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What is the New Russian Federalism?

Jeffrey D. Kahn
Southern Methodist University, Dedman School of Law

Author ORCID Identifier:

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

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Observers of Russia's stumbling transition to democracy might be forgiven for regarding successive promises of a 'new Russian federalism' with healthy scepticism. The centralizing legacies of so-called Soviet federalism still cast a shadow over the rubble of the former Soviet multinational state. Yeltsin's tightening grip on regional leaders following his violent but victorious battle with parliament in October 1993 suggested plans for more centralized rule. The new Constitution, the hard-fought prize of that battle, established tremendous powers for the federal executive and left the division of powers between centre and periphery purposefully ambiguous. The 'Parade of Sovereignties' that opened a new decade and closed the old Soviet era was overstopped in its tracks by its initiator, Boris Yeltsin.

Russia's first president did not create his powerful, 'unified' federal state. By the mid-1990s, federal and regional authorities alike bemoaned the failure to create a cohesive state system that could address mounting economic and social problems, although each side proposed very different solutions. Soon after the referendum that narrowly ratified his Constitution, Yeltsin launched a new parade. Signing treaties (*dogovory*) and agreements (*soglasheniya*) with the executive heads of ethnic republics (and soon thereafter with oblasts and krais), Yeltsin eroded the legal equality his Constitution proclaimed for different levels of centre–periphery relations. Savvy regional negotiators won budget privileges, powers of appointment, exemption from various federal requirements, and a tacit understanding that federal officials—at least for the time being—would look away from glaring violations of the federal Constitution and basic democratic principles.

With the sudden rise of Vladimir Putin, Russian federalism made another volte-face. The ambiguous enforceability of Yeltsin's treaties—never ratified by legislatures—was made clear by Putin's disregard for executive promises that no longer suited his interests. One of Putin's first presidential decrees, signed days after his inauguration, divided Russia into seven federal districts, each encompassing several republics, oblasts, and okrugs, and each headed by a presidential enforcer tasked to maintain the supremacy of federal law. Lists were rumoured to circulate in the Kremlin of regional leaders to be brought to heel. Putin described his project as the 'dictatorship of law.'

What forces have influenced such sea-changes in Russian federal politics? How might political scientists approach the dynamic of centre–periphery relations in a post-Soviet, and now a post-Yeltsin, Russia?[1] Examination of the conceptual and political struggles to define

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[1] Chechnya (Ichkeriya) is not analysed here. The two wars fought thus far (conservatively estimated to have killed tens of thousands of combatants and civilians) have largely removed the republic from federal politics. On 8 June 2000 Vladimir Putin issued an *ukaz* establishing direct presidential rule. Ukaz No 1071, *Rossiyskaya gazeta*, 10 June 2000, p. 3.

Russian federalism provides insights into the path of Russian federal development and Russia's difficult democratic transition.

The spectrum of federal choices

In a country as large and multinational as Russia, it is unsurprising that renewed debates about federalism coincided with systemic political reform in the late 1980s. Federal arrangements offer small polities the freedom of self-government combined with the economic and security advantages of a larger state. Federalism also appeals to large states struggling with various forms of internal disharmony, but which value accommodating their diversity within a more unitary framework. As A. V. Dicey expressed this 'very peculiar state of sentiment', the citizens of a federation 'must desire union, and must not desire unity'.[2] Ethnic or religious minorities may consider federalism the best available means of cultural self-preservation, less risky than secession. There is seldom a single motivation; many factors co-determine the prospects for federal governance.

Federalism is best viewed as a spectrum of possible ways to divide jurisdiction over the same population between different levels of government. One of the best definitions of federalism captures its dynamic: '[The federal principle is] the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent.'[3] But federalism is more than the sum of its definitional parts; indeed, that is the very real goal a federal system is designed to achieve. Ivo Duchacek noted the importance of a 'federal political culture', a form of citizen loyalty to the federal polity that extends above and beyond regional allegiances. Acceptance of the inevitability of multiple, overlapping political identities and the importance of ensuring their complementarity is crucial in a federal system.

