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**RUSSIA, FEDERALISM, AND  
POLITICAL STABILITY**

April, 1995

Peter C. Ordeshook

Working Paper No. 156

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*Russia, Federalism, and Political Stability*

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This essay has two parts -- a text in English and one in Russian. The Russian version is a translation of a slightly abbreviated form of the English text and will be published sometime this year in Russia (Siberian Academy of Science's *Regional Economics and Sociology*). The English version, although too long for publication in any American academic journal, will be the basis for several manuscripts, including a 20 page essay for the volume to be published as the outgrowth of the Workshop on Regional Constitutions held in Moscow, March 13-17 of this year. The essential purpose of this manuscript is two-fold. First, to show the great diversity in U.S. state constitutions to a Russian audience of regional administrators and legislators and to argue that such documents, although not thought of as normal legislation, are unlike national constitutions and, in fact, serve a somewhat different purpose. The objective here is to convince those who might prepare equivalent documents (charters) for Russia's regions that they need not think of their enterprise as requiring the same content as currently characterizes the Russian Federation constitution. Second, the manuscript argues that federal stability derives from constitutional provisions (federal and regional) other than those dealing explicitly with federal relations. Stability derives as well from the role and organizational structure of political parties, which, in turn, derives from national and regional election laws and from the extent to which regional and local elections are meaningful -- the extent to which the offices being filled by such elections control real resources. Insofar as we should be concerned with the stability of the Russian Federation in the long term as well as the short term, then, the manuscript tries to shift attention from immediate policy disputes and formal federal relations to the overall design of political institutions.

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## **Russia. Federalism. and Political Stability<sup>1</sup>**

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### **Part I: THE FUNDAMENTALS OF STABLE FEDERALISM**

*If a nation, part of a nation, or more than one nation within the Five Nations should in any way endeavor to destroy the Great Peace by neglect or violating its laws or resolve to destroy the Confederacy, such a nation or nations shall be deemed guilty of treason and called enemies of the Confederacy and the Great Peace. (Constitution of the Iroquois Confederation, ca. 1300)<sup>2</sup>*

The treaty signed in February 1994 between Moscow and Kazan is taken by some as prefacing the eventual dissolution of the Russian Federation, and by others as a model that heralds a new relationship between Moscow and the Federation's federal subjects. It may be true that agreeing to agree is an essential first step, and that the treaty signals an important departure from the unitary state form that has otherwise characterized Russia. We are less sanguine, though, as to whether such agreements can provide useful guarantees about the delineation of authority between center and periphery or whether they will engender political stability. For Russia to be a stable federation that allows each of its parts to realize the benefits of decentralized federalism, its leaders must abandon the view that they are participants in a game in which the players must allocate power and authority and define the meaning of autonomy and sovereignty through bilateral or multilateral negotiation. Instead, we need to look at the incentives of political leaders, and see how those incentives can be influenced by both federal and regional constitutions so as to engender an integrated political process in which Moscow is transformed from being an adversary of the regions to their partner in political-economic development. Treaties and the like cannot change these incentives, and they are enforceable only if they are consistent with preexisting incentives. Here we argue that preexisting incentives do not give us much cause for optimism: instead, the key to such a transformation lies in the

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<sup>1</sup> Support for preparation of this manuscript, delivered at the Workshop on Regional Constitutions, Moscow, Russia, March 13-17, was generously provided by IRIS, University of Maryland.

<sup>2</sup> *The Constitution of the Five Nations* (or "The Iroquois Book of the Great Law"), New York State Museum Bulletin, No. 184 (April 1, 1916), Albany, N.Y.: The University of the State of New York.

shaping of political competition within regions and the center, and in the incentives we create for the formation of political parties of one type rather than another.

### 1. Introduction

Erecting the institutions of a democratic federal state is one of the daunting tasks confronting Russia, if only because of the fear that the Federation is threatened by the same centrifugal forces that undermined the Soviet Union. There is, of course, an understanding that, to make markets more efficient, many of the activities of the state need to be decentralized.<sup>3</sup> And for Russia in particular, federal decentralization is desirable not only because Russia's regions demand it or because economists speak loudly of its advantages, but also because it provides regions with a protection against political uncertainties in Moscow and because it promises a procedural solution to several contentious issues such as regional expenditure and tax equalization. These consequences of federalism are not unimportant. Decentralized power, if properly implemented, allows federal subjects to resist the illegitimate actions of the center and makes political instability at the center less catastrophic for the country as a whole. And the institutions of a well-designed federal state can give political elites a means and an incentive to reach mutually beneficial outcomes as well as an incentive to sustain the viability of national constitutional arrangements.

The political and economic decentralization that define a federal state, though, are also seen as threats. Events in Chechnya merely illustrate extreme possibilities. We cannot wholly discount the view that the ad hoc decentralization taking place more quietly throughout the Federation can have even more lasting and detrimental impacts. Without plan or rationale, such decentralization determines people's fundamental long-term interests and motives, encourages a struggle for power that need not yield a rational resolution, and by stripping the center of its authority, erodes any rationale for the center to exist in the first place.

These concerns become focused when discussing regional constitutions and charters. It is here that the prerogatives of national versus regional governments are addressed and it is here that we must wrestle with such issues as the design of local self-government, the unity of Russia's judicial system, and the supremacy of federal law. Indeed, the subject of federalism occasions innumerable crucial questions about intergovernmental relations. What interpretation should we give to a region or republic's declaration of sovereignty?<sup>4</sup> How should the state's

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<sup>3</sup> The classic arguments for federal decentralization with respect to market efficiency are offered by Friedrich Hayak, "The Economic Conditions of Interstate Federalism," reprinted in *Individualism and the Economic Order* (Chicago, University of Chicago Press, 1939) and *Constitutional Liberty* (Chicago: Univ. of Chicago Press, 1960), and Charles Tiebout, "A Pure Theory of Local Expenditures," *Journal of Political Economy*, 64, 416-24.

<sup>4</sup> For discussion of the legal definitions see Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination* (Philadelphia: University of Pennsylvania Press, 1990). For the classic statement of the state sovereignty position see John C. Calhoun, 1853, *A Disquisition on Government* (C. Gordon Post, ed. Indianapolis: Bobbs-Merrill, 1953).

taxing authority be allocated over levels of government? Who should fund and administer the social services that privatized firms had previously provided? What control will Moscow exercise over regional administrators and bureaucrats? If regions are to have separate constitutions, who should write and who should approve them, and what principles should guide their design? There are also some more general questions that require answers. What evidence is there that federal institutions facilitate political stability? Do the experiences of countries like the United States, Canada, Germany, Switzerland, Czechoslovakia, and Yugoslavia offer any lessons for the Russian Federation? Are there methodologies that can help us identify the federal forms that are best suited to Russia's circumstances? Does the concept of a "united and indivisible Russia" or the demands for a "strong central hand" contradict basic principles of federalism. How are bargains between the center and units of the Federation enforced? What role does economics or ethnicity play in the stability of federal states and how might the institutions of federalism resolve or exacerbate domestic conflict?

One question we will not ask here is whether Russia should be a federal or a unitary state. We assume it will be federal. We do this, though, not because we predict it will be federal but simply because that is the stated aim of its national constitution. There are, though reasons for supposing that Russia will be federal in name only or federal only in the sense that Mexico is formally a federation. On the one hand, as Table 1 suggests, Russia already looks much like other federal states in terms of the sharing of tax revenues between central and regional governments. On the other hand, Russia's new constitution at times seems more consonant with a unitary state than with a federal one.

- Although Article 5 of that constitution proclaims that all federal subjects have equal status, the authorities in the Kremlin resist the preparation of regional charters (constitutions) that parallel the constitutions prepared by Russia's republics for themselves. Appealing to Article 71(c) and its provision that the "regulation and protection" of individual rights is the exclusive jurisdiction of federal authorities, regions are told that bills of rights like those in republic constitutions are out of place in their charters. Ignoring the fact that rights regulate the state and not vice-versa and that the supremacy of federal law and the federal constitution preclude having regional bills of rights restrict individual freedoms, authorities in Moscow are nevertheless concerned that autonomous regions in particular will use such provisions to advantage indigenous ethnic minorities, and that those provisions will set the stage for the regulation of rights independent of Moscow.
- Article 72, which identifies the policies that fall under the jurisdiction of both national and regional governments, and Article 71, which identifies the things that are the exclusive jurisdiction of the national government, are virtually all-encompassing. Both articles, then, give Moscow a constitutional excuse to regulate or become involved in any public policy issue, thereby rendering Article 73 -- the RF Constitution's residual powers clause -- essentially meaningless. Regional leaders, then, are uncertain as to whether their constitutions and charters should address any specific program or policy

**Table 1: Central Government's Share of Total Tax Receipts<sup>5</sup>**

Unitary	Federal	Central Gvt.'s Share (%)
Netherlands		98
Israel		96
Italy		96
Belgium		93
New Zealand		93
Ireland		92
France		88
Britain		87
Iceland		83
Luxembourg		82
	Australia	80
Denmark		71
Finland		70
	Austria	70
Norway		70
Japan		65
Sweden		62
	United States	57
	<b>RUSSIA</b>	<b>56</b>
	Germany	51
	Canada	50
	Switzerland	41

such as education, pensions, regional debt, and so on, which have largely become their responsibility as Moscow seeks to formulate a balanced federal budget by passing funding responsibilities on to the regions.

- Article 96.2, takes the method of election of regional representatives to the national legislature, including the Federation Council, out of the hands of regional governments and, in fact, leaves open the possibility that the Federation Council, like the Canadian Senate, will be appointed by authorities in Moscow.

<sup>5</sup> This table is adapted from Arendt Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty One Countries* (New Haven: Yale Univ. Press, 1984), 178. Data are taken from *Revenue Statistics of OCED Member Countries, 1965-1980* (Paris, 1981). Data for Russia are from Christine I. Wallich, ed. *Russia and the Challenges of Fiscal Federalism* (Washington, D.C.: World Bank, 1994), p. 172, and concern only the year 1992.

- Article 77.2's provision that "federal executive bodies and the bodies of executive authority of the members of the Russian Federation shall form a single system of executive authority" makes it unclear whether regional charters can establish executive branches of government that are answerable solely or even primarily to regional legislative and judicial authorities.
- Article 118.3's provision that "the judicial system of the Russian Federation shall be established by the Constitution of the RF and federal constitutional law" leaves regions uncertain about how to establish balanced regional governments -- governmental structures with a tripartite divisions of power (executive, legislative, and judicial). Absent the authority to establish regional judicial systems, regions cannot see clearly how to balance powers between executive and legislative branches.
- Although Article 66.2 of the RF constitution appears to place the drafting and implementation of regional charters in the hands of regional legislative bodies, there is considerable room for alternative interpretations over the role other federal authorities can or should play in this process. There seems little dispute that such charters should be ratified by local referenda. However, the Kremlin wants to oversee the drafting process and want to be empowered, along with the Federation Council, to pass final judgement on whatever documents are prepared. Although there does not appear to be any explicit constitutional provision that gives the president or the Federation Council a formal role in this process, the non-federal character of various parts of the constitution might, nevertheless, be used by Moscow to assert its authority.
- Article 85.2, which allows the President of the Russian Federation "to suspend the acts of executive bodies of RF members if they contradict the Constitution of the RF, federal laws or the international obligations of the RF" not only gives the president general judicial authority and blurs the separation of powers at the national level, it also leaves regional leaders uncertain as to whether they in fact have any overall autonomy.

These are not inconsiderable roadblocks to the formation of a meaningful democratic federal state. However, they need not be insurmountable: they can be modified by court interpretation, by federal legislation, and, as we argue later, most importantly by the form and function of regional and national political parties. Thus, with understanding the constraints established by the Russian Federation constitution, the central question for us is: how do we fashion federalism in Russia to encourage efficient markets and political stability? How do we design a federal state in which the central authority has the power to meet its obligations but which does not at the same time use that power to subvert the legitimate autonomy of federal subjects?<sup>6</sup>

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<sup>6</sup> For a discussion that places this issue in sharp focus with respect to the evolution of federal principles in England see Barry R. Weingast, "Constitutions as Governance Structures: The Political Foundations of Secure Markets," *Journal of Institutional and Theoretical Economics*, 149 (1); 286-311.

We can begin by noting that a true democratic federal state consists of a government in which federal subjects possess meaningful autonomy with respect to issues that matter to people generally and in which political elites at all levels achieve a consensus on some "rules of the game." The basic elements of those rules are these:

- A national constitution that guarantees to the residents of all federal subjects a democratic system of government, since a political system cannot be democratic only in parts (e.g., Art. 28 of the German Basic Law, Art. IV.4 of the U.S. Const.).
- A national constitution that prohibits trade barriers across federal subjects, otherwise we cannot realize the economies of scale afforded by a national market (e.g., Art. I.10 of the U.S. Const., Art. 74.1 of the RF Const.)
- Courts that can enforce contracts throughout the federation and agreements between the center and regions, because non-enforcement threatens economic efficiency and engenders dangerous political competition among regions.
- Regional constitutions that guarantee the enforcement of the constitutional laws of all other regions and that recognize the obligation of contracts throughout the federation (e.g., Art. I.10 and Art. IV.1 of the U.S. Const., Sect. 118 of the Const. Act of Australia).
- National courts with jurisdiction over lower and regional courts, because federations cannot function with contradictory judicial systems.
- A national constitution that proscribes the authority of the federal government *in general terms* so as to give guidance to the courts when adjudicating between the central and regional governments (e.g., Art. I.9 of the U.S. Const., Sects. 99 and 100 of the Const. Act of Australia).
- Federal subjects with representation in the national parliament, because we want national and regional governments to function as a whole rather than as adversaries.
- National and regional constitutions that adhere to the supremacy of federal law, because we cannot imagine a viable state in which regional governments fashion laws that explicitly or implicitly allow them to secede from the federation or that contradict the laws of the national government or other regions (e.g., Articles 30, 31, 37, and 70 of the German Basic Law, Art. VI of the U.S. Const., Sections 5 and 109 of the Const. Act of Australia, Articles 4.2 and 76.5 of the RF Const.).

This last item is critical, but it might seem that by including it we underestimate the dangers of authoritarian rule from the center or that we have sided against the aspirations of Russia's regions and republics and with those who prefer that Russia be a unitary state. It is also evident that, for Russia at least, agreement on these principles has not yet been reached. Thus, President Mintimer Shaymiyev of Tatarstan can say, when discussing the meaning of the Moscow-Kazan treaty, "Kazan has the right to demand adjustment of certain articles of the federal constitution to its own ... [and that] Tatarstan will be empowered to raise the question of the alignment of

particular articles of the Russian constitution with its own constitution."<sup>7</sup> Our argument for supremacy, though, does not derive from any sharp disagreement with this view. Rather, it derives in part from the fact that, without general acceptance of at least *the principle of* supremacy (and the legitimacy of a Constitutional Court to negate acts and laws that violate it), regions cannot avoid incessant conflict with the center, and that defections from cooperation and coordination will necessarily occur and undermine the essential purpose of federalism.

Our view of supremacy, though, should not be interpreted to mean that regional and republic laws cannot be *de facto* supreme in certain policy domains. However, rather than trying to fix domains in the cement of constitutions or "treaties," those domains can only be defined and redefined through some ongoing political process. Indeed, trying to specify those domains constitutionally is a practical impossibility. No matter how carefully we craft our words or how many sub-agreements we attach to constitutions and treaties, there is always room for one level of government or the other to claim that the policy or issue in question falls under its jurisdiction. And even if we believe that we can overcome this difficulty, changing circumstances, technology, and ideology would require the continual reappraisal of agreements. Even after two hundred years, the form of the American federation and the relationship of states to the government in Washington are the subject of lively debate on the floor of Congress and in the chambers of the U.S. Supreme Court (see Tables 3 and 4 in Section 4). Neither treaties nor constitutions can provide a permanent resolution of matters. We may imbed certain protections in them against expropriatory taxation;<sup>8</sup> we may grant regions certain rights such as the right to tax, or the right to benefit from the natural resources on their territory. But supremacy is less threatening when it is proclaimed only in the context of general constitutional principles that guide the basic construction of the state. Ultimately, the full consequences of federal supremacy and the meaning of regional autonomy can be resolved only as part of a country's ongoing politics, and reinterpreted, if need be, as part of its normal political process.

Thus, although we support the principle of supremacy, we also accept the idea that federal subjects have legitimate claims to authority and autonomy. The great trick of federal institutional design, then, is establishing a state in which all federal subjects can protect their autonomy but in which all find it in their self-interest to accede to the supremacy of federal law so that the benefits of federation can be realized by all. Thus, how Russia's regions and republics can protect these claims, adjust them to changing circumstances, and at the same time maintain stable federal institutional arrangements, is the primary issue this essay tries to address. Our central theme is that state policies and governmental performance with respect to the federal principles listed above will depend only partially on the formal provisions authored by

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<sup>7</sup> Quoted in FIBS daily report, August 4, 1994.

<sup>8</sup> The U.S. Constitution, for example, prohibits the federal government to lay taxes or duties on articles exported from any state, to give preference "to the ports of one state over those of another," or, until the passage of the Sixteenth Amendment allowing an income tax, to tax on any basis other than in proportion to population (Article I, section 9).

parliament or ministries or offered by various agreements, "treaties" and the like. More important is the way we structure the incentives of those elites who can obstruct or facilitate the practical implementation of policy. These incentives depend in turn on how we structure political competition between parliament and the president, and, through the design of regional constitutions, on what forms of political competition emerge within the republics and regions of the Federation. This competition will dictate the role of political parties in Russia, which, in turn, will determine the extent to which political processes unify the Russian state or evolve to merely exacerbate the competition between center and periphery.

This essay proceeds as follows. Part I focuses on the ways in which federal systems are rendered stable. In the next section, Section 2, we examine the type of bargain that must be struck between center and periphery in order to maintain a stable democratic federation, and in Section 3 we consider some elementary hypotheses about federalism that might guide the design of such a state. Section 4 examines in the abstract how the federal bargain is maintained. It is here that we argue that, rather than focus on the details of agreements that might be reached between center and periphery, an understanding of parties and political competition is critical to predicting a federal state's performance. Section 5 looks at some of the history of the American federation in order to illustrate the importance of political parties and, thus, of election laws and constitutional structures. Part II of this essay focuses on regional constitutions and charters. With full recognition of the fact that Russia's circumstances differ greatly from America's, both today and in the past, Section 6 surveys the content of state constitutions in the United States to both illustrate the nature of the federal bargain that can be struck in a federation, and to gain a better sense of the types of provisions that are most usefully included in regional charters and constitutions. Finally, using Tatarstan's new constitution to focus our discussion, we consider what general lessons about regional constitutional design are implied by our survey of U.S. state constitutions and our view of the sources of federal stability.

## 2. The Fundamental Logic of Federalism

To understand the essence of our reservations about the role that treaties and the like can play in achieving stability, we must turn first to the basic logic of federal governmental design. We can begin, then, by noting that in its ideal form, a federation is much like an alliance in which federal subjects transfer some of their sovereignty to a central authority and empower it to coerce them so they can realize benefits they cannot realize if they act independently.<sup>9</sup>

To see the essence of the problem that alliance and federation formation tries to solve, consider a situation in which if each of some number of autonomous states contributes, say, 100 (billion rubles or whatever) to some common fund for environmental protection, each realizes a benefit of 150. If none of them makes such a contribution, each benefits 0. Thus, the net

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<sup>9</sup> For elaboration of the relationship between federations, alliances, and other international organizations, see, for example, Peter H. Rohn, "A Legal Theory of International Organization," *Milletterarasi Munasebetler Turk Yilligi (The Turkish Yearbook of International Relations)*, 5 (1964), 19-53.

benefit to each of cooperation is 50. Suppose, though, that if one of them refuses to contribute (and pollutes as before), the net benefit to each is degraded to 45 whereas the benefit to the defecting state increases to 145 -- it can now free ride on the efforts of others since it cannot be excluded from "consuming" the environmental protection provided by them and it saves paying 100. However, this calculation applies to all federal subjects, so, although cooperation is mutually beneficial, each has an incentive to defect. In fact, if net benefits continue to decline as additional states defect, then we can reach a point in which the net benefits of those who adhere to the agreement become negative. Thus, each state can reason as follows: 'Although I gain if everyone fulfills their part of the bargain, I gain more if I defect. Moreover, I would be a fool to contribute if others defect, and since everyone will reason as I do, I should defect.' Understanding this problem, the states who are part of the original agreement need to establish a mechanism whereby they can sanction any defection, and, in fact, they should be able to agree unanimously to establish such sanctions and a sanctioning body.<sup>10</sup>

Our example also illustrates a second problem coordinated action must overcome. Notice that each state in that example can legitimately claim that its efforts generate a benefit of 5 units to every other state. Thus, if there are, say, 20 such states, then when negotiating "fairness" or when demanding compensation from the center for its contribution, each can argue for full reimbursement -- since 19 other states will each lose 5 units of benefit, the 20th can "legitimately" claim up to 95 units of transfer from the federal government. However, if all states do this, then no compensation is possible and no collective benefit is realized. Thus, everyone has an incentive not only to sanction defections or extortion, but also to develop a sanctioning body that can resist the demands and threats of individual states.

Alliances, of course, are not normally concerned with environmental matters. The usual benefit that concerns states when forming an alliance is collective security, and compliance in it is enforced commonly by a single hegemonic power (the United States in the case of NATO, the USSR in the case of the Warsaw pact) that can either withdraw the protection afforded by alliance membership or, as with Hungary in 1956 and Czechoslovakia in 1968, can sanction defection by force.<sup>11</sup> Absent such a power, alliances need to be strengthened through the creation of some central authority. Thus, the creation of a strong national government and transformation of the United States from a weak confederation (alliance) to a federation with the ratification of its constitution in 1788 was a response, in part, to the fear that its western territories (Kentucky, Tennessee) might side with Spain owing to Spain's control of the

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<sup>10</sup> For elaborations of this argument see Mancur Olson, *The Logic of Collective Action* (Cambridge: Harvard University Press, 1965) and John Muller, *Public Choice* (Cambridge: Cambridge University Press, 1966).

<sup>11</sup> That same benefit is a goal of most federations. Indeed, aside from federations put in place by colonial powers (e.g., Nigeria and India) or that evolved from some expansive imperial power (e.g., the Soviet Union and Russia), the primary impetus to confederation has been a common external military threat. See William H. Riker, *Federalism: Origin, Operation, Significance* (Boston: Little Brown: 1964).

Mississippi and that the northeastern states might seek realliance with Britain owing to their international commercial interests and Britain's control of the seas.<sup>12</sup>

But while federations, like alliances, may originate with a military threat, federations are also concerned with a vast range of economic policies that require coordinated action, such as currency and debt control, inter-state trade, and reciprocity in the recognition of the obligation of contracts. Put simply, once the institutions of federalism are in place to take care of military issues, it is only sensible to use that same structure to realize those other benefits that require coordinated action. This expanded domain poses both risks and potential benefits. The risk of expanded domain is that it allows a defection with respect to one policy to 'contaminate' cooperation on others. The potential benefits, though, are twofold:

First, a defection in one domain can be sanctioned by policies in another, thereby rendering overall compliance easier to achieve. Second, members of the federation can negotiate across policies to facilitate the realization of programs that are deemed 'fair' overall.

Expanding a federation's policy domain not only expands the possibilities for useful coordination, but it also gives each federal subject as well as the center increased opportunities to punish defectors from cooperation. Thus, sanctions need not merely take the pecuniary form of withholding subsidies or revenue transfers; they can also include exclusion from participation in environmental projects, in international trade delegations, and so on. With respect to the second benefit, one of the common errors made in the search for a viable federal arrangement is to focus on a single issue such as tax or expenditure equalization. Doing so merely diminishes the opportunities to reach a mutually beneficial resolution of disputes that trading across issues allows. Thus, while one region might benefit from a direct subsidy, another might be compensated by the facilitation of trade with foreign states, while another benefits from the regulation of pollution generated by some fourth federal subject.<sup>13</sup>

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<sup>12</sup> Riker, *ibid.*

<sup>13</sup> There is, perhaps, no clearer example of trading across issues than what occurred in the selection of Washington D.C. as the capital of the United States. Southern states, and especially James Madison of Virginia, wanted the capital moved from New York to the south, preferably Virginia. At the same time, Alexander Hamilton of New York, architect of America's banking and finance system, wanted the federal government to assume the debt states had incurred during the Revolutionary War. The difficulty, though, was that although several states, including New York, had not paid off their debts, Virginia had. Thus, Virginia had little incentive to accede to Hamilton's scheme for putting the new country on a sound financial foundation by sharing New York's burden. The resolution was simple -- Madison switched his vote and the votes of several other Virginians in Congress to Hamilton's position, and the capital was moved from New York to an otherwise unusable swamp straddling the states of Virginia and Maryland.

Regardless of the complexity or scope of issues that fall under its purview, the key to the construction of a federal state is the abrogation of some of the sovereign rights of constituent units. Without giving a central power the right to coerce, each federal subject has a natural incentive to "free ride" on the efforts of others. One or more federal subject will soon find it in its interest to issue its own currency, to erect barriers to trade within the federation, or to fail to enforce a contract between one of its residents and the resident of some other federal subject. And, as our earlier example shows, if most subjects free ride, few benefits of cooperation will be realized. It follows that all units, when forming a federation or when conferring legitimacy on a central government's authority, are interested in having a "third party" ensure against defections. A national government is such an authority, but to fulfill its function, it must be given some degree of supremacy over federal subjects. So the question becomes: What degree?

If we continue to equate a federal state merely with the idea of a "reenforced" alliance, then we can see why federal subjects must allow the national government to exercise certain basic powers. First, that government must be empowered to raise and maintain an army, which requires that it tax citizens to that end. Second, to realize the most obvious economies of scale, and in accordance with the principles set forth earlier, the central authority should be empowered to regulate the money supply, to regulate the issuance of debt in its name, to ensure free trade throughout the federation, to establish a national judicial system that can referee disputes across federal subjects, to guarantee to all citizens a democratic form of government at all levels of governance, and, again, to tax so that it can engage in each of these activities.

It is at this point, though, that we come to an important crossroads in our thinking: whether to sustain the view of a federation as some aggregate of  $n+1$  governments --  $n$  federal subjects and one national government -- or to see it as a more coordinated entity. Sometimes history chooses. The United States and Switzerland began as confederations of otherwise sovereign states and, for the United States at least, its citizens during the first half of the 19th century held closer allegiance to their states than to the national entity their constitution created. Nigeria, on the other hand, is the product of a colonial power, and its federal subjects can only be viewed as artificial creations of the national government. And sometimes history can change. The states added to the original thirteen members of the United States (with the exceptions of Texas and California) were clearly creatures of the federal government, formed largely out of its western territories. And the view that the original thirteen states predated the federation succumbed to Abraham Lincoln's legalistic argument, made to subvert the legitimacy of secession, that they too did not exist as states until after the republic's formation.

History and legalism aside, if we take the first view (which is the one implicit in Russia's various bilateral and multilateral Federal Treaties), we must necessarily see the separate parts of the federation as potential adversaries in the competition for resources and power. Sometimes the coalitions that emerge from this competition pit federal subjects against the national government. Sometimes they pit federal subjects against each other, where each side of the conflict tries to enlist the resources of the national government to its cause. Voters, in turn, elect representatives to a national assembly so that their region, province, republic, or state will be best represented in this competition, in which case it is impossible to say whether the previously

specified basic powers of the national government corresponds to the correct degree of abrogated autonomy on the part of federal subjects. This first view, moreover, would seem to make it impossible for federal subjects to find a straightforward resolution of the thing they fear most -- the eventual dominance of the center -- short of placing unduly restrictive limits on the center's authority and even threatening dissolution of the federation. After having acceded to the creation of a center that can coerce them to collective and coordinated action, the separate parts of a federation must be concerned that the center does not act wholly in its own interests. Thus, prudence dictates erecting as many barriers as possible to oppression by the center. The net result is a continual struggle for authority and power, and a politics in which everyone demands as much autonomy as possible, even to the point of disputing the supremacy of the center over those issues that reasonably fall in its domain.

If, on the other hand, we can somehow come to view federal subjects and the national government as parts of a more integrated political structure -- as partners in a program of political-economic development -- then even though competition among political elites will continue, we must change our definition of "key players." Rather than federal subjects, those players now are politicians, political parties, and the voters to whom they appeal and who can substitute one set of leaders for another. Moreover, with politics occurring at and across all levels -- local, regional, and national -- federal subjects are but a part of the national political processes and national processes are but part of local ones. Questions of supremacy and autonomy, although important to courts and legislators, become less important to citizens or to the parties that compete for their votes, since such questions concern little more than optimal organizational design and can be answered by voters when asked in an election to approve or disapprove of the overall performance of government.

Clearly, this second view is the healthier one. The problem, though, is how to ensure that it is more than a utopian dream, and that it predominates over the first view to become the more accurate description of contemporaneous circumstances.

There seems little room for optimism: the list of failed federalisms is long, and even successful ones have experienced (the United States) or are experiencing (Canada) serious disruption and threats to their survival. The dangers to federal stability are numerous. In ethnically divided states that try to use federal institutions to ameliorate conflict, ethnicity is often the most readily available way for elites to mobilize people to political action. Especially in societies making the transition to democracy, ethnic appeals are the simplest ones elites can use to transmit the message that they support people's aspirations. Framed in "us-versus-them" terms, the logical response of "them" is to encourage the emergence of a countervailing cadre of elites.<sup>14</sup> This process escalates until there is conflict within the region (as when the region is ethnically divided) or, as in Chechnya, the region is placed in direct opposition to the national

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<sup>14</sup> In the context of Yugoslavia, see for example, V.P. Gagnon, Jr. "Serbia's Road To War," *op cit.* in Larry Diamond and Marc F. Plattner, eds. *Nationalism, Ethnic Conflict, and Democracy* (Baltimore: Johns Hopkins University Press, 1994), and for Canada see R. Kent Weaver, ed. *The Collapse of Canada?* (Washington D.C.: Brookings Press, 1992).

government (as when that government is seen to be under the control of the opposition ethnic group). And even in ethnically homogeneous states, regions are unlikely to enjoy equivalent economic prospects or material development. If, as is often the case, labor is relatively immobile, residents of disadvantaged regions may see their situation as permanent. Disadvantaged regions, then, would naturally seek coalitions within or without the national government to secure a redistribution of resources and wealth. At the same time, advantaged regions will protect their position by withdrawing resources from the center, so that attention moves from the mutual gains of federation to ensuring that one enjoys a privileged position -- thereby reintroducing the problems of the free rider that the formation of the federation sought originally to solve.

With these potential problems in mind, and mindful of the fact that we have not yet traced a path to this end, we can begin to discern the outlines of a viable federal state. Specifically,

- We must give the national government sufficient authority to regulate the affairs of federal subjects so as avert political-economic inefficiencies with respect to money, banking, credit, national defense, and interstate commerce.
- We must allow for fair reallocations of resources across federal subjects without opening the door to competition for those resources that undermines federal unity.
- We must find ways for society to develop a consensus on the basic principles of federalism, especially the supremacy of federal law and the national constitution.
- We must find ways of allocating jurisdictional responsibilities so that the things best performed by regional governments are allocated to them and the things best done by local governments fall exclusively within their purview. And, finally,
- We must find ways of keeping the national government from using its authority to subvert the legitimate autonomy of federal subjects.

Until we satisfy this last criterion, we have merely imposed an ad hoc decentralization on the state that the central government can too easily corrupt. Short of this, we cannot say that federal subjects have autonomy or any measure of sovereignty, in which case we have not designed a federal state but a unitary one that is administratively decentralized. Moreover, we must do more than merely profess these goals in constitutions, treaties, and other such documents. Mere words do not move us from the first perspective on federalism to the second. Until and unless we find a way to change the incentives of political elites so that the second view becomes a part of the description of their self-interest, we have accomplished little. Unfortunately, it is the first perspective that characterizes Russia today, and that is the one we must somehow transform with the tools at our disposal -- regional charters and constitutions, election laws, and, if necessary, revision of the national constitution.

### **3. Potential Contributors of Stability**

The benefits of federalism in large states like Russia seem self-evident. However, among its justifications, perhaps nothing stands out more than the argument that federal decentralization is an especially useful way to achieve political stability in a country characterized by ethnic

differences and inequalities in the distribution of natural and economic resources. The autonomy that federal institutions give to a country's regions and ethnic groups, so it is sometimes argued, gives those regions and groups direct control over many of the things that most concern them - language, cultural traditions, and the ability to allocate regional resources according to the preferences of the residents of these regions. Federalism is also a way of decentralizing conflict and isolating contentious regional issues so that they do not "bubble up" to disrupt national politics.

Most discussions of the role of federal institutions and ethnicity focus on Switzerland or India, since it seems impossible to imagine either country surviving as unitary states. One can also point to Spain's switch from unitary to quasi-federal regime following its transition to democracy as a successful attempt to use federal structures to ameliorate the ethnic conflicts within it, as well as to the autonomy granted Scotland by Great Britain in 1978 and to the Muslim regions of Mindanao and Cordillera by the Philippines in 1989. And despite its checkered history, the incremental changes in Nigeria's federal structure seem to have had some effect on reducing tribal tensions.

But before we proclaim the virtues of federalism, we should note that a majority of contemporary federations have been unsuccessful. In the period after the World War II, eight federations (some countries managed to supply more than one example of federation failure) were dissolved, ten were taken over by military coups or otherwise were transformed into unitary states, and the remaining fourteen are characterized by a varying subjective assessments of their stability (Nigeria, Pakistan, Malaysia, and India are in the lower end of the specter, while in its upper end are such countries as Switzerland, Germany, USA, Austria and Australia). Optimism about the prospects for forming stable federal relations must be tempered also by the fact that all federations that collapsed formed after the war, or, as with the USSR, Yugoslavia, and Czechoslovakia, approached democracy in this period. The average longevity of collapsed federations (taking the USSR, Yugoslavia, and Czechoslovakia as beginning in 1987) was eight years, with maximal length of survival of 24 years in Pakistan with Bangladesh (1947-71), followed by the 14 years in Burma (1948-62). Among surviving federations, only Germany, Austria, and four we might classify as unstable, formed after the war. All others have longer histories, and, thus, things other than federal structure may explain their durability. Moreover, insofar as federalism's role in mitigating conflict is concerned, it is worthwhile noting that a linguistically fractured Belgium seems held together more by external considerations (membership in the EEC) than by any newly formed federal arrangement; Nigeria's future as a stable federation remains in doubt (one must wonder about a future in which the oil runs out); Canada teeters on the edge of disunion and seems incapable of reaching a constitutional accord acceptable to all parties; and there is the especially discomfiting example of Yugoslavia, which, following Tito's death, saw federal structures used as much to dismember the state as to ensure stability.<sup>15</sup>

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<sup>15</sup> V.P. Gagnon, Jr. "Serbia's Road To War," *op cit.*

Defenders of federalism have several responses to these facts, most based on the premise that unsuccessful ones failed to abide by some simple rules of design or were begun in unfavorable environments. For example, perhaps the most often repeated hypothesis is that

- Federalism is a source of stability, but only if the country is economically prosperous.

Perhaps this addendum to our first proposition can resurrect the idea of using federal structures to ensure stability in an ethnically divided state. However, although it remains whole, there is no guarantee that a relatively prosperous Canada will survive much into the next century. Nor can we attribute the American Civil War (1861-1864) to any economic crisis. Indeed, the depression of 1837 was a distant memory, and America's economic performance and prospects at that time seemed greater than any European power. Third,

- A federation is stable only if no federal subject is much larger or more powerful than the rest.

Slovaks feared domination by Czechs in a Czechoslovak federation and that Slovenes and Croats feared a dominant Serbia in a federal Yugoslavia, and these fears are all we may need to explain the eventual dissolution of those federations. The partition of the state of Virginia by the Northwest Ordinance in 1786 is seen by some as an essential precondition for America's federal success. And the dissolution of the USSR owed as much to the desire to escape Moscow's (Russian) control as anything else, and we might speculate that it could have survived if Russia proper had been divided into three or four autonomous republics as part of its economic reforms. There is, though, the counter-example of Bismarck, who formed a stable German federation in 1867 despite Prussian dominance. Fourth,

- Federations with many subunits are more stable than federations with few.

The logic of this proposition is that if there are many "small" federal subjects, then no one can hope to survive as an independent entity, whereas if there are only a few "large" subjects, then each can aspire to independence. The gradual division of Nigeria into 30 federal subjects seems a response to this proposition, and the stability of the United States, its manifestation. However, the reshaping of Nigeria's federal structure is as much a response to internal tribal divisions as it is to the fear that certain regions might declare independence;<sup>16</sup> it seems unlikely that any or Russia's problems can be resolved by increasing the number of regions and republics through division (indeed, we might even argue for a decrease in that number through recombination); and we cannot see how the American Civil War would have been averted if its states had been subdivided. Aside from the unstable federal arrangements of, say, the United Arab Republic

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<sup>16</sup> Donald Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1991)

(1958-61), the Central African Federation (1953-63), or the Malai Federation (1959-60), which were mere alliances more than anything else, this proposition is more a reflection of our next one than of mere numbers:

- A federation can be stable only if it is symmetric -- only if all of its parts share equal degrees of autonomy.

The concept of equality is difficult to define. Are Canadian provinces equal even though, unlike American states, Australian territories, Swiss cantons, and Russian regions, they do not share equal representation in the Canadian Senate?<sup>17</sup> However, if we take 'equal' to mean that citizens in one unit enjoy the same constitutional protections as those in another, the idea that asymmetric federations cannot be stable comes from the idea that disadvantaged units will demand equality or their own advantages, and that these demands will escalate across the federation. In defending this proposition, one can point to any number of situations in which federal and unitary states have been compelled for one reason or another to grant special privileges to different geographic regions: Spain with respect to the Basque country, Navarre, Catalonia, and Galicia; the United Kingdom with respect to Scotland; Australia with respect to the Northern Territory; Canada with respect to Quebec and regions populated by 'natives'; the Philippines with respect to Mindanao and Cordillera; and Malaysia with respect to Sabah and Sarawak.<sup>18</sup> The demand for privilege can arise in a newly formed democratic state as part of the initial federal bargain (Spain and Malaysia) or it can arise in otherwise stable states (Canada or Great Britain). Canada perhaps best illustrates our proposition and the animosities special privileges creates in a federation. But there are exceptions such as Puerto Rico's relationship to the United States or the stability Spain seems to enjoy despite its uneven accommodation of regional demands. Moreover, the logic of this proposition must explain why demands for greater autonomy are more likely when relations are asymmetric. Finally, we might be tempted to identify the USSR as an example of an asymmetric federation (owing to Russia's special position) that was stable for at least for three quarters of a century. Here, though, we encounter a final proposition that tries to explain the USSR deviation from the 'pattern':

- Centralized federations are more stable than decentralized ones.

As with symmetry, degree of centralization is difficult to define. Nevertheless, on a qualitative basis, it seems reasonable to say that the USSR was more centralized than the United States and Switzerland or that Germany was less centralized than Yugoslavia under Tito. Once we look past

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<sup>17</sup> For additional discussion of debates over the construction of the Canadian Senate see Campbell Sharman, "Second Chambers," in Herman Bakvis and William M. Chandler, *Federalism and the Role of the State* (Toronto: University of Toronto Press, 1987).

<sup>18</sup> Jennie I. Litvak, "Regional Demands and Fiscal Federalism," in Christine I. Wallich, ed. *op cit.*

the three examples of the U.S., Switzerland, and Germany, though, and focus on the USSR after Gorbachev's 'reforms' or Yugoslavia after Tito, it seems reasonable to hypothesize that decentralized federations are less stable than centralized ones.<sup>19</sup> Thus, while Spain became an asymmetric quasi-federation shortly after becoming democratic, it appears to have suffered less strain than did the USSR, in part because no region of Spain predominates over any other. The difficulty here, though, is two-fold. First, regardless of what they call themselves, centralized states are, almost by definition, stable (or at least appear to be up until the regime is displaced). And second, Switzerland today, and the United States until World War II, when the federal budget for the first time exceeded state and local budgets, illustrate decentralized stable federations (see Table 2 and our discussion of it later). So while centralization may be sufficient for stability (by definition), it is not necessary.

#### **4. The Role of Political Competition in Achieving a Stable Federalism**

The characteristics of federal states the preceding survey examines are largely beyond the control of most constitutional designers and legislatures. Moreover, the questions we raise about the empirical validity of various hypotheses suggest that such macro-hypotheses do not get at the root sources of stability and instability. Appreciating this fact, we can adopt one of two perspectives when trying to fashion a stable democratic federation. The first focuses on general political-constitutional matters such as the design of regional charters, parliamentary representation, and whether and when federal law should be supreme over regional law. The second perspective focuses on economic issues like revenue equalization and special economic zones, policies like environmental protection, health services, and tax administration, and specific jurisdictional disputes between center and periphery. The argument for treating the second perspective as primary is that it compels us to address things subject to practical policy implementation. In contrast, the argument for the first perspective is that the policies formulated under the second will be ephemeral if political elites have no incentive to implement them, where these incentives derive largely from the state's basic structure -- from the things that determine whether and under what circumstances elites can maintain their positions and find it in their personal interest to sustain the collective agreements that define federal relations.

Of course, neither perspective is separate from the other: a democratic state's constitutional structure will survive only if it delivers on its promise of effective policy, which, in turn, requires constitutional structures that encourage political stability. It seems impossible, moreover, to discuss federalism in Russia without concerning ourselves with such matters as the willingness of regional governments to accede to the supremacy of federal law or to share in tax revenues in accordance with well-articulated formulas. For the most part, then, political elites in Moscow and Russia's regions have focused on the second rather than the first perspective. Federal Treaties and the agreement between Moscow and Kazan may be vague or incomplete, but the focus remains on policies, programs, and the relationship between federal subjects and

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<sup>19</sup> Jonathan Lemco, *Political Stability in Federal Governments* (New York: Praeger: 1991).

the executive agencies of the national government.<sup>20</sup> In contrast, we argue here that the primary focus ought to be the first perspective. We offer four general reasons.

First, because federal policies come in such great variety, and because the "law of unintended consequences" operates with such force in the politics of a country as diverse as Russia, it is impossible to program the specific policies and relations between national and regional governments that will ultimately characterize a state. Consider the analogy of the market. Efficient markets, stable prices, and technological innovation cannot be decreed or negotiated. They are the logical consequences of thousands, millions of decisions by individual consumers and firms, made in the context of some basic institutional structures that establish and sustain competitive processes. The same is true with federalism and federal relations. The policies that come to characterize federal relations cannot be directed by some central authority or promulgated by some negotiation between regional heads of administration. Regardless of what fiscal policies we promulgate today, *de facto* policy will reflect the operation of individual self-interest and, to some extent at least, the political forces set in place by tradition and constitutions.

Second, the usual economic analyses of federalism and federal policies commonly take federal structures and political institutions as given.<sup>21</sup> This circumstance, though, hardly characterizes Russia. The attention given to agreements such as the Moscow-Kazan treaty reveal that fundamental issues await determination. Russia has not yet decided whether it is to be a federation like the United States in which parallel constituent units govern themselves and share a common constitutional government, like Germany or Switzerland in which the extraordinary power of the center is modified by devolving the administration of those powers to federal subjects, like the European Community in which individual units possess sovereignty so that the center serves only a weak coordinative function, or like Puerto Rico's relationship to the United States, in which specific units (e.g., the Republics) maintain only some associated connection with an otherwise unitary state. Such things, though, cannot be decided when focusing on the second perspective. Just as, when implementing a competitive market, we must decide which things are essential and which are not -- we must give our attention to property rights, capital markets, and so on, rather than such things as the share of profits that should accrue to the managers of firms or each firm's precise product mix. Basic things must be decided first, and so we must make the first perspective a clear focus.

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<sup>20</sup> See, for example, Vasilij Likhachev (vice-president of Tatarstan) who, when listing the "most important elements" of the political-legal complex that will be the foundation of the Russian Federation, cites, (1) the RF Constitution, (2) the constitutions, charters, etc. of republics and regions, (3) treaties between the RF government and republic governments, (4) agreements among and between federal subjects, (5) treaties of the RF, and (6) treaties and agreements among regional and RF ministries (*Nezavisimaya Gazeta*, November 29, 1994).

<sup>21</sup> See for example the essays in Christine I. Wallich, ed. *op cit*.

Third, fiscal policies will resist attempts to renegotiate their terms only if constitutional structures somehow discourage national and regional elites from preferring to make all policy a part of a dangerous zero-sum game in which increasing the status of one region is seen as requiring a decrease in the status of all others. Indeed, the greatest challenge to democratic federalism is finding a way to survive these continuous attempts at renegotiation. But if we address first the detailed terms of the federal bargain, rather than the more fundamental issues of who does the bargaining, under what incentives, across what policy domains, and in what institutional context, then we have done little more than to make ourselves a part of those disputes that threaten the Federation's integrity. Indeed, as we argue shortly, until and unless there is agreement about fundamental matters like the supremacy of federal law and the federal constitution, the status of regional laws, and the legality of secession, negotiating such details in the same context as we seek to establish basic institutional structures can only lead to an escalation of demands by federal subjects, to greater efforts by the center to maintain control, and to an undermining of our attempt to erect rational structures.<sup>22</sup>

Finally, the issues on which the second perspective focuses concern immediate benefits and costs whereas those of the first have more long-term implications. Thus, if we combine or otherwise confuse the two perspectives, we necessarily abandon our ability to design institutions behind a "veil of ignorance" as to what position each of us will confront in the future. The advantage of working behind this veil is that, if each of us is uncertain as to whether we will hold a natural advantage or disadvantage in the future, then the institutions we erect today to deal with inter- and intra-regional matters are more likely to be fair, since none of us want to risk disadvantaging ourselves later.<sup>23</sup> A designer of a federation today wants to insure his creation against tomorrow's abuse -- against selfish actions of future politicians, including himself. If we conflate specifics with general principles -- if we allow individual unit arrangements to become part of the debate over the fundamentals of federal design -- then each participant cannot help but try to pull the blanket onto himself at the expense of everyone else.

Nothing said here should be interpreted to mean that revenue equalization formulas are unimportant or that we need not consider how to treat regional public debt when drafting regional constitutions or that such constitutions can ignore relations between regional and local governments. Such things lie at the heart of regional constitutional design, and we address some of these issues in Part II of this essay. Nevertheless, it might seem to some that Russia has already addressed its general constitutional issues, and that attention needs to shift to specifics. Indeed, looking that the objectives set forth at the end of Section 2 -- a national government with the authority to coordinate federal subjects to mutually beneficial collective action, that encourages the fair distribution of resources, and that is protective of regional autonomy -- it might seem that there are two straightforward ways to meet those objectives, and that, contrary

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<sup>22</sup> Steven L. Solnick, "Political Consolidation or Disintegration: Can Russia's Center Hold?" Dept. of Political Science, Columbia University, April 1994.

<sup>23</sup> Brennan, G. and J.M. Buchanan (1985) *The Reason of Rules*, NY: Cambridge Univ. Press.

to our assertions, both are provided for in Russia's constitution and in the bilateral treaties Moscow has or is negotiating with federal subjects -- regional representation in a national parliament and a delineation of national and regional jurisdictions.

The first, by giving the separate regions explicit representation in the Federation Council seeks to offer regions the protection against the national government they demand, thereby, weakening their incentive to seek greater autonomy. This solution, though, is illusive. Why should we suppose that such representation does anything more than provide an official forum for conflict among regions and against the other branches of the national government? What precludes the other parts of the national government from co-opting a majority in the upper legislative chamber so that it acts in the interests of those parts rather than in the interests of the rest of the regions? Both of these questions are especially salient in the case of the Russian Federation, which must operate under a constitution that gives its executive branch, especially the President, extraordinary powers, including the authority to suspend regional executive actions he deems unconstitutional (Article 85). And that salience is hardly undermined by a constitutional arrangement in which regional representatives in the Federation Council possess different allegiances -- some to the residents of their regions, some to specific industrial enterprises, and others to the national executive. Thus, although the national constitution begins the process of integrating national and regional governments, it leaves that process largely unfinished and at the whim of a changeable law or presidential edict (Article 96, section 2).

The delineation of jurisdictions offered by the national constitution is equally unsatisfactory. Any such delineation, however carefully worded, must be ambiguous, and the ambiguities offered in the Russian constitution loom especially large. Indeed, it is a challenge to imagine any issue not covered by some part of the exclusive (Article 71) or joint jurisdiction clause (Article 72) of Federation's constitution, which thereby undermines the meaning of any residual powers clause (Article 73). The philosophy of the various treaties signed or currently being negotiated by Moscow merely reinforces the misguided belief that a viable federal state can be constructed on the basis of agreements over policy jurisdictions. Even if we ignore the illogic of giving two contradictory constitutions equal standing, these agreements are no less ambiguous about jurisdictional authority than what is offered by the Federation's constitution. Moreover, they leave undisturbed the incentives of political decision makers everywhere, and they sustain the view that each of Russia's federal subjects must negotiate its status as though it were dealing with some foreign power or with some administrative monolith and each of its many arms.

Disputes over autonomy, sovereignty, and jurisdiction cannot be resolved by treaty. Treaties can signal fundamental shifts in principle (such as that Russian will no longer be regarded as a unitary state), but those disputes can only be resolved by some political process. Consider, for example, the Canadian experience with natural resources. Section 109 of its Constitution grants its provinces ownership of the lands and resources within their territories (the United States does the same with respect to offshore rights along the Texas coast, but not otherwise). At the same time, though, the national government, as in all other federations, manages trade and foreign policy and is empowered to protect the free flow of goods throughout Canada. The problem is

that it is impossible to separate definitively these two policy domains.<sup>24</sup> For example, the desire of the Western provinces to maximize oil revenues during the energy crises of the 1970's contradicted the national government's purpose of ensuring adequate energy supplies throughout the federation, and Ontario's attempt to protect its log and pulpwood processing industry from competitors ran afoul of the government's international trade policies. Exacerbating internal tensions over the resolution of such jurisdictional overlaps is the fact that Canada's provinces have vastly different capabilities: resource-poor maritime provinces, an industrially developed center, and resource-exporting Western provinces. Formal attempts at accommodation cannot foreclose the necessity for ongoing negotiation. Although Section 92A of the Canadian constitution (added as an amendment in 1982) expands the province's powers in areas that were previously under exclusive federal control, its grant of concurrent powers requires that resolution of disputes be reached through political accommodation.

Thus, when studying the experience of other federations and when proposing additional reforms for Russia, we must ask why people pursue certain issues rather than others and what compels them to cooperate rather than engage in disruptive political conflict? Answering this question, in turn, requires, at a minimum, an exploration of the things that motivate political elites of different types and the things that influence those motivations. The logical place to begin such an inquiry, at least for democratic systems, is with elections and with the nature of electoral rewards that politicians realize, since, unless elections are wholly fraudulent, it is electoral outcomes that determine a politician's fate in a democracy. And here we can begin by noting the two features of the political institutions that are common to most federations: (1) regional representation in BOTH national legislative chambers; and (2) meaningful regional and local elections -- regional and local public officials who control real resources such as tax and expenditure policy, local and regional election laws, and so on.

With respect to the first feature, it is commonplace to suppose that the upper legislative chamber of a federal state should give explicit representation to federal subjects.<sup>25</sup> There is, though, significant variation among the federal states we can label "stable" -- the United States, Switzerland, Australia, Canada, Germany, and Austria. Members of the German Bundesrat can hold official office within their states, whereas members of the U.S. Senate cannot; deputies to the upper chambers of Switzerland, the United States, Australia, and Germany possess significant legislative powers, whereas those of Canada and Austria have little. Members of the upper chambers of Switzerland and the U.S. are elected so as to divorce their interests from those of the lower chambers (as are members of the Bundesrat and the Australian Senate to a

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<sup>24</sup> For further discussion of the Canadian experience see Robert D. Cairns, "Natural Resources and Canadian Federalism: Decentralization, Recurring Conflict, and Resolution," *Publius: The Journal of Federalism*, 22, 1 (1992), 55-70.

<sup>25</sup> See for example K.C. Wheare, *Federal Government* (New York: Oxford University Press, 1947) and, for a useful survey in the German context, Edward L. Pinney, *Federalism, Bureaucracy, and Party Politics in Western Germany* (Chapel Hill: University of North Carolina Press, 1963).

slightly lesser extent), whereas members of the Canadian Senate are merely appointed by the national government, and Austria uses essentially the same party-list proportional representation formula to fill both of its chambers.<sup>26</sup>

The disadvantages of a poorly formed upper chamber are perhaps best illustrated by looking again at Canada. Briefly, the British North American Act (now part of the Canadian Constitution) followed the Russian template of enumerating the powers of the national versus the provincial governments (Section 92), and gave the national government the authority to postpone or circumscribe provincial acts and laws (much like Article 85, section 2 of the Russian Federation constitution).<sup>27</sup> Formed virtually as an afterthought, the Canadian Senate, like the House of Lords, was given little legislative authority and, being appointed by the national government, was ill-suited to be the protector of regional interests. As provincial grievances against the national government grew, and absent a viable legislative protector, provincial governments turned to Britain's Privy Council for relief, which for seventy years ruled as impartial referee (but generally in favor of the provinces) to "kept the lid" on center-periphery conflict. However, in 1949, the Canadian Supreme Court assumed the appellate jurisdiction of the Privy Council's Judicial Committee, at which point the provinces lost their ability to restrain the national government. It is no accident that the period after 1949 saw increased unrest not only in Quebec but in Canada's Western provinces as well.<sup>28</sup>

Most federations, though, provide federal subjects with a dual legislative protection. Although lower chambers are commonly thought to "represent society generally," most federal states give federal subjects explicit representation in that chamber as well. Deputies to the lower chambers in the United States and Canada, for example, are elected from narrowly drawn single-member constituencies that are wholly contained within federal subjects, whereas in, say, Germany, they are elected both from single-member constituencies and from *Lander*-wide party lists using proportional representation. Other states such as Switzerland and Austria employ only regional (federal subject) party-lists, and elections in one region are separate from elections in another. Thus, although details vary from country to country, the common theme is to give both chambers strong regional orientations by way of giving deputies to both an explicit connection to the electorates or governments of federal subjects.

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<sup>26</sup> For additional details see Sharman, *op cit.*, and Arend Lijphart, "Bicameralism: Canadian Senate Reform in Comparative Perspective," in the same volume.

<sup>27</sup> With the American Civil War as background, John A. Macdonald, a founder of the Confederation, could assert: "We have given the General Legislature all the great subjects of legislation ... We have thus avoided the great source of weakness which has been the cause of the disruption of the United States." from B.L. Strayer, *Judicial Review of Legislation in Canada* (Toronto: University of Toronto Press, 1968), p. 15.

<sup>28</sup> For additional discussion of this argument and comparison with earlier developments in Britain, see Jenna Bednar, William Eskridge, and John Ferejohn, "A Political Theory of Federalism," working paper, Stanford University, December, 1994.

In contrast, consider a scenario in which one legislative chamber is based on explicit regional representation while the other is selected using some unitary, national electoral format (for example, national party-list proportional representation as is practiced in Russia as well as is in non-federal Israel and the Netherlands). In this instance we can assume that the two chambers will disagree on issues that pit the interests of regions against those of the national government and that they will be united only when both oppose some third authority, such as a president. Indeed, it is difficult to imagine that all interests in a country as diverse as Russia can be so communalized that national parties running national lists can ever appeal to a fraction of the citizens of the Federation without relying on dangerous emotional issues such as nationalism and revanchism, and we should not be surprised to find regional leaders opposed to the party-list format.<sup>29</sup> Alternatively, parties may find themselves with narrow regional bases of support, thereby further increasing the centrifugal pressures on the federation. The stage is then set for incoherent disputes: as the nationally elected chamber competes with the president for claims to a national mandate to lead, while both compete with the regionally based chamber over the prerogatives of federal subjects versus the national government.<sup>30</sup> The resulting policy paralysis gives regions an opportunity to and necessity for asserting their autonomy, which only increases the central government's incentive to assert its authority -- thereby exacerbating an already dangerous conflict.

This scenario, not lacking in precedent, highlights the fact that there are two important consequences of giving both legislative chambers a strong local or regional orientation.

- Conflict between the two chambers is minimized. Although each can act as a check on the other whenever both must approve of any legislation, the things that motivate deputies to both chambers are similar -- regional interests and the sanctioning by regional electorates.
- Those who have already secured a position in the national legislature's lower chamber can subsequently seek greater national visibility by competing for a position in the upper chamber (assuming that the upper chamber has at least as much authority as the lower one).

The significance of these two consequences increases when we consider what can be regarded as an essential component of any federal state -- meaningful regional and local elections. By "regional and local" we do not mean only elections to the national legislature; we refer also to elections for local and regional public offices -- city, village, and regional soviets and heads of administration. And by "meaningful" we do not mean simply that the elections be fairly

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<sup>29</sup> See, for example, the comments of Vladimir Medvedev, head of the Duma New Regional Policy parliamentary faction, reported in *Nezavisimaya Gazeta*, February 7, 1995.

<sup>30</sup> For elaboration of this point see Peter C. Ordeshook, "Institutions and Incentives: The Prospects for Russian Democracy," *Journal of Democracy*, forthcoming 1995.

contested; we mean that the offices filled by elections have real authority -- to tax, regulate, and reallocate resources that matter to voters. The economic advantages of allowing regional or local governments to make tax and spending decisions that do not affect other regions is self-evident. However, the political advantages are even more important. Specifically,

- If all elections to regional and local governments as well as to the national legislature have a strong local flavor, expertise at one level can be applied to the next level, and those with political aspirations can position themselves to "work up the ladder" in the same way as people are promoted in the management of an industrial firm.
- Heads of administrations, members of city and county councils, judges, and so on can aspire not only to higher position (e.g., a governorship), but also to national office.
- National politicians become "professional" not only at winning elections and representing local interests, but also in the day-to-day operation of government. A decentralized system serves not only to allow citizens to regulate the state according to some idealized view of democracy, it serves also as a practical "school of public administration" for political leaders.

There are two additional advantages. First,

- meaningful regional and local elections yield an integration of local, regional, and national political structures.

The opportunity (even the necessity) to win local and regional offices before embarking on a national political career removes the sharp distinction between regional and national political elites and, thereby, diminishes the likelihood of establishing a purely conflictual "game" between national and regional governments. Correspondingly, when local and regional political elites do not feel estranged from national political structures -- when they aspire to become a part of those structures -- it becomes far easier to maintain a consensus on the federal principles of free trade, reciprocity, representation, and, most importantly, the supremacy of federal law.

Note, however, that nothing we have said precludes sharp inter-regional conflicts and a dangerous competition for the center's resources. We have not, for example, precluded the possibility that regional elites will seek to advance their careers by raising divisive ethnic or regional issues. It is at this point, then, that we need to consider the second consequence of meaningful regional and local elections by redirecting our attention away from formal federal structures and to the role of political parties. Specifically, and somewhat paradoxically,

just as meaningful regional and local elections are a part of a viable, decentralized federalism, a decentralized election system encourages the development of strong and unifying national political parties.

Parties are the vehicles politicians use to mobilize voters and to advance their careers. They are not only the means whereby politicians seek to advance their careers, they are the primary expressions of the self-interest of politicians. Thus, "the federal relationship is centralized according to the degree to which the parties organized to operate the central government control the parties organized to operate the constituent governments. This amounts to the assertion that the proximate cause of variations in the degree of centralization (or peripheralization) in the constitutional structure of a federation is the variation in degree of party centralization."<sup>31</sup> Similarly, "political parties in the national and regional arenas and the central and regional government administrations are the principal mechanisms for federal 'checks and balances'"<sup>32</sup> Parties perform this 'checks and balances function' to the extent that

- winning nationally requires that they campaign locally,
- party activists can be rewarded for national party service by using the party to win local and regional elected office, and
- national platforms must be made acceptable in local terms and must be interpreted in local terms by local politicians campaigning on behalf of national parties in national elections.

Elaboration of this argument requires that we distinguish between presidential and parliamentary systems, since the role of parties differs somewhat between these two systems and since, typically, the number of parties that compete is greater in parliamentary systems. At one extreme we find parties in the United States, which are largely local and regional organizations, but which operate under two national labels -- Democrat and Republican -- in order to compete for the national office of the presidency (or, at the state level, for Governor and other state-wide offices).<sup>33</sup> Indeed, it is incorrect to say that the United States is a two party system; it is in fact a 100 or even 100,000 party system, where all of those parties are local and regional ones but where all of them operate under one of two labels and agree to organize themselves in the national legislature and in national election campaigns according to those labels in order to maximize their effectiveness. "American parties persist only at state and local levels."<sup>34</sup> One consequence of this decentralization is that American parties differ ideologically as much within themselves as they do from each other. A subsidiary consequence is that, to compete effectively for the presidency, many of the issues that divide society must be negotiated within party

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<sup>31</sup> Riker, *op cit.*, p. 129.

<sup>32</sup> Charles D. Hadley, Michael Morass, and Rainer Nick, "Federalism and Party Interaction in West Germany, Switzerland, and Austria," *Publius: The Journal of Federalism*, 19, 4 (1989): 81-97.

<sup>33</sup> The argument that follows owes much to Riker, *op cit.*

<sup>34</sup> William M. Chandler, "Federalism and Political Parties," in Bakvis and Chandler, eds. *op cit.*

structures, lest a party be unable to organize an effective national campaign. Thus, debate over such issues as abortion rights, currently salient in the U.S., occurs largely within parties at state and national conventions and fails to loom large in presidential contests, because state and local candidates from both parties take opposing positions on the issue. Similarly, debate on civil rights and racial discrimination in the 1950's and 60's failed to generate any sharp division between the parties. A clear preference among blacks for Democratic candidates emerged only after President Johnson, in the 1960's, took a more strident position with respect to welfare programs and affirmative action quotas that especially advantaged blacks, and after he skillfully maneuvered to take credit for civil rights legislation that both parties had a hand at passing. In general, then, because a large percentage of divisive issues must be negotiated in a decentralized fashion or within parties at their conventions, those issues do not "bubble up" to disrupt national politics or, when they do, they do so so as to cut across party lines.

Parliamentary systems, especially those that employ some variant of party-list proportional representation for parliament, tolerate a larger number of parties than do presidential ones.<sup>35</sup> Absent competition for the presidency, there may be less incentive for regional, issue-specific, or ideologically similar parties to coordinate their activities under a single organizational umbrella. Since even regional, special-interest, and third-parties in parliamentary systems can hope to play a role in the formation or control of the national government, they need not negotiate policy disputes prior to an election in order to win parliamentary representation; instead, those disputes can be negotiated in the parliament (or if negotiated within parties, it is negotiated as in Yugoslavia with the idea of wholly taking control of that party), with the consequences that all issues become entangled with those that might threaten political stability.

A useful contrast between otherwise similar systems is offered by the United States and Australia. Were we to calculate the shares of the vote in state elections won by Republicans and Democrats in the U.S., that share would nearly universally exceed 90%.<sup>36</sup> In contrast, Table 2 gives the average vote shares of the two largest parties in each of Australia's 6 states in contests for regional parliamentary seats from 1945-86, as well as the average share won by the largest party. As we see, despite the 2-party structure engendered by the Westminster parliamentary form (single member-constituencies) within each state, only Tasmania and South Australia approaches the 2-party dominance witnessed in the U.S.

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<sup>35</sup> See, for example, Mark P. Jones, "Presidential Election Laws and Multipartyism in Latin America," mimeo, University of Michigan, 1993; Matthew S. Shugart and John M. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (Cambridge: Cambridge University Press, 1992); and Rein Taagepera and Matthew S. Shugart, *Seats and Votes: The Effects and Determinants of Electoral Systems* (New Haven: Yale University Press, 1989).

<sup>36</sup> For Gubernatorial elections held between 1988 and 1992, in only 8 of 50 states did candidates from other than the Republican or Democratic parties receive more than 5% of the vote, and in only three cases did such a candidate receive more than 10% -- in Connecticut, New York, and Utah.

Table 2: Regional Party Dominance in Australia, 1945-86<sup>37</sup>

State	# elections	2-party share (%)	range	dominant party share	dominant party/# elections
New South Wales	14	81.6	75.5 (1947) 86.0 (1976)	48.5	ALP/14
Queensland	15	70.6	52.3 (1957) 82.9 (1983)	43.3	ALP/15
South Australia	15	89.1	77.9 (1975) 95.8 (1968)	49.9	ALP/14 LP/1
Tasmania	13	91.4	85.4 (1982) 98.0 (1955)	50.8	ALP/11 LP/2
Victoria	15	79.2	61.5 (1945) 91.9 (1985)	42.8	ALP/9 LP/5
Western Australia	14	85.9	72.6 (1947) 94.3 (1986)	47.0	ALP/12 LP/2

Both Canada and Belgium -- the first with single-member constituencies and the other with multi-member ones -- illustrate the divisive possibilities in heterogeneous parliamentary federal states. Indeed, we can quite easily imagine pro-abortion, anti-abortion, black, and Mexican-American parties emerging in the United States in the 90's were it changed into a parliamentary system. This is not to say, though, that a dangerous regionalism necessarily overtakes parliamentary federations -- Australia, Germany, Austria, and Switzerland are counter-examples to any such prediction. However, we can find special circumstances for each such example that do not seem to apply to the Russian case. Germany could not become unstable in part because its Western allies -- notably, the United States -- would not "allow" it (although today, interesting negotiations describe relations between the eastern and western parts); Austria has a well-developed two party system that derives from historic religious and social cleavages with a single predominating issue so that its electoral politics approximate those of a presidential system; and although Swiss parties are regional, the country's small size and a collegial presidency mitigates conflict. Moreover, we cannot say that regionalism does not characterize a presidential republic -- the American Civil War was a regional conflict, and as recently as the 1960's the Democratic party had two distinct parts in the national legislature: Southern (generally conservative) Democrats and "other" (generally liberal) Democrats. Also, German political parties exhibit many of the characteristics of their American counterparts. Although the Social Democrats (SPD) began with a highly centralized organization, considerable decentralization

<sup>37</sup> Source: Campbell Sharman, "The Party Systems of the Australian States," *Publius: The Journal of Federalism*, 20,4 (1990): 85-104. ALP = Australian Labor Party, LP = Liberal Party.

occurred during the 1960's, so that its structure matched that of the Christian Democrats (CDU/CSU), the Liberals (FDP), and, later, the Greens. Swiss parties are more decentralized still, with Austrian parties falling somewhere in between.

Like the United States, though, parties in these countries maintain a strong regional flavor and have structures that closely parallel the formal federal organization of government.<sup>38</sup> Some parties, moreover, maintain an exclusive regional identity, although variations can be attributed to other features of the electoral and constitutional system. For example, Germany's CSU is the dominant party in Bavaria, but operates nationally in coalition with the CDU under an agreement in which the CDU refrains from competing in the CDU's home base. On the other hand, in Canada, the Parti Quebecois, the Union Nationale, and the Social Credit parties are provincial parties with no federal counterparts. Unlike the United States Senate or German Bundesrat, though, the Canadian Senate is a weak legislative body, and local elections are commonly held at different times than national ones. These two features of Canada's constitutional order would tend to break the chain between regional and national electoral structures and facilitate a more fragmented, regional party system. The dangers of this fracturing and attendant regionalism can be seen even if we look only at the parties that compete at the federal level. Briefly, Table 3 gives the regional representation of Canada's three main regions in each of Canada's governing coalition, from 1945 to 1988. Notice in particular here that almost perfect negative correspondence between Quebec's representation and the Western provinces -- a correspondence that delineates clearly the conflict of interest between these two parts of the Federation. That is, whenever the Western provinces gain in their representation in the governing coalition, Quebec loses, and vice-versa.

Aside from those variations attributed to the details of a political system, we see that, whether presidential or parliamentary, stable federalisms have national parties with decentralized structures or at least with strong regional orientations. It follows that regions need not view the national parliament, national ministers, or even a nationally elected president as "alien" forces against which they must struggle. Much of the activities of these national parties is the recruitment of attractive regional candidates to their ranks, thereby creating an incentive for regional political elites to defuse regional conflicts. Moreover, dependent on regional and local party organizations, national office holders are instead creatures of local and regional politics so that, in the most fundamental way possible, local, regional, and national politics form a unified whole. As a consequence,

- although federal laws and the federal constitution are necessarily supreme, the exercise of that supremacy is controlled indirectly by regional political leaders and political forces;

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<sup>38</sup> Oscar W. Gabriel, "Federalism and Party Democracy in West Germany," *Publius: The Journal of Federalism*, 19, 4 (1989): 65-80.

- although the federal government has the power (military or otherwise) to preclude secession or other extreme expressions of autonomy, that power is regulated by leaders whose sustenance derives from regional concerns; and
- although regional and local governments will prefer as much autonomy as possible, they will not be averse to allowing the federal government to regulate their actions since that government is merely their agent for coordinating all of their actions to common purpose.

**Table 3: % seats controlled by region in governing party, Canada<sup>39</sup>**

Year, and party in power	Western Provinces	Ontario	Quebec	Atlantic Provinces
1945: Liberal	15.2	27.2	42.2	15.2
1949: Liberal	22.6	29.5	34.7	13.2
1953: Liberal	15.9	29.4	38.8	15.9
1957: Conservative	18.8	54.5	8.0	18.8
1958: Conservative	31.7	32.2	24.0	12.0
1962: Conservative	42.2	30.2	12.1	15.5
1963: Liberal	7.8	40.3	36.4	15.5
1965: Liberal	6.9	38.9	42.7	11.5
1968: Liberal	17.4	41.3	36.1	4.5
1972: Liberal	6.4	33.0	51.4	9.2
1974: Liberal	9.2	39.0	42.6	9.2
1979: Conservative	44.1	41.9	1.5	13.2
1980: Liberal	1.4	35.4	50.3	12.9
1984: Conservative	28.9	31.8	27.5	11.8
1988: Conservative	28.4	27.2	37.3	7.1

These processes are especially important in ethnically heterogeneous societies. The great danger here is not misallocating revenues or authorizations of autonomy. Indeed, there is strong evidence to suppose that, in trying to treat ethnic minorities differently by affording them and their territory greater autonomy than the rest of society, is an unsatisfactory solution to ethnic tensions: "Polities that establish autonomous territories, even with real powers, for special minorities, but otherwise maintain total control over all remaining territories within the hands of the central government generate a situation in which the specially powered regions are peripheralized."<sup>40</sup> The "trick" to creating an

<sup>39</sup> Source: R. Kent Weaver, "Political Institutions and Canada's Constitutional Crisis," in R.K. Weaver, ed., *The Collapse of Canada* (Washington, D.C. Brookings Inst.: 1992), pp. 36-7.

<sup>40</sup> Daniel J. Elazar, "International and Comparative Federalism," *PS: Political Science and Politics*, June 1993, 190-5.

enduring federalism, then, is not finding ways to negotiate treaties between regions and the national government. The path Russia has thus far taken is doomed to failure. Instead, that trick is to establish constitutional and electoral structures that encourage regional decentralization of national parties that at the same time have an incentive to form broad-based national coalitions so that all national parties compete for all interests in society.

In the United States this is accomplished by a combination of devices, including a continuous hierarchy of elected offices, direct regional election of the national legislature, and a presidential election system that encourages regional parties to coordinate in order to win control of the presidency. In a parliamentary state such as Germany, the critical institutions are not merely the constitutional autonomy given to Lander and their role in administering federal functions, but also the requirement that national parties submit regional lists for election to the Bundestat. Thus, although there is no single path to a stable federalism, the prerequisites of success are institutions that encourage parties to be both national and regional so that political elites see all the offices of the state as parts of a whole or as steps of the ladder in their political careers.

In summary, then, we see that political parties play a critical role in the operation of American federalism, just as parties play a critical role in other federal states. Political institutions -- the pervasiveness of elections, the structure of the national legislature, and the procedures for electing the president all play a role in determining that role by way of their influence on the incentives of political elites and ordinary citizens. Constitutional grants of authority and jurisdiction to the national government or states cannot resolve issues. Indeed, as Woodrow Wilson wrote,

The question of the relation of the States to the federal government is the cardinal question of our constitutional system. At every turn of our national developments we have been brought face to face with it and no definition either of statesmen or judges has ever quieted or decided it. It cannot, indeed, be settled by one generation because it is a question of growth, and every successive stage of our political and economic development gives it a new aspect, makes it a new question.<sup>41</sup>

That the answers to this question have, at least since 1865, been peaceful and orderly, we can attribute to parties and their function in American politics.

## 5. Lessons of the American Civil War

The differences between Russia today and America at any time between the writing of its constitution in 1787 and the outbreak of its civil war in 1860 would constitute a nearly endless list. Nevertheless, there are important general lessons to be drawn from the American experience without the necessity for making the assumption that American models, institutions, or history need to be replicated in Russia. The first point to be appreciated is that the United States emerged in 1787 as a highly decentralized federation, but with constitutional provisions sufficient for political centralism -- provisions such as the supremacy of federal law (U.S. Const. Article 6), the explicit exclusion of various powers to the states (U.S. Const., Article 1, Section 10), and the authority of the federal government to regulate interstate and foreign commerce (U.S. Const., Article 1, Section 8).<sup>42</sup> Although useful data are not available before

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<sup>41</sup> Woodrow Wilson, *Constitutional Government in the United States* (New York: Columbia University Press, 1911), p. 173.

<sup>42</sup> See, for example, Mark Tushnet, ed., *Comparative Constitutional Federalism: Europe and America* (Westport, Conn.: Greenwood, 1990), especially the essay by Jack N. Rakove, "The First Phases of American Federalism."

1900, Table 4 gives two sequences of numbers that make our point. The first sequence gives, for selected years beginning with 1902, national government general revenues divided by state and local government (excluding inter-governmental transfers). The second sequence gives the ratio of local to state revenues (excluding inter-governmental transfers). As the first sequence shows, it is not until World War II that the U.S. federal government's revenues exceed those of state and local governments; and since the 1950's we see a gradual return to parity between national versus state and local government revenues. The second sequence establishes that early in this century (and in the 19th as well), local revenues greatly exceeded those of the states as well as of the national government. Thus, while there is a trend now to greater decentralization at the national level, there is the opposite trend within states. The third sequence, which can be derived from the first two, shows that as late as 1932, local revenues were more than twice the revenues of the national government.

**Table 4: U.S. Federal, State and Local Revenues Compared<sup>43</sup>**

Year	National/(State+Local)	Local/State	Local/National
1902	.62	4.40	1.31
1913	.48	4.28	1.72
1922	.83	3.14	.91
1927	.61	2.85	1.30
1932	.33	2.26	2.11
1936	.60	1.56	1.01
1940	.47	1.23	.93
1944	3.76	1.05	.13
1950	1.73	.90	.29
1956	1.92	.86	.52
1960	1.64	.87	.31
1970	1.28	.67	.36
1980	1.39	.77	.31
1990	1.09	.82	.41
1992	1.07	.81	.41

<sup>43</sup> Data are from *Statistical Abstract of the United States, 1994* (U.S. Dept. of Commerce) and *Historical Statistics of the United States, 1970* (U.S. Dept. of Commerce).

Another way to see the decentralization of the American federalism is to consider grants made by the federal government to state and local governments. Table 5, then, shows the recent increase in these grants since 1940, and their tendency, of late, to level off or even decline in relative importance (although proposals by the current Republican controlled national legislature may increase the flexibility of states to determine their own spending priorities).

**Table 5: Federal Grants to State and Local Governments<sup>44</sup>**

Year	Total (billions)	% of state + local
1940	\$ .9	8.0%
1950	2.3	9.7
1960	7.0	11.4
1970	24.1	14.0
1980	83.0	18.3
1990	136.8	13.2

These tables show a number of things.<sup>45</sup> First, in support of the observation we made earlier (see Section 1) that the terms of American federalism are under continual renegotiation, we see here that the role of the federal government relative to that of the states, and even of the states

<sup>44</sup> Source: Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics*, 4th ed. (Washington, D.C.: CQ Press, 1994)

<sup>45</sup> Insofar as how federal spending in general is distributed among the 50 states, Table 6 summarizes one estimate of federal expenditures in a state divided by federal taxes paid by residents of each state. Thus, from a low of .63 (New Jersey) to a high of 2.02 (New Mexico), we see a variation of over 300% in relative advantage.

**Table 6: U.S. Federal Expenditures/Federal Taxes Paid**

Federal spending/ federal taxes paid	# of states
.60-.79	6
.80-.99	14
1.00-1.19	11
1.20-1.39	10
1.40-1.59	7
1.60-1.79	1
1.80-1.99	-
≥ 2.00	1

relative to that of local governments, has undergone considerable cyclic change in this century. Table 5, when compared to Table 4, shows, moreover, that change has been complex -- although states are gradually regaining their position as the primary source of governmental revenues, the transfer of federal revenues to states (and, presumably, the policy directives that come with such transfers) is increasing as well.

But even if we ignore these cycles, these tables also show that the "economic" growth of the national government and the relative "economic" centralization of American federalism occurred seventy years after it achieved political centralization -- seventy years after its civil war. Although the catalyst was the issue of slavery, the American Civil War, in fact, was a war to remove the special political rights that southern states had negotiated for themselves, including a prohibition of federal intervention into the issue of slavery and the authority to regulate the market for slaves. Indeed, one indicator of the fact that the American Civil War was a war over the supremacy of federal law (as well as over slavery and a variety of economic issues) is indicated by the following facts:<sup>46</sup>

- of the 33 state constitutions written before the Civil War, 1 (3%) made explicit provision for the supremacy of federal law and the U.S. Constitution, 20 (61%) did so implicitly via the oaths of office required of state officers, and 12 (36%) made no provision whatsoever.
- of the 29 state constitutions written during or after the civil war but before 1900, 21 (72%) made explicit provision, 8 made implicit provision (28%), and none failed to mention supremacy in some form.
- of the constitutions currently in force (see Table 7), 43% make explicit provision, half do so implicitly, and 7% make no provision.

For example, Article 1, Section 1 of the Texas state constitution, ratified in 1876, begins: "Texas is a free and independent State, subject only to the Constitution of the United States ...," Section 2 of Article 1 of the Washington constitution, ratified in 1889, asserts "The Constitution of the United States is the supreme law of the land," and the first section of the first article of the West Virginia constitution, ratified in 1872, provides that "The state of West Virginia is, and shall remain, one of the United States of America. The constitution of the United States of America, and the laws and treaties made in pursuance thereof, shall be the supreme law of the land." Most states that offer no such declaration nevertheless do so implicitly by the oath of office they require of public officials: for example, "I do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of \_\_\_\_ ..." In contrast, the oath prescribed by the constitution of Massachusetts, written in 1780, reads: "I do solemnly swear that I will bear true faith and allegiance to the Commonwealth of Massachusetts and will support the constitution thereof" (Article VI), whereas that of Vermont requires that

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<sup>46</sup> F.N. Thorpe, ed., *Federal and State Constitutions, Colonial Charters and Other Organic Laws* (Washington, D.C.: U.S. Government Printing Office, 1909)

officials affirm that they will "be true and faithful to the State of Vermont" and that they not "do any act or thing injurious to the constitution or government thereof" (Article II).

Thus, the basic principles of federalism were no longer negotiable by the states after the Civil War, and this stability and the corresponding uniformity in the treatment of states within the federation arguably created an especially fertile ground for U.S. economic development. It is perhaps interesting to see, though, what effect this resolution and the increasing importance of the federal government had on American national politics and the role of states in those politics. The result is paradoxical.

- Of the 11 presidents elected before the outbreak of the Civil War after Thomas Jefferson (excluding Zachary Taylor [1849-50], a general), only two (18%) held the office of governor of their state as their last elected post before becoming president whereas 9 served in Congress;
- between 1860 and 1900, 3 (43%) of 7 were governors and 4 were in the Congress (excluding Grant, a general, and Arthur who held only minor state offices); and
- between 1900 and today, 7 (50%) were governors and 7 were from the Congress (excluding Taft, Hoover, and Eisenhower).

Moreover, several of those elected from the Congress served extensively in state governments (for example, Harding [1921-23] served as state senator and as lieutenant governor before his election to the U.S. Senate).<sup>47</sup> Thus, despite the political and economic centralization of the federation, state office and especially election to the governorship of some state became a more common route to the national office of the presidency.

The explanation for this pattern can be found, once again, in the decentralized yet uniform nature of competition. We have already noted that American political parties are highly decentralized creatures, that national party organizations must have platforms that appeal to local interests, and that those parties can win national office only by competing locally. Because an election campaign for the presidency requires attention to local interests and needs, those who are successful in running for local and state office are well-positioned to make a claim for their party's nomination to the presidency. Thus, the integration of political structures afforded by a consensus on federal principles produces incentives for establishing a variety of integrated policies nationwide, and it is not unreasonable for voters to suppose that a person who is successful at heading the executive branch of a state government can be successful at heading the national executive branch as well. In contrast to the American experience, no Canadian Prime Minister served as the head of a provincial government. Absent the competition for the national office of the presidency, and absent as well provincial-level competition for the Canadian Senate, the party organizations that seek to control the national government are less

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<sup>47</sup> It is useful also to note that, in West Germany, Chancellors Kiesinger and Kohl both served as Land minister-presidents, Brandt was mayor of Berlin, and Schmidt began his political career in the local politics of Hamburg.

integrated with those that compete for control of provincial offices, and, as we have already noted, several such parties have no national counterpart. The regionalism encouraged by Canadian political institutions, as well as their failure to encourage a national integration of local and regional parties, plays no small role in that country's current problems of federal stability.

## Part II: REGIONAL CHARTERS AND CONSTITUTIONS

*the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men.*<sup>48</sup>

If the structure of political competition with a federation's constituent parts is critical to that state's stability and overall performance, then the crafting of regional constitutions and charters is an important part of the construction of a federal state. After all, it is presumably those constitutions that establish the rules of regional and local election, the offices to be filled by election, and the power of those offices once filled. However, this crafting can be a painful experience. Since regional governments are closer to the people than is the national one, the political pressures on those who would prepare such documents can be proportionally greater. Also, the varied circumstances of even a modestly heterogeneous country, not to speak of Russia, can encompass regions led by corrupt, authoritarian leaders with little interest in anything but the cosmetics of democratic governance, as well as by honestly democratic and enlightened leaders. There is no guarantee, then, that regional constitutional drafts will correspond to the principles of liberal democracy or even that all drafts, taken as a whole, will be consistent. Nevertheless, the preparation of such social compacts can be an important stage in the development of democracy in a society and an important learning exercise for nearly everyone. Indeed, because the preparation of at least 18 separate state constitutions and charters in the United States predated the crafting of its federal Constitution, those documents often served as templates for the federal one or as laboratories for the testing of ideas (it was, for example, Pennsylvania's poor experience with a powerful unicameral legislature that made a bicameral national one a foregone conclusion at the convention).

None of this, though, answers the question "what should be in a regional constitution?" or "who should craft them and how should they be adopted?" We will address these questions in this part of our essay by first considering the form and content of state constitutions in the United States, with an appreciation of the fact that not all of the lessons learned from this experience have universal applicability. Before proceeding, though, we should note the fundamental choice in federal institutional design that Russia now confronts. Features of the two primary alternatives already characterize the Federation. On the one hand, Russia can pursue a German-style federation in which federal subjects are primarily administrative arms of the central government. Thus, German federalism is often referred to as "functional federalism," where the

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<sup>48</sup> Article XXX, *Constitution of the Commonwealth of Massachusetts*, the oldest written and still functioning constitution in the world, ca. 1780.

different levels of government are assigned specific functions for the implementation of policy, but where general policy is set by the national government (influenced in part, of course, by the Lander through their control of the Bundesrat).<sup>49</sup> The alternative is the American example whereby federal subjects develop full parallel political structures that function relatively autonomously and are integrated with the national government by the relationship of local to national party organizations and by dual representation in the legislature.

Canada represents something of a mid-point in this classification owing to its failure to give its provinces autonomous representation in a national legislature. In the Canadian case, integration and the resolution of disputes, if they occur at all, occur at the level of regional and national executive bodies, and regional and executive bureaucracies.<sup>50</sup>

Elements of both federal arrangements can be found in Russia: Moscow's historical relationship with its regions corresponds more closely to German federal arrangements whereas its relationship with its republics better fits the American model. Article 77.2 of the Russian Federation Constitution, moreover, with its references to "a unified system of executive power" suggests a federal form like Germany's in which heads of regional administrations are empowered merely to implement federal policy.<sup>51</sup> However, the relevance of the German model for Russia is nevertheless decreasing. Regional political elites are subverting that relevance on their own through their demands for the same prerogatives enjoyed by the republics, whereas political elites in the republics, in addition asserting autonomy, sovereignty, and the like, have adopted constitutions that establish the same parallel political-institutional structure that characterizes the American federation. Thus, attempting to impose "the German option" would, in all likelihood, only increase center-periphery conflict. Insofar as the American variant is concerned, there is little question but that the presidential form of the Russian Federation Constitution moves things in the direction of this variant.

The danger of the American variant, though, is illustrated by Canada, in which provincial governments, like their American state counterparts, also possess parallel autonomous political institutions. However, absent explicit representation in a meaningful Senate and absent the coordinating influence of a presidential election, Canada's parties are far more decentralized than are American ones, or are at least far less integrated with national political party organizations. The consequence, as illustrated by political events in Quebec (and elsewhere), is provincial party elites who use their opposition to the national government as a way to advance their careers: "There can be little doubt from Canadian history that fighting Ottawa provides

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<sup>49</sup> See William M. Chandler, "Challenges to Federalism: Comparative Themes," in Chandler and Christian W. Zollner, eds., *Challenges to Federalism: Policy Making in Canada and the Federal Republic of Germany* (Ontario: Institute of Intergovernmental Relations, Queens University, 1986).

<sup>50</sup> *ibid.*

<sup>51</sup> Edward W. Walker, "Designing Center-Regional relations in the New Russia," *East European Constitutional review*, 4, 1 (Winter 1995), 54-62.

political advantages for provincial premiers who then present their own provincial party as the sole defender of regional interests."<sup>52</sup>

None of this is to say that Russia will not invent or choose some new or unforeseen hybrid form of federalism. Indeed, it is unlikely that Russia's federal structures will simply mirror some existing system. Moreover, the German, American, and Canadian experiences show that, despite the problems we might foresee for each of these countries, societies can prosper under a variety of federal arrangements. We need not assume, a priori, that different arrangements between center and periphery cannot coexist as in Spain or Britain, at least for the foreseeable future. Nevertheless, we suspect that regional constitutional development in Russia, due in part to the Russian Federation Constitution and in part to the demands of regional elites, will move closer to the American form, and that every effort should be made to make this evolutionary process a coherent one. Hence, in the second part of our essay we turn first to a brief survey of the content of American state constitutions to see what lessons they hold for regional and republic constitutional development in Russia.

#### 6. The Character and Diversity of American State Constitutions

Even a cursory look at U.S. state constitutions tells us that they are different creatures than the national one. The U.S. national constitution has been in existence for over 200 years, consists of fewer than 8,000 words, and, excluding the original bill of rights, has been amended only 16 times (approximately once every 13 years). In contrast, looking at Table 7 we see that state constitutions average 28,100 words (the English translation of the Constitution of the Russian Federation is approximately 12,700 words)<sup>53</sup>, have an average age of 90.4 years,<sup>54</sup> and are amended on average 1.6 times per year. Some constitutions, such as Alaska's are sparse and straightforward, and as such, resemble the federal constitution in style as well as content. Others, such as Massachusetts's, embody a good deal of the political philosophy of the 18th century by way of explaining their content and purpose. These constitutions also vary considerably in permanency: Louisiana has had 11, Georgia 10, South Carolina 7, three states have had 6, three 5, nine have had 4, four have had 3, nine have had 2, and nineteen 1, and although the United States has had but one federal constitutional convention, the states have participated in approximately 230 such assemblies.<sup>55</sup>

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<sup>52</sup> Chandler, *ibid*, p. 11.

<sup>53</sup> Vladimir V. Belyakov and Walter J. Raymond, eds and trans., *Constitution of the Russian Federation* (Lawrenceville, Va.: Brunswick Pub. Co., 1994).

<sup>54</sup> which is not much different than the constitutions of Swiss cantons, which, as of 1982, had an average age of 92 years. See Hanspeter Tschaeni, "Constitutional Change in Swiss Cantons: An Assessment of a Recent Phenomena," *Publius: The Journal of Federalism*, 12, 1 (1982): 113-30.

<sup>55</sup> Albert L. Sturm, "The Development of American State Constitutions," *Publius: The Journal of American Federalism*, 12, 1 (1982): 57-98.

Table 7: Basic Features of U.S. State Constitutions

State	word length <sup>1</sup>	date ratified <sup>2</sup>	number of amendments <sup>3</sup>	federal supremacy clause? <sup>4</sup>	# of constitutions
Alabama	174,000	1901	556 (71%)	implied	6
Alaska	16,700	1959	23 (72)	implied	1
Arizona	28,900	1912	119 (55)	yes	1
Arkansas	40,700	1874	81 (47)	implied	5
California	33,400	1879	485 (60)	yes	2
Colorado	45,700	1876	124 (49)	yes	1
Connecticut	9,600	1965	28 (97)	implied	4
Delaware	19,000	1897	123 <sup>5</sup>	implied	4
Florida	25,100	1968	65 (71)	implied	6
Georgia	25,000	1903	39 (75)	yes	10
Hawaii	17,450	1959	86 (84)	implied	1
Idaho	21,500	1890	109 (58)	yes	1
Illinois	13,200	1971	8 (57)		4
Indiana	9,400	1851	38 (54)	implied	2
Iowa	12,500	1857	49 (94)	implied	2
Kansas	11,870	1861	90 (76)		1
Kentucky	23,500	1891	32 (49)	implied	4
Louisiana	51,400	1974	54 (59)	implied	11
Maine	13,500	1820	162 (84)	yes	1
Maryland	41,400	1867	205 (86)	yes	4
Massachusetts	36,690	1780	117 (81)	no	1
Michigan	20,000	1963	17 (33)	implied	4
Minnesota	9,500	1974	113 (55)	implied	1
Mississippi	24,000	1890	116 (78)	yes	4
Missouri	42,000	1945	81 (61)	yes	4
Montana	11,900	1972	18 (56)	implied	2
Nebraska	20,000	1875	197 (67)	implied	2
Nevada	20,800	1864	113 (61)	yes	1
New Hampshire	9,200	1784	143 (51)	no (before 1970)	2
New Jersey	17,090	1948	44 (77)	implied	3
New Mexico	27,200	1912	123 (51)		1
New York	80,000	1895	213 (76)	implied	4
North Carolina	11,000	1971	27 (77)	yes	3
North Dakota	20,600	1889	129 (55)	yes	1
Ohio	36,900	1851	151 (60)	implied	2
Oklahoma	68,800	1907	146 (50)	yes	1
Oregon	26,000	1859	192 (51) <sup>6</sup>	implied	1
Pennsylvania	21,700	1968	19 (76)	implied	5

Rhode Island	19,000	1986	53 (54)	implied	2
South Carolina	22,500	1895	463 (71)	implied	7
South Dakota	23,300	1889	99 (52)	yes	1
Tennessee	15,300	1978	32 (58)	yes	3
Texas	76,000	1876	353 (68)	yes	5
Utah	11,000	1896	82 (63)	yes	1
Vermont	6,600	1786	50 (24)	no	3
Virginia	18,500	1971	23 (82)	implied	6
Washington	29,400	1889	88 (56)	yes	1
West Virginia	25,600	1872	64 (58)	yes	2
Wisconsin	13,500	1848	129 (74)		1
Wyoming	31,800	1890	61 (60)	yes	1

1. Source: The Book of the States, vol. 30, 1994-5 edition, The Council of State Governments, Lexington, Kentucky
2. Dating a constitution is somewhat arbitrary since amendments can be of such a significant nature as to be equivalent to a rewriting of the entire document. Thus, Vermont's constitution is given a ratification date of 1986, despite the fact that Vermont ratified its original constitution in 1777 and the current version borrows heavily from it.
3. Source: The Book of the States, vol. 30, 1994-5 edition, The Council of State Governments, Lexington, Kentucky. Numbers in parenthesis refer to the percent of amendments approved by voters of those submitted to them for ratification. For example, then, 783 amendments have been submitted to voters in Alabama since 1901, and 556 (71%) have been approved.
4. Typical language includes passing no laws that "are repugnant to the Constitution of the United States," "The Constitution of the United States is the supreme law of the land," and "The state of \_\_\_ is, and shall remain one of the United States of America. The Constitution of the U.S. and the laws and treaties made in pursuance thereof, shall be the supreme law of the land." The coding "Implied" generally means swearing allegiance to the Constitution of the United States in various oaths of office.
5. Amendments are not submitted to voters in Delaware
6. Since 1968

BEST AVAILABLE DOCUMENT

Before proceeding, though, we should again comment on the relevance of these documents to Russia. Circumstances differ greatly, but in at least a few respects, Russian and American constitutional traditions are similar or are moving along the same historical path. First, U.S. state constitutions, subject only to the limitations set by the federal one, are the creation of the citizens of the separate states and subject to wide discretion in terms of their content. The experience of Russia's republics is similar, at least with respect to the republic constitutions written independently of Moscow. In this way Russia is more like the United States (as well as Argentina, Brazil, Mexico, Germany, Switzerland, and Austria), than, say, Canada and Australia, who employ constitutional statutes that render state fundamental law of little consequence.<sup>56</sup> And despite the current asymmetry of Russian federalism in which regions (oblasts, etc.) are treated like the federal subjects of India, Nigeria, and Pakistan, whose must employ common federally directed charters that have little more significance than normal law, it seems reasonable to predict that the demands of those regions for greater parity with the republics will lead them to develop independently their own charters and constitutions.

Several additional things point us in the direction of assuming that the American model is relevant to all of Russia and not merely to its republics. First, like the U.S. Constitution, and despite current practice, the Russian Federation Constitution treats regions and republics symmetrically. Second, like the U.S. Constitution, the RF Constitution is a relatively sparse document that leaves the details of regional and republic governance to federal law, republic constitution, and regional charter. Third, like the political elites who represented their states in Philadelphia in 1787, Russia's regional elites -- the heads of regional administrations, Soviets, republic Presidents, and so on -- also demand protection from the center, but want a center that functions effectively for their common ends. Finally, for a variety of reasons (most of them healthy), Russia seeks to encourage national parties that nevertheless have strong regional roots, and as we have argued in Part I of this essay, meaningful regional autonomy, embodied and certified in federal and state constitutions, is essential to achieving that end.

#### Main Features of U.S. state constitutions

Depending on when they were written or the circumstances under which they underwent significant revision, American state constitutions can be said to be of one of three types:<sup>57</sup>

**populist:** For this type, regional governments are made as directly answerable to the people as possible. In addition to direct election of representatives and governors, maximum use should be made of referenda, initiative and recall petitions. Elections should be frequent, and terms of office should be short (2 years).

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<sup>56</sup> Daniel J. Elazar, "State Constitutional design in the U.S. and Other Federal Systems," *Publius*, 12, 1 (1982): 1-10

<sup>57</sup> For elaboration, see Daniel J. Elazar, "The Principles and Traditions Underlying State Constitutions," *Publius*, 12,1 (1982), 11-25.

**federalist:** Less use of immediate citizen control of policy, and greater reliance on the indirect basis of liberal democracy through the strengthening of legislative and executive powers, with the legislature having greater authority in general over the executive branch.

**managerial:** Same emphasis (or lack of emphasis) as the federalist view with respect to referenda, initiatives, and so on, but greater emphasis on the executive branch, which can exert its control over policy through a hierarchical administrative structure staffed by appointed substantive "experts" and elected heads of various administrative organs of government.

There is no single type that is self-evidently best, and American state constitutions have cycled through all three. But while they may differ in details, and style, the following outline would characterize the common content of most of them.<sup>58</sup>

- a bill of rights (normally more restrictive of the state than the federal constitution that might codify decisions of the U.S. Supreme Court);<sup>59</sup>
- guarantees of the right to vote for state and local offices, usually in the form of a minimum residency requirement (usually 30 days to three months);
- in 16 states, a granting of the authority of voters to remove various states elected officials from office, including the governor, by a recall petition.
- a delineation of the powers of the legislative, executive, and judicial branches of the government (often including such details as salaries, oaths of office, election procedures, apportionment of election districts, appointment powers of the governor, and the authority of other parts of the executive branch such as the state's attorney general, insurance commissioners, boards of education);
- carefully worded provisions limiting the power of the state to tax, borrow, and spend, often directing certain classes of revenue to specific expenditure categories;
- statutory-like provisions describing the state's obligations with respect to public services such as education, health, roads, banking, the development of tourism, energy conservation, and the licensing of corporations;
- a delineation of the state's obligation with respect to the exploitation of natural resources and publicly owned lands, including, in the case of many western states, the relationship of the state to federally controlled lands;
- detailed provisions dealing with the state's relationship to local governments, including the authority of the state to create those governments, and to limit and direct their

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<sup>58</sup> This list is adapted from Elazar, *op cit.*

<sup>59</sup> See, for example, Paul Finkelman and Stephen E. Gottlieb, *Toward a Usable Past: Liberty Under State Constitutions* (Athens, Georgia: The University of Georgia Press, 1991)

taxing and spending authority (in the U.S. local governments are viewed as creature of the states just as the states are creatures of the national government);  
- provision for constitutional amendment and the drafting of a new constitution through convention, including citizen initiatives of amendments, and direct citizen involvement in the amending and convention processes.

Even this list shows that U.S. state constitutions are substantively different from the national one. Like the U.S. and Russian constitutions, each contains a bill of rights (although no state bill of rights can diminish the liberties provided in the federal constitution, they exist here in part by tradition -- recall that state constitutions preceded the federal one -- and also to give direction to state courts),<sup>60</sup> and each establishes and enumerates the powers of the legislative, executive, and judicial branches of state government. But detailed provisions dealing with public services, and subsidiary public offices are far more detailed than we see in either the American or Russian national constitutions. For example, the Russian Constitution contains fewer than 1,000 words dealing with the judicial branch, and the U.S. Constitution even fewer. The six pages of the Kentucky constitution or the 17 pages of the Missouri constitution, though, are not unusual in their length or in their treatments of the composition and general powers of their state Supreme Courts, Courts of Appeals, various circuit courts, district courts, county courts, as well as the terms of office, compensation, method of appointment and retirement of judges and justices.

The reason why state constitutions differ so markedly from the national one derives from the different purposes served by them. Although we might refer to the national constitution as the "highest law of the land," it is not a law as much as it is a document that coordinates all of society the common principles about the essential democratic character of the state. It is not a detailed blueprint of the government's internal operation but is designed instead to set limits on state action consistent with the ideals of liberal democracy and to set forth the essential agreements between the sovereign (citizens) and the state as well as the relationship of the national government to its federal subjects (the states). Complexity is unnecessary, even detrimental, since elaboration of its provisions would only serve to undermine agreement on principles (e.g., supremacy of federal law, and so on).<sup>61</sup> Those details will be filled in as part of the country's normal political process, by the states directly, or by the states in collaboration with the national branches of government. Thus, rather than try to resolve specific disputes

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<sup>60</sup> State bills of rights can also make certain rights more explicit as when various states passed their versions of an Equal Rights Amendment (directed primarily at the position of women in society) even though an insufficient number of states ratified the proposed federal constitutional amendment. Similarly, a number of states earlier in this century required the popular election of Senators to the U.S. Congress before the passage and ratification of the 17th Amendment to the U.S. Constitution.

<sup>61</sup> For elaboration of this view of constitutions see Peter C. Ordeshook, "Constitutional Stability," *Constitutional Political Economy*, 3, 2 (1992), 137-75, and "Some Rules of Constitutional Design," *Social Philosophy and Policy*, 10, 2 (1993), 198-232.

between national and state governments, the national constitution establishes the institutions, procedures, and, correspondingly, the incentives that will direct the negotiation of all disputes or reinterpretation of agreements.

State constitutions serve a different purpose. Although often written to appear otherwise, they do not guarantee a democratic form of state government -- that goal is achieved through the national constitution (U.S. Const., Article IV, Section 4) and acceptance of the supremacy of that document (witness the gradual extension of full voting rights to racial minorities in the South by **federal** courts). Instead, they must establish the representative, judicial, administrative, and electoral structures consistent with democratic government and set forth laws that, for one reason or another, the residents of the state and their representatives choose to make more permanent than "ordinary law." This "philosophy of state constitutionalism" allows the distinction between those constitutions and normal law to become blurred. Thus,

- The Texas constitution specifically outlaws banditry, and offers twelve pages of provisions dealing with the establishment, financing, and administration of the state university system;
- Pennsylvania's constitution has multiple articles and sections exclusively treating the debt, courts, public housing, and motor vehicle laws of the city of Philadelphia;
- Oregon's devotes a full page to farm and home loans to veterans, and two pages to veterans' bonuses;
- Maryland's spends one and a half pages on off-street parking and multiple sections directed specifically at the city of Baltimore;
- Oklahoma's spends thirteen pages on private corporations chartered or licensed to operate within the state;
- Louisiana devotes six pages to the state police, and specifies the order in which members can be dismissed in the event of a reduction in the size of that service;
- Mississippi's devotes a page each to its militia and prisons;
- Delaware's devotes a page and a half to lotteries and gambling;
- California's spends three pages on motor vehicle revenues, two and a half on labor relations, and eleven on water and marine resources.

Although we might be amused by constitutional provisions dealing with off-street parking, there is a logical reason for their existence. Eighteen state grant voters the constitutional right to directly propose amendments to their constitutions. Thus, if frustrated by legislative or executive action or inaction, residents of these states can "take the law into their own hands," which is something that few if any national constitutions allow. The different procedures for amending constitutions, then, can account for differences in their content (and their length), and thereby makes it difficult to characterize them generally any more than we already have. At this point, then, it is useful to turn to details, and without any attempt at being comprehensive or attendant to all details, we will consider the following categories of constitutional provisions insofar as they relate to our discussion of the design of a stable federation in Part I of this essay:

- the regulation of state debt
- elections
- the authority of governors
- amending the constitution and the authority of voters

### Debt

Aside from the definition and apportionment of state legislative districts, perhaps no issue receives more attention in state constitutions than does that of finance and taxation. We cannot review here the great variety of provisions that are made, aside from noting that each state retains an independent authority to tax, as well as a tax administration that is separate from the federal government. Thus, there is not conflict over tax sharing, or the passing of revenues on up to the national level. The issue of local and regional public debt, though, is especially interesting owing to the history of this issue. Briefly, that history is a long one, since the issuance of debt in the form of bonds predates the American Revolution. Following the profitable experience of the building of the Erie Canal in the 1830's, the selling of state bonds became a primary source of capital for American states and the development of their infrastructure. Unfortunately, the depression of 1837, in conjunction with substantial corruption and the fact that foreign (i.e., non-voting) investors held much of the debt, led several states to default on their loans. With investor confidence thus impaired, foreign investment in the U.S. virtually disappeared in the 1840's. With rapidly growing populations and an increasing need for infrastructure, states sought to recapture that confidence by incorporating strict limitations on debt directly into their constitutions and by creating the category of "full faith and credit debt" - debt that the state pledged to repay using, if necessary, current tax revenues (as opposed to fees and profits earned from capital projects). Today, virtually every state imposes some limit on the issuance of such debt, including

- the requirement that voters approve the issuance of any bond,
- approval by some super-majority in the legislature.
- limitations on debt as a fraction of state taxes or some other revenue base, or
- outright prohibition.

Table 8 summarizes the main outlines of these limitations as they appear in different state constitutions. The empirical evidence suggests that, although requiring voter approval tends to limit the issuance of full faith and credit debt, requiring legislative super-majorities does not.<sup>62</sup> One explanation for this is that such super-majorities are circumvented in the legislature by more strenuous efforts at creating packages of proposals that benefit a wide cross section of legislators, which, in turn, can only increase debt further. That is, legislative super-majorities can have the opposite effect of what is intended.

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<sup>62</sup> Kiewiet and Szakaly, *ibid.*

**Table 8: U.S. State Constitutional Limitations on Issuance of Guaranteed Debt\***

State	Require referendum approval	Require legislative super-majority	Revenue-based limitation	Strict prohibition	No limitation
Alabama				✓	
Alaska	✓				
Arizona				✓	
Arkansas	✓				
California	✓				
Colorado				✓	
Connecticut					✓
Delaware		✓			
Florida	✓				
Georgia			✓		
Hawaii			✓		
Idaho	✓				
Illinois	✓	✓			
Indiana				✓	
Iowa	✓				
Kansas	✓				
Kentucky	✓				
Louisiana		✓			
Maine	✓	✓			
Maryland					
Massachusetts		✓			✓
Michigan	✓	✓			✓
Minnesota		✓			
Mississippi			✓		
Missouri	✓				
Montana		✓			
Nebraska					
Nevada			✓	✓	
New Hampshire					✓
New Jersey	✓				
New Mexico	✓		✓		
New York	✓				
North Carolina	✓		✓		
North Dakota					
Ohio				✓	
Oklahoma	✓			✓	
Oregon			✓		
Pennsylvania	✓		✓		

Rhode Island	✓				
South Carolina			✓		
South Dakota		✓	✓		
Tennessee					✓
Texas				✓	
Utah			✓		
Vermont					✓
Virginia	✓	✓	✓		
Washington	✓	✓	✓		
West Virginia				✓	
Wisconsin			✓		
Wyoming	✓		✓		

This table is taken from D. Roderick Kiewiet and Kristin Szakaly, "Constitutional Limitations on Borrowing: An Analysis of State Bonded Indebtedness," forthcoming, Journal of Law and Economics.

The reliance on such debt as opposed to general obligation (non-guaranteed) bonds varies from state to state. Overall, in 1992, full faith and credit debt amounted to \$96.5 billion, or approximately 26% of the total debt of states. Ten states issued little or no such debt, whereas a majority of the debt of states such as Connecticut, Georgia, Oregon, and Washington was full faith and credit. The per capita debt of states ranges from a low of \$193/person in Kansas to a high of \$5,000/person in Delaware and Rhode Island and \$8,000 in Alaska. Thus, as with nearly everything else, we see considerable variation among the states in terms of their willingness to borrow and the form of that borrowing.

One additional feature of state finances should be noted. Aside from regulating public records and the flow of information, states and the governments beneath them are free to go bankrupt. In the 1830's the state of Indiana actually declared bankruptcy, and more recently, in 1975, New York City was confronted with this possibility. Although it successfully lobbied Washington for aid, there was no legal obligation on the federal government's part to act. Only the same political imperatives that account for the current effort to support Mexico's economy - - protecting the interests of American investors -- compelled federal action. Thus, although we might take a cynical view of such aid, we see here an example of how political imperatives can protect not only individuals, but also governments, both domestic and foreign, even though there are no constitutional obligations to do so.

### Elections

Just as an American journalist and social-satirist Mark Twain once wrote that a person is no more harmlessly occupied than when he is making money, it would seem that, judging by the practices in most states, Americans believe that "a politician is no more harmlessly occupied than when running for election or reelection." State constitutions require not only that the offices of governor (generally, every 4 years, with only two exceptions) and legislators (generally every 2 years in single-member districts) be filled by direct election, but also that a wide variety of other state-wide offices be filled in the same way rather than through some appointment process -- offices such as lieutenant governor (vice-governor), secretary of state, treasurer, attorney general (prosecutor general), superintendent of schools, secretary of agriculture, commissioner of insurance, highway commissioner, commissioner of labor, commissioner of elections, and state auditor. Table 9 gives the distribution of the number of **executive offices** (excluding, then, elections to the legislature as well as to various state courts) that are normally filled on a state-wide basis in addition to governor. And state-wide elections are more pervasive than even this table suggests. Among the most important statewide elections are those for the judicial branch. For example, after initial appointment by the governor upon the recommendation of various types of judicial councils, state Supreme Court justices (as well as judges to many other state, and county and local courts) must secure reappointment in general elections in 39 states, of

which more than half (23) run with their party affiliations listed on the ballot.<sup>63</sup> And Californians have, on at least one occasion, used their power of recall to remove a state supreme court justice from the bench.

**Table 9:** Number of statewide offices filled by direct election<sup>64</sup>

range	number of states
0	3
1 - 5	5
6 - 10	18
11 - 15	12
16 - 20	10
21 - 25	1
> 25	1

It might seem unproductive to have dozens of executive and judicial state offices filled through election. After all, we cannot assume that many voters will have good information about a great many, if any, of the candidates for these offices. Few voters would know much about the candidates for the office of, say, inspector of mines (Arizona), or commissioner of the general land office (Texas). Thus, we should ask: Doesn't direct election open the door to having these positions filled by incompetent persons, or persons who are merely adept at manipulating public opinion? And wouldn't appointment be more in the interests of political elites -- for example, regional administrators and legislators?

Certainly we cannot argue that voters are all-wise or all-knowing, even in an established democracy, and that they will not elect incompetent people to office. Nor can we say that those in positions of authority would not like the power to pay of their friends and associates with official position. But if we have designed our political institutions well, then more important than any individual local or regional politician is the local or regional political party, and the interests of parties are not always served by direct appointment. Specifically, absent any information except the party affiliation of the candidates, voters are likely to vote straight-party ballots. In this case, nomination to these lesser offices are an important way for parties to pay off politicians within the parties and the offices themselves provide an important source of new

<sup>63</sup> For details see *The Book of the States*, 1994-5, pp. 190-2. The usual size of state Supreme Courts is 7, but nineteen have five members and eight have 9 members, with term lengths varying between 6 and 15 years (5 have Supreme Court justices that serve for life or until age 70).

<sup>64</sup> Source: *The Book of the States*, vol. 30, 1994-5, The Council of State Governments, Lexington, Kentucky

talent for a party when nominating candidates to higher position. Thus, allowing so many positions to be filled by direct election is one way to strengthen regional party structures.

Filling local and regional offices by direct election is also an important way to strengthen national parties. There is the story of the candidate for city judge of New York City, who, during the presidential election campaign of 1935, collected the contributions for his campaign and turned over the money to the local Democratic party in anticipation of the party supporting his campaign with various professional advertisements. Weeks went by, but he saw nothing -- no posters, no radio broadcasts that mentioned his name! Agitated and uneasy, he returned to Party headquarters to complain. The head of the party took him to the southern tip of Manhattan where the ferry from Staten Island landed. And, as a ferry pulled into the dock, he pointed to the floating debris and garbage that swirled at the ferry's stern, pulled in by its wake, and said "the name of your ferry is Franklin Delano Roosevelt."<sup>65</sup>

One additional feature of elections warrants comment. Specifically, although federal courts have not been reticent to regulate state elections in accordance with the rights specified in the U.S. Constitution, the national Congress did not intervene in such things until 1993 with the passage of the National Voter Registration Act. Thus, subject only to judicial scrutiny, states are the administrators of their elections, including election to the national legislature and the drawing of national legislative district boundaries. That is, rather than rely on Central Election Commissions and the like, the United States has relied more on its judicial system for whatever enforcement it provides for free and fair elections. This decentralized election structure results in considerable variation in how elections are administered. Some states use paper ballots, others use machines, and still others have voters punch cards. California asks candidates to submit brief statements of their positions, and requires that these statements, along with sample ballots, be printed by the state and distributed to all registered voters. Only recently did Hawaii allow voters to cast absentee ballots, a practice that is common in most other states, although some states require notarized requests before sending a person their absentee ballot. Some states open their polls on election day at 6 am, some at 7 am, and some at other times; some close their polls as early as 6 PM, others as late as 9 PM, and in some states (for example, New Hampshire), determination of polling times is left to local governmental officials. Several states have recently imposed term limits on their state and federal legislative representatives (the U.S. Supreme Court will soon rule on their constitutionality), and the rules under which voters may vote in party nominating primaries are too varied to summarize here.

It is not difficult to argue, of course, that such decentralization has, historically at least, led to a not inconsiderable amount of corruption. American history is replete with stories of the dead voting, sometimes more than once. But decentralization has salutary effects. First, it isolates the consequences of corruption to the locality in which it occurs. Second, it opens the

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<sup>65</sup> As reported in Edward J. Flynn, *You're The Boss: The Practice of American Politics* (New York: Collier Books, 1962). Ed Flynn, one of Roosevelt's most trusted political operatives, was "Boss" of the Bronx Democratic Party for more than 25 years and directed Roosevelt's campaign for a third term in 1939-40.

door to *competitive corruption* -- indeed, we might even say that it is less important that an election be fair than that everyone have an equal chance to steal votes. Finally, decentralization allows for greater local participation and encourages the gradual development of local and regional citizen groups who become watchdogs of elections. A wholly centralized system discourages such things since no local group or organization can hope to have much influence on a national centralized structure. Overall, then, it is difficult to say whether decentralization encourages or discourages corruption at the polls.

### **Budgets and the Authority of Governors**

Absent the ability to appoint some key state cabinet-level officials, many state's nevertheless allow their governors considerably authority in day-to-day administrative matters. Table 10, for example, summarizes some of the procedures required to pass a state budget, and as the next-to-last column indicates, all but six governors have a line-item veto. That is, 44 governors can take the annual budget bill passed by the legislature, and veto specific items on it so as to require that the legislature vote (if it so chooses) to override the veto by an extraordinary vote in each instance (see the last column of Table 10 for veto-override vote requirements). However, the governor of Indiana cannot veto the budget in any way, while, unique among the 50 states, the governor of North Carolina has no veto authority whatsoever. Most states also have a constitutional balanced budget requirement, and 40 of 50 state governors are authorized to withhold the spending of funds in order to satisfy this requirement.

Not only is the budget authority of U.S. state governors significant, but those budgets, even after we exclude revenues generated at local (city and county) levels, are significant as well. Without any evidence that any of them seeks sovereignty for their states (several, though, aspire to the presidency), they must govern economies that would rank in the top tier of national economies. Table 11 compares the 1992 state (non-local) budgets of the ten largest states against the central government budgets (excluding social security funds) of a selection of Western countries, as well the 1990 Gross Domestic Products of these states and countries (budgets are in millions of U.S. dollars, GDP figures are in billions of U.S. dollars). Thus, both in terms of budgets and size of the economy, we might say that the governor of California is comparable to the prime minister of Canada, that the Governor of New York deals with a larger budget and economy than does the prime ministers of Australia, Belgium, Sweden, and Denmark, that the governors of Texas and Pennsylvania oversee budgets that are only slightly smaller than Austria's but whose economies are greater, the governors of five other states must administer budgets that exceed the national budgets of Switzerland and Greece, and the governors of four states -- California, New York, Pennsylvania, and Texas -- together administer a combined budget that exceeds that of France. Table 11 also gives the population of these political units for purposes of comparison.

Insofar as other specific provisions of state constitutions are concerned, thirty six states limit their governors to two consecutive terms, and, interestingly, twelve do not require that the governor be a citizen of the United States (although they must be legal *residents* of their states). Forty two governors have emergency powers that include the authority to use the national guard

Table 10: Provisions of U.S. State Constitutions concerning Budgetary Legislation\*

State	balanced budget required	leg. vote required to pass budget	extra-ordinary votes required for ... <sup>1</sup>	governor has line-item veto	provisions for veto override <sup>2</sup>
Alabama	✓	majority		✓	maj e
Alaska	✓	maj. elected		✓	2/3 e
Arizona	✓	1/2 elected		✓	2/3 e
Arkansas	✓	3/4 elected	T	✓	maj e
California		2/3 elected	T	✓	2/3 e
Colorado	✓	majority		✓	2/3 e
Connecticut	✓	majority		✓	2/3 e
Delaware	✓	maj. elected	T,B	✓	3/5 e
Florida	✓	majority		✓	2/3 p
Georgia	✓	majority		✓	2/3 e
Hawaii	✓	maj. elected		✓	2/3 e
Idaho	✓	majority		✓	2/3 p
Illinois	✓	3/5 elected	B	✓	3/5 e
Indiana	✓	majority			
Iowa	✓	majority		✓	2/3 e
Kansas	✓	majority		✓	2/3 p
Kentucky	✓	majority		✓	maj e
Louisiana	✓	1/2 elected	T,B	✓	2/3 p
Maine	✓	majority			
Maryland	✓	majority		✓	3/5 e
Massachusetts	✓	majority	B	✓	2/3 p
Michigan	✓	maj. elected	B	✓	2/3 e
Minnesota	✓	maj. elected	B	✓	2/3 e
Mississippi	✓	majority	T	✓	2/3 e
Missouri	✓	maj. elected		✓	2/3 e
Montana	✓	majority		✓	2/3 p
Nebraska		3/5 elected		✓	3/5 e
Nevada	✓	majority			
New Hampshire		majority			
New Jersey	✓	majority		✓	2/3 e
New Mexico		majority		✓	2/3 p
New York		majority		✓	2/3 e
North Carolina	✓	majority		✓	
North Dakota	✓	majority		✓	2/3 e
Ohio		maj. elected		✓	3/5 e
Oklahoma	✓	majority		✓	2/3 e
Oregon	✓	majority		✓	2/3 p
Pennsylvania	✓	maj. elected		✓	2/3 e
Rhode Island	✓	majority			

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South Carolina	✓	majority		✓	2/3 p
South Dakota	✓	maj. elected	T,B	✓	2/3 e
Tennessee	✓	maj. elected		✓	maj e
Texas	✓	maj. elected		✓	2/3 p
Utah	✓	majority		✓	2/3 p
Vermont		majority			
Virginia		maj. elected	B	✓	2/3 p
Washington		majority		✓	2/3 p
West Virginia	✓	majority		✓	2/3 p
Wisconsin	✓	majority		✓	2/3 p
Wyoming	✓	majority		✓	2/3 e

\* The first four columns of this table are taken from Stanley and Niemi, op cit. p. 327-9, the last column from The Book of the States, vol. 30, 1994-5, The Council of State Governments, Lexington, Kentucky.

1. T indicates tax bills, B indicates state borrowing
2. e = elected, p = present

**Table 11: Comparison of Budgets and Economies<sup>66</sup>**

Country or State	1992 revenue, millions US\$	1990 GDP, billions US\$	Population, millions
France	3245,156	1,195	57.8
Spain	115,120	491	39.3
Canada	112,251	568	28.1
Netherlands	102,903	284	15.4
<b>CALIFORNIA</b>	<b>100,154</b>	<b>745</b>	<b>29.8</b>
<b>NEW YORK</b>	<b>74,931</b>	<b>467</b>	<b>18.0</b>
Australia	70,229	297	18.1
Belgium	66,486	192	10.1
Sweden	62,026	230	8.8
Denmark	55,643	129	5.2
Austria	47,314	158	8.0
<b>TEXAS</b>	<b>36,763</b>	<b>372</b>	<b>17.0</b>
<b>PENNSYLVANIA</b>	<b>36,699</b>	<b>245</b>	<b>11.9</b>
Norway	36,630	105	4.3
<b>OHIO</b>	<b>35,590</b>	<b>222</b>	<b>10.8</b>
<b>NEW JERSEY</b>	<b>28,922</b>	<b>208</b>	<b>7.7</b>
<b>FLORIDA</b>	<b>28,311</b>	<b>245</b>	<b>12.9</b>
<b>ILLINOIS</b>	<b>27,865</b>	<b>272</b>	<b>11.4</b>
<b>MICHIGAN</b>	<b>26,290</b>	<b>188</b>	<b>9.3</b>
Switzerland	23,171	226	7.0
<b>MASSACHUSETTS</b>	<b>20,466</b>	<b>154</b>	<b>6.0</b>
Greece	19,638	67	10.6

(state militia) and state police in the event of natural disasters, and, in accordance with Article IV, Section 4 of the federal Constitution, the authority to authorize or prohibit federal involvement in state emergencies. Thus, as with electoral procedures, we see some features of

<sup>66</sup> State budget source: *The Book of the States*, volume 30, 1994. State GDP source: *Statistical Abstract of the United States, 1990* (U.S. Dept. of Commerce, Bureau of the Census). Country budget and GDP source: *National Accounts, 1980-1992*, vol. 2 (Paris: OECD, 1994).

this office that most states share (term length, term limits, budgetary authority, emergency powers), but we also see variation across states in other categories such as the office's appointment powers.

### **Amending and Rewriting Constitutions**

We have already commented on the frequency with which the constitutions of states in the United States have been amended. Table 12 gives the varied procedures states use for proposing and passing an amendment, as well as the procedures for calling for a new constitutional convention and ratifying a new state constitution. The things portrayed in these two tables are instructive for those who would draft similar documents for Russia. Notice first that only Delaware fails to require the approval of voters for amendments. Eighteen states allow voters, by initiative petition, to propose and vote on amendments directly (perhaps unexpectedly, such constitutions are actually amended less frequently, on average, than the national average -- 1.3 versus 1.6/year).

Calling for a constitutional convention is only slightly more difficult than initiating an amendment and, in fact, 14 states require that voters decide this issue periodically (as of January 1992, 233 constitutional conventions have been held in the U.S., 60 since 1900). But as with amendments, voter authorization of a constituent assembly as well as approval of the assembly's product is required in all but six states, although the composition of the assembly and its rules of procedure are usually left to law.

Insofar as constitutional assemblies are concerned, early experience failed to distinguish between the legislature and a constituent assembly. The independent constituent assembly, invented to "render revolution routine and peaceful," is generally required by a state constitution to be formed under the direction of the state legislature but separate from them. In this way, they can formally allow the participation of constitutional experts and interests not specifically represented in a legislature. Often, the state legislature will initiate a constitutional reform commission that would first study the desirability of a constituent assembly, draft initial proposals, and make recommendations about the composition of the assembly itself. Commissions are largely the invention of state legislatures, who prefer to begin with a body they are constitutionally empowered to control; in contrast, the development of the constituent assembly was encouraged by the understanding that it is inappropriate to have political leaders control the rules of the game under which they must operate.

Aside from details, the common characteristic of state constitutions with respect to amendments and revisions is, once again, direct citizen involvement, with the idea that each generation, in accordance with the principle of popular government set forth in the preamble to the Constitution of Massachusetts, may choose to radically alter the document. State constitutions, then, are not assumed to have the same permanency associated with the national constitution. And if, as Alexander Hamilton said, "the people are turbulent and changing," then state constitutions are allowed to change with them. But if they lack the legitimacy that accrues

Table 12: Provisions for Amending or Changing U.S. State Constitutions\*

State	legislative vote required for proposal	vote by two sessions required	vote required for ratification	voter initiative allowed	provision for const. convention	leg. vote required for submission of question	popular vote to authorize convention (j)	periodic submission of question	popular vote required for ratification (i)
Alabama	3/5		majority		✓	majority	me		unspecified
Alaska	2/3		"		✓	majority	mp	10 years	unspecified
Arizona	majority		"	✓	✓	majority	mp		mp
Arkansas	majority		"	✓		-	-		-
California	2/3		"	✓	✓	2/3	mp		mp
Colorado	2/3		"	✓	✓	2/3	mp		me
Connecticut	(a)	✓	"		✓	2/3	mp	20 years	mp
Delaware	2/3	✓	no		✓	2/3	mp		unspecified
Florida	3/5		majority	✓	✓	-	mp		unspecified
Georgia	2/3		"		✓	2/3	no		unspecified
Hawaii	(b)	✓	"		✓	?	mp	9 years	mp
Idaho	2/3		"		✓	2/3	mp		unspecified
Illinois	3/5		(f)	✓	✓	3/5	no	20 years	mp
Indiana	majority	✓	majority			-	-		-
Iowa	majority	✓	"		✓	majority	mp	10 years	mp
Kansas	2/3		"		✓	2/3	mp		mp
Kentucky	3/5		"		✓	majority	mp		unspecified
Louisiana	2/3		"		✓	2/3	no		mp
Maine	2/3		"		✓	(h)	no		unspecified
Maryland	3/5		"		✓	majority	me	20 years	mp
Massachusetts	majority	✓	"	✓		-	-		unspecified
Michigan	2/3		"	✓	✓	majority	mp	16 years	mp
Minnesota	majority		"(g)		✓	2/3	me		3/5
Mississippi	2/3		"	✓		-	-		-
Missouri	majority		"	✓	✓	majority	mp	20 years	unspecified
Montana	2/3		"	✓	✓	2/3	mp	20 years	mp
Nebraska	2/5		"	✓	✓	3/5	mp		mp
Nevada	majority	✓	"	✓	✓	2/3	me		unspecified
New Hampshire	3/5		2/3		✓	majority	mp	10 years	2/3
New Jersey	(c)	✓	majority			-	-		-
New Mexico	majority		"		✓	2/3	mp		unspecified
New York	majority	✓	"		✓	majority	mp	20 years	mp
North Carolina	3/5		"		✓	2/3	mp		mp
North Dakota	majority		"	✓		-	-		-
Ohio	3/5		"	✓	✓	2/3	mp	20 years	mp
Oklahoma	majority		"	✓	✓	majority	mp	20 years	mp
Oregon	majority		"	✓	✓	majority	mp		unspecified

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Pennsylvania	majority	✓	-			-	-		-
Rhode Island	majority		-		✓	majority	mp	10 years	mp
South Carolina	2/3	✓	-		✓	(h)	me		unspecified
South Dakota	majority		-	✓	✓	(i)	no		mp
Tennessee	(d)	✓	"(g)		✓	majority	mp		mp
Texas	2/3		-			-	-		mp
Utah	2/3		-		✓	2/3	me		mp
Vermont	(e)	✓	-			-	-		-
Virginia	majority	✓	-		✓	(h)	no		mp
Washington	2/3		-		✓	2/3	me		unspecified
West Virginia	2/3		-		✓	majority	mp		unspecified
Wisconsin	majority	✓	-		✓	majority	mp		unspecified
Wyoming	2/3		"(g)		✓	2/3	me		unspecified

- \* Source: The Book of the States, vol. 30, 1994-5, The Council of State Governments, Lexington, Kentucky
- a. 3/4 in each chamber in one session, or majority in two successive sessions
  - b. 2/3 in each chamber in one session, or majority in two successive sessions
  - c. 3/5 in each chamber in one session, or majority in two successive sessions
  - d. majority for first passage, 2/3 for second passage
  - e. 2/3 in senate, majority in house for first passage, majority in both chambers for second passage
  - f. majority voting in election or 3/5 on amendment
  - g. of those voting in the election
  - h. 2/3 in each of two sessions of the legislature
  - i. 3/4 in each of two sessions of the legislature
  - j. mp = majority voting on proposal; me = majority voting in election

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from having them be part of society's social fabric, they gain it back by being, even more than ordinary law, the people's product.

The "cost" of allowing state constitutions to be under the direct control of voters may be continual change, but since those documents treat immediate policy, this is perhaps unavoidable and even desirable. It does, however, raise the question as to whether the entire system could be scrapped in favor of some more unifying treatment. Why not apply a common constitution or charter to all states? The answer here, is that even after they recognize the supremacy of federal law and the federal constitution, individual states and the residents therein are unwilling to abrogate the autonomy that state-authored constitutions afford them. Those constitutions may be little more than "hard-to-change laws," but they are "laws" that are authored wholly by the residents of a state (although even a cursory reading of them reveals a good deal of copying) and that allow states to maintain an identity beyond what map-drawers give them. Those constitutions also give states the opportunity to experiment and to treat unique circumstances.

The Texas constitution's lengthy treatment of its university system, for example, makes sense once we realize that that system has, as part of its endowment, a significant share of the oil-producing land of Texas and that the constitution is intended to ensure an equitable distribution of oil revenues across the branches of the university located in different parts of the state. The space devoted by state constitutions to legislative apportionment might seem strange until we review the history of protracted political battles that have been fought over the drawing of district boundaries and the unfair advantage that control of the legislature can give to a majority party. These are not issues that fall under the purview of the national government, but they are also not issues that the residents of the different states want to have treated by normal legislation. Hence, the rationale for autonomous state constitutions that are controlled by citizens directly or indirectly.

## **7. Implications for Russia**

Of the many features of U.S. state constitutions that distinguish them from the federal one, perhaps nothing stands out more than the pervasiveness of the role of elections in state political systems as compared to the national one. As originally conceived, the U.S. Constitution stipulated only that citizens vote for electors to President and Vice-President, and for representatives to the lower legislative chamber. Senators were to be chosen by state legislatures, and all other federal officials in the executive and judicial branches were to be appointed by the President with the "advice and consent" of the Senate. In contrast, the previous section gives the impression of voters who vote on virtually everything at the sub-national level -- governors, legislators, judges, constitutional amendments, recall petitions, a variety of executive and administrative officials, not to mention countless local and municipal offices.

The logical reaction is to assert that ballot which extend for pages cannot be implemented in Russia, if only, because of people's lack of experience with democracy and because of the absence of well-structured political parties. Absent these things, voters will be poorly informed about their choices and can be easily misled. Thus, as the leader of the Federation Council, Vladimir Shumeiko, has argued, elections ought to be postponed until political parties develop.

Shumeiko's logic is convoluted. Information and parties are endogenous to political institutions: parties cannot develop until there are competitive contests for meaningful offices, and voters will remain poorly informed until given good reason to be otherwise.

**An Example of Endogenous Information:** To illustrate our argument, let us review a study of voter information conducted in the U.S. that assessed the impact of institutions on information.<sup>67</sup> 200 homeowners in each of three cities (Roseberg Oregon, Bennington Vermont, and Keene New Hampshire) were interviewed in 1977 to assess their knowledge of the taxes they pay on their homes. They were asked two questions: (1) how much they paid the previous year in property taxes (generally between \$1,000 to \$2,000/year), and (2) what the consequences for them would be of a "5-mill" increase in their tax rate (approximately \$150/homeowner).<sup>68</sup> Answering the first question required approximate knowledge of the tax bill whereas the second required knowing the official value of their property and an understanding of the term "5-mill." After completion of the interviews, a check was made of official records (which are public record) to assess the accuracy of each person's answers. The three communities in the study were nearly identical in terms of standard socio-economic measures (size, and median income and education), but they differed in three important institutional respects. Roseberg made frequent use of local referenda to decide property tax rates. Keene did not allow referenda, but it, like all of New Hampshire, relied almost exclusively on this tax for its revenues. Bennington allowed no referenda, and unlike Keene, employed a vast array of taxes to raise revenues in addition to the property tax. Although there was little difference among respondents in their knowledge of their overall tax bills, residents of Roseberg and Keene were far better informed about the consequences of a tax rate increase. Fewer than 30% of the residents of Bennington could estimate the impact of the proposed increase within 20% of the true cost, whereas 65% and 75% of the residents of Keene and Roseberg were able to do so. Aside from possible statistical problems, the most likely explanation for these differences is institutional -- given the salience of property taxes in Keene, and the opportunities to vote on the issue in Roseberg, voters were far better informed than when, as in Bennington, they were denied the opportunity to act directly on such tax increases or were compelled to see those increases through a maze of other taxes.

The quality of information is, by implication, endogenous, and there is no reason to suppose that the information Russia's citizens presently have about politics will characterize the information they will have in the future, especially if democratic processes become more

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<sup>67</sup> Peter C. Ordeshook, "Property Tax Consciousness," *Public Choice*, 34 (1979): 285-95.

<sup>68</sup> An increase of "5-mills" translates into \$5/\$1000 of assessed valuation so that a person with a home valued at \$100,000 would pay an additional tax of \$500.

pervasive. One objection, then, to building a Russian Federation around Federal Treaties and the like is that they contribute little if anything to the development of Russia's democratic political culture. Despite our reservations about the role such treaties can play, it is nevertheless true that many of the rudimentary elements of a stable federal state are already in place for Russia. These include

- An explicit admission by way of the Moscow-Kazan and other such treaties, that Russia will not be a unitary government and that it intends to fulfill its constitutional commitment to federalism.
- The establishment of the office of the presidency, the competition for which will serve as a focus for the gradual development of national parties.
- A bicameral legislature in which the Federation Council and at least half of the Duma give explicit representation to federal subjects.
- The development of republic constitutions that, in principle at least, institute democratic forms of governance within their domain
- The gradual emergence of regional constitutions and charters that move those federal subjects closer to autonomous status.

There are, though, several problem areas. These include:

- A failure to consider the potential beneficial effects of electing the president through an electoral college so as to give regions and republics a clearer role in the competition for that office.
- A federal constitution that gives too little voice to the national parliament and that gives the president too much, especially the authority to abrogate regional acts and laws.
- Ambiguity about the method whereby deputies to the Federation Council will be elected or selected, thereby opening the door to presidential manipulation and control.
- Local government administrations that remain the extension of federal authorities rather than political entities under the supervision of regional and republic governments.
- An approach to federal design that places too much emphasis on agreements between ministries and federal subjects, thereby sustaining the view of federalism in Russia as a "top-down" structure.
- Regional and republic constitutions and charters that fail to fashion political competition fully within their domain.
- An incomplete or ambiguous commitment on the part of the center with respect to the powers it is willing to devolve onto federal subjects.

These last three issues have been this essay's focus, but before we consider the first two of these, let us first comment on the last. For most of its existence, Russia has been a unitary state, with the result that instability at the center could not be muted by the autonomy of its regions. In probably no other state has the personality, capabilities, and inadequacies of the head of state

had such profound consequences for the rest of society. One of the advantages of federalism, though, is that decentralized power offers a counter-weight to the potential excesses of the center. Russia needs to pursue this end. The route she must take cannot be mapped out fully, since idealistic goals will be tempered, even diverted, by political realities. However, the reality that weights most heavily today is the unequal resources and prospects of its 89 regions and republics. Some are richly endowed with natural resources, others with capital infrastructure, but others have little or nothing that the world today values highly. Absent this concern, we would have little hesitation to recommend the immediate establishment of a decentralized and symmetric federation in which all regions are given the same autonomy as the republics. Even still, that is the end toward which Russia must move. The problem is to get there without incurring destabilizing conflict and the impoverishment of its least endowed regions.

Part of the solution to this problem is to realize that even regions poorly endowed with natural resources or capital infrastructure are not without capabilities and potential advantages. Among these capabilities is the opportunity to develop stable regional governmental structures that can be a powerful magnet for investment and that can, at the same time, allow regional governments to enter various capital markets for infrastructure development. Decentralization allows each region and republic to become, in effect, its own free trade and development zone. Moreover, the regions that take advantage of this opportunity most quickly will realize the greatest gains, regardless of whether their territory contains oil, diamonds, timber, or "merely" an educated citizenry. Federal decentralization will also engender competition among regions and republics along this dimension, with the net result being the development of stable and efficient regional governments at a faster rate than can ever be decreed from Moscow.

We cannot also preclude the possibility of redrawing regional boundaries so as to reduce the number of regions (to say thirty or so), to resolve disputes between autonomous okrugs and the oblasts of which they are a part,<sup>69</sup> and to create regions with a more nearly equal distribution of resources and wealth. However, regardless of the Federations ultimate configuration and regardless of whatever arrangements are negotiated between Moscow and regional and republic capitals, as our discussion of Canada's treatment of natural resources in Section 3 illustrates, those agreements will be subject to continual reinterpretation in the courts and national and regional parliaments. It is essential, then, that the context for these negotiations -- society's political institutional structure -- be formed to facilitate non-conflictual processes. We have tried to indicate the centrality of political competition and the institutions that direct the form

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<sup>69</sup> Tyumen oblast, for example, contains two autonomous okrugs rich in resources (oil). Unsurprisingly, okrug authorities interpret Article 5 of the Russian Constitution to mean that they should control those resources to the same extent as other oblasts control the resources on their territories. Oblast authorities, on the other hand, cite the traditional administrative subservience of okrugs as a reason for claiming a share of these resources.

of that competition. It is time for us to take these general suggestions and convert them into specific proposals and suggestions.<sup>70</sup>

We can begin by noting that Russia's regions, at least in terms of population, are small. With approximately 60% of the population of the United States, it nevertheless has 1.8 times the number of federal subjects. Thus, on average, a Russian federal subject has only one third the population of an American state. This small size makes recombination a feasible option, although politically it may be an unapproachable one. Regardless, regional government in a Russian federal subject will be much closer to the population it governs than is the case in the United States. Correspondingly, the connection between the average Russian citizen and the government

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<sup>70</sup> It is useful at this point to consider whether the Spanish experience offers any useful lessons for Russia. There are, of course, certain broad parallels. Both countries are making the transition from an authoritarian system to a democratic one, both began that transition as unitary states, both confront special regional demands for greater autonomy (some based on historical precedent and others on a demand for equal treatment), and both are meeting these demands by accepting in practice (if not in principle) the necessity for establishing an asymmetric quasi-federal state. Nevertheless, our general view is that Spain is an inappropriate model. Beginning with some 50 provinces that, like Russia's regions, served largely as administrative arms of the central government, Spain has transformed itself into a quasi-federal republic with seventeen "communities" possessing varying degrees of autonomy. Presently, only a few of these communities possess a degree of autonomy we might associate with a true federalism, but the 1978 Constitution appears to allow for the gradual development of a federal republic much along traditional lines (the relevant sections of the 1978 constitution are Section 2 of its transitional provisions, and Articles 143 - 158). However, despite the asymmetry afforded by the special status given to the Basque Country, Catalonia, and Galicia, the government continues to exercise considerable financial control over its communities; indeed, Article 155 of the Constitution allows the central government to dictate regional fiscal policy and in fact the central government accounts for 87% of all public revenues. An otherwise ambiguously worded constitution that assigns rights to communities that are little different from what one would expect in a unitary state (see Article 148) might signal an evolutionary process of decentralization dictated by the demands of the separate regions. Here, though, it is less clear whether those regions can express themselves fully or clearly. The lower chamber (*Congreso de los Diputados*) is filled from party lists drawn within each of the 52 provinces rather than lists made at the community level. Similarly, the majority of deputies (208 out of 253) to the upper chamber (*Senado* or Senate) are also elected from the provinces (using a 3-vote, 4 seat district, first-past-the-post system). Thus, no senator explicitly represents any autonomous community. These procedures, combined with traditional ethnic conflicts, yields a tradition of both national and regional parties. What remains an open question is the response of the "nation-based" communities of the Basque Country and Catalonia to affording the other regions the same rights as these two enjoy. Thus, while there may be much to be learned from Spain's experience with incremental and ad hoc decentralization, it is evident that there is no clear formula or model here to be emulated by any other country. [Much of our discussion here is taken from Peter J. Donaghy and Michael T. Newton, *Spain: A Guide to Political and Economic Institutions* (Cambridge: Cambridge Univ. Press, 1987), and Cesar Enrique Diaz Lopez "The State of the Autonomic Process in Spain," *Publius*, 11 (1981): 193-217.]

in Moscow, through members of the Duma and Federation Council will be more immediate as well.

In addition to the ways Moscow can facilitate this process (the devolution of authority to regions and republics, and prohibitions of discriminatory taxation, tariffs), the thing regions can do for themselves is adopt constitutional structures most compatible with democratic governance on their territories, and most compatible with democratic political development throughout Russia (since such a development provides the surest guarantee of their legitimate autonomy). Let us turn, then, to the design of those constitutions, and let us begin with the issues of who should write them and how they are best adopted.

Here the American experience, in which each state designs its own constitution, is a better model for Russia than, say, the Canadian one, in which provincial constitutions are largely the product of federal authorities, if only because the federalism that Russia is currently pursuing under the cover of republic treaties more closely matches that of the U.S. than of Canada. At issue, though, is whether regions should be treated differently than republics, and, aside from the otherwise unitary character of the federation constitution that we noted earlier, we can only take the Constitution at its word: "all members of the Russian Federation shall be equal in their relations with federal bodies of state authority" (Article 5.4).

The authorities of each region and republic that require such a document should establish their own Constitutional Advisory Commissions, which, in addition to legislators, should consist of political and legal experts who have no immediate self-interest in specific schemes of representation and legislative apportionment. These commissions can rely, if they choose, on the advice of experts from Moscow and elsewhere and on model constitutions (the development of such models can only bring coherence to the overall project). Legislative oversight of the Advisory Commissions is a thornier issue. On the one hand, we should not ask regional legislatures to wholly abrogate their responsibilities; on the other hand, we cannot recommend having those with an immediate self-interest in the document be its chief architects. Whatever decision is made here (and it need not be the same in every region), the final draft copy of the constitution should be placed before the electorate for majority approval (without any turnout requirement, since such a requirement merely gives opponents a costless protest). Requiring voter approval begins the process of having people in each region become involved in the design and implementation of the governmental structures that will most directly impact them.

The process of writing and ratifying regional charters, though, should avoid excessive control from Moscow -- it should avoid having, say, the Federation Council or the President approve such documents. Otherwise, Russia's regions should simply turn over the drafting of their charters to the Kremlin and be done with the process. Consultation with the Constitutional Court would be useful, if only so that regional legislative leaders can anticipate the reaction of that court to potential conflicts with the national constitution. In addition, regional Dumas should coordinate among themselves, outside of the purview of the Kremlin. Many of the charters that will be written, and even some that may be adopted, will quickly prove to be inadequate or incomplete. Thus, the regions have much to learn from each other as they develop viable documents.

Insofar as what belongs in a regional or republic constitution, several things are, of course, obvious -- a bill of rights (to give direction to regional courts, if they are permitted to form, and even if not, to allow federal courts to referee between executive and legislative authorities), a delineation of the powers of the separate branches of government (executive, legislative, and judicial), treatments of taxes and debt, authorization to especially important administrative agencies (health, social welfare, natural resources, assuming that federal law eventually provides a coherent framework for regional laws), procedures for the conduct of elections, and the relationship of regional governments to local governments. Our subsequent survey of U.S. state constitutions, though, reveals that federal stability need not require uniformity of these documents. It may be difficult to have a presidential system at the national level and a parliamentary one for some regional governments, but such arrangements are not unimaginable. Each constitution can be tailored to individual circumstances and traditions. Two things, though, are critical: (1) recognition of the supremacy of federal law and the federal constitution; and (2) extensive use of elections and voting to fill public offices, as well as giving residents of a region or republic some voice in amending the constitution.

Both suggestions have been discussed extensively, but to give our analysis more focus, it is useful to look specifically at the constitution of Tatarstan.<sup>71</sup> There are several things this constitution does well, and several things it does poorly. We have somewhat arbitrarily classified our comments by the following categories: rights, style, supremacy, local self-government, taxes, public services, conflicts of interest, and elections.

**Rights:** As we have already argued, bills of rights belong in regional constitutions as much as they belong in republic ones. The supremacy of federal law precludes allowing such bills to restrict rights, but they can expand them. Moreover, Article 72 of the Federation Constitution makes the protection of individual rights a joint responsibility of federal and regional governments. A safe starting point for regional charters would be to simply copy the rights provided in the national document so as to present a framework for future changes and so as to avoid the argument that regional charters are somehow unconstitutional. Insofar as the Tatar constitution is concerned:

- Although Chapters 3 and 4 appear to offer a complete menu of rights consistent with liberal democracy, they confuse basic rights with citizen duties. Articles 51 through 58, especially, perpetuate the view that constitutions restrict the actions of citizens as well as the state. Democratic ones do not that. Instead, they, whether federal, regional, or local, define the purposes of the state, the structure under which it will pursue those purposes, and the limits on state action that will constrain the state in the pursuit of those purposes. They cannot do otherwise without opening the door to tyranny.
- Inclusion of citizen duties might be little more than an annoyance, were it not for Article 167, which takes revision of the constitution out of the hands of the republic's

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<sup>71</sup> All references are to the translated version of the text reported in FBIS-USR-93-024 (March 4, 1993), and as amended, FBIS-USR-94-139 (December 27, 1994).

residents and places it in the hands of the legislature. Thus, the document gives the impression that it is intended to serve the interests of a political elite than those of the republic's citizens.

- Too many rights are written in vague or qualified terms. Article 27 refers to "legitimate grounds" as a basis for abrogating the right to housing: who determines those grounds? Article 37 refers to the disbanding of public associations "on the basis of a judicial ruling if their activity is contrary to the Constitution": who determines what court has jurisdiction? Article 40 refers to the right to "freely obtain and disseminate reliable information"; who determines what information is reliable? And Article 66 states that "an official may be dismissed ... in the event of his improper performance of his duties": who determines what performance is improper? Such ambiguities is all a dictator ever needs to abrogate the rights of nearly everyone.
- Article 89.26 gives the State Council the authority to interpret the law. Legislators pass laws, and the COURTS interpret them in a democracy!
- If, as Article 21.3 asserts, "the rights and liberties of the citizen may be qualified or suspended only in accordance with the law ...", then if the law can limit rights, what limits the law. In effect, this article wholly abrogates the rights otherwise provided for in the constitution.

**Style:** There is no "correct" style for these documents, but as with rights, little is lost by adhering to the style of the federal Constitution. That is, regional charters which are brief and provide the minimum of essential political structure. In this respect, the Tatar constitution has some notable deficiencies:

- Compounding the impression of a document written to serve the interests of a political elite, is its almost complete focus in Chapters 5 onwards, on the prerogatives of state officials, and their relationship to each other, rather than on the general purposes of the state and the specifics of how it intends to achieve those purposes.
- Too much of the document is written in vague terms that have little or no meaning. For example, Article 67 states "The activity of the soviets of peoples' deputies is organized on the basis of the collective, free, and businesslike discussion and solution of questions ..." and Article 85 states "deputies tackle questions of state, economic, and socio-cultural building and exercise supervision of the work of state authorities, enterprises, establishments, and organizations." Such articles have little legal or political content.
- Much of the document presumes far too much governmental intervention in normal market activity. Thus, Article 15 gives the government a constitutional role in the pricing of goods and services, Article 18 restricts the rights of private land ownership, and Articles 14 and 17 open the door wide to government regulation of business without constitutional limitation.

**Supremacy:** Supremacy is not an issue for regional charters although it is likely to remain one with respect to the republics despite treaty agreements with Moscow. The Tatar constitution, though, is especially problematical in this respect.

- That constitution makes an all-encompassing assertion about its supremacy and the supremacy of the laws promulgated under it. As we indicate throughout this essay, there is nothing inappropriate with specific issues being treated so that regional or republic law are *de facto* supreme, but it is difficult if not impossible to maintain a federation (as opposed to a confederation or mere alliance) without federal law being supreme, at least in principle. In addition,
- Article 19, in effect, allows the Republic of Tatarstan to determine unilaterally who is a citizen of the Russian Federation, thereby removing from the hands of federal legislative authorities one of their essential functions.
- In light of the Moscow-Kazan Treaty, it would be appropriate to change the oath of office (Article 110) to swear loyalty as well to the Constitution of the Russian Federation.

**Local self-government:** The relation of local governments to regional authorities remains a wholly open issue. The Tatar constitution's treatment of local governments is, however, deficient, in that local governments under Articles 134, 153, and 156 become mere administrative arms of the Republic government, and Article 112.12, in particular, renders local governments a part of the President's apparatus. The Republic of Tatarstan demands full autonomy from the Russian Federation, but it fails to grant even approximate self-government to its rayons, cities, villages, and rural soviets.

**Taxes and Debt:** Fiscal reform in Russia requires extensive revision of current arrangements, including the development of parallel tax administration systems.<sup>72</sup> Regional and republic governments, however, may have too little experience with contemporary tax systems to put much of any significance into the concrete of their charters and constitutions. The Tatar constitution, though, seems to take this cautionary note to an extreme:

- Article 162 spends sixty two words (English translation) on the dimensions of the Republic flag; Article 128 (unamended version) spent but thirteen on local taxes, and this article was subsequently deleted from the constitution. The document is virtually silent about how taxes are to be collected and spent, and what specific taxes fall in the purview of local governments. Once again, the American experience has taught the lesson of codifying much of the outlines of tax law in state constitutions, since doing so gives citizens and investors some guarantee against a capricious legislature.
- No accommodation is made for republic and local debt, and no constitutional protections are provided to investors who might underwrite debt. Inclusion of even modest protections against excessive debt, and even tying debt to specific revenue sources would

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<sup>72</sup> See especially Wallich, *op cit.*

do much in the way of making federal subjects attractive to outside investors and give those subjects a way to "front load" the benefits of their natural resources for infrastructure development.

**Public services:** Absent federal legislation that more clearly delineates the responsibilities of regional versus federal authorities and implements Articles 71 and 72 of the Federation Constitution, regional authorities can only operate within the constraints of existing policy. As with taxation, it is perhaps impossible to begin establishing constitutional offices for dealing with education, pensions, and so on. Nevertheless, regional charters can offer general statements about the social responsibilities of their governments. Insofar as the Tatar constitution is concerned,

- That constitution proclaims Tatarstan to be a social state; however, the document is largely silent about such things as education, the administration of natural resources, and the provision of social services.
- Administrative structures as boards of education and the revenues specifically targeted for education need to be spelled out constitutionally so that other potential claimants to those revenues do not engender continual legislative and executive-legislative conflict.
- Although an ambiguously worded Article 14 hints at regional chartering of corporations, the constitution offer no specific provision regulating such charters and, thus, provides private corporations with little if any constitutional protections.

**Conflicts of interest:** Possessing little experience with democratic institutions, regional leaders are confronted with an additional problem -- establishing a balanced separation of powers systems without full authority to develop regional judicial structures. Even still, there is a tendency to confuse executive and legislative roles so that some continue to speak of things like "dual control" or "dual responsibility," thereby blurring legislative tasks from administrative ones. The Tatar constitution creates some additional confusions.

- Article 84 explicitly allows a people's deputy to maintain his or her position outside of the government, thereby admitting the possibility of serious conflicts of interest between the public and private sectors as well as other branches of the public sector (the phrase "as a rule" has no legal content). Articles 71 and 72 place some limit on overlap, but do not close the door to it; however, these articles are an improvement of the presidential decree of December 22, 1993, which stated that "local self-government leaders and other officials of local administrations may be members of the corresponding representative bodies of local self-government."<sup>73</sup> Curiously, Article 138 places a restriction on judges that does not apply to anyone else.
- Article 84 also raises the question as to whether the State Council will be a full-time legislature -- it can be, but the constitution provides no guarantee. The constitution also

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<sup>73</sup> cited in Teague, *ibid.*

- fails to rule out the possibility that members of local administrative units cannot simultaneously serve as deputies to the Republic legislature.
- Article 111.4 provides that the President of Tatarstan "has the right to participate in the business of the State Council ... and its Presidium." This vaguely worded clause, then, can be interpreted as an abrogation of the separation of powers between executive and legislative branches.

**Elections and Referenda:** Although it is widely understood that elections and electoral control of public officials are the essential ingredient of democratic systems, elections are usually thought of as applying only to regional legislative deputies and the region's governor. Unlike most U.S. states, all other officials are presumed to be appointed positions. In addition, there is little if any understanding of the main theme of this paper -- that an integrated federal system requires a vertically integrated party system, and that such a party system requires a virtual continuum of elected offices from local to national. There also appears to be, as yet, an incomplete understanding of gerrymandering and, thus, little attention is paid in republic constitutions and draft regional charters to the issue of legislative apportionment. Insofar as the Tatar constitution is concerned:

- Virtually any election procedure is consistent with the vaguely written provisions of Article 73; will elections be in single member districts, multi-member ones, by party-list PR, or by a single non-transferable vote scheme? Changes in procedure can be implemented by the State Council at its own discretion, to serve the interests of its members and to thwart the opportunities of challengers.
- Article 88 opens the door to the possibility of initiative recall of legislators, but because it fails to give specifics, it is essentially an empty provision. Nothing would be changed were it excluded from the constitution, since, until implementing legislation is passed, citizens have no right of recall with Article 88 alone. If recall is to be allowed, specify its implementation in the constitution.
- Articles 68, 69, and 73 allow the legislature too much room to manipulate the basis of their election, whereas Article 108 does the same with respect to Presidential elections. Such manipulation is one explanation for why 30 (75%) of the 45 deputies elected in Penza in January 1994 came from rural areas even though such areas comprise only 38% of the population. In general, the constitutions of all regions and republics need to pay close attention to closing down the opportunities for drawing legislative district boundaries to become a subsequent source of intra-regional conflict.
- Article 111.17 now allows the President to call for a referendum in the event that the State Council rejects his call for an emergency, but it is difficult to see how this procedure can be implemented in the event of a true emergency; the door is thus open for abuse of the President's emergency powers.
- Although a Central Election Commission is to oversee the administration of elections, its powers are not described in the constitution and we can assume that it will be largely under the control of the President and State Council.

Although Tatarstan's constitution represents an important step in the introduction of the basic elements of democratic governance outside of Moscow, the primary deficiency of that document is its failure to give citizens a more direct voice in the form and operation of their government:

- The Republic's State Council is directly elected, but much of its work will be done through an indirectly selected Presidium, which may choose in some instances to avoid consultation with the directly elected members of the State Council;
- The constitution provides little protection against the possibility that a legislative majority will manipulate election laws and procedures to its own benefit;
- Local soviet's will be directly elected, but their authority can be wholly subverted by, for example, the Republic government, the President, or as yet unframed laws delimiting the policy prerogatives of local governments;
- Administrative heads of rayon and city governments will, in effect, be appointed rather than elected;
- The Constitution is broadly democratic in form, but citizens have little if any access to its content through amendment or constitutional convention.

The fundamental weakness of Tatarstan's constitution is that it continues to echo a Soviet past with its emphasis on internal legislative-administrative structures and prerogatives, central control of local governments, the absence of clearly defined limits on taxation and the manipulation of elections, and rights that can be used to regulate citizens but not the state. Although at times the document gives the impression of falling into the managerial format of U.S. state constitutions, it does so only incompletely to the extent that, aside from elections to the State Council and President, it gives residents of Tatarstan little direct voice in the operation of the state and places few meaningful controls on the opportunities for corruption and abuse of powers. In addition, with the state authorized to regulate most of the "independent" organizations that form a civic culture (Articles 6, 11, 14), it thwarts the surest protection of regional autonomy -- an nationally integrated political structure.

Many of this constitution's deficiencies can be corrected by amendment and judicial interpretation. Moreover, since considerably greater latitude is allowed in the charters and constitutions of the constituent parts of a federation, we should not be too greatly upset by documents that fall short of some ideal form. Nevertheless, those revisions need to be compatible with the principle of the supremacy of the federal constitution and federal law (about which the Tatar constitution is silent), and they need to encourage processes that protect regional autonomy as the natural byproduct of regional and national politics rather than as the result of conflictual negotiations between center and regional or republic authorities. Attention also needs to be paid to the many issues that are largely untreated by this constitution: taxation and the independent taxing authority of regional and local governments; debt, and the opportunities of regional and local governments to incur debt directly from other than federal sources; definitions of residency

and, correspondingly, the right to vote in regional and republic elections; the administration of public services, especially education; and regional chartering of corporations.

Naturally, the question arises as to whether it is necessary to build such provisions into newly formed regional and republic charters or whether it is better to prepare sparse documents that, like the federal one, merely lay out the basic structure of the state and leave details to subsequent amendment. Once again, the American experience is perhaps instructive. First, if we look simply at existing American state constitutions, it would seem that such details need to be incorporated as quickly as possible since they constitute such an important part of each American state's constitution. For example, the constitution of Idaho spends 11 pages on rights, elections, and the authority of the legislature, the executive, and the courts -- the issues that the Tatar constitution addresses -- but it also spends 14 pages on education, finance and revenue, corporations, agriculture, and legislative apportionment. In fact, if we divide state constitutions into the part treated by the Tatar document, and all other parts, then we find, for example, that the Iowa constitution spends 9 pages on the first part, and 7 on the second; Nebraska and New Jersey spend 30 pages on the first part and 30 on the second; New York spends 25 pages on the first part and 20 pages on the second; Oregon spends 21 pages on the first part and 23 pages on the second. The constitution of the state of Washington, ratified in 1889, offers 22 pages on rights, the legislative, executive, and judicial branches, and amendment procedures, accompanied by 16 pages dealing with: revenue and taxation (1.5 pages), state, county and municipal indebtedness (1.5 pages), education (1 page) county, city and township organization (3 pages), the licensing and regulation of private corporations (4 pages), harbors and school lands (1 page), and transitional provisions (4 pages).

We could continue with this list, but the point is simply that state constitutions, as they have evolved in the American federal system, devote approximately as many words to the details of banking, debt, revenues, and so on as they do to defining the basic structure of government and the legal authority of the separate branches of government. However, we should not conclude that provisions dealing with education, debt and taxation, corporations, and the like have always been a part of each state's constitution. In fact, they are largely the product of the second half of the 19th century. period of reform Nor are these additions wholly the product of the complexities of governance of the 20th century. For example,

- the issues addressed by Kentucky's first constitution (1799) were much the same as Tatarstan's. By 1850, 14 pages were devoted to general political structures and rights, and only 3 to county and district government, education, the militia, and slavery. However, by 1890, general political structures and rights occupied 23 pages whereas articles dealing with municipalities, revenue and taxation, education, corporations, railroads and other such matters occupied 15 pages. And today, Kentucky's 140 page constitution is divided evenly between both types of provisions.
- Illinois' first constitution (1818) devoted all of its 13 pages to general political structures and rights; by 1840, its constitution had grown to 24 pages, but only four dealt with county governments, revenue and taxes, and corporation. In contrast, its constitution of

1870 devoted 22 pages to traditional matters, and 10 pages to education, revenue, country government, corporations, banks, and railroads.

The story told by the Illinois and Kentucky constitutions is repeated in virtually every state: with increased governmental complexity comes increased complexity in constitutional documents. Provisions dealing with rights and basic governmental structures may be fine-tuned or changed, but much of the revision of these documents addresses a gradual evolution in the responsibilities of state government. Thus, the history of U.S. state constitutions suggest that at the present time, Russia's federal subjects need to focus their attention on basic political institutional matters -- courts, election systems, and relationships among executive, legislative and administrative parts of government. They probably do not need as yet to be made as accessible to citizen initiated change as are some U.S. state constitutions (e.g., California, Oregon), but they do need to encourage meaningful political competition at all levels of government. Regardless of the details of taxation, debt, and public services that are placed in those documents, and regardless of the stage of constitutional development we assume pertains to Russia's federal subjects, there will arise a need for constitutional provisions and protections that go beyond those offered by basic treatments of executive, legislative and judicial structures. Nevertheless, judging from the experiences of other countries, it is evident that absent well-designed structures with a close connection to the state's ultimate sovereign -- the people -- federalism will remain a tenuous enterprise for Russia.

BEST AVAILABLE DOCUMENT