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IF HAMILTON AND MADISON WERE MERELY LUCKY, WHAT HOPE
IS THERE FOR RUSSIAN FEDERALISM?

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Abstract

Just as the two-headed eagle of imperial and contemporary Russia looks in two different directions, this essay has two objectives: to evaluate, on the basis of the American experience, the prospects for stable democratic federalism in Russia, and to reconsider the insights into federalism offered by Madison and Hamilton in *The Federalist*. The swirl of events in Russia make it difficult if not impossible to confidently render conclusions about the future direction of events and the prospects for meaningful federal domestic relations. However, some theoretical perspective can be gained by looking at the theory of federalism offered in *The Federalist Papers*, with special attention to Madison and Hamilton's failure to appreciate fully the role political parties would play in the eventual integration of American political institutions so as to establish, in Madison's words, a "properly structured" federation. Looking as well at the early history of parties in the U.S. we see, in addition to the usual constitutional provisions associated with federalism, the importance of those things that structure political competition within states. Properly designed, these things encourage the development of political parties that mirror federal relations, and integrate regional and national political elites so as to avert center-periphery conflict. Unfortunately, a review of the provisions currently in place for Russia reveals that electoral practices and regional and republic constitutions and proposals are unlikely to encourage parties of the sort that facilitate a stable federal system. This fact, in conjunction with several other trends (notably, corruption and the political instincts of political elites in Moscow) lead to the conclusion that a "federation" of the type currently observed in, say, Mexico is a better scenario of the future for Russia than is a federation that imitates the U.S., Australia, Germany, or Switzerland.

If Hamilton and Madison Were Merely Lucky, What Hope is there for Russian Federalism?¹

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1. Introduction

In December 1993, Russian voters ratified a constitution that ostensibly established a democratic federal state. However, it is not yet clear whether that document will lure Russia in the direction of its stated objective or whether it merely provides a democratic gloss to a new authoritarian regime, albeit one with a capitalist foundation. Political parties, all born and bred in Moscow, are precarious entities that rise and fall with the fortunes of specific personalities (Fish 1995, Remington and Smith 1995). Federal relations remain a struggle between Moscow and Russia's regions and republics over revenue, resources, and policy (Wallich 1994). And official interpretations of democracy, including interpretations of a separation of powers and federalism, are suspiciously reminiscent of the comfortable tradition of democratic centralism. Thus, it is not unreasonable to ask: will Russia become a democratic federal state like the United States, Australia, Switzerland, or Germany; a quasi-federal one like Mexico ruled by a single party fed by official corruption; a democratic unitary one like France or Costa Rica; or a federalism like Nigeria that intersperses military dictatorship with democratic process?

The answer to this question cannot be found in any survey of Russia's current circumstances alone. The swirl of events there lead in too many contradictory directions. On the one hand, we see a political system permeated by corruption in which competing "clans" vie for control of Russia's resources while exhibiting little interest in investing in a moribund economy.² On the other hand we find a Constitutional Court that has just begun to operate in an environment in which there appears

¹ The ideas in this essay were inspired by discussions at the Workshop on Regional Constitutions and Charters, Moscow, March 13-17, sponsored by the University of Maryland's IRIS Center, funded by the Global Bureau of the agency for International Development. We would want to thank Morgan Kousser and Keith Poole for their commentary and suggestions.

² See, for example, "Political Elites Battle for Power in Russia's New 'Proto-Democracy'," Washington Post, Sunday, March 26, 1995

to be considerable demand for an arbiter of conflict among those clans and among the varied parts of government. Economic reform proceeds fruitfully in some regions, whereas in others, circumstances are not much different than a decade ago.³ And although mass elections have gained ascendancy as a way to legitimize political leadership, arrangements are being fashioned that would allow even greater manipulation of election outcomes than is alleged to have occurred in 1993.⁴

To make sense of these contradictions requires some theoretical perspective. That is, to assess the interplay of these contradictory processes requires a general understanding of why some federal states are successful and others are not, of Russia's deficiencies in this respect, of the tools of political institutional design that might remedy these deficiencies, and of the likelihood that those tools will be used. For this we turn to what seems an unusual source insofar as our subject matter is Russia: *The Federalist Papers*. We do this not only because the United States has achieved what seems to be Russia's contemporary goal -- a viable, balanced, democratic federalism -- but also because, in setting forth the constitutional prerequisites for achieving a balance between a national government whose laws are supreme but which is protective of the legitimate autonomy of its states -- the twin objectives that currently bedevil the creation of a democratic federal Russia -- Madison and Hamilton offer a blueprint for how constitutional parameters could be shaped to reach such an outcome.

The circumstances Madison and Hamilton confronted were, of course, wholly different from those that confront Russians. Among those differences is the fact that states in 1787 were entities with functioning governments that possessed significant if not complete autonomy; it was a national government that the new constitution sought to empower. Russia's circumstances are the opposite. Except for the ethnic republics that have wrested some autonomy from the center, Russia's 68 or so non-ethnic regions (oblasts, krajs, autonomous okrugs) are largely administrative subparts of the national government that have not yet secured a clear constitutional role. Thus, although Hamilton and Madison were concerned with assuring states (and delegates to the New York ratification convention) that the new federal government would not usurp their legitimate authority, Russia must find a way to empower its federal subjects without threatening the dismemberment of the country.

³ See, for example, "Russia's Regions: Peripheral Power," *The Economist*, March 25, 1995.

⁴ "Computerized System of Elections Fails to Exclude the Manipulation of Elections," *Izvestia*, February 10, 1995; Alexandar Sobyenin, "According to the Project of the Central Committee of the Communist Party," *Izvestia*, February 10, 1995. On allegations and evidence of fraud in the December 1993 elections see Myagkov and Sobyenin (1995) and Sobyenin and Sukhomlinskii (1994). The evidence cited in these essays and allegations as to who benefitted from fraud are subject to argument and varied interpretations, but, given the election's circumstances and judging from the experience of other countries, it would require a belief in miracles to suppose that creative accounting was insignificant.

Despite this difference, the central issue addressed by *The Federalist* concerns Russia as much as it did the United States: how to avoid having relations among the separate levels of government become an $n+1$ person conflictual game in which the n federal subjects (states) are pitted against each other and the national government, and how to sustain an equilibrium that allows society to realize the benefits of federal decentralization in some natural way. How, that is, states can be made "constituent parts of the national sovereignty" (*Federalist* #9) in which decisions about the legitimate authority of one level of government or the other are the product of "normal" politics.

The words of *The Federalist* have been widely translated and read, no less in Russia than elsewhere, and were those words a complete blueprint for democratic federal design, our task would be done. However, Madison and Hamilton's theory about how a federal equilibrium is maintained is incomplete. *The Federalist* accepts the view of parties that prevailed at that time, and by equating them with factions and as things to be controlled, it focuses on a narrow range of constitutional parameters that would facilitate such control -- separations of power, representation in the national legislature, bicameralism, and allocations of policy jurisdictions. But because they failed to see how national and local parties would operate symbiotically to breath life into constitutional institutions so as to implement a balance between federal supremacy and regional autonomy -- as the things that would mobilize people to political action under the rules set by the constitution -- Madison and Hamilton failed to anticipate fully the influence on federalism of a different set of institutional parameters, those dealing directly or indirectly with national election laws, the role of state and local elections, and the character of state governments.

Given their limited objectives (securing ratification of a new national constitution when arguably a majority opposed it) Madison and Hamilton's genius was marrying rhetoric and practicality to theories drawn from the Enlightenment in a way that made a series of newspaper essays required reading for generations to come. Their failure to appreciate the role of parties and the constitutional provisions that would directly or indirectly influence that role, might lead to the conclusion that they (and us) were merely lucky -- that the Constitution "worked" for reasons other than the ones Madison and Hamilton offer. Fortunately, states in the new republic began the "game" with institutions and powers that encouraged parties of the right sort, and that arguably allowed for greater flexibility in the constitutional forms that would prove to be successful. Thus, the combination of what was provided for in the U.S. Constitution and the formal and informal institutions that preceded it facilitated the development of a party system that integrated federal and state governments and allowed the establishment of a viable federation.

Despite these advantages, it took the Civil War to resolve the issues of slavery and the supremacy of federal law. Russia must operate in an environment that is even less forgiving than the one

America confronted in 1787 or 1860. Burdened by the legacy of an administratively centralized state, and more poorly endowed with democratic traditions, decision makers there continue to focus on simple ad hoc command-and-control expedients, such as bilateral treaties between the Kremlin and federal subjects. And although they have learned the importance of the constitutional parameters discussed by Hamilton and Madison, they fail to understand the context in which those parameters were set. The crafting of regional constitutions, as part of the power struggle between center and periphery, is seen as part of the Kremlin's attempt to serve the old interest of centralized administrative control. And although discussions of election laws take the same form as they do nearly everywhere else -- they focus, naturally enough, on how best to serve the immediate self-interest of those who would design them -- Russia hasn't the luxury of divorcing that discussion from an assessment of their impact on federalism. There are, then, good reasons for believing that Russia is making some fundamental errors of political institutional design.

2. The Incomplete Theory of *The Federalist*⁵

Without trying to distinguish between what was written merely as political rhetoric versus things said as part of a coherent theory of political institutional design, Madison and Hamilton offer two cures for the instabilities that characterized earlier republics: an extended republic and a properly structured federalism:

In the extent and proper structure of the Union, therefore, we behold a Republican remedy for the diseases most incident to Republican Government (Federalist #10).

The first of these cures, the extended republic, need not concern us, since if that argument applied in 1787-8, it applies with special force to Russia. If anything, Russia's size and diversity compel us to seek a clearer understanding of the meaning of "proper structure" than was required even of the Framers of the U.S. Constitution. Unfortunately, Madison and Hamilton's definition or outline of a proper structure is vague and incomplete. There are, though, several components of political institutional design that seem essential. First among these is a tripartite, balanced separation of powers, and there is little doubt that Madison and Hamilton saw the necessity for applying this principle to state governments as well as the national one:

⁵ The required emphasis on the words "proper structure" was first brought to our attention by Vincent Ostrom (1991) and this section owes much to his discussion in that volume (see especially cp. 4).

In the compound republic of America, the power surrendered by the people, is first divided between two distinct governments, and then the portion allotted to each, subdivided among distinct and separate departments. Hence, a double security arises to the rights of the people. The different governments will control each other; at the same time that each will be controlled by itself (Federalist #51).

A balanced separation is a virtual axiom of *The Federalist* for achieving a stable republican government. But insofar as this axiom is directed primarily at safeguarding individual rights, we can end here only if we speak of a unitary state. Much if not most of Madison and Hamilton's argument is directed at countering the criticism that the powers granted the new national government by the proposed constitution, especially the supremacy of federal law, would quickly usurp the legitimate authority of states. However, there is little doubt they were unwilling to compromise on the issue of supremacy:

the laws of the confederacy, as to the enumerated and legitimate objects of its jurisdiction, will become the SUPREME LAW of the land; to the observance of which, all officers legislative, executive, and judicial in each State, will be bound by the sanctity of an oath. Thus the Legislatures, Courts, and Magistrates of the respective members will be incorporated into the operations of the national government, as far as its just and constitutional authority extends; and will be rendered auxiliary to the enforcement of its laws (Federalist #27, emphasis in the original).

To leave the matter here would render ratification of the new constitution an impossible achievement. Thus, for both political and theoretical reasons, additional requirements must be met to ensure a stable federal state. Those requirements, as outlined in *The Federalist*, are four in number:

- A constitutional guarantee of state sovereignty with respect to those policy jurisdictions for which there is little rationale for federal involvement. To counter federal incursions of state power, states must be armed with a guarantee of sovereignty that Hamilton and Madison presumed was provided by the proposed constitution's limited assignment of powers to the federal government.
- State representation in a meaningful upper legislative chamber of the national government. Because constitutional prohibitions of federal excess are unlikely to be more than mere

"parchment barriers," states require the additional protection of explicit representation in the Senate.

Hamilton, in fact, virtually equates these two requirements with the definition of proper structure:

The proposed Constitution, so far from implying an abolition of the State Governments, makes them constituent parts of the national sovereignty by allowing them a direct representation in the Senate, and leaves in their possession certain elusive and very important portions of sovereign power. This fully corresponds, in every rational import of the terms, with the idea of a Federal Government (Federalist #9).

Representation in the Senate was, of course, the cornerstone of the Great Compromise whereby small states were empowered to protect their interests against the larger ones. But, in adhering to the demands of the more populous states, the U.S. Constitution gives states a dual protection:

- In addition to seeing the Senate as representing states and the House as more responsive to "the people generally," *The Federalist* identifies **both** chambers as giving the states representation - small states in the case of the Senate, large ones in the case of the House. Madison's caveat that the lower chamber be sufficiently large to ensure meaningful representation but not too large emphasizes the local character to the intended structure of representation:

after securing a sufficient number for purposes of safety, of local information, and of diffuse sympathy with the whole society, they will counteract their own view by every addition to their representatives (Federalist #58, emphasis in the original).

Although Hamilton and Madison's arguments here are colored by more than a little political rhetoric, the general principle hinted at bears emphasis. Specifically, both chambers of the U.S. Congress (like both chambers of the German, Swiss, and Australian parliaments) give explicit representation to the states, and thus both chambers, at least in theory, provide states with some degree of protection. In the U.S. and Australia, this is accomplished in the lower chamber by single-member districts contained wholly in each state; Switzerland implements proportional representation at the canton level, and in Germany it is accomplished by having parties fill seats in the *Bundestag* by both single-member districts and by party lists generated within each *lander*. The Swiss and German systems are, perhaps, more explicitly "federal" in the way they fill their lower legislative chambers, and although

the U.S. House of representatives is not designed to represent states *per se*, to the extent that state interests are an aggregation of local interests, it performs this function. Finally,

- Concurrent jurisdiction. Unlike a unitary state in which the central government is alone responsible to the people and merely assigns powers to federal subjects, and unlike a confederacy in which the federal government has no direct connection to the people, proper structure requires that both the national government and state governments have their own direct connection to the ultimate sovereign. As Hamilton states the matter:

we must resolve to incorporate into our plans those ingredients which may be considered as forming the characteristic difference between a league and a government; we must extend the authority of the union to the persons of the citizens, -- the only proper objects of government (Federalist #15).

And

The government of the Union, like that of each state, must be able to address itself immediately to the hopes and fears of individuals ... It must, in short, possess all the means and have a right to resort to all the methods of executing the powers, with which it is entrusted, that are possessed and exercised by the government of the particular States (Federalist #16)

It is true that Madison and Hamilton argue for concurrent jurisdiction primarily as a way to empower the national government. As we note earlier, there was little need in 1787 to empower states; they existed and were already fully sovereign under the Articles of Confederation. Nevertheless, if we take their argument at face value, then the following assessment by Vincent Ostrom (1991: p. 80) of Hamilton and Madison's definition of a "proper structure" is appropriate summary of their position: "Sovereignty, conceptualized as the authority to make laws, is divided so that the people of the member republics are subordinate to the authority of the Union with respect to national affairs, but are independent with respect to those prerogatives that apply to the jurisdiction of the separate states or republics. The states, in turn, serve as constituent parts of the national government by their representation in the Senate. Governments do not govern governments as such. Concurrent governments reach to the persons of individuals, including citizens and officials claiming to exercise governmental prerogatives under constitutional authority."

The emphasis here on states as "constituent parts" of the Union contrasts sharply with most contemporary treatments of federalism, including the approach taken today in Russia. Academic treatments, especially ones offering formal assessments of public goods and the benefits of decentralization or ones debating the constitutional prerogatives of governments, typically conceptualize federalism as some $n+1$ person game: n federal subjects versus the national government (see, for example, Aranson 1995, Rapaczynski 1985). There are good reasons for this view. If realizing the benefits of federalism requires a national government that has the constitutional authority to coerce all other governments in it to a common purpose, and requires as well a constitutional rather than contingent decentralization of authority -- a decentralization that cannot be defined exclusively by the national government -- then the core design problem is to find a way to achieve an equilibrium of federal and state prerogatives.⁶ This view also predominates Russian perceptions of the management of federal relations. Moscow's attitude toward the ethnic republics has not been much different than relations between sovereign states: Bilateral treaties are negotiated between the Kremlin and republic authorities that divide areas of responsibility and tax shares as though one side's gain is the other's loss (Teague 1994, Wallich 1994). The non-ethnic regions, on the other hand, are seen as mere competitors for authority and control of Russia's vast natural resources. Thus, manifested in an unwillingness even to allow for direct election of regional governors, the Kremlin sees these regions more as subjects to be controlled than anything else.

Madison and Hamilton, though, saw a federation as a more integrated entity. Although their federation was to be a political system in which the evils of faction and threats to individual liberty were to be controlled by both a vertical and a horizontal separation of powers, with federal and state governments simultaneously and directly answerable to the people and formally combined in the institution of the Senate, it was to be an integrated entity nonetheless: "The proposed constitution ... makes [States] constituent parts of the national sovereignty" (*Federalist* no. 9). The source of any federal equilibrium, then, was to be found not merely in the relationship of the separate levels of government to each other as an $n+1$ person game conceptualizes things, but also in the relationship of the separate governments and their parts to the ultimate sovereign, the people.

There is, though, one glaring omission from Madison and Hamilton's account of the properly structured federalism, and its absence allows them only an incomplete account of the mechanisms whereby the people would implement their control over state and national governments and the integration of federal and state governments that characterized proper structure. "The balance of social interests, the separation and balance of powers, were meant to secure liberty, but it was still

⁶ For discussion of the distinction between constitutional and contingent decentralization see Aranson (1990).

uncertain, after the instrument had been framed and ratified, whether the balance would not be too precarious to come to rest anywhere; and whether the arms of government, separated in parchment, could come together in reality to cooperate in the formation and execution of policy ... a mechanism had to be found ... by which men could put together what God, in the shape of the Constitution, had sundered" (Hofstadter, 1969, p. 70). That mechanism is the political party.

Hamilton and Madison deemed parties and factions the same thing, and both were to be controlled rather than made integral parts of the political process: "The Fathers hoped to create not a system of party government under a constitution but rather a constitutional government that would check and control parties" (Hofstadter, 1969: 53). However, "in a country which was always to be in need of the cohesive force of institutions, the national parties, for all their faults, were to become at an early hour primary and necessary parts of the machinery of government, essential vehicles to convey men's loyalties to the State" (Hofstadter, 1969: 70-1). A constitution defines the institutional skeleton of government; but parties are the things that politicians erect to achieve their goals (notably reelection) under the rules defined by a constitution and, thus, they are the things that breathe life into constitutional provisions. Put simply, "political parties created modern democracy ... and modern democracy is unthinkable save in terms of political parties" (Schattschneider 1941: 1).

The role of political parties in creating a modern democracy occurs in many ways, but their role is especially important in federal states. In William Riker's (1964: 136) words, "Whatever the general social conditions, if any, that sustain the federal bargain, there is one institutional condition that controls the nature of the bargain in all instances here examined and in all others with which I am familiar. This is the structure of the party system, which may be regarded as the main variable intervening between the background social conditions and the specific nature of the federal bargain." What remains, then, is identification of those institutional structures, constitutional or otherwise, that facilitate the formation of parties of the right sort -- of parties that encourage incentives for politicians to be protective of regional autonomy while simultaneously acceding to the supremacy of federal law. The American Civil War may warn us that we may be able to speak only of necessary but not sufficient conditions. Perhaps the economic interests associated with slavery precluded the integration of governments that Madison and Hamilton sought, especially full acceptance of the supremacy of federal law.⁷ But we now know the role parties play in achieving that integration and

⁷ One can argue, in fact, that it was not merely the issue of supremacy that was brought into question in the 1850's, but the very legitimacy of the law itself. Northern resistance to the Fugitive Slave Law, especially with the publication of *Uncle Tom's Cabin*, rendered federal law immoral and, as events soon showed, it was impossible for any party system to overcome this perception. We can, then, ask party systems to do some things for us, but we cannot ask them to do the impossible. Certainly in this respect, Hamilton's admonition that "as to those

we have some good ideas as to what influences the role and form of parties. It is these things to which we now turn.

3. The Complete Constitution for a Federal State

Madison and Hamilton's view of parties and their failure to address them in contemporary terms is understandable. Neither they nor anyone else at the time had experience with such creatures; instead, their experience was drawn largely from the factions and "proto-parties" that emerged after 1776 in state legislatures to dispute patronage, reapportionment, and suffrage (Main 1973, Williamson 1960). Even today there is some dispute over the extent to which parties merely mirror constitutional federal arrangements versus the degree to which they influence the operation of those arrangements (Chandler 1987). Nevertheless, even if we admit of simultaneous influences, what is important about Riker's analysis of federalism is that it directs our attention to constitutional provisions other than those normally associated with federal relations. Briefly, when designing a federal constitution, it is commonplace to suppose that the relevant provisions are those that deal with the following:⁸

- federal subject representation in one or both national legislative chambers and the authority of those chambers;
- supremacy and secession (or nonsecession);
- regional courts;
- jurisdictional boundaries between the federal government and federal subjects;
- guarantees of the obligation of contracts, of free trade within the federation; and of democratic governance within federal subjects;
- the admission of new federal subjects or alterations in the boundaries of existing ones;
- the role of federal subjects in amending the national constitution.

mortal feuds ... it is in vain to hope to guard against events too mighty for human foresight and precaution, and it would be idle to object to a government because it could not perform impossibilities" (*Federalist*, #16), holds true.

⁸ Perhaps we should include in this list a bill of rights in recognition of Madison's argument (*Federalist* #10) for an extended republic, which includes the hypothesis that federal subjects will be less capable of defending individual rights than the national government because of the likelihood that the national government will be more "polyarchic" than individual federal subjects. For further discussion see Finkelman and Gottlieb (1991), and also Moser (1994). Perhaps we should also add the necessity for clarifying the concept of citizenship. Although this remains a contentious issue in even non-federal states (e.g., Estonia), the question arises in Russia as to whether federal subjects or the federal government alone is empowered to distinguish between "resident" and "citizen."

However, if Riker is correct, these provisions alone cannot define a properly-structured federalism. If parties play as profound a role as Riker and others suggest, then we need also look at the following:

- the method of electing the president if the system is presidential;
- the timing of elections;
- control over the methods of election to the national legislature as well as state legislatures;
- the pervasiveness of elections as a means of filling national, federal subject, and local public offices;
- the content of federal subject constitutions.

The first two items on this list, in combination with representation formulas for the national legislature, are the usual ones thought of as influencing the number of parties and the extent to which party leaders (especially in ethnically divided states) act to moderate conflict (Shugart and Carey 1992, Taagepera and Shugart 1989, Horowitz 1991, Sartori 1994). These provisions alone, however, do not tell us much about regional party formation, the relationship between national and regional parties (especially the critical matter of regional parties that are organized merely to increase the salience of especially divisive ethnic or racial issues or to undermine the authority of the national government), or the extent to which parties facilitate viable federal relations.

Turning, then, to the remaining three items on this list, we can begin by noting that much of the early organized activities of "parties" in the United States, both before and after the ratification of the Constitution, was directed at the manipulation of those election laws and procedures controlled by the states, especially apportionment and suffrage. Absent meaningful competition for the presidency (owing to Washington's hesitancy to reject running for a third term and the near-consensus that that office was his for the asking throughout his administration), political competition, with but a few exceptions, focused on control of state legislatures, and, in some (but not all) states, control of the governorship and the patronage they controlled. "For nearly fifty years popular attention in politics was absorbed in operating the local system, already 150 years old. Interest in the new federal politics developed with extreme deliberation" (Nichols, 1967: p. 164).

Considerable political activity focused on national issues -- the Jay Treaty, the Alien and Sedition Acts, the debt, and the contest for the presidency in 1800, but national parties, as compared to state organizations, remained weak (and disappeared for awhile), as witnessed by the fact that national party conventions were unknown until the 1840's. State apportionment and suffrage laws were often key determinants of one party or faction's fortunes over another. Absent each state's opportunity to manipulate such things, it is unlikely that we would have seen the accelerated development of state

parties, the conversion of personality-based factions into standing organizations for the mobilization of voters, and, subsequently, the federalized, bottom-up development of national parties in the 1820's and 1830's as opposed to the top-down process we see in Russia today. Indeed, the salience of national issues, given the state's authority to manipulate election procedures for federal office, contributed to this process. Although some states proceeded directly to popular election of electors to the electoral college and single-member district elections for the U.S. House of Representatives, others manipulated these procedures with great frequency. For example, Massachusetts chose electors by popular vote in 1788, 1792, and 1796, turned to legislative selection in 1800, returned to the popular vote in 1804, back to legislative selection in 1808, returned once again to popular vote in 1812, back again to legislative selection in 1816, and, finally, back to popular vote in 1820. New Jersey, Georgia, and North Carolina made almost as many changes, and only Maryland and Virginia began with a popular vote and stuck with it. Similarly, when electing members of Congress, Pennsylvania began in 1788 with an at large system (SNTV), changed to a district system in 1791, returned to the at large system in 1792, and permanently changed to single-member districts in 1794 (Hoadley 1986). Maryland, demonstrating the same schizophrenia we see in Russia today, began with a split system but changed to the district system in 1790, whereas New Jersey began with SNTV, changed to a district system in 1798, returned to SNTV in 1800, and changed subsequently and permanently to a district system. In all cases, these changes were governed by the fortunes of different factions or proto-parties within the states, and the opportunity to implement such changes, like changes in apportionment and suffrage, were part of the rewards encouraging state party formation.

Insofar as contemporary circumstances are concerned, there is, of course, some dispute over the extent to which federalism has eroded in the United States. We do not want to enter that debate, aside from noting that although the federal government's share of public expenditures after World War II and the Korean War greatly exceeded that of state and local governments, the trend since then has been a return to the more nearly even balance that prevailed in the 1930's. Thus, although there are good arguments in favor of the view that erosion has been excessive, we cannot say that long-term trends point unambiguously in any one direction. Parties, in the meantime, remain decentralized, and if we ask what keeps them federalized -- decentralized, yet vertically integrated -- we must look still at electoral systems. One of the most striking features of American political institutions, especially when we compare them to an imperfectly formed federal state such as Russia, is our pervasive use of elections. Indeed, just as Mark Twain once wrote that a person is no more harmlessly occupied than when he is making money, it would seem that Americans believe that a politician is no more harmlessly occupied than when running for election or reelection. As a consequence largely of the abuses of patronage, U.S. state constitutions require not only that the office of governor and seats in the legislature be filled by direct election, but also that a wide variety of other state-wide offices be

filled in the same way rather than by appointment -- offices such as lieutenant governor, secretary of state, treasurer, attorney general, superintendent of schools, secretary of agriculture, commissioner of insurance, highway commissioner, commissioner of labor, commissioner of elections, and state auditor. Table 1 gives the distribution of the number of executive offices that are normally filled on a state-wide basis in addition to governor. And state-wide elections are more pervasive than even this table shows. For example, after initial appointment by the governor, state Supreme Court justices must secure reappointment in general elections in 39 states, of which more than half (23) run with their party affiliations listed on the ballot.

Table 1: # statewide executive offices, in addition to governor, filled by direct election⁹

| range | number of states |
|--------------|-------------------------|
| 0 | 3 |
| 1 – 5 | 5 |
| 6 – 10 | 18 |
| 11 – 15 | 12 |
| 16 – 20 | 10 |
| 21 – 25 | 1 |
| > 25 | 1 |

It might seem unproductive to have dozens of executive and judicial state offices filled through election, not to mention countless local offices. After all, we cannot assume that many voters will have good information about a great many, if any, of the candidates for these offices. Few voters would know much about the candidates for, say, inspector of mines (Arizona), or commissioner of the general land office (Texas). Thus, we might ask: Doesn't direct election open the door to the election of people who are merely adept at manipulating public opinion? Indeed, a positive answer to this question is not unreasonable, and was not an uncommon opinion in the formative years of the United States. Although most states allowed for direct election of governor (as well as of sheriffs, state assemblies, and even militia officers) in their early constitutions, it is only in 1824, and only as a byproduct of the agitation for reapportionment, that election of the governor of Georgia was moved from the legislature to the citizens of that state (Green 1930). Other states were even later: North Carolina in 1835, Maryland in 1836, New Jersey in 1844, and last of all, Virginia in 1850. Whatever

⁹ Source: *The Book of the States*, vol. 30, 1994-5, The Council of State Governments, Lexington, Kentucky.

the benefits of widespread application of elections, they were not universally appreciated in the first quarter of the nineteenth century.

But what are those benefits, and, in particular, what is the relevance of the pervasive use of elections at the regional and local level to the character of federalism? Briefly, the benefits take three interdependent forms. First, as we have tried to indicate earlier, pervasive use of elections at the state and local level facilitates the formation of state and local party organizations that become the building blocks for federal, national parties. Just as competition for state legislative office was the basis for state party formation in the 1790's, we should not be surprised to learn that, because Northern and Central states subsequently made greater use of direct election for state office than Southern, the development of political parties proceeded more quickly in the North than in the South (Formisano 1981). This is not to say that the things labeled parties in this period bear any resemblance to today's parties or that in the 1790's we can find a simple relationship between state and national political activities. But certainly by the 1820's, parties had assumed much of the federalized character we associate with them today. Although state conventions became firmly rooted in the Middle Atlantic states by the mid-1820's and in New England by the mid-1830's, it was only until 1844 that an organization analogous to a national committee first appeared, and it was primarily a confederation of state organizations (Shade 1981). Regardless of the different degrees of development, it is this feature of American state politics that gives additional meaning to De Tocqueville's observation that

The constitution of the United States is an admirable work, nevertheless one may believe that its founders would not have succeeded, had not the previous 150 years given the different States of the Union the taste for, and practice of, provincial governments... (emphasis in the original).¹⁰

The second benefit of filling a multiplicity of local and state offices by direct election is a somewhat paradoxical one: it strengthens national parties and integrates them with local and regional ones. It might seem that regional elections would only encourage the rise of regional parties and political elites who would act in competition with the national government and who, for their own purposes, would raise issues that would threaten political stability. This is sometimes true, but primarily in countries in which regional competition focuses on a single salient office such as governor. Consider, though, the candidate for local judge in New York City, who, during one of Roosevelt's presidential campaigns, gave his campaign funds to the local Democratic party in

¹⁰ as cited in Ostrom (1991), p. 96.

anticipation of professional assistance (Lubell 1952). Weeks went by, but he saw nothing -- no posters or radio broadcasts that mentioned his name! Agitated and uneasy, he returned to party headquarters to complain. The head of the party took him to the southern tip of Manhattan where the ferry from Staten Island landed, and, as a ferry pulled in, he pointed to the floating debris and garbage that swirled at the ferry's stern, towed by its wake, and said "the name of your ferry is Franklin Delano Roosevelt." Thus, in an election in which voters confront scores of candidates about whom they know little or nothing, the essential commodity possessed by candidates is their partisan labels and the fact that these labels are shared by viable candidates for national office. Extensive application of direct election at the local and state level, then, gives party leaders a valuable commodity with which to deal -- the party's nomination and official sanction -- which, in turn, gives those leaders an incentive to integrate their party with the national one. Moreover, as described in virtually every textbook, the connection works in the other direction as well. While the name Roosevelt and the label "Democrat" doubtlessly helped the local candidate for judge and countless other Democratic candidates for office, the organizations erected to nominate and facilitate local and state elections become an essential part of any national candidate's campaign. Thus, in a symbiotic relationship like those found in nature (e.g., between cleaner fish, *labroides dimidiatus*, and groupers, *epinephelus striatus*), local and national parties rely on each other for their survival and success.

Finally, extensive application of direct elections gives those with political ambition a ready means of moving up the ladder of political position and a home to those who would compete for the next rung. Moreover, because it is only natural to recruit candidates for national office, as with the farm clubs of professional baseball, from among those who have demonstrated effectiveness at campaigning and governing at the local or regional level, it ensures that those who achieve national office have a strong genetic connection to local and regional parties and governments. It is no accident that Robert Dole, majority leader of the U.S. Senate and presidential hopeful, began his political career in the Kansas legislature, and served as county prosecutor for eight years before moving on to the U.S. Congress in 1961. Excluding generals (Grant, Eisenhower) and those who held the office without directly campaigning for it (Arthur, Ford), and despite the fact that election to the House of Representatives offers a ready opportunity for the neophyte who wishes to enter national politics, of the 19 people elected to the presidency since the Civil War, all but six (Harrison, Hoover, Kennedy, Johnson, Nixon, Bush) began their political careers pursuing state or local office. For example, Cleveland was assistant district attorney, sheriff, and mayor of Buffalo before becoming governor of New York; Coolidge served as mayor of a small town, state senator, lieutenant governor, and governor; Taft as judge in local and state courts; and Harding, McKinley, Garfield, both Roosevelts,

and Carter began their careers in their state legislatures. Although Truman rose directly to national position (ignoring his position as county judge), his early career depended on a local political machine.

None of this is to say that a multiplicity of regional and local elections alone yield vertically integrated yet decentralized parties of the sort Riker argues are essential for stable federal relations. For example, absent meaningful representation in **both** national legislative chambers and absent as well a national competition for the office of the presidency, we are more likely to see parties like Canada's, where it is not uncommon to see national parties and wholly separate regional ones compete for provincial office, with the result that provincial campaigns are often framed as a competition between the prerogatives of the regional versus the national government (Chandler 1986). Thus, although approximately half of those who held elective office before succeeding to the presidency of the United States since 1864 served as governor of a state, no Prime Minister of Canada has ever served as head of a provincial government. Notice, moreover, that we cannot attribute this difference to the fact that the U.S. is presidential and Canada parliamentary. Germany is also parliamentary, but the explicit Land representation in both the Bundestag and Bundesrat, in combination with meaningful local and Land elections, help explain the regional origins of at least four Prime Ministers (Kiesinger and Kohl both served as Land minister-presidents, Brandt was mayor of Berlin, and Schmidt began his political career in local Hamburg politics).

It is, then, the combination of constitutional provisions -- those dealing explicitly with federal relations, those that concern the authority of the separate chambers of the national legislature and the basis of representation in them, and those that treat directly or indirectly the political structure of regional and local governments -- that determine a constitution's influence on the nature of the federalism that will prevail in a country.

4. Whither Russia?

The circumstances that confront a modern-day Russian Madison or Hamilton are radically different from those that characterized the United States in 1787. As we note in our introduction, with the possible exception of its ethnic republics, Russia does not have federal subjects that possess anything approximating the authority enjoyed by American states today or in the past. Those who seek a viable Russian federalism, then, are not concerned with empowering the national government, but instead must be concerned with empowering regional governments without opening the door to a Pandora's box of centrifugal forces. This is a daunting task. Although Russia's new constitution proclaims both democracy and federalism, a significant number of provisions bring into question the definition of democratic federalism that the drafters of that document had in mind. The underdevelopment of regional and local self-government and of a democratic political culture in general, can only be further suppressed by these provisions of the Moscow-produced constitution:

Although Article 66.2 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 wants to be empowered, along with the upper legislative chamber (Federation Council), to pass final judgement on whatever documents are prepared.

- 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 constitution's residual powers clause -- essentially meaningless.
- Article 96.2 takes the method of election of regional representatives to the national legislature, including the Federation Council, out of the hands of regions and leaves open the possibility that the Council will be appointed by authorities in Moscow.
- Although Article 130 promises citizen control of local affairs by "referenda, elections, and other means of direct exercise of their will," Articles 132.2 and 133 render local governments agents of the national government as opposed to regional governments. Specifically, the authority of local government will be determined by federal law.

The Russian "Federation" constitution is notable as well for what it does not say. Specifically, it does not guarantee a democratic form of government to each of its regions, nor does it provide any guarantee of the obligation of contracts or reciprocity in the legal acts of regions or republics. The preceding provisions do not appear (or fail to appear) by accident. They are the product of the ideological heritage of "democratic centralism," a quasi-democratic system of adopting and implementing decisions within the framework of an all encompassing communist party. Although that system allowed a bottom-up *discussion* of alternatives, once a decision was made by the party hierarchy, it had to be unconditionally obeyed and implemented in reverse order, from top to bottom. One does not need a magnifying glass to see the precision with which Moscow official ideology and constitutional plans follows these rules today. Regionally elected legislatures, like the national legislature, are directly elected, but with yet-to-be-specified or sharply curtailed powers, thereby rendering much like the official discussion groups of the communist party. The instinct toward democratic centralism, though, is perhaps no better revealed in three other parts of the constitution.

- Article 77.2 perhaps most clearly enunciates the concept of democratic socialist centralism. This article provides 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." Thus, it is unclear whether regional authorities can establish an executive branch of government that is answerable solely or even primarily to regional legislative and judicial authorities.
- 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" centralizes Russia's entire judicial establishment, and leaves regions uncertain about how to establish balanced governments with a tripartite division of power. Unlike the circumstances surrounding the ratification of the U.S. Constitution, in which the prior existence of state courts left little ambiguity about the authority of states to establish their own judicial systems, or the German constitution's (Basic Law) specific reference to Land judicial systems, the Russian constitution makes no allowance for regional court systems.
- Article 85.2, which allows the President of Russia "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 centralizes all power in the Kremlin and leaves regional leaders uncertain as to whether they in fact have any overall constitutional guarantee of regional autonomy.

Despite the anti-federal nature of these provisions, we should not assume that Russia's federal subjects are wholly impotent in securing meaningful autonomy. First, we do not yet know how Russia's newly formed Constitutional Court will balance these provisions against Article 5, which proclaims the equal status of all regions and republics. Under terms negotiated through a variety of bilateral treaties and side agreements, Russia's ethnic republics, especially Tatarstan, currently enjoy a degree of autonomy comparable to states in the U.S. (Solnick 1994, Teague 1994, Wallich 1994). It is only reasonable to predict that the remaining, predominantly Russian regions (its oblasts and krais) will, in a variety of substantive contexts, appeal to the Court under Article 5 for equivalent autonomy (although Moscow's attempt to impose its "model charter" in the regions reveals its desire to avoid this possibility).¹¹

¹¹ For text of this charter see "A Sample Oblast Charter," Institute of Legislation and Comparative Jurisprudence, The Committee on Federation Affairs, Federative Agreements and Regional Policy, Federation Council of the Russian Federation, Moscow, July, 1994.

Second, the struggle for control of Russia's vast natural resources has only just begun and it is unlikely that mere "parchment barriers" will do much to regulate this contest in the absence of enforceable or even identifiable property rights. The stakes are too high to suppose that regional authorities will avoid using nearly any measure to secure or retain control of those resources. Nor are they likely to seek protection from Moscow to avoid competing claims. It is far more efficient to collude against a distant center than to try to use the center as an agent for resolving intra-regional conflicts. That is, competition for resources may serve the same party-formation function as did the competition for patronage in the United States.

However, even though we can find reasons for believing that the anti-federal provisions of the constitution will be reshaped by court interpretation and economic self-interest, if the arguments set forth in the previous section are correct, we must be less sanguine about the likelihood that Russia will achieve a meaningful balance between center and periphery. Wider use of direct election to fill public office, which we identified earlier as critical to the encouragement of a decentralized yet vertically integrated party system, lies far in the future, if at all, for Russia and its federal subjects. If we look, for example at the Tatar constitution, we find a document that makes provision for direct election (every four years) of a regional parliament and governor (president), but otherwise offers little more than democratic socialist centralism transplanted to the republic level in which local governments are reduced to mere administrative appendages of the republic government.

Moscow has sought to impose more centralized control over its oblasts and krais. But like Tatarstan, it has not used that control to facilitate local and regional political party development. Local governments in these regions remain under Kremlin control, with little or no independent taxing authority. Unlike the latitude allowed U.S. states, Russia's regions have little control over suffrage (definitions of residence will be determined by federal laws), apportionment (Russia's Central Election Commission, currently filled by Presidential appointment, dictates the drawing of district boundaries for the single-mandate elections of the Duma), or the rules under which seats in the upper "federal" chamber, the Federation Council, will be filled. And although one half of the Duma is filled by single-mandate district election, the other half is filled by national party-list proportional representation -- the world's largest experiment in PR. This, more than anything else, has encouraged a top-down development of parties so that, with the exception of the Communist and Agrarian parties, there has been little indigenous regional party development or activity.

Nor is it certain yet whether the regions will be empowered to control the election (or selection) of governors. With instincts that remain "appointment and direction from the center," and fearing regional political elites with independent electoral mandates, the Kremlin resists sanctioning competition for local and regional office, even though doing so discourages the indigenous development of regional parties that might eventually seek to integrate with national party

organizations. As a manifestation of the instinct toward democratic centralism, the "model charter," drafted by lawyers within the Federation Council, offers no mention whatsoever of regional courts, suggesting their acceptance of a wholly centralized court system established under the aegis of Article 118 of the Federation constitution. Finally, although Article 81.1 of the Russian Federation constitution provides for the direct election of the president, there is no requirement of simultaneous elections. Indeed, the current election schedule prescribes that parliamentary elections be held six months earlier than the presidential one, and no uniform schedule exists with respect to contests for regional or republic office, thereby further diminishing the incentives for developing any symbiotic relationship of the sort described earlier between national and regional parties.

Of course, much of the institutional structure we believe is essential for a viable federalism appeared in the United States only in a long sequence of reforms stretching from 1800 to early in this century. These reforms expanded democracy: reforms such as popular election of governor and of the vast array of state executive, administrative and judicial officials; popular election of Senators; requirements for voter approval of state and local debt; and direct voter access to state constitutions. Whether similar institutional developments will arise in Russia remains to be seen, but it should also be kept in mind that the United States first developed its parties in an era when the federal government was relatively unimportant in the affairs of most voters. Even as late as the 1930's, local revenues exceeded those of the federal government two to one. Thus, regional and local parties formed because elections filled meaningful offices -- offices that controlled meaningful resources. It is not yet clear what resources Russia's regions will control, and its local governments control even less than ours do today.

5. Conclusion

The Framers of the U.S. Constitution knew well that constitutional provisions and allocations of authority were mere words on paper, and that speculations as to the eventual relationship among state and federal governments,

must be extremely vague and fallible, and that it is by far the safest course to lay them altogether aside; and to confine our attention wholly to the nature and extent of the powers as that are delineated in the constitution. Everything beyond this, must be left to the prudence and firmness of the people; who; as they will hold the scales in their own hands, it is to be hoped, will always take care to preserve the constitutional equilibrium between the General and the State Governments (Federalist #32).

These words, then, are prophetic of Woodrow Wilson's (1911, p. 173) assessment of American politics more than one hundred years later: "The question of the relation of the States to the federal government is the cardinal question of our constitutional system. At every turn of our national developments we have been brought face to face with it and no definition either of statesmen or judges has ever quieted or decided it. It cannot, indeed, be settled by one generation because it is a question of growth, and every successive stage of our political and economic development gives it a new aspect, makes it a new question."

Things are not likely to be much different for Russia. Now, though, we can benefit from the experiences not only of the United States but of those successful and unsuccessful federations that have appeared since 1787 in order to see where Madison, Hamilton and the others who met in Philadelphia were struck by genius and where they were struck by luck or fortuitous circumstances. That assessment compels us to the view that Russia is unlikely to progress along a path that parallels the one travelled by the United States, and it is equally unlikely to reach an end similar to the ones achieved by Germany or Switzerland. The American Civil War shows that the conditions set forth here as necessary for the development of a stable federation are not sufficient. In Russia, though, even these conditions remain unsatisfied. Although intra-regional competition for resources may occasion the development of competing factions, there are as yet no incentives for those factions to integrate vertically so as to begin the development of things we might call parties. Local governments control little or nothing, whereas elections at the regional level are limited to regional Dumas with uncertain or little authority. Indeed, to the extent that regional competition materializes, we are more likely to see those factions, as with Canada's regional parties, as competitors to whatever national parties politicians in Moscow try to organize. We should not be surprised, then, by the fact that the upper chamber of the legislature (the Federation Council) resists (as of April 1995) approving an election law that fails to decrease the number of State Duma seats allocated by national party-list proportional representation. Party-list PR favors party leaders in Moscow who have tenuous or non-existent links to local constituencies, whereas the Federation Council is acting to strengthen the position of regional interests.

The Nigerian model cannot be ruled out, but we doubt, for reasons that we haven't the space to discuss here, that any military regime would arise to subvert the new constitution. French centralism is also improbable, since Russia's great geographic diversity and the financial impoverishment of the center preclude full control of things by Moscow. In fact, from the Kremlin's perspective, the greater danger is a federation that, while whole on paper, becomes more like a confederation in which Russia's eastern and resource-rich regions succeed in securing nearly complete autonomy. The most likely scenario, though, is Mexico: a top-down party system, pervasive official corruption that is used to "buy out" regional political elites, and a state that is more unitary than federal in terms of the

autonomy enjoyed by its regions and republics. Should this prediction prove accurate, we may bemoan the absence of a viable Russian federalism, but perhaps take solace from the fact that a modicum of democratic stability has replaced a regime that, in the name of utopian fantasies, has left behind not the building blocks of better systems of government, but only impediments to such systems.

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