

# Spiral effect of the law: migrants' experiences of the state law in Russia – a comparative perspective

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## Abstract

*Through an ethnographic study of the immigration law system in Russia, and interviews with legal professionals and Central Asian migrants themselves, this paper asks: What are the lived experiences of the highly complex, though ambiguous immigration law regime of Russia? According to what 'rules of the game' does it operate? Are they specific to Russia only? This paper develops the concept of 'the spiral effect of the law' to capture the image of law, as formed through people's experiences of the legal system. Drawing on the comparative tool of analogy, this paper suggests that 'the spiral effect of the law' is perhaps not that different from the observable effects of immigration law in other major migration-receiving jurisdictions, namely the US, framed as 'legal violence' by Cecilia Menjívar and Leisy Abrego (2012).*

## I. Introduction

There is a widespread view supported by empirical and scholarly evidence that the state law, including the immigration law, 'does not work' in Russia (Kahn, 2002; 2008; Yudina, 2005; McAulley *et al.*, 2006; Hendley, 2006; Greenberg, 2007; Doolotkeldieva, 2008; Ruget and Usmanalieva, 2008; 2010). In international comparisons, Russia is often portrayed as a 'deviant' and 'exceptional' case, with a haphazard system of official and unofficial control, which leaves human mobility in a permanent state of uncertainty (Light, 2010). I suggest the full picture is more complicated.

This paper advances an argument that the immigration law in Russia, as experienced by those involved in the process, actually does work, but according to its own logic. I term this logic the 'spiral effect of the law'. This concept captures the imbalance between the practices of 'disciplining and punishing' (Foucault, 1977) migrants for their alleged breaches of immigration rules, and the patchy and inconsistent state rules and practices regulating conditions of migrants' stay and status regularisation. Drawing on the comparative tool of analogy (Bourdieu, 1984), I posit that the spiral effect of the law is not that different from the observable effects of immigration law in other major migration-receiving jurisdictions, namely the US, analytically framed as 'legal violence' by Cecilia Menjívar and Leisy Abrego (2012). These authors define legal violence as 'the normalised but cumulatively injurious effects' of the immigration legislation and its implementation in the US, aided by a vast technological infrastructure and state bureaucracy (Menjívar and Abrego, 2012, p. 1380). The comparative exercise undertaken in this paper involves the construction and elucidation of concepts – the 'spiral effect of the law' and 'legal violence' – as key elements in rethinking the immigration law in practice.

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## II. Rethinking Russia from a comparative perspective

Russia, after the US and Germany, is the third-largest recipient of migrants worldwide, with 11.6 million foreign-born people, primarily from the Central Asian republics (Uzbekistan, Tajikistan and Kyrgyzstan) currently residing in its territory (UNPD, 2015). Russia's immigration policy and immigration law have recently started attracting academic attention (Reeves, 2013; 2015; Malakhov, 2014; Dave, 2014; Ivahniuk, 2015). At the same time, researchers, reporters and human rights activists have extensively documented the difficult living and working conditions of labour migrants in Russia (Yudina, 2005; Greenberg, 2007; Doolotkeldieva, 2008; Ruget and Usmanalieva, 2008; 2010). The list of ways in which their human rights are abused is long: discrimination at work, such as routinely being denied wages; failure to provide required contracts; unsafe working conditions (Human Rights Watch, 2009); racial profiling for document checks when using public transport (Open Society Institute, 2006); extortion of bribes by the police; and other extra-legal strategies aimed at controlling their movement (Ruget and Usmanalieva, 2008; 2010; Light, 2010).

These accounts and academic reports confirm, for some, long-established assumptions about Russia's exceptionalism, in terms of the lack of the rule of law, corruption and legal nihilism (Ledeneva, 1998; 2006; Kurkchiyan, 2003; 2009; McAulley *et al.*, 2006). Much of the academic literature, analytical reports, mass media and even common wisdom suggest that the justice system in Russia is unreliable – it does not provide equal access to justice, it does not treat its litigants fairly, law enforcement is fortuitous and 'telephone law' still prevails in different court settings (Pastukhov, 2002; Solomon, 2005; Ledeneva, 2006; Transparency International, 2007; Sakwa, 2009; 2010).

All these complexities and legal restrictions, allegedly endemic to the legal environment of Russia, lead many to observe that the only way for international migrants to become 'legal' and regularise their status is actually via 'illegal procedures' (Dave, 2014): 'contributing to a vibrant market in false identity documents or ... (dirty papers) and subjecting residents within the national territory to varying regimes of management and discipline' (Hallett, 2014, p. 626).

This quote, although a useful summary of the experiences of – and strategies vis-à-vis – immigration law employed by many migrants in Russia, comes, however, from a recent paper on the construction of immigration status categories in law and social practice in the US. Miranda Cady Hallett (2014) investigates the protracted lives of Salvadoran immigrants in rural Arkansas under the conditional legality known as Temporary Protected Status (TPS). In her paper, false identity documents regarded as *papeles chuecos* (fake papers), sometimes even *buenos chuecos* (good fakes), bear a striking resemblance with the Russian *fal'shivka* (fake papers) or *chistaya fal'shivka* (clean fake), described by Madeleine Reeves (2013) in the context of migrant Moscow.

