TITLE: RUSSIAN FEDERALISM AND THE DRAFTING OF REGIONAL CHARTERS

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Abstract

This paper reports in summary the main points that emerged in a Russian Academy of Sciences workshop on regional charters which took place in Moscow on March 13-17, 1995. The author concludes:

Relations between Russia's federal subjects and Moscow remain largely a power struggle, flavored by varied interpretations of constitutionality -- interpretations that the powers that be in Moscow are only too ready to supply. There is, unfortunately, little understanding of the fact that provisions in the Russian Federation constitution other than those dealing with center-periphery relations will, in the long run, determine the form and fate of federalism in Russia. The lesson of federalism in the U.S., Canada, Switzerland, Germany, and Australia is that political parties not only reflect formal, federal relations, but they also determine how those relations are implemented and interpreted. For example, the decentralized yet integrated parties in the U.S. ensures that national political elites will be protective of regional interests, whereas the decentralized, wholly regional parties in Canada results in regional and national leaders oftentimes acting wholly in conflict. The structure and operation of parties, in turn, are a function of election laws, the authority of upper legislative chambers, the ways in which members of those upper chambers are elected or appointed, and the extent to which regional and local governments have meaningful authority subject to the control of officials elected by meaningful elections. Until and unless these other influences on federal relations are understood and adjusted to meet the requirements of stable federal relations in Russia, the Russian brand of federalism will more closely approximate that of, say, Mexico or Spain than of the United States, Germany, or Switzerland.

The early stages of the development of Russian federalism, including the drafting of republic constitutions and the Russian Federation constitution, were dominated by the sorting of relations between Moscow and the republics, and by disputes over the issues of sovereignty and the supremacy of federal law. Bilateral federal treaties appear to have resolved the issue of sovereignty (at least for awhile). However, the issue of supremacy remains, although sharp positions here are slowly giving way to ambiguously worded side agreements between Moscow and each republic.

In contrast, Moscow's relation to its regions emphasizes different issues -- the degree of autonomy Moscow will allow its regions and the authority of each region with respect to designing regional governmental structures. Confronted with the task of drafting regional
charters in accord with Article 5.2 of the Russian Federation (RF) constitution, both issues are a major source of confusion. On the one hand, Article 5.4 of the RF constitution proclaims that all federal subjects -- republics, oblasts, autonomous okrugs -- have equal status. On the other hand, Moscow (and the Kremlin in particular) objects strongly to the writing of regional charters that parallel the structure of republic constitutions. Adding to this confusion is the slow pace of federal legislation: few constitutional provisions have been subject to implementing legislation. With or without this legislation, oblast authorities are confronted with a new national constitution that seems more consonant with a unitary state than with a federal one.

First, appealing to Article 71 and its provision that the "regulation and protection" of individual rights is the exclusive jurisdiction of the national government, regions are told that a bill of rights is out of place in their charters. Ignoring the fact that rights regulate the state and not vice-versa and that the supremacy of federal law and the federal constitution preclude having regional bills of rights restrict individual freedoms, authorities in Moscow are nevertheless concerned that autonomous regions in particular will use such provisions to advantage indigenous ethnic minorities, and that those provisions will set the stage for the regulation of rights independent of Moscow.

Second, Article 72, which identifies the policies that fall under the jurisdiction of both national and regional governments, and Article 71, which identifies the things that are the exclusive jurisdiction of the national government, are virtually all-encompassing. Both articles, then, give Moscow a constitutional excuse to regulate or become involved in any public policy issue, thereby rendering Article 73 -- the RF Constitution's residual powers clause -- essentially meaningless. Regional leaders, then, are uncertain as to whether their constitutions and charters should address any specific program or policy such as education, pensions, regional debt, and so on, which have largely become their responsibility as Moscow seeks to formulate a balanced federal budget by passing funding responsibilities on to the regions.

Normally, we would expect jurisdictional disputes between levels of government to be resolved as part of a state’s ongoing political process. Thus, innumerable observers of American politics see the resolution of such disputes as the primary theme of those politics. However, such a resolution of things in Russia is confounded by the fact that regions have little if any control over the election not only of Duma deputies, but also of deputies to the Federation Council (Article 96.2) who ostensibly represent them. The Federation Council is not yet viewed as representing fully the interests of the regions generally, but merely of regional administrators who remain largely semi-autonomous agents of the president. A smooth
resolution is confounded also by the fact that Russia's party system is still in its infancy, and thus there are no mechanisms for resolving disputes within party structures and outside of formal state structures.

