	-.050 (.038)
<i>Homicide rate (per 100,000 inhabitants)</i>	-.033 (.016)*	-.027 (.021)	-.042 (.017)*
/cut1	.695 (.768)	.501 (.542)	-.164 (.383)
/cut2	1.966 (.769)	1.803 (.544)	1.020 (.383)
/cut3	3.523 (.772)	3.264 (.546)	2.521 (.385)
N (observations)	2,852	4,420	6,492
N (countries)	24	26	26
Log pseudolikelihood	-3553.183	-5573.641	-8237.480
Wald chi2	529.04	713.96	908.05
Prob > chi2	0.000	0.000	0.000
Count R2	0.412	0.398	0.428
McKelvey and Zavoina's R2	0.229	0.219	0.237
Difference of BIC' parameters	55.968	69.602	35.121

Note: Data clustered by country; robust standard errors are reported in parentheses; all significance tests are two-tailed; a large difference of BIC' indicates that model with the judicial viability measure is more likely to have generated the data than the model without the viability measure (i.e., it indicates very strong support for the inclusion of CC viability measure into the model); Count R2 statistic reflects the proportion of responses correctly predicted by the model; McKelvey and Zavoina's R2 provides the closest approximation of Adjusted R2 statistic found in OLS; * p<0.05; ** p<0.01; *** p<0.001.

An examination of change in predicted probabilities reported in Table 2 reveals that the average impact of CC viability is substantial in 1999 and 2002, but more modest in 2005. In 1999, the likelihood of respondents expressing confidence (Y=3 and Y=4 combined) increases by 26.5%, and the likelihood of expressing no confidence decreases by 26.6% (Y=1 and Y=2 combined). In 2002, the impact of CC viability is somewhat larger – the likelihood of respondents expressing some and great deal of confidence in legal system increases by 30% and the likelihood of expressing no confidence decreases by 18.2%. Finally, in 2005, as CC viability shifts from its minimum to its maximum value in the sample, the likelihood that respondents express confidence in legal system (Y=3 and Y=4 combined) increases by 14.1% and the likelihood of having no confidence decreases by 7.4%. Thus, the impact of CC viability is less substantial in 2005, although still clearly visible.

Table 2. Change in predicted probabilities: Business elite confidence in the legal system

	Strongly Disagree	Tend to Disagree	Tend to Agree	Strongly Agree
BEEPS 1999	Pr (Y=1)	Pr (Y=2)	Pr (Y=3)	Pr (Y=4)
Baseline probability	0.183	0.252	0.341	0.225
Constitutional court viability**	-0.128	-0.138	0.222	0.043
Ease of access to laws/rulings/regulations*	-0.055	-0.045	0.018	0.083
Frequency of bribing court officials***	0.250	0.039	-0.143	-0.146
Plaintiff in civil/commercial cases**	-0.198	-0.015	0.113	0.100
Defendant in civil/commercial cases	0.064	-0.014	-0.032	-0.017
View courts as able to enforce decisions***	-0.163	-0.206	0.167	0.537
FH rights and liberties (added indices)***	0.108	0.042	-0.062	-0.088
Per capita GDP income (natural log)	-0.034	-0.026	0.014	0.046
Homicide rate (per 100,000 inhabitants)*	0.132	0.041	-0.078	-0.094
BEEPS 2002	Pr (Y=1)	Pr (Y=2)	Pr (Y=3)	Pr (Y=4)
Baseline probability	0.217	0.300	0.386	0.098
Constitutional court viability***	-0.073	-0.109	0.241	0.059
Ease of access to laws/rulings/regulations***	-0.251	-0.083	0.128	0.205
Frequency of bribing court officials***	0.266	-0.085	-0.118	-0.063
Plaintiff in civil/commercial cases*	-0.171	-0.028	0.097	0.102
Defendant in civil/commercial cases	-0.107	-0.005	0.061	0.052
View courts as able to enforce decisions***	-0.323	-0.173	0.091	0.405
FH rights and liberties (added indices)	0.040	-0.005	-0.021	-0.014
Per capita GDP income (natural log)	0.027	-0.003	-0.014	-0.009
Homicide rate (per 100,000 inhabitants)	0.117	-0.037	-0.052	-0.027
BEEPS 2005	Pr (Y=1)	Pr (Y=2)	Pr (Y=3)	Pr (Y=4)
Baseline probability	0.187	0.263	0.481	0.068
Constitutional court viability***	-0.051	-0.023	0.107	0.034
Ease of access to laws/rulings/regulations***	-0.265	-0.015	0.150	0.129
Frequency of bribing court officials***	0.237	-0.092	-0.102	-0.042
Plaintiff in civil/commercial cases *	-0.222	0.001	0.126	0.095
Defendant in civil/commercial cases	0.193	-0.071	-0.086	-0.037
View courts as able to enforce decisions***	-0.416	-0.148	0.139	0.425
FH rights and liberties (added indices)***	0.048	-0.013	-0.023	-0.011
Per capita GDP income (natural log)	0.064	-0.018	-0.031	-0.015
Homicide rate (per 100,000 inhabitants)*	0.155	-0.069	-0.063	-0.024

