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The Unification of Law in the Russian Federation

Jeffrey Kahn, Alexei Trochev, and Nikolay Balayan¹

Abstract: How have fluctuating approaches to federalism in post-Soviet Russia affected its legal system? This article examines the core legal subjects, processes, and institutions composing the Russian legal system. The source of legal changes, as Russian federalism has shifted from decentralized beginnings under Yel'tsin to the current centralized system under Medvedev and Putin, is evaluated. Seeds for centralization in the original 1993 Constitution and the roles of "top down," "bottom up," and "outside in" pressures to centralize the federal system are examined. The degree of unification and centralization of Russian law and the de facto nature of the legal system are analyzed.

It is undeniably true that in the last nine years Russian law has experienced an extraordinary period of unification. In other words, harmony has increasingly replaced conflict between federal and regional legal acts. Whether the Russian Federation (Russia) continues to operate a federal system of government, however, is a question on which reasonable minds differ. On the one hand, the Constitution proclaims Russia to be a "federal, rule-of-law" state, divides the country into 83 component states of six different types, and appears to allocate separate spheres of both exclusive and shared jurisdiction both to the central government and to the component states. On the other hand, Russia's political system has grown increasingly centralized and the actual implementation of the Constitution's division of jurisdiction between governments has resulted in such

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an extraordinary degree of central control that the *de facto* federal nature of the system is thrown into doubt.

The Russian Federation emerged from the rubble of its predecessor, the Russian Soviet Federated Socialist Republic, itself the largest component state of the Union of Soviet Socialist Republics. Soviet federalism, however, was a façade that did not mask a rigidly centralized system operating under the explicit control of the Communist Party (Kahn, 2002). Russia is not the Soviet Union. But the course of Russian federalism has been influenced by this past. It has become progressively more centralized in its first 18, post-Soviet years. This change has played an important role in the unification of law.

The first decade of Russian federalism was characterized by an economically and politically weak central government that struggled to maintain control over newly empowered, ethnically non-Russian, resource-rich component states. The Federation Treaty (signed March 1992) devolved considerable power to these components in an effort to preserve the state itself. The Russian Constitution (adopted December 1993, displacing the Federation Treaty) created a strong federal executive and the potential for a dominant central government. Nevertheless, political and economic considerations led the first Russian President, Boris Yel'tsin (1991–1999), to negotiate scores of treaties and agreements with the executive leadership of many of the component states. These documents ceded substantial federal authority ranging from control over taxation and natural resources to the setting of cultural and linguistic policies. They were both a cause and effect of an extraordinary disharmony between the laws of the central government and those of the defiant component states. The mid-1990s were characterized by a so-called War of Laws, in which the central government asserted that thousands of component state-level laws and executive orders contravened the Constitution. Many component states routinely withheld taxes, refused conscripts, or otherwise defied the legal mandates asserted by the central government.

Russia's second president, Vladimir Putin (2000–2008), ended this shadowy bilateral treaty system and took as his first task the strengthening of federal executive power. The central government reasserted the supremacy of the Constitution, accomplished a considerable unification of law, and blurred a previously clearer division of central and regional power (and the political constituencies for that power) into a so-called "unified system of executive power" (Constitution RF, 1994, Art. 77(2)). Most areas of law have been unified under a broad and strict rule of federal legal supremacy enforced by a centrally administered judiciary and by a variety of centrally controlled bureaucracies. Russia's third president, Dmitriy Medvedev, has given no indication in the first year of his presidency that he will deviate from this approach.

This article critically evaluates the institutions, laws, procedures, and forces that have resulted in so centralized a system of law. We begin with a broad introduction to the pressures that led Russia to adopt federal approaches in the first place. Next we examine the constitutional

formula that distributes jurisdiction over legal subjects and spaces. Then we evaluate how Russia's formal institutions—legislatures, executives, and courts—have built (or weakened) the separation of powers between the federal center and the component states of the Russian Federation. Finally, we present three different dynamics to the unification of laws and its concomitant effect on the centralization of federal power. We characterize these forces as coming from the “top down” (imposed by Moscow on the regions), from the “bottom up” (informal regional forces lobbying for uniformity), and from the “outside in” (international legal institutions and norms of law to which Russia has obligated itself). In our judgment, the first dynamic has been the dominant one.

Russian federalism has swung dramatically toward the centralization side of the continuum in a very short period of time. The speed and extremity of that shift suggest the malleability of Russia's federal rules of the game, a game that is by no means over.

THE CASE FOR FEDERALISM

Six of the world's seven largest states are both federal and democratic (Kahn, 2002).² It should not be entirely surprising, therefore, that federalism was an appealing organizing philosophy for the new Russian state that, at the start of the 1990s, professed to be a democratic republic and found itself shrouded in the musty infrastructure of Soviet federal boundaries and institutions. Along with its enormous size, substantial ethnic, religious, linguistic, and other social cleavages in the Russian Federation are coupled with sharply asymmetrical allocations of natural resources and economic potential. This section provides a brief introduction to these various factors, natural catalysts for federal organization in a state that had denounced the autocratic alternative that had heretofore marked Russian imperial history.

More than four-fifths of the population is ethnically Russian. A combination of Imperial Russian and Soviet history, however, established substantial populations of non-Russian ethnic groups in different parts of the Federation: Turkic and Finno-Ugric peoples in the Volga Region (Tatars, Bashkirs, Mariis, Udmurts, Chuvash, and Mordvins), the North (Komi, Karelians), and Eastern Siberia (Tuvins, Buryats, Yakuts). The North Caucasus is home to scores of Slavic and non-Slavic ethnic groups, including Chechens, Kalmyks, Avars, Ossetians, Ingush, and many others. Although Russian is the official language, all of these different ethnic groups speak different languages with varying degrees of linguistic overlap and mutual intelligibility. Most religious Russians are Orthodox Christians. Most of the Turkic peoples

²In order of geographic size, those states are Russia, Canada, the United States, Brazil, Australia, India, and Argentina. China, which would be third, is neither federal nor democratic.

of the Volga Region and many of the ethnic groups of the North Caucasus are Muslims. Kalmyks and Tuvins are Buddhists. There are also substantial populations of adherents to other forms of Christian Orthodoxy (e.g., the Georgian Orthodox Church) and Christianity (e.g., the Armenian Apostolic Church, Protestantism, and Catholicism). Although adherents have dwindled in numbers, Judaism has a long history in Russia (as does anti-Semitism).

For these multi-cultural reasons, the Russian constitution makes an important distinction that is often lost in translation. The first article of the Russian Federation Constitution identifies the state by two names of equal validity: Russia (Rossiya) and the Russian Federation (Rossiyskaya Federatsiya). A citizen of Russia is not a *Russian* (*russskiy*)—that adjective describes one of several Slavic ethnic groups—but a *Rossiyanin* (*rossiyskiy*)—a civic category that may include any of the over 100 ethnic groups that populate the country.

One need look no further than the two wars fought in Chechnya to imagine the violence into which Russian ethno-federal politics are capable of descending. These sources of ethnic conflict extend back centuries, but were subject to particular manipulation by early Bolshevik planners, who deliberately created “titular” ethnic republics (i.e., political units named for particular ethnic groups, whose indigenous languages and customs were also given privileged status) to secure support for their seizure of power (Kahn, 2002). Subsequent demographic trends resulted in minority status for several ethnic groups within their “own” republics or regions. According to the 1989 census, the titular ethnic groups in 15 of 20 ethnic republics within the boundaries of the RSFSR were a minority of the population (Kahn, 2000). These ethnically based divisions took on a life of their own after the collapse of the Soviet Union. Forty-six provinces and two federal cities now have predominantly ethnic Russian populations, whereas the other component states are mostly named for non-Russian ethnic groups that in most cases constituted at least a plurality of their population (Kahn, 2002). According to the most recent census, conducted in 2002, Russians predominate in more regions named for non-Russian ethnic groups, but are outnumbered in a few more titular republics.³

³According to statistics provided in Table 4.2 (“National composition for regions of the Russian Federation”) of the 2002 Russian census report, non-Russian ethnic groups outnumber Russians in the republics of Kabardino-Balkariya, Kalmykiya, Karachayevo-Cherkessiya, North Ossetiya–Alaniya, Tatarstan, Tuva, Chuvashiya, and Yakutiya, and in the Agin-Buryat and Komi-Permiyatskiy Autonomous Districts (Goskomstat Rossii, 2004, Table 4.2). Subsequent to the census, however, the Komi-Permiyatskiy Autonomous District merged with Perm’ *Oblast’* (Federal Constitutional Law No. 1-FKZ of March 25, 2004) and the Agin-Buryat Autonomous District merged with Chita *Oblast’* to form Zabaykal’skiy *Kray* (Federal Constitutional Law No. 5-FKZ of July 21, 2007). These mergers resulted in a majority of ethnic Russians in both new component states.

As of this writing, Russia comprises 83 component states.⁴ There are 46 provinces, 21 republics, nine territories, four autonomous districts, one autonomous province, and two “cities of federal significance,” Moscow and St. Petersburg (Constitution RF, 1994, Art. 65(1)).⁵ Some component states form part of the territory of other component states, and thus have special relationships with those components. The Constitution requires that all component states “shall have equal rights as constituent entities of the Russian Federation” and “be equal with one another in relations with federal State government bodies” (Constitution RF, 1994, Art. 5(1) and Art. 5(4)). This has not been interpreted to require identical structures of government in component states; indeed, the Constitution acknowledges a distinction in the organic law of republics (which have constitutions and are governed by presidents) compared to other components (which have charters and are governed by governors or mayors) (Constitution RF, 1994, Art. 5(2)). Only republics (which are all named for non-Russian ethnic groups) are constitutionally entitled to establish their own official languages alongside Russian (Constitution RF, 1994, Art. 68(2)).

There is substantial asymmetry in natural resource allocation, development, wealth, and education that is more often exacerbated than ameliorated by the structure of the federal system. Russia is richly endowed with natural resources unevenly distributed among its component states. Considerable iron ore reserves are to be found in the European part of Russia, which is predominantly populated with ethnic Russians living in provinces (*oblasti*). Timber stocks are largely found in remote parts of Siberia and in Northwest Russia (particularly the republics of Kareliya and Komi). Coal, oil, and natural gas deposits are also predominantly found in Siberia and the Far East, which are sparsely populated with both ethnic Russian and various indigenous peoples. The Republic of Sakha-Yakutiya in the Far East sits atop almost all of Russia’s substantial diamond reserves. In terms of development and financial wealth, there exist extreme disparities between the wealthiest component states (the federal cities of Moscow and St. Petersburg, Tatarstan, Bashkortostan, Sakha-Yakutiya) and the poorest (Chechnya, Kalmykiya, and the border republics of the North Caucasus, Mariy El in the Volga Region, and the provinces of Ivanovo and Pskov).

Control over these resources was a leading cause of the struggle between the central government and the component states between 1990 and 1999. In their declarations of sovereignty, the component states almost

⁴The Russian Federation initially comprised 89 components. This change is the result of deliberate efforts to decrease the number of components by merging several in accordance with Article 66(5) of the Constitution.

⁵See also Ukazy Prezidenta RF No. 20 of January 9, 1996; No. 173 of February 10, 1996; No. 679 of June 9, 2001; No. 841 of July 25, 2003; and Federal Constitutional Laws No. 1-FKZ of March 25, 2004; No. 6-FKZ of October 14, 2005; No. 2-FKZ of July 12, 2006; No. 6-FKZ of December 30, 2006; and No. 5-FKZ of July 21, 2007.

universally asserted exclusive possession of everything of value in their territories. These declarations set the tone for newly drafted laws and constitutions, which also asserted complete control over natural resources and other valued property on the territory of the component state. These documents and this wealth were then used as bargaining chips to wrest concessions from the federal executive in the form of bilateral treaties and agreements.

In short, component states blessed with various forms of wealth sought to protect assets perceived to be “theirs,” while component states lacking such resources grew increasingly dependent on the largesse of the central government and increasingly resentful of the perceived selfishness of their wealthier neighbors. Much of this competition was crushed by Vladimir Putin. With the exception of republics that were both exceptionally wealthy and possessed sizeable non-Russian ethnic minorities, most component states were stripped of their claimed powers to tax and control “their” resources and forced to submit to federal policies.

THE RUSSIAN FEDERAL FORMULA

Federal governance is a broad church, but scholars generally agree that federalism requires an explicit formula (typically originating in a written constitution but often supplemented elsewhere) to divide subject-matter jurisdiction between levels of government and to resolve jurisdictional disputes between levels of government (Kahn, 2002). Russia’s formula is sufficiently vague to have permitted a broad distribution of powers in the first seven years of its existence under its 1993 Constitution that has been almost completely reversed in its second decade.

Which areas of law are subject to the legislative jurisdiction of the central authority? Article 71 of the Constitution lists 18 subjects over which jurisdiction is allocated to the central government. Article 72 lists 14 subjects over which jurisdiction is allocated to the joint authority of the central government and component states. All of these subject areas are, for all practical purposes, under the control of the central government to the degree that the central government desires to exercise such control. Article 76(2) of the Constitution provides that all laws and normative legal acts of the component states in areas of joint jurisdiction must be issued in accordance with the federal law on the issue. The Constitutional Court has upheld the central government’s view that in areas of joint authority (Article 72), the central government takes the leading role in establishing the space left for local law-making, even when that space is a null set. The central government has also been accorded a remarkable power of preemption by the Constitutional Court.

Federal law often operates throughout Russia directly, unmediated by the law of component states. Thus, the laws of contracts, torts, property, business organizations, and other aspects of private and commercial law

(subjects that other federal systems may leave to the jurisdiction of the component states) all are governed by federal law (largely to be found in the federal civil code). Alternatively, federal law may establish principles and standards that are then implemented by the law of component states. For example, the tax code establishes federal taxes but also establishes tax principles to be followed by component states and municipalities.

Thus, most law in Russia is federal law. Through a system of codification, the central government regulates all civil law, civil procedure, criminal law, criminal procedure, administrative law and procedure, and the procedure for use in the commercial courts. There are federal codes governing the use of land, air, water, and forests. Federal codes also govern all labor law and family law. There are codes for the siting and construction of towns, housing, collection of taxes and customs duties, and regulation of government budgets. Many other areas of law are also constitutionally allocated to the central government. These include the establishment of the basic legal principles of the marketplace, fiscal and monetary policies, and the establishment of federal banks (including a Central Bank). The judicial system in Russia is almost entirely federal. The same is true of law enforcement personnel.

What, then, remains within the legislative jurisdiction of the component states of the Russian Federation? As already noted, the Constitution identifies 14 areas over which component states and the central government share joint authority. But this guarantees neither equal voice in the legislative process nor a capacious role in the regulation of these subjects. The central government is invariably the senior partner. Some areas of the law remain influenced by regionally specific legislation; among these are family law, tax law, real property law, and labor law. All local legislation in these areas must conform to federal codes establishing both general principles and specific requirements in these subject areas.⁶

Even the form of government *within* the component state is not the exclusive prerogative of component states. Article 77 of the Constitution indicates that the organization of legislative and executive branches of component state government must conform to both the "fundamentals of the constitutional system of the Russian Federation" and "general principles ... as envisioned by a federal law." In 2004, such a law ended elections for component-state executives (Federal Law No. 159-FZ of December 11,

⁶Perhaps because of the Soviet legacy, the existence and independence of municipal government is constitutionally protected, presumably against encroachment by component states (Constitution RF, 1994, Art. 12). Municipal property is constitutionally entitled to the same protection as private and state property (Constitution RF, 1994, Art. 8(2)). Municipalities are constitutionally authorized to "independently manage municipal property, form, approve, and execute the local budget, establish local taxes and levies, maintain public order and decide other questions of local importance" (Constitution RF, 1994, Art. 132(2)).

2004). The federal president now nominates candidates to be ratified by the component-state legislature.⁷

Where are so-called residual powers allocated? Article 73 of the Constitution states that “[o]utside the limits of authority of the Russian Federation and the powers of the Russian Federation on issues under the joint jurisdiction of the Russian Federation and constituent entities of the Russian Federation, the constituent entities of the Russian Federation shall enjoy full State power.” Article 76(4) directs that component states “shall effect their own legal regulation, including the adoption of laws and other normative legal acts,” in the sphere of residual powers not otherwise allocated exclusively to the central government or jointly with the component states. Exclusive and joint federal authority is so expansive that it is difficult to identify subjects left to the “full State power” of component states. Federal constitutional or statutory silence regarding a particular subject, for example, is no indication that it falls under the umbrella of Article 73. Thus, the Constitutional Court (Konstitutsionnyy Sud Rossiyskoy Federatsii, hereafter KSRF) declared that component states could not regulate advertising because only the federal legislature could establish the foundations of a single market; advertisements were seen to be a part of the free distribution of goods and fair competition protected under that rubric by Article 8 of the Constitution (Postanovleniye KSRF No. 4-P of March 4, 1997).

How are conflicts over jurisdiction resolved between governments? Regarding subjects in Articles 71 (exclusive federal authority) and 72 (joint authority), the Constitution unambiguously provides for the supremacy of federal law in the event of conflict with component-state laws or other normative legal acts (Art. 76(5)). The phrase “laws or other normative legal acts” includes component state constitutions or charters, treaties or agreements negotiated with the central government, and regular legislation. The Constitutional Court has permitted the passage of federal laws that have the practical effect of shifting jurisdiction from the joint authority envisioned by Article 72 to the exclusive jurisdiction of the central government (Postanovleniye No. 1-P of January 9, 1998).

Regarding residual powers left by Articles 73 and 76(4) to component states, the constitutional principle is precisely the opposite of the one stated above: “[i]n the event of a conflict between a federal law and a normative legal act of a constituent entity of the Russian Federation ..., the normative legal act of the constituent entity of the Russian Federation shall prevail” (Constitution RF, 1994, Art. 76(6)). As noted above, however, it is not easy to identify substantial residual powers.

⁷Article 1(2)(c) of this law provides that the president may dismiss the legislature and call early elections if it rejects his candidate three times. Dryden recognized this power in more literary terms over 300 years ago: “Secure his person to secure your cause/They, who possess the prince, possess the laws” (Dryden, [1681] 1972).

A sharp existential debate raged in the 1990s about whether the country was a “constitutional-treaty” federation (i.e., based on a federal constitution, the preferred position of the central government) or a “treaty-constitutional” federation (i.e., a treaty-based confederation, the opinion of several ethnic republics). As a result, numerous assertions of “sovereignty” in the preamble and first few articles of the Constitution acquired special importance. These clauses, along with those allocating to the central government exclusive authority over the territory and structure of the country, have been read by the Constitutional Court (a strong proponent of the constitutional-treaty approach) as independent grounds to strike down legal acts by component states as unconstitutional in addition to more specific, sufficient grounds (see, e.g., Postanovleniye No. 10-P of June 7, 2000, at § 3.1).

INSTITUTIONAL POWER AND THE UNIFICATION OF LAW: EXECUTIVES

On the one hand, the recent history of the Russian Federation under its present Constitution indicates that truly recalcitrant component state governments simply can refuse (and have refused) to take direction from the central government. The results of this obstinacy on some occasions have been extreme and violent (Chechnya), on some occasions strategic and partially successful (Tatarstan), but for the most part ultimately unsuccessful as a practical political matter. On the other hand, the central government now has the statutory power to use an array of inducements and threats to obtain component state compliance.⁸

Among his first acts as president, Vladimir Putin succeeded in passing legislation to amend a 1999 federal law that had attempted to standardize baseline principles for the structure of the legislative and executive branches of the component states (e.g., terms of office, immunity of officeholders, etc.) (Federal Law No. 184-FZ of October 6, 1999). The amendments gave the federal president the power to dismiss regional legislatures and executives for continuing or gross violations of federal law. Thus, the central government *does* possess the power to force the component states to *rescind* regional legislation that contravenes federal constitutional or statutory law. This power has been upheld by the federal judiciary (Postanovleniye KSRF 8-P of April 4, 2002). The dismissal process is cumbersome and lengthy, and requires the involvement of the federal judiciary to determine the existence of a violation sufficient to trigger the successive stages to dismissal (Federal Law No. 106-FZ of July 29, 2000). This power

⁸This power is obviously most effective when the federal executive—composed of a presidential administration as well as a government headed by a Prime Minister and a Cabinet of Ministers—exercises it in a non-contradictory fashion. To varying degrees, all three Russian presidents have been confronted with a certain rivalry within the Executive Branch. This has grown more pronounced under President Medvedev and Prime Minister Putin.

was augmented (and rendered less likely to be used) by further legislation replacing direct election of governors and presidents by constituencies in their component states with the power of the federal president to nominate them for office (Federal Law No. 159-FZ of December 11, 2004, Art. 1(4)(a)). The constitutionality of this statute was also upheld by the Constitutional Court (Postanovleniye KSRF No. 13-P of December 21, 2005). Further tinkering occurred during spring 2009 to allow the majority party in the regional legislature to participate in the nomination process by proposing a slate of candidates to the President (Federal Law No. 41-FZ of April 5, 2009 and Ukaz Prezidenta RF No. 441 of April 23, 2009). Some minor additional reforms to this process were under discussion as this article was being finalized, but these seem unlikely to result in substantial changes (E. Bilevskaya in *Nezavisimaya gazeta*, September 10, 2009). At the most recent meeting of the Valday Discussion Club, in mid-September 2009, President Medvedev said that he saw no reason to return to direct gubernatorial elections, "not now, not in one hundred years," because "in my view, it does not fully correspond with Russian traditions or the level of federalism existing here" (K. Latukhina and S. Kuksin in *Rossiyskaya gazeta*, September 16, 2009).

The execution of central government law depends upon the areas involved. In some areas, the central government itself executes the law. For example, all law enforcement personnel are part of the federal bureaucracy (albeit not of the federal civil service). The investigation and prosecution of crime, therefore, is entirely a function executed by the central government. Likewise, with the exception of Justices of the Peace and judges of the currently operating constitutional or charter courts of the component states, the judiciary is entirely a federal one.

In some cases, the executive branch of the component state may be conscripted (or entitled, depending upon one's point of view) to execute central government law through the federal civil service bureaucracy. This is the result of a recent law, signed in the final days of the presidency of Vladimir Putin, that provides an exception by presidential decree to the general rule prohibiting the appointment to the federal civil service of elected or politically appointed officials (Federal Law No. 30-FZ of March 29, 2008, Art. 3). This change is in clear furtherance of the federal executive's interpretation of Article 77(3) of the Constitution, as providing for his leadership of a "unified system of executive power" in the Russian Federation.

The civil service in Russia is divided into a federal civil service and the civil service bureaucracies of the component states (Federal Law No. 58-FZ of May 27, 2003, Art. 2(2)). The legal regulation and organization of the federal civil service is within the exclusive jurisdiction of the Russian Federation (Constitution RF, 1994, Art. 71(t)). This excludes personnel in the judicial and law enforcement organs of the state, which are within the joint jurisdiction of the central government and the component states (Constitution RF, 1994, Art. 72(1)). The legal regulation of the civil service of each component state is in the joint jurisdiction of the central government and

the component state, while the organization of the component state civil service rests with that component state (Federal Law No. 58-FZ of May 27, 2003, Art. 2(4)). We do not have adequate data to assess the current extent of lateral mobility between the federal civil service and the civil service bureaucracies of the component states. However, federal law seems to contemplate such mobility, e.g., in provisions for determining the total length of government service (Federal Law No. 58-FZ of May 27, 2003, Art. 14).

The Constitution grants the President the power to "use conciliatory procedures to resolve disputes between State government bodies of the Russian Federation and State government bodies of constituent entities of the Russian Federation, and disputes between State government bodies of constituent entities of the Russian Federation" (Constitution RF, 1994, Art. 85(1)). If the agreed resolution cannot be reached, the President can pass the dispute for consideration by the proper court.

The State Council is one such institution. Under the presidential decree "About the State Council of the Russian Federation," one of the goals of the Council (which is composed of the heads of the subjects of the Russian Federation) is to provide assistance to the President in utilizing conciliatory procedures for resolution of the disagreements between public authorities of the Russian Federation and public authorities of the subjects of the Russian Federation, and also between the public authorities of the subjects of the Russian Federation (Ukaz Prezidenta RF No. 1602 of September 1, 2000).

Another unusual federal institution is the Envoy of the President of the Russian Federation in the Federal District. This institution was also established in May 2000 by decree of the President of the Russian Federation (Ukaz Prezidenta RF No. 849 of May 13, 2000). The decree and accompanying regulations divided Russia into seven federal districts. These districts coincided with existing military districts. The capital of each district was deliberately chosen not to coincide with the capital of one of the non-Russian ethnic republics, in an effort to deflate the leadership pretensions of the most powerful component states. Each district is under the charge of one of the President's "plenipotentiaries" (*polnomochnyye predstaviteli, polpredy* for short and commonly translated as "envoys"). According to the decree, these *polpredy* are officially part of the Administration of the President and are charged with overseeing the President's constitutional authority in the districts. The *polpredy* report directly to the President.

Legal unification was among the primary objectives of the *polpredy* from the start. *Polpredy* were given extensive control over federal cadre policy in their districts and given wide access to participate in both federal government agencies operating in their districts and in the work of component state institutions. *Polpredy* and large numbers of federal inspectors set to work scouring component state constitutions and laws as well as the bilateral treaties signed with the central government for conformity with federal legal norms. Among the functions of the Plenipotentiary of the President of the Russian Federation in the Federal District is organization "by order of the President of the Russian Federation of carrying out of

the conciliation for resolution of the disagreements between federal public authorities and public authorities of the subjects of the Russian Federation, located within the limits of the federal district.”

INSTITUTIONAL POWER AND THE UNIFICATION OF LAW: LEGISLATURES

The Federal Assembly of the Russian Federation is a bicameral legislature comprising a lower chamber called the State Duma and an upper chamber called the Council of the Federation. The Duma contains 450 deputies. The Council of the Federation comprises two representatives from each of the component states (thus, now composed of 166 senators). The autonomy of representation from the component states in the Federal Assembly has been substantially reduced in recent years. Between 1993 and 2001, half of the deputies in the State Duma were selected proportionally via nationwide party lists and half were selected by a first-past-the-post system of territorially defined electoral districts. Each component state's two-person delegation to the Council of the Federation comprised *ex officio* the head of the executive branch (the president, governor, or mayor) and the chairperson of the parliament of the component state (Federal Law No. 192-FZ of December 5, 1995).

Today, neither chamber of the Federal Assembly is as reflective of the component states or their governments. The Council of the Federation was restructured in 2000 at the start of Vladimir Putin's first term as President (Federal Law No. 113-FZ of August 5, 2000). The top executive and legislative officials in each component state no longer serve *ex officio* in the upper chamber. This demotion cost them their senatorial immunity from prosecution and their direct influence over federal lawmaking. The chief executive of the component state now nominates senators, who must be approved by the regional legislature. Since the chief executive of each component is himself nominated by the President of the Russian Federation, there is reason to suspect a reduction in the independence of these representatives.

Legislation passed in Putin's second term changed the previous double-ballot approach in the State Duma. All territorial electoral districts have been eliminated. The State Duma is now filled entirely through a proportional system based on nationwide party lists (Federal Law No. 51-FZ of May 18, 2005). By removing clear connections between Duma deputies and territorially based constituencies, this restructuring has also diminished the representation of component state interests in the federal legislature.⁹

⁹Some have observed that, under President Putin, the federal legislature entered into the apparent habit of annually passing legislation (prepared by the Kozak Commission) that redistributed responsibilities and roles between the federal government and the component states in the guise of clarifying Article 72 of the Constitution (Leksin, 2007, pp. 132–153). If this discourse about diminishing federalism at least demonstrates that legislators continue to talk about federalism in the course of passing such statutes, it is perhaps damning with faint praise.

The division of taxing authority is made in the federal Tax Code. The central government collects a Value Added Tax, excise taxes, a tax on individual income, a "Uniform Social" tax paid by employers from the wages of employees, a tax on mineral extraction, a water tax, and customs and duties (Federal Tax Code, Art. 13). The component governments collect taxes on business property, a tax on gambling businesses, and a tax on transportation (Art. 14). Municipal governments collect taxes on land and personal property (Art. 15).

Article 72(1)(i) provides that the central government and the component states shall have joint authority over the "establishment of common principles of taxation and levies in the Russian Federation." Both the central government and the component states have taxing powers, although the extent of power exercised by the component states is largely within the control of the central government. Article 75(3) of the Constitution states that "The system of taxes paid to the federal budget and the general principles of taxation and levies in the Russian Federation shall be determined by federal law." Again, because of federal control over most taxation and natural resources, revenue sharing is largely a top-down affair.

INSTITUTIONAL POWER AND THE UNIFICATION OF LAW: COURTS

The Russian Supreme Court regularly addresses federalism questions.¹⁰ Under Article 27 of the Russian Civil Procedure Code, the Russian Supreme Court handles complaints alleging the illegality of presidential decrees and edicts of the Federal Cabinet. Governors or legislatures of component states may bring such complaints to the Supreme Court.¹¹ The Court upholds the authority of the federal center in almost every case. The component states, after having lost their cases, often contest these judgments of the Russian Supreme Court in the Russian Constitutional

¹⁰This sub-section draws substantially from Trochev (2008, pp. 139–155). That book, published by Cambridge University Press, is based on an extraordinary volume of primary sources and statistical data, including interviews with 15 justices and 15 clerks of the Constitutional Court. To aid the reader of this article (which is based on a report commissioned for the International Academy of Comparative Law), in-text citations, with additional bibliographic information in the References section, are provided for the major decisions that are referenced here. Readers are invited to study Trochev's book for a more thorough statistical analysis of his data.

¹¹In areas of joint jurisdiction, it remains unclear whether these decrees and edicts have a higher legal force than statutes of component states adopted on the same subject matter. The court deals with this uncertainty on an *ad hoc* basis and tends to rule in favor of the central government.

Court by challenging the constitutionality of the federal legislation that the Supreme Court applied in their cases.¹²

Article 125 of the Constitution authorizes the Russian Constitutional Court to police whether central legislation has exceeded the lawmaking powers allocated to the central government. Governors or legislatures of the component states can request that the Court review the facial constitutionality of federal statutes, decrees of the Russian President, and edicts of the Russian Cabinet (i.e., without requiring an underlying case filed in a trial court). Municipalities (and individuals) can request that the Court determine the constitutionality of federal statutes through a concrete judicial review procedure (i.e., when the contested law "has been or is subject to being applied" to them). Component state legislatures can also ask the Court to issue a binding official interpretation of provisions of the Constitution without challenging a specific federal statute. The Court issues such interpretations only in plenary meetings and by a two-third majority of votes of judges hearing the case (Federal Constitutional Law No. 1-FKZ of July 21, 1994, Art. 21; Trochev, 2008). Finally, the Court has the power to settle disputes between government bodies at the central and component state level over the scope of their authority. Government institutions can ask the Court to settle such disputes without challenging a specific federal statute.

Decisions of the Constitutional Court are final and binding on all government institutions at the federal, component state, and municipal levels. Increasingly, the Court issues a "constitution-conforming" interpretation of contested legislation without striking it down. Such an interpretation is also binding on all governments. Even when the Court declines to rule on the merits of a petition, the Court sometimes inserts a "constitution-conforming" interpretation of contested legislation and insists that such interpretation is also binding (see, e.g., *Opredeleniye KSRF No. 542-O*, December 7, 2006). The Court accepts for review about 15–20 percent of petitions coming from the component states. Moreover, the Chief Justice or the Judge-Rapporteur routinely meets in person with the petitioners from the component state governments to discuss their cases. According to the official statistics published by the Court, between 1995 and 2006 the Court received 627 petitions "on the issues of federalism" and issued over a hundred judgments accompanied by numerous dissents. Russia's component states continued to use the Court more actively under President Putin's centralizing regime (147 petitions) than under Yel'tsin's presidency (113 petitions).

¹²It should be noted that the Supreme Court and the Constitutional Court have a long and troubled history of sparring over their respective jurisdictions (Burnham and Trochev, 2007).

General Federal Relations

The Court has repeatedly allowed the component states to legislate in areas of joint jurisdiction “until the adoption of a federal statute on the matter.”¹³ This has gone hand in hand, however, with equally powerful limitations on component state legislation once the federal center chooses to be more active. In 1996, the Court expanded federal supremacy in the joint federal-regional jurisdiction enumerated in Article 72 of the Russian Constitution (Postanovleniye KSRF No. 2-P of January 18, 1996). The Court has ruled that if the component states fail to legislate in the area of joint jurisdiction, then the federal center has the power to preempt responsibilities of the component state (Postanovleniye KSRF of No. 15-P of November 3, 1997). For example, the Court declared that the component states could not regulate advertising because only the federal legislature could set up the foundations of a single market—that is, free distribution of goods and fair competition (Postanovleniye KSRF No. 4-P of March 4, 1997). These foundations, according to the Court, taken together with federal supremacy in fiscal policy, do not permit the expansion of component state and municipal taxes and fees beyond those listed in federal law (Postanovleniye KSRF No. 5-P of March 21, 1997).¹⁴

Relations with Ethnic Republics

For much of the 1990s, the 21 ethnic republics within Russia demanded special privileges and status. The Court routinely repudiated these demands and upheld strong central government authority. In the 1995 *Chechnya Secession* case, the Court approved and legitimized the authority of the Russian President to use military force to quell rebellion in the com-

¹³See, e.g., the Constitutional Court’s decisions (*postanovleniya*), Postanovleniye KSRF No. 16-P (November 30, 1995) and Postanovleniye KSRF No. 12-P (July 9, 2002). For example, in 2001, the Constitutional Court upheld the right of component states to set up extra-budgetary funds and to determine their own revenue bases, even though the Federal Budget Code did not assign this power to the component states and the Russian Supreme Court had earlier ruled that the creation of sub-federal extra-budgetary funds violated federal law (Opredeleniye KSRF No. 228-O, December 6, 2001). In another decision issued in 2002, the Constitutional Court refused to hear a petition by the federal Cabinet and reiterated that the delimitation of state property ownership between the federation and its parts should be achieved by balancing federal and sub-federal economic interests through the process of federal legislation (Opredeleniye KSRF No. 112-O of May 14, 2002).

¹⁴This court-ordered fiscal centralization ran against President Yel’tsin’s 1993 decree and against an earlier decision of the Court issued in 1996, both of which allowed the component states to set up their own taxes (Postanovleniye KSRF No. 9-P of April 4, 1996). Yel’tsin promptly repealed his decree and chose not to interfere with component state fiscal autonomy. The component states continued to levy their own taxes and set up various trade barriers, particularly in the wake of the August 1998 financial crisis. As a result, it was impossible by the end of the decade to ignore the diversity of fiscal regimes in Russia’s component states. Clearly, the widespread explosion of component state and municipal taxes, fees, and trade barriers (and even customs duties!) worried judges concerned about the future of Russia’s common market and of the Federation itself.

ponent states and secession from the federation (Postanovleniye No. 10-P of July 31, 1995). It has upheld the central government's prerogative to divide central and component state functions by adopting federal statutes instead of continuing the practice of signing bilateral intergovernmental treaties (Opredeleniye KSRF No. 13-O of February 4, 1997).¹⁵ It has struck down the "sovereignty" clauses of constitutions of seven republics (Postanovleniye KSRF No. 10-P of June 7, 2000; Opredeleniye KSRF No. 92-O of June 27, 2000). In the same decisions, the Court struck down numerous provisions on republican citizenship, and control over land use and natural resources. The Constitutional Court has upheld the constitutionality of a federal statute that permits the federal executive, through a rather complicated and lengthy procedure involving courts of general jurisdiction, to dissolve legislatures of the component states and to remove their governors (Postanovleniye KSRF No. 8-P of April 4, 2002).

Fiscal Federalism

The Court repeatedly rejected challenges to the power of the federal center to control component state fiscal policies. For example, the Court ruled that the constitutional requirements of a "social state" (Article 7) and a single-budget system limited the autonomy of the budgets of the component states and obliged them to provide federally-set guarantees of social protection—that is, the federal government could "commandeer" the component states to increase salaries and benefits for public employees (Opredeleniye KSRF No. 43-O of April 13, 2000). In another decision, the Court ruled that the states (and municipalities) cannot even pick and choose banks in which to keep their budgetary accounts—they have to keep them in the branches of the Russian Central Bank (Postanovleniye KSRF No. 12-P of June 17, 2004).

Appointments

The Court has concluded that the component states may not veto appointments of federal judges, procurators, and police chiefs in their territories, as all such matters are the prerogative of the federal center (Postanovleniye KSRF No. 10-P of June 7, 2000). The Court ruled that only the federal legislature could regulate the involvement of the component states in this process. The Court has also upheld legislation abolishing direct gubernatorial elections and granting the federal President the power to nominate and dismiss governors of the component states (overturning its own precedent set in 1996 that governors of the component states had

¹⁵Articles 11(3) and 16(1) of the Constitution mention these agreements as part of the "foundations of constitutional order," and by 1998 the central government had signed bilateral treaties with 47 component states (Kahn, 2002, p. 159). Nevertheless, the Court ruled that federal statutes were superior to intergovernmental agreements, and that the component states could not require the federal center to sign such agreements.

to be directly elected) (Postanovleniye KSRF No. 13-P of December 21, 2005).

Recalling the weaknesses of Gorbachev's presidency in handling the break-up of the USSR, most judges of the Constitutional Court agreed that the federal center had to be stronger to save Russia from political, economic, and territorial collapse even if it meant the widespread use of coercion, commandeering, and near-total federal preemption of the autonomy of component states. Numerous interviews with judges indicate that they perceived a strong (even authoritarian) federal center to be the lesser evil compared to the breakdown in center-regional relations that characterized the recent past. The judgments of the Court issued between 1995 and 1998 largely paved the way for President Putin's campaign of legal unification launched in 2000. Thus, the Court was effective in terms of shaping the recentralization of the Federation, but it was not effective in setting the limits of this centralization and legal unification.

The Russian Constitutional Court has the power to authoritatively interpret component state law. In its 2001 decision, the Court struck down the Moscow City land use law and declared that it is the court of last resort in any public law disputes in which all other courts failed to protect individual rights through the application of unconstitutional federal laws or laws of the component states. Thus, while the Russian Supreme Court and the Higher Arbitration Court have the statutory authority to interpret component state law, their interpretation can be challenged in the Constitutional Court. The case law of the Constitutional Court indicates that this tribunal often interprets component state law through: (1) the complaints of individuals against the laws of component states, such as laws on land use, elections, and taxation; (2) the petitions of the governments of the component states to confirm the constitutionality of their legislation, which had previously been invalidated by other federal courts as non-conforming with federal law, such as the structure of the civil service; (3) the petitions of the governments of the component states to settle separation-of-powers disputes at the component-state level; and (4) the petitions of the members of the federal parliament to declare component state laws unconstitutional.

Throughout the 1990s, most component states successfully defied the unfavorable judgments of the Russian Constitutional Court that interpreted component-state law by openly or quietly refusing to implement them. However, by 2008, most component states reversed this stance and carried out constitutional court decisions interpreting component state law faster and in full. One area in which component states continue to defy the Court remains the regulation by component states of migration, as numerous component states continue to impose unconstitutional restrictions on freedom of movement, particularly in Moscow and in the

North Caucasus.¹⁶ But they are able to resist largely because the federal center has no interest in relaxing the control over the migration flows across Russia.

Although the Russian version of federalism diffuses some lawmaking power, judicial power is largely unified. Federal courts include: (1) the Russian Constitutional Court, (2) the Russian Supreme Court that crowns a hierarchy of almost 2,500 federal courts of general jurisdiction, of which there are 83 appellate courts and 2,400 trial courts, and (3) the Higher Arbitration Court that heads the hierarchy of arbitration courts, consisting of 10 cassation courts, 20 appellate courts, and 81 trial courts. The federal courts apply not only federal law but also the laws enacted by the component states. Within the federal court system, the higher courts exercise the power to reverse judgments of lower courts for failure to correctly follow component state constitutions, charters, laws, and regulations.

The 1996 Federal Law "On the Judicial System of the Russian Federation" authorizes the component states to establish their own constitutional or charter courts as well as justices of the peace (JPs). The constitutional and charter courts will be discussed below. There are about 11,000 justices of the peace, and they exist on the level of political subdivisions of cities and regions. They are trial-level courts and form the lowest level of the courts of general jurisdiction. These courts have limited civil and criminal jurisdiction as well as jurisdiction over minor administrative offenses, similar to misdemeanors in common-law systems, including traffic violations. Decisions of the justice-of-the-peace courts can be appealed to the district-level federal courts of general jurisdiction, which conduct a complete *de novo* trial with live witnesses. Since 2000, the workload of the justice-of-the-peace courts has grown dramatically, and in most component states they became overloaded. In 2007, they handled all administrative offenses, half of all criminal cases, and two-thirds of civil cases.

These courts, however, are not under the complete control of the component states. The federal center determines the number of justices of the peace, their general qualifications, and their basic characteristics and jurisdiction. Their salaries are set by federal law and paid by the federal budget. The justices of the peace apply federal procedural law and substantive law, since federal law preempts the component state law in the areas of joint jurisdiction. The component state legislatures appoint JPs for renewable terms of five years but the chairs of federal courts *de facto* control judicial recruitment. The federal law requires component states to pay for the support staff of the JP courts and to provide logistical support to these courts.

¹⁶It should be noted, however, that the Constitutional Court recently complained that 12 component states (Sakha-Yakutiya, Tatarstan, Bashkortostan, Kabardino-Balkariya, Komi, Tyva, Chechnya, Buryatiya, Krasnodar, Nenets, Yamalo-Nenets, and Karachayevo-Cherkessiya) still maintain constitutions or charters that assert sovereignty, ownership of natural resources, citizenship, and other provisions at odds with the Court's caselaw (see Resheniye KSRF ob ispolnenii resheniy KSRF of April 21, 2009, paragraph 5).

There are no formal mechanisms for resolving differences in legal interpretation among central and component state courts. While the Constitution authorizes the Russian president to co-ordinate and reconcile relations among the top government institutions at both the federal and component state levels, no Russian president has greatly improved the thorny relations among the top three central Russian courts. A proposal to establish a "Higher Judicial Office" in charge of settling differences in judicial interpretation emerged during the 1993 constitution-making process and has resurfaced occasionally since the Constitution's adoption. But the judges of the Constitutional Court have repeatedly defeated these proposals, arguing that such an office is incompatible with judicial independence.

Differences are most often resolved via informal bargaining between judges of different courts. Sometimes, the Supreme Court and Higher Arbitration Court refer their differences in interpreting the same federal laws to the Constitutional Court through the abstract constitutional review procedure. Similarly, there are no formal mechanisms for resolving differences in legal interpretation among the Russian Constitutional Court and component state constitutional courts. Increasingly, the latter draw in their decisions on the legal interpretation offered by the former. When such differences arise, decisions of both courts containing conflicting interpretations of component state law stand valid. There are no formal mechanisms for resolving differences in legal interpretation among component state constitutional courts.

UNIFICATION OF LAW FROM THE TOP DOWN

If the unification of law in Russia now appears to be an empirically settled fact, how did it occur? Are the pressures entirely "top down," or are there parallel pressures emanating from grass roots sources? To what extent do component states voluntarily coordinate their efforts to achieve a desired outcome? Have non-state actors played a role in this unification? Does the process of legal education (a steady pressure from within the system) or international legal bodies (a steady pressure from without) exert a noticeable force in one direction or another? It is to these questions that we now turn.

The most direct source of unification has been the malleable language of the Russian Constitution itself. The Constitution establishes certain "fundamentals" in its first chapter (articles 1–16), and "rights and freedoms of the individual and citizen" in its second chapter (articles 17–64). These chapters are protected from amendment; they may only be changed by drafting a new constitution (Art. 135). Among these fundamentals, as noted above, the Constitutional Court has invoked the sovereignty of the Federation to strike down component state legislation. Similarly, the equality of component states in their relations to the central government has been a means of unification and harmonization of law (Constitution RF, 1994, Art. 5(4); Postanovleniye KSRF No. 12-P of July 14, 1997). Other

norms include the federal supremacy provisions of Article 15(1), and guarantees for a single economic space (Art. 8) and social welfare (Art. 7).

Similarly, individual rights norms influence unification efforts. The Constitution contains a highly detailed equal protection guarantee (Art. 19(2)). The power of the state to limit individual rights is also limited both substantively and procedurally.¹⁷ Notably, component states are not permitted to limit constitutionally protected individual rights for *any* reason, since such limitations are possible only by federal law (Art. 55(3)). Thus, the protection of individual rights—and choices about balancing individual rights with state interests—are exclusively federal responsibilities. With each federal decision (executive, legislative, or judicial), therefore, Russian law in that area becomes more unified and more centralized.¹⁸

The number and specificity of rights guaranteed by the Constitution is such that resort to more general norms is not always necessary. The Constitution grants the central government the exclusive authority over the “regulation and protection of human and civil rights and freedoms,” a reference to the 47 articles on the subject in chapter two of the Constitution (Constitution RF, 1994, Art 71 (“v”)).¹⁹ Thus, for example, although the Constitution provides generally for the independence of local self-government as a protection against encroachment by other state authorities, the more specific constitutional guarantee of voting rights has been held to permit the central government to enact framework legislation to harmonize the timing of municipal elections (Postanovleniye KSRF No. 13-P of May 30, 1996).

The unification and harmonization of law is also accomplished through the judicial creation of uniform norms. Russia has three central supreme courts. The Supreme Court is the highest judicial organ for civil, criminal, administrative, and other cases in the federal judicial system. It also may determine the legality of the laws and regulations of component states. The Higher Arbitration Court hears commercial disputes and disputes between private businesses and governments. The Constitutional Court’s jurisdiction has already been described. Since the early 1990s, these courts have actively exercised their authority to strike down laws and regulations of component states and municipalities that they determined to be

¹⁷Some individual rights in this chapter may not be restricted for any reason (Constitution RF, 1994, Art. 56(3)). Other rights may be restricted, but only for specified reasons and only by federal law (Constitution RF, 1994, Art. 55(3), Art. 45-46 (concerning defense of rights and judicial review)).

¹⁸Beyond constitutional provisions, central legislation, particularly the codes of law noted above, has played a very significant role in legal unification and harmonization. As already noted, most law in Russia is federal law. To the extent that the law of component states occupies a particular subject area, it is most likely to have been guided by federally promulgated principles.

¹⁹It should be noted that Article 72(b) assigns the “protection of human and civil rights and freedoms” to the joint authority of both the central government and component states. However, as noted above, the central government is *primus inter pares*.

in conflict with the Constitution and federal law. Since the Russian Constitutional Court began functioning in 1992, this tribunal declared unconstitutional more than a hundred component state legal acts.²⁰ In 1998, the Court ordered other federal courts to strike down analogous component state legal acts, which were previously found unconstitutional (Opredele-niye KSRF No. 147-O of November 5, 1998). By mid-1998, federal courts of general jurisdiction, headed by the Russian Supreme Court, declared illegal 2,016 sub-federal legal acts, issued by sub-federal legislatures and executives (S. S. Sukhova in *Segodnya*, February 16, 2000, p. 2). For much of the 1990s, however, the central government lacked the means to carry out judicial decisions and force the compliance of sub-federal governments with federal standards.

When Vladimir Putin announced a crackdown in 2000 against component state laws that were not in line with federal standards, these courts largely approved his agenda and became major instruments of legal unification. Between 2000 and 2001, federal courts reviewed over 4,000 contested component state laws and regulations and struck down almost all of them (Ye. Grigor'yeva in *Izvestiya*, June 30, 2001). Moreover, amendments made in 2001 to Article 87 of the federal constitutional law "On the Constitutional Court" provided that the judicial annulment of the provisions of a law enacted by one of the component states automatically annuls all laws of all component states that contain the same provisions (Federal Constitutional Law No. 4-FKZ of December 15, 2001). By 2008, component states routinely accepted these court decisions, promptly repealed invalidated laws and regulations, or brought them into compliance with federal law. Most often, top federal courts were involved in unifying laws in the areas of joint jurisdiction.

LEGAL UNIFICATION FROM THE BOTTOM UP?

Voluntary coordination by component state legislatures accounts for a rather small extent of legal unification in Russia. In other words, legal unification has not emerged from the "bottom up" in Russia. Restatements and uniform or model laws are unknown in Russia. Models for legislation typically come through the promulgation of federal guidelines regarding subjects within the joint authority of the central government and component states. Nevertheless, component state legislatures do seem to learn from one another. This has been evident in the past in the similarities (to the point of identity) of their declarations of sovereignty adopted between June 1990 and July 1991. It is likewise evident in the formulaic approach to constitution-drafting that component states undertook in the early 1990s. As discussed in more detail below, the 83 component states have been grouped into seven "federal districts," each of which comprises six

²⁰This statistic is derived from the official, annual compilations of decisions of the Constitutional Court.

to 18 component states. Their legislatures may find opportunities to interact with each other through the office of the federal presidential envoy in charge of each district.

Russia has a unified judicial system in which federal courts overwhelmingly predominate (Constitution RF, 1994, Art. 118(3); Federal Constitutional Law No. 1-FKZ of December 31, 1996, Art. 3). The Supreme Court and Higher Arbitration Court rest atop a pyramid of lower courts of general jurisdiction and lower arbitration courts, respectively. Two types of courts may be found in the component states: constitutional or charter courts, and justices of the peace. Justices of the peace function in all component states except Chechnya. Constitutional or charter courts (depending upon the organic law of the component) function in only 16 component states: the republics of Adygeya, Bashkortostan, Buryatiya, Chechnya, Dagestan, Kabardino-Balkariya, Kareliya, Komi, Mari El, North Osetiya-Alaniya, Sakha-Yakutiya, Tatarstan, and Tuva; the oblasts (provinces) of Kaliningrad and Sverdlovsk; and in the City of Saint Petersburg, which is one of two "cities of federal significance."

The constitutional courts of component states are primarily concerned with determining whether the laws and decrees of component states and the municipalities within them comply with the constitutions (charters) of the component states through both abstract (advisory) and concrete (i.e., concerning particular cases) constitutional review procedures. By mid-2008, these courts issued over 600 decisions.²¹ Eight courts began working before 1996. Their hasty creation was driven by component states seeking to create judicial systems that were independent of the central judiciary. During this period, these courts by and large did not strive for legal unification. This decentralizing trend came to a halt at the end of 1996 with the passage of a federal constitutional law that entrenched a unitary judicial system (Federal Constitutional Law No. 1-FKZ of December 31, 1996).²² As a result of strengthening central power, the constitutional (charter) courts increasingly focused their attention on verifying the compliance with federal law of municipal and component state laws and regulations. In 2000, two-thirds of these court decisions concerned the compliance of such laws with federal laws (Trochev, 2004). The Russian Constitutional Court coordinated and directed this trend in formal and informal meetings with the judges of these courts and was particularly solicitous of the requests of component state courts to consider the constitutionality of federal laws. A concerted effort to expeditiously publish decisions of these tribunals also contributed to unifying and harmonizing trends. In 1999 and 2001, the Court organized (together with the RF presidential administration) two large-scale meetings to promote the contribution of these courts to legal

²¹This estimate is calculated from legal databases, court websites, and decisions published in regional mass media (see also Kryazhkov, 2007).

²²Many governors challenged this law, but the Constitutional Court upheld its constitutionality (Opredeleniye KSRF No. 32-O of March 12, 1998).

unification (Shubert, 2000; Mityukov et al., 2001). Such meetings allowed judges to discuss their jurisprudence and exchange views on judicial practice with colleagues in other jurisdictions.

This shift in transforming the courts of the component states into active agents of legal unification coincided with the enactment of numerous federal statutes in areas of joint jurisdiction and pressure from the Putin administration to uphold their supremacy over the laws of component states. The shift culminated in October 2002, when the St. Petersburg Charter Court rejected the attempt of the St. Petersburg governor to run for a third term (Postanovleniye Ustavного suda Sankt-Peterburga No. 042-P of October 2, 2002).

Historically, agreements between the executive-branch officials of component states aimed to bolster the negotiating position of the components *against* the federal center. Thus, they often promoted less unification and more legal conflict. Now, the chief executives of each component state are nominated by the federal president and confirmed by the regional legislature. By presidential decree, they also may work as part of the federal civil service. (This is discussed in greater detail below). Therefore, as part of the “unified system of executive power” foreseen by Article 77 of the Constitution, legal unification may be increasingly advanced with the help of component state executive branches.

Turning now to private entities such as trade organizations and industrial associations, generally these do not yet possess the necessary political influence to exert pressure for legal unification by exerting autonomous pressure on either the central government or the component states. When they do act, it is often in concert with state actors according to procedures established by federal law. The primary source of input into the legislative process by non-state actors is either through *ad hoc* involvement in the process of legislative initiative (which is legally possible in the component states, although very rare) or through participation in parliamentary working groups and other committees of the State Duma (the lower chamber of the Federal Assembly). Such participation is governed by federal law (Federal Law No. 82-FZ of May 19, 1995, Art. 27).

It is important to note that although freedom of association is constitutionally guaranteed, non-governmental organizations are subject to substantial state regulation (Constitution RF, 1994, Art. 30; Federal Law No. 82-FZ of May 19, 1995). Such associations take different forms but each type requires state registration and different levels of state intrusion into the activities of the association, with the consequences one would expect on the range of activities in which such organizations feel free to engage (Federal Law No. 82-FZ of May 19, 1995, Art. 7, 21 and Art. 23). Recent amendments to this law further tightened registration requirements (Federal Law No. 18-FZ of January 10, 2006). These sparked considerable international controversy by increasing state control over non-governmental organizations, including international human rights monitors,

thus further limiting the independent growth of civil society.²³ Such state involvement necessarily affects the capacity of non-state actors to organize, represent their members' interests, and voice dissent.

Legislative Initiative

At the level of the central government, the right of legislative initiative is exclusively reserved to state actors (Constitution RF, 1994, Art. 104(1)). In component states, however, a more direct role for non-state actors is possible (Federal Law No. 184-FZ of October 6, 1999, Art. 6(1)). Five component states appear to have granted the right of legislative initiative to non-governmental organizations (Zaks.ru, February 21, 2007, www.zaks.ru/new/archive/view/27301). Twenty-four component states have legislation extending the right of legislative initiative to Russian citizens residing in that component state (Afinogenov, 2008).

Parliamentary Working Groups

The general absence of a right of non-state actors to initiate legislation directly (although hardly unusual) has meant that non-state actors must either resort to their own lobbying efforts or seek *ad hoc* invitations to participate in the legislative committees and working groups of the relevant legislature. Because of the top-down emphasis on legal unification in Russia, the most effective locus of this activity is in the lower chamber of the Federal Assembly, the State Duma. The State Duma establishes committees and commissions to draft and evaluate legislation (Constitution RF, 1994, Art. 101(3); Reglament Gosudarstvennoy Dumy (hereafter "RGD"), Art. 19(2) and Art. 20). These are free to seek the involvement of both state and non-state actors for the "preparation of opinions, suggestions, and notes, and also to provide scholarly expertise" (RGD, Art. 112(1)). Duma regulations further provide for "working groups," which are essentially subcommittees (RGD, Art. 111(3)). Consultative (i.e., non-voting) participation in such working groups may be extended quite broadly and may include representatives of non-state organizations and "experts and specialists" (RGD, Art. 111(4) and Art. 113(2)). The responsible committee has the right to conduct its own, independent, expert analysis of the conformity of draft legislation with the Constitution and federal constitutional laws (RGD, Art. 112(1) and Art. 121(1)).²⁴

²³The US State Department repeatedly expressed its "serious concerns" about these amendments (see Press Statement No. 2006/66, US Department of State, January 19, 2006).

²⁴Public discussion of drafts is also possible (RGD, Art. 119(6)). The Legal Office of the State Duma is specially tasked with determining the conformity of proposed legislation with all existing federal law (RGD, Art. 112(2) – (4)). The participation of this office is required when a component state seeks to exercise its right of legislative initiative (see RGD, Art. 114(2) ("g")).

Quasi-State Actors

Perhaps because of the highly regulated nature of civil society in the Russian Federation, an unusual feature is the role that *quasi*-state actors play in legal unification. These are organizations that are created by the state but are not part of the constitutional structure of the state. These organizations take different forms, the level of state influence in them varies, and they occupy different roles. The following play a significant role in the law-making process:

(1) The Public Chamber of the Russian Federation. The Public Chamber was created in 2005 as a special body that “guarantees” the interaction of citizens of the Russian Federation with organs of state power at all levels of government (Federal Law No. 32-FZ of April 4, 2005, Art. 1(1)). The Chamber consists of 126 members chosen in three tranches.²⁵ Its organic statute establishes as its primary purpose the evaluation of draft legislation at both the central level and the component state level (Federal Law No. 32-FZ of April 4, 2005, Art. 2(3)). The Chamber possesses a variety of investigative and consultative powers, including a weak subpoena power for documents and materials necessary to evaluate proposed legislation (Arts. 16(3) and 18(4)). However, opinions of the Chamber are only advisory in nature (Art. 17). In 2006–2007, the Public Chamber sent opinion letters to the State Duma regarding 65 draft pieces of federal legislation (Public Chamber of the Russian Federation, 2008). Out of the 27 drafts that ultimately were passed into law by the end of 2007, 23 fully or partially took into account the Public Chamber’s opinion letters (Public Chamber of the Russian Federation, 2008). The Public Chamber has recently sought to make receipt of its opinion letters mandatory for all federal legislation, an idea which received initial support from (then President-elect) Dmitriy Medvedev (*Rossiyskaya gazeta*, March 20, 2008, p. 2).

(2) Russian Trilateral Commission for Social-Labor Relations. When draft legislation is proposed on labor issues, the Duma’s regulations require that the draft be submitted to the Russian Trilateral Commission for Social-Labor Relations (RGD, Arts. 108(13), 114(2)(“g”2), and 122(1)(“z”). The Commission is composed of representatives of the Russian Government, the All-Russia Organized Labor Association, and the All-Russia Employers’ Association (Federal Law No. 92-FZ of May 1, 1999, Art. 1(1)). The latter two associations are non-state actors, although each association is formed on the basis of federal law (Federal Law No. 156-FZ of November 27, 2002; Federal Law No. 10-FZ of January 12, 1996).

²⁵One-third of the membership (42 members) is chosen by the President of the Russian Federation. Nomination of civil servants is prohibited. Those members in turn select the next third (42 members) from competing all-Russian (i.e., nationally active) non-governmental organizations. The remaining third are chosen in a similar manner as representatives from inter-regional and regional public associations (Federal Law No. FZ-32 of April 4, 2005, Art. 8(1), (5)–(6)).

(3) The Chamber of Commerce and Industry of the Russian Federation. The Chamber of Commerce and Industry of the Russian Federation and similar chambers in the component states are established and operate under federal law (Federal Law No. 5340-1 of July 7, 1993). The Chamber is a “non-state, non-commercial organization, uniting Russian businesses, and Russian entrepreneurs” (Art. 1(1)). Chambers of Commerce and Industry seek the creation of favorable conditions for entrepreneurial activity, for the regulation of entrepreneurs’ relations with their social partners, and for the development of all kinds of entrepreneurial activity and promote connections with foreign entrepreneurs. The Chambers should not be mistaken for wholly non-governmental organizations: these goals are established by federal law (Art. 3(1)). State authorities are required by law to render assistance to chambers in achieving these goals; even assistance as mundane as the provision of meeting places is established by law (Art. 4(1)). State authorities also exercise control and oversight over the Chambers’ observance of federal legislation (Art. 4(3)).²⁶

The Chambers “conduct independent expertise of the drafts of statutory acts in the sphere of economics, external economic relations, and also on other issues, touching interests of businesses and entrepreneurs” (Art. 12(1) (a)). Chambers participate in the evaluation of draft legislation, represent their interests in working groups and committees of the State Duma, and lobby for the introduction of draft legislation. Between 2004 and 2007, the federal Chamber evaluated 181 draft laws, and promoted 47 draft amendments and 29 draft laws, including the Federal Law “About Development of Small and Medium Enterprises in the Russian Federation” of July 24, 2007 (TPP RF, n.d.a). The Chamber also drafts a significant document called the “Conception of Legislation Development of Russian Federation,” which reflects its views of the most urgent business needs and legislative developments. The most recent (second) Conception concerns the period 2008–2011 (TPP RF, n.d.b); the first Conception covered the period 2004–2007.

(4) The Ombudsman of the Russian Federation. The Ombudsman of the Russian Federation was created by statute in 1997 (Federal Constitutional Law No. 1-FKZ of February 26, 1997). The Ombudsman considers Russian legislation about human rights. The Ombudsman has no right of legislative initiative. Therefore, the Ombudsman is limited to lobbying component states and the central government regarding proposed legislation. In 2007, the Ombudsman made such references 62 times and prepared four draft laws (Lukin, 2007). Forty-eight component states have their own ombudsmen.

Finally, one might ask what role legal education and training has played in the unification of law in Russia. In short, the influence has been a centralizing one because legal education is controlled by the federal government. The main law schools in Russia draw students from through-

²⁶State interference with Chambers’ activities is forbidden (Federal Law No. 5340-1 of July 7, 1993, Art. 4(2)).

out the federal system. The overwhelming focus of legal education (which follows the Western European model as an undergraduate course of study) is on central or system-wide law. The Government of the Russian Federation has the authority to establish procedures for drafting and confirming educational standards for higher professional education (Federal Law No. 125-FZ of August 22, 1996, Art. 24(2)(8)). Accordingly, standards in the area of legal education in Russia are established by the central government, in particular by the Ministry of Education of the Russian Federation (Ministerstvo obrazovaniya Rossiyskoy Federatsii, 2000). A state diploma as a “specialist in law” requires a five-year course of study. These national standards require 6062 hours of mandatory instruction in “general professional disciplines,” out of which 4,744 hours of instruction are required for the “federal component” and 658 hours are recommended for the “national-regional” component (Ministerstvo obrazovaniya Rossiyskoy Federatsii, 2000).²⁷ Therefore, law schools in Russia are mainly oriented to teach system-wide law.

Under federal law, the Chamber of Advocates of each component state determines the award of advocate status (admission to the bar) and administers the qualifying examination (Federal Law No. 63-FZ of May 31, 2002, Art. 9(3)).²⁸ It is the Federal Chamber of Advocates, however, that adopts the list from which questions on the exam may be drawn and establishes standards for the general procedure of bar admission (Art. 11(1)). The exam consists of both a written and an oral part (FPA, n.d.). The form of the written examination is determined by qualifications commissions of the Chamber of Advocates of the component state. The oral examination is administered with the use of examination cards, containing at least four questions from the list adopted by Federal Chamber of Advocates. The current list contains 588 questions (FPA, 2005). The overwhelming majority are questions of federal law. The Chamber of Advocates of the component state has substantial discretion to determine bar passage rates.

Federal Law does not contain any territorial restrictions applicable to one admitted to the bar (Federal Law No. 63-FZ of May 31, 2002). Thus, an advocate admitted to the bar of one of the component states can practice in all jurisdictions and in all levels of the court system. However, article 15(4) of this law provides that an advocate may not be admitted to more than one bar at the same time. An advocate is free to move from membership in the bar of one component state to that of another by filing a petition (Art. 15(5)).

²⁷The federal component includes 24 subjects. The national-regional component is recommended to include four subjects: criminal-executive law (i.e., the law of enforcing court orders, including punishment), prosecutorial supervisory review (*nadzor*), the law of private enterprise, and commercial law. The remaining 660 hours are “electives” left to the choice of the student from a range established by the component state. In addition, 1,620 hours are required in a “discipline of specialization” (a “major”).

²⁸It should be noted that judicial candidates also take exams for elevation to the bench, just as advocates are examined for the award of that status (Trochev, 2006, pp. 375–394).

Graduates of the main law schools in Russia (Moscow State Legal Academy, Saint-Petersburg State University Law Department, Urals State Legal Academy, Saratov State Academy of Law, and others), especially those outside Moscow and Saint Petersburg, tend to practice and take jobs throughout Russia. For obvious reasons, graduates of law schools located in Moscow and Saint Petersburg tend to remain in those cities. Graduates of less prestigious law schools also tend to practice in the location of their schools.

Institutions of legal education and training also play a unifying role. One of most significant and successful of them is the Russian Academy of Justice, which was established in 1998 by the Russian Supreme Court and Russian Higher Arbitration Court. Establishment of the Academy was greeted by specialists on the Russian judiciary as a very positive step in the development of competent judges (Solomon and Foglesong, 2000). Its primary goal is the training of candidates for judicial office and other court officials, as well as their continuing education (Ukaz Prezidenta RF No. 528 of May 11, 1998). An important goal of the further training program for judges, judicial candidates, and personnel of the courts of general jurisdiction is the promotion of a unified judicial system in the whole territory of the Russian Federation.²⁹ It has 10 branches scattered over Russia.

Another prominent institution is the Russian Legal Academy under the Ministry of Justice of the Russian Federation. This institution provides professional training, higher qualification training, and internships for personnel from all agencies of the Ministry of Justice, the Federal Registrars Service, and the Federal Bailiffs Service (see the Academy's website, www.minjust.ru/ru/sub_institution/low_academy/). It has branches in 14 component states.

In addition to these two prominent institutions, the Ministry of Internal Affairs operates numerous legal institutions throughout Russia, which train personnel for that Ministry (see the list of training institutions in the Ministry of Internal Affairs, www.mvd.ru/about/education/100019/). The Public Prosecutor's Office also has a similar set of institutions in its structure, training personnel for work in that federal office (see list of training institutions in the General Procuracy, <http://genproc.gov.ru/structure/scientific/district-7/>). The fact that these are subordinated within their corresponding agencies of the central government and provide training for personnel throughout Russia necessarily promotes a higher degree of uniformity in the performance of these law enforcement bodies.

LEGAL UNIFICATION FROM THE OUTSIDE IN

There is a certain irony in the fact that, whatever its effect has been on the promotion of individual rights and democratic governance in

²⁹See e.g., the Russian Academy of Justice statement of goals (www.raj.ru/ru/training/cgs.html).

Russia, compliance with international legal obligations has had a centralizing effect on Russian law. Article 15(4) of the Constitution provides that generally recognized principles of international law, as well as international treaties of the Russian Federation, are a part of its legal system.³⁰ This clause continues: "If an international treaty of the Russian Federation establishes rules, which differ from those stipulated by law, then the rules of the international treaty shall be applied." This constitutional provision makes international obligations an important source of the unification of law in Russia.

In most cases, Russia honors the treaty obligations that it has undertaken, including those in the areas of legal unification and harmonization. Thus, the 1980 Vienna Convention on the International Sale of Goods has direct effect in the civil law relations in Russia (Rozenberg, 1999). The 1971 Berne Convention for the Protection of Literary and Artistic Works had a direct influence on the drafting of the Fourth Part of the Russian Civil Code (Yakovlev and Makovskiy, 2007). It is worth noting that anticipation that Russia would join the World Trade Organization led to the drafting of particular provisions in the Fourth Part of the Russian Civil Code. That is, Russian domestic law took into account an international convention to which Russia was not a party, but hoped soon to be.

Participation in international organizations also plays a role. Russia's entry into the Council of Europe substantially affected its legislation and led to the unification and harmonization of many laws. One of the conditions of the admission of Russia into the Council of Europe required that Russia will "pursue legal reform with a view to bringing all legislation in line with Council of Europe principles and standards" (European Parliamentary Assembly, 1996a; European Parliamentary Assembly, 1996b). The task of putting Russian law in accord with these standards required a considerable amount of unification or harmonization of law (Voinov, 2001; Nikitina, 2001; Ivliyev, 2004; Kahn, 2004, 2008; Trochev, 2009). Sometimes this influence has had a positive effect in preserving local self-government. Russia's ratification of the European Charter of Local Self-Government, for example, has had a protective effect on the continued existence of local elections in Russia.

Russia is a party to or has signed five UNCITRAL (United Nations Commission on International Trade Law) conventions and enacted only one statute based on an UNCITRAL model law. UNCITRAL Model Law on International Commercial Arbitration was largely replicated in the Federal Law "About International Commercial Arbitration" (Spiegelberger, 2005). Some specialists even argue that this Russian law, perhaps, as no other national law based on the Model Law, absorbed the provisions of

³⁰ Article 7 of the First Part of the Civil Code restates the constitutional supremacy requirement and provides that international treaties act "directly" in the regulation of civil relations in Russia except when the treaty requires for its application the enactment of national law.

the Model Law with the minimum amount of additions and divergences (Kostin, 2002).

Russia is a member of UNIDROIT (International Institute for the Unification of Private Law). Russia has signed two UNIDROIT conventions and is a party to one convention (UNIDROIT, 2008, pp. 33–41).³¹ Russia is a contracting state to four international instruments that were adopted under the auspices of other organizations, but were based on UNIDROIT drafts or conventions. UNIDROIT has prepared only one model law: its Model Franchise Disclosure Law (2002). Russia does not have rules of law regulating this subject. Russian courts make frequent references to the UNIDROIT Principle of International Commercial Contracts as, for example, to its provisions on freedom of contract (article 1.1) (Resheniye arbitrazhnogo suda Krasnodarskogo kraya of May 4, 2007), interest for failure to pay money (article 7.4.9) (Resheniye arbitrazhnogo suda Belgorodskoy oblasti of May 23, 2007), and *force majeure* (article 7.1.7) (Resheniye arbitrazhnogo suda Kamchatskoy oblasti of November 23, 2007). Likewise, the International Commercial Arbitration Court under the Russian Chamber of Commerce and Industry also applies UNIDROIT Principles in cases in which the parties have identified it as the applicable law, as well as on its own initiative as rules that reflect international trade customs (Komarov, 2007).

Russia has been a member of the Hague Conference on Private International Law since 2001. Russia is a party to four of the conventions adopted by the Conference and has signed one.³²

Another organization, though not intergovernmental, which should be mentioned here is the International Chamber of Commerce and particularly its Incoterms (International Commercial Terms)—“standard trade definitions most commonly used in international sales contracts” (see the International Chamber of Commerce website, www.iccwbo.org/incoterms/id3042/index.html). These terms were recognized by a decree of the Russian Chamber of Commerce and Industry as trade custom on the territory of Russian Federation (Vilkova, 2004). The Chamber is not a public authority, so this decision is not legally binding. However, it

³¹The Soviet Union signed the Convention Providing a Uniform Law on the Form of an International Will (1973) in 1974 and the Russian Federation is identified by UNIDROIT as the current signatory. Russia signed the Convention on Stolen or Illegally Exported Cultural Objects (1995) in 1996. Russia became a party to the Convention on International Financial Leasing (1988) in 1998.

³²The Soviet Union signed the Convention on Civil Procedure (1954) in 1966. The Russian Federation indicated in a diplomatic note of April 14, 1992 that it desired to be considered as a party to this Convention. The Soviet Union signed the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (1961) in 1991, and the Russian Federation indicated in a similar note in 1992 its intention to be considered a party. The Russian Federation became a party to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965) in 2001. The Russian Federation acceded to the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (1970) in 2001.

indicates the recognition of its importance in the light of certain Civil Code provisions about customs of business intercourse as one of the means of privity regulation.

CONCLUSION

We believe that Russia is a highly centralized federal state with an extremely unified legal system. We also believe that plausible arguments can now be made—based on its new electoral system, “unified system of executive authority,” and current division of jurisdiction between the central and component state governments—that Russia may have ceased to be a federal state in any meaningful sense of the term. Terms lose their meaning when stretched too far.

Nevertheless, we conclude that Russia remains federal because its legal processes (and political will) preserve the federal character of the state. Its current degree of centralization of power and unification of law was not inevitable and may not be permanent. The history of this very new federal state is one of substantial change in the relationship between the central government and the component states. It is worth noting that in the face of so much change, the federal Constitution remained virtually unchanged until the final days of 2008.³³ We do not think that this is evidence of the Constitution’s irrelevance. To the contrary, we think that this indicates a degree of flexibility built into the Constitution (although we do not speculate whether this flexibility was intentional) that has given it what Oliver Wendell Holmes Jr. once described as the necessary “play in its joints” that has led to its changing interpretation in changing times and circumstances (Holmes, 1931).³⁴ However, it should be noted that the most recent amendment (which lengthens the terms in office for the President and members of the State Duma) is part of a trend of increasing power to the federal center, particularly the Executive Branch (Federal Constitutional Law No. 6-FKZ of December 30, 2008).³⁵ The day may come when the current trends of unification of law and centralization of authority are

³³Until December 30, 2008, only those passages concerning the number and identity of component states had been changed (always according to constitutionally established processes).

³⁴The full quotation is: “The interpretation of constitutional principles must not be too literal. We must remember that the machinery of government would not work if it were not allowed a little play in its joints.”

³⁵The law increases the term in office of the president to six years (from four) and of members of parliament to five years (from four). The amendment was accomplished with unusual haste following its proposal by President Medvedev in his address to the Federal Assembly on November 5, 2008. According to one respected national newspaper, the upper chamber of the parliament, the Council of the Federation, required only 20 minutes to pass on the measure, which had already been approved by more than the two-thirds of regional legislatures required by Article 136 of the Constitution (A. Barakhova in *Kommersant*, December 23, 2008). On the eve of adoption, one liberal party (Yabloko) protested this haste as a violation of the federal law on constitutional amendments (*Interfax*, December 22, 2008).

reversed, perhaps with little need for constitutional amendment to accomplish this altered course. For the present, however, we see problems from too much unification of law, rather than not enough.

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