Fourth, the relationship of autonomous okrugs to the oblasts of which they are a part presents another source of confusion as well as conflict. Okrugs in Tyumen oblast, for example, are rich in resources (oil), which both the oblast and okrug governments would want to control. Once again, though, Article 5's provision that all federal subjects have equal status is taken by okrug officials as an excuse for okrugs to have the same control over the resources on their territory as oblasts claim on the territories that are exclusively theirs. Confusion arises, however, over how to square this article with the traditional, more subservient relationship of okrugs to the oblast authorities of which they are a part.

Fifth, Article 77.2's provision that "federal executive bodies and the bodies of executive authority of the members of the Russian Federation shall form a single system of executive authority" makes it unclear whether regional charters can establish executive branches of government that are answerable solely or even primarily to regional legislative and judicial authorities.

Sixth, Article 118.3's provision that "the judicial system of the Russian Federation shall be established by the Constitution of the RF and federal constitutional law" leaves regions uncertain about how to establish balanced regional governments -- governmental structures with a tripartite divisions of powers (executive, legislative, and judicial). Absent the authority to establish regional judicial systems, regions cannot see clearly how to balance powers between executive and legislative branches.

Seventh, although Article 66.2 of the RF constitution appears to place the drafting and implementation of regional charters in the hands of regional legislative bodies, there is considerable room for alternative interpretations over the role other federal authorities can or should play in this process. There seems little dispute that such charters should be ratified by local referenda. However, the Kremlin wants to oversee the drafting process and want to be empowered, along with the Federation Council, to pass final judgement on whatever documents are prepared. Although there does not appear to be any explicit constitutional provision that gives the president or the Federation Council a formal role in this process, the non-federal character of various parts of the constitution might, nevertheless, be used by Moscow to assert its authority.

Finally, Article 85.2, which allows the President of the Russian Federation "to suspend the acts of executive bodies of RF members if they contradict the Constitution of the RF,
federal laws or the international obligations of the RF” not only gives the president general judicial authority and blurs the separation of powers at the national level, it also leaves regional leaders uncertain as to whether they in fact have any overall autonomy.

Confronted with ambiguous constraints, we should expect that regional charters would be written in varied and tentative forms. Thus, whereas the draft charters of several oblasts extend to 50 pages or more (e.g., Yamal-nenets autonomous okrug, 58 pages; Taburskaia, 71 pages), others take fewer than twenty (e.g., Stavropol, 18; Novgorod, 11; Orenburg, 16; Lepetskaia, 12), and most are shorter than the constitutions of the republics which also vary considerably in length (e.g., Yakutia, 126; versus the Karelia republic, 32, and Buryatia, 20). Although the length and content of American state constitutions vary considerably, that variation is the product of an evolutionary process in which different states make it more or less easier for residents to access their constitutions through initiatives and referenda. The variation found in Russian regional and republic constitutions derives more from the absence of any clear understanding of the role of constitutions and their essential content.

Relations between Russia’s federal subjects and Moscow remain largely a power struggle, flavored by varied interpretations of constitutionality -- interpretations that the powers that be in Moscow are only too ready to supply. There is, unfortunately, little understanding of the fact that provisions in the RF constitution other than those dealing with center-periphery relations will, in the long run, determine the form and fate of federalism in Russia. The lesson of federalism in the U.S., Canada, Switzerland, Germany, and Australia is that political parties not only reflect formal, federal relations, but they also determine how those relations are implemented and interpreted. For example, the decentralized yet integrated parties in the U.S. ensures that national political elites will be protective of regional interests whereas the decentralized, wholly regional parties in Canada results in regional and national leaders oftentimes acting wholly in conflict. The structure and operation of parties, in turn, are a function of election laws, the authority of upper legislative chambers, the ways in which members of those upper chambers are elected or appointed, and the extent to which regional and local governments have meaningful authority subject to the control of officials elected by meaningful elections. Until and unless these other influences on federal relations are understood and adjusted to meet the requirements of stable federal relations in Russia, the Russian brand of federalism will more closely approximate that of, say, Mexico or Spain than of the United States, Germany, or Switzerland.