Note: Changes in predicted probabilities are calculated by moving the variable of interest (*CC viability*) from its minimum to its maximum value, while simultaneously holding the remaining variables at their minimum values. This allows one to make judgments of the variable's impact relative to the baseline probability (calculated holding all variables at their minimum levels) for each category of the dependent variable. * p<0.05; ** p<0.01; *** p<0.001

The purpose of this analysis was to link the development of the constitutional courts to the way the judiciary, as a whole, is perceived by the business elites. I proposed that the constitutional rights protections provided by the constitutional courts (e.g., private property guarantees, fair taxation and contract law standards) are of great and

immediate importance to the successes and failures of these businesses, and especially to the owners of private enterprises, and hypothesized that their level of trust in the legal system should therefore be closely linked to the institutional development of the constitutional courts. The BEEPS data support these arguments and the predicted probabilities reveal that the impact of CC viability is substantial. Of course, it is difficult to draw direct causal linkages between the empowerment of constitutional courts and what individuals think, but the fact that empirical connection was discovered in all three years of this analysis and across 26 countries, increases the likelihood that the confidence in the judiciary and CC development are in fact causally linked.

7.2 Performance Perceptions (Micro-Level Institutional Performance)

Earlier, I argued that the individual firm owners/managers may manifest very different levels of confidence in the legal system because they differ either in their personal experiences or in their performance evaluations. This study therefore hypothesized that firm owner's/manager's level of confidence in the legal system will be related to his perceptions of judicial performance; the legal system that is perceived to perform well will generate more positive responses.

Specifically, I hypothesized that if a respondent has difficulty obtaining information on laws, bureaucratic regulations, and court rulings which have impact on his business, he is not likely to view the legal system as an effective performer, and will therefore express little confidence in it (Hypothesis 2). The BEEPS data strongly support this hypothesis (see Table 1), and the impact of legal transparency on confidence is substantial (see Table 2). As the variable moves from its lowest value (i.e., one strongly disagrees that laws/regulations/court rulings are easy to access) to its highest value (i.e., one strongly agrees that laws/regulations/rulings are easily accessible), the likelihood of a businessperson reporting confidence in the legal system increases by 10.1% in 1999, by 33.3% in 2002, and by 27.9% in 2005 (Y=3 and Y=4 combined). Moreover, as these data show, over time, as the regulatory system becomes more complex and the courts rule on more and more issues pertaining to business operations, the impact of legal transparency increases substantially. These results are eminently reasonable and empirically confirm the common impression that legal transparency matters greatly for one's confidence in the legal system.

I also hypothesized that if a businessperson has to constantly rely on gifts and bribery to receive fair treatment by the courts, he is not likely to respond with high level of confidence in the legal system (Hypothesis 3). Put differently, perceptions of rampant judicial corruption should have a predictable, negative effect on trust in the judiciary. The results reported in Table 1 support this notion unequivocally – the sign on the coefficient is negative (i.e., the more one perceives that he has to bribe court officials, the less likely he is to confide in the legal system) and highly significant in all years. As Table 2 shows, the substantive impact of this variable is large. If one's answer to the statement "Thinking now of unofficial payments/gifts that a firm like yours would make in a given year, could you please tell me how often would they make payments/gifts to deal with courts?" is "always," the likelihood of that respondent having complete lack of confidence in the legal system (Y=1) rises by 25% in 1999, by 26.6% in 2002, and by 23.7% in 2005. As the hypothesis predicts, countries where respondents perceive that rampant judicial corruption exists also exhibit some of the lowest levels of confidence in the legal system. For example, the 2005 levels of elite confidence are 43.3% in Bulgaria, 44.6% in Macedonia, 35.8% in Moldova, and 36.1% in Russia. At the same time, 31% of business elites in Bulgaria, 37% in Macedonia, 32% in Moldova, and 30% in Russia also reported that they have "sometimes," or more frequently, given bribes to the courts. On the other hand, perceptions of a very "clean" legal system improve one's confidence by 28.9% in 1999, by 18.1% in 2002, and by 14.4% in 2005 (Y=3 and Y=4).