All federal systems rest upon a written, formal document, usually called a constitution, that is the supreme law of the land, overriding all other legislation or executive acts. As Dicey observed, federalism does away with the principle of the supreme sovereignty of parliament, which is subordinated in a federal system to a written constitution. This is one important distinction between federalism and the mere *devolution* of power, under which a parliament granting greater authority to lower levels of government retains the legal right (though not always the political ability) to revoke those powers later. An important difference between federal and *confederal* systems lies in this sovereign power accorded constitutional law. In confederations, established by treaty, the constituent units retain a far greater portion of their sovereignty and give up far fewer areas of jurisdiction to the union government. At its most extreme, a confederal programme may assert that the union government's proper role is only as agent of the component states. Thus, states might selectively reject federal laws or agency when they conflict with local laws and interests. This historically unstable 'doctrine of nullification' interprets a constitution not as a founding legal document against which a

[2] A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, 10th edn. (London: Macmillan, 1967), 141.

[3] K. C. Wheare, *Federal Government*, 4th edn. (London: Oxford University Press, 1963), 10. Compare William H. Riker, *Federalism: Origin, Operation Significance* (Boston: Little, Brown & Co., 1964), 11. For an excellent and detailed comparative analysis of federal systems, see Alfred Stepan, 'Russian Federalism in Comparative Perspective', *Post-Soviet Affairs*, 16/2 (2000).

constitutional court may adjudicate disputes impartially, but as a political compact always open to political renegotiation.[4]

In many ways, the doctrine of nullification, notions of federal political culture, and the emphasis on a written constitution are different facets of a common theme: the problem of establishing an agreed framework of federal objectives. These three issues and the conceptual problems they raise are omnipresent in the development of the new Russian federalism. A consensus on the inherent value of the federal project is crucial for its success. In Russia, conceptual consensus has been conspicuous by its absence. This fundamental problem for the long-term stability of the Russian Federation can be traced back to debates about sovereignty and federalism reopened in the mid-1980s, underscored by the 'Parade of Sovereignties', and which continue today.

Conflict over the 'old' Russian federalism

The legacy of Soviet 'federalism' has exerted considerable influence on newer thinking. Lenin's and Stalin's early policies gave institutional privileges to ethnic elites in order to win allegiance to the Soviet state. The regime created what one scholar called the 'institutionalised monopoly on the public expression of ethnic identity'.[5] The map of Russia was redrawn to create new nations with their own administrative regions—these political boundaries have remained virtually unchanged. Early Soviet constitutions combined the language of federalism with the reality of democratic centralism. Contrary to the federal principle that certain spheres of authority remain the exclusive jurisdiction of each level of government, early Soviet constitutions created the legal fiction of 'dual subordination': each executive body was accountable both to its electorate and to the executive body higher in the hierarchy of democratic centralism. As one constitutional scholar observed: '[W]hile centralism might conceivably be reconciled with democracy it was entirely incompatible with local autonomy. . . . By coupling "horizontal" with "vertical" subordination it [dual subordination] seemed to grant local authorities a measure of control over local affairs; by the same token, however, it ensured that no part of such control was truly autonomous'.[6] Notions of 'horizontal' and 'vertical' federal relations have lingered in the post-Soviet federal vocabulary.

The contradictory rhetoric of Soviet federalism obstructed Mikhail Gorbachev's reforms, in part through institutional structures that Zbigniew Brzezinski noted created 'institutional vessels' for nationalist sentiment.[7] Federal reform was relatively low on Gorbachev's agenda until too late in his tenure as general secretary and Soviet president. Notes of Politburo discussions show that Gorbachev often listed alternatives to federation but seldom suggested any detailed plan of federal reform.[8] Few of his Politburo colleagues gained even that level of enlightenment.

Outside the Politburo, *suverenitet, federalizm*, and *pravovoe gosudarstvo* (law-governed

[4] Keith E. Whittington, 'The Political Constitution of Federalism in Antebellum America: The Nullification Debate as an Illustration of Informal Mechanisms of Constitutional Change', *Publius*, 26/2 (1996).

[5] Philip G. Roeder, 'Soviet Federalism and Ethnic Mobilization', *World Politics*, 43/2 (1991), 205.

[6] Aryeh L. Unger, *Constitutional Development in the USSR: A Guide to the Soviet Constitutions* (New York: Pica Press, 1981), 19.

[7] Zbigniew Brzezinski, 'Post-Communist Nationalism', *Foreign Affairs*, 68/5 (1989/90), 6.

[8] A. B. Veber, V. T. Loginov, G. S. Ostroumov and A. S. Chernyaev, eds., *Soyuz mozhno bylo sokhranit'* (Moscow: Izdatel'stvo 'Aprel'-85', 1995), 95.

state) were much more popular terms. National movements discovered that such language resonated well with their demands for greater economic and cultural autonomy. The ethnographer Yulian Bromlei, the geographer Vladimir Sokolov, and others incautiously proposed territorial redivisions of between three and sixty separate republics.[9] Not everyone supported federal solutions. Vladimir Zhirinovsky: 'How can the nationalities crisis be solved under these conditions? Only through fear. We need fear and a strong patriotic government; political life in the country must be frozen, all political parties forbidden, and all representative organs of power disbanded, except for the president and his authorised local representatives (governors [*gubernatory*], viceregents [*namestniki*]—whatever). All the republics must be abolished.'[10]

The conflation of federal with confederal approaches corresponded to conflicting objectives held by regional and Moscow-centred political elites. Federal authorities invariably advocated 'unified' or 'vertical' approaches to federalism, viewing the system as a simple hierarchy or pyramid. Regional leaders naturally embraced those elements of federal theory that emphasized local control, exclusive jurisdictions, and protection from an intruding central authority. They advocated a very weak centre, while federal politicians rallied around the slogan 'a strong centre and strong republics'.[11]

Conflicting conceptions of the new Russian federalism

EXPECTATION: THE PARADE OF SOVEREIGNTIES

Debates on federalism took place in a highly charged political environment, in newly elected regional Supreme Soviets and the First Russian Congress of People's Deputies, where delegations of regional elites actively participated in debates over the Declaration of Sovereignty that was issued by the RSFSR (Russian Soviet Federated Socialist Republic, soon to be the Russian Federation) on 12 June 1990. This Declaration (especially Article Nine, which 'confirmed the need to broaden substantially' the rights of federal sub-units), combined with Yeltsin's political junket through key regions that summer, was an obvious invitation for regions to assert their own autonomy. Yeltsin's populist exhortation in Tatarstan to 'take as much independence as you can hold on to,'[12] one of the most quoted and inflammatory statements of his career, deliberately focused on the element of federalism that most appealed to regional elites—autonomy from centralized rule. Yeltsin deliberately sought to weaken Gorbachev's power and increase his own support by galvanizing opposition to the federal centre.

His plan worked, and the 'Parade of Sovereignties' played a key role in undermining late attempts to reform Soviet 'federalism.' Twenty-four of the forty declarations of sovereignty were made by constituent units of the RSFSR. Unlike union republics (Ukraine, Belarus,

[9] Stephan Kux, 'Soviet Federalism,' *Problems of Communism* (Mar.–Apr. 1990), 9. Nicholas J. Lynn and Alexei V. Novikov, 'Refederalizing Russia: Debates on the Idea of Federalism in Russia', *Publius*, 27/2 (1997), 193. Gavriil Popov, *What is to be Done?* (London: Centre for Research into Communist Economies, 1992), 26–8, 48–9.

[10] 'Interethnic Contradictions in Russia: The Strategy of Parties and Social Movements (A Roundtable)', *Russian Politics and Law*, 32/5 (1994), 11–12. This round table was held in Moscow on 9 June 1992.

[11] Draft 'General Principles' for self-government published by a Supreme Soviet working group, *Pravda*, 14 Mar. 1989, p. 2.

[12] Yelena Chernobrovkina, *Vechernaya kazan'*, 10 Aug. 1990, p. 1.

Moldova, and the Baltic, Caucasian, and Central Asian states), autonomous republics (ASSRs in Soviet parlance) within the RSFSR desired not *independence* as sovereign states but respect for *sovereignty* within a renewed federation. Their declarations, remarkably similar to one another, emphasized the supremacy of local over federal laws, and many went on to declare separate republican citizenship, language rights, and exclusive ownership and authority over economic resources on its territory. These documents contained the regional conception of what the new Russian Federation should look like: a polity that took its orders from its constituent members. Autonomy was to be privileged above all else. Yeltsin's gambit did little but foment antagonism towards *any* central authority. Rather than encourage compromise in the renegotiation of autonomy, Yeltsin encouraged a mindset which at the time strengthened him against Union authorities (particularly Gorbachev) but left him vulnerable to his own short-sighted exhortations when he became the embodiment of the new 'Centre.'

NEGOTIATION: THE FEDERATION TREATY AND FEDERAL CONSTITUTION

Unilateral declarations of sovereignty were of minor legal-constitutional significance within the pre-existing Soviet system, but of enormous political significance. All ASSR declarations shared at least one more clause in common: these declarations were the basis for negotiating the Union Treaty for a renewed USSR and the Federation Treaty within the RSFSR. From the regional perspective, particularly that of republics, the Federation Treaty was the next logical step—a means to achieve the objectives expounded in these declarations. Such objectives were not shared by federal elites, who acquiesced to republican assertions of sovereignty, self-determination and even rights to secession as tolerable 'transitional devices' to maintain territorial integrity as the system developed.[13] True to regional self-conceptions of sovereignty, the first founding document to be negotiated was a treaty, *not* a constitution.

Central and regional elite conceptions of their common federal project starkly diverged. One negotiator from Bashkortostan complained, 'Acquaintance with the draft Federation treaty creates the impression that the authors strove to create a centralised, unitary state under the pretext of the Russian Federation.' The role of the sovereign republics was 'not more than the former *guberniya* of tsarist Russia.'[14] The Federation Treaty that emerged was a patchwork of three separate treaties (one for each level of the envisaged tripartite federal hierarchy of republics, oblasts, and autonomous okrugs) and two protocols.[15] The signatory republics saw the document as the keystone of a new federal order, a point they collectively underscored by insisting on repeated references to it in the draft federal constitution. The Federation Treaty officially acknowledged republican sovereignty, the right to self-determination and expressly prohibited federal intrusion into regional affairs, a long list of jurisdictions and authorities. In addition, one protocol promised half of the seats in one of the chambers of the proposed federal parliament to representatives of the ethnically defined regions (republics and autonomous okrugs).[16]

[13] Lynn and Novikov, 'Refederalizing Russia' 191–2. Robert Sharlet, 'The Prospects for Federalism in Russian Constitutional Politics', *Publius*, 24 (1994), 119.

[14] Zufar Yenikeev, 'Proekt dogovora nas ne ustraivaet', *Leninets*, M2 138 (7644), 24 Nov. 1990, 2.

[15] R. G. Abdulatipov and L. F. Boltenkova, eds., *Federativniy dogovor. Dokumenty. Kommentarii* (Moscow: Izdatel'stvo 'Respublika', 1992).

[16] 'Protokol k Federativnomu dogovoru', rep. in B. A. Strashun, *Federal'noe konstitutsionnoe pravo Rossii: Osnovnye istochniki po sostoyaniyu na 15 sentyabrya 1996 goda* (Moscow: Izdatel'stvo NORMA, 1996), 198–9.

In addition to the protocols, a special appendix (*prilozhenie*) was signed exclusively for one republic: Bashkortostan. At the eleventh hour, Bashkortostan threatened to walk out on the negotiations, an act that would have collapsed the process given the refusal of two key republics (Tatarstan and Chechnya) to sign the Treaty. The appendix granted special exceptions and privileges exclusively to Bashkortostan: its legislative and judicial systems were declared to be independent, assertions of independent statehood and the right to certain foreign relations acknowledged, and certain statements about republican control of property were added.[17] While it could be said that these special dispensations were nominal and often merely a few shades different from powers provided by the Federation Treaty, the Appendix established a powerful precedent from the outset of the 'renewed' Russian Federation: the ink was not yet dry on the Treaty before parochial bilateral exceptions to it were being made.[18]

The October 1993 shelling of the White House and arrest of Yeltsin's parliamentary opponents left the Federation Treaty subordinated to Yeltsin's draft Constitution.[19] While Articles 71 and 72 of the Constitution were nearly exact duplications of Articles I and II of the Treaty (establishing exclusive federal and joint jurisdictions), Treaty Article III on exclusive republican powers was omitted from the Constitution. The presumption that republics possessed all powers not explicitly handed over to the Federation in the Treaty—a more confederal conception—was reversed by Article 73, which granted constituent units only those remaining powers not claimed by federal authorities. Republican sovereignty and separate citizenship were no longer acknowledged.

NULLIFICATION: THE PARADE OF TREATIES

The Parade of Sovereignties developed a vocabulary and a mindset of provincial autonomy well before attempts were made to develop sound federation-wide organizing principles. Federation Treaty negotiations quickly fell hostage to that mindset as republics realized that they could ignore the federal centre (Chechnya and Tatarstan) or make last-minute ultimatums (Bashkortostan and Sakha-Yakutia) with a fair degree of impunity. Republican elites spoke in terms of 'treaty-constitutional' federal relations, implying their prerogatives as sovereign subjects of international law. Federal actors insisted on 'constitution-treaty'-based federalism, by which they meant the strong central power that had always dominated centre–periphery relations in Russia. A vocabulary of federalism built on an interest in multilateral, transparent, and equal relations was not of particular interest to either side. Bilateralism, exceptionalism, and hierarchy were the emerging norms of Russian federal politics.

A new phrase increasingly dominated regional conceptions of federalism—*snizu vverkh*, 'from the bottom up.' At its core was the notion that a federation really was *not* more than the sum of its parts, each of which had an indissoluble sovereignty of its own. This principle

[17] M. A. Aiupov *et al.*, eds., *Stanovlenie dogovornykh otnoshenii Respubliki Bashkortostan i Rossiyskoy Federatsii* (Ufa: Izdatel'sko-poligraficheskiy kompleks pri Sekretariate Gosudarstevennogo Sobraniya Respubliki Bashkortostan, 1997).

[18] Bashkortostan was not the only republic to receive a special, long-term agreement in exchange for its signature. Between initialling the treaty on 14 March, and signing on 31 March 1992, the diamond-rich republic of Sakha-Yakutia signed a lucrative diamond output agreement with federal authorities.

[19] Section Two, Article 1, §4. *Konstitutsiya Rossiyskoy Federatsii* (Moscow: Izdatel'stvo 'Os'-89', 1998).

found expression at the highest levels of regional politics.[20] In Tatarstan, the phrase even influenced republican law, passed weeks after the acceptance of a fiercely independent republican Constitution, which appealed to the then Russian Federal Supreme Soviet to construct 'treaty-constitutional relations' with the republic.[21]

Republican constitutions based their legitimacy on many of the same principles found in declarations of sovereignty, foremost of which was the principle that republican laws (by virtue of state sovereignty) retained supremacy over federal legislation. A hierarchy implicit in the treaty-constitutional approach raised republics above the federal government in all matters save those explicitly transferred by the republics. This approach sounded less in federal solutions and more in confederal ones. The federal approach was the reverse, summarized in 1994 by Yeltsin's then chief-of-staff Sergei Filatov: 'The most general trends are the aspiration of the republic elites to represent the powers of the Russian Federation as the sum of powers delegated by the components (this is notably characteristic of the constitutions of Bashkortostan, Buryatia, Sakha, Tatarstan, and Tuva). However, the powers of the Russian Federation ensue from its own sovereignty as a single, integral federative state, and they do not depend on the components.'[22]

Yeltsin responded to regional assertions of sovereignty by beginning a new parade, the Parade of Treaties. 'I have not renounced my formula,' he declared in the spring of 1994, 'Take as much sovereignty as you can swallow.'[23] Tatarstan was the first republic to receive a bilateral treaty, signed in February 1994 (although negotiations had taken several years). Bilateral treaties were really several documents: a treaty (*dogovor*), establishing general principles, and a complement of agreements (*sovershenie*) that provided short-term (five-year) concrete arrangements for budgetary, tax, personnel, and other relationships. Between 1994 and 1998, forty-six of the eighty-nine subjects of the Federation signed bilateral treaties with the federal executive.

The Parade of Treaties raised a number of serious questions for the future of Russian federalism. First, the practice of overriding, supplementing, or amending centre–periphery relations established in the federal Constitution highlighted the controversy and confusion of 'treaty-constitutional' versus 'constitutional-treaty' approaches to federalism. How important was the Constitution compared to a bilateral treaty? Second, it was unclear where bilateral treaties should be placed in the hierarchy of laws established by the Constitution. Bilateral treaties were never ratified by either federal or regional legislatures; they were wholly executive-driven relationships, exclusively involving presidents, governors, and prime ministers. This question of legality was further aggravated by the suspicion shared by many regional leaders that, in addition to published treaties, secret agreements were also negotiated. Third, apart from the content of bilateral treaties, the process of negotiation entailed a certain brinkmanship: the best treaties were negotiated by regions with the power

[20] Rashit Vagizov, a committee chairman in the Tatarstan Parliament, insisted that the voluntary delegation of political power 'from the bottom up' was a core principle of federalism. Author's interview, 10 June 1997, Tatarstan State Soviet, Kazan.

[21] Tatar Law 'On the order introducing into action the Constitution of the Republic of Tatarstan', in Rafael' Khakimov, ed., *Belaya kniga Tatarstuna: put' k suverenitetu, 1990–1995* (Kazan: Tsentr gumanitarnykh proektov i issledovanii, 1996), 23–4.

[22] 'Filatov on Center-Region Constitutional Issues', *FBIS Daily Report: Central Eurasia*, 2 Sept. 1994, p. 19.

[23] Elena Tregubova, 'Boris Yel'tsin v Tatarii', *Segodnya*, 31 May 1994, p. 1.

and nerve to withhold tax payments, boycott federal elections or otherwise exempt themselves from the federal polity.

The proliferation of treaties was accompanied by the adoption by republics and regions of their own constitutions and charters. The so-called 'War of Laws,' coincident with the parade of treaties, produced thousands of laws and constitutional clauses that contradicted the federal constitution and federal law. The Russian Federation Ministry of Justice announced in late 1996 that nineteen out of twenty-one republican constitutions violated the federal Constitution.[24] Article Seven of the Constitution of the Republic of Ingushetia announced that a federal law was 'lawful' only to the extent that it did not violate the 'sovereign rights' of the republic. Article 41 of the Constitution of Sakha-Yakutia required federal legislation to pass a vote in the lower chamber of the republican parliament before its jurisdiction would be accepted in the republic. Other republics, for example Adygeya and Dagestan, reserved the right to suspend federal legislation, subject to varying degrees of arbitration.[25] Despite the strong language of the federal Constitution and the small but growing number of high court cases denouncing regional non-compliance and malfeasance, republics continued to seek alternatives to the federal framework, often openly defying it.[26]

These are extraordinary claims for component states in a federal system, for they call into question the very unified legal space that is both a hallmark and a fundamental advantage of federation. The perils of nullification and the potential for the destruction of a federal civic identity are very real.

Putin's way: towards a 'dictatorship of law'?

Yeltsin made weak attempts to restructure increasingly difficult relations. On 30 July 1999 a new federal law came into force to regulate the bilateral treaty process.[27] The law re-emphasized the supremacy of federal laws and Constitution in the legal hierarchy, categorically stated the principle of glasnost in treaty promulgation, and gave regions three years to bring existing treaties into conformity with federal law. However, the law stopped short of establishing the ratification of treaties by federal and regional legislatures, requiring only examination (*rassmotreniya*) by the legislature prior to adoption. Given that no treaty had been signed since June 1998, the law seemed conspicuously late.

The inauguration of Vladimir Putin led to substantial change for Russian federalism. Less than a week after taking his oath of office, Putin issued a presidential decree (*ukaz*) on 'The Status of the Plenipotentiary Representative of the President in a Federal District'.[28] The

[24] Irina Nagornykh, 'Regiony staviat na konfrontatsiyu', *Segodnya*, 22 Nov. 1996, p. 2.

[25] *Konstitutsii Respublik v sostave Rossiyskoy Federatsii*, Vypusk 1 (Moscow: Izdanie Gosudarstvennoy Dumy, Izvestiia, 1995).

[26] See e.g. 'Postanovlenie Konstitutsionnogo Suda Rossiiskoy Federatsii po delu o proverke konstitutsionnosti statey 80, 92, 93 i 94 Konstitutsii Respubliki Komi i stat'i 31 Zakona Respubliki Komi ot 31 oktiabrya 1994 goda "Ob organakh ispolnitel'noy vlasti v Respublike Komi"', *Rossiiskaya gazeta*, 31 Jan. 1998, p. 4; Alexander Blankenagel, 'Local Self-Government vs. State Administration: The Udmurtiia Decision', *East European Constitutional Review*, 6/1 (1997), 51.

[27] Zakon 'O printsipakh i poriadke razgranicheniya predmetov vedeniya i polnomochii mezhdu organami gosudarstvennoy vlasti Rossiyskoy Federatsii i organami gosudarstvennoy vlasti sub"ektov Rossiyskoy Federatsii', *Sobranie zakonodatel'stva Rossiyskoy Federatsii*, 26 (28 June 1999), item 3176, pp. 5685–92.

[28] *Rossiyskaya gazeta*, 16 May 2000, p. 5.

decree divided Russia into seven federal districts to which Putin appointed plenipotentiary representatives to coordinate the activity of federal organs, ensure the observance of federal laws and the conformity of regional laws to the federal Constitution, and to suggest to the president the suspension of non-conforming legislation and executive normative acts. More *ukazy* soon followed, declaring laws or executive orders of some regions in violation of federal law and therefore null and void.[29] Boris Nemtsov, a former governor and leader of the Union of Right Forces, recognized the key to the decrees would lie in the calibre and standing of the people appointed to head the new districts. If they were just 'run-of-the-mill bureaucrats', then the whole new system would be 'nothing other than decorative'.[30] Putin's choices indicated his resolve: five of the seven representatives were generals (including Viktor Cherkesov, former deputy director of the FSB, and Petr Latyshev, former deputy minister of the MVD).[31]

Putin followed his *ukaz* with a salvo of proposals to reform the Federation Council and give him the power to dismiss recalcitrant executives, legislatures, and local government officials throughout the Federation.[32] Eugene Huskey, earlier in this volume (Chapter 6), analyses these bills, all three of which were signed into law after difficult passage through the Federal Assembly.[33] Putin's apparent victory, however, presents serious concerns of executive overreach, tipping an already fragile balance of the separation of powers (not only between branches of government but also between federal and regional levels of government). Although the Constitution is vague regarding who constitutes the 'representatives' that compose the upper chamber, many politicians and lawyers protested that such extensive reforms required full-blown constitutional amendment, not mere legislation.[34] A transfer of power from the Federation Council to a proposed 'State Council' under the executive branch would almost certainly require such amendment. Nikolai Fedorov, president of the republic of Chuvashia and an outspoken critic of the reforms, led other senators to begin an appeal to the Constitutional Court, contending that 'all honest lawyers admit that these reforms and laws are essentially revising the existing constitutional structure of the Russian Federation . . .'.[35]

One month after Putin's initial reform package, the federal Constitutional Court issued a Determination (*Opredelenie*) on the constitutions of Adygeya, Bashkortostan, Ingushetia, Komi, N. Ossetia, and Tatarstan.[36] This highly critical document rejected the claims to sovereignty (several bordering on the doctrine of nullification) made by these republics over the past decade. The decision of the Court—a court of discretionary jurisdiction—at such a

[29] See e.g. an *ukaz* of 15 May suspending a resolution levying fines by the head of Smolensk oblast as a violation of federal law. *Rossiyskaya gazeta*, 18 May 2000, p. 4. Other early decrees targeted alleged violations by Adygeya, Ingushetia, Amur, and Tver.

[30] *Segodnya*, 16 May 2000, p. 4.

[31] *Current Digest of the Post-Soviet Press*, 52/20 (2000): 2–4. *Rossiyskaya gazeta*, 20 May 2000, p. 3. *Segodnya*, 31 May 2000, pp. 1–2.

[32] Original proposals published in *Nezavisimaya gazeta*, 20 May 2000, pp. 4–5.

[33] The Federation Council predictably vetoed its own proposed dissolution and the federal executive power to dismiss governors. While in the latter case, the Duma overrode that veto with a 2:3 majority, a special conciliation commission was necessary to pass the amended Federation Council reform. Local government reform, Putin's third prong, provoked comparatively less controversy.

[34] RF Constitution, Art. 95, ss 2.

[35] *Radio Free Europe/Radio Liberty Newsline*, 4/148 Part 1, 3 Aug. 2000, 36.

[36] Opredelenie Konstitutsionnogo Suda Rossyskoy Federatsii, 27 June 2000.

charged moment in Russian politics was viewed by some as a political warning as much as a legal ruling. To others the Court's decision was unimportant. A senior official of the Permanent Mission of the Republic of Bashkortostan in Moscow observed (on condition of anonymity): 'In Russia, the political process is more important than the law itself. So the agreements of our president with the Russian Federation president are more important than the law. The Constitutional Court of Russia is just a body, highly respected, but just a body of the Russian Federation. It has nothing to do with the Republic of Bashkortostan—we have our own Constitutional Court.'[37] In Tatarstan, Tatar nationalists presented that republic's parliament and president with a bill declaring the decision invalid on its territory.[38]

Of course, such thinking is not new, but part of the ongoing, sometimes schizophrenic, conceptual battle over basic principles of federalism. The latest attempt at reform draws from that legacy as much as it continues it. The future of the 'new Russian federalism' depends in large part on what balance can be struck between valid assertions of regional autonomy and federal obligations to promote and protect democratic principles and a unified legal space throughout the country. As one respected legal scholar observed, Putin's federal reforms 'unwittingly unleashed a war', the resolution of which will not be quick and the outcome of which is impossible to predict.[39]

[37] Author's interview, Moscow, 14 July 2000.

[38] Boris Bronshtein, 'Vosstanovit' nezavisimost'', *Izvestiya* (online), 9 Aug. 2000.

[39] William Smirnov, prominent political scientist and lawyer, Institute of State and Law. Author's interview, Moscow, 13 July 2000.