It was the discovery of these (unexpected) similarities that gave rise to the research questions this paper grapples with: What are the lived experiences of the highly complex, though ambiguous and unevenly enforced, immigration law regime of Russia? According to what 'rules of the game' does it operate?<sup>1</sup> And, finally, is the complex and multilayered immigration law system, as experienced by the people involved in the process, specific to Russia?

Addressing these questions, I engage with conceptual analysis as the basis for the social understanding of law (Twining, 2009; Galligan, 2015). Drawing on extensive qualitative fieldwork in Russia and a host of diverse, empirically observed social practices (described below), this paper develops the concept of the 'spiral effect of the law' to capture the inner workings of immigration law enforcement in Russia, as experienced by those affected by it. 'Spiral effect of the law' is a middle-range concept, sufficiently abstract to constitute a distinct realm of knowledge (Galligan,

1 'Rules of the game' are not legal rules, but more rules that characterise the ways in which the state law system operates in practice and is perceived to impact people's lives.

2015, p. 388), yet close enough to observed data to permit further empirical investigation (Merton, 1949, p. 39). As a middle-range concept, it is constructed from a delimited range of social practices (Merton, 1949, p. 39), reflecting the ways in which immigration law in Russia is understood and experienced by those who are engaged with, or affected by, it in everyday life. I then draw analogies between the 'spiral effect of the law' and another middle-range concept: the 'legal violence' proposed by Menjívar and Abrego (2012). 'Legal violence' captures the complex system of immigration legislation and its implementation in the US, aided by a vast technological infrastructure and state bureaucracy (Coutin, 2002; Stumpf, 2006; Yngvesson, 2006; Legomsky, 2007; Chacón, 2009; 2012; Menjívar, 2014a; 2014b) resulting in 'normalized but cumulatively injurious effects' (Menjívar and Abrego, 2012) for those affected by it.

This comparative approach opens up the study of Russia to richer interpretation and analysis, by 'identifying similarity between things that are otherwise dissimilar for the purpose of explanation or clarification' (Creutzfeldt, Kubal and Pirie, this issue). By situating the Russian case in comparative perspective, this paper demonstrates how the evolution of the Russian immigration law in 'the everyday work of producing, defining and precluding both movement and connection' (Coutin *et al.*, 2002, p. 801) follows a well-established logic of more global trends of migration governance (Kubal, forthcoming). Immigration controls in the former Soviet Union were distinct, in the sense that the state over-ambitiously aimed to fully 'regularise' internal migration, by integrating it into a system of administrative controls and localised social policies dependent upon residence registration or *propiska* (Light, 2012, p. 419). By contrast, modern Russia seems rather to conform to a more global trend associated with a proliferation of insecure and legally ambiguous migration statuses, where 'fictively hyper-documented' migrants (Reeves, 2015, p. 122) are exposed to an inconsistent, albeit socially violent, enforcement apparatus, as this paper demonstrates.

### III. The legal environment of immigration law in Russia

International migrants are inseparable part of the Russian social structure. They have come to Russia primarily from post-Soviet countries in Central Asia, but more recently also from the Middle East and East Africa. Seasonal and undocumented economic migration was part of the Soviet reality, but this reached new levels and took different forms after the break-up of the Soviet Union (Pilkington, 1998). Unrestricted cross-border movements between Russia and its 'near-abroad' countries of Kyrgyzstan, Tajikistan and Uzbekistan facilitated the migration of desperate people leaving their economically destitute and often politically repressive home countries in search of means of survival. According to the 2011 World Bank report, migrants contribute 16 per cent of Russia's labour force; these workers are mostly engaged in the construction industry, agriculture, trade and services. Every large state-funded project, such as building the venues and infrastructure necessary for Russia to host the 2014 Winter Olympic Games in Sochi or the 2018 World Cup, is reliant on the extensive employment of migrants. Labour migrants form a group diverse in terms of race, ethnicity, religion, legal status and the acquisition of Russian citizenship.

The already-high level of migration acquired a new momentum in 2006, when the Russian government announced the policy of attracting new, and regularising already-present, migrants (Ivahniuk, 2014). As a result of unfavourable demographics, with a catastrophic crash in life expectancy (plunging to 56 years for men during the early 1990s and having recovered now to only 62 years), Russia was in dire need of migrant labour. The migration reform was a result of political pragmatism in the second presidential term of Vladimir Putin, who, at the ad hoc meeting of the National Security Council of the Russian Federation on 17 March 2005, was heard to say:

Today, our most important task is to encourage migration inflow ... the major reasons for irregular migration are much-talked-about administrative barriers, which confront people who

would like to stay and work in Russia legally . . . Due to the lack of a humane attitude to millions of migrants, we ourselves push them into the criminal sphere. Confusion in the procedures for the legalization of migrants harms the interests of the state, the society, and its economics.' (quoted after Ivahniuk, 2015)