Following Benesh (2006), I hypothesized that experience with courts should independently weigh on one's confidence in the legal system. Specifically, I hypothesized that the owners/managers of firms that petition the court on multiple occasions in the plaintiff's role are more confident of the legal system than those that rarely use the courts in the plaintiff capacity (Hypothesis 4a). I also hypothesized that if a business owner/manager appears as a defendant on multiple occasions, that this individual is less likely to express high support of the courts (Hypothesis 4b). Both hypotheses attempted to tap into the respondent's "psychological comfort level" with the judiciary. Throughout the six-year period, 27.8% of the sampled firms appeared in courts at least once as plaintiffs (4,070 firms) and 14.5% as defendants (2,116 firms).

The results of BEEPS data support Hypothesis 4a in all three years under the analysis. Table 2 shows that respondents that appeared in the courts on multiple occasions as plaintiffs were 21.3% more likely to express confidence in the legal system in 1999 (Y=3 and Y=4 combined), 19.9% more likely to express confidence in 2002, and 22.1% more likely to express confidence in 2005. No support was found for Hypothesis 4b (see Table 1). Overall, data seem to suggest that even though both defendants and plaintiffs have high stakes and low

control over case outcomes, some differences between these types of judicial experience do exist, at least in the post-communist region. The conclusion that “repeat” plaintiffs express more positive attitudes toward the legal system than respondents that have no experience with the courts in this capacity confirms some common-sense notions about what should drive trust in courts.

Finally, I hypothesized that confidence in the legal system should be closely related to one’s perceptions of the court system’s effectiveness in enforcing its decisions (Hypothesis 5). The results support this hypothesis unequivocally and the change in predicted probabilities shows that this perception-based variable has the largest impact of all variables included in the model. Table 2 indicates that if a respondent believes that the courts are always able to enforce their decisions, their likelihood of expressing the highest level of confidence in the legal system ($Y=4$) increases by 53.7% in 1999, 40.5% in 2002, and 42.5% in 2005. The impact of this perception-based measure of judicial performance is truly one of the most important findings of this study of business elite opinions.

7.3 Contextual Influences (Macro-Level Institutional Performance)

This study hypothesized that low levels of per capita GDP (as a proxy measure for economic performance) will impact the perceptions of the owners/managers of business enterprises. In relatively wealthy countries, therefore, I expected to find more trustful business elites. However, the data fail to support this hypothesis entirely. Per capita GDP is not significantly related to business elite confidence in the legal system (see Table 1).

Hypothesis 7 posited that businesspersons are likely to value judicial institutions more in countries that succeed in removing restrictions on individual liberties and providing increased freedoms. I expected to find that democratic consolidation will improve perceptions of the legal institutions. The data largely confirms this hypothesis. The coefficient on *FH rights and liberties* variable is negative (as higher values indicate lower degree of rights protection), and statistically significant in 1999 and 2005, although it fails to reach significance in 2002 (see Table 1). Substantively, the results show that as the regime’s procedural emphasis on individual freedoms increases from its lowest level (14) to its highest level (2), business elites are 15% more likely to trust the legal system in 1999 and 3.4% more likely to do so in 2005 ($Y=3$ and $Y=4$ combined). This decline in impact seems to suggest that this macro-level performance measure is playing a considerably lesser role on the perception of the business elites over time (as democratic systems consolidate), and other considerations figure more prominently in their responses.

Finally, businesses depend greatly on predictable and safe environment and I therefore hypothesized that high murder rates will have a negative impact on business elite views of the legal system (Hypothesis 8). BEEPS data largely confirms this insight. The homicide rate is statistically significant and negatively related to respondent’s confidence in the legal system in 1999 and 2005, but like *FH rights and liberties* variable, fails to achieve significance in 2002. Perhaps there is something peculiar about business elite responses in 2002 that further studies may reveal. In years where the variable is significant, however, the likelihood of a respondent having completely no confidence in the legal system ($Y=1$) increases by 13.2% in 1999 and by 15.5% in 2005 as the number of murders rises (see change in predicted probabilities in Table 2).

8. Conclusion

As Huguette Labelle, Chair of Transparency International, noted “*Equal treatment before the law is a pillar of democratic societies*” (Transparency International, 2007), and some measure of popular trust in the judiciary is thus vital to democracy. In post-communist countries, however, numerous studies find that in the recent years mass public skepticism and distrust are pervasive. Yet, the present study of business elite opinions provides some ground for optimism. It points out that the owners and managers of business enterprises are less skeptical and more trusting of the legal system than the masses. As Steen (2001) argues, and this study finds, the elite may in fact serve as a “vanguard for basic confidence” in the post-communist legal systems.

The data confirm the possibility that the elite may be more attracted by the “intrinsic value” of institutions. But this study also shows that contemporary judicial performance evaluations are also closely related to the business elite confidence in the legal system and that the post-communist legal systems may enjoy more support among the members of the business elite because, unlike the mass public, they perceive the courts to work relatively well. The largest impact on a businessperson’s confidence in the legal system is his or her perceptions of how effective the courts are in enforcing their decisions. Business owners and managers are also highly affected by their perceptions of legal transparency and, to a somewhat lesser extent, their experience with courts (as plaintiffs) and their perceptions of judicial corruption. It is therefore tempting to conclude that the elite trust in the legal system is largely endogenous – that is, determined by the performance of the courts.

This study also finds that, in most respects, confidence in the legal system is not a system-level performance attribute as macro-institutional theories suggest. The reported effects of macro-political performance (*FH rights and liberties* and *homicide rate*) on trust are important, but seem to be mediated at the micro level by an individual's perceptions. Macro-economic performance (proxied by *per capita GDP*) is unrelated to business elite's trust in the legal system.

One significant exception to this conclusion is the effect of the previously untested factor and one that is of primary interest to this study – the level of institutionalization of the country's constitutional court. As a macro-level variable, CC viability proves to have a consistent, highly significant, positive effect on business elite's individual perceptions of the legal system. Across the time period analyzed in this study, the businesspersons in countries with highly institutionalized constitutional courts are on average 23.5% more likely to express high level of confidence in their legal systems relative to the businesspersons in countries where the constitutional courts are underdeveloped. I proposed that the constitutional rights protections provided by the constitutional courts (e.g., private property guarantees, fair taxation and contract law standards) are of great and immediate importance to the successes and failures of business enterprises in the post-communist region. The BEEPS data strongly support these arguments. It is possible that because the business elites are generally more attentive to national politics, they are more aware of the constitutional court, its actual levels of institutionalization, and its activity than the mass public. Still, since I was unable to explicitly test how knowledgeable the elites are of the constitutional courts, this is a reasonable stipulation but not a definitive conclusion.

