

**"CRUDE" FEDERALISM. OIL POLITICS AND THE EVOLUTION OF
INTERGOVERNMENTAL RELATIONS IN POST-SOVIET RUSSIA**

by

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**A thesis submitted in conformity with the requirements
for the degree of Doctor of Philosophy,
Graduate Department of Political Science,
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Abstract

“Crude” Federalism. Oil Politics and the Evolution of Intergovernmental Relations in Post-Soviet Russia

Doctor of Philosophy, 2000

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This dissertation explores the complicated interplay between the institutions of the Russian federal system, the policy making process and the dilemmas of legislative reform in the oil sector. Part one examines the problematic evolution of the 1995 federal Law on Production Sharing Agreements, a critical element in the reformist agenda. Part two looks at the legislative responses of Tatarstan and Khanty Mansiisk, two resource producing regions, to the production sharing issue and the broader questions of reform in the resource sector.

In spite of the apparent benefits that production sharing holds for the crisis-ridden Russian economy, the passage of production sharing legislation has been fraught with problems and delays. Why has this happened? I argue that the operationalization of a production sharing regime has been impeded by a series of institutionally-based cleavages and other disfunctional elements within the Russian federal system. First, jurisdictional overlap and the lack of a mutually acceptable and structured system for resolving disputes have undermined intergovernmental and interregional cooperation in the resource sector. Second, asymmetries between the constituent members of the federation, coupled with the absence of an institutional framework for managing

interregional relations, have disrupted the policy making process at the federal level and complicated the process of political and economic reform in the some of the key resource-producing regions. Third, the dominant position of the executive branch at both the federal and regional levels has hampered the legislative process by aggravating the long-standing interbranch conflict.

The study draws on the vast theoretical and empirical resources available to students of comparative federalism and comparative politics to explain the structures and processes that characterize the Russian federal model in the post-Soviet period. In doing so, it enhances our understanding of the policy making process in this transitional state. The research also makes a significant contribution to the literature on politics and government in federal states by positioning the Russian Federation within a broader comparative context and introducing a number of concepts and ideas that are unique to the Russian federal system.

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This dissertation is dedicated to my father, Norman Wilson.

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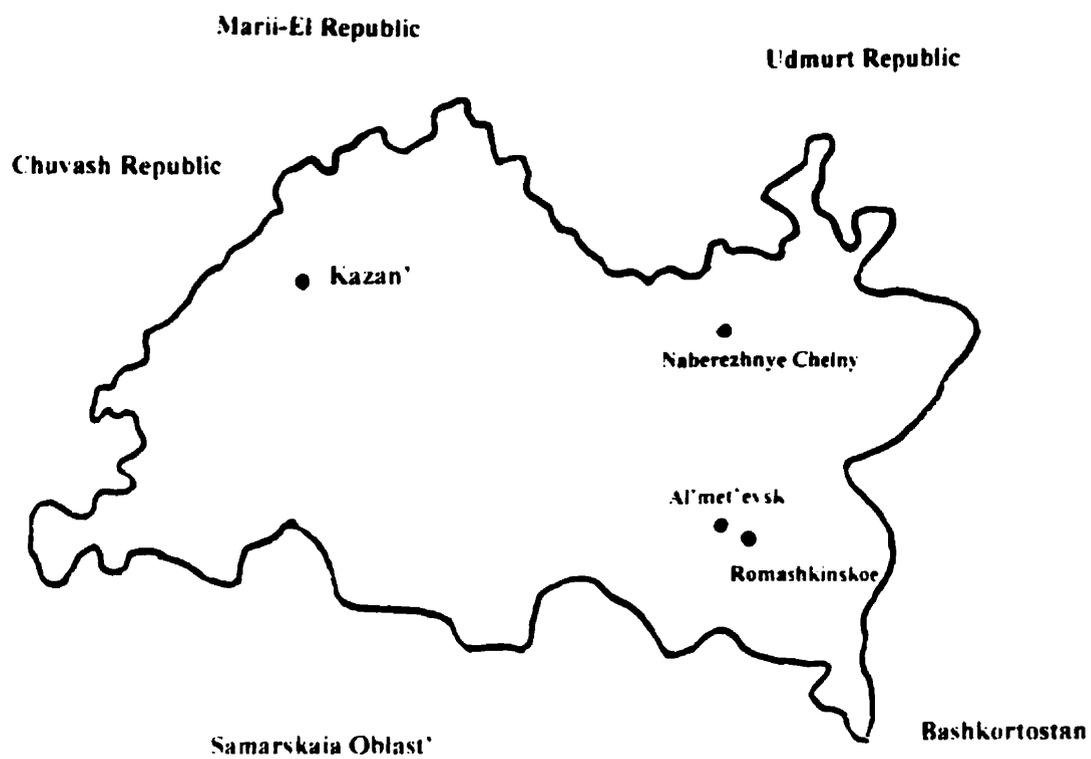
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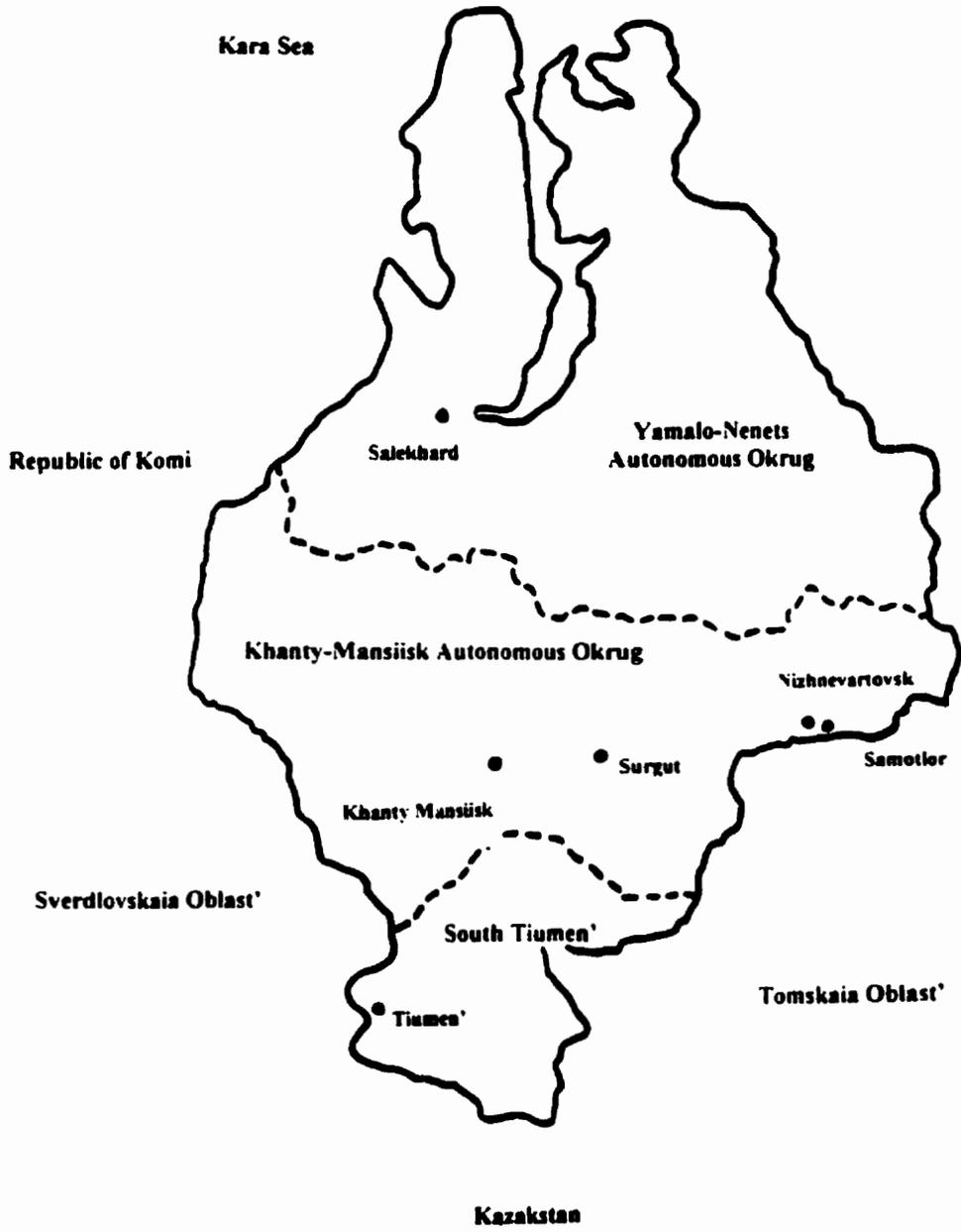


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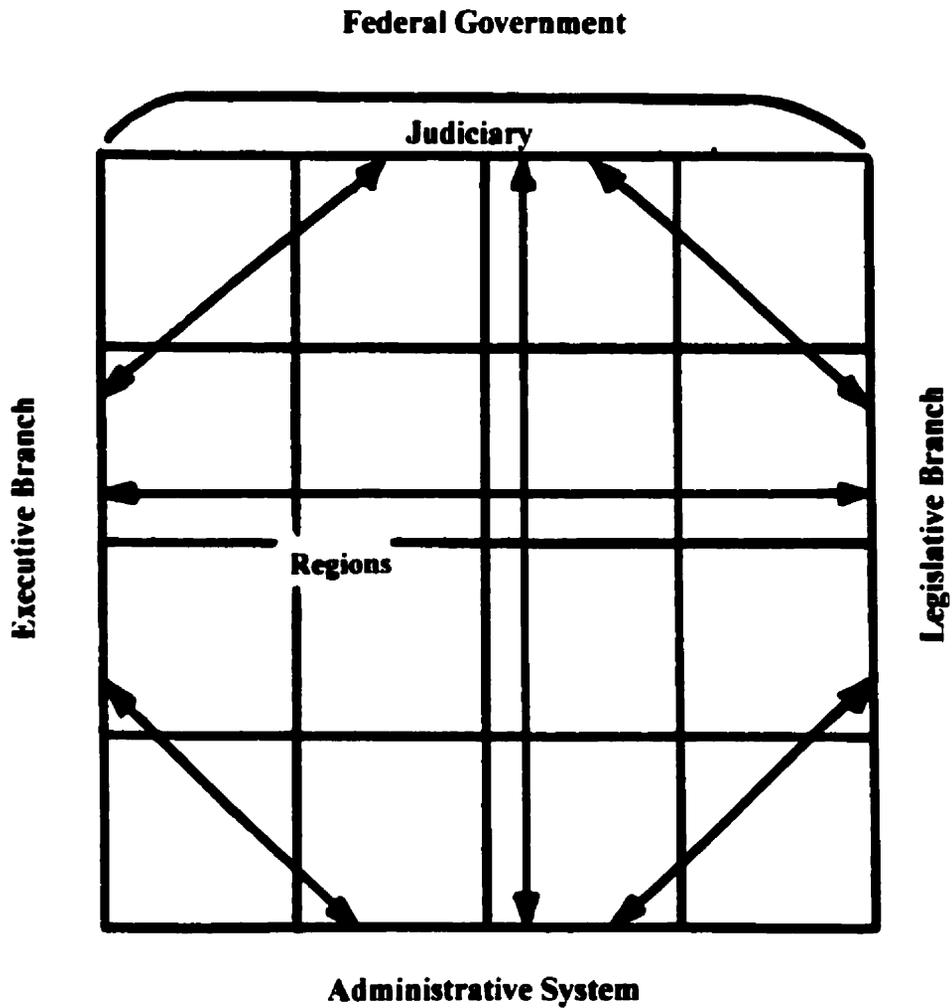
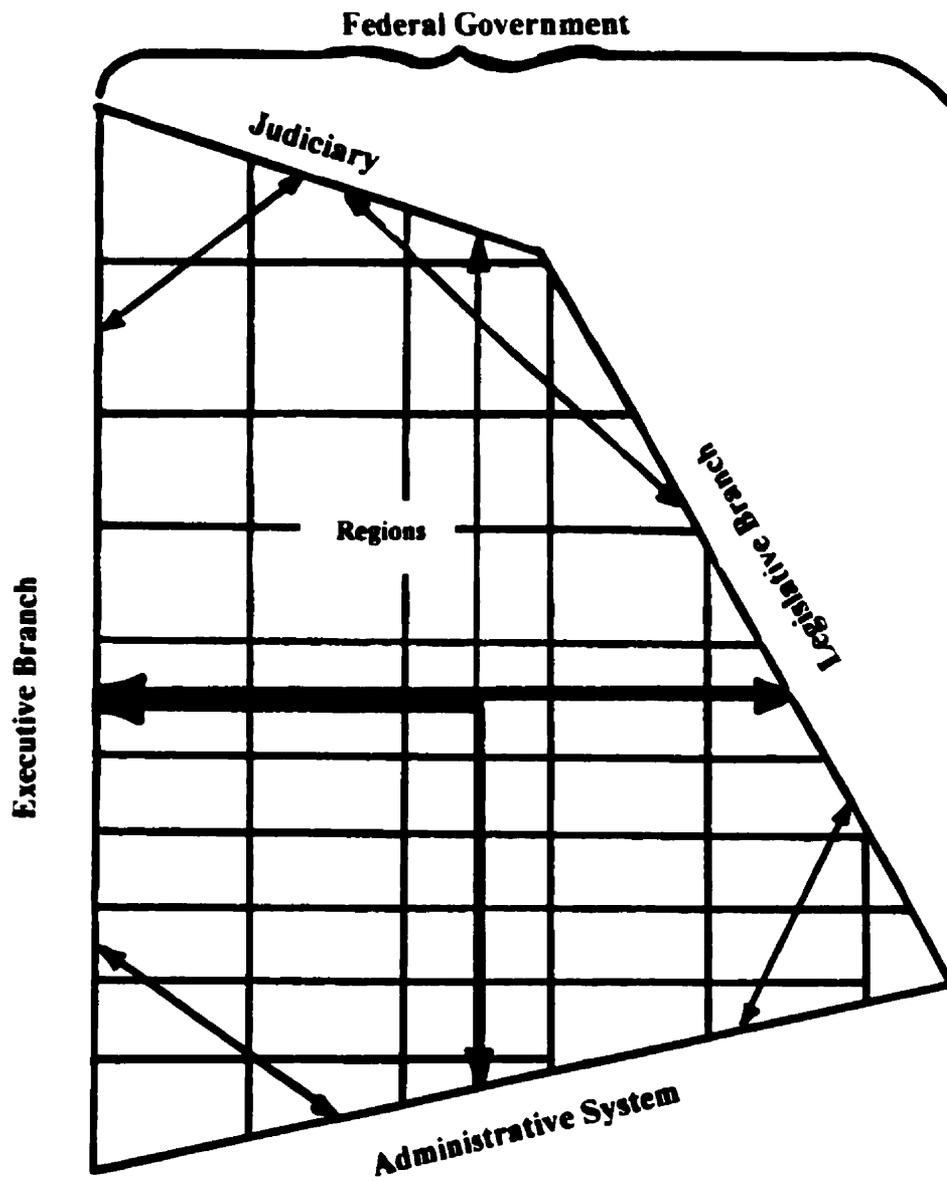


Figure 1 adapted from: Daniel J. Elazar, *Exploring Federalism* (Tuscaloosa, AL: University of Alabama Press, 1987), 37.