One major change was the introduction of specific 'out-of-quota' work permits, the so-called 'patents', in 2010 (No. 86-FZ of 19.05.2010) for migrant workers entering employment in Russia with individual citizens, for personal, household or similar purposes (not related to business activities). This significantly simplified the procedures by which migrant workers could regularise their residence and employment. The dual system of regular work permits and simplified patents existed until January 2015, when work permits were abolished for migrant workers from the former Soviet Union. The system of patents was subsequently extended to all forms of migrant employment in Russia (No. 357-FZ of 24.11.2014), resulting in extensive 'de iure' liberalisation of the migrant worker regime. This reform could also be viewed as a 'silent' regularisation of many migrant workers from Central Asia, who were previously accessing the labour market semi-legally (Kubal, 2013): they possessed the administratively and formally easier-to-obtain patents, but were working outside the conditions specified in those permits (working for business establishments, companies and so on). These changes, combined with executive steps (Presidential Decree No. 1545, in force since 2004) making it easier for citizens of former USSR republics to acquire Russian citizenship, marked a significant transition in Russia's immigration law: from restricting immigration to importing labour and attracting more migrants.

The apparent simplicity of these legal measures belied the way in which they were bureaucratically administered, however. The confusing duality of the work permit vs. patent category was actually implicitly prolonged under the new 'patent-only' system. Despite the rhetoric of unification, two types of permits continued to be issued, authorising work for an individual (*fizicheskiye litsa*) or a business establishment (*yuridicheskiye litsa*) (Polyanina, 2015). And, whilst, under the 'old' system, the application for a patent required a fairly easy procedure, after January 2015, the new patent application had to be accompanied by a number of attachments – a medical insurance policy (valid for the duration of employment contract) and certificates of passing a set of state exams on the knowledge of the Russian language, knowledge of the history of Russia and 'basic' knowledge of legal system of the Russian Federation (Polyanina, 2015). In practice, it was difficult to fulfil these conditions, particularly obtaining the requested certificates and documents, within the prescribed timeframe of thirty days from arrival into the Russian Federation (Polyanina, 2015). This gave rise to a proliferation of various legally fictitious spaces (Reeves, 2015), where, under the veneer of formal legality, medical insurance policies were purchased, 'certification centres' were established, exam certificates issued and money exchanged hands as migrants tried not to miss the thirty-day deadline for legalisation (Chupik, 2015). These and various other 'grey schemes' ultimately exposed migrants to inconsistent and socially punitive law enforcement.

The alleged regularisation and liberalisation of the work permit system described above have, furthermore, been countered by other legislative initiatives in 2012 and 2013. These aimed to strengthen reliance on deportation and deportability (De Genova and Peutz, 2010; Reeves, 2015; Kubal, forthcoming) as a form of post-entry control (Kanstroom, 2000). Deportability – an uncertain socio-legal condition marked by the possibility of deportation (De Genova, 2002) – was realised in Russia through entry bar (*zapret na v'yezd*) legislation. Initially, a three-year entry bar was to be issued to anyone who had not left the territory of Russia within a thirty-day grace period following the expiry of their residence permit (No. 321-FZ of 30.12.2012, Law on the Rules of Entry and Exit from the Territory of RF). In July 2013, stricter amendments followed – the three-year entry bar was to be issued to foreign citizens who, within a period of three years, had committed two or more administrative offences (No 224-FZ of 23.07.2013, Law on the Rules of Entry and Exit from the

Territory of RF). Administrative offences included speeding or parking tickets or being caught crossing the street in the wrong place. Two of those offences forbade a person's entry into the Russian Federation for three years, or – if issued within the country – rendered a person effectively deportable. The number of people against whom the entry bar was issued increased over eightfold between 2013 and 2014, peaking at 1.7 million in February 2016 (Federal Migration Service, 2016), demonstrating that this has become a popular tool for migration management (Kubal, *forthcoming*).<sup>2</sup> What do these legislative changes tell us about the Russian immigration law regime and its 'rules of the game'? What are their consequences for migrants' everyday lives and livelihoods? How are these laws perceived, understood, experienced and 'made sense of' by migrants?

#### IV. Methods

My investigation of the Russian immigration law system, leading to conceptual analysis in terms of the spiral effect of the law (which follows in the later part of this paper), was empirically informed by a qualitative inquiry into the Russian immigration law and how it intersects with migrants' livelihoods. I spent over five months in Russia in 2014 and collected empirical data in a variety of settings.

I conducted participatory observation and closely observed the work of a number of Russian non-governmental organisations (NGOs), legal aid clinics and migration organisations (such as Migrant Trade Unions) that help immigrants in Russia with legal problems regarding status determination, residence and access to the labour market. The lawyers and members of these organisations also represent immigrants in courts and in disputes with employers or with state immigration agencies like the Federal Migration Service (FMS).<sup>3</sup> Throughout several months, I volunteered in these organisations in a variety of roles. I sometimes accompanied the clients during their reluctant visits to state immigration agencies, like the FMS, either to attend an interview or to clarify questions regarding their residence permits. I also shadowed the lawyers when they represented clients in domestic courts and assisted with writing submissions to the European Court of Human Rights in more serious cases.

Throughout these several months, I observed interactions between lawyers, employees of the NGOs and their clients. These daily observations, supplemented by interviews with a selected number of representatives of the NGOs, migrant organisations, legal professionals and lawyers, were informative about: (1) the grass-roots level implementation of the immigration law and everyday experiences of it, (2) the role these institutions play in mediating immigrants' access to justice in Russia and (3) the experiences of handling claims and complaints, their outcomes and consequences.