References

- Anderson, C. J. (1998). Political satisfaction in old and new democracies. *Institute for European Studies Working Paper*, No. 98.4. Ithaca, NY: Cornell University.
- Anderson, C. J., & Tverdova, Y. V. (2003). Corruption, political allegiances, and attitudes toward government in contemporary democracies. *American Journal of Political Science*, 47(1), 91-109. <http://dx.doi.org/10.1111/1540-5907.00007>
- Anderson, J. H., Bernstein, D. S., & Gray, C. W. (2005). *Judicial systems in transition economies: Assessing the past, looking to the future*. Washington, DC: World Bank Concept Paper. <http://dx.doi.org/10.1596/978-0-8213-6189-4>
- Benesh, S. (2006). Understanding public confidence in American state courts. *Journal of Politics*, 68(3), 697-707. <http://dx.doi.org/10.1111/j.1468-2508.2006.00455.x>
- Bumin, K. M., Randazzo, K. A., & Walker, L. D. (2009). Institutional viability and high courts: A comparative analysis. *Australian Journal of Political Science*, 44(1), 127-153. <http://dx.doi.org/10.1080/10361140802657052>
- Bunce, V. J. (1999). Lessons of the first postsocialist decade. *East European Politics and Societies*, 13, 236-243. <http://dx.doi.org/10.1177/0888325499013002002>
- Caldeira, G. A. (1986). Neither the purse nor the sword: Dynamics of public confidence in the Supreme Court. *American Political Science Review*, 80(4), 1209-1226. <http://dx.doi.org/10.2307/1960864>
- European Bank for Reconstruction and Development. (1999). *Business Environment and Enterprise Performance Survey 1*. Retrieved from <http://ebrd-beeps.com/about/>
- European Bank for Reconstruction and Development. (2002). *Business Environment and Enterprise Performance Survey 2*. Retrieved from <http://ebrd-beeps.com/about/>
- European Bank for Reconstruction and Development. (2005). *Business Environment and Enterprise Performance Survey 3*. Retrieved from <http://ebrd-beeps.com/about/>
- Freedom House. (2014). *Freedom in the world: Annual data reports*. New York: Author. Retrieved from <http://www.freedomhouse.org>
- Gibson, J. L., Caldeira, G. A., & Baird, V. A. (1998). On the legitimacy of national high courts. *American Political Science Review*, 92(2), 343-358. <http://dx.doi.org/10.2307/2585668>
- Huntington, S. P. (1991). *The third wave. Democratization in the late twentieth century*. Norman: University of Oklahoma.
- Keohane, R. (1969). Institutionalization in the United Nations General Assembly. *International Organization*, 23, 859-896. <http://dx.doi.org/10.1017/S0020818300025698>

- Lijphart, A., & Waisman, C. H. (Eds.). (1996). *Institutional design in new democracies*. Boulder, CO: Westview.
- Magalhães, P. C. (1999). The politics of judicial reform in Eastern Europe. *Comparative Politics*, 32(1), 43-62. <http://dx.doi.org/10.2307/422432>
- March, J. G. (1988). *Decisions and organizations*. Oxford, UK: Blackwell.
- McGuire, K. T. (2004). The institutionalization of the U.S. Supreme Court. *Political Analysis*, 12(2), 128-142. <http://dx.doi.org/10.1093/pan/mph005>
- Miller, A. H., Hesli, V. L., & Reisinger, W. M. (1995). Comparing citizen and elite belief systems in post-Soviet Russia and Ukraine. *Public Opinion Quarterly*, 59, 1-40. <http://dx.doi.org/10.1086/269456>
- Miller, A. H., Hesli, V. L., & Reisinger, W. M. (1997). Conceptions of democracy among mass and elite in post-Soviet societies. *British Journal of Political Science*, 27(2), 157-190. <http://dx.doi.org/10.1017/S0007123497000100>
- Mishler, W., & Rose, R. (1997). Trust, distrust and skepticism: Popular evaluations of civil and political institutions in post-communist societies. *Journal of Politics*, 59(2), 418-451. <http://dx.doi.org/10.2307/2998171>
- Mishler, W., & Rose, R. (2001). What are the origins of political trust? Testing institutional and cultural theories in post-communist societies. *Comparative Political Studies*, 34(1), 30-62. <http://dx.doi.org/10.1177/0010414001034001002>
- Mishler, W., & Rose, R. (2005). Test of cultural and institutional theories in Russia. *Comparative Political Studies*, 38(9), 1050-1078. <http://dx.doi.org/10.1177/0010414005278419>
- Ragsdale, L., & Theis, III, J. J. (1997). The institutionalization of the American presidency, 1924-1992. *American Journal of Political Science*, 41(4), 1280-1318.
- Rogowski, R. (1974). *Rational Legitimacy: A Theory of Political Support*. Princeton: Princeton University Press.
- Rothstein, B. (2003). *Social Capital, Economic Growth and Quality of Government*. Stockholm: SNS.
- Schwartz, H. (2000). *The Struggle for Constitutional Justice in Post-Communist Europe*. Chicago, IL: University of Chicago Press.
- Shapiro, M., & Stone Sweet, A. (2002). *On Law, Politics, and Judicialization*. Oxford University Press. <http://dx.doi.org/10.1093/0199256489.001.0001>
- Steen, A. (1996). Confidence in institutions in post-communist societies: The case of Baltic states. *Scandinavian Political Studies*, 19(3), 205-225. <http://dx.doi.org/10.1111/j.1467-9477.1996.tb00391.x>
- Steen, A. (2001). The question of legitimacy: Elites and political support in Russia. *Europe-Asia Studies*, 53(5), 697-718. <http://dx.doi.org/10.1080/09668130120060233>
- Stone Sweet, A. (2000). *Governing with judges: Constitutional politics in Europe*. Oxford: Oxford University Press.
- Thorson, C. (2004). Why politicians want constitutional courts: The Russian case. *Communist and Post-Communist Studies*, 37(2), 187-211. <http://dx.doi.org/10.1016/j.postcomstud.2004.03.003>
- Transparency International. (2007). *Judicial corruption fuels impunity, corrodes the rule of law, says new Transparency International report [Press release]*. Retrieved from http://www.ti-israel.org/_Uploads/dbsAttachedFiles/291u.pdf
- Trochev, A. (2005, June). Distrusted courts: The impact of state (in) capacity on judicial power in post-communist countries. Paper presented at the annual meeting of the Canadian Political Science Association, Toronto, Ontario.

Appendix A

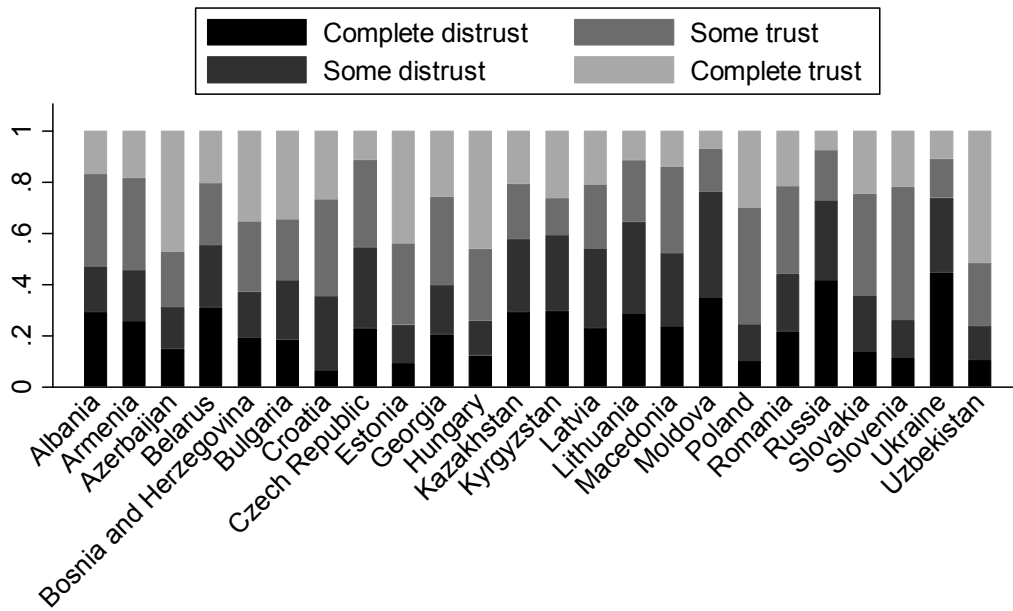


Figure A1. Business elite confidence in the post-communist legal systems, 1999

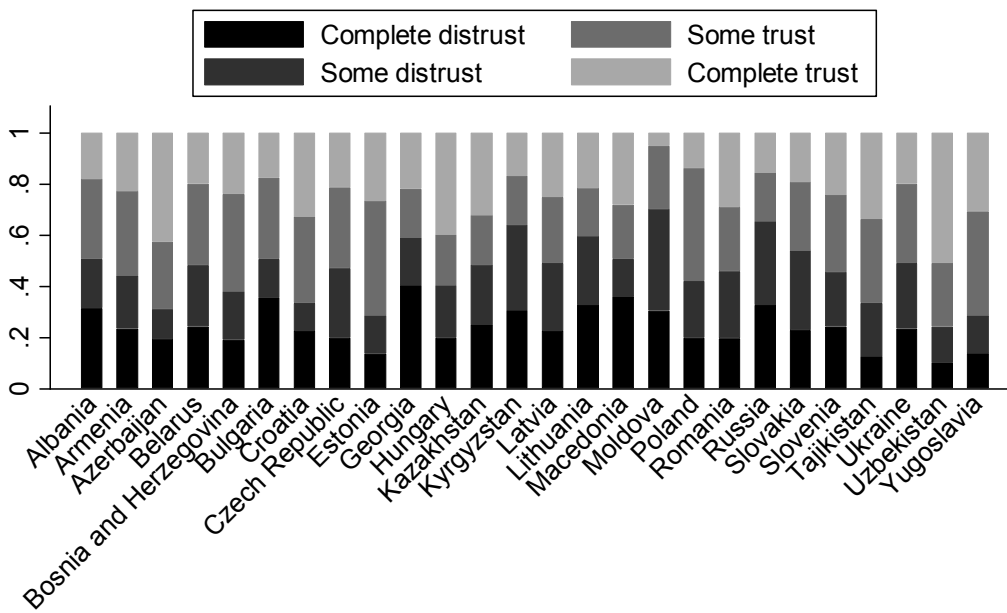


Figure A2. Business elite confidence in the post-communist legal systems, 2002

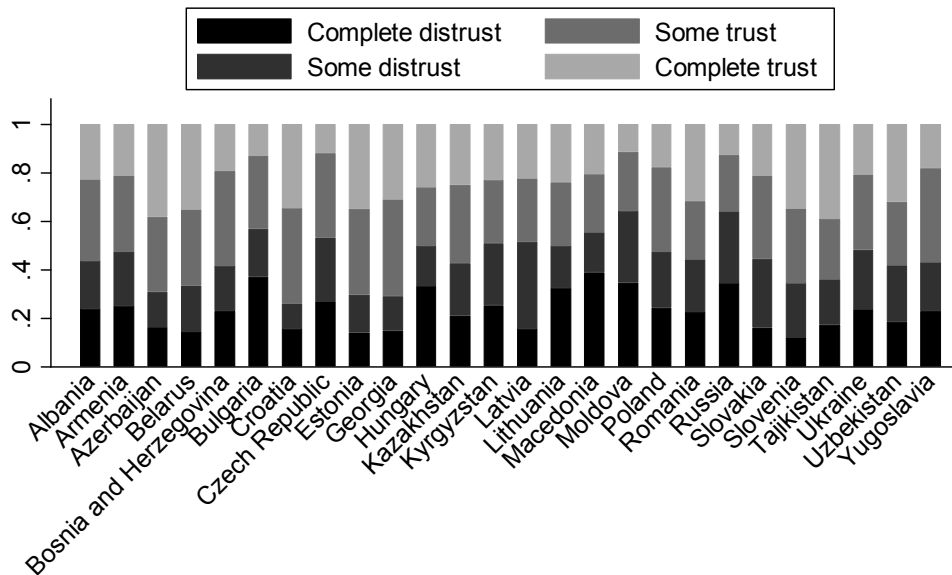


Figure A3. Business elite confidence in the post-communist legal systems, 2005

Appendix B

Descriptive statistics

Variable	N	Mean	Std. Dev.	Min	Max
<i>Confidence in the legal system (dependent variable)</i>	18282	2.52	1.10	1	4
<i>Constitutional court viability</i>	19140	0.73	0.43	-0.64	1.31
<i>Ease of access to laws/rulings/regulations</i>	18797	3.99	1.46	1	6
<i>Frequency of bribing court officials</i>	16292	1.64	1.17	1	6
<i>Plaintiff in civil/commercial cases</i>	14634	1.82	5.93	0	99
<i>Defendant in civil/commercial cases</i>	14581	0.57	2.76	0	80
<i>View courts as able to enforce decisions</i>	17024	2.71	1.05	1	4
<i>FH rights and liberties (added indices)</i>	19140	6.34	3.64	2	14
<i>Per capita GDP income (natural log)</i>	19140	8.72	0.74	6.77	9.93
<i>Homicide rate (per 100,000 inhabitants)</i>	19140	6.91	5.57	1.26	22.8

Dependent variable, original coding		N	%
<i>Strongly disagree</i>	1	1,945	10.64
<i>Disagree in most cases</i>	2	2,482	13.58
<i>Tend to disagree</i>	3	4,160	22.75
<i>Tend to agree</i>	4	5,369	29.37
<i>Agree in most cases</i>	5	3,165	17.31
<i>Strongly agree</i>	6	1,161	6.35

Dependent variable, recoded		N	%
<i>Strongly disagree</i>	1	4,427	24.22
<i>Tend to disagree</i>	2	4,160	22.75
<i>Tend to agree</i>	3	5,369	29.37
<i>Strongly agree</i>	4	4,326	23.66

Appendix C

Variable Descriptions and Coding Rules

- **Confidence in the legal system:** Variable derived from BEEPS data (retrieved from: <http://ebrd-beeps.com/>); the question asks, “To what degree do you agree with this statement? I am confident in the legal system.” (1) = strongly disagree; (2) = disagree in most cases; (3) = tend to disagree; (4) = tend to agree; (5) = agree in most cases; (6) = strongly agree; (7) = don’t know. The variable was then recoded in the following manner: (1) = strongly disagree/disagree in most cases; (2) = tend to disagree; (3) = tend to agree; (4) = agree in most cases/strongly agree. The “don’t know” category was recoded with missing values to drop these observations from the data.

- **Constitutional court viability:** An annual measure of institutional development of the constitutional courts developed by Bumin, Randazzo, and Walker (2009). Measure is derived from the principal factor analysis of eleven indicators of institutional development. This measure is available for all 28 post-communist constitutional courts. The post-communist countries were coded during each year after the collapse of their communist regimes through the year 2005, and the data collected capture changes in the ordinary and constitutional laws pertaining to the organization and function of constitutional courts. The scores for the relevant post-communist sample range from -0.64 to 1.31, with higher values representing higher level of institutionalization.

- **Ease of access to laws, court rulings, and administrative regulations:** Variable derived from BEEPS data; the question asks, “To what degree do you agree with the following statement? Information on the laws, court rulings, and regulations affecting my firm is easy to obtain.” (1) = strongly disagree; (2) = disagree in most cases; (3) = tend to disagree; (4) = tend to agree; (5) = agree in most cases; (6) = strongly agree; (7) = don’t know. The “don’t know” category was recoded with missing values to drop these observations from the data.

- **Frequency of bribing court officials:** Variable derived from BEEPS data; the question asks, “Thinking now of unofficial payments/gifts that a firm like yours would make in a given year, could you please tell me how often would they make payments/gifts to deal with courts?” (1) = never; (2) = seldom; (3) = sometimes; (4) = frequently; (5) = usually; (6) = always.

- **Plaintiff in civil or commercial cases:** Variable derived from BEEPS data; the question asks, “How many cases in civil or commercial arbitration courts have involved your enterprise as a plaintiff?” The variable ranges from 0 to 99.

- **Defendant in civil or commercial cases:** Variable derived from BEEPS data; the question asks, “How many cases in civil or commercial arbitration courts have involved your enterprise as a defendant?” The variable ranges from 0 to 80.

- **Court system is able to enforce its decisions:** Variable derived from BEEPS data; the question asks, “How often do you associate the following descriptions with the court system in resolving business disputes? Able to enforce its decisions.” (1) = never; (2) = seldom; (3) = sometime; (4) = frequently; (5) = usually; (6) = always; (7) = don’t know. The “don’t know” category was recoded with missing values to drop these observations from the data.

- **Civil liberties and political rights:** To capture the current state of democratic governance, this study uses Freedom House’s cross-national time-series data from the *Freedom in the World* dataset (retrieved from <https://freedomhouse.org/>), which measures political rights and civil liberties to proxy the level of democracy around the world. Political rights and civil liberties indices contain numerical ratings between 1 and 7 for each country, with 1 for the most free and 7 for the least free. This study adds the two indices together to construct a single variable that represents country’s annual democracy score. The country scores range from 2 (most democratic) to 14 (least democratic).

- **Per capita GDP:** Natural log of real GDP per capita income in US dollars. Data is available from the European Bank for Reconstruction and Development (retrieved from <http://www.ebrd.com/what-we-do/economic-research-and-data/data.html>). The logged per capita incomes in the region range from 6.77 (\$871.32) to 9.63 (\$15,213.85).

- **Homicide rate per 100,000 inhabitants:** Data compiled by author from several official government sources, United Nations Office on Drugs and Crime (UNODC) Division for Policy Analysis and Public Affairs, UN Surveys of Criminal Trends and Operations of Criminal Justice Systems (UNCJS), INTERPOL, and Economist Intelligence Unit *Global Peace Index*. The annual country scores range from 1.26 to 22.8 murders per 100,000 country inhabitants.

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