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Federalism, Democratization, and the Rule of Law in Russia

Jeffrey D. Kahn

Southern Methodist University, Dedman School of Law

Author ORCID Identifier:

 <https://orcid.org/0000-0002-8857-5647>

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FEDERALISM,
DEMOCRATIZATION,
AND THE RULE OF LAW
IN RUSSIA

JEFFREY KAHN

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1

Introduction

I am certain that there is no simple causal relationship between federalism and freedom.

William Riker¹

What is the relationship between federalism, democracy and the rule of law? It has frequently been asserted, first, that federal government is possible in a non-democratic regime, and second, that this holds true even when fundamental legal principles are absent. The Union of Soviet Socialist Republics is cited as the classic example of such a state structure. I dispute the validity of these theoretical and empirical assertions. Like a Potemkin village—the fabled sham settlements built by the Empress Catherine's favourite minister to deceive foreigners touring her conquered lands—the Soviet Union was a federal façade that hardly masked the most centralized state in modern history. This façade has had tremendous repercussions for the subject of this book: the development of post-Soviet Russian federalism. Unlike Potemkin's false fronts, so quickly dismantled once his *paramour* had passed by with her court, the institutional and conceptual architecture of Soviet 'federalism' was not so easily deconstructed following the collapse of the Soviet monolith. The keystone republic of the Soviet Union and its acknowledged successor—the Russian Soviet Federated Socialist Republic (RSFSR)—was itself a multi-national state partially comprised of a score of so-called 'Autonomous Soviet Socialist Republics', (ASSRs). When the Soviet Union collapsed, the RSFSR retained the fundamentals of the old Soviet superstructure, building the new Russian Federation upon its crumbling foundations.² The magnitude of such an undertaking is difficult to conceive: a new state was built almost overnight in both the real and ideological rubble of the *ancien régime*.

¹ William H. Riker, *Federalism: Origin, Operation, Significance* (Boston: Little, Brown, 1964), 13–14.

² Between the collapse of the Soviet Union in December 1991 and the adoption of a new constitution for the Russian Federation in December 1993, the 1978 Constitution of the RSFSR was still law, although subject to increasing amendment.

This book is a study of Russian (i.e., *Rossiiskii*)³ federalism, on its own terms and in comparative perspective with other federal systems. What is this 'new' Russian federalism? How have its institutions, old and new, influenced the development of Russia's new state system, its attempts at democracy, and the development of the rule of law? What effect has the division of federal and regional political agendas had on Russia's beleaguered transition from authoritarianism? Is Russia what its Constitution, in its very first words, purports it to be: a democratic, federal, rule-of-law state?⁴

This book relates to several debates in political science and law. In a departure from the classic exposition of federal theory by William Riker, I dispute the assertion that federalism is possible in an authoritarian environment.⁵ The immediate implication of this approach is the rejection of the surprisingly unchallenged view of the Soviet Union as an authoritarian, yet nevertheless federal, system of government. The outward display of federal structures was just a thin veneer that masked a highly centralized state, one in which the vanguard role of the profoundly anti-federal Communist Party was enshrined at the heart of its Potemkin constitution.⁶ Of course, no serious scholar would dispute the fact that the Soviet Union was an authoritarian (and, at times, terrifyingly totalitarian) state. However, although few took the claim to be a 'people's democracy' at face value, the Soviet assertion to have adopted a federal system of government was rarely the subject of critical study.

Federalism is a broad church, and 'federal' can describe a wide continuum of institutional arrangements; nevertheless, the minimum requirements of democracy and the rule of law must adhere to the term if it is not to be rendered

³ A distinction, obvious in Russian but hidden in English, must be made clear. The term *Rossiiskii* denotes 'Russian' in the sense of relationship to the Russian Federation, regardless of national origin or ethnicity. *Russkii* is the adjective denoting Russian ethnicity. In such a multinational state system as Russia, it is insulting and erroneous to use these terms carelessly.

⁴ See Part One, Chapter One, Article One, Section One, *Konstitutsiia Rossiiskoi Federatsii* (1993).

⁵ William H. Riker, *Federalism: Origin, Operation, Significance* (Boston: Little, Brown, 1964), 38-40, 115-16, 124. William H. Riker, 'Federalism', in Fred I. Greenstein & Nelson W. Polsby, eds. *Handbook of Political Science: Volume 5. Governmental Institutions and Processes*. (Reading, MA: Addison-Wesley, 1975), 93-172.

⁶ See e.g. Arts. Three and Six, *Constitution of the Union of Soviet Socialist Republics* (1977):

Article Three: The Soviet state is organized and functions in accordance with the principle of democratic centralism: 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.

Article Six: The Communist Party of the Soviet Union shall be the guiding and directing force of Soviet society, the core of its political system and of state and social organizations.

Aryeh L. Unger, *Constitutional Development in the USSR: A Guide to the Soviet Constitutions* (New York: Pica, 1981), 234-5. These articles of the USSR Constitution are reproduced verbatim in the constitutions of the 15 union republics, including that of the RSFSR. See F.J.M. Feldbrugge, *The Constitutions of the USSR and the Union Republics: Analysis, Texts, Reports* (Alphen aan den Rijn, Netherlands: Sijthoff & Noordhoff, 1979), 275.

meaningless. These minimum requirements are beyond the reach of authoritarian systems. That is why authoritarian states that have asserted a federal or quasi-federal structure are fascinating objects of study. The Soviet façade, for all its faults, was *crucially* important in the way that it framed conflict within particular institutional constraints, influenced the development of political agendas at different levels of government, and provided ready-made templates for political (and sometimes ethnic) mobilization that could be used by different elites for different objectives. This was especially true as the party-state weakened and some electoral prizes were gradually introduced. Studies that accept at face value the institutional structure of the Soviet Union as a genuinely federal structure overlook important factors that distinguish the failure of the Soviet (and imperiled Russian) federal experiments from multi-national federal states that, by various measures, are more stable and successful. In fact, the explanations this book offers for the course of Russian federal politics over the last ten years dwell more on the weaknesses and failings of ostensibly federal systems than on the strengths of 'real' federal systems.

An emphasis on the strong path-dependency of the development of the new Russian Federation out of Soviet institutions is a recurring theme of this book. The institutional shell of federal government, for so long inactive in the Soviet Union, offered enormous opportunities for political mobilization in a 'renewed' Russian Federation once the party-state structure had eroded and regional elections provided the impetus for new, more localized political agendas. Both in its philosophical formulation and in its empirical application, post-Soviet Russian federalism is also a federal façade, but one very different from that of the preceding regime. This study charts the stages in the rebuilding of federal structures after the collapse of the Soviet Union. Constitutional re-engineering progressed from early, ill-defined ascertions of sovereignty—the 'Parade of Sovereignties' inspired and manipulated by the first Russian president, Boris Yeltsin—to the writing of federal 'treaties', a federal Constitution and scores of bilateral treaties all authored predominantly by old political actors creating (and contesting) new rules of a post-Soviet, post-Communist political game.

Special attention is devoted to two particularly unexplored aspects of federal theory that are among Russian federalism's most pronounced attributes: (1) extreme constitutional, unconstitutional (but *de facto*), and institutional asymmetry in federal-regional relations, and (2) the problem of establishing a consensus about the fundamental purpose of the federal compact and the importance of enforcing basic principles of legality in the drafting and functioning of that compact.

Asymmetry is not an uncommon characteristic in federal states; indeed, geographic, economic, demographic, political, and other forms of asymmetry

may be incentives for federal union. However, the institutional asymmetry entrenched in the Russian Federation Constitution raises serious problems for relations between the federal centre and regional units as well as for relations among regional units themselves. Some units, for example, are governed by presidents and constitutions; others elect governors on the basis of 'charters'. These institutional differences are exacerbated by Soviet legacies of privilege for some ethnic groups over others. Invariably, these institutional differences (and there are many more) affect federal politics. The greatest casualty of this variation has been the development of democratic politics and the rule of law in many of Russia's eighty-nine federal units, weaknesses that return to haunt the federal system as a whole.

Institutional asymmetry is not just a problem for *de jure* federal relations. In many ways, asymmetric, *ad hoc* and non-transparent bilateral 'treaty' arrangements between federal authorities and individual units have *de facto* superseded the federal constitution, which promises a rule-of-law basis for equality and openness in centre-periphery relations. The exclusive control of these relations by federal and regional executive branches has thus far excluded these 'treaties' from ratification by the legislative branch of either level of government, and just as often from interpretation by the judicial branch. The exceptions and contradictions these *treaty*-based relations present to *constitution*-based federal structures are problematic. These problems are exacerbated (and partly caused) by the privileging of personal political patronage over the protections of the rule of law.

What euphemistically has been termed the 'treaty-constitutional' approach to federalism has adversely affected transitions to democracy in Russia. This is both an effect and a self-reinforcing cause of problems in Russia's federal development. *Ad hoc* bilateral negotiations that circumvent federal institutions weaken structures that already suffer from low levels of respect or even compliance. Federal authority to preserve a unified legal environment and to collect taxes for all-federal needs was drastically diminished under Boris Yeltsin. This itself would be a blow to any democratic transition. Russia's asymmetrical federalism exacerbated these difficulties by creating islands of republican authority in which the federal executive is too weak to act, and often too wary of the potential negative effect on his political future to interfere. Just as republican leaders insist that the federation is no greater than the sum of its parts, Russia's transition to democracy is threatened by a creeping authoritarianism in its constituent republics. There is a new federal façade in Russia today: behind the thin veneer of federal structures, a mass of conceptual and legal contradictions reduces federal rules into a sink of misfeasance, non-compliance and brinkmanship. Russia's second president, Vladimir Putin, has sought to re-centralize authority by strengthening what he calls the 'vertical of executive power' in the

Federation by way of a 'dictatorship of law'. His reforms, however, may turn out to be worse than the problems they seek to remedy.

The second theme of this book is the politically driven and uncritical adoption of concepts and philosophies ill-suited to the project of a 'new federalism', a project which Boris Yeltsin and the leaders of Russia's component units conceived for almost diametrically opposed purposes. While everyone used the new vocabulary of federalism—sovereignty, autonomy, separation of powers, the rule of law—few seemed to share a common understanding of the meaning of these terms. The result is the conspicuous lack of a strong consensus on the merits and design of federal government shared by Russia's leaders at different levels of government. From the start, federal political elites—the 'centre', in the lexicon of the debate—have conceived the purpose of federal relations in a manner strikingly different from regional political elites—the 'periphery'.⁷ Despite rhetoric to the contrary, the centre in the guise of Yeltsin, his executive branch advisers and successor Vladimir Putin, have viewed federalism as a tool to centralize control over (if not to save) the largest piece of the Soviet empire. Yeltsin began this project, using the rhetoric of Soviet federalism to gain the allegiance of regional leaders in his struggle for the political high ground against Mikhail Gorbachev. Yeltsin's promises of a decentralized, limited federal system that privileged regional autonomy were disingenuously made and quickly broken. Regional elites—who, with hindsight, perhaps should have known better—drafted with Yeltsin a Federation Treaty that seemed to deliver all of those promises. When Yeltsin unilaterally rescinded the Treaty in favour of his own Constitution—a document that reversed many of the presumptions previously favouring local autonomy—regional elites felt the sting of betrayal. The repercussions for federal relations have lasted more than ten years and will taint centre-periphery relations for a long time to come. While some regions (desperately poor or politically impotent) quickly accepted Yeltsin's new regime, the most powerful regions stopped paying taxes, refused to recognize the supremacy of federal law, and rattled whatever nationalist or economic sabres they had to hand.

1. WHY STUDY THE REPUBLICS?

The Russian Federation is a multi-national state with a complicated federal structure. It is composed of eighty-nine units or 'subjects of the Federation', as they are called in the federal constitution. In addition to twenty-one

⁷ Or, as federal officials in Moscow sometimes say, the *glubinka*, a term with the same slightly pejorative ring a New Yorker might lend the phrase 'Deep South'. When relations turn particularly sour, the appellation might switch to *zakholust'ye*, roughly translated as 'the back of beyond'. Thanks are due to Dr Tomila Lankina for sharpening the author's understanding of these colloquialisms.

ethnically defined republics, there are forty-nine *oblasti* (provinces), ten autonomous *okruga* (districts), six *kraia* (territories), two cities of federal significance (Moscow and St. Petersburg) and one autonomous *oblast'*. Over twenty-three million people, including over ten million ethnic Russians, live in these republics, almost one-sixth of the total population. The republics constitute roughly 28% of the total area of the Russian Federation (see Maps 1-4, and Table 1.1, showing Russian administrative divisions).

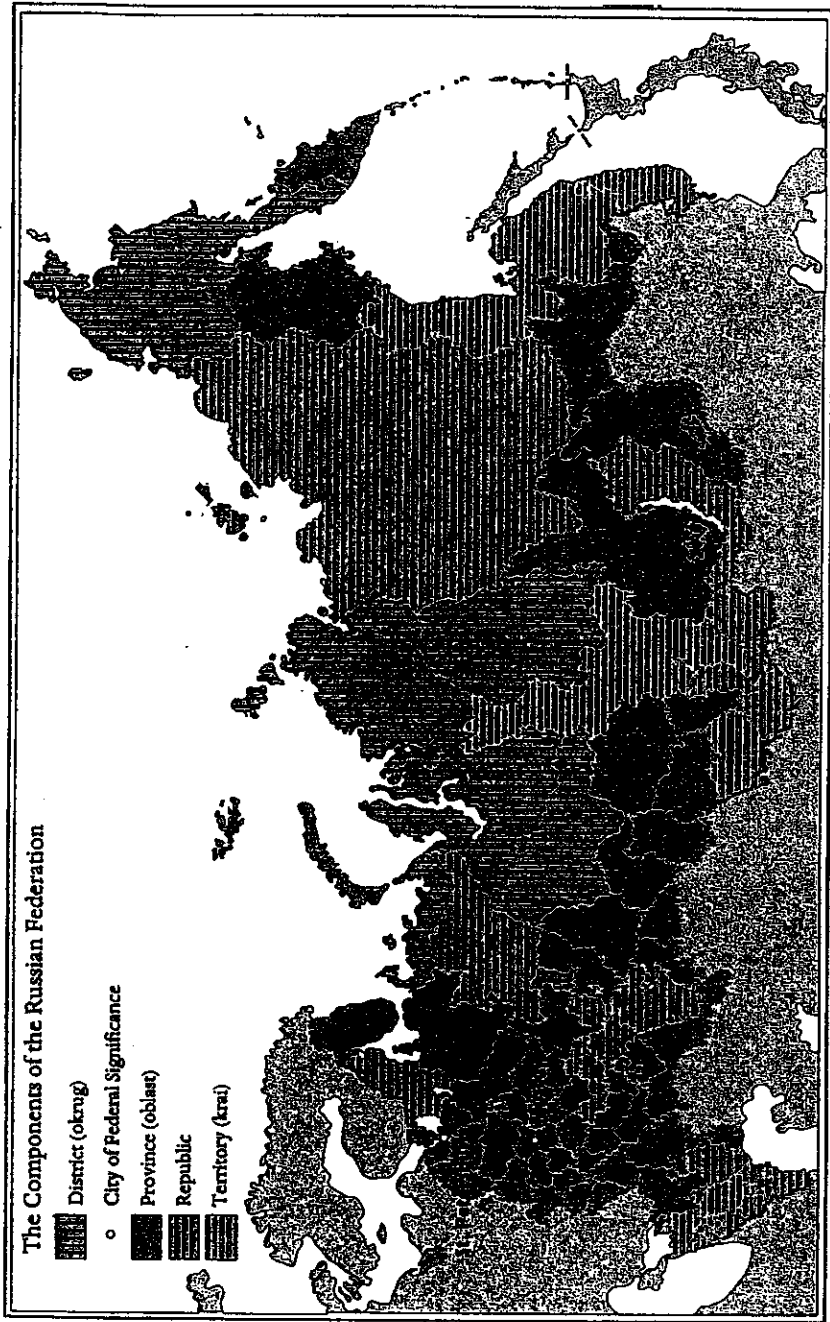
Article Five of the federal constitution declares that 'in interrelationships with federal organs of state power all subjects of the Russian Federation possess equal rights'.⁸ In fact, there are very real differences in the hierarchy of federal subjects. Both *de jure* and *de facto*, republics possess more rights and advantages than other federal units. These privileges have long (if dubious) histories which have lent credence to ever-increasing demands. The result is a self-fulfilling prophecy, as *oblasti* and other units emulate republican gains and thus provide them with implicit justification. Further complicating these relations is the variation in privileges among units of the same type. This is despite constitutional assertions that all units are 'equal rights subjects of the Russian Federation'.⁹ As George Orwell might have observed, all republics may be equal, but some are more equal than others.

In legal terms, republics are quite distinct from other units. A Federation Treaty signed in 1992 elevated republics to the apex of this hierarchy of federal subjects. Although this treaty was later subordinated to the 1993 Federal Constitution, republics still retain a *primus inter pares* relationship to other units. That constitution recognizes a republic, in contradistinction to all other subjects, to be a 'state' (*gosudarstvo*).¹⁰ Republics are the only federal units that have ratified their own constitutions, most of them by mid-1994. The remaining sixty-eight units are governed according to *ustavy*, or charters, most of which were adopted after mid-1995. The chief executive of a republic is, in almost every case, called a president; governors preside in the remaining regions. Such distinctions are not merely terminological. Republics present these and other differences as hallmarks of their state sovereignty. Republics enshrine in their constitutions rights to republican citizenship, with attendant privileges and duties. There is no such thing as *oblast'* citizenship. Governorships, unlike presidencies, have only relatively

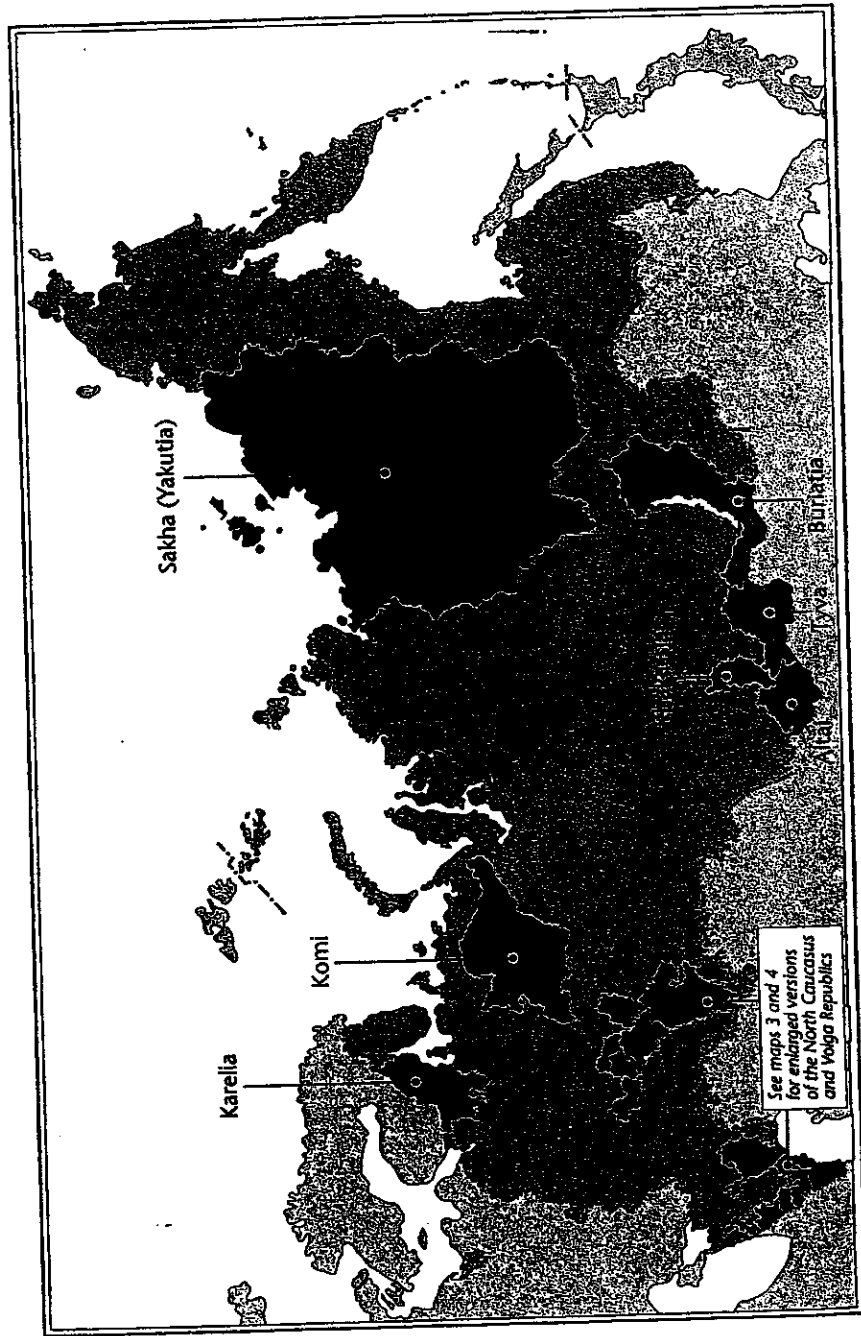
⁸ Article 5, §4. *Konstitutsiia Rossiiskoi Federatsii* (1993).

⁹ Article 5, §1. *Konstitutsiia Rossiiskoi Federatsii* (1993).

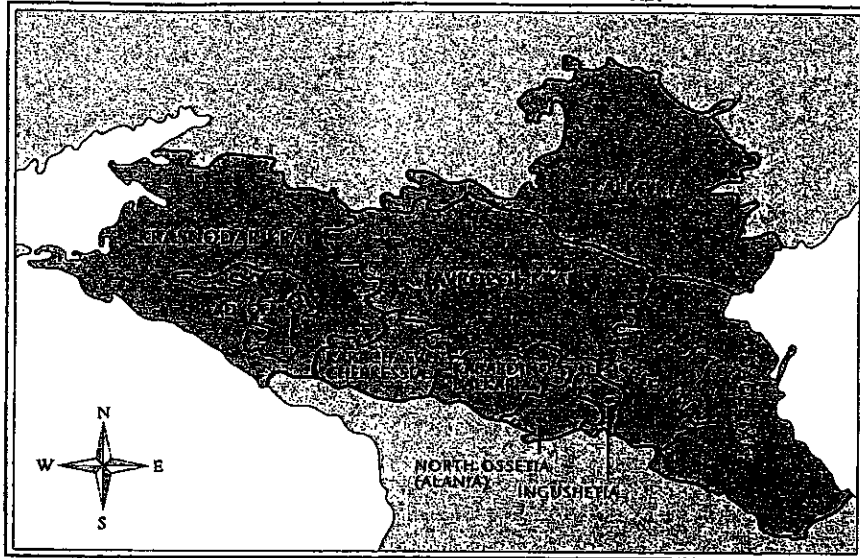
¹⁰ Article 5, §2: 'The republic (state) has its own constitution and legislation. The krai, oblast, city of federal significance, autonomous oblast, and autonomous okrug has its own charter and legislation'. See introduction by M.A. Mitiukov (former first deputy chairman of the Duma), in *Konstitutsii Respublik v sostave Rossiiskoi Federatsii*, Vol. 1 (Moscow: Izdanie Gosudarstvennoi Dumy, Izvestia, 1995), 3.



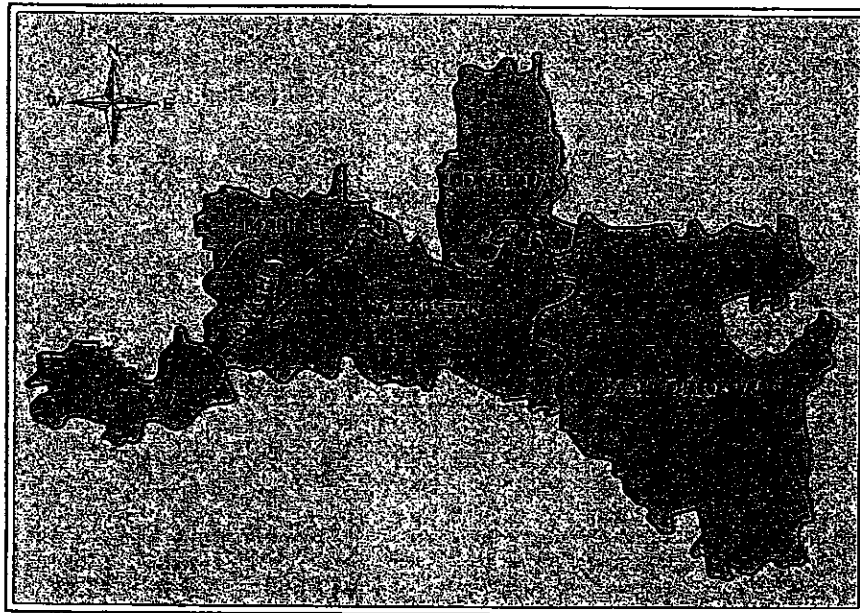
MAP 1. The Components of the Russian Federation



MAP 2. The Republics of the Russian Federation



MAP 3. The North Caucasus.



MAP 4. The Volga Region.

Table 1.1 Constituent Units of the Russian Federation

Republics (21)	Oblasts (49)	Autonomous Okrugs (10)	Krais (6)	Cities of federal significance (2)	Autonomous oblast (1)
Adygeia	Amur	Novgorod	Altai	Moscow	Jewish
Altai	Arkhangelsk	Novosibirsk	Krasnodar	St. Petersburg	
Bashkortostan	Astrakhan	Omsk	Krasnoyarsk		
Buryatia	Belgorod	Orenburg	Primorski		
Dagestan	Briansk	Orël	Stavropol		
Ingushetia	Vladimir	Penza	Khabarovsk		
Kabardino-Balkaria	Volgograd	Perm			
Kalmykia	Vologda	Pskov			
Karachaevo-Cherkessia	Voronezh	Rostov			
Karelia	Ivanovo	Ryazan			
Komi	Irkutsk	Samara			
Mari El	Kaliningrad	Saratov			
Mordova	Kaluga	Sakhalin			
Sakha (Yakutia)	Kamchatka	Sverdlovsk			
North Ossetia (Alania)	Kemerovo	Smolensk			
Tatarstan	Kirov	Tambov			
Tyva	Kostroma	Tver			
Udmurtia	Kurgan	Tomsk			
Khakassia	Kursk	Tula			
Chechnya (Ichkeria)	Leningrad	Tyumen			
Chuvashia	Lipetsk	Ulyanovsk			
	Magadan	Chelyabinsk			
	Moscow	Chita			
	Murmansk	Yaroslavl			
	Nizhni Novgorod				

recently become elected posts—until Autumn 1996, most governors were appointed by the Kremlin.¹¹ This has led to sharp political differences in the amount of control federal authorities have been able to exert over republics, as compared to other units.

From the point of view of federalism, the republics of the Russian Federation raise a number of interesting issues that the other regions do not. Following the lead of the union republics (SSRs, or Soviet Socialist Republics) that comprised the Soviet Union, the republics (then ASSRs, or Autonomous Soviet Socialist Republics) fostered with declarations of their rights as sovereign states what became known in 1990 as 'The Parade of Sovereignities'. These declarations were the basis for negotiating the principles of a new Russian Federation in 1992. Starting in 1994, republics played the vanguard role in the parade of bilateral treaties that occupy a defining position in Russian federalism.

These declarations and treaties have shaped the development of the Russian Federation. Their emphasis on sovereignty has fundamentally affected the manner in which federal relations are conceptualized in Russia. Many republican elites comprehend federalism in the most profoundly confederal terms, as the loosest of associations in which the sovereignty of constituent members is paramount. Republican elites speak about 'treaty-constitutional' federal relations and about building federalism 'from the ground up'. Their philosophy tolerates minimal federal intrusion at the same time that it demands considerable federal financial and social supports. In its starkest formulation, this doctrine is the justification republican elites use to discriminate between federal obligations they choose to honour and those that they choose to ignore. The most intransigent republican leaders have occasionally insisted upon the right to pay taxes only for the services from which they immediately benefit, rejecting the notion of a general obligation to the federation. Contrary to most theories of federalism and almost universally accepted practice in other federations, the Russian Federation is not judged by many of the leaders of its republics to be greater than the sum of its parts.

Russia is a multi-ethnic state, in which republics and enormous, sparsely populated *okruga* are named after (though rarely predominantly comprised

¹¹ One analyst reports that 'Until December 17, 1995 only 9 of the sixty-eight [governors] holding office were elected; of the sixty-eight, fifty-three were appointed by Yeltsin in the six months or so after August, 1991'. In the 49 oblasts, through December 1995, 45 governors were Yeltsin appointees. By comparison, by December 1993, 16 republics had elected presidents. Jeffrey W. Hahn, 'Democratization and Political Participation in Russia's Regions', in Karen Dawisha & Bruce Parrott, eds. *Democratic Changes and Authoritarian Reactions in Russia, Ukraine, Belarus, and Moldova* (Cambridge University Press, 1997), 148, 157.

of) particular ethnic groups. This is a remnant of the earliest Soviet nationalities policies. The republics are frequently called 'titular' republics because they are named after the ethnic groups (e. g. Tatars in Tatarstan, Udmurts in Udmurtia) for whom Bolshevik planners constructed these often artificial administrative units (according to the last census, in 1989, Russians outnumbered the titular nationality, although they rarely constituted a majority themselves, in twelve of the twenty such units that then existed). The remaining forty-nine *oblasti* are almost entirely Russian; in only five of them is the ethnic Russian population below 80 per cent (Astrakhan, Kaliningrad, Magadan, Orenburg, Ulianovsk). With only a few exceptions, only republics declared sovereignty in 1990—Russian *oblasti* did not. Likewise, although the bilateral treaty process has been extended to encompass all federal units, republics initiated the process, have set the standard and reaped the greatest benefits from this system. The importance of these ethnically defined components for the Russian Federation is immediately apparent if they are cut out of a hypothetical map of Russia *without* these units. What remains snakes crazily across eleven time zones of Eurasia, marked by holes, splits, and impossibly configured borders. Only four of the other former union republics of the Soviet Union contained any specially demarcated autonomous ethnic units—Azerbaijan (Nagorno-Karabakh and Nakhichevan), Georgia (Abkhazia, Azaria and South Ossetia), Tadjikistan (Gorno-Badakhshan), and Uzbekistan (Karakalpak). All fourteen former SSRs became unitary states, though three of the four mentioned above continue to suffer threats to their territorial integrity.

The republics also pose serious concerns for democracy. Although demographic shifts have reduced titular ethnic groups to minorities in their own republics, the privileges that accrued through titular membership in the Soviet era have not disappeared. In fact, in the new Russian Federation, republics have increased advantages for titular ethnic populations in terms of electoral representation, cultural and linguistic policies, and other benefits. Institutional legacies and new constitutionally entrenched developments have established republican parliaments that systematically privilege the titular ethnic group far in excess of its demographic position. Eligibility for high political office has been restricted by language requirements, effectively excluding Russians and other non-titular ethnic groups.

2. METHODOLOGY AND SOURCES

The nature of federal systems places special emphasis on written compacts, formal structures and institutional arrangements. This book combines a

range of methodologies—most obviously those of comparative politics, federal theory, law, and post-Soviet area studies—but orients itself primarily within a legal-constitutional, institutionalist approach. That is, it seeks to combine the structuralist and legalist emphases of the ‘old institutionalism’ with an awareness of the influence of both individual and institutional actors, the changeable nature of formal and informal political ‘rules of the game’ and the interplay between state and society that are all hallmarks of the ‘new institutionalism’.¹²

Comparative questions of federalism have long fascinated both political scientists and legal scholars. Amazingly, however, these two disciplines have each developed extensive scholarly literatures on the subject that scarcely acknowledge one another. The ‘greats’ do not engage in cross-disciplinary discussion, as even a cursory glance at the bibliographies of specialists in either field will confirm. In fact, within disciplines, the harshest criticism seems to involve insinuations that a scholar is over-employing the methodology of the other discipline.¹³ The result has been a terrible loss for both areas of scholarship.¹⁴

One of the major goals of this book is, where appropriate, to bridge that gap, bringing together the insights of comparative law and comparative politics. American legal thinking (understandably) has focused on the specific constitutional problems uniquely experienced in the American experiment with federal government. Nevertheless, the insights developed in this field on the theoretical and philosophical nature of federalism put forward in treatises, law reviews and opinions of the federal circuit courts and U.S. Supreme Court are of tremendous value to comparative political scientists interested in all federal systems. Perhaps counter-intuitively, area-studies specialists on Russia and the post-Communist states of Eastern Europe can also benefit from this scholarship—not to mimic the American approach (a very dangerous illusion), but to adopt and adapt a rich learning experience of how to combine the rule of law with federal democracy.

¹² B. Guy Peters, *Institutional Theory in Political Science: The ‘New Institutionalism’* (London: Pinter, 1999). James G. March & Johan P. Olsen, ‘The New Institutionalism: Organizational Factors in Political Life’, 78 *American Political Science Review*, 3 (1984): 734–49.

¹³ In his suggestions for further reading at the end of his book, Riker comments on Wheare’s *Federal Government*: ‘It is highly legalistic in tone and displays very little understanding of political realities’. This is one of Riker’s gentler criticisms. William H. Riker, *Federalism: Origin, Operation, Significance* (Boston: Little, Brown, 1964), 157.

¹⁴ Legal scholars writing in law reviews, similarly, spare little effort on the extensive political science literature on federalism. One excellent example of legal scholarship, in over 70,000 words and 400 footnotes, makes not a single mention of William Riker, Kenneth Wheare, or Ivo Duchacek. See Roderick M. Hills, Jr. ‘The Political Economy of Cooperative Federalism: Why State Autonomy Makes Sense and “Dual Sovereignty” Doesn’t’, 96 *Michigan Law Review*, 813 (1998).

The British legal scholar Lord Dicey noted that citizens in a federation become a 'nation of constitutionalists'.¹⁵ Post-Soviet legal scholars, at the command of newly elected (but rarely new) political elites, drafted the institutions and structures of a new legal order at a furious rate of speed. As another British legal scholar explained: 'During the last years of its life the Soviet Union turned to law like a dying monarch to his withered God... with the fervour of one who sees in legislation the path to paradise'.¹⁶ Although this speed was not always conducive to exemplary legal draftsmanship, the phenomenon provided a bounty of new political and legal documents to study. Declarations of sovereignty, constitutions, bilateral treaties, and judicial opinions are the core of primary sources around which this book is structured. These documents provide a rich opportunity to compare the underlying principles of this federation with the foundations of other federal systems, as well as to examine the success of the Russian Federation in meeting its own officially documented aspirations.

Hardly any of these documents are available in English translation. Many of them have not even been compiled in Russian collections. Extensive use has been made by the author of the embassy-like 'permanent representations' (*postoiannye predstavitel'stva*) that republics operate in Moscow. In addition, extended stays in many of the republics have provided access to official and unofficial periodicals and in some cases to the stenographic records of republican parliaments (in two republics, legislative sessions were observed in action).

As important as official documents certainly are, their formal prose may nevertheless conceal how institutions function in practice. As Oliver Wendell Holmes observed, '[t]he interpretation of constitutional principles must not be too literal. We must remember that the machinery of government would not work if it were not allowed a little play in its joints'.¹⁷ Russian federal governance, to put it mildly, does not suffer from arthritis. Interviews with federal and republican officials, opposition politicians, judges, lawyers, legal academics, and other political actors have been used to augment written primary sources. In two cases, the presidents of republics were interviewed (Mintimer Shaimiev of the Republic of Tatarstan, and Kirsan Ilumzhinov of the Republic of Kalmykia). Interviews were conducted between June 1995 and December 1998 over the course of five research trips to the far compass points of the Russian Federation.

¹⁵ A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, 10th Ed. (London: Macmillan, 1967), 141.

¹⁶ Bernard Rudden, 'Civil Law, Civil Society, and the Russian Constitution', 110 *The Law Quarterly Review* (Jan. 1994): 56.

¹⁷ *Bain Peanut Co. of Tex. v. Pinson*, 282 U.S. 499, 501 (1931).

3. STRUCTURE OF THE STUDY

This book integrates analysis of federal theory with its unique application in the turbulent post-Soviet political environment. A limited case study methodology is eschewed in favour of examination of an entire tier of the Russian federal structure—the republics. A detailed analysis of even three or four republics could not capture the dynamics of centre-periphery struggles in Russia. Study of the apex of Russia's federal hierarchy allows both generalizable conclusions about the Russian Federation as a whole and sufficient detail to shed light on some of the problems of individual republics, notably their difficult (and largely incomplete) transitions from authoritarian rule.

Readers will note that this book refers to Chechnya more often as a foil to the other republics than as a focus in its own right. Chechnya—or, the Chechen Republic of Ichkeria, as it refers to itself—has very little to offer from the point of view of the institutional development and operation of a federal system. The choices made by Chechen leaders stand in sharp contrast to the very different choices of almost all other republican leaders. After issuing one of the most belligerent declarations of the 'Parade of Sovereignities', in which the republic distinguished itself as the only ASSR actually seeking independence, not merely greater autonomy within a federal Russia, the republic approved a constitution in March 1992 and separated from Ingushetia that June. Increasing violence ultimately led, in December 1994, to a Russian military invasion. Two bloody wars have been fought and years of warlordism and anarchy have followed.¹⁸ In August 1996, an armistice was signed, leaving determination of the republic's status until 2001. In February 1999, Chechen President Aslan Maskhadov replaced by decree the old Constitution with the Islamic law of Sharia, establishing a legislature without law-making powers and giving the president virtually unchecked authority.¹⁹ That Autumn 1999, then Russian Prime Minister Vladimir Putin began a second bloody war against the secessionist republic. Horrifying, frequent, and flagrant violations of the most basic human rights led the Parliamentary Assembly of the Council of Europe to suspend Russia's voting privileges in April 2000. The fate of Chechnya—arguably

¹⁸ For analysis of the legal implications of the Chechen war, see William E. Pomeranz, 'Judicial Review and the Russian Constitutional Court: The Chechen Case', 23 *Review of Central and East European Law*, 1 (1997): 9–48. For a brief analysis of the Chechen elections from an OSCE observer and distinguished expert on Russian law see F.J.M. Feldbrugge, 'The Elections in Chechnia in the Framework of Russian Constitutional Law', 23 *Review of Central and East European Law*, 1 (1997): 1–7.

¹⁹ Alla Barakhova, 'Maskhadov sdalsia shariatu', *Kommersant*-daily, 5 February 1999, 3.

among the units best situated to secede from Russia²⁰—has served as an ominous warning to both centre and periphery over the course of Russia's federal development.²¹ The lessons of secession exhibited by the Chechen case are lessons for all multi-national federal systems. But from the point of view of analysis of Russia's functioning federal structure and republican transitions from authoritarianism, Chechnya's extreme situation makes its constitutional-legal analysis an unenlightening exercise.

This book comprises nine chapters. In Chapter Two, federal theory is deconstructed to examine the fundamental issues of sovereignty, democracy, and law faced by all federal systems. These themes form the backbone of this book. The theoretical link between democracy and federalism is given special attention in this chapter and the possibility of 'non-democratic federalism' is disputed.

Chapter Three examines one candidate for 'non-democratic federalism'—The Soviet Union. The origins and successive changes in the constitutional structure of the system are assessed on the basis of the analysis of the preceding chapter. Chapter Three also establishes the starting point for one of the recurring themes of this book, the path-dependency from Soviet models under which more recent institutions have struggled.

Chapter Four focuses on Mikhail Gorbachev's conceptual and policy struggles with two 'problems': nationalities and federalism. Boris Yeltsin's role in stimulating regional demands for autonomy, exacerbating both these problems, and his involvement in the failed Novo-Ogarevo renegotiation of a 'renewed' Soviet Union are closely scrutinized. Chapter Five reverses the perspective from 'high politics' in Moscow to focus on republican reaction to the federalism problem. The 1990 'Parade of Sovereignities', 1992 Federation Treaty and 1993 Federal Constitution provide milestones for their changing demands and evolving approach.

Chapter Six returns to a theoretical problem presented in Chapter Two: institutional asymmetry in federal systems. Following a more detailed theoretical treatment of the issues, Russian conceptions of asymmetrical federalism are explored in detail. The most problematic application of these theoretical and conceptual issues to centre-republican relations in Russia is the negotiation of bilateral treaties between federal and republican executive branches. This process is carefully examined, with special attention given to

²⁰ Alfred Stepan notes that Chechnya had the highest population percentage of everyday speakers of the titular language, centuries of conflict with Moscow, and an external border with a foreign state. Alfred Stepan, 'Russian Federalism in Comparative Perspective', 16 *Post-Soviet Affairs*, 2 (2000): 170, note 45.

²¹ For an analysis of the Chechen war, see Anatol Lieven, *Chechnya: Tombstone of Russian Power* (New Haven: Yale University Press, 1998).

the implications for the development of a unified legal and economic space, two subjects of intrinsic importance to any federal system. The chapter concludes with a brief discussion of the effect of such a system on a transition to democratic government in Russia as a whole.

Chapter Seven continues the theme of democratic transition but again reverses the perspective from the federal to the republican level. Until the rise of Vladimir Putin, bilateral treaties were the weak backbone to Boris Yeltsin's laissez-faire federal approach to regional development, as much a function of federal impotence as political calculation. Republics had been left relatively unhindered to establish their own constitutions, citizenship, and systems of government. An examination of these intra-republican institutional developments and their effect in republican elections suggests that discussion of 'transition to democracy' in the republics is inappropriately optimistic. The chapter concludes with suggestions on how republican transitions might more fruitfully be assessed.

Chapter Eight examines the sweeping federal reforms undertaken between Summer 2000 and Autumn 2001 by Yeltsin's successor, Vladimir Putin. The establishment of presidentially appointed governors-general, reform of the Federation Council and the legislative package that strengthened the *vertikal* of federal executive power are all analysed in detail. In particular, Putin's promise of a 'dictatorship of law' is considered for its effect on both the institutional and conceptual pillars on which Russian federalism rests.

The conclusion of this book (Chapter Nine) returns again to the complex relationship between federalism and democracy in a final assessment of Russia's prospects both as a federal multi-national state and as a weakly democratic one.