Figure 2: The Russian Matrix



PART ONE: INTRODUCTION

Chapter One

Oil Politics, Institutions and Intergovernmental Relations

In addition to the difficult task of building law-based, democratic institutions and a functioning market economy, one of the greatest challenges facing post-Soviet Russia is the development of a federal system of government. As many scholars have pointed out, the federal model that existed during the Soviet period was, to all intents and purposes, a façade that veiled the highly centralized political and economic system. Although the various republics that comprised the federation had limited autonomy over cultural and some administrative matters, the overwhelming dominance of centralized structures such as the Communist Party and the systems of economic planning and administration effectively nullified the country's federal character.¹

The dismantling of this system of government began in earnest in the late Soviet period when Mikhail Gorbachev initiated the reform process that would later lead to the unraveling and disintegration of the Soviet Union. *Glasnost* (openness) and *perestroika* (reconstruction), the two main policy thrusts of the Gorbachev era, had a profound effect on the political and economic foundations that supported the Soviet system. Slowly but

¹ John S. Reshetar, Jr., *The Soviet Polity: Government and Politics in the USSR* (New York: Harper and Row, 1989), 212.

surely, the rigid, centralized institutional apparatus began to give way under the weight of reforms that exposed the weaknesses of the Soviet regime. What was originally designed to be a controlled “reorganization” of the polity and economy soon became an unmanageable process of disintegration. The eventual death knell was sounded in the wake of a failed hard line coup when the constituent members of the Union of Soviet Socialist Republics declared their independence and formally withdrew from the federation.

In the period following the collapse of the Soviet Union, Russia has undergone a period of intense federal construction. The nascent yet growing literature on Russian federalism and intergovernmental relations has distilled a number of general themes regarding this process of transition.² As many students of Russian federal and regional politics have observed, the transition to a democratic federal model³ has taken place in the midst of a significant and often uncontrolled process of decentralization. In many respects, the regional governments have taken advantage of the political chaos at the centre in order to assume *de facto* control over vast areas of political and economic

² Peter Kirkow, **Russia's Provinces: Authoritarian Transformation versus Local Autonomy** (London: Macmillan, 1998); Kathryn Stoner-Weiss, **Local Heroes. The Political Economy of Russian Regional Governance** (Princeton: Princeton University Press, 1997); Kathryn Stoner-Weiss, “Federalism and Regionalism,” in Stephen White, Alex Pravda and Zvi Gitelman (eds), **Developments in Russian Politics** (Durham, NC: Duke University Press, 1997); Steven L. Solnick, “The Political Economy of Russian Federalism: Problems of Measurement and Analysis,” Paper prepared for presentation at the 1995 Annual Meeting of the American Political Science Association, Chicago, 31 August-3 September, 1995; Edward W. Walker, “Federalism – Russian Style. The Federation Provisions in Russia's New Constitution,” **Problems of Post-Communism**, July-August, 1995; Gail W. Lapidus and Edward W. Walker, “Nationalism, Regionalism, and Federalism: Center-Periphery Relations in Post-Communist Russia,” in Gail W. Lapidus (ed), **The New Russia: Troubled Transformation** (Boulder: Westview Press, 1995); Darrell Slider, “Federalism, Discord, and Accommodation. Intergovernmental Relations in Post-Soviet Russia,” in Theodore H. Friedgut and Jeffrey W. Hahn (eds), **Local Power and Post-Soviet Politics** (Armonk, NY: M.E. Sharpe, 1994); Edward W. Walker, “Moscow and the Provinces: Economic and Political Dimensions of Russian Regionalism,” **Eurasian Reports**, Winter 1993.

³ A democratic federal model is understood here as a system of government that is characterized by two levels of government and a division of powers such that neither is subordinate to the other.

jurisdiction, regardless of whether these areas of jurisdiction are allocated to them in the federal constitution. The ambiguous nature of many of the institutions and principles that constitute the existing federal system has only exacerbated this jurisdictional confusion.

The second important theme outlined in the literature on federalism is that the broader political, economic and social changes shaping this transitional polity have influenced the federalization process. The evolution of Russia's federal model, therefore, has not occurred in a vacuum. The institutional choices made by Russia's political elites and the relationships that flesh out this structural framework are products of the conflicts and underlying cleavages that dominate the political life of this transitional state.

This study will build upon earlier efforts at describing, analyzing and evaluating the evolution of contemporary Russian federalism. It will chart the development and analyze the particular characteristics of the Russian federal model by examining intergovernmental relations and the reform process in the Russian oil sector. Using concepts and models that are familiar to students of comparative federalism and intergovernmental relations, I intend to explore the complicated interplay between the emerging institutional structures and processes that characterize the Russian federal model, the policy making process and the broader political, economic and social transitions shaping post-Soviet Russia.

Models of Federalism and Intergovernmental Relations

Traditionally, scholars of federalism have focused on the relationship between the centre (the federal government) and the periphery (the regions). In his seminal work on federal government, K.C. Wheare defined the federal principle in terms of the independence of these two orders of government. Although Wheare acknowledged that the existence of areas of concurrent or joint jurisdiction is not necessarily incompatible with the federal principle, he questioned whether such interdependence is compatible with *good* federal government.⁴

Later studies expanded our understanding of federalism by emphasizing both the structural and procedural components of federal government. Carl J. Friedrich defined federalism as a fixed division of powers, or static design, and a process through which autonomous political entities enter into political and economic arrangements for the purpose of adopting joint policies and making joint decisions.⁵ By challenging the strict notion of jurisdictional exclusivity, therefore, Friedrich provided a conceptual basis for future studies on intergovernmental relations.

Building on Friedrich's notions of interdependence and process, scholars such as Daniel J. Elazar and Deil Wright have emphasized the "multiple, complex and interdependent interjurisdictional relationships" found in federal states such as the United States.⁶ In addition to the relationships that exist between the centre and the periphery, proponents of intergovernmental interdependence argue that the study of federalism must take into account linkages that transcend the centre-periphery divide.

⁴ K.C. Wheare, *Federal Government* (London: Oxford University Press, 1963), 77.

⁵ Carl J. Friedrich, *Trends of Federalism in Theory and Practice* (New York: Praeger, 1968), chp. 1

These crosscutting relationships may take many different forms representing both alliances and conflicts between and/or within the federal and regional spheres of government.⁷

Students of federalism and intergovernmental relations in post-Soviet Russia have focused to a large extent on relations between the federal and regional governments. This approach is understandable given the magnitude of the conflicts that have taken place over issues such as regional autonomy, asymmetry⁸ and decentralization. Furthermore, many studies have concentrated on the general issues shaping the Russian federal polity rather than using case studies of specific policy areas to illuminate the intergovernmental structure and relationships that have emerged in the post-Soviet period. Again, it should be emphasized that this is to be expected as area specialists find their bearings in the confusing world of post-Soviet federal politics and intergovernmental relations.

If we take a closer look at federal and intergovernmental relations in Russia, however, it becomes evident that a tangled web of intragovernmental disputes, centre-periphery alliances, interregional conflicts and relationships between governments, quasi-governmental and private actors exists alongside the more traditional centre-periphery cleavage. One of the objects of this study will be to examine this set of diverse

⁶ Brian Galligan, Owen Hughes and Cliff Walsh (eds), *Intergovernmental Relations and Public Policy* (Sydney: Allen and Unwin, 1991), 5.

⁷ Such alliances and conflicts may exist within particular regions (intra-regional), between elements at the federal level (intra-federal) or between different regions (inter-regional).

⁸ Asymmetry denotes the political-constitutional, economic and geographical differences between the various regions that comprise a federal state. Autonomy refers to the exclusive powers and responsibilities held by a particular region or set of regions in relation to the federal government.

relationships in order to explain how they influence the policy making process in the Russian Federation.

There are a number of models in the literature on federalism and intergovernmental relations that could serve as frameworks for such an empirical inquiry. The cooperative or collaborative federalism model places a great deal of stress on the interdependence of federal and regional governments across a wide variety of policy areas. Its supporters advocate the equality or symmetry of the regions in their relationships with the federal sphere of government. Proponents of cooperative federalism also emphasize the problems of inadequate policy coordination and the need to institutionalize intergovernmental relationships as a means of encouraging greater cooperation and less duplication, overlap and contradiction.⁹

The competitive federalism model, as the name suggests, places less emphasis on the costs of fragmentation than its cooperative counterpart. While the cooperative model views the act of cooperation as both a process and an outcome, the competitive model makes a clear distinction between the two, arguing that the latter can occur without the former.¹⁰ Advocates of competitive federalism criticize the institutionalization of intergovernmental relations. Their ideal federal model is one in which there are:

the fewest possible constraints on the freedom of each government to act as it sees fit, in accordance with its own political priorities and its own reading of the electorate. From this comes the desire to avoid mechanisms that tie any government's initiatives to the consent of others.¹¹

⁹ Kenneth Norrie, Richard Simeon and Mark Krasnick, *Federalism and the Economic Union in Canada* (Toronto: University of Toronto Press, 1986), 126.

¹⁰ *Ibid.*, 127.

¹¹ *Ibid.*, 127.

Supporters of such an unrestrained and atomistic federal model stress the desirability for asymmetry in the relationships between the federal government and the constituent members of the federation. In their opinion, the federal members should be allowed to develop their own varied relations with the federal authorities based on their unique characteristics and circumstances. In other words, they should not be forced into formal intergovernmental arrangements that attempt to stifle such differences by encouraging equality and symmetry.

Although both models emphasize the centre-periphery dimension of intergovernmental relations, they also diverge from this focus by stressing the problems and benefits of asymmetrical and symmetrical relationships between the regions. As models representing or illustrating the interplay of the federal and regional governments in the policy making process, they provide a number of important insights into the relationships that may exist in federal states. It is important to remember, however, that the cooperative and competitive models are ideal types existing at opposite poles on a continuum with reality being a complex mixture of the two.¹² This continuum features varying degrees of intergovernmental collaboration, ranging from very little formal cooperation to consultation, coordination and finally joint decision-making.¹³ Most

¹² *Ibid.*, 126.

¹³ In his study of contemporary Canadian federalism, McRoberts' uses the terms unilateralism, bilateralism and multilateralism to refer to these varying levels of cooperation. Unilateralism refers to a system in which each level of government acts independently of each other; bilateralism, a system in which the federal government collaborates with the provincial governments on an individual basis; and multilateralism, a system in which the federal government acts jointly with all or most of the provincial governments. See: Kenneth McRoberts, "Unilateralism, Bilateralism and Multilateralism: Approaches to Canadian Federalism," in Richard Simeon (ed), *Intergovernmental Relations* (Toronto: University of Toronto Press, 1985)

federal states, including the Russian Federation, embody elements of both models, an idea referred to in the literature as competitive interdependence.¹⁴

In his work on comparative federalism and intergovernmental relations in the United States, Daniel J. Elazar challenges some of the traditional theories of intergovernmental relations by advancing a political model that seeks to provide a more complex and flexible framework for the types of political interaction that occur in federal polities. Unlike pyramidal or centre-periphery models of intergovernmental relations, which assume the dominance of the federal government over the peripheral regional governments, Elazar's matrix model contains no higher or lower power centers, only larger and smaller arenas of political decision making (see figure 1).¹⁵ As such:

[t]he matrix of decision making centers is linked through formal lines of authority with both formal and informal lines of communication crisscrossing it. The constitution provides the frame or bare bones of the structure, which is fleshed out by formal and informal institutional arrangements, often overlapping. In this sense, the lines of communication serve as the nerves of the overall system.¹⁶

Elazar's matrix model not only reveals the complex set of linkages that characterize intergovernmental relations in federal states but also focuses our attention on the interplay between structure and relationships. In his words, "while [federalism is] embodied in constitutions and institutions, structures and functions, in the end it is the relationships that count."¹⁷ These relationships or federal processes are what flesh out the skeletal structure provided by the institutional framework. The key to understanding

¹⁴ Ronald L. Watts, *Comparing Federal Systems in the 1990s* (Kingston: Institute of Intergovernmental Relations, Queen's University, 1996), 55.

¹⁵ Daniel J. Elazar, *Exploring Federalism* (Tuscaloosa, AL: University of Alabama Press, 1987), 37.

¹⁶ *Ibid.*, 37-38.

¹⁷ Daniel J. Elazar, "International and Comparative Federalism," *PS: Political Science and Politics*, June 1993, 191.

intergovernmental politics in federal states, therefore, lies in the interaction between structure and process within this complicated matrix of crosscutting relationships.

A second model that builds upon centre-periphery conceptions of intergovernmental relations is Sidney Tarrow's theory of new localism. Tarrow believes that while existing models of centre-periphery relations contain some useful ideas, they fail to provide a comprehensive framework for the study of intergovernmental relations. He proposes a synthesis of these models as a means of providing the student of intergovernmental relations with a more theoretically satisfying and sufficiently complex alternative.¹⁸ This synthesized model:

recognizes the possibility of several different kinds of relationships between center and periphery, depending on elite ideologies and the social context. Above all, it demonstrates the likelihood that competing alliances between elements at the center and elements at the periphery will play a more important role in the decision making process than a crude confrontation between a united center and a united countryside.¹⁹

One of the strengths of Tarrow's model is that it is not restricted to or dominated by one particular theoretical approach; it acknowledges the influence of institutions, individuals and groups on the dynamics of intergovernmental relations. Above all, it recognizes the possibility that several different kinds of relationships can exist between the centre and the periphery within a single state. In particular, Tarrow emphasizes the role that competing alliances²⁰ between elements at the centre and elements at the periphery play in the policy making process. He surmises that such alliances largely

¹⁸ Sidney Tarrow, *Between Center and Periphery. Grassroots Politicians in Italy and France* (New Haven: Yale University Press, 1977)

¹⁹ Mark O. Rousseau and Raphael Zariski, *Regionalism and Regional Devolution in Comparative Perspective* (New York: Praeger, 1987), 80.

depend on elite ideologies and the social context in which interaction takes place.

Therefore, like Elazar's matrix, Tarrow's model reinforces the idea that

intergovernmental relations should not be restricted to a centre-periphery axis.

The Policy Making Process in Federal States: Key Concepts and Variables

The nature and design of the institutions that constitute a particular federal system influence the policy making process in federal states. In established federations such as Canada or Germany, the federal institutional framework is relatively constant. Aside from the occasional modification or adaptation, few changes occur in the institutional structure that underpins these federal systems. In transitional federations, however, the case is quite different. The institutional structure of the Russian Federation, for example, has undergone a considerable amount of change over the past decade and will likely continue to do so in the near future.

In the literature on institutional development in transitional states, proponents of institutional engineering argue that political life will be shaped primarily by the institutional choices made after the collapse of the previous regime. Their emphasis, therefore, is on selecting the most appropriate institutional structures to govern a particular society.²¹ Others have pointed out that the institutional legacies and

²⁰ Such alliances are comprised of governmental bodies, individuals and other political actors from the federal and regional spheres of government. They engage in a competitive struggle for power within the political system.

²¹ See: Juan Linz, "The Perils of Presidentialism," *Journal of Democracy*, 1/1, Winter 1990; Juan Linz and Arturo Valenzuela (eds), *Presidentialism and Parliamentarism: Does it Make a Difference?* (Baltimore, MD: Johns Hopkins University Press, 1994)

dependency paths of the previous regime also influence the transition process.²²

According to Kenneth Jowitt, the primary factor shaping the political transition in Russia is the 75-year Leninist experience. This legacy includes the behavioural patterns of former Soviet officials and elites who still occupy positions of power and authority, as well as other institutional frameworks, rules and standard operating practices that have remained in place despite the formal collapse of the communist system.²³ Although the influence of these legacies will weaken as new institutions and officials replace the old, they remain evident in many sectors of Russian political and economic life.

What variables influence the policy making process in federal states such as Russia? Are these variables products of the Soviet system, the post-Soviet transition or a combination of both? The following sections will examine several features of federalism and the manner in which they influence the political process in federal states in general and in the Russian Federation in particular. They include concurrency and the division of power, asymmetrical and symmetrical federalism, executive federalism, intrastate federalism, and the concepts of autonomy and sovereignty. These features will serve as the basis for a more in depth study of the interaction between federalism and the policy making process in later chapters.

Concurrency and the Division of Power. The division of powers and responsibilities in federal states can assume a number of different forms. For instance, a federal

²² D.C. North, "Institutions," *Journal of Economic Perspectives*, 5/1, 1991; and W. Andreff, *La crise des économies socialistes* (Grenoble: PUG, 1993). Both works cited in Catherine Locatelli, "The Reorganization of the Russian Hydrocarbons Industry," *Energy Policy*, 23/9, 1995, 810.

²³ Kenneth Jowitt, *New World Disorder: The Leninist Extinction* (Berkeley: University of California Press, 1992)

constitution may demarcate these powers into “watertight compartments” or it may use the less clear but arguably more flexible concept of concurrency as a defining principle. The watertight compartments method sets rigid guidelines on which areas of government the federal and regional authorities may administer. While this may seem like an expedient and efficient way of organizing a political system, it does little to encourage interaction between the two governments. Concurrency, on the other hand, encourages and in fact demands cooperation by acknowledging “that many areas do indeed have both national and [regional] dimensions.”²⁴

Another “virtue” of concurrency is its flexibility. This method of dividing powers and responsibilities avoids the painful and potentially disruptive task of allocating jurisdictions during the formative stages of federalization. It also may enable one order of government to act on a problem if the other order seems unwilling or is unable to do so.²⁵ Of course, such an outcome can only occur if there is a clear understanding between the governments involved regarding the need for action in a particular policy area. Unfortunately, this is not always the case. Often the government that has avoided taking action has a reason for doing so and will resist any further “independent” steps on the part of another government. In order to avoid such problems, an established mechanism or set of rules for managing cooperation and resolving disputes between the various orders of government involved must be in place. In most federal states, the role of intergovernmental arbiter is played by the judicial branch through a constitutional or supreme court.²⁶

²⁴ Op. Cit., Norrie, Simeon and Krasnick (1986), 43-4.

²⁵ Ibid., 44.

²⁶ Op. Cit., Watts (1996), 92-93.

In addition to being either concurrent or watertight, the division of power in a federal state can be either detailed or broad. Broad allocations of power are flexible, yet often unclear. Detailed allocations, although clear, can also introduce unnecessary rigidity into a federal polity. The division can also be symmetrical or asymmetrical, a question that will be examined in greater detail in the following section. Suffice it to say that one of the dilemmas of federalism is that different members of the federation may simultaneously demand symmetry and asymmetry. The goal of the committed federalist politician, therefore, is to balance these interests and thus avoid the type of interregional conflict that could threaten the stability of the federation.

The federal constitution and the various intergovernmental treaties that have been signed between the federal government and the regions in Russia have divided the powers and responsibilities of administration into three categories: federal powers, concurrent powers and the powers of the regions. The division of powers tends to be fairly broad and, as many scholars have pointed out, ambiguous and vague.²⁷ This is especially true for the rather lengthy list of powers and responsibilities that fall under the category of concurrent jurisdiction.²⁸ Moreover, not only do other agreements and treaties often contradict the categories in the list of concurrent powers, but the procedures and institutional mechanisms for administering and resolving disputes in areas of concurrent jurisdiction have not been properly established. The result is yet another

²⁷ While some scholars feel that such vagueness is a problem, others, such as Edward Walker argue that it may be beneficial. "The loose division of powers between the central and regional governments is not necessarily a flaw. Vagueness contributes to flexibility and flexibility may be advantageous." *Op. Cit.*, Walker (1995).

²⁸ Of particular importance to this study is the fact that the natural resource sector falls under this concurrent category. Article 72, section c of the Russian constitution states that "[t]he joint authority of the Russian Federation and the members of the Russian Federation shall comprise: questions related to the possession, use and disposal of lands, minerals, water and other natural resources."

example of how institutional confusion or the inadequacies of the present institutional structure contribute to the problems of federalism and policy making in the Russian Federation.

Concurrency is a two-way street. It involves both the participation of the regions in the legislative process at the federal level and the development of legislation at the regional level. In Russia, the latter has often come in response to federal inaction or political impasse at the federal level that prevents the adoption of draft legislation that the regions consider vital to their well-being. One such initiative is the legislation on natural resources adopted by the Republic of Tatarstan, a case that will be explored at length in the second part of this study. The federal government showed concern about both the provisions in this regional legislation that contradict federal laws and the region's decision to adopt legislation in an area of concurrent jurisdiction without obtaining ratification in the federal parliament or consent from the federal government. The resulting dispute has aggravated tensions between Tatarstan and the federal government and created legislative confusion in an important policy area.

The lack of effective and impartial mechanisms for resolving intergovernmental disputes has complicated the political process in areas of concurrent jurisdiction. Although Russia does have a constitutional court, the historical weakness of the judiciary in relation to the other branches of power (in particular, the executive branch) has limited the constitutional court's position as an arbiter of jurisdictional disputes between the federal government and the regions. In the absence of an effective judicial mechanism for conflict resolution, discussions, bargaining and agreements between federal and regional elites have played an increasingly prominent role in the political process.

Asymmetrical and Symmetrical Federalism. In a recent article entitled “The Theoretical and Practical Implications of Asymmetrical Federalism: the Canadian Experience in Comparative Perspective”, Ronald Watts commented: “until recently scholars have not focused much attention upon instances of asymmetry within federal political systems nor upon the implication of asymmetry for the operation of such systems.”²⁹ The apparent absence of an established theoretical literature on asymmetrical federalism, however, should not diminish its significance as a political factor. The struggle for and against asymmetry is a feature of many federal states and, as such, the role played by asymmetrical relationships should not be underestimated as a determinant of the policy making process.

Before entering into a discussion of the political consequences of asymmetrical federalism, it would be wise to define some of the basic attributes of this concept. In the federal context, both symmetry and asymmetry refer to the manner in which a member state relates to the federal government, other member states and the political system as a whole.³⁰ Symmetry denotes uniformity (or at least some measure of uniformity, for no federation can ever be completely symmetrical) in the pattern of these relationships. An asymmetrical relationship, on the other hand, “refers to a situation where the diversities within the larger society find political expression through component governments possessed of varying degrees of autonomy and power.”³¹ Most federations face the dilemma of finding the right mix of symmetry and asymmetry to secure stability and

²⁹ Ronald L. Watts, “The Theoretical and Practical Implications of Asymmetrical Federalism: The Canadian Experience in Comparative Perspective,” Paper prepared for presentation at the 16th World Congress of the International Political Science Association, Berlin, 21-25 August 1994, 2.

³⁰ Charles D. Tarlton, “Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation,” *Journal of Politics*, 27:4 (1965), 861.

political harmony. Such an outcome is often elusive, especially when demands for greater asymmetry by some federal members are met with stern calls for symmetry from others.

An important distinction in the concept of asymmetrical federalism exists between political or *de facto* asymmetry and constitutional or *de jure* asymmetry. Political asymmetry is the actual difference between the constituent units in terms of geography, wealth, population, standard of living, economic potential and actual influence and power. Constitutional asymmetry, on the other hand, refers to the structural or constitutional-legal arrangements that distinguish one constituent member from another.³² Both types of asymmetry have a significant impact on the political process in federal states. In addition to affecting the way in which the constituent units perceive each other and, in turn, the federal government and the political system, they also influence the amount of political or economic “weight” that a particular constituent member has within a federation.

Depending on the criteria employed, Russia can be classified as both a symmetrical and an asymmetrical federation. The federal constitution entrenches the ideal of symmetry by stating that all members of the federation are equal.³³ The formal equality of membership in the Federation Council, the upper house of the Russian parliament, also strengthens the symmetrical organization of the federal system. Each territory, regardless of its size and population, has two members. Russian federalism,

³¹ Ibid., 869.

³² Op. Cit., Watts (1996), chapter 6.

³³ Constitution of the Russian Federation, article 4, point 1. Point 4 of the same article further entrenches this equality by stating that “[a]ll members of the Russian Federation shall be equal in their relations with federal bodies of state authority.”

however, also displays some *de jure* asymmetrical characteristics. For example, clear differences exist between political authority of the various republics, oblasts, krais and autonomous areas in the Federation Treaty and only some of the 89 members of the Federation have signed special “bilateral” treaties with the federal government.³⁴

Although the constitution is supposed to be the supreme law of the land, the legal position of the Federation Treaty and the bilateral treaties in relation to the constitution is not entirely clear; a situation that adds confusion to the hierarchy of laws (and the study of federalism!).³⁵ The fact that only republics are allowed to have a constitution further reinforces this formal asymmetry.

The Russian Federation is also “asymmetrical” in an informal, *de facto* sense. Significant disparities exist between the various regions in terms of their attitudes toward economic and political reform, their financial situations and their potential for future growth and development. Asymmetries between pro- and anti-market regions, have and have-not regions and resource rich and resource-poor regions have led to many disputes over the direction and substance of policies adopted at the federal level. This is especially true in areas of concurrent jurisdiction where the regions have much more input into the policy making process.

One can imagine the problems that these ambiguities create among the regions and between the regions and the federal authorities. Russia’s inability to clarify its

³⁴ These bilateral treaties confer special powers on the regions in question that distinguish them from other regions. Initially, the federal government only signed bilateral treaties with the republics. Since 1996, however, it has negotiated and signed treaties with a number of other regions, including oblasts, krais, federal cities and autonomous okrugs. As such, bilateral treaties are quickly becoming the rule rather than the exception in the federal government’s regional policy.

³⁵ S.V. Polenina, B.M. Lazarev, R.Z. Livshits, A.E. Kozlov and E.K. Glushko, “Initsiativnyi proekt federal’nogo Zakona o zakonakh i inykh normativno-pravovykh aktakh RF” (Draft project on the federal law on laws and other normative-legal acts of the Russian Federation), *Gosudarstvo i pravo*, 3/1995, 57-68.

constitutional position has caused all manner of disputes, conflicts and misunderstandings and has, in turn, given students of Russian politics a clear example of how an aspect of the institutional structure affects politics and the policy making process. Conversely, the fact that the federal government continues to negotiate and sign bilateral treaties with only certain, “chosen” regions (just one of many examples of institutional dynamism or change) suggests that the institutional structure is also being influenced by other variables.

Executive Federalism. Executive federalism, a term first coined by Canadian federal scholars, refers to the process in which decisions regarding policy are made through negotiations between senior officials from the federal and regional governments. Naturally, this type of decision making process is more likely to occur in systems where power is concentrated in the hands of the executive or where there is an imbalance in the powers defined by the constitution that favours the executive branch of government. In parliamentary federations such as Canada, for example:

[the] executives are members of the legislature, are responsible to the legislature and can usually deliver the votes of a majority in the legislature. Therefore, power is concentrated in their hands. This means that relations between governments are also concentrated among the executives (not the legislators) of the governments—hence the term “executive federalism”... This is not to imply that ordinary members of Parliament or provincial legislatures have no role to play, but that they tend not to have a direct role in undertaking or mediating relations among the governments.³⁶

³⁶ Douglas M. Brown, David R. Cameron, Peter J. Meekison and Ronald L. Watts, “Federalism in Canada: Structures and Practices,” Part one of the experts’ report for component five of the Russia-Canada Collaborative Federalism Project (Kingston: Institute of Intergovernmental Relations, Queen’s University, March 1996), 42.

According to the literature, executive federalism may take many forms, ranging from organized annual conferences to ad hoc meetings and discussions. These meetings may involve all the leaders of the federal government and the federal members, only some of the leaders of the federal members or simply ministers and officials from particular areas of jurisdiction. In some federations the practice of executive federalism is institutionally entrenched. That is to say the constitution or other legal documents formally outline the meeting and decision-making powers of the executive. In other cases, executive federalism is still largely a political convention rather than a legal requirement.³⁷

Critics of this executive-dominated decision-making process argue that it is undemocratic and elitist because it bypasses the elected legislatures. Executive federalism has also been criticized because it often lacks an institutional-legal basis. In many federations, no established rules exist about where and when the meetings should take place or how decisions should be made. As one group of scholars has observed, this “lack of formal rules about intergovernmental relations may mean that they are less legitimate in the public’s eye, and less accountable as well.”³⁸

It should be noted, however, that there are some positive aspects to executive federalism. For example, it can be a very useful tool in fragile democratic federations where political expediency and the need to make quick and decisive decisions may take precedence over democratic concerns and legislative oversight. Often, it seems that difficult problems requiring an immediate solution have a much greater chance of being resolved by negotiations between a few government leaders or senior officials than by a

³⁷ Ibid., 43.

lengthy and divisive spell of parliamentary debate. The problem is that if the role of parliament is diminished in such a way, where does this leave democracy?

Historically speaking, executive rule has played a significant and enduring role in the politics of the Russian state. In post-Soviet Russia, the dominant position that the executive occupies in relation to the other branches of government underscores the importance of executive rule. The federal constitution, a document that was passed in the aftermath of President El'tsin's violent defeat and subjugation of the legislative branch in October 1993, secures both the *de jure* and *de facto* power of the executive through the office of the Presidency.

Another consequence of the executive-legislative struggles of 1993 that enhanced the power of the executive was the abolition of the local *soviets* (councils) and their replacement with regional legislatures. These bodies possess fewer powers than the *soviets* and, as a result, the executive branch dominates political life in the regions. Like the federal executive, therefore, the regional executives have become very powerful institutions.³⁹ Until recently, the close relationship between the federal and regional executive branches, a key precondition for executive federalism, was secured by the fact that the President appointed the majority of the regional governors.⁴⁰

Executive federalism occurs on a number of different levels and in a variety of settings in the Russian Federation. One could argue, for example, that sessions of the

³⁸ Ibid, 46.

³⁹ "The FSU After the Russian Elections," Cambridge Energy Research Associates: Former Soviet Union Watch, Autumn 1996, 16.

⁴⁰ This changed in 1996 when regional leaders were chosen through competitive elections. This institutional shift could have a significant impact on the level of support that the President enjoys at the regional level.

Federation Council are in fact organized forums for executive federalism.⁴¹ The heads of the regional executive and legislative branches represent each region in the Council, meetings take place on a fairly regular basis and the Council possesses a considerable amount of formal authority over the legislative process. According to one observer, the members of the Federation Council spend an inordinate amount of their time in Moscow securing privileges and deals for their regions.⁴² Other manifestations of executive federalism take place on a somewhat less organized, yet equally important, basis. The bilateral treaties that have become one of the building blocks of the Russian federal state since 1994 are essentially products of executive federalism. High level politicians conduct the negotiations for these treaties behind closed doors without the participation of the federal or regional legislatures or any kind of popular ratification.

Executive federalism also occurs at an interregional level, as evidenced in the growth of regional associations such as the Siberian Agreement and the Great Volga Association. In some cases, the purpose of these associations is to encourage general cooperation between members of the regional executive branches on a wide range of issues facing the regions in a certain part of the country. The Siberian Agreement, for example, was formed by politicians from a number of Siberian regions with the intention of strengthening the lobbying power of the region as a whole in relation to the federal government. Sometimes, however, regions will band together to lobby the federal government on a particular piece of legislation. This was the case in February 1997

⁴¹ In a manner similar to the German Bundesrat or Federal Council. According to Watts, the members of the Bundesrat "are delegates of their Land cabinets, holding office in the federal second chamber ex officio as members of their Land executive and voting in the Bundesrat in a block on the instructions of their land governments." *Op. Cit.*, Watts (1996), 87.

when the heads of a number of oil-producing regions sent a letter to the members of the State Duma asking them to support the federal legislation on production sharing agreements.⁴³

Some officials support executive federalism, arguing that the need for constant legislative ratification impedes the political process and threatens the overall stability of the state. In their view, the treaties and agreements produced as a result of federal-regional negotiations have preserved the integrity of the federation by clarifying the positions of the governments involved and by resolving potentially destructive conflicts in a peaceful and orderly manner. The power of the federal and regional executive branches and their penchant for executive decision-making and negotiations that bypass the democratically elected legislatures, however, has led to harsh criticism from a number of sources. Supporters of the legislature maintain that executive federalism enhances the democratic deficit in this transitional state. Moreover, they add that executive negotiated bilateral treaties, clauses in legislation that are designed to perpetuate the process of executive decision-making and rule by decree have contributed to the country's political woes by aggravating the disruptive and longstanding conflict between the executive and legislative branches.

Bearing all this in mind, it appears that executive federalism can affect the political process in two distinct ways. First, it can act as an active determinant of change in which the process of executive-dominated negotiation and decision-making has a direct impact on policy. In a more passive sense, it also serves as an object of criticism

⁴² One observer has suggested that this often results in the members having less time and energy for actual Council business. Interview, Moscow, March 1997.

among opponents of executive rule that, in turn, prompts them to use their critique of executive federalism as a pretext for opposing and changing legislation.

Intrastate Federalism. The preceding section dealt with executive federalism, an important feature of what the literature refers to as interstate federalism or relations between the federal and regional governments.⁴³ An equally significant institutional feature of a federal state is intrastate federalism, a term denoting the manner in which the regions are represented in the federal institutional structure. Most parliamentary federal states provide for regional representation at the federal level through the executive branch and the upper chamber of a bicameral legislature. Federal cabinets are often composed of representatives from a variety of different regions in order to ensure that the regional voice is heard at the highest levels of government. The upper chamber in both parliamentary and presidential federations is usually reserved for representatives from the constituent members of the federation. These institutions allow the regions to have some input into the policy making process at the federal level.

As noted above, each region in the Russian Federation has two representatives in the Federation Council. Since the individuals in question represent the heads of the executive and legislative branches of government, this body is in effect a hybrid of interstate and intrastate federalism.⁴⁵ Although the conventions for regional

⁴³ Svetlana Lolaeva, "Naiden sposob razdela shkury neubitogo medvedia (Finding a means of sharing is like skinning a live bear)," *Segodnya*, 14/02/97, 2.

⁴⁴ D.V. Smiley and Ronald L. Watts, *Intrastate Federalism in Canada* (Toronto: University of Toronto Press, 1985).

⁴⁵ In a similar manner to the German Bundesrat or Federal Council. The regional representatives in the Bundesrat are sent and instructed by the Lander governments. See: David P. Conradt, *The German Polity* (New York: Longman, 1986)152-153.

representation in the federal executive are still evolving, the regions also have some representation in the State Duma. Half of the members of the Duma are elected in single-member plurality districts, while the other half are elected through proportional representation.

Autonomy and Sovereignty. The terms autonomy and sovereignty refer to the degree of independence that one political entity has in relation to another political entity. One source characterizes autonomy as “self-governance – the ability or right to determine one’s own actions or beliefs.”⁴⁶ Sovereignty, on the other hand, is described as “the right to own and control some area of the world... the idea of independent rule by a country or institution over a certain territory or set of political concerns.”⁴⁷ In other words, sovereignty denotes “national independence, the sole right of the authorities of a particular country to take decisions affecting its citizens.”⁴⁸ One way of distinguishing the two concepts, therefore, is to link the term sovereignty with the political situation of an independent state, an increasingly difficult task in a globalizing and interdependent world. Autonomy, in comparison, refers to the limited or partial independence that some regions or communities exercise within a larger political entity.

The problem with these terms is that a region within a given political entity can be sovereign or autonomous, depending on the policy area or issue under discussion. This is especially true in federal states, where regionally based subjects of the federation often possess the sole right to take decisions affecting their citizens in some areas of

⁴⁶ Robert M. Martin, *The Philosopher’s Dictionary* (Lewiston, NY: Boadview Press, 1991), 20.

⁴⁷ David Robertson, *The Penguin Dictionary of Politics* (London: Penguin, 1993), 440.

⁴⁸ *Ibid.*, 440.

jurisdiction, but only concurrent rights with the federal government in other areas. Even in cases where the subjects of the federation exercise exclusive jurisdiction over a particular policy area, it is often still possible for the federal government to challenge the *de jure* sovereignty of a region. Under these circumstances, the region in question could be considered autonomous in terms of the day to day administration of the policy area, but not sovereign because the federal government has the capacity to become involved when and where it feels the need.

The tendency for Russian politicians to use the words autonomy and sovereignty interchangeably has contributed to the confusion that exists between the two terms. For example, federal and republican politicians have described certain republics as sovereign entities in speeches, meetings and even official documents. The reality, of course, is that the republics are not completely sovereign entities. In some areas, they exercise sovereignty, albeit sovereignty that is often limited by overlapping federal authority. In others, however, they possess only varying degrees of autonomy.

The autonomy/sovereignty debate in post-Soviet Russia has also been complicated by a whole series of issues and institutions, ranging from concurrency in the division of powers to treaty federalism. Accordingly, the question of whether a region is sovereign or simply autonomous is often open to interpretation or manipulation. In the Russian context, the term sovereignty has a powerful symbolic value and is often used to serve the short term political purposes of officials at both the federal and regional levels of government. Unfortunately, this only adds to the confusion and intergovernmental tension present within the political system.

For the purposes of this study, therefore, the term sovereignty will refer to the ability (at least in a *de jure* sense) of the regional governments to exercise exclusive control over a particular policy area. Such control is usually legally entrenched through a constitution, a treaty or other legally-based document, but is not necessarily undisputed. In fact, as the chapters on Tatarstan will demonstrate, the dispute over the legal foundations of regional sovereignty in the resource sector constitutes one of the clearest examples of institutional confusion and overlapping jurisdictional ambiguity in the post-Soviet period.

In comparison, the term autonomy will be used to refer to a broad range of levels of independence from federal incursion and control. Unlike sovereignty, autonomy implies the existence of limitations on the ability of the regional governments to act in a specific policy area. Autonomy is a particularly useful concept for analyzing the intergovernmental relations in the Russian Federation for a number of reasons. First, the prevalence of areas of concurrent jurisdiction and the existence of few areas of exclusive regional jurisdiction mean that the subjects of the federation do not have sovereignty in the majority of policy areas but may instead exercise some degree of autonomy. In many respects, this autonomy is a result of the significant devolution of power that has occurred during the post-Soviet period. Second, the fact that the term autonomy encompasses a variety of differing levels of freedom from federal control means that it is particularly suited to describing the asymmetrical character of the Russian federal model and regional attempts to increase their autonomy.

Institutional Interplay and Confusion in Federal States

The use of established theories, models and concepts to organize and explain observed political phenomena is an essential element in the study of politics. This is even true in the study of post-Soviet politics where, until recently, theoretical analysis and comparison have played a secondary role to the task of building a solid empirical base.⁴⁹ Now that the dust has begun to settle and a post-communist political structure has started to emerge from the ashes of the Soviet collapse, the challenge facing scholars is to determine which models or set of theories can be used to explain the political dynamics of contemporary Russia.

At first glance, it seems that all of the major models of politics have something to offer to the study of Russian politics. Cultural analysis, for example, emphasizes the importance of cultural experience on the political environment. The current crop of policy makers (politicians, officials, bureaucrats, business people, experts and academics) are all products of the Soviet and post-Soviet cultural experiences. This is reflected both in their attitudes toward political and economic reform and more concretely in the policies they support or oppose.⁵⁰ Culture, however, is only one part of the larger political fabric and must be used in conjunction with other ideas to explain political developments.

Another approach to understanding contemporary Russian politics is group theory. In this sense, politics and political outcomes are seen as products of group

⁴⁹ This approach was initially advocated by scholars such as Sarah Meiklejohn Terry and Valerie Bunce. See: Sarah Meiklejohn Terry, "Thinking About the Post-Communist Transitions: How Different Are They?" *Slavic Review*, 52:2 (Summer 1993); and Valerie Bunce, "Analyzing the Transitions: Constraints on Empirical Research," Ithaca, NY: Cornell University, Department of Government, 1992. Unpublished report.

⁵⁰ *Op. Cit.*, Jowitt (1992),

activity and conflict. This is certainly becoming more evident in post-Soviet Russia as group activity intensifies and the various factions, parties and other groups that have emerged on the political scene during the past few years become more organized and active. It is already apparent that the policy making process is being influenced by the efforts of the major political factions (communists, nationalists, democrats, market reformers, centrists, and so forth), lobby groups and other associations. Although many of these groups are still unorganized and in a state of transition, their growing influence over the legislative process is becoming more evident. Consequently, their role in the political system will undoubtedly continue to evolve in the future.

In addition to groups and culture, some political scientists emphasize the role that individuals play in the political life of the state. Proponents of rational choice theory, for instance, stress the influence that rational, self-interested individuals exert over the political system. At present, Russia seems to be inundated with such individuals; many of them seeking to consolidate and expand their power bases amidst the political and economic confusion that characterizes the transition period. Scholars such as Peter Kirkow and Daniel Kempton have noted this aspect of political life in post-Soviet Russia. In his insightful study of regional "warlordism", Kirkow argues that as a result of the weaknesses displayed by national political parties and institutions, politics in Russia tends to be dominated by individual personalities who are able to negotiate deals and reach political and economic compromises.⁵¹

Like many of their counterparts from the rational choice school, contemporary elite theorists have developed a broad conception of power that recognizes the

importance of economic as well as political elites. This is a particularly relevant idea for Russia area specialists because rapid marketization has created an emerging group of entrepreneurial elites that play an increasingly significant role in regional and national politics. These elites form the backbone of the industrial complexes that operate at both the federal and regional levels.⁵² Any study that underestimates the significance of these economic or private sector elites and the sectors of the economy they represent risks presenting a skewed picture of the post-Soviet reality.

Whereas all these approaches or models offer a number of interesting insights into Russian politics, they have been criticized for ignoring or undervaluing the importance of institutions as determinants of change in a given political system. In recent years, the cause of institutions has been revived and championed by the “neo-institutionalists”, a loose cohort of scholars who argue that individual behaviour, group dynamics, political culture and other aspects of political life are all influenced by the particular institutional setting in which they exist.⁵³

Contrary to some interpretations of this “new-institutionalism”, neo-institutionalist thought should not be considered a rejection of other theories of politics but a blending of elements of the old institutionalism into the non-institutionalist styles of more recent theories of politics.⁵⁴ Generally speaking, institutions are seen as the “strategic context” in which politics and policy making takes place. In the words of

⁵¹ Peter Kirkow, “Regional Warlordism in Russia: The Case of Primorskii Krai”, *Europe-Asia Studies*, 47:6 (1995)

⁵² The most important are the military-industrial, the agrarian-industrial, and the fuel and energy complexes.

⁵³ According to James March and Johan Olsen, two pivotal figures in contemporary political science, “institutional thinking emphasizes the part played by institutional structures in imposing elements of order on a potentially inchoate world.” See: James G. March and Johan P. Olsen, “The New Institutionalism: Organizational Factors in Political Life”, *The American Political Science Review*, 78:3 (September 1984), 743.

Kenneth Shepsle, a student of the rational-choice institutionalist school, “rational-choice theorists have turned to institutions. Like relationships, institutions may be thought of as part of what embeds people in social situations. They are the social glue missing from the behaviouralist’s more atomistic account.”⁵⁵

In addition to carefully avoiding the type of theoretical rejection that has accompanied previous shifts in political theory and their warnings about the dangers of “grand system theories”, institutionalists and their supporters also emphasize the interactive nature of institutions with other elements in the polity. Even at the height of the “behaviouralist revolution”, M.J.C. Vile had the foresight to argue that:

[t]he study of politics must, therefore, very largely consist of the ways in which constitutional and political institutions, and the social forces and movements in a particular society, interact with each other; of the limits upon the extent to which stable constitutional modes of behaviour can be developed and maintained; and the effects that they can have in moulding behaviour.⁵⁶

Recently federal scholars have related this theme of interaction to the study of intergovernmental relations and federalism. In *The Federal Condition in Canada*, Donald V. Smiley critiqued society-centered accounts of federalism by applying an institutionalist approach to the study of policy making and emphasizing the interactive nature of variables in a federal context.⁵⁷ Smiley’s views are echoed by others such as Alan Cairns and Richard Simeon who believe that the state is more than just a hollow

⁵⁴ Ibid., 738.

⁵⁵ Kenneth A. Shepsle, “Studying Institutions. Some Lessons from the Rational Choice Approach”, *Journal of Theoretical Politics*, 1 (2), 1989, 134.

⁵⁶ M.J.C. Vile, *Constitutionalism and the Separation of Powers* (Oxford: Clarendon Press, 1969), 314.

⁵⁷ D.V. Smiley, *The Federal Condition in Canada* (Toronto: McGraw-Hill Ryerson, 1987), chapter one. Earlier federal scholars such as William Riker portrayed federal structures as dependent variables that are shaped by other factors.

shell for the political games of groups and individuals.⁵⁸ “Institutions are not simply the outgrowth or products of the environment...and they are not just dependent variables in the political system.” argues Simeon. “They can also be seen as independent forces, which have some effects of their own; once established, they themselves come to shape and influence the environment.”⁵⁹ More importantly, institutions are also considered players in a larger interactive game rather than singular determinants of political change.⁶⁰ This emphasis on interactivity lends a crucial element of flexibility to institutionalist theory, making it more adaptable and applicable to a variety of cases.

While the interplay between institutions as both independent and dependent variables is evident in all polities, it is a particularly relevant feature of politics in transitional regimes such as the Russian Federation. Over the past decade, Russia’s federal institutional structure has undergone an almost constant process of adaptation and development. In many respects, institutions have become objects of contention, the focus of deliberate strategies by competing political actors to encourage a favourable transformation of the structural parameters that comprise the political system. At the same time, it seems that some institutional structures and processes have started to

⁵⁸ Richard Simeon, **Federal-Provincial Diplomacy. The making of recent policy in Canada** (Toronto: University of Toronto Press, 1972), 8. Also see: Alan C. Cairns, “The Governments and Societies of Canadian Federalism,” **Canadian Journal of Political Science**, 10 (December 1977)

⁵⁹ Richard Simeon, “Regionalism and Canadian Political Institutions,” in J. Peter Meekison, ed., **Canadian Federalism: Myth or Reality** (Toronto: Methuen, 1977), 292-304.

⁶⁰ Richard Simeon acknowledges that “[i]t seems clear that neither sociological nor institutional factors alone can account for the actual performance of political systems or for their policy-making processes. More likely there is a subtle interplay between three sets of factors: (a) broad social and cultural characteristics, (b) institutional and constitutional factors, and (c) the particular norms, attitudes, goals and perspectives of decision-makers and the particular demands and problems facing the system at a given time. Each level is logically independent, but each interacts with the others.” Op. Cit., Simeon (1972), 8. This opinion is also held by Ronald Watts who said that “[i]t is in the interplay and the interactions of the social foundations, the written constitutions and the actual practices and the activities of government that an understanding of the nature and effectiveness of the recent federal experiments is to be found.” See: Ronald Watts, **New Federations: Experiments in the Commonwealth** (London: 1966), 15.

influence politics in ways that may or may not have been originally envisioned by their “creators”. One of the main purposes of the present study will be to explore these aspects of the transition within the context of a wider study of the policy making process in post-Soviet Russia. Such a study will require a balanced analytical approach that is capable of treating institutions as objects as well as instigators of political change.

One of the consequences of this period of intense institutional construction is the proliferation of competing and contradictory laws. Throughout much of the post-Soviet period, a “war of laws” has raged between the federal government in Moscow and some of the more assertive regional governments.⁶¹ In a recent interview, the former Justice Minister and Prime Minister Sergei Stepashin revealed that one-third of approximately 16,000 regional laws examined by the Justice Ministry contradicted federal legislation.⁶² The dilemma posed by this problematic feature of the Russian federal system has been exacerbated by the emergence of other competing institutions; the most notable being the federal constitution and the bilateral treaties that have been signed between the federal government and various regions.

How does the institutional confusion present in the Russian federal structure affect the policy making process? What are the implications of institutional confusion for the reform process? How have the federal and regional governments attempted to cope with the problem of institutional confusion? In order to answer these questions, it is necessary to examine the interaction between political actors and institutions at the federal and regional levels of government.

Oil Politics and the Production Sharing Debate

This study will view the development of federalism, intergovernmental relations and the policy making process in Russia through the lens provided by the oil sector and, in particular, the debate taking place over the issue of production sharing agreements. There are a number of reasons for choosing this particular case study as a context for examining federalism and intergovernmental relations in the Russian Federation. The most obvious is that energy and natural resources policy is a matter of concurrent jurisdiction between the federal and regional governments. Since the mechanics of concurrent jurisdiction are unclear at this point in time, one would expect conflicts to arise between the federal government and the regions concerning questions of authority, cooperation, jurisdiction and conflict resolution and mediation. Preliminary research has indicated that such conflicts have occurred in the oil sector. This situation, however unfortunate for the parties involved, makes this case study an even more appropriate candidate for the study of the problems of Russian federalism.

The oil sector is a vast and complex network of different areas that touches on many aspects of federalism and the policy making process. As such, it can not only be employed as a means of analyzing how this policy process unfolds and how it affects and is affected by federal structures and processes. It can also serve as a “springboard” for examining the more general features of the federal system in post-Soviet Russia.⁶³ Many

⁶¹ Op. Cit., Stoner-Weiss (in White et al, 1997), 234.

⁶² RFE/RL *Newsline*, 20/01/1998.

⁶³ Op. Cit., Simeon (1972), 11. Simeon argues that “the case study method permits an intensive examination of the actual operation of the decision-making process. But it also has its dangers. Too often analysis is subordinated to exhaustive description; the unique takes precedence over the general. In this study, the cases are invaluable not in themselves but only as they serve as a springboard for analyzing the more general process of federal-provincial negotiation.”

analysts regard the oil industry as a key element in the overall strategy for economic recovery and reform in post-Soviet Russia. Oil is Russia's most important source of export revenue and a vital resource for domestic industrial production. The strategic importance of the oil industry and the value of natural resources involved make the oil sector a highly contentious and highly coveted policy area. There are many players in the high-stakes game of oil politics. Alliances are formed and broken, disputes arise and are mediated, ministries, regions, political factions and private actors cooperate and fight with one another for a share in this lucrative and politically powerful sector of the economy. All this activity suggests that a study of the oil sector and the legislation that affects this sector will reveal a great deal about federalism, intergovernmental relations and the changing political topography of post-Soviet Russia.

In spite of its wealth and position within the Russian economy, the oil sector has not been immune to the dramatic changes that have occurred since the collapse of Soviet Union. Like many other sectors of the economy, it faces economic stagnation brought about, in large part, by an acute investment crisis. As a result of political and legal instability and confusion, an arbitrary and punitive tax system and widespread corruption, both foreign and domestic investors have been reluctant to commit the large amounts of capital necessary to resurrect the oil sector's failing fortunes. Indeed, until the rights of investors are protected in a stable legal framework, it seems that the oil sector will continue to be starved of the financial resources it needs to act as an engine for the recovery of the Russian economy.

One of the most important developments in recent years has been the attempt to create a rational and efficient system of management for this key sector of the economy.

This process of rationalization has taken place on a number of different levels. The development and adoption of legislation such as the Law on Underground Resources and Law on Production Sharing Agreements have transformed the institutional structure at the federal level of government. Institutional reform has also occurred at the regional level where several oil-producing *sub'ekty* have been actively developing their own legislative frameworks for managing the oil industry on their respective territories.⁶⁴ Together, these laws represent an important part of the institutional construction process in the Russian Federation. As draft legislation they are objects of change. Once they are adopted, however, the laws become part of the structural framework that influences the political process.

The primary focus of this study is Russia's most recent attempt to establish an investor-friendly regulatory framework for the oil sector based on the concept of production sharing agreements. Production sharing seeks to encourage a greater degree of investment in the resources sector by replacing the current system of licensing with a system of production sharing agreements (PSAs) between the oil companies and the state. A PSA is a:

commercial contract between the government and those investors (foreign, Russian or both) who wish to develop an oil or mineral deposit. It binds the government most importantly with respect to applicable taxes, for the term set out in the agreement and determines how the production generated will be shared by the government and the investors and how the investors will recover their investment and costs.⁶⁵

⁶⁴ The term *sub'ekty* refers to the regions that belong to the Russian Federation. There are 89 in total: 21 republics, 49 oblasts, 6 krais, 10 autonomous okrugs, 2 federal cities (Moscow and St. Petersburg) and 1 autonomous oblast'.

⁶⁵ "Court Direct Investors," Moscow Times, 14/10/1998.

Under the production sharing system, the state receives revenue from set taxes levied on land-use and profits and a pre-determined share of the oil produced. Since the state, as represented by the federal and regional governments, and the investor negotiate the terms of production and profit sharing in advance, the oil companies avoid many of the arbitrary taxes and legal problems that have rendered their operations unprofitable in the past. Production sharing is not a new idea. It is a policy approach that has been employed in a number of other oil-producing countries. It is, however, a groundbreaking concept in Russia where the relationship between private investors and the state has always been a tenuous one at best.

In spite of the benefits attributed to production sharing, federal legislation on production sharing agreements has met with considerable opposition and delays in the federal parliament. It has elicited criticism from members of Communist and nationalist factions who are wary of any attempts to encourage private and foreign activity in such an important sector of the economy. The legislative process has also been delayed by interregional and intragovernmental conflicts in the State Duma and the Federation Council. Furthermore, the development of a national regulatory framework based on the concept of production sharing has been hampered by jurisdictional disputes between the federal and regional governments as well as contradictions between federal and regional legislation.⁶⁶

⁶⁶ This problem of legislative contradiction and overlap has been exacerbated by the confusion surrounding the idea of concurrency and the lack of effective conflict-resolution mechanisms. Indeed, the mechanics of concurrent management remain somewhat of an enigma, even to the most seasoned politicians and specialists. Cooperation and conflict-resolution do take place, but often on an ad hoc, unorganized basis and between high-level officials from the executive branches of the federal and regional governments. This approach often causes conflicts to arise by aggravating other cleavages within the political system.

The most active regions in terms of developing natural resource legislation have been the Republic of Tatarstan and the Khanty Mansiisk autonomous okrug, two of the largest oil-producing regions in the Russian Federation. Located about 800 kilometres east of Moscow in the Middle Volga region, Tatarstan has been an oil-producing region for over forty years. In the 1950s and 1960s, the republic was the Soviet Union's largest producer of crude oil. Even though its oil fields have been surpassed by new discoveries in other, more remote parts of the country, oil still plays an important political and economic role in the republic. Since the demise of the Soviet Union, revenues from oil production have fueled the political aspirations of the Tatarstani government, allowing it to reinforce and expand the economic and political autonomy of the republic within the federation.

The Khanty Mansiisk autonomous okrug in Western Siberia, is the home of some of Russia's richest oil deposits. The okrug has been a major oil producer since the 1960s and, like Tatarstan, still makes a significant contribution to Russia's oil sector. During the post-Soviet period, the okrug government has been anxious to retain a greater share of the revenues accrued from the sale of oil for the purpose of social and economic development in Khanty Mansiisk, as well as more control over the operation of the oil sector in the okrug. These goals, however, have been complicated by the okrug's ambiguous relationship with its "host region", Tiumen' oblast'.⁶⁷ During the Soviet period, the okrug was subordinate to Tiumen' oblast'. Although Khanty Mansiisk has since become an equal subject of the federation, autonomous from yet still located within

⁶⁷ The unusual situation of regions within other regions is known as "matreshka federalism". The relationship between the autonomous okrugs and their "host regions" resembles that between the smaller and larger dolls in a Russian nesting or matreshka doll.

the larger politico-territorial entity known as Tiumen' oblast, the oblast' government based in Tiumen proper or South Tiumen would like to maintain its traditional role as the centre of the region's oil industry. This is an aspiration that has met with considerable resistance from the okrug government.

Recently, Khanty Mansiisk and Tatarstan each adopted comprehensive laws on natural resource use and production sharing. In 1996, Khanty Mansiisk passed its Law on Natural Resource Use, a piece of legislation that harmonizes well with the federal Law on Production Sharing Agreements and other federal legislation on natural resources, but does not specify a role for the Tiumen' government in the okrug's oil sector. In contrast, Tatarstan's 1997 Law on Oil and Gas challenges federal laws and the principle of concurrency by underlining the dominance of the republican organs of state power over areas such as production sharing. How can we explain the differences between the tenor and direction of these two pieces of legislation? In addition to examining the geographical and historical factors that have affected the development of these regional legislative initiatives, this study will explore the institutional determinants behind the respective positions of Tatarstani and Khanty Mansiisk governments and the manner in which the structural features of Russian federalism have influenced the policy making process at the regional level.

Research Methods

I have based this study on a variety of empirical sources. The most important sources were transcripts from State Duma and the Federation Council sessions, federal committee hearings and regional government debates. As well as providing valuable

insights regarding the attitudes of politicians, individuals and the groups and political factions they represent toward the legislation in question, these proceedings also illuminated the actual dynamics of the legislative process.

A second crucial source was interviews. This method of inquiry was used to clarify and expand upon the data obtained from other sources. Interviews were conducted with as wide a circle of individuals as possible, including officials and legislators, at the regional and national levels, academics and oil sector analysts. While there was no uniform questionnaire or systematic, quantitative compiling of responses, every effort was made to gather insights on a similar range of issues and questions from officials and observers at both the federal and regional levels of government.⁶⁸

Primary sources such as parliamentary proceedings and interviews were used in conjunction with a number of secondary sources of information. For several years, I have followed the production sharing debate in the regional, national and international press. Although the Russian press cannot be classified as fully independent and impartial, it is still an important source on the attitudes and ideas that have surfaced on the production sharing issue. The press served as a particularly useful tool for gauging the opinions of a wide variety of national and regional actors toward the legislation on production sharing.

Given the topical nature of the production sharing debate and oil politics, one would expect to find a great deal written about these subjects in academic journals and other publications. During the past couple of years, several energy and natural resource industry publications have followed the production sharing debate. Some of these publications serve primarily as resources for companies doing business in Russia and,

therefore, are quite technical in nature. Others focus more on the political debates and issues that have arisen during the legislative process.

I have also made three research trips to the Russian Federation. In the spring of 1997, I spent three months in Moscow interviewing officials and studying legislation relating to the federal Law on Production Sharing Agreements. My second trip, in the fall of 1997, was spent in Kazan', the capital of Tatarstan, interviewing republican officials and examining the legislative history of the Law on Oil and Gas. In the spring of 1998, I traveled to the Khanty Mansiisk autonomous okrug to conduct research on that region's oil sector and the Law on Natural Resource Use.

Plan of Study

Charting the development and impact of federalism in the Russian Federation requires an analysis of the political process at both the federal and regional levels of government. This is especially true in the study of policy areas that fall under the concurrent jurisdiction of the federal and regional governments. The first part of this study will examine the legislative odyssey of the federal Law on Production Sharing Agreements. A particular focus will be the role and influence of the regions and their representatives in this process. Following an overview of the development of oil politics in the late Soviet and post-Soviet periods, chapter three will explore the passage of the Law on Production Sharing Agreements through the federal parliament in 1995. Chapter four will place the federal production sharing debate within a broader analytical context

⁶⁸ I conducted a total of 24 interviews in Russia: 8 in Moscow, 7 in Tatarstan and 9 in Khanty Mansiisk.

by relating the empirical evidence presented in chapter three to the structural and ideological cleavages that have dominated Russian politics in the post-Soviet period.

No study of federalism and the principle of concurrent management would be complete without considering the role that the regions have played in the process of federal construction. Part two of this study, therefore, will explore some of the regional initiatives on natural resource use and production sharing and the consequences of these laws for the stability of the federation and the future of reform in the oil sector. Chapters five and six will focus on the case of Tatarstan; in particular, the republic's evolving relationship with the federal government and its controversial stance on the issue of production sharing. Chapters seven and eight will examine the unique case of the Khanty Mansiisk autonomous okrug and its responses to the questions of oil sector reform and production sharing.

The last part of this study will position the Russian case within a broader comparative context, as well as attempt to distill some general conclusions about the interaction of oil politics and intergovernmental relations in the Russian Federation. Chapter nine will explore the impact of federalism and intergovernmental relations on the political process in Canada. Like Russia, Canada has had to come to terms with the problems of intergovernmental and interregional conflict over natural resources. Its experiences will hopefully illuminate the Russian case and provide some insights into Russia's resource future. Lastly, chapter ten will draw together the various conclusions reached in this study and provide some reflective insights into the future of federalism and intergovernmental relations in the Russian Federation.

Chapter Two

The Soviet and Russian Oil Sectors: Crisis and Reorganization

It could be said that the fate and the fortunes of the Soviet oil industry mirrored those of the empire it once served. Oil was initially discovered in Baku and throughout the Caucasus region in the early part of this century. Like the Soviet Union, however, oil production and the industry it spawned really only reached “superpower” status after the Second World War with the discovery of giant oil fields in the Volga region in the 1950s and in Western Siberia in the 1960s. The oil extracted from these regions was one of the factors that prolonged the Soviet Union’s global dominance throughout the economic and political stagnation of the Brezhnev era.

By the 1980s, it was apparent that the Soviet oil industry was undergoing a series of crises that threatened the future viability of the sector and of the Soviet economy as a whole. As early as 1977, a Central Intelligence Agency report estimated that oil production in the Soviet Union would peak at the end of that decade.¹ While the “peak” actually occurred in 1987, both western and Soviet analysts noted that the industry had already been in a state of decline for some time.²

¹ Prospects for Soviet Oil Production, **Central Intelligence Agency**, ER 77-10270, April 1977; and The International Energy Situation: Outlook to 1985, **Central Intelligence Agency**, ER 77-10240 U, April 1977.

² Robert Ebel, **Energy Choices in Russia** (Washington D.C.: The Center for Strategic and International Studies, 1994), 8-9. For an excellent account of the energy crisis in the Soviet Union see: Thane Gustafson, **Crisis Amid Plenty: The Politics of Soviet Energy Under Brezhnev and Gorbachev** (Princeton: Princeton University Press, 1989)

Although the volatility of international energy markets during the 1970s and 1980s had a significant impact on the health and stability of the oil industry in the Soviet Union, the production crisis was largely brought about by the dysfunctional behaviour of the central planning model. Ironically, the defining feature of an industry that had constituted the financial backbone of the Soviet empire during the post-war period was enormous levels of waste, caused in large part by methods of centralized planning that stressed over-production and inadequate and wasteful methods of exploration and recovery.³ The failure to find new deposits to replace exhausted sources of oil in the Volga-Urals region and Western Siberia in turn exacerbated the difficult situation faced by the Soviet authorities.

Consequently, like most other parts of the Soviet economy, the demise of the Soviet economic and political structure in the early 1990s merely accelerated the decline of the oil sector. While efforts at reorganizing this once highly centralized industry will have some positive long-term effects, production in the oil sector will probably continue to decline in the short-term. The road to recovery will be a long and arduous one. In the opinion of one industry analyst:

[n]o other producer in the history of the world oil industry has undergone such a transformation under circumstances dictated not by war or by the workings of the marketplace, but, rather, by the mismanagement of a superior natural resource base—now made more dramatic by the political changes surrounding this transformation⁴

In addition to the deficiencies of the previous system and the turmoil caused by the collapse of the Soviet Union, the decline in oil sector activity has also been the result of an

³ According to Ebel, domestic oil production in Russia has declined from a high of 11.4 million barrels/day in 1988 to 7.1 million barrels/day in 1993 (12.48 b/d to 8.1 b/d in the former Soviet Union as a whole during the same period). *Ibid.*, 13.

⁴ *Ibid.*, 14.

investment crisis. At the present time, billions of dollars of investment in exploration and recovery technology and other aspects of oil production are needed to guarantee the future health and stability of the industry. A major source of such investment is the private sector and, in particular, foreign and multinational corporations. The problem is that general uncertainty about the political and economic future of the country coupled with the legal and financial insecurity that currently exists in the oil sector has made Russia a risky venture for foreign investors. Whereas some foreign oil companies have formed joint-ventures with Russian partners, many are reluctant to make a long-term financial commitment because of political, economic and, most importantly, legal instability. The paradox here, of course, is that "Russia desperately needs, and claims it wants, foreign investment capital. At the same time, however, it is afraid of losing control of this important sector and the income upon which Russia has long depended. As a result, it has been slow in bringing about reforms to its tempestuous legal climate."⁵

This chapter will provide an overview of the developments that have influenced the oil sector during the past decade. Part one will look at the Soviet oil sector and the impact that the post-Soviet transition has had on the structural organization of the oil industry. The second part will examine the role of the nascent private sector and foreign corporations in this unfolding drama with a particular focus on regionally-based oil companies. Part three will outline the oil sector's emerging legislative structure and the response of the regions to the changes that have transpired.

⁵ Igor Kirman, "Foreign Investment in the Russian Oil Sector: the Elusive Distinction Between Law and Politics," *Parker School Journal of East European Law*, 2 (1995), 77. Some of the main deterrents to foreign investment are the absence of an appropriate and stable legal framework, a punitive tax structure and the difficulties associated with repatriating profits. These problems are outlined in greater detail in: James

The Structural Transformation of the Soviet Oil Sector

In order to understand and appreciate the magnitude of the transformation that has occurred over the past decade, it is necessary to stress the level of centralization that existed in the Russian oil sector prior to the Soviet collapse. Throughout most of the Soviet period, the oil sector was a centralized, state-controlled monopoly. The industry was organized according to a vertical chain of command and its functions and responsibilities were divided among a number of different central ministries.⁶ Despite the apparent unity of this system, the horizontal links between different ministries, were non-existent or, at best, underdeveloped.⁷ This often led to organizational problems and bottlenecks that limited the industry's capacity to operate in an effective and efficient manner.

Under this centralized system of administration, the regions had very little authority or control over the resources located in their territories. For the most part, their role was to implement decisions made by the Party structures and the government at the all-Union level.⁸ The extremely elaborate method of economic planning used by the Soviets enhanced the centralized nature of the system. As such, "[t]he branch basis for economic planning and management relegated the great majority of programs and plans for regional

Watson, "Foreign Investment in Russia: The Case of the Oil Industry," *Europe-Asia Studies*, 48:3 (1996), 429-455.

⁶ These included: the Ministry of the Oil Industry; the Ministry of Geology; the Ministry of Petroleum Refining; the Ministry of Construction for the Oil and Gas Industry; and the State Committee for the Supply of Petroleum Products.

⁷ Arild Moe and Valerii Kryukov, "Observations on the Reorganization of the Russian Oil Industry," *Post-Soviet Geography*, 35:2 (1994), 89.

⁸ Arild Moe and Valeriy A. Kryukov, "Joint Management of Oil and Gas Resources in Russia," *Post-Soviet Geography and Economics*, 39/7 (1998), 590.

development to sub-sections of industrial sector plans, and resources for such purposes were largely channeled through the [central] sectoral ministries.”⁹

Although many reform-minded officials in the late Soviet period perceived the deficiencies of the central planning model, the Soviet authorities rejected wholesale decentralization needed to render the system more effective.¹⁰ In the words of Arild Moe and Valeriy Kryukov, two veteran observers of the Soviet and Russian oil scene:

transferring the main levers of management of a territorial entity to the territory itself would entail the right to make decisions regarding land-use and mineral development, and consequently the share of the economic rent generated by the oil and gas sector. Thus, any real solution to the many regional problems and questions that existed would inevitably mean fundamental change in the economic as well as the political system. Not even a liberal Soviet regime – such as Gorbachev’s during the period of perestroika – was in any position to support such measures.¹¹

Whereas the central authorities essentially spurned the idea of drastic decentralization as a cure for the ills of the Soviet oil industry, a number of changes did take place in the organization of the resource sector as the Soviet period drew to a close. In late 1991, for example, the USSR Ministry of Oil and Gas¹² was transformed into the Rosneftgaz (Russian Oil and Gas) conglomerate. This entity subsequently claimed to be a central coordinating body for the oil and gas sector as a whole.

By 1993, however, the Russian oil sector was undergoing an even greater transformation. In an attempt to prepare the industry for privatization, the Russian

⁹ *Ibid.*, 590.

¹⁰ The problems of the central planning model have been discussed extensively by western scholars. See: Janos Kornai, *The Socialist System. The Political Economy of Communism* (Princeton: Princeton University Press, 1992); Ed A. Hewitt, *Reforming the Soviet Economy* (Washington, DC: The Brookings Institution, 1988); and Paul R. Gregory and Robert C. Stuart, *Soviet Economic Structure and Performance* (New York: Harper and Row, 1990)

¹¹ *Op. Cit.*, Moe and Kryukov (1998), 591.

government created a number of vertically integrated oil companies (VICs). The most familiar of these were LUKoil, YUKOS and Surgutneftegaz. Furthermore, Rosneftegaz was abolished, its place being taken by Rosneft' (Russian Oil), an entity designed to function as a holding company for the state's shares of the oil enterprises not controlled by the VICs.¹³ The VICs currently control the bulk of Russia's oil production outside of Rosneft's sphere of influence. By as early as 1993, for example, LUKoil, YUKOS and Surgutneftegaz alone were responsible for approximately one-third of the country's total oil production.¹⁴

A vertically integrated oil company, as the name suggests, is involved in the production, refining and distribution of petroleum resources. It is organized in much the same way as western multinational oil corporations like Royal Dutch Shell and British Petroleum.¹⁵ In spite of the fact that the federal government has retained a controlling share in most of these companies, the creation of VICs is supposed to be the first step on the way to a privatized oil industry. This end result, however, is by no means certain. Although the federal government was supposed to relinquish control over its shares in these companies, press reports and comments from people such as former prime minister Viktor Chernomyrdin suggest that the federal government is endeavouring to extend the state's tenure and scope of control over Rosneft'.¹⁶ Consequently, this goal has been aided by the economic uncertainty created by the financial collapse in August 1998.

¹² The USSR Ministry of Oil and Gas was created in 1989 when the then separate Ministries of Oil and of Gas were merged.

¹³ Op. Cit., Moe and Kryukov (1994), 90.

¹⁴ Op. Cit., Ebel (1994), 24.

¹⁵ International Energy Agency (IEA), "Energy Policies of the Russian Federation," (Paris: Organization for Economic Cooperation and Development (OECD), 1995), 95.

¹⁶ For example see: Denis Kirillov "Mintopenergo ne khochet teriat' kontrol' nad prepriatiami otrasli' (The Ministry of Fuel and Energy Does Not Want to Lose Control Over Developed Companies), *Finansovye*

The Emerging Fuel and Energy Complex

At the outset of the transitional period in post-Soviet Russia, there were some doubts about the political strength of the fuel and energy complex (FEC) in relation to other sectors of the Russian economy (namely the agrarian and military-industrial complexes).

As V.V. Razuvaev, a keen observer of the Soviet energy scene, explained:

[c]ontrary to the myths of our own and foreign political science and journalism, the political weight of the oil industry in no way matches its economic might. This has actually been true for several decades. "Developed socialism" was built at the cost of exporting crude oil to the West and selling it within the USSR at a fabulously cheap domestic price. The industry and the persons working in it did not receive due compensation in return. Moreover, the state prudently placed severe limitations on the industry's representation in the state and political organs of power.¹⁷

Whether the independent and quasi-independent energy conglomerates that have emerged since the collapse of the Soviet Union have managed to shed (or are in the process of shedding) the cloak of political emasculation described by Razuvaev is one of the key questions facing students of Russian energy sector. Razuvaev himself has suggested that "the importance of the major oil companies for the functioning of Russian politics must be given much higher consideration by political scientists than the actions of specific politicians, on whom the attention of Kremlinologists is presently focused."¹⁸ Razuvaev is correct to point out the need to focus on the increasingly influential role that oil producing companies such as the VICs and the regional oil producers are playing in the political life of the federation. As this study will demonstrate, though, it is also vitally

Izvestiia, 06/06/96, 2; and Denis Kirillov, "LUKoil opasetsia nacionalizatsiia" (LUKoil Afraid of Nationalization), *Finansovye Izvestiia*, 18/04/96, 1.

¹⁷ V.V. Razuvaev, "Nefianye kompanii v rossiiskoi politike (Oil Companies in Russian Politics)," *Kontavr*, #2/1995, 43.

¹⁸ *Ibid.*, 42

important to pay close attention to the actions of individual politicians, the activities of the lobby groups to which they belong and their relationships to the oil industry.

Among the acknowledged major players in contemporary Russian politics are a few strong corporate interest groups (in particular exporters led by the oil and gas industry), the major banks and a number of key political players. The privatization of the oil sector through the creation of VICs and other oil- producers, has enabled corporate interests, including the banking establishment, to strengthen their overall position within the national economy. In 1995, for example, 29 oil companies participated in the government's "shares for loans" scheme, in which blocks of government shares in the oil companies were auctioned off in return for loans. The auctions apparently touched off a storm of controversy because they were dominated by insider dealing.¹⁹ Nevertheless, banks such as ONEKSIMbank, which won a 51% share in Sidanco and Menatep bank, which won a 78% share in YUKOS, acquired vast new holdings, not to mention considerably more influence in Russian political circles.²⁰

Politicians, for their part, have also succeeded in carving out a niche for themselves in this new quasi-state, quasi-corporate world. Their skill in navigating through the legislative and institutional quagmire that often passes for a legal framework in post-Soviet Russia has made many state officials, at both the federal and regional levels, indispensable figures in the realm of political and economic management. For the most part, key economic controls are usually managed by ad hoc negotiation mechanisms between state officials at the national and regional levels and powerful private players.²¹

¹⁹ Daniel Treisman, "Russia's Energy Empire Under Strain," *Transition*, 03/05/1996, 7.

²⁰ *Ibid.*, 7.

²¹ "Former Soviet Union Watch," *Cambridge Energy Research Associates*, Autumn 1996, 7.

While the major oil companies and their banking partners have steadily strengthened their relationships with Russia's political elites, the cause of the FEC has also been openly championed by lobby groups and factions in the more established institutions of Russian government: the State Duma and the Federation Council. Groups such as the Union of Russian Oil Producers (UROP) and the Association for Mutual Economic Action (AMEA) are comprised of loose cohorts of deputies (in the case of the State Duma) and representatives (in the case of the Federation Council), usually from resource-producing regions. In many instances, these groups have close links to the more established factions in the lower and upper chambers. Such is the case with the UROP, a group headed by Vladimir Medvedev, a deputy from the oil-rich Khanty Mansiisk autonomous okrug in Western Siberia. For a period of time, Medvedev also headed the Russian Regions faction in the Duma, a group that represents many of Russia's disparate regions, but one that is mainly comprised of deputies from outlying resource producing regions.²²

It will become clear in later chapters that such representation is not limited to the FEC. Members of the Duma and the Federation Council also represent the interests of other "complexes", an example being the machine-building complex. Some observers have suggested that the efforts of the FEC lobby (in relation to other lobbies) have been hampered by a number of factors. Among these are: a lack of political experience (what Razuvaev would refer to as a legacy of the political emasculation of the Soviet period), the inability of the oil industry to forge strong alliances with radical reformers and the problems that some VICs have experienced with regional authorities.

²² *Dumskii Vestnik*, #6 (21), 1996.

In many respects, the oil companies are in a strange position. As privatized companies (or at least quasi-privatized companies), they are treated with caution by Communist and nationalist politicians who feel that the oil sector should be state-controlled and owned. On the other hand, oil producers have not always been supportive of the economic plans of the reformers in the Russian government; an attitude that brands them as conservatives in the eyes of those who support market reforms.²³ To add to this, “although vertically integrated companies are oriented in principle toward cooperation with regional authorities, it is instructive that in some instances open conflict has ensued.”²⁴ Therefore, in spite of the progress the FEC and, in particular, the VICs have made in terms of strengthening their political influence, their position within the political system is by no means immune to the changing circumstances and confusion that characterize federal and regional politics in post-Soviet Russia.

When discussing the FEC in Russia, it is important not to overlook the role played by the regional authorities. As one recent study has observed: “In the new Russia... control over energy resources is playing an important role in the realignment of power taking place within the emerging federal structure of the country.”²⁵ In the drive for regional autonomy, a number of resource producing regions have “created” their own regional oil companies. Examples range from the well-established Tatneft’ company in Tatarstan, the 4th largest oil producer and the largest non-vertically integrated oil company in Russia, to the relatively new Tiumen’ Oil Company based in Tiumen’ and Khanty-Mansiisk. The regional governments formed these companies with the intention of providing their regions

²³ Op. Cit., Razuvaev (1995), 47.

²⁴ Ibid., 48.

²⁵ Op. Cit., Moe and Kryukov (1998), 590.

with more autonomy in the form of a secure supply of oil and extra tax revenue for the regional budget.²⁶ It should be noted, however, that the ability of the regional companies to accomplish these goals is often limited by the fact that they lack vertical integration (i.e. they are comprised of a refinery without a production association or vice versa). Moreover, many of these companies face the same type of financial crisis as other “national” companies (as a result of non-payments and indebtedness).²⁷

In addition to domestic concerns, foreign companies have also taken an interest in the Russian oil sector in recent years. Indeed, foreign corporations are recognized as one of the keys to the successful recovery of the Russian oil sector.²⁸ As many analysts have pointed out, only foreign companies have the financial muscle to provide the level and type of investment and expertise needed at this crucial point in the reform period. Until recently, though, foreign corporations have been reluctant to make significant long-term investments because of Russia’s poor investment climate. This situation began to change in 1995 when legislation on production sharing agreements was introduced in the federal parliament. As a method of organizing and managing the oil sector, production sharing has the potential to provide the type of legal and financial stability that is necessary if Russia is going to encourage significant, long-term, foreign investment.

²⁶ John Webb, “Pragmatic Reformers Win Most Regional Russian Elections, Posing New Challenge for Yeltsin,” *Cambridge Energy Research Associates: Decision Brief*, March 1997, 10. Politicians in Western Siberian resource producing regions were angry about the decision of many Russian VICs to locate their headquarters in Moscow. This meant a loss of important tax revenue for them, since the VICs would have to pay their taxes to the Moscow municipal government instead.

²⁷ *Ibid.*, 11.

²⁸ *Op. Cit.*, Watson (1996), 429.

The Battle for Legislative and Political Supremacy in the Oil Sector

The struggle for legislative supremacy in the Russian oil sector has taken place on a number of different levels and settings. In general terms, this battle can be divided into two parts, neither of which is mutually or temporally exclusive. The first involves a set of conflicts surrounding the Law on Underground Resources before, during and after the introduction of legislation on production sharing agreements. The second deals with the role and position of the regions (including resource and non-resource regions) within the legislative politics of the oil sector. The purpose of this section is to provide an introduction to the issues that underlie these conflicts in order that they can be explored in greater detail in subsequent chapters.

Licensing and Production Sharing: An Uneasy Coexistence. An analysis of the policy making and legislative processes in the oil sector will shed some light on the alliances and divisions that have emerged between government bodies, private and quasi-private actors and the regions. Although this study focuses primarily on the issue of production sharing and the Law on Production Sharing Agreements (Law on PSAs), the legislative framework governing the natural resources sector is a far more complicated collection of laws and regulations. One of the problems that has emerged as a result of new legislation on natural resources is that of different (and, in many respects, contradictory) legal regimes coexisting, often uneasily, in the same jurisdictional space. Such is the case with the two competing legal regimes outlined by the Law on PSAs and the Law on Underground Resources.²⁹ Aside from creating an environment of legal confusion and financial doubt

²⁹ The Law on Underground Resources is also known as the Law on the Subsoil

among investors, the conflicting provisions and goals of these two pieces of legislation have exacerbated divisions between politicians, government officials and the private sector.

Prior to the adoption of the Law on PSAs, the Law on Underground Resources, a legal framework that was first passed in 1992 but amended as recently as 1995, was the main legislative foundation of the oil sector. Originally intended as a general framework for more specific legislation, the Law on Underground Resources retained its central position as a piece of regulating legislation for the oil industry until the passage of production sharing legislation in December 1995 challenged its supremacy.

The Law on Underground Resources sets out the conditions for natural resource production and ownership rights, primarily through a system of licensing and joint-ventures.³⁰ Under a licensing system, areas or deposits suitable for licensing are selected and an auction or competition is chosen as the basis for determining the recipient of the license. In theory, this licensing system was supposed to fall under the concurrent jurisdiction of the federal and regional governments.³¹ The nebulous character of the concept of concurrent jurisdiction, both as a general principle and as a particular feature of this law, however, has hampered the process of licensing, thus rendering the law ineffective and contradictory. On the one hand, the law reinforces the joint control of the federal and regional governments over resources and the licensing of projects. On the

³⁰ The law does refer to production sharing as a method of producing resources, but concentrates mainly on laying the legislative framework for a licensing regime.

³¹ James Watson, "Foreign Investment in Russia: The Case of the Oil Industry," *Europe-Asia Studies*, 48/3 (1996), 434-5. In his article on Russian oil legislation, Kaj Hober mentions that licenses were supposed to be issued jointly by Roskomnedra and the legislative authorities of the territory in which the petroleum operations are to be conducted. See: Kaj Hober, "Russian Oil Legislation: An Overview," *Parker School Journal of East European Law*, 2:4-5 (1995), 452.

other hand, it also includes a clause that gives the law precedence over any contradictory law of the constituent territories.³² In any event, “although the law seems to unambiguously grant supremacy to federal authority when it conflicts with regional laws, in reality the balance of power is quite indeterminate. For example, neither the law nor any of the supplemental regulations give a clear statement of the input that regional authorities are supposed to have in the licensing procedure.”³³

In 1995, the unorthodox passage through the parliament of amendments to the Law on Underground Resources questioned its legal stability. After the State Duma adopted the amendments on February 8, 1995, the Federation Council missed its two-week deadline to consider the bill. The legislation then went straight to President El'tsin, who signed it into law on March 3, 1995. The problem was that article 106 of the Constitution states that all tax legislation must be considered and approved by the Federation Council. Since this requirement was not met, the constitutionality of the tax-related amendments has been cast into doubt.³⁴

Aside from muddying the jurisdictional waters between the federal and regional governments and having a somewhat dubious legislative foundation, the Law on Underground Resources has also generated a certain amount of political conflict between rival federal bodies. Following the passage of the law, the Ministry of Fuel and Energy (Mintopenergo) and the Committee for Underground Resources (Roskomnedra), and their respective political allies engaged in a heated jurisdictional dispute over control of the licensing system outlined in the Law on Underground Resources. The State Duma in turn

³² Op. Cit., Kirman (1995), 92.

³³ Ibid., 92-3.

³⁴ Op. Cit., Hober (1995), 454.

fuelled this conflict when it defied the wishes of Mintopenergo and put Roskomnedra in charge of the federal licensing scheme.³⁵ This controversial decision may have been the legislature's way of showing its disapproval of Mintopenergo's relationship to the executive branch of government. Given Roskomnedra's close relationship to the regions, it also could have served as a means for strengthening regional authority and rights in the natural resources sector.

The conflict between Roskomnedra and Mintopenergo became even more acute after the introduction of draft legislation on production sharing. The production sharing system is in direct competition with the licensing system outlined by the Law on Underground Resources and, as such, Roskomnedra saw the Law on PSAs as a threat to its position and authority within the oil sector. Consequently, during the course of the production sharing debate, Roskomnedra officials criticized the production sharing legislation and its supporters in an attempt to defend their legislative territory from a rival system of resource management.

The main difference between the Law on Underground Resources and the Law on PSAs is that former is an administrative law (based on public law) while the latter is based on civil law. As an administrative law, the Law on Underground Resources entrenches the legal superiority of the state in relation to the investor. This feature makes the law particularly appealing to conservatives who, generally speaking, oppose the idea of contractual relations between the state and the private sector and are wary of private sector involvement in the economy.

³⁵ Op. Cit., Kirman (1995), 93-4.

The Law on PSAs, on the other hand, treats the state and investors as equals and, as such, has more appeal to reformist elements in the parliament, certain parts of the domestic fuel and energy complex and foreign companies wanting to invest in the Russian oil sector.³⁶ Another important difference between the two laws is their respective tax provisions. The system outlined in the Law on Underground Resources is based on set taxes and negotiated taxes. Many industry analysts have criticized this particular feature of the law because it provides a disincentive to investors. Tax levels and rates, as well as the actual number of taxes levied on producing firms are subject to arbitrary change by the state.³⁷ Opponents of the law argue that even the state loses out because the unstable nature of the law's tax system often encourages wide fluctuations in the level of taxation. In some instances this leads to undertaxation, in others, overtaxation.

Proponents of production sharing argue that the Law on PSAs offers a better alternative; fewer and more stable taxes for the investor and increased, stable revenue for the state.³⁸ According to a 1997 survey of the Russian oil and gas industry, there were still more than 30 separate taxes and fees levied on oil and gas companies under the system outlined in the Law on Underground Resources. While some of these taxes had been reduced as a result of political pressure from oil companies, others were raised to compensate. The fact that both the federal and regional governments have been active in terms of creating new taxes has complicated this taxation dilemma even further.³⁹

For many, however, production sharing represents a radical departure from existing resource management and taxation practices. In addition to paving the way for greater

³⁶ Interview, Moscow, April 1997.

³⁷ Ibid.

³⁸ Ibid.

foreign investment in the Russian oil sector, which in itself is a source of conflict, the PSA legislation courted controversy by advocating a streamlined system of taxation. Whereas this new system would benefit the resource-producing regions through increased investment, many resource-consuming regions were concerned about how the taxation changes proposed by the PSA law would affect federal revenues and systems of intergovernmental subsidization and equalization. Since the majority of Russia's regions at this time depended on federal subsidies, many were afraid to support changes in the existing, albeit dysfunctional, system, for fear that they would actually find themselves in a worse position.

The Law on PSAs' basis in the civil law tradition makes it attractive to oil companies, investors and the resource producing regions that need investment. There are, however, some legal problems connected with civil-based legislation that may deter regional support for production sharing. The most important legal problem from the standpoint of the regions is that according to the federal constitution, civil and civil-procedural legislation falls within the sole jurisdiction of the federal government.⁴⁰ This small but significant point counteracts the idea that the resource producing regions should have the right to enact their own laws on production sharing under the principle of concurrent management. As one industry analyst has noted:

[t]here are no doubts about the expediency and usefulness of legislative regulation by the subjects of the Russian Federation of questions regarding their participation in PSAs. However, what is extraordinarily important is that such regulation of questions of participation must be put into effect within the limits of authority set up by the constitution of the Russian Federation and by federal laws (point 4, article 2 of the law on PSAs)⁴¹

³⁹ "Survey of Russian Oil and Gas Industries," Cambridge Energy Research Associates, 31/01/1997, 28.

⁴⁰ Stat'ia 71 (o), Konstitutsiia Rossiiskoi Federatsii (Moskva: INFRA, 1997).

⁴¹ Anatolii Averkin, *Neft' i Kapital*, 11/1996, 17.

Since the adoption of the Law on PSAs in December 1995, the two regimes have nervously co-existed. The confusion over which law takes precedence is evident in the first two articles in the Law on PSAs. Article 1.4 declares that the rules of the law will prevail if there are other laws with conflicting rules. Article 2.2, however, states that production sharing agreements must not conflict with the Law on Underground Resources.⁴² This is an example of the type of confusion that prompted one observer of the Russian oil sector to comment:

[o]n the whole, it would seem difficult to reconcile a system of licenses with production sharing agreements. The two concepts are really incompatible. To use them together will, in all likelihood, create confusion and serve as a ground for potential conflicts...production sharing agreements create clearly recognizable rights of a contractual nature which are not subject to unilateral change. The system of licenses, on the other hand, presupposes the existence of state authority in the granting of licenses.⁴³

The response of supporters of production sharing to this problem of jurisdictional confusion has been mixed. Whereas organizations such as the Petroleum Advisory Forum have lobbied for the abolition of the licensing system outlined in the Law on Underground Resources, people such as Andrei Konoplianiuk, the head of the team that authored the production sharing legislation have adopted a gradualist approach. Since oil companies tend to favour the concept of production sharing over licensing, Konoplianiuk believes that the licensing system and the authority of the Law on Underground Resources will gradually wither away over time.⁴⁴

⁴² "Lesser Evil," *Russian Petroleum Investor*, February 1996, 21.

⁴³ *Op. Cit.*, Hober (1995), 456.

⁴⁴ *Op. Cit.*, Interview, Moscow, April 1997.

Regional Legislation and the Production Sharing Debate. The problems of legislative conflict in the Russian oil sector are not confined to the battle between the Law on Underground Resources and the Law on PSAs and their respective supporters. A number of issues relating to the regional question also influence the debate over who controls the country's oil resources. Two issues that have probably done the most to shape the debate are the plethora of regional legislation on natural resource management and the differences between resource producing regions and non-resource regions.⁴⁵

Shortly after the collapse of the Soviet Union, several resource producing regions in the Russian Federation sought to strengthen their control over the natural resources located on their respective territories by adopting legislation on resource management and use. Some of these laws actually predated the federal Law on Underground Resources which was first adopted on February 21, 1992.⁴⁶ As well as having important symbolic value, a number of these regional laws also challenge the superiority of federal resource legislation, thereby causing conflicts to arise between the federal and regional governments. The fact that natural resources such as oil fall under the concurrent jurisdiction of the federal and regional governments in the Russian constitution has not helped this situation. Given the importance of natural resources to the regions that produce them and the national economy as a whole, this would, in theory, seem to be a very fair way of allocating responsibility. In

⁴⁵ Generally speaking, resource regions are sparsely populated and less industrialized than their non-resource producing counterparts (with some notable exceptions, of course)

⁴⁶ For example: the "Law on Underground Resources" of the Komi Republic (passed on February 12, 1992) and the Udmurt Republic (passed on February 13, 1992).

reality, though, the ill-defined principle of concurrency has caused a number of conflicts to arise between the federal government and the regions in the resource sector.⁴⁷

In some respects, this situation may be changing. Federal politicians who insist (as does the federal constitution) that federal laws should prevail over regional legislation also realize that “the locally based power of the constituent parts [the regions] is such that the federal government would have difficulty imposing its will without the cooperation of the regional and local authorities.”⁴⁸ Over the past few years, an increasing number of intergovernmental agreements concerning natural resource use have been signed between federal and regional authorities. The question of natural resource use has often been one of the main foci of the negotiation process for bilateral treaties that have been signed between the federal government and some of the more assertive regions. Nevertheless, as the second part of this study will demonstrate, there are wide discrepancies between regions on this matter. Some regions, such as Khanty Mansiisk, have adopted natural resource legislation that seeks to comply with existing federal law. Other regions, however, have passed laws that challenge federal legislation, thus contributing to the sense of jurisdictional and legal confusion that exists in the Russian oil sector.

Often, there is a tendency to forget that the politics of oil or natural resources involves more interests than just the federal government and the resource producing regions. After all, there is the very plausible argument that natural resources belong to the whole nation and not just the federal authorities or the regions in which the resources are

⁴⁷ The same is true of other resource-producing federations such as Canada. Overlapping federal and provincial jurisdictions in an area of *de facto* concurrency caused a protracted series of intergovernmental disputes over natural resources in the 1970s and early 1980s.

⁴⁸ Alexander Barmin and Doran Doeh, “The Legal Framework for Foreign Investment in the Russian Petroleum Industry: Problems and Progress,” *Petroleum Economist*, Volume 61, #9, September 1994, 2.

located. This is essentially the position of the non-resource or resource-consuming regions. And, since these regions constitute a majority of the 89 subjects of the federation, it is an argument that carries a lot of weight in the debate over oil.

The strained relationship between the resource-consuming regions and the resource-producing regions has its basis in the Soviet period. During Soviet times, natural resources in sparsely populated areas were routinely plundered to fuel industrialization in the more developed parts of the country. For the most part this process followed an east-west axis. Minerals, oil, gas, timber and other natural resources were taken from outlying regions in the East and shipped to the industrial heartlands of Western and Central Russia. Not only were many of the resource regions forcibly “plundered” for the greater good of the Soviet state. They were often left with the horrendous environmental consequences of rapid and indiscriminate resource removal.

In the post-Soviet period, the resource regions have begun to assert their rights over what they argue are “their” natural resources in an effort to redress past economic and environmental sins. As donors to the federal budget and suppliers of low-priced fuel, regions such as Khanty Mansiisk are angry that they are continuing to subsidize other regions; in particular the depressed industrial regions that benefited at their expense in the past.⁴⁹ They argue that more of the wealth generated from natural resource exports and domestic sales should stay in the regions where the resources are produced in order to fund infrastructure development, environmental renewal and clean-up, and socio-economic reform.⁵⁰

⁴⁹ In 1996, several resource regions were among the 14 donor regions (regions that sent more tax revenue to the federal government than they received in return). *Op. Cit.*, Webb (CERA 1997), 10.

⁵⁰ The same issues arose in Canada in the 1970s and will be examined in greater detail in chapter nine.

For the inhabitants of the resource-consuming regions, who were brought up on the notion that Russia's natural resource wealth belongs to the whole nation, the demands of the resource regions seem selfish. The resource-consuming regions are worried that any changes to the present system of subsidization or resource allocation will have disastrous effects on their already crippled economies. For example, in 1995, many resource-consuming regions and their representatives in the federal parliament opposed the draft Law on PSAs because they feared the production sharing system would reduce the amount of revenue flowing into the federal budget and allow resource-producing regions and oil companies to keep more of the revenues from the sale of resources. They were also concerned that the domestic machine building industry would suffer in the face of foreign competition. These and other issues raised by the non-resource regions will be examined in greater detail in following two chapters. What is important to note at this stage is that the regions are by no means united on the question of how to manage the resource sector. As the next chapter will demonstrate, these divisions would have an enormous impact on the progress of natural resource legislation such as the draft Law on PSAs.

PART TWO: THE FEDERAL PRODUCTION SHARING DEBATE

Chapter Three

The Legislative Evolution of the Law on Production Sharing Agreements¹

Choosing a Draft

The present Law on Production Sharing Agreements (Law on PSAs) began its legislative journey as a presidential decree issued in December 1993 by President El'tsin.² Supporters of production sharing maintain that the decree "On Matters Pertaining to Production Sharing Agreements in the Use of Underground Resources" constituted an important first step on the road to a working production sharing regime in the Russian Federation. The decree not only placed the issue of production sharing firmly on the legislative agenda of the federal and regional governments. It also provided the basic legal framework for later drafts of a federal production sharing law.

As is the case with most legislative initiatives in the Russian Federation, the decree did not pass through the corridors of power unchallenged and bereft of controversy. First, the constitutional status of the decree was uncertain. Parliament did

¹ Federal'nyi zakon. "O soglasheniyakh o razdele produktsii" (On Production Sharing Agreements), *Sobranie zakonodatel'stva Rossiiskoi Federatsii*, #1, st. 18, 01/01/96, 154-167.

² Ukaz Prezidenta Rossiiskoi Federatsii No. 2285 "O voprosy soglashenii o razdele produktsii pri pol'zovanii nedrami" (On Production Sharing Agreements for the Use of the Subsoil), 24/12/1993, *Rossiiskaia gazeta*, 10/01/1994.

not approve the decree and at the time, Russian law required such approval.³ Second, the decree conflicted with several existing federal laws, including the Law on Underground Resources and various pieces of tax legislation. The Russian constitution states that the President cannot issue decrees that violate or contradict existing legislation.⁴

The most obvious source of controversy was the decree's provisions on executive control over the production sharing process. Article two of the decree stated that all agreements shall be signed by:

The state – the Russian Federation in the form of the Government of the Russian Federation and the organs of executive power of the subject of the Russian Federation in which the resources are located, or the representatives of these organs.⁵

Article six reinforced the idea of executive control by stipulating that:

The allocation of the shares of the mineral resources (or their value equivalent) received by the state as a result of production sharing, is fulfilled on the basis of a special treaty, not included in the agreement, between the organs of executive power of the Russian Federation and the organs of executive power of the subjects of the Russian Federation.⁶

Together, these two articles provided a legislative basis for executive federalism in the negotiation and regulation of production sharing agreements. Needless to say, this arrangement provoked a critical response from supporters of the legislative branch. The articles also entrenched the position of the resource producing regions in the production sharing process. As this chapter will demonstrate, both of these controversial issues –

³ Kaj Hober, "Russian Oil Legislation: An Overview," *Parker School Journal of East European Law*, 2/4-5 (1995), 456.

⁴ *Ibid.*, 456.

executive federalism and the role of the resource producing regions – would be revisited on numerous occasions as the later versions of the production sharing legislation passed through the parliamentary apparatus.

From a Decree to a Law

One of the realities of Russian legislative practice is that decrees carry less legal weight than laws. The Presidential decree was an important step, but it did not provide the necessary legal framework or political consensus required for a working production sharing regime. Both domestic and foreign supporters of production sharing in Russia agreed that in order to make production sharing a reality, a comprehensive piece of legislation would have to be drawn up and approved by both the legislative and executive branches of the federal government. Shortly after Decree #2285 was issued, therefore, the difficult task of developing a draft production sharing law began.

By early 1995, two versions of a draft law were ready to be presented to the State Duma. The first version (henceforth the Presidential version) had been prepared by an intergovernmental commission under the direction of R.G. Orekhov, the official representative of the President of the Russian Federation and the head of the State Legal Commission. In his opening speech to the Duma, Orekhov emphasized the importance of this legislation for the Russian economy, focusing specifically on the problems of attracting investment under the present system. The Presidential draft, which incidentally had the same title as the earlier Presidential Decree, outlined a system whereby the state would establish a list of deposits that could be produced under

⁵ Op. Cit., Ukaz No. 2285.

conditions of production sharing. Once the list had been ratified, the investors would bid on the deposits and the winners of this competitive bidding process would conclude a production sharing agreement with the government.⁷

An alternative project to the Presidential draft was prepared by the Duma Committee for Economic Policy (henceforth the “Duma version”). Simply entitled “On production sharing agreements”, this draft had been produced by an interdepartmental working group that included officials from the Ministry of Fuel and Energy and the Duma Committee for Economic Policy. Two of the most prominent and influential members of the latter body were Aleksei Mel’nikov, a Duma deputy from the IaBLoko faction and Andrei Konoplianik, an advisor to Mintopenergo and a former Deputy Minister of Fuel and Energy.

In his speech to the Duma, Mel’nikov tried to convince the more skeptical members of the chamber of the merits of the Duma version by outlining how it would benefit many different sectors of the national economy. He appealed specifically to the opponents of production sharing (i.e. Communists, nationalists, deputies from resource-consuming regions), arguing that this version of the draft law would benefit the domestic economy in a number of different ways. In addition to increasing government revenue and reducing Russia’s dependence on international creditors, the measures outlined in the Duma draft would pull the country out of its economic crisis and attract much needed technology to the oil and gas industries and related sectors of the economy.⁸

⁶ Ibid.

⁷ Stenogramma zasedanii, Biulleten’ No. 89 (24/02/1995), Federal’noe Sobranie - Parlament RF, Gosudarstvennaia Duma (Moskva: Izdanie Gosudarstvennoi Dumy), 42.

⁸ Ibid., 42.

In the second part of his presentation, Mel'nikov turned his attention to what he felt were the shortcomings of the Presidential version. According to Mel'nikov, the main problem with the existing system of resource management was that high, arbitrary and constantly changing levels of taxation had dissuaded much needed investment. The Duma version intended to solve this problem by replacing the present system with a royalty tax or tax on the right to use natural resources and a tax on profits. In other words, the company or companies that signed the PSA would produce the resources, pay for the right to use the resources, share profit production with the state and from their share of the profits, pay a tax on profits. Moreover, all of this work would be carried out by the companies involved, at their risk and at their expense.⁹ In return, the state would ensure that the conditions of the agreement remained fixed for the whole term of the agreement. In Mel'nikov's opinion, the Presidential version of the draft merely modified the existing taxation system. "And with such a tax approach," he argued, "I'm sorry, but no investment, in my view, could possibly be expected."¹⁰

Mel'nikov continued his attack by playing on the fears of nationalist and regionalist deputies. He asserted that while the Duma version was designed to encourage both foreign *and* domestic investment, the Presidential draft was unclear on this matter. This is significant because the mere suggestion that the Presidential draft may favour foreign over domestic investors could have been enough to sway the opinion of even the most liberal nationalist in favour of the Duma variant.

⁹ Vladimir San'ko, "Borba za eshche nedobytuio nefi' (The Battle for Still More Unproduced Oil)," *Nezavisimaya gazeta*, 03/10/1996, 4.

¹⁰ *Op. Cit.*, *Stenogramma zasedanii* (24/02/1995), 43.

Another important difference between the two drafts was the level of regional control over the negotiation and implementation of the production sharing agreements. The draft prepared by the Mel'nikov team made the regions a party to the agreements, thus giving them greater authority. The Presidential draft, on the other hand, centralized authority by giving the regions a mainly ceremonial role.¹¹ Mel'nikov also explained that the Duma project was the result of three months of extensive consultations with the regions. During this time, the committee considered approximately 200 suggestions with over 100 of these coming from the regions themselves. Meetings had also taken place between the authors of the draft and the representatives of a number of regional governments, including Sakhalin oblast' where the Sakhalin 1 and 2 production sharing projects were already in operation.¹² The Presidential version, asserted Mel'nikov, did not adequately incorporate the remarks of the subjects of the federation or the Duma committees.

Despite criticism that the Duma draft had essentially been written by IaBLoko deputies rather than an interdepartmental working group, the Duma voted on the two drafts on February 24th and chose the Duma version over its Presidential counterpart. In the same session, the deputies overwhelmingly approved the chosen draft on first reading.¹³ It should be emphasized that the first reading of any law in the Duma is a relatively straightforward process. At this stage, the Duma is only required to approve the general intention of a draft law. Consequently, "it is only at the second reading, after

¹¹ Op. Cit., Hober (1995), 467.

¹² Op. Cit., Stenogramma zasedanii (24/02/1995), 44.

¹³ Dnevnik zasedanii Gosudarstvennoi Dumy (24/02/95), Federal'noe Sobranie - Parlament RF (Moskva: Izdanie Gosudarstvennoi Dumy, 1995), 36. Two hundred and fifty four deputies voted in favour of the draft law on its first reading in the Duma. Sixteen voted against and 5 abstained.

several government committees have added their suggestions for re-working, that the process becomes more complicated. The second reading involves a detailed discussion of each of the points raised.”¹⁴

The success of the Duma version could be attributed to a number of factors ranging from the content of the law to the fact that it was the result of consultations with a wide-ranging group of officials and politicians at the federal and regional levels. One could also acknowledge Aleksei Mel’nikov’s skillful presentation of the draft to the Duma deputies. According to one official, the main concern of the team that prepared the Duma draft was to find a balance of interests not only within the state (i.e. between federal, regional and local interests) but also between the state and investors (both foreign and domestic). In the period leading up to the first Duma debate, the team spent a considerable amount of time preparing drafts, sending them to the regions and other parties, receiving suggestions and trying to incorporate these suggestions into a revised draft.¹⁵ Having said all this, the fact remains that many Duma deputies probably supported this particular version of the law because it was the alternative to the draft compiled by members of the Presidential apparatus. Such actions would be consistent with the long-standing conflict between the executive and legislative branches of power in Russia.

¹⁴ Jane Upperton, “Russian Oil Law: Concerns Remain,” *Platt’s Oilgram News*, 17/06/1994, Volume 72, #117, 4.

¹⁵ Interview, Moscow, April 1997.

The Duma Debates

The draft Law “On Production Sharing Agreements” was brought before the Duma for its second reading on June 9th, 1995. In the 3 months since the draft had been chosen by the Duma, the Committee for Economic Policy worked “feverishly” on the legislation, considering almost 200 amendments to the law. Other committees such as the Committee for Industry and the Committee for Natural Resources also reviewed the legislation. In his presentation to the Duma on June 9th, Aleksei Mel’nikov acknowledged the constructive criticism of these committees, adding that “although a large number of the amendments put forth by the Committee for Natural Resources did not find support, nevertheless, this criticism was very useful.”¹⁶ More importantly, Mel’nikov also mentioned the input provided by the representatives of the Khanty-Mansiisk autonomous okrug and Sakhalin oblast’ in the latter stages of the consultation process. Later he stressed that because natural resources fall into an area of concurrent jurisdiