

FEDERALISM, REGIONALISM, AND SOVEREIGNTY IN RUSSIA

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I. INTRODUCTION

So that in the first place, I put for a generall inclination of all mankind, a perpetuall and restlesse desire of Power after power, that ceaseth onely in Death. And the cause of this, is not always that a man hopes for a more intensive delight, than he has already attained to; or that he cannot be content with a moderate power: but because he cannot assure the power and means to live well, which he hath present, without the acquisition of more.¹

Thomas Hobbes argued that individuals are pulled into a competitive struggle for power over others, or at least into a struggle to resist their powers being commanded by others.² This notion is mirrored within the “federal” system of government of the Russian Federation.³ Federation components,⁴

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¹THOMAS HOBBS, *LEVIATHAN* 37 (C.B. Macpherson ed., Penguin Classics 1985).

²*Id.*

³References to the Russian Federation refer to the successor state of the Russian Soviet Federated Socialist Republic (“RSFSR”), a former republic of the Soviet Union. Harold J. Berman, *The Rule of Law and the Law-Based State (Rechtsstaat)*, in *TOWARD THE “RULE OF LAW” IN RUSSIA* 55 (Donald D. Barry ed.)

⁴In order to standardize terms of reference within this Article, all participants within the federal system of the Russian Federation will be referred to as Federation “components,” or “subjects” or in the aggregate as the “periphery,” as distinguished from the “center.” “Center” refers to the leadership or decision-making unit of the Russian Federation. The following

executive, legislative, and judicial bodies of power, and local authorities struggle to garner maximum political control against each other within Russia's "federalist" framework. The founding fathers of the United States saw federalism as the proper arena in which such struggles should take place.⁵ Russia's federalism, however, has failed as such a tool of mediation. The question arises whether Russia has ever experienced true federalism, despite its appellation as a federalist state, and if not, why has it failed to achieve it.

Particularly, this Article sets forth an examination of federalism with the various models of federalism that Russia has employed. Part II defines federalism in a theoretical manner and provides various models of federalist systems. Part III specifically discusses soviet federalism, while Part IV examines forces contributing to Russia's decentralization. Next, Part V follows the center-periphery power struggles reflected within the subsequent drafts of the Russian Federation Constitution. Finally, Part VI and Part VII provide the author's analysis and concluding thoughts, respectively, on Russian Federalism.

II. DEFINING FEDERALISM

A. THEORY

Federalism arises from the formation of a common supranational state among a group of previously sovereign powers.⁶ Scholars have commonly defined a federalist state⁷ by four characteristics.⁸ First, the state must have

translations will also be used when referring to the components of the Russian Federation: republics, territories ("kray"), provinces ("oblast"), regions ("okrug"), cities of federal significance and districts ("raiony").

⁵See THE FEDERALIST NO. 27 (Alexander Hamilton).

⁶The term federal has been defined as "[o]f or constituting a government in which power is distributed between a central authority (*i.e.*, federal government) and a number of constituent territorial units (*i.e.*, states). A league or compact between two or more states, to become united under one central government." BLACK'S LAW DICTIONARY 422 (6th ed. 1991). The term federalism refers to "interrelationships among the states and relationship between the states and the federal government." *Id.* at 424.

⁷A federalist state must be distinguished from other types of similar bilateral or multilateral state unions, namely free-trade areas, customs unions, common markets, and economic and monetary unions, which are characterized by only partial, rather than full, desires for centralization of control by a supranational organization. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 833 (1993).

effective control over the means of violence within its boundaries, although delegation of this control may be granted to its member-units.⁹ Second, a federalist state must contain a decision-making center that is able to significantly affect the allocation of resources and rewards throughout the federal community.¹⁰ Third, the federalist state must be the dominant focus of political identification for the large majority of the politically-aware citizens.¹¹ Finally, the federalist state must possess, internally, jurisdiction that is divided so that the states and the federal government possess complementary but independent powers.¹² Each of these two levels of government must possess one area of action where it is autonomous, and some guarantee that the autonomy will continue.¹³ Additionally, member

⁸Although scholars have managed to determine the elements that may characterize federalism, they have not determined what federalism actually is. Professor Duchacek explores the breadth of possible definitions when he writes:

Is [federalism] only a *structure* that includes two separate yet interconnected planes of territorial government? Is it a *process* which fosters unity while preserving diversity or prevents only an excessive power concentration at the system's center for the sake of local autonomies . . . ? Or has federalism and its division of powers such an inherent quality that it becomes an *end* in itself? Is federalism basically a special type of civic culture — *federal political culture* — whose cornerstone, regardless of institutions, is respect for group rights and commitment to plural decision making? Is federalism *any distribution of power* between a central political authority and other entities, including nonterritorial functional ones such as industries, unions, churches and workshops . . . ? Or is federalism simply a territorial dimension of true *democracy*?

Ivo D. Duchacek, *Antagonistic Cooperation: Territorial and Ethnic Communities*, 7 PUBLIUS 3, 14 (1977).

⁹CHARLES PENTLAND, INTERNATIONAL THEORY AND EUROPEAN INTEGRATION 148 (1973) (quoting AMITAI ETZIONI, POLITICAL UNIFICATION 4 (1965)).

¹⁰*Id.*

¹¹*Id.* The politically-aware citizens, according to the sociological perspective of Etzioni, consisted of the social elites. *Id.* at 172. Etzioni theorized that the social elites would unify for economic or national security reasons. *Id.* The elite would then use education, religion, national rituals, propaganda, and symbols to support the popular will for the federalist state. *Id.* Etzioni's requirement of "political identification" does not require absolute loyalty to any level of government because Etzioni accepted that individuals may feel loyal to multiple levels of government without an internal conflict. *Id.* at 174.

¹²PENTLAND, *supra* note 9, at 148. The phrase "complementary but independent powers" has been assumed to mean that a constitution will delegate between central and component governments those powers which normally would be entirely confined to the component level of government. *Id.* For example, the constitutional delegation of power to the central government to conduct foreign policy would be an independent grant of power. *Id.* at 153.

¹³*Id.* at 151.

states must share equally in the division of power.¹⁴ This sharing of power is the essence of the federalist state as it provides a safeguard against single group domination or totalitarian centralization.¹⁵

The federalist states' virtues are that they provide a forum for a dialectic of centralizing principles, such as security, order, authority, administrative rationality, constitutionalism, and unity, with decentralizing values of local autonomy, representation, pluralism, and diversity for the ultimate goals of peace and liberty.¹⁶ The unity of the federal system provides a bulwark against forces that cause such states to become natural enemies of each other. The more localized the government, the more powerful the persuasion of short-term loss or gain. Localized temptations have less influence on the national government as their reach may, by definition, only encompass a few states. Even though the local government may not be subject to such influences, the inhabitants of the region may be affected by them, and the governing party could lack sufficient strength to prevent spontaneous action by the populace.¹⁷

However, for development and functioning of a federalist state, there must be a shared perception that existing structures are unable to address pressing needs.¹⁸ The reasons for the development of this perception can be militaristic, economic, socio-anthropological, or historical. Much as individuals came together to form cities and nation-states to defend against outside threats and benefit from economic intercourse, federalist states can also be conceptualized as a collection of entities leaguing together to achieve similar goals.

B. MODELS

Germany, the United States, and Switzerland provide distinctive models of federalist systems. German federalism was, in part, an artificial construct of the cold war.¹⁹ The Länder, Germany's federal components, were not

¹⁴*Id.* at 150.

¹⁵*Id.*

¹⁶*Id.* at 157.

¹⁷See, e.g., Alex Dehgan, *A Criticism of the New Mechanisms for Environmental Protection in the Russian Federation*, 19 REV. CENT. & E. EUR. L. 661, 700 n.220 (1993) (noting the suspension of "laws, decrees and resolutions [by local soviets] on their territories in contravention of federal authority" (citation omitted)).

¹⁸PENTLAND, *supra* note 9, at 167.

¹⁹R. Taylor Cole, *West German Federalism Revisited*, 23 AM. J. COMP. L. 325, 326 (1975). Germany's present internal-borders were a result of creating a reunited German state out of West Germany's three occupation zones in order to confront the growing Soviet threat.

based on ethnic or cultural differences.²⁰ In fact, the federal structure and territorial divisions were meant to be temporary. Nonetheless, the framework has survived until the present,²¹ despite surpassing a number of unique problems, including the lack of a historical center (Berlin), general dependent sovereignty with NATO and the Western Alliance, and Germany's division and reunification.²²

The German Constitution²³ gives all government powers to the Länder, unless specifically provided otherwise.²⁴ Thus, governmental powers are delegated from the Länder to the center, with the Federation components retaining residual authority.²⁵ The framers of the German Constitution sought to dramatically curtail the immediate effectuation of the majoritarian impulses of the masses.²⁶ In so doing, the Constitution elevated the individual above the collective and sought to decentralize the government's power over the Länder.²⁷

Edward McWhinney, *Federalism as Process: The National, Transnational (Regional), and International*, in *FEDERALISM-IN-THE-MAKING* 7 (Edward McWhinney et al. eds., 1992). Thus, the Länder (components of the German federalist system), with the exception of Bavaria and the city-states of Hamburg and Bremen, were not truly historical entities, but fortuitous cold war creations. PHILIP M. BLAIR, *FEDERALISM AND JUDICIAL REVIEW IN WEST GERMANY* 3 (1981).

²⁰See PENTLAND, *supra* note 9, at 167 (discussing how three Western Military Occupation powers "formed a union of their three separate zones in Germany" out of their desire to do so, as well as in response to the "particular political circumstances in the late 1940's . . .").

²¹BLAIR, *supra* note 19, at 3.

²²Daniel Kanstroom, *The Shining City and the Fortress: Reflections on the "Eurosolution" to the German Dilemma*, 16 B.C. INT'L & COMP. L. REV. 86 (1993).

²³Germany's constitution is referred to as the "Basic Law" or, in its native language, the "Grundgesetz" [hereinafter GG].

²⁴GG art. 83 ("The Länder shall execute federal laws as matters of their own concern insofar as this Basic Law does not otherwise provide or permit").

²⁵BLAIR, *supra* note 19, at 4 ("As in the United States, Federal powers are of a delegated nature, the Länder possessing under Art. 30 GG the reserved or residual authority.")

²⁶Donald P. Kommers, *German Constitutionalism: A Prolegomenon*, 40 EMORY L.J. 837, 840-41 (1991). In order to protect the rights of the individual, the German Constitution's framers created the Federal Constitutional Court. *Id.* at 840. This Court is the sole body empowered to determine the constitutionality of a statute or law. *Id.* The Federal Constitutional Court may also declare a political party unconstitutional if such party "seek[s] to impair or abolish the free democratic basic order or . . . endanger the existence of the Federal Republic of Germany." *Id.* at 841. Moreover, the Basic Law gives any person who claims his basic rights have been violated by a public authority, the power to file a complaint with the Federal Constitutional Court. *Id.*

²⁷*Id.* at 873.

On its face, the German federal government appears decentralized. The Länder each have their own written constitution and exercise substantial autonomy.²⁸ The constitutions of the Länder are subject to few restrictions by the Federal Constitution; namely, they must conform to the principles of republican, democratic, and social government based on the rule of law.²⁹ Federal governmental structures are mirrored on a regional level, facilitating political identification with regional, as well as national, governments.³⁰

The Länder are also given tremendous influence through local exercise of federal power.³¹ Most federal legislation is executed by the member states with the exception of a restricted number of fields specified by the Constitution.³² The federal government has few administrative substructures

²⁸The constitution of each Länder, however, must not violate the federal constitution. GG art. 28 (“The constitutional order in the Länder must conform to the principles of republican, democratic and social government based on the rule of law within the meanings of this Basic Law.”).

²⁹*Id.* (“The Federation shall ensure that the constitutional order of the Länder conforms to the basic rights . . .”).

³⁰BLAIR, *supra* note 19, at 3.

³¹*Id.* at 5.

³²*Id.* Section VII of the Basic Law of the Federal Republic of Germany sets forth the legislative powers of the Federation and states. *Id.* This section provides in pertinent part:

The Federation shall have exclusive power to legislate in the following matters:

1. foreign affairs as well as defen[s]e including the protection of the civilian population;
2. citizenship in the Federation;
3. freedom of movement, passport matters, immigration, emigration, and extradition;
4. currency, money and coinage, weights and measures, as well as the determination of standards of time;
5. the unity of the customs and commercial territory, treaties on commerce and on navigation, the freedom of movement of goods, and the exchanges of goods and payments with foreign countries, including customs and other frontier protection;
6. federal railroads and air transport;
7. postal and telecommunication services;
8. the legal status of persons employed by the Federation and by federal corporate bodies under public law;
9. industrial property rights, copyrights and publishers’ rights;
10. co-operation of the Federation and the L[ä]nder in matters of
 - (a) criminal police,
 - (b) protection of the free democratic basic order, of the existence and the security of the Federation or of a Land (protection of the constitution) and

of its own and, therefore, relies upon the Länder.³³ The center supervises the execution of its laws only to the extent of whether the law's general intent has been followed.³⁴ Such laws leave the Länder substantial discretion regarding interpretation; thus, regional administrative rules and supplemental legislation consequent to a law's enactment may differ substantially among Länder.³⁵

The German federal government is paradoxically strong despite its institutionalized decentralization. German federalism is a process³⁶ providing a meeting point between the countervailing tendencies of center and periphery, over which the Constitutional Court serves as referee.³⁷ This process allows adaptation of the existing federalist framework to new economic and social challenges rather than developing new institutions for changing conditions. How power is allocated within Germany's federal system, however, is no longer a valid inquiry because this question inherently entails the notion of separation of power. Rather, under the German federalist framework, the question is how can power be effectively *shared*?³⁸ In this

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- (c) protection against efforts in the federal territory which, by the use of force or actions in preparation for the use of force, endanger the foreign interests of the Federal Republic of Germany, as well as the establishment of a Federal Criminal Police Office and the international control of crime.

11. statistics for federal purposes.

Id. at 292-93 (quoting GG art. 73).

³³*Id.* at 5. Apart from the exclusive powers set forth in Article 73 of the Basic Law, the Federal administration is deplete of its own administrative substructures. *Id.*

³⁴*Id.* Article 84, section (3) of the Basic Law states in pertinent part: "[t]he Federal Government shall exercise supervision to ensure that the L[ä]nder execute the federal laws in accordance with applicable law." *Id.* at 298 (quoting GG art. 84(3)).

³⁵*Id.* at 5. Article 70 of the Basic Law gives the Länder the extensive right to legislate in areas where the Federation has not been given legislative power. *Id.* at 292 (citing GG art. 70(1)). Concurrent legislation, as stated in Articles 72 and 74, also gives each Länder the individual right to legislate in areas where the Federation chooses not to exercise its right to legislate. *Id.* at 292-95 (citing GG arts. 72 & 74).

³⁶McWhinney, *supra* note 19, at 10.

³⁷BLAIR, *supra* note 19, at 147-48. The Constitutional Court has wide-ranging jurisdiction over a number of disputes in which it acts as judicial referee, as outlined in Article 93 of the Basic Law. *Id.* at 10-11, 301-02 (citing GG art. 93).

³⁸Even the German Constitutional Court, which acts as an arbitrator between the center and the periphery, is not immune from the influences and interdependence of the German system. According to one scholar, the Court is not separate from the negotiations of the political process, but rather has sought "mutual control and mutual modification" of the constitutional balance with the concept of separation of powers only providing "a guiding organi[z]ational principle." Ernst Benda, *The Position and Function of the Bundesverfassungsgericht (Federal*

manner, German federalism is distinguished by the extent of integration, interdependence, and mutuality of influence between the center and the periphery.

Like that of Germany, America's federal system was not ethnoterritorially-based. American federalism preceded the creation of the country's ethnic diversity, with minor exceptions.³⁹ No ethnic group held a sufficiently large majority as to control the political process on the state level.⁴⁰ There were few, if any, claims for ethnic rights, such as the right to use a particular language, to adopt a state religion, to secede, or to separate governance.⁴¹ Although group exceptions to the general rule of broad distribution and integration of ethnic minorities within the United States did exist,⁴² these groups, upon gaining control on the state-level, have not taken steps to break away from the American political process.⁴³ American culture, rather, is assimilating by nature.⁴⁴ It does not have a memory or tradition upon which ethnic conflicts can occur, and there are no "homelands" to which individuals are potentially attached and whose rights they wish to expand.⁴⁵

The American federalist system, like the German government, also seeks to protect the individual from the tyrannical nature of the federal government. It accomplishes this goal by vesting all powers not specifically enumerated

Constitutional Court) in a Reunited Germany, in FEDERALISM-IN-THE-MAKING 29, 30 (Edward McWhinney et al. eds., 1992).

³⁹Nathan Glazer, *Federalism and Ethnicity: The Experience of the United States*, 7 PUBLIUS 71, 72 (1977). There were small pockets of ethnic groups, such as the Germans in Pennsylvania, the Dutch in New York, the Spanish in California and New Mexico, and later, the French in Louisiana, that preceded the development of American federalism. *Id.*

⁴⁰*Id.* at 73. By definition, Protestant European Americans, as the founding entity, are excluded. *Id.* at 78.

⁴¹*Id.*

⁴²Particularly, Spanish-speaking populations in the West, African-American populations in the South, and Native Americans have chosen to remain distinctive in their culture and their demands for political empowerment. *Id.* at 73-76.

⁴³For example, Native American populations have demanded the opportunity for self-governance and sovereignty, but have not managed to exercise their control above a regional level. *Id.* at 75-76.

⁴⁴There is some indication that ethnic groups are trying to rebel against this element. *See generally* Glazer, *supra* note 39.

⁴⁵*Id.* at 78. This is not to suggest that ethnicity has not contributed to distinguishing characteristics of a state, only that ethnicity consists of one variable in a complex calculus. For instance, a state's physical characteristics may play an equally influential role in its economic, social and religious idiosyncrasies. *Id.*

to the federal government in the states.⁴⁶ The states possess extensive power to determine, organize, and control their political structures and to set and levy their own taxes, serve as an important focus of political identification, play a major role in traditional areas of state responsibility, provide oversight of local governments, and participate both formally and informally in the machinery of the central government.⁴⁷ The states participate in the central government through a number of mechanisms: the composition of the electoral college and the national legislature, determination of congressional districts, and informally through the National Governor's Association.⁴⁸

Despite the extensive powers of the states and the original intent of the constitutional founders to construct a weak national government vis-à-vis the states,⁴⁹ the United States Federal Government has become resoundingly strong. Two factors have played an important role in achieving this result. First, the federal system has evolved into interdependence, rather than "a dual world of sovereign, coordinate, coequal, independent, autonomous, demarcated, compartmentalized, segregated, and distinct constitutional personae."⁵⁰ This evolution was counter to the founders' belief that the states would bind together to defeat a trespass of the federal government.⁵¹ The states have been equally likely to cooperate with the federal government as with each other particularly because they reap benefits by participating in national schemes.⁵² Consequently, self-interest may even preclude cooperation and foster competition between the states.

⁴⁶Calvin R. Massey, *The Locus of Sovereignty: Judicial Review, Legislative Supremacy, and Federalism in the Constitutional Traditions of Canada and the United States*, 1990 DUKE L.J. 1229, 1230.

⁴⁷See, e.g., Richard P. Nathan, *Defining Modern Federalism*, in NORTH AMERICAN AND COMPARATIVE FEDERALISM 89, 92-93 (Harry N. Scheiber ed., 1992) (listing, among other things, powers vested in states).

⁴⁸Martha Derthick, *The Structural Protections of American Federalism*, in NORTH AMERICAN AND COMPARATIVE FEDERALISM 8, 11 (Harry N. Scheiber ed., 1992).

⁴⁹Massey, *supra* note 46, at 1230-31.

⁵⁰S. RUFUS DAVIS, *THE FEDERAL PRINCIPLE* 182 (1978). Although numerous opinions of the American Federal System's present status exist, there is widespread agreement that today's system reflects "[a] vast cooperative of all governments of all levels" *Id.*

⁵¹THE FEDERALIST No. 46, at 300 (James Madison) (Isaac Kramnick ed., 1987) ("[S]hould an unwarrantable measure of the federal government be unpopular in particular States, . . . [t]he means of opposition to it are powerful and at hand.").

⁵²For an example of federal incentives eliciting state cooperation, see *San Antonio Metropolitan Transit Auth. v. Garcia*, 469 U.S. 528, 552-53 (1985) (linking federal highway funds to adopting the national 21 year minimum drinking age and the 55 mph speed limits). Moreover, federal grants account for one-fifth of state and local government expenditures. *Id.*

Second, the federal judicial system has played an important role in overseeing, mediating, and facilitating the convergence between state autonomy and national supremacy.⁵³ Federal courts have provided the flexibility to accommodate changing relationships and conflicting interests. They have attempted to do so with sensitivity to the legitimate interests of both the state and national government.⁵⁴

The federal courts have not acted alone; the state and federal judicial systems are inextricably intertwined. State courts must frequently apply federal constitutional law, particularly in the criminal context. Federal courts, through diversity and supplemental jurisdiction, often interpret state law.⁵⁵ The federal courts seek to provide uniformity of federal law through review of state court decisions. Nonetheless, they are still dependent on the state courts for adherence to the precedent set by the federal judiciary.⁵⁶ Thus, the success of American federalism regarding the judiciary depends in part on the cooperation and interdependence of the state and federal institutions, rather than their antagonism.⁵⁷

Switzerland provides an example of a federalist system developed around ethnic divisions. Its basic federal component, the canton,⁵⁸ closely mirrors Switzerland's ethnic heterogeneity.⁵⁹ Linguistically, the country is divided among four languages: Swiss German, Swiss French, Italian, and Romansch.⁶⁰ Switzerland is also divided by religion. Protestants and

⁵³The *Garcia* Court noted that states' interests are adequately protected by safeguards inherent in the federal system. *Id.* at 550.

⁵⁴*Younger v. Harris*, 401 U.S. 37, 43 (1971) (observing that federal court declaratory relief, granted while a state court proceeding was pending, was unconstitutional because it violated public policy).

⁵⁵See *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938).

⁵⁶*Welch v. Cadre Capital*, 735 F. Supp. 467, 476-77 (D. Conn. 1989); *United States v. Wyoming Nat'l Bank of Casper*, 505 F.2d 1064, 1067 (10th Cir. 1974).

⁵⁷This is not to suggest that tensions may not arise between the two levels of government, but rather, stability may be best protected when such antagonism is avoided. Nor is this to suggest that interdependence is to be equated with centralized government.

⁵⁸Harold E. Glass, *Ethnic Diversity, Elite Accommodation, and Federalism in Switzerland*, 7 *PUBLIUS* 31, 32 (1977).

⁵⁹*Id.* at 31-32. Ethnic differences correspond to relatively clear geographic boundaries. *Id.* at 32. Swiss federalism grants each canton the freedom to follow their own traditions and practices. *Id.* The ethnic diversity of the cantons is integrated into the national decision making process. *Id.*

⁶⁰Approximately only one percent of the Swiss population speak this ancient Latin-based language. *Id.* at 33.

Catholics almost equally split the population.⁶¹ Despite the undercurrent of potential ethnic conflict,⁶² which has paralyzed other similarly-situated nations, such as Belgium and Canada,⁶³ Switzerland provides a paradigm of stability.

Switzerland has succeeded because its leaders have recognized that ethnic differences are not determinants of conflict, but only preconditions for other factors, such as minority dissatisfaction, that may prompt such conflict.⁶⁴ This realization has been present since the inception of the modern Swiss Federation. When the Protestant majority won the civil war in 1847,⁶⁵ it made major concessions to the defeated Catholics who were offered equal representation even though some of their districts were of a smaller size.⁶⁶

Swiss elites have made cooperation and power distribution among the ethnic majorities inherent within its government structure through federalism.⁶⁷ This has been accomplished through two steps: (1) Swiss federalism allocating substantial power to the cantons and lower administrative units in Switzerland to govern their own affairs; and (2) Switzerland's national government integrating cantonal considerations into the national decision-making process.⁶⁸

⁶¹Particularly, Protestants constitute 51.7 percent of the population, and Catholics make up 41.3 percent. *Id.*

⁶²Tony Czuczka, *Wine Brouhaha Typifies Swiss 'Civil War,'* L.A. TIMES, Mar. 1, 1992, at A14.

⁶³Glass, *supra* note 58, at 36.

⁶⁴*Id.* at 32. Mr. Glass delineated why ethnic differences possibly prompt conflict when he explained Professor Gurr's theory of relative deprivation:

Relative deprivation is the perceived discrepancy between value expectation and value capability. Persons in groups determine their expectations, to a large extent, by measuring them against the accomplishments and capabilities of others. The potential for conflict increases then when a group sees itself deprived of benefits enjoyed by others.

Id. at 35.

⁶⁵*Id.* at 42.

⁶⁶Charles W. Maynes, *Containing Ethnic Conflict*, FOREIGN POLICY, Spring 1993, at 13.

⁶⁷Glass, *supra* note 58, at 32. *See id.* at 37 (arguing that elite behavior can provide important mediating factor between ethnic divisions and political conflict).

⁶⁸*Id.* at 32.

Switzerland's cantons and lower administrative components have tremendous autonomy. Swiss "communes"⁶⁹ manage their own municipal affairs, regulate their own churches, and confer Swiss citizenship.⁷⁰ The cantons also retain substantial powers, including authority over schools and highways, intra-cantonal domestic affairs, welfare, most methods of taxation, and the organization and administration of both criminal and civil courts.⁷¹ Similar to Germany, Switzerland's federal power is limited by the federal constitution, and federal law is administered by cantonal governments with wide latitude for cantonal discretion.⁷² However, unlike the American states and the German Länder, Swiss cantons are the dominant financial unit.⁷³

The cantons also exercise tremendous powers on the national level. Switzerland makes widespread use of the tools of direct democracy, referendum and initiative.⁷⁴ Further, cantons participate in the national government through a bicameral legislature modeled on the United States Congress. Cantons serve as electoral districts for the lower house, whose seats are allocated per cantonal population.⁷⁵ In the upper house, cantons are equally represented.⁷⁶ Finally, Switzerland's executive branch is controlled by committee, where the presidency is rotated among the seven committee members who represent separate cantons.⁷⁷

The success of these three federalist models is a result of their ability to adapt easily to changes and conflicts within their societies. Mere reliance on a structural framework of federal constitutions and institutions, in the absence of an inter-elite commitment to respect areas of individual autonomy and integration of regional components into the national decision-making process,

⁶⁹These are administrative units below the canton level which may range in size from a small village to a large metropolis. See Jonathan Steinberg, *What Bosnia Can Learn From Switzerland?*, *NEWSDAY*, Apr. 11, 1993, at 32.

⁷⁰*Id.*

⁷¹Glass, *supra* note 58, at 39.

⁷²*Id.* & n.29.

⁷³*Id.*

⁷⁴Steinberg, *supra* note 69, at 32. For example, eight cantons together have the right to call a national referendum; five cantons may summon a special parliamentary session. Glass, *supra* note 58, at 42.

⁷⁵*Id.* As a result of the civil war of 1947, the writers of the constitution implemented this system to accommodate the federalist concerns of the two warring canton factions. *Id.*

⁷⁶*Id.* The representation of the upper house allows for each canton to receive two seats, and each half-canton to receive one seat. *Id.*

⁷⁷Steinberg, *supra* note 69, at 32.

is insufficient.⁷⁸ Rather, as the models have demonstrated, another element, namely, cooperation, is needed. It is the absence of cooperation that has undermined the Russian federalist system.

III. SOVIET FEDERALISM

There are two basic factors that have shaped Soviet federalism: (1) the complex ethnic and national composition of its population; and (2) the absolute dominance of the Communist Party.⁷⁹ The first addressed the need to consider and mollify the large number of nations.⁸⁰ The second represented the reality of the status quo.⁸¹

Joseph Stalin, the leader of the Union of Soviet Socialist Republics ("USSR") from 1941 until 1953, developed union republics to resolve problems originating from the USSR's ethnic complexity⁸² and to address, if only nominally, national aspirations and international concerns.⁸³ Drafters,

⁷⁸Duchacek, *supra* note 8, at 13. The basis of this commitment is a contract between the center and the periphery that is mutually beneficial. *See id.* at 4-12. The presence of the structures themselves is merely ephemeral, but the nature of the relationships persists and provides the foundation for a successful state. *Id.* *See also* ALAIN GAGNON, *CANADIAN FEDERALISM: A WORKING BALANCE IN FEDERALISM AND NATIONALISM* 164 (Murray Forsyth ed., 1989).

⁷⁹FERDINAND J.M. FELDBRUGGE, *RUSSIAN LAW: THE END OF THE SOVIET SYSTEM AND THE ROLE OF LAW* § 17.1, at 122 (1993) [hereinafter FELDBRUGGE, *RUSSIAN LAW*].

⁸⁰Russia had the paradox of having colonies on its motherland. *Id.* at 36. *See also* Duchacek, *supra* note 8, at 12.

⁸¹FELDBRUGGE, *RUSSIAN LAW*, *supra* note 79, at 36. The 1936 and 1977 Soviet Constitutions provided the legal apparatus to "man all state bodies from top to bottom with Party appointees[, resulting in a State that] was nothing more than a machine to process and express . . . decisions which had been taken within the Party." *Id.* at 29. For the Soviet State, Federalism, like the law, was meant only to be a temporary structure for governance. VICTOR SHEVTSOV, *THE STATE AND NATIONS IN THE USSR* 38 (1982).

⁸²To understand the complexity of the Soviet Union, one must imagine a country spread over an area the size of the United States, Canada, and Mexico combined with a population of 225 million people of various nationalities (twenty-two of which contained at least one million people at the last census).

⁸³Professor Feldbrugge elucidated the reason for creating the union republics when he wrote:

[T]he Soviet rulers did not . . . divest[] themselves of their unwanted federal baggage . . . [since] the gains would have been [only] modest; absolute central control would not have been enhanced, regional and national susceptibilities would have been needlessly offended, and the propaganda effect vis-à-vis the outside world would have been . . . negative.

during the formulation of 1936 Soviet Constitution, used three factors for determining whether a nation or ethnic group merited union candidacy:⁸⁴ (1) the nation had to constitute a majority on its own territory; (2) the national territory had to be located at the USSR's border or at the open sea; and (3) the territory's population had to be of a certain minimum size.⁸⁵

According to the 1977 Soviet Constitution⁸⁶ ("1977 Constitution"), the relationship between the central government and the republics was a federal one.⁸⁷ Particularly, Article 76 spoke of the union republics as "sovereign states."⁸⁸ Article 80 provided that the republics have the right to enter into and direct relations with foreign states, conclude agreements, and exchange diplomatic personnel.⁸⁹ Moreover, under Article 72, each republic had the right to secession.⁹⁰

Those nations not eligible for union republic status were granted autonomy on different levels according to their relative strength within their own

FELDBRUGGE, RUSSIAN LAW, *supra* note 79, at 41.

⁸⁴The basic federal component of the Soviet Union was the union republic. FELDBRUGGE, RUSSIAN LAW, *supra* note 79, at 115. Outside of the fifteen union republics, there were thirty-eight ethno-territories of lesser political status: autonomous republics, autonomous provinces and autonomous regions. *Id.* They were named, as were the union republics, for the majoritarian ethnic populations historically resident upon their territory. *Id.*

⁸⁵*Id.* at 42. Roughly, the population had to be over 300,000 people. *Id.* at 37.

⁸⁶KONST. SSSR (1977). Reference to the 1977 Constitution is made to its unamended form (with exception of the minor amendment of 1981) as it existed until the changes made during the Gorbachev era (starting on December 1, 1988). See Ved. SSSR 1988, No. 49, item 727, Law of 1 Dec. 1988.

⁸⁷JERRY F. HOUGH & MERLE FAINSDOD, HOW THE SOVIET UNION IS GOVERNED 482 (Jerry F. Hough, 1979) (stating that Soviet Constitution emphasized sovereign nature of republics by granting republics right to negotiate and enter into formal agreements with foreign states, exchange ambassadors with foreign states, and secede from union).

⁸⁸KONST. SSSR art. 76 (1977) explicitly states:

A union republic is a sovereign Soviet socialist state which has united itself with other Soviet republics in the Union of Soviet Socialist Republics.

Outside the limits indicated in Article 73 of the Constitution of the USSR, a union republic independently exercises state power within its territory.

A union republic has its own Constitution, which conforms to the Constitution of the USSR and takes account of the special character of the republic.

Id.

⁸⁹KONST. SSSR art. 80 (1977) ("A union republic has the right to enter into relations with foreign states, to conclude treaties with them and to exchange diplomatic and consular representatives, and to participate in the activities of international organizations.").

⁹⁰Specifically, Article 72 provides, "Each union republic retains the right freely to secede from the USSR." KONST. SSSR art. 72 (1977).

territory.⁹¹ These further geographic divisions primarily occurred within the Russian Soviet Federated Socialist Republic ("RSFSR"),⁹² as other union republics were ethnically less diverse.⁹³ The territory was assigned, in descending order of constitutional importance, as a union republic, an autonomous republic, or an autonomous province.⁹⁴ Other geo-political components of the Russian Federation, provinces and territories, had less importance, being primarily established for administration of geographic areas containing Russian majorities.⁹⁵

Autonomous republics⁹⁶ were treated as a type of a semi-state that enjoyed some attributes of "sovereignty" and "state-hood," such as their own

⁹¹FELDBRUGGE, *RUSSIAN LAW*, *supra* note 79, at 37. There was a wide scope in the size of the nations within the Russian Soviet Federated Socialist Republic ("RSFSR"). Two examples are the Tatars in East European Russia, numbering nearly six million, and the Chukchi of Kamchatka, which only number in the thousands. *Id.* at 124. The Tatars, although clearly surpassing the numerical threshold, are surrounded by Russians and thus, neither constituted a majority within their area, nor lived along a border or body of water to merit their own republic. *Id.* The Chukchi, on the other hand, were too small in number for consideration. *Id.*

⁹²The smaller union republics, such as the Baltic Republics, were usually about the size of a Russian province and were not divided into provinces, but directly into districts. F.J.M. FELDBRUGGE ET AL, *ENCYCLOPEDIA OF SOVIET LAW 73-74* (2d ed. 1985) [hereinafter FELDBRUGGE ET AL, *ENCYCLOPEDIA*].

⁹³The RSFSR was the only union republic to incorporate the word "Federated" into its name. Thomas F. Remington, *Federalism and Segmented Communication in the USSR*, 15 *PUBLIUS* 113, 115 (1985). As Professor Remington noted: "[u]nder the Constitution . . . , the Russian Republic is federated because it *contains*, along with regular provincial and territorial units, *autonomous* units (republics, provinces, and circuits [regions]) associated with particular ethnic groups. The USSR is federated because it *comprises* fifteen co-equal *union republics*, each also identified with a particular ethnic group." *Id.*

⁹⁴FELDBRUGGE, *RUSSIAN LAW*, *supra* note 79, at 124.

⁹⁵Provinces were major subdivisions of the RSFSR, going back to the tsarist government, and even to the independent principalities of medieval Russia. *Id.* at 189. Territories are generally analogous to provinces but enjoy a somewhat higher status. *Id.* They are larger than ordinary provinces and located in remote parts of the country. *Id.* Territories and provinces did not overlap, although autonomous provinces, unlike common provinces, were located within the boundaries of territories. *Id.* Territories and provinces persist to the present. *Id.* Recent tensions between the center and the components of the Federation have arisen because of the difference in treatment under the Constitution between the republics, autonomous provinces and autonomous regions on one hand and the provinces and territories on the other. *Id.*

⁹⁶The RSFSR contained 16 autonomous republics: Bashkortostan, Buriatia, Dagestan, Kabardino-Balkar, Kalmykia, Karelia, Komi, Marii, Mordovia, North-Ossetian, Tatarstan, Tuva, Udmurt, Chechen-Ingush, Chuvash, and Yakutia (Sakha). KONST. SSSR art. 85 (1977). The Uzbek, Georgian and Azerbaïdzhan republics also contained autonomous republics. *Id.*

constitution, supreme soviet,⁹⁷ government, and supreme court, but lacked the full breadth of sovereignty enjoyed by the union republics.⁹⁸ Autonomous republics existed within the borders of the union republics.⁹⁹ Autonomous republics within the RSFSR subsequently became republics of the Russian Federation. Although the autonomous republics had attributes of statehood, some scholars have argued they were merely glorified provinces.¹⁰⁰ This explains in part why, when the Soviet Union collapsed, the union republics easily fell into their pre-established, ideological roles as sovereign states while the republics of the Russian Federation merely struggled in the vacuum, having no such previously delineated role.

Autonomous provinces,¹⁰¹ subdivisions of the RSFSR, were located within territories. Currently, only one autonomous province remains, the rest having been upgraded in status to Russian Federation republics.¹⁰²

The 1977 Constitution did not mention autonomous regions by name, except that they were to be regulated by the law of the union republic concerned.¹⁰³ Although they formed part of a province or territory, they were independent in a number of ways.

⁹⁷The governmental structure of the center was mirrored on the component level, especially in those components possessing some degree of autonomy. The governing body for these components, like the national government, was a supreme soviet, essentially a parliamentary body with substantial, although not always clearly defined, powers. HOUGH & FAINSOD, *supra* note 87, at 485-86; FELDBRUGGE, RUSSIAN LAW, *supra* note 79, at 171.

⁹⁸See FELDBRUGGE ET AL, ENCYCLOPEDIA, *supra* note 92, at 73. Some of the attributes possessed by the union republics were the rights to possess territory, organs of state power, and internal self-rule, subject to the supervisory powers that rested with the union republic wherein they are located. *Id.* Yet, these republics lack "any of the indicia of external independence, [such as] . . . the right to secede, to maintain foreign relations, etc. . . ." *Id.*

⁹⁹*Id.* at 188.

¹⁰⁰FELDBRUGGE, RUSSIAN LAW, *supra* note 79, at 95-96. The autonomous republics were given the power to have their own constitutions, governments, and supreme courts. *Id.* at 124. This delegation of power, however, was largely a question of Nomenklatura since the actual power granted to the republics was no greater than that granted to the provincial governments because the territory of an autonomous republic could not be changed without approval. *Id.* See also *infra* note 108 (defining Nomenklatura).

¹⁰¹FELDBRUGGE, RUSSIAN LAW, *supra* note 80, at 124. Autonomous republics were formed when an area came close to meeting the requirements of a union republic. *Id.* The autonomous republics were formed on the basis of a specific nationality. HOUGH & FAINSOD, *supra* note 87, at 483. Autonomous provinces, on the other hand, are merely described as being part of a union republic, and are not given the distinction of having their own constitutions, supreme courts, etc. FERDINAND J.M. FELDBRUGGE, THE CONSTITUTION OF THE USSR 189 (1979).

¹⁰²FELDBRUGGE, RUSSIAN LAW, *supra* note 79, at 189. The Jewish Autonomous Province remains a part of the Khabarovsk Territory. *Id.*

¹⁰³*Id.* Autonomous regions were large territories sparsely populated with ethnic minorities and are comparable to American Indian reservations. *Id.*

Despite the framework of a federalist state, Soviet federalism was a facade for two reasons. First, the predominant position of the Communist Party in all levels of society created a highly centralized and totalitarian state directed from a single source of power.¹⁰⁴ Second, the 1977 Constitution left little power for the supposedly sovereign components of the union.¹⁰⁵

The Communist Party was the basic organizing element of society.¹⁰⁶ Although the government controlled all the stores, schools, factories, theaters, and farms,¹⁰⁷ the Nomenklatura system¹⁰⁸ in essence gave the Party the

¹⁰⁴See Article 6 of the 1977 Soviet Constitution, wherein it reads: “[t]he Communist Party of the Soviet Union is the leading and guiding force of Soviet society and the nucleus of its political system and of state and social organizations.” KONST. SSSR art. 6 (1977). This article was substantially modified in March of 1990, in one of many of the perestroika amendments under the Gorbachev era. The amendment substantially reduced the role of the CPSU within the government of the USSR. Article 6 in its reformulated form, now provided:

The Communist Party of the Soviet Union and other political parties, as well as trade union, youth and other social organizations and mass movements, participate in the formulation of the policy of the Soviet state and in the administration of state and social affairs through their representatives elected to the Soviets of People’s Deputies and in other ways.

KONST. SSSR art. 6 (1977) (amended 1990).

¹⁰⁵FELDBRUGGE, *RUSSIAN LAW*, *supra* note 79, at 29. This reality existed in the face of the Soviet Constitution which dictated its multinational, federal character. Article 70 of 1977 Soviet Constitution provided “The Union of Soviet Socialist Republics is a unitary federal multinational state formed on the basis of the socialist federalism, and as the result of the free self-determination of nations, and the voluntary association of equal Soviet Socialist Republics.” KONST. SSSR art. 70 (1977). Yet, this was the opposite of the true situation. Feldbrugge aptly captures the paradox of the situation writing:

The pretension was nevertheless that a number of nations, possessing their own national and sovereign states, had united voluntarily to form the Soviet Union. The absurdity of this view was made obvious, if by nothing else, by the fact that some of the allegedly constituent states had never existed before they were set up in order to become members of the USSR.

FELDBRUGGE, *RUSSIAN LAW*, *supra* note 79, at 122.

¹⁰⁶Leon Boim, *Party-State Control in the Soviet Union*, in *LEGAL CONTROLS IN THE SOVIET UNION* 13 (Z. Szirmai ed., 1966) (asserting that the socialist State is, from a formal point of view, the main constituent of this power system, and that it is the Communist Party that actually holds the key role therein and controls all other components, including the State itself). The Communist Party was the one dominant party in which the ultimate powers of decision were vested. *Id.* at 12. In fact, the Party’s Twelfth Congress held that the Communist Party can direct the political and cultural activity of the State organs. *Id.* at 13-14.

¹⁰⁷HOUGH & FAINSD, *supra* note 87, at 480.

ability to approve who would govern those places.¹⁰⁹ An election or appointment of a position could not transpire without Party approval.¹¹⁰ Although the legal basis for Nomenklatura was weak, it permitted total Party domination because it was the foundation for a highly integrated control system. The Party itself did not deal with the charade of federalism; rather, it was highly centralized.¹¹¹ Its general justification for control was the constitutional principle of Party leadership over all state and social organizations.¹¹²

The periphery under this system had little power. The basic essence of the central government was for all organs of state power and administration to form a single system where lower organs of power were subordinated to the leadership and control of the higher.¹¹³ The main policymakers of the system remained the federal government, with local governments predominately following federal administrative directives.¹¹⁴ Moreover, the structure of Soviet economic central planning worked against localized interests; ministries took little note of local needs within the planning process.¹¹⁵ Thus, despite wearing the cloak of a federalist state, the Soviet Union was a single bureaucratic behemoth organized by a single source of power, the Communist Party.

Toward the end of the Soviet Union's existence, the structural difficulties of Russia's social, governmental, and economic framework persistently plagued the central government. The growth of semi-autonomous centers of

¹⁰⁸Nomenklatura was a list of offices which were to be filled only by persons who had received Party approval. Remington, *supra* note 93, at 123. It was the Party's formal personnel recruitment system. *Id.* The Party officials had approval powers over a list of appointments in each territorial unit. *Id.* This enabled the Party to control elite recruitment in both Party and non-Party organizations. *Id.* Nomenklatura provided the backbone to a highly integrated control system. FELDBRUGGE, *RUSSIAN LAW*, *supra* note 79, at 114.

¹⁰⁹HOUGH & FAINSOD, *supra* note 87, at 480.

¹¹⁰FELDBRUGGE, *RUSSIAN LAW*, *supra* note 79, at 114.

¹¹¹*Id.*

¹¹²*See supra* note 104.

¹¹³Everett M. Jacobs, *Introduction: The Organizational Framework of Soviet Local Government*, in *SOVIET LOCAL POLITICS AND GOVERNMENT 7* (Everett M. Jacobs ed., 1983). Marxism saw the Communist Party as a community of enlightened individuals, which would lead the enslaved proletariat to revolution. W. E. BUTLER, *SOVIET LAW 28-29* (1983). Once the final synthesis occurred, a new community would emerge where the state would be unnecessary and wither away. *Id.* The paradox of the Soviet Union was that the State did exactly the opposite.

¹¹⁴DONNA BAHRY, *OUTSIDE MOSCOW: POWER, POLITICS AND BUDGETARY POLICY IN THE SOVIET REPUBLICS 35* (1987).

¹¹⁵*Id.*

power paralleled faltering central control. Local leaders strongly felt that the bureaucratic inertia and incompetence at the center and component level stymied the country's overall progress. The solution for local leaders was hegemony over their domains, against the center.

The ascendancy of local authority only hastened the decline of federalism in the Soviet Union. There was no true transition period between authoritarianism and decentralization where a "federalist" system could have developed because the localized gains in power were completed through seizure rather than voluntary sharing between the center and its components.¹¹⁶ Power within the system was no longer complementary and stable, but hostile and insecure. There was no guarantee that autonomy within the system would continue. Thus, the contradiction between the old ideological federalism and the modern reality of total decentralization in the absence of centralized control provided the basis for conflict. A new set of tensions also arose in Russia among the Federation components: the republics and autonomous provinces on the one hand and the larger and more populous, but politically powerless, Russian populated provinces and territories on the other.¹¹⁷ Finally, all federal components suffered from ethnic clamoring on their territories, resulting from small ethnic groups whose limited numbers did not justify their own administrative component, but nonetheless, who still heard the nationalist anthem.

IV. FORCES FOR DECENTRALIZATION

In Boris Yeltsin's historic struggle with then-Soviet President Mikhail Gorbachev for power,¹¹⁸ Yeltsin actively sought to strengthen the RSFSR sovereignty vis-à-vis the Soviet government.¹¹⁹ To accomplish this goal, Yeltsin urged Russia's federal components to seek greater autonomy from the

¹¹⁶BAHRY, *supra* note 114, at 37. Despite an apparent need to reorganize the distribution of power between the central authority and localities, Moscow was very reluctant to impart "real" decision-making powers to the lower levels of government. *Id.*

¹¹⁷*Id.* Tensions over economic policy-making crippled relations between Moscow and the regional capitals. *Id.* For instance, tied to the political nature of the hierarchical system, those regions with effective representation in the Politburo, like the Ukraine and Georgia, succeeded in the competition for funds. *Id.*

¹¹⁸Zhores A. Medvedev, *Yeltsin and His "Little" Russia; Why Is Moscow Cheering A Historic Loss*, WASH. POST, Jan. 12, 1992, at C1.

¹¹⁹*Russia: Prospects for the Federal System 7* (August 1993) (Background Brief from the Foreign & Commonwealth Office in London) (on file with author) [hereinafter Background Brief].

Soviet Union.¹²⁰ To undermine Yeltsin's own centralization of power within the RSFSR, Soviet authorities encouraged demands by Russia's provinces for more autonomy.¹²¹ The result of this conflict was the precipitation of the USSR's disintegration and the growth of centers of local hegemony and center-periphery conflict.¹²² Political conflict was not the only fuel for separatist movements. A grab for resources and, to a limited extent, ethnic nationalism contributed to decentralization.¹²³

Once the Communist Party collapsed, a vacuum was opened for the regions to fill.¹²⁴ The means of attaining power was through resource control;¹²⁵ thus, centers of power slowly shifted to resources rather than republic institutions. Local governments and the lower components of the

¹²⁰Yeltsin bluntly urged the regions to "grab as much sovereignty as you can swallow." Fred Hiatt, *As Yeltsin Strengthens, Regions' Hopes for Autonomy Fade*, WASH. POST, Nov. 22, 1993, at A14.

¹²¹Background Brief, *supra* note 119, at 7.

¹²²Similar events took place during the 1917 Revolution when former provinces, cities and even villages declared their independence. Urs W. Saxer, *The Transformation of the Soviet Union: From a Socialist Federation to a Commonwealth of Independent States*, 14 LOY. L.A. INT'L & COMP. L.J. 581, 609 (1992).

¹²³Russian "imperialist" actions in the North Caucasus under Stalin and in the recent past have resulted in a rise in nationalism among ethnic groups. For instance, in 1991 the Russian government imposed a state of emergency and mobilized 650 troops in response to Chechnya's declaration of independence. Background Brief, *supra* note 119, at 3. The Russian government's actions provoked substantial resentment against the state. *Id.* Stalin exiled several of the predominantly Islamic minority nationalities *en masse* in the 19th century. *Id.* Inter-ethnic clashes have continued to this day. *Id.* On October 31, 1992, fighting broke out between the Ingush and the North Ossetians, resulting in over 500 deaths. *Id.*

Nationalities within Siberia have also taken advantage of the fragmentation of the Soviet Union, and subsequently, the Russian Federation, to gain greater autonomy and vent national aspirations. *Id.* at 5. On Siberia's southern border, Tuva, originally ruled by Mongolians and subsequently the Chinese before becoming an independent State from 1921 until 1944, has seen a revival of a Turkic language and culture derived from mixed Turkic and Mongolian stock. *Id.* This trend of increased nationalistic tendencies has been strengthened by recent Russian immigration coupled with increased unemployment and the exploitation of its natural resources. *Id.*

¹²⁴Sergei Stankevich, *Carte Blanche: The Constitution Will Inevitably Be 'Provisional,'* NEZAVISIMAYA GAZETA, Jun. 15, 1993, at 2, available in LEXIS, Nexis Library, Curnws File (condensed text).

¹²⁵Deputy Prime Minister Sergei Shakhrai, the Chairman of the State Committee for the Federation and Nationalities, believes that ethnic conflicts do not preeminently stem from ethnic problems *per se*, but that the driving powers behind them are the various interests seeking a redivision of property and power. Sergei Shakhrai, *Multiformity of Regions is Source of Russia's Strength*, NEZAVISIMAYA GAZETA, Nov. 9, 1993, at 1, 3, available in Nexis, Lexis Library, Russian Press Digest File.

Federation, being in closer proximity to these resources, sought to build their own power through commanding, or at least limiting, their use.

The "resources" at the heart of the conflict were not limited to raw materials; they also included land control, industrial enterprises, tax revenues, trade transactions, and privatization schemes.¹²⁶ In Moscow, for instance, the dearth of office space resulted in a conflict between the district soviets, the regional soviets, and the mayor's office, over who had the authority to allocate state owned land and buildings.¹²⁷ Similar problems existed elsewhere.¹²⁸

Attempts to gain control over resources also resulted in the establishment of local administrative and ministerial regulatory counterparts for foreign economic activities.¹²⁹ Such agencies owe their allegiance only to the local administrations which created them and have clearly exceeded their powers by engaging in international operations.¹³⁰ Additionally, non-federal administrations have been issuing restrictions on intra-Federation trade, including export licensing requirements,¹³¹ and expropriating control over natural resources.¹³² Many regional leaders, therefore, were necessarily forced to arrange their own business matters;¹³³ when such leaders find cheaper, surer sources for their industries than do the central planners,

¹²⁶Nina Belyaeva, *Russian Democracy: Crisis as Progress*, WASH. Q., Apr. 1993, at 2.

¹²⁷*Id.*

¹²⁸For instance, Belyaeva noted that foreign companies seeking rights to oil and gas in Siberia must work through both the central ministry of the Russian Republic and the local authorities. *Id.*

¹²⁹Lidia Malash, *Regionalism in Russia — Prelude to Separatism?*, CURRENT DIG. POST-SOVIET PRESS, Mar. 31, 1993, at 14.

¹³⁰*Id.* The agencies were exceeding their powers by "independently conduct[ing] foreign-currency and customs regulations." *Id.* at 15.

¹³¹The Tyuman province imposed licensing requirements on oil shipments to other parts of Russia. George Rodrigue, *Russian Federation in Precarious State: Regions Struggle for Basic Needs as Leaders Enjoy First Taste of Power*, DALLAS MORNING NEWS, Apr. 4, 1993, at 1A. The province produces eighty-nine percent of Russia's oil and supposedly contains larger oil reserves than the Middle East. *Id.* The Krasnodar territory has begun to use wheat as a weapon against the center, prohibiting unlicensed grain "exports." *Id.*

¹³²The three years of power struggles in Moscow between the RSFSR and the Soviet Union, and then between the executive and the legislature, permitted the Tatarstan Republic the opportunity to secede from the center in regional economic hegemony. *Regionalism Rampant as Moscow Tries to Reassert Control*, FIN. TIMES, Aug. 19, 1993. Prior to the USSR's disintegration, Moscow controlled ninety-eight percent of local enterprises; afterwards, Tatarstan controlled seventy percent of the enterprises. *Id.* Respecting oil revenue, Moscow handled the sale and export of all oil drilled in Tatarstan. *Id.* Presently, however, the republic sells nearly twenty-nine percent of the oil produced in the region. *Id.*

¹³³Rodrigue, *supra* note 131, at 1A.

transactions are more likely to remain on a local rather than federal level.¹³⁴ Moreover, Federation components have sought financial self-sufficiency by plundering federal tax revenues¹³⁵ and directly appealing to the West for aid.¹³⁶

Once Yeltsin had succeeded in acquiring control of the RSFSR from the USSR, he struggled against forces within his own government, namely the RSFSR Supreme Soviet, that were seeking to usurp his control. Again, Yeltsin found regionalization a useful counterweight to the centralist forces of the Communist Party that sought to reassert themselves in Russia. Yeltsin created institutions and appointed new representatives outside the existing constitutional framework to strengthen his political control vis-à-vis the parliament and the soviets, traditional communist enclaves. In September 1991, Yeltsin began appointing heads of provincial administrations to reorganize executive structures and presidential envoys, to allow for direct implementation of executive policies, and maintain awareness of local issues.¹³⁷ Although the presidential envoy does not have immediate executive powers, he is nonetheless closely involved in provincial government.¹³⁸ Problematically, however, the presidential envoy's authority is not always recognized by local administrations.¹³⁹

Along with direct presidential representatives, the executive and Federation components both have developed other institutions respecting decentralization trends. In October 1992, Yeltsin created the Council of Republic Heads to

¹³⁴*Id.*

¹³⁵*Id.* In 1992, components of the Russian Federation kept one-third of the business profit tax revenues they should have forwarded to Moscow. *Id.*

¹³⁶The governor of Nizhny Novgorod province made the suggestion that Western aid to Russia would be best channelled to the provinces, rather than the federal government. *Russian Governor Urges That Western Aid Go To The Provinces*, BNA INT'L BUS. & FIN. DAILY, May 27, 1993.

¹³⁷Prior to Yeltsin's order for the dissolution of local soviets, there were three centers of government within the provinces and territories: the soviets, which exercise legislative power; the heads of administration, which exercise executive and some legislative power; and the presidential envoys, who supervise the activities of the heads of administration.

¹³⁸Belyaeva, *supra* note 126, at 7. The presidential envoy conveys information concerning the president's policies, assists in implementing the president's decisions, and informs the president about local issues. *Id.*

¹³⁹President Yeltsin's creation of the position of presidential envoy was not without precedent. Ever since Peter the Great in the mid-1700s, Russian rulers have tried to maintain control over the country through imperial agents. *Id.*

build his constituency among the Federation subjects.¹⁴⁰ The new constitution sought to reward Russia's components through representation on the federal level via the Federation Council.¹⁴¹ Local administrations established the Union of Russian Towns, holding its first congress on June 4, 1993.¹⁴² At the congress, Yeltsin stressed the national government's new "emphasis" on regional policy.

Additionally, Federation components have bound together for collective strength. Eight territorial associations have been created in Russia and include nearly all Federation components.¹⁴³ Noteworthy, the associations were created on the foundation of economic homogeneity, rather than national or ethnic ties.¹⁴⁴

In early 1992, Yeltsin introduced the Federative Treaty ("Treaty")¹⁴⁵ to provide a legal framework for delegation of greater autonomy to Federation components. The Treaty delineated the powers of Federation subjects, granting them greater authority in their own territories, including limited control over natural resources and authority to independently engage in foreign trade.¹⁴⁶ However, the Treaty also set the stage for inter-component conflict. Under the Treaty, the republics, comprising approximately twenty-nine percent of Russia's land area and only approximately fifteen percent of its population, enjoyed substantially more autonomy than other components, even though the other components were both larger and richer in mineral

¹⁴⁰See Vera Kuznetsova, *Power: Now A Council Of Heads Of Republics Has Been Set Up In Russia, Too — Yeltsin Is Strengthening Presidential Power as Much as He Can*, NEZAVISIMAYA GAZETA, Oct. 16, 1992, at 1, available in LEXIS, Nexis Library, Curnws File; Background Brief, *supra* note 119, at 8.

¹⁴¹Ger P. van den Berg & William B. Simons, *The New Russian Political System: Its Features and How It Was Created*, 7 REV. CENT. & E. EUR. L. __, __ (1993) [hereinafter van den Berg & Simons]; KONST. RF art. 94.

¹⁴²Yeltsin Greets First Congress of Union of Russian Towns, BBC, June 5, 1993, available in LEXIS, Nexis Library, Summary of World Broadcasts File, File No. SU/1707/1.

¹⁴³van den Berg & Simons, *supra* note 141, at 6.

¹⁴⁴Malash, *supra* note 129, at 10. For instance, the administration of Moscow Province and the Tual Union of Industrialists initiated the creation of such an association of provinces and cities in central Russia. *Id.* See also Irina Bolshova, *Russian Regions Want Export Quotas Increased*, TASS, Mar. 4, 1994, available in LEXIS, Nexis Library, Curnws File (condensed text) (commenting that Russian regions have created several proposals for Russian government regarding changes in mechanism which regulates foreign trade activities).

¹⁴⁵Russia Soviet Federative Republic Federation Treaty, Mar. 31, 1992, reprinted in FERDINAND J.M. FELDBRUGGE, *RUSSIAN LAW: THE END OF THE SOVIET SYSTEM AND THE ROLE OF LAW* 445 (1993).

¹⁴⁶*Id.*

wealth.¹⁴⁷ The federal government sought to allay these concerns by concluding two other "Federation Treaties": one with the Jewish Autonomous Province and the ten autonomous regions, and the other with the provinces.¹⁴⁸ The "sovereign" republics balked at the relative diffusion of their power. The Federation Treaties were integrated into the Russian Constitution on April 21, 1992, only to be repeatedly and substantially amended, and finally eliminated.¹⁴⁹ Accordingly, the constitutional conflict over federalism, regionalism, and sovereignty intensified.

V. CONSTITUTIONAL EVOLUTION OF RUSSIAN FEDERALISM

The Russian Federation, like the Soviet Union, is composed of several different territorial components, allocated upon the same principles as were the components for the USSR.¹⁵⁰ The Federation consists of twenty-one republics, forty-nine provinces, six territories, one autonomous province, cities of federal significance,¹⁵¹ and ten autonomous regions, in addition to localized administrations.

Territories only differ from ordinary provinces in name and have remained unchanged since the Soviet period.¹⁵² In the past, five of the territories each contained an autonomous province.¹⁵³ Those autonomous provinces, with the exception of the Jewish Autonomous Province, were transformed into republics as Russia changed from a republic of the USSR to a distinct nation-state.¹⁵⁴ Autonomous regions were treated as autonomous provinces, regarding the extent of their political duties and powers.¹⁵⁵ They were also the only major Federation component, excepting the Jewish autonomous province, located within the borders of another Federation subject.¹⁵⁶

¹⁴⁷Background Brief, *supra* note 119, at 3.

¹⁴⁸FELDBRUGGE, *RUSSIAN LAW*, *supra* note 79, at 142. *Id.* The allure of the Treaty was diminished when the people saw that the Federation Treaties received more or less the same treatment. *Id.*

¹⁴⁹*Id.* at 143. Certain chapters of the Federation Treaties were extensively amended, specifically, those dealing with the autonomous provinces and regions, the republics within the Russian Federation, and the local and provincial government. *Id.*

¹⁵⁰KONST. SSSR art. 85 (1977); KONST. RF art. 65 (adopted Dec. 12, 1993).

¹⁵¹For example, Moscow & Saint Petersburg. KONST. RF (adopted Dec. 12, 1993).

¹⁵²FELDBRUGGE, *RUSSIAN LAW*, *supra* note 79, at 189.

¹⁵³*Id.*

¹⁵⁴*Id.*

¹⁵⁵These components are large and sparsely populated. *Id.* For an enumeration of their political duties and powers, as of December 1992, see KONST. RSFSR art. 82 to 84-6 (1992).

¹⁵⁶See FELDBRUGGE, *RUSSIAN LAW*, *supra* note 79, at 189.

With the Federation Treaties' association and subsequent integration, the Russian Constitution now delineated the relative status of Russia's components. The relationship between the center and the periphery had not remained stable;¹⁵⁷ rather, it changed as political conflicts developed in Moscow. Thus, it is possible to trace aspects of the development and decline of federalism within the Federation by tracing the growth and decline of the powers granted to its various components, namely sovereignty, secession, governmental control, political identification, and international presence.¹⁵⁸ However, despite the myriad forms that the relationship between the center and the periphery took, the relationship was never a federal one.

A. DECEMBER 1992 CONSTITUTION

The December 1992 Constitution of the Russian Federation¹⁵⁹ ("1992 Constitution"), like the 1977 Constitution, granted the republics a substantial measure of sovereignty, albeit only in name. Under Article 76 of the 1977 Constitution, union republics were sovereign Soviet socialist states.¹⁶⁰ The 1992 Constitution subtly limited sovereignty of the Federation republics, defining "republic" as "a state that enjoys the fullness of state power on *its* territory."¹⁶¹ Therefore, without having to enunciate limitations, the new 1992 Constitution curtailed the ability of Federation republics to act as sovereign states.

Support for this position can be found by examining the right of secession, present under Article 72 of the 1977 Constitution,¹⁶² but not enunciated under the 1992 Constitution. Its absence, under traditional Russian constitutional rules of construction, indicated its prohibition.¹⁶³ The

¹⁵⁷The final draft of the Constitution presently in force no longer contains the Federation Treaties. Rather, as Yeltsin managed to gain the upper hand, the power of the republics has been diluted and dispersed among all other Federation components. van den Berg & Simons, *supra* note 141.

¹⁵⁸Although these indicators are not benchmarks of a federalist system *per se*, they do provide insight into the power struggle between the center and the periphery.

¹⁵⁹KONST. RSFSR (amended Dec. 10, 1992).

¹⁶⁰Article 76 provided: "[a] union republic is a sovereign Soviet Socialist State which has united itself with other Soviet Republics in the Union of Soviet Socialist Republics." KONST. SSSR art. 76 (1977).

¹⁶¹KONST. RSFSR art. 78 (amended Dec. 10, 1992) (emphasis added).

¹⁶²Article 72 read, "[e]ach union republic retains the right freely to secede from the USSR." KONST. SSSR art. 72 (1977).

¹⁶³The Soviet Constitution was a grant of rights and duties to the Soviet people. FELDBRUGGE, *RUSSIAN LAW*, *supra* note 79, at 217. A citizen could participate in those rights by performing his duty to the socialist system of production. *Id.* Many rights granted by the system could also be categorized as duties. The most basic right was the right to work. *Id.*

1992 Constitution declared that the Russian Federation components could only change their "constitutional-legal status," as well as their "partition or unification," upon satisfying two conditions: (1) a positive vote of the populace of the Federation component; and (2) *approval* by the Congress of People's Deputies.¹⁶⁴ Therefore, the second prong effectively centralizes the secession question by eliminating the previous right, albeit pretended, granted under the 1977 Constitution. Further, the 1992 Constitution separately listed the other Federation subjects from the Federation republics and granted them even fewer powers.¹⁶⁵

Moreover, the 1992 Constitution limited the republics' ability to participate in the international sphere. Article 80 of the 1977 Constitution gave union republics the right to enter into relations with foreign states, conclude treaties, exchange diplomatic personnel, and participate in international organizations.¹⁶⁶ These rights, however, were not available to other

All other rights were derivative. *Id.* Other constitutional provisions also worked to further restrict fundamental rights. Article 39 of the 1977 Constitution mandated that "the exercise of fundamental rights and freedoms should not injure the interests of society and state." *Id.* (quoting KONST. SSSR art. 39 (1977)). Other rights were dependent on being exercised for a specific purpose, usually the furtherance of Communism. *See, e.g.*, KONST. SSSR art. 50 (1977) (providing that freedom of expression should be "[i]n accordance with the interests of the people and in order to strengthen and develop the socialist system").

Mirroring the Soviet Constitution in its treatment of fundamental rights, the RSFSR Constitution did not recognize Natural Law. Fundamental rights were an affirmative grant of rights to the individual from the collective, rather than a grant of rights from the collective to the government. *See* KONST. RSFSR arts. 36 to 67-11 (1992). Therefore, a right would have to be specifically granted in order to be claimed.

¹⁶⁴KONST. RF art. 70 (amended Dec. 10, 1992). Article 70 of the December 1992 Constitution provided, in pertinent part:

A change in the constitutional-legal status of the republics, territories, provinces, the cities of Moscow and St. Petersburg, the autonomous province, and autonomous regions, as well as their partition or unification may only be effected on the basis of the expression of the will of the majority of their voters, subject to confirmation by the Congress of People's Deputies of the Russian Federation.

Id.

¹⁶⁵*See* KONST. RSFSR arts. 71-72 (amended Dec. 10, 1992).

¹⁶⁶KONST. SSSR art. 80 (1977). Article 80 read in relevant part that "[a] union republic has the right to enter into relations with foreign states, to conclude treaties with them and to exchange diplomatic and consular representatives, and to participate in the activities of international organizations." *Id.*

components of the USSR, particularly the Federation republics' predecessors, the RSFSR autonomous republics.¹⁶⁷

The 1992 Constitution only permitted the Russian republics to conclude foreign "economic connections" and inter-republic, intra-state pacts.¹⁶⁸ Any agreements concluded by a Federation republic, however, could not offend the Constitution, nor the laws of the Russian Federation.¹⁶⁹ Therefore, although republics were at least nominally considered states, their sovereignty did not extend extraterritorially. Outside of the sphere of "economic connections," the 1992 Constitution delegated coordination of the republics' international and foreign economic relations to the federal government.¹⁷⁰

Counterbalancing the reduction of power of the Federation republics vis-à-vis the union republics was an elimination of national controls over the local level. Article 1 of the December draft no longer defined the Russian Federation as a single integral system.¹⁷¹ Instead, the adjective "unitary," which modified federal, was dropped.¹⁷² Therefore, state power would no longer be exercised through principles of "democratic centralism" and "unified leadership" as outlined in the 1977 Constitution,¹⁷³ but rather

¹⁶⁷KONST. SSSR arts. 82-87 (1977). Chapter 10 of the 1977 Constitution delineated only the power that the autonomous republics have over its internal affairs. Specifically, the 1977 Constitution emphasized that the concerns of the autonomous republics focus only "social development within the autonomous republic's territory[,]" as opposed to foreign affairs. KONST. SSSR art. 83 (1977).

¹⁶⁸KONST. RSFSR arts. 81-2 (amended Dec. 10, 1992). In this instance, the term "state" referred to the Russian Federation, as opposed to its components. *Id.*

¹⁶⁹*Id.*

¹⁷⁰*Id.*

¹⁷¹KONST. RSFSR art. 1 (amended Dec. 10, 1992).

¹⁷²*Compare* KONST. SSSR art. 70 (1977) ("The Union of Soviet Socialist Republics is a unitary federal[,] multinational state, formed on the basis of the principle of socialist federalism, and as the result of the free self-determination of nations, and the voluntary association of equal Soviet Socialist Republics. The USSR embodies the state unity of the Soviet People and brings together all nations and nationalities for the purpose of jointly building Communism.") with KONST. RSFSR art. 1 (amended Dec. 10, 1992) ("The Russian Federation — Russia — is a sovereign federative state, created by the peoples which have been historically united in it. The unshakable foundations of the Constitutional structure of Russia are rule[d] by the people, federalism, a republican form of government, and separation of powers.").

¹⁷³KONST. SSSR art. 3 (1977). Article 3 defined "democratic centralism" as a system of organization where "all organs of state power are elected from the lowest to the highest, they are accountable to the people, and the decisions of higher organs are binding for lower organs. Democratic centralism combines unified leadership with local initiative and creative activity and with the responsibility of every state organ and official for the tasks entrusted to them." *Id.*

through principles of both vertical and horizontal separation of powers as denoted by the 1992 Constitution.¹⁷⁴

Finally, the government no longer held a “stranglehold” over all levels of control within the Federation. Prior to its decline, the Soviet state exercised tremendous power on the local levels of the USSR through the Communist Party’s control over the soviets.¹⁷⁵ The notion of centrally-directed soviets, which had provided the framework for the exercise of political control,¹⁷⁶ was dead — the specter of unitary control, however, would return.

B. FURTHER DECENTRALIZATION: MAY 1993 DRAFT CONSTITUTION

The May 1993 Draft Constitution of the Russian Federation’s Constitutional Commission¹⁷⁷ (“Rumyantsev Draft”) again referred to republics as states and declared that they possess the fullness of state power on their territory, excepting authority transferred to the Federation government.¹⁷⁸ The primary distinction between the 1992 Constitution and the Rumyantsev Draft was that the other “state-territorial formations” of the Federation had the potential to possess the same rights and bare the same obligations as a Federation republic, excluding exceptions established by the Constitution.¹⁷⁹ Under this change, the other regions were given a broad affirmative delegation of authority and jurisdiction subject to limitations, rather than a restrictive grant of enumerated power.¹⁸⁰

¹⁷⁴KONST. RSFSR art. 3 (amended Dec. 10, 1992).

¹⁷⁵Article 89 of the 1977 Constitution mandated that the Soviets on the levels of the USSR, union republics, autonomous republics, territories, provinces, autonomous provinces, autonomous regions, districts, cities, settlements, and villages “constitute a single system of . . . state power.” KONST. SSSR art. 89 (1977).

¹⁷⁶Article 2 of the 1977 Constitution provided, in pertinent part, “[t]he people exercise state power through the Soviets of People’s Deputies, which constitute the political foundation of the USSR. All other state organs are under the control of and accountable to the Soviets of People’s Deputies.” KONST. SSSR art. 2 (1977).

¹⁷⁷KONST. RF (Draft May 8, 1993).

¹⁷⁸KONST. RF art. 7(1), 7(3) (Draft May 8, 1993).

¹⁷⁹KONST. RF art. 7 (Draft May 8, 1993). *See* KONST. RF arts. 77-I, 78-I, 79-I (Draft May 8, 1993, Version A), 77 (Draft May 8, 1993, Version B) (listing exceptions). Conversely, the Rumyantsev Draft contained two versions, A and B; version A mirrored the 1992 Constitution in differentiating the Federation’s components, while version B eliminated all such distinctions, suggesting equality between all Federation subjects. *See* KONST. RF arts. 77-I to -VII (Draft May 8, 1993, Version A), 77-82 (Draft May 8, 1993, Version B).

¹⁸⁰The presumption under the former draft was a Federation subject had authority to act in a field if it were not expressly restricted; under the latter, the component nonetheless could not act, unless the Constitution expressly permitted.

The right to secession, however, was noticeably absent. In fact, Article 75 of the Romyantsev Draft lent an opposite view.¹⁸¹ Federation subjects were limited regarding foreign relations, excluding the field of economic relations where they were considered “independent participants.”¹⁸² The Romyantsev Draft seemingly contradicted itself when, in the same section, it mandated that the center coordinate foreign economic relations.¹⁸³ Whether this was a drafting error or political compromise, however, is uncertain.¹⁸⁴

Further stressing its emphasis on decentralization, the Romyantsev Draft failed to mention the local representatives of federal power. Specifically, Article 7 provided that the “state-territorial arrangement” was based on federalism, allowing for the, seemingly contradictory, goals of uniting the Russian Federation, coupled with the decentralizing state power and providing the people’s right to self determination.¹⁸⁵ Inclusion of the recognition of self-determination was significant, indicating the government’s growing awareness of the Federation subjects’ demands and power.

¹⁸¹Article 75 declared that change in the legal status of a component of the Russian Federation must be effectuated by a two-thirds approval of the local electorate with a corresponding decision of the Supreme Soviet. KONST. RF art. 75(4) (Draft May 8, 1993).

¹⁸²See KONST. RF art. 77-III(2) (Draft May 8, 1993, Version A); KONST. RF art. 79 (Draft May 8, 1993, Version B). Both Version A’s and Version B’s articles, however, provided that:

Republics within the Russian Federation are independent participants in international and foreign economic relations and agreements with other republics, [territories], [provinces], autonomous [provinces], and autonomous [regions] of the Russian Federation unless this conflicts with the Constitution and laws of the Russian Federation and this treaty.

KONST. RF art. 77-III(2) (Draft May 8, 1993, Version A); KONST. RF art. 79 (Draft May 8, 1993, Version B).

¹⁸³KONST. RF arts. 77-I(k) (Draft May 8, 1993, Version A), 77(k), 77(o) (Draft May 8, 1993, Version B) (providing that jurisdiction of federal bodies of state power of Russian Federation includes foreign economic relations).

¹⁸⁴See KONST. RF arts. 78(o), 79 (Draft May 8, 1993, Version B), 78-III(2), 79-III(2) (Draft May 8, 1993, Version A). Particularly, Version A omitted the coordination requirement, leaving a conflict of power between the federal government and the Federation components.

¹⁸⁵KONST. RF art. 7(1) (Draft May 8, 1993). Article 7(1) provided that “[t]he state-territorial arrangement of the Russian Federation is based on the principle of federalism, providing for the unity of the Russian Federation, the decentralization of state power and the right of the peoples to self-determination within the Russian Federation.” *Id.* Apparently, the Russian government was “hedging its bet” by maintaining a right to regain central control.

C. POLITICAL COMPROMISE & CONTRADICTION:
JULY 1993 DRAFT CONSTITUTION

The July 1993 Draft Constitution of the Russian Federation's Constitutional Assembly¹⁸⁶ ("Presidential Draft") again followed the trend toward greater decentralization by describing the republics as "sovereign" states.¹⁸⁷ Nonetheless, similar to the Romyantsev Draft, the Presidential Draft suggested, within the same article, that all components of the Federation enjoy equal rights.¹⁸⁸ Therefore, by implication, all components of the Russian Federation would now enjoy some measure of sovereignty.

Again, as in the Romyantsev Draft, the Presidential Draft seemingly contained the contradictory ideas of a state based on unity, decentralization, and self-determination.¹⁸⁹ The Presidential Draft, however, takes these concepts one step further. In the Romyantsev Draft, decentralization, self-determination, and unity were merely listed as components of federalism, the governing structure.¹⁹⁰ Conversely, the Presidential Draft sought to *guarantee* these rights by adding "equal rights" for all Federation people, irrespective of federalism.¹⁹¹ Although this change addressed the separatist/nationalistic clamoring among all levels of the government, not merely those at the republic level, it nonetheless failed the federalist model by fragmenting power without providing for its allocation or guaranteeing its sustenance.

In other areas, the Presidential Draft was a retreat from decentralization. For example, the Presidential Draft did not delineate the possibility of secession, nor did the Draft grant the components of the Federation

¹⁸⁶KONST. RF (Draft July 1993).

¹⁸⁷*Id.* at art. 5 (Draft July 1993). Article 5 stated that "[a] republic shall be a state within the Russian Federation; implementation by a republic of its sovereign rights shall not conflict with the Constitution of the Russian Federation." *Id.*

¹⁸⁸*Id.* Specifically, Article 5 provided in part: "[t]he Russian Federation as a federal state shall consist of Republics, Territories, Regions, Cities of Federal Importance, Autonomous Regions, Autonomous Areas, *subjects of the Russian Federation enjoying equal rights.*" *Id.* (emphasis added).

¹⁸⁹*Id.* ("The state structure of the Russian Federation shall guarantee its unity, decentralization of authority, equal rights and self-determination of the peoples within the Russian Federation.").

¹⁹⁰*Id.* at art. 7(1) (Draft May 8, 1993) ("The state-territorial arrangement of the Russian Federation is based on the principle of federalism, providing for the unity of the Russian Federation, the decentralization of state power and the right of the peoples to self-determination within the Russian Federation.").

¹⁹¹*See* KONST. RF art. 5 (Draft July 1993).

independent foreign affairs authority.¹⁹² Further, Article 74, for the first time, sought to crack down on Federation components which were imposing custom duties and licensing requirements on inter-Federation trade moving through their territory.¹⁹³

Finally, the Presidential Draft endeavored to strengthen executive control over the regions. The Presidential Draft did this by reimposing executive agents and “territorial structural units” on the periphery.¹⁹⁴ Moreover, Article 77 placed the executive bodies of the Federation components, which were under the joint control of the executive and component members, in the hands of the center.¹⁹⁵

D. RETREAT TO CENTRAL CONTROL: THE NEW CONSTITUTION

The final draft of the Constitution¹⁹⁶ (“Referendum Draft”), presently in force, severely limits the sovereignty of the republics against other components of the Federation.¹⁹⁷ The Referendum Draft refers to the republics as states in parenthesis. Furthermore, the Referendum Draft

¹⁹²*Id.* at art. 72(n) (Draft July 1993). Article 72 provided in pertinent part that the “[c]ommon jurisdiction of the Russian Federation and the subjects of Russian Federation shall cover: coordination of international and external economic relations of the members of the Russian Federation [and] implementation of the international treaties of the Russian Federation.” *Id.*

¹⁹³Article 74 read, “[c]ustoms borders, duties, charges and any other barriers for free movement of goods, services and financial means in the Russian Federation shall not be allowed.” *Id.* at art. 74 (Draft July 1993).

¹⁹⁴In relevant part, Article 78 stated, “[t]he federal bodies of executive authority, in order to exercise their powers, may create their territorial structural units and appoint relevant officials.” *Id.* at art. 78 (Draft July 1993).

¹⁹⁵Specifically, Article 77 provided:

Within the jurisdiction of the Russian Federation and powers of the Russian Federation on the matters of common jurisdiction of the Russian Federation and subjects of the Russian Federation the federal bodies of executive authority and bodies of executive authority of subjects of the Russian Federation shall form a *single system of executive authority* in the Russian Federation.

Id. at art. 8 (Draft July 1993) (emphasis added).

¹⁹⁶KONST. RF. See Wendy Sloane, *Ethnic Bashkirs Revive Culture in Russia*, CHRISTIAN SCI. MONITOR, Jan. 6, 1992, at 9.

¹⁹⁷This draft of the Constitution was submitted to and approved by a nation-wide ballot on December 12, 1993. During the approval process, Yeltsin pressured leaders of the Russian Federation’s constituent republics to drop their demand for sovereignty under the new Constitution. Oliver Wates, *Russia: Yeltsin Aides Keep Up Pressure on Constitution*, REUTERS NEWS SERV., Dec. 8, 1993, available in LEXIS, Nexis Library, Reuters File.

emphasizes equality amongst all Federation components in terms of their relationship with the federal government.¹⁹⁸ This concept of equality among all the components is repeatedly stressed throughout the Referendum Draft.¹⁹⁹

As in previous drafts, the Referendum Draft does not mention the possibility of succession for the components; rather, integrity is stressed.²⁰⁰ Additionally, Federation components are not delegated independent foreign affairs powers under the Referendum Draft²⁰¹ and are still subject to executive control through territorial bodies, executive representatives, and a mandate that the components' executive bodies fall under central control.²⁰²

In the period between the Presidential Draft's issuance and the December elections, Russia's federal system dramatically changed from a decentralized system to one which was highly unitary, both in law and in practice. The relations between the center and the Federation subjects became similar to those existing in the past between the center and the union republics. New agents filled the power vacuum left by the Communist party. Under the resolutions of September 23 and 24, 1993, the national government created special regional governmental representatives possessing power to participate in the work of agencies of state power on all component levels.²⁰³ Yeltsin, albeit upon a gossamer foundation, now managed to establish new vertical lines of control.

This new centralized framework contradicts the concept of a federation much like the previous attempts at decentralization did. As in the past, periphery authorities again are limited in their discretion to following executive directives.

The return of federal control in the Referendum Draft and the dissolution of power among all components of the Federation was evidenced by Yeltsin's actions after his victory in defeating the September coup. Yeltsin increased his campaign against local soviets, asking them to "voluntarily" dissolve, but many refused. By presidential decree, Yeltsin subsequently eliminated those

¹⁹⁸KONST. RF art. 5.4 ("All components of the Russian Federation are equal with each other in inter-relationships with federal bodies of state power.").

¹⁹⁹*See id.* at arts. 5.1, 5.3, 72.2.

²⁰⁰Particularly, Article 4.3 states that the Russian Federation "ensures the integrity and inviolability of its territory," and Article 5.3 declares that the Federation is based upon "state integrity" and "unity of the system of state power." *Id.* at arts. 4.3, 5.3.

²⁰¹*Id.* at art. 72(n).

²⁰²*Id.* at art. 72(n) ("[T]he federal bodies of executive power and the bodies of executive power of the components of the Russian Federation form a unified system of executive power in the Russian Federation.").

²⁰³*See van den Berg & Simons, supra* note 141.

soviets failing to comply.²⁰⁴ Further, Yeltsin tightened central control through gubernatorial firings.²⁰⁵ Yeltsin removed the governor of the Sverdlovsk province in the Urals for “exceeding his authority” by spearheading efforts to remodel the province as the “Urals Republic.”²⁰⁶ Further, Yeltsin eliminated the head of the Novosibirsk province and the governor of the Bryansk province.²⁰⁷

²⁰⁴Carey Goldberg, *Russian Law Makers Clean Their Desks — If They're Lucky; Reforms: After the Bloodshed in Moscow, the Communist's Last Bastions — Ruling Councils — Are Falling*, L.A. TIMES, Oct. 16, 1993, at A8. Some Russians have argued that the soviets are the historical basis for Russian Federalism and the current struggle to eliminate them reflects the striving of the top bureaucracy to abolish all legal obstacles to its rule. Ramazon Abdulatipov, *The Soviets as the Backbone of the Russian State*, ROSSIISKAYA GAZETA, Aug. 31, 1993, at 5, available in LEXIS, Nexis Library, Cumws File.

²⁰⁵It is unclear whether the Russian Federation President actually holds the power to fire component heads. Article 80 declares that the President is the “head of state.” KONST. RF art. 80. As Professor van den Berg has noted, “the head of state is not a special function of the state. It means ‘the most wide concept,’ which entails that the President has all powers unless the Constitution provides otherwise.” GER P. VAN DEN BERG, CONSTITUTION OF THE RUSSIAN FEDERATION 15 n.2 (1993) (unpublished manuscript, on file with the Institution of East European Law and Russian Studies, Leyden University). Article 83(j) also grants the President the power to “appoint and remove plenipotentiary representatives of the President of the Russian Federation.” KONST. RF art. 83(j). It is unlikely that this grant of power refers to the Federation component leaders, but rather to the separate control system of presidential representatives, created to buttress the Presidency. Nonetheless, the Constitution is drafted so that the President, rather than the legislators or the courts, is the guarantor of the Constitution and of the rights and freedoms of man and citizen. *Id.* at art. 80.2. Thus, if the President dismissed the leader of a Federation component, the component leader would have no constitutional remedy. Moreover, because Article 91 of the Constitution grants the President inviolability, a court would not be empowered to judge directly on the legality of a firing. *Id.* at art. 91. Therefore, Russian courts would probably deny a plaintiff his/her private rights, as well.

²⁰⁶The leaders of both the governments and district councils of Kurgan, Orenburg, Perm, Sverdlovsk, and Chelyabinsk districts sought to bind together to form the “Urals Republic,” *Five Districts of the Area Are Ready to be United in a Republic*, SEVERO-ZAPAIID NEWS SERV., Sept. 20, 1993, available in ECONET, Env.cis File, while Yeltsin sought to preclude this action. *Yeltsin Sacks Governor of His Home Region*, UPI, Nov. 10, 1993, available in LEXIS, Nexis Library, UPI File.

²⁰⁷*Yeltsin Sacks Two Powerful Regional Leaders*, REUTER NEWS SERV., Oct. 5, 1993, available in LEXIS, Nexis Library, Reuters File. Yeltsin fired Vitaly Mukha, regional head of Novosibirsk province, a major scientific and industrial center, along with Amur governor A. Surat, for their opposition to Yeltsin’s decision to dissolve the national parliament. *Id.*

VI. FEDERALISM, REGIONALISM, OR ENTROPY?

Few things in Russia are always as they appear.²⁰⁸ True federalism presupposes the sharing of power between the central government and member-states. States voluntarily give up their sovereignty to an individual “supranational” government in exchange for economic, social, and political benefits. A supranational center of decision-making for allocation of those resources and maximization of rewards must exist, but such decision-making must encompass and respect rights of the component-members.

Russia, however, has lacked at least part of these characteristics during its existence for the last seventy-seven years. During this time, the Soviet Union was little more than an oligarchic-authoritarian state. The overwhelming role of the Communist Party in nearly every aspect of life and government precluded the voluntary secession of control and cooperation between the center and periphery.²⁰⁹ Although a federalist framework existed on paper, it did not exist in practice. The central government and its economic planning apparatus dictated the policies; lower political entities followed suit.²¹⁰

Russia’s titanic struggles, breaking away from the monolithic USSR and the subsequent internal power struggles for control over the newly independent republic, left the Federation’s regional components an open door to power.²¹¹ As the Federation was little more than an eclectic mix of multinational races, fragmentation began and subsequently snowballed within the former monolithic, centrally-controlled union republic of the USSR. Differences in the treatment of the Federation republics, autonomous provinces and regions, versus the primarily-Russian provinces also undermined the foundations of a government already weighed down by economic and social problems.

²⁰⁸Take, for example, the year of issuance printed on ruble notes. Normally, currency notes are inscribed with the year of their printing. From 1961 to 1991, however, all denominations of ruble notes were marked with the year 1961. The Soviet government believed that this would give the perception that Communist economics did not mandate the issuance of new currency and that the same notes had remained in circulation since 1961.

²⁰⁹See *supra* notes 106-12 and accompanying text for a discussion of the Communist Party’s role.

²¹⁰See *supra* notes 87-115 (discussing the relationship between central government and the local governments).

²¹¹For a discussion of the difficulties faced by the RSFSR when breaking away from the USSR, see *supra* notes 124-28 and accompanying text.

The most important basis for the separatist movements, however, remained power. Control of resources became equated with Communist Party membership under the former Soviet Union. As Moscow preoccupied itself with its own difficulties, decisions regarding the allocation of resources on the Federation subjects' territory fell upon them.

Dried up funding from the center was replaced with independent and unrestricted income derived from control over natural resources. Federation subjects initiated licensing requirements on resources leaving their territory, and the periphery started foreign and economic relations *sua sponte*, hoping to gain lost investment from the center and revitalize local economies. Essentially, the component members of the Federation became the independent entities that the USSR portrayed the union republics to be. They, however, were not members of the Federation.

Taxes provided another substantial source of power. As component governments discovered the omnipotence of capital, they became reluctant to cede tax revenue to Moscow.

Federation components increasingly sought to usurp power from, rather than contribute power to, the center. Moscow no longer served as a dominant source of identification for the component members, but rather as a hindrance to local hegemony. The lack of an integrative federative structure created rifts between the components. The rebellious republics began to fragment within their own borders. Local areas also sought to fill the power vacuum and harness control over their natural resources against the center, as well as other Federation subjects.

Presently, Russia's federative structure fails to achieve the basic purpose of federalism: conciliation between the needs for uniformity on a national level and diversity among the Federation subjects.²¹² The mere existence of a multi-level government is but a first step in a process of fusion of the centripetal and the centrifugal. At no point has there been a recognition of the need for interdependence, integration, or the mutuality of influence. When delegations of power are made from the center to the periphery or the periphery to the center, such delegations are clouded with the reluctance to cede any control. Thus, the powers derived from shared governance are not complementary and independent,²¹³ but overlapping and competitive.

Ethnic minorities in Russia are not seen as legitimate participants in the ruling elite. The Russian federalist system was developed to isolate and

²¹²PENTLAND, *supra* note 9, at 157-58.

²¹³This is not to suggest all powers shared between center and periphery need to be clearly delineated, but there must some degree of voluntary division of the natural powers of governance.

pacify ethnic nations within the Federation.²¹⁴ Federalism is seen as a way to disseminate ethnic tensions, but not to address them.²¹⁵ In this sense, federalism in Russia is limited to a structural framework, naked and devoid of the fundamental rights it is built to protect.

Thus, Russian federalism is not a process to prevent the excessive concentration of power at the system's center or to preserve diversity, but a tool of the national government to maintain control over diversity.²¹⁶ Accordingly, Russian federalism has failed.

VII. CONCLUSION

Yeltsin's seizure and consolidation of power at the end of September 1993 seemed to return Russia to the status quo of Soviet unitarian federalism. Localized executive representatives, coupled with federal control over the executive governments of the component members and a single authoritarian source of power, have reunited the monolith of the Soviet Union on a smaller scale. Even this system, however, may not survive Russia's economic and social turbulence.²¹⁷ The chaos of the December 1993 elections released the

²¹⁴This assimilating element was also present in Soviet federalism which sought to submerge national diversity into the new collectivity of the Soviet People. Remington, *supra* note 93, at 114. See also Adeno Addis, *Individualism, Communitarianism, and the Right of Ethnic Minorities*, 67 NOTRE DAME L. REV. 615, 619 (1992) (noting that assimilation is most common response to ethnic differences).

²¹⁵At the root of Russian federalism is fear. Without Russia's federalist charade, ethnic pluralism would threaten the integrity of the nation under a unitary government. Genuine federalism, however, would give non-Russian nations governance over native Russians. For the Russians, fear of the ethnic nations within the Federation is not without some justification, considering the recent treatment of Russians within the newly independent Baltic states.

²¹⁶Why has federalism taken this shape in Russia? Although a multiplicity of answers are possible, this author only suggests the obvious: Russians lack a tradition of power sharing and are deeply suspicious of any plan which asks them to cede power for the greater good of the government. FELDBRUGGE, *RUSSIAN LAW*, *supra* note 79, at 122 (noting that Russian people came to dominate Soviet state through evolutionary process and that notion of "[i]ndependent, sovereign, national states . . ." was a great game of make-believe, a gigantic hypocrisy" forming very foundations of Soviet federalism).

²¹⁷After the nationalist victory during the December elections, Federation subjects renewed their efforts for greater autonomy. The Republic of Bashkortostan, which borders Tatarstan, adopted a new constitution that in many ways directly contradicted the Russian Constitution. *New Regional Constitution Challenges Russian Federal Constitution*, *RUSSIA & COMMONWEALTH BUS. L. REP.*, Jan. 10, 1994, available in LEXIS, Nexis Library, Curnws File. The new Tatar Constitution directly contradicted the Russian Constitution by allowing local laws to take precedence over Russian law within the borders of the Republic, expropriating natural resources, and determining its own domestic and foreign policies. *Id.*

regions from the grasp of the national government, and the cycle has commenced once again.

Tatarstan has provided the strongest indication of the separatist tendencies of the Federation components. After recent negotiations with the central government, Tatarstan is no longer a member of the Russian Federation, but "a sovereign state and subject of international law associated with the Russian Federation." Radik Batyrshin, *Russian Federation: Tatarstan Has 'United' with Russia — It Turned Out To Be Easier To Reach Agreement With Kazan Than To Clash With It*, NEZAVISIMAYA GAZETA, Feb. 16, 1994, available in LEXIS, Nexis Library, Curnws File (condensed text). Noteworthy was the Russian Constitutional Court ruling that the Tatar Constitution and the Treaty on the Demarcation of Objects of Jurisdiction and the Mutual Delegation of Powers Between the Bodies of State Power of the Russian Federation and the Republic of Tatarstan violated the Russian Constitution. *Id.* Thus, the Treaty has been unprecedented in its trade-off under which Moscow essentially recognized Tatarstan's right to manage its own affairs in violation of the Russian Constitution in exchange for Tatarstan agreeing to send lawmakers to the Russian parliament. Guy Chazan, *Russia Signs Power-Sharing Treaty with Rebellious Province*, UPI, Feb. 15, 1994, available in LEXIS, Nexis Library, UPI File. Some have argued that other regions, such as the Kaliningrad Province and the Chechen Republic, will soon follow Tatarstan's example. Tamara Zamyatina, *Experts: Federalism or Disintegration — There Is No Third Way*, SEVODNYA, Feb. 25, 1994, available in LEXIS, Nexis Library, Curnws File (condensed text). *See also*, *Russia Calls on Chechnia President to Resign*, THE LATEST NEWS, Sept. 4, 1994, at 3 (noting that Chechan Republic was on brink of civil war).