My observations in the NGOs were also supported by in-depth interviews with migrants themselves, sometimes in more formal settings (e.g. whilst accompanying them to the FMS offices in Moscow), sometimes less structured and less formal (including at social gatherings). I met my informants either as clients of the legal aid NGOs or via informal, snow-ball techniques. These

2 In principle the entry bar can be issued by a number of Russian state institutions (aside from the Federal Migration Service): the Ministry Internal Affairs, Federal Security Service, Ministry of Defence, Russian Financial Monitoring, External Intelligence Service, Ministry of Justice, Drug Control Federal Service, Federal Service on Surveillance for Consumer Rights protection and Human Well Being, and Federal Medical Agency. I am grateful to Malika Bahovadinova for pointing this out.

3 It is important to mention that after the article has been accepted for publication the Federal Migration Service (FMS) has been disbanded by the Presidential Decree of April 5, 2016 No. 156. The functions of the FMS have been transferred to the Main Directorate for Migration Affairs of the Russian Federation Ministry of Internal Affairs. This major institutional change does not significantly affect the conclusions of this paper.

observations and interviews were helpful in capturing the way in which migrants responded to the immigration regime and its requirements: When did they follow, when did they avoid it? What legal troubles did they face and how they were planning to address them? What did they think of the immigration law and how did they navigate around it in their daily lives? These interviews were less structured and rarely recorded.

Upon my return from fieldwork, I analysed my field notes using the grounded-theory approach, as a systematic procedure to generate theoretical insights, concepts and categories from empirical data (Glaser and Strauss, 1967). Although each migrant's story was slightly different, when I came to analyse their legal troubles and legal experiences, certain patterns and trends emerged from the data, leading me to formulate the concept of the spiral effect of the law.

There are different ways in which a researcher might engage with empirical data to make sense of it and draw out its conceptual, theoretical implications. The most popular method in qualitative research is to use direct quotations to illustrate certain points and arguments. In this paper, I have selected a single personal narrative, comprising a wide range of typical experiences, to illustrate the specific analysis. From a number of life stories describing migrants' experiences of the legal immigration system, I selected the case-study of Pulod. The narrative of his legal troubles (which started with an accusation of false immigration papers) is linear and follows Pulod from an encounter with the police at the Moscow metro through the different courts and immigration offices, and finally out of Russia. This case-study typifies the genealogy, processual character and everyday life effects of the spiral effect of the law.

## V. Pulod: the immigration law case-study

A twenty-eight-year-old Tajik man, Pulod, was one day stopped in the metro by the police. He had arrived in Moscow a couple of years previously to work in a small confectionary business; it was a job for which he had received training back in Tajikistan, he liked it and he was advancing well in his career. Of course, as with everyone, there were temporary delays in payments, but Pulod came to accept this as part of the general working conditions in Moscow. Overall, he was content with his job.

During the check, the police examined his passport and residence registration. The officers made allegations that his registration was not legitimate. Pulod was kept at a police station overnight and in the morning he was taken to one of the district courts on the charge of having false registration papers (under Article 18.8 Code of Administrative Offences, CAO). Pulod reported that, in the court, alongside him, there were eighteen or more people accused of the same immigration offences; all of them had also been kept at the police station overnight. The District Court judge seemed to hear their cases all at once – there was maybe a two-minute difference between delivering the various judgments.

The court accepted the police charges and found Pulod guilty of administrative and immigration offences, ordering a typical, triple sentence: a 5,000 RUB fine, an expulsion order and a five-year entry bar onto the territory of the Russian Federation, to be issued by the FMS. I had a chance to read the District Court judgment. It seemed to be a typically 'mass-produced' decision, many of which must have been issued on that day, the day before and probably the day after. I learned that district courts in Moscow, in particular, are inundated with immigration and administrative offences cases. If one looks closely at the text, at one point, the man appears correctly as a Tajik citizen, but further down his nationality changes Uzbek (probably the nationality of a person who was tried alongside Pulod, or shortly before).

Pulod was, however, certain that his registration and other documents were legitimate; they were provided to him by his current employer. He sought legal advice and was lucky to find a lawyer who was willing to take on his case pro bono. The lawyer advised Pulod to go to the FMS local field office and request a check of the exact status of his registration on the Central Database of the Registration of

Foreign Citizens.<sup>4</sup> The police checking migrants' documents on the street do not usually have access to the FMS database due to the legal division of responsibilities when it comes to immigration law enforcement. Immigration law (as opposed to other types of the law) lies clearly within the prerogatives of the FMS. Each time the police arrest someone whom they suspect of having false immigration papers, they should submit an enquiry to FMS to check the central database. However, as also in the case of Pulod, the police officers often act on their 'hunch' and, especially in the case of Central Asian migrants, they file the case directly at the District Court.

Pulod went to FMS; he stood in a long queue, but finally he received the information he was after. The FMS officer confirmed that his registration was on the database, and that it was valid and legitimate. The FMS officer himself expressed concerns over the court's decision in a private chat with Pulod and provided the Tajik migrant with a printout from their database confirming the validity of his registration, with a stamp certifying its legality. Based on this evidence, Pulod's lawyer prepared an appeal, which she then filed with the Moscow City Court.

I had the opportunity to accompany Pulod and his lawyer to the trial. The Moscow City Court, faced with the evidence from the FMS on which the appeal was based, annulled the earlier decision of the District Court. The hearing did not take longer than ten minutes. The judge familiarised herself with the evidence submitted, checked that all formal details were in order by asking a couple of questions of Pulod and his lawyer, and finally annulled Pulod's expulsion order. No FMS or police representatives were present at the trial.

Justice was served. But what were the effects of the court's decision, which had effectively legitimised Pulod's residence in Russia? This is when a new set of problems started revealing broader, more structural features of the Russian immigration law and practice, which I frame analytically in the next part of the paper as the 'spiral effect of the law'.

It is important to remember that Pulod originally received a triple sentence: a fine, an expulsion order (which the Moscow City Court overturned) and a five-year entry bar (*zapret na v'yezđ*). The entry bar needed to be removed from the FMS database to allow Pulod to legitimise his status in Russia and to reapply for a work permit or a patent. However, there was yet another problem that had to be considered: Pulod's current residence registration was due to expire before the court's decision would be communicated to the relevant immigration law-enforcement authorities responsible for the removal of the entry bar. Without a valid registration, Pulod was slipping back into illegality and could not renew any of his work permit documents.

The lawyer advised Pulod to enquire with the FMS about the possibility of removing the entry bar earlier, so that he could regularise his stay before the expiry of his registration. After all, the Moscow City Court had quashed the decision of the District Court. I accompanied Pulod to the FMS; he was asked to write a formal application and attach a reference letter from the Moscow City Court indicating the outcome of the case (not yet the formal judgment). The FMS officer confirmed that the entry bar would be removed in approximately one month's time. This, however, was well past the expiry of his current residence registration.

Was it therefore a Pyrrhic victory? Pulod, in the end, had to leave Russia for a minimum of ninety days because the formal long processing time for Moscow City Court judgments and equally long procedural delays on the part of FMS meant he could not regularise his immigration status. There was therefore no other option – in order not to slip into conditions of illegality, Pulod had to leave Russia hoping that, when it was time for him to come back, the entry bar would have been

4 ЦБД УИГ–TSBD UIG–Tsentral'nyy bank dannykh po uchetu inostrannykh grazhdan i lits bez grazhdanstva, vremennno prebyvayushchikh i vremennno ili postoyanno prozhivayushchikh v Rossiyskoy Federatsii. [Central database on the registration of foreign citizens and stateless persons temporarily staying and temporarily or permanently residing in the Russian Federation.]

lifted. I would put it even more strongly – Pulod had to leave Russia despite being acquitted of the alleged immigration offences by the Moscow City Court.

## VI. Spiral effect of the law

This case is illustrative of many of the immigration law and legal status troubles that migrants are facing in Russia. How best to frame and understand these different elements of the Russian legal environment? What are the ‘rules of the game’ according to which it operates? Immigration law and practice are characterised by complicated, multilevel rules, discretionary enforcement practices and an unclear division of responsibilities between different state and non-state agents, which mean that migrants have to negotiate their way constantly across different state borders on the inside (see Leerkes *et al.* 2013 for the US context).

My observations suggest that one could divide the Russian immigration rules and their respective enforcement practices into three categories. These are not legal rules, but more ‘rules of the game’ that characterise the ways in which the state law system operates in practice and is perceived to impact peoples’ lives:

- 1 positive rules and associated practices, setting the conditions on which legitimate residence status can be acquired,
- 2 rules and associated practices that censor wrongdoings and provide sanctions for breaching the positive rules (‘discipline and punish’ those who break the immigration law), as well as
- 3 rules and associated practices that enable migrants to regularise their status upon a temporary breach of the positive rules.

When one examines the positive rules that specify the conditions for legal status, the law appears fragmented, unenforceable and at times plainly contradictory. For example, there is an ever-present confusion over whether a residence registration is required when one is accessing a Russian labour market on the basis of an out-of-quota work permit (‘a patent’). The immigration law says that residence registration is always required, whilst an FMS policy document (known as *Trebovaniye RomodanovskogoI*, an internal circular by Konstantin Romodanovsky, the former Head of the Federal Migration Service in Russia) clearly specifies that no residence registration is necessary and that the patent presents sufficient evidence that a person not only works but also resides in Russia legally. What is unfortunate is that courts of both instances (district and city courts) issue judgments justifying both interpretations. The appeal courts had not, whilst I was carrying out my research in Moscow, clarified the law in this regard. The provisions setting out the legal requirements are, therefore, characterised by confusion, complexity and indeterminacy, encouraging legally ambiguous practices to flourish and set roots. As one lawyer told me:

‘I go to courts and represent migrants. In the past I won around 85 percent of registration cases for migrants with patents accused of false or no registration. I would defend them on the basis of the FMS policy document. Now with the new patents, judges are less likely to recognise this. But formally the policy was not amended or withdrawn, nor has it been clarified whether it extends to the new patents as well.’ (Immigration lawyer, female, 40, Russia)

The second sets of rules – rules and procedures sanctioning immigration law offences – are disproportionately well developed by comparison with positive rules, and reinforce one another. The Tajik migrant worker case-study has amply illustrated this: police who check migrants’ documents on the street and suspect invalid registration or lack of a work permit immediately direct cases to the court, even without sufficient evidence. The courts of the first instance, on all



too many occasions, agree with the police's suspicions. Due to the time pressure to process these cases quickly and effectively, migrants are often asked to sign a document declining their right to legal counsel, which many of them do (some under duress) (Troitsky, 2016). As many of the younger immigrants from Central Asia do not speak good Russian, if the court lacks an interpreter, one of the accused who seems to speak the language is called upon to interpret for the others. The FMS issues entry bars following the first-instance court judgments, even though these have not yet become final and enforceable; there is a ten-day period to appeal the District Court's decision to a City or Regional court.

Third, the rules and provisions for regularisation 'going back to law' are extremely limited, pointing towards their almost exceptional character. As they are rarely practised and invoked, they cannot readily be implemented, particularly as compared to the strength of the sanctions. They are thereby liable to give rise to procedural delays. As demonstrated in the Tajik migrant worker's case: even though his appeal was successful, this did not automatically overturn the negative effects of the previous decision. The route towards legalisation was fractured with time delays, which ultimately prevented him from renewing his work permit. In Pulod's own words:

'I cannot really understand the lack of a link between different state organs; once the police caught me they took me straight to the court, the court ruled in their favour, I received the expulsion order, a fine and the entry bar has been issued by the FMS. But they were wrong. The Moscow City court proved them wrong. Why is enforcing the court's decision now so difficult?'

The strength and working order of the second set of procedures and practices, disciplining and punishing the alleged immigration offences – especially when compared with the positive rules of compliance and the available legal remedies of regularisation – encourage the observation that the state, through its institutions, officials and practices, is more oriented towards punishing deviation (by penalising non-compliance) than clarifying the conditions for the basic compliance with immigration law, and ensuring that the law is fairly and evenly applied. The Tajik migrant worker case, which is typical of other examples of migrants struggling with their legal troubles in Moscow, amply demonstrates their experiences of a state that seems to focus on policing and punishing those who somehow did not manage to navigate their way through the complex legal environment, who gave up or who simply slipped through the procedures, sometimes due to no fault of their own. As another migrant explained:

'You happen not to fulfil one condition, you are a few days late with a tax payment on the patent, or the immigration clerk who took your papers misspelled your name or wrongly stated a date, and then it starts, like an avalanche. And one thing leads to another – and you suddenly find yourself in court, pleading guilty. And then all is left for you is to be illegal.' (Migrant worker, male, 31, Uzbekistan)

The inconsistent rules and procedures followed by different agencies lead to a situation in which sanctions can be applied and other negative consequences can arise for migrants, even when irregularity has not been proved and can still be challenged. Minor infringements are disproportionately sanctioned, going far beyond the ostensible purpose of the legal requirements. Paths for regularisation are scarce.

This uneven balance between the three sets of rules, practices and provisions results in the phenomenon of a 'spiral effect of the law'. Once even a small rule is broken, migrants find themselves breaking more and more rules, sometimes simply by their continued presence on the territory of the Russian Federation. The system appears to be designed in a way that the different

immigration provisions and requirements are intricately connected to one another so that a loss of one permit or a document has debilitating effects on attempts to renew other documents and can potentially lead to a person being stuck in a downward spiral towards irregularity. As one immigration lawyer put it:

'The refusal of patent or work permit makes it impossible to extend one's residence registration; the expired registration translates into a fine, expulsion order, and re-entry bar. The idea of regularizing one's status, righting the wrong, returning to the legal path is missing from peoples' experiences of law.' (Immigration lawyer, female, 40, Moscow)

The spiral effect of the law presents an analytical frame of the institutional image of law, as seen and experienced by people caught up in it. As illustrated by the Tajik migrant worker's case, the Moscow City Court judgment acquitting the man did not mean that his immigration problems were solved. By then, he found himself firmly in the systemic, spiral grip of the law from which it was impossible to extricate himself. One immigration lawyer explained to me the dynamics of this 'systemic grip':

'The more "in" they are the more difficult it is for me to do something to help. Once a migrant has been apprehended by the police on the street, I can act, but once they have spent the night at the police station or been taken to court there is this feeling that they *must have done* something wrong at some stage. It's difficult to come back from that.' (Immigration lawyer, female, 40, Moscow)

The spiral effect of the law does not refer to one institution, such as the courts and their punitive role in enforcing the immigration law or the FMS issuing entry bars, but to the whole system of immigration law experienced as social reality, where decisions – even positive ones, like acquittals – in the process of trickling down through the different bureaucratic layers, become blurred and lose their significance, as this is how the system is used to operate. This was a widely shared feeling among many migrants: 'I have sometimes this feeling of throwing it all away, all these documents, receipts, applications, judgments and simply getting on with my life. The law, these institutions they are like a barrier, a heavy stone' (Migrant worker, male, 43, Uzbekistan).

## VII. Drawing on comparison to better understand Russia: legal violence

Is the spiral effect of the law specific to Russia only? Is it yet another example of Russia's exceptionalism? Or can analogous processes also be encountered elsewhere, in other major migration-receiving jurisdictions? In order to better understand seemingly localised phenomena and to communicate one's observations of 'what happens within', a comparative perspective is inevitable.

Analogies with what is familiar are commonly drawn by those who undertake qualitative empirical research, both to highlight common features and to emphasise the depth of difference (Pirie, 2014). An unexpected sense of familiarity between cases in different socio-legal contexts can here be as revealing as a deliberate, though epistemologically problematic, judgment of 'sameness'. The act of comparison is undertaken whilst describing and simultaneously translating the phenomena observed, but also whilst seeking patterns and continuities in socio-legal forms (Creutzfeldt *et al.*, this issue).

Coutin, Maurer and Yngvesson (2002) have captured the ways in which global transformations in the movement of people, financial assets and transnational families are legitimated by reconfigurations in jurisdictions, transparency and sovereignty. They do this by demonstrating the unexpected, if not unlikely, analogies in the lives of immigrants, transnationally adopted children and offshore businesses in very different settings. Their comparison between case-studies of El

Salvadoran undocumented immigrants in the US, of South Korean, Chilean and Ethiopian children adopted by Swedish families, as well as of offshore businesses operating in the Caribbean demonstrates the fragmented and porous boundaries between the legitimate and the illegitimate in global processes – ‘issuing and denying documents, sealing and opening records, regulating and criminalizing transactions, and repudiating and claiming countries and persons’ (Coutin *et al.*, 2002, p. 840). Similarly, Castles (2010), reviewing comparatively processes of labour market segmentation and their relationships to international migration in three local-level case-studies – in New York City, Berlin’s construction industry and London’s garment industry – observes that, whilst ‘each of the above cases has specific characteristics, it also reveals recurring patterns that show the connection between specific experiences and global shifts ... between labour force change and processes of social transformation in both North and South’ (Castles, 2010, p. 1582). These two works invite further comparative inquiries, not only into the law’s presence in various jurisdictions, but also across the different contexts of analysis and socio-legal studies.

The concept of legal violence results from Menjívar and Abrego’s (2012) qualitative analysis of migrants’ experiences of the state law in the US ‘that makes visible different forms of violence inherent in the implementation of the law, particularly when these become normalized and accepted’ (Menjívar and Abrego, 2012, p. 1381). To theorise about legal violence, Menjívar and Abrego focus on the law’s underside: the ‘various, mutually reinforcing forms of violence that the law makes possible and amplifies’ (Menjívar and Abrego, 2012, p. 1384). They link particular immigration laws and their enforcement to specific effects in three areas of migrants’ lives: family, work and school. These three sites constitute ‘vital spheres of life through which immigrants come into contact with institutions in the wider society’ and through which they experience the effects of immigration law (Menjívar and Abrego, 2012, p. 1384). Menjívar and Abrego use the concept of ‘legal violence’ to capture the ‘normalized but cumulatively injurious effects of the law’ that is ‘not only exclusionary but also generates violent effects for individual immigrants and their families, affecting everyday lives and long-term incorporation processes’ (Menjívar and Abrego, 2012, p. 1380).

Menjívar and Abrego argue that the purpose of legal violence, beyond it being a tool for theorising the place of law in everyday life, is to offer an analytical lens to inspire further comparative work with migrants in ‘unresolved legal statuses’ around the world (Menjívar and Abrego, 2012, p. 1381). My paper responds to this invitation, yet with certain reservations. The empirical work of the effects of immigration law in Russia demonstrates that the application of the theoretical lens of legal violence cannot be straightforward, as migrants’ experiences in the US and Russia may not be directly intelligible due to the differences in the legal structures of the immigration regime. Legal violence, as a middle-range theoretical concept, might well reflect the conditions and experiences faced by Central Americans in the US, but its application into Russian context had to be preceded by careful and methodical empirical filtering and localisation – that is, adapting the concept to a specific locale and its legal tradition.

On the one hand, one can see interesting parallels between the concept of ‘legal violence’ and the ‘spiral effect of the law’ that I observed in the Russian context. The legal violence exposes the contradictions on which the formulation and implementation of immigration law rests: the various laws at federal, state and local levels today seek to punish the behaviour of undocumented immigrants but at the same time push them to spaces outside the law (Menjívar and Abrego, 2012, p. 1385). The mechanisms that ‘push migrants to spaces outside the law’ are similar to those that, in the Russian context, result in the spiral effect of the law. This shared experience of immigration law enforcement has been captured by one of my interviewees: ‘And one thing leads to another– and you suddenly find yourself in court, pleading guilty. And then all is left for you is to be illegal’ (Migrant worker, male, 31, Uzbekistan). The source of these experiences of immigration law in Russia stems from the imbalance between the positive rules and legal

remedies on the one hand and the sanctioning and punitive techniques and legal procedures on the other. In the US context, it is being realised under the ‘enforcement first’ approach to immigration law (Aranda *et al.*, 2014).

On the other hand, the concept that legal violence rests firmly on the premise of criminalisation of the immigration law therefore comes short of explaining the punitive effects of the law in a non-criminal context. Menjívar and Abrego (2012) argue that the origins of the violent effects of the law they describe could be seen in the recent convergence of criminal and immigration law. The American immigration law, combining the federal, the state and local-level laws and ordinances, results in a multipronged, multilayered immigration regime, where state- and local-level legislation amplifies the effects of federal laws, creating a ‘force multiplier’ or the ‘Poli-migra’ (Menjívar, 2014b, p. 1809). The ‘Poli-migra’ system consists of an intricate and complex network of immigration legislation and enforcement practices, aided by a vast technological infrastructure and state bureaucracy, in which multiple ‘migras’ and strategies to govern them seem to co-exist and reinforce each other in a highly articulated fashion (Menjívar, 2014b). Measures designed to combat illegal migration, to limit immigrants’ access to social services, to make the lives of immigrants difficult and to ‘create a hostile climate for immigrants with an aim of enforcement’ constitute a form of immigration law (Cleaveland and Ihara, 2012; Menjívar, 2014b, p. 1808). This overly criminalised (Chacón, 2012) immigration regime produces immediate effects of social suffering (Menjívar and Abrego, 2012, p. 1384) and results in social, psychological and in some cases physical harm for immigrants, regardless of their legal status – whether undocumented or legal permanent residents (Aranda *et al.*, 2014).

Russian immigration law, in contrast to the British (Aliverti, 2012) or the American system (Chacón, 2009; Romero, 2010), has not been formally criminalised and still rests within the domain of administrative law. Whilst the immigration law in Russia remains, therefore, formally within the remit of the administrative law, the spiral effect of the law phenomenon demonstrates how certain elements of immigration law (especially if analysed from the perspective of severity and impact on migrants’ lives) actually deliver quasi-criminal sanctions and forms of punishment.

Whilst therefore the spiral effect of the law better reflects migrants’ experiences of the state immigration law in Russia, this does not prevent the researcher from drawing comparative analogies between the concepts. Together, they enrich the theoretical repertoire and toolbox of concepts (Nealon and Giroux, 2012) with which to approach the everyday effects of an increasingly fragmented and arbitrary field of immigration law on its subjects. These concepts capture the cumulatively injurious effects of the laws, as well as offer a critique of the limited legalisation provisions that leave migrants in the firm ‘spiral grip of the law’ towards illegality (from which it is difficult to extricate oneself). Whilst the legal structures and practices in the US and Russia remain very different, it is remarkable that the experiences of migrants facing the law can be so similar. This analysis therefore suggests that there are important commonalities between these otherwise dissimilar contexts that could be further explored.

## VIII. Conclusion

This paper, based on extensive qualitative empirical research, proposed a conceptual understanding of the everyday life effects of the immigration law in Russia. Weaving comparative links between the ‘spiral effect of the law’ and ‘legal violence’, it relied on concepts as the currency and basis of social understanding of law (Galligan, 2015). Given the critical tone of the ‘spiral effect of the law’ as well as ‘legal violence’, the appreciation of these commonalities is not at all complimentary. It reveals unexpected similarities around the perpetuation of legally ambiguous forms of migrant incorporation, which produce injurious effects whilst paying lip service to the discourses of human rights, governance, order and legality (see Kubal, 2013; 2014).

On the one hand, the idea this paper puts forward is not new, as 'no one can understand their local law by focusing solely on municipal domestic law of a single jurisdiction or nation state' (Twining, 1999, p.221). In the current cosmopolitan era, the comparative perspective seems, therefore, necessary to provide a context for more particular or localised enquiries and activities (Twining, 1999, p. 222).

On the other hand, however, my study is one of the first to consider Russia from a comparative perspective, recognising its place in the global migration processes, not only in terms of its sheer volume of migrants, but also in terms of the legal mechanisms and, in particular, the migrants' own experiences. This approach would be anathema to hard-line Sovietologists, to whom Soviet socialist law succeeded in shaping 'a legal mentality, a legal vocabulary and a system of legal concepts that have been exceedingly difficult to dislodge, adapt or replace' (Butler, 2005, p. 145), let alone to compare. The modern Russia as a successor of the Soviet past was, therefore, arguably unintelligible to international comparative research, which inevitably contributed to its further isolation. This paper takes a step towards redressing this image.

Naturally, these observations raise the question of what could explain the unexpected similarities. One possible explanation is the fact that the world is interconnected and certain phenomena operate on a global sphere, especially in the realm of migration governance: state responses to the global movements of people. What was once seemingly quite local and disconnected from larger events is now clearly interconnected with persons, places and events on the global level (Sarat and Kearns, 1995). The forces of globalisation in their renewed velocity and contradictory developments have, on many occasions, been invoked as presenting some sharp challenges to the discipline of law (Friedman, 2004; Twining, 2005; von Benda-Beckman, 2002, p. 107), indicating no universal developments towards more connectedness or convergence. However, it is exactly the global perspective that allows the comparative project to thrive, with anthropological and sociological studies of law in specific contexts often revealing unexpected similarities between legal processes and familiar Western forms (Pirie, 2014). In that sense, my paper responds to Twining's call, put forward in his seminal paper on 'Globalisation and Comparative Law' (1999), to go beyond the exclusive focus on Western societies and incorporate a wider perspective and detailed consideration of 'the East' in comparative legal studies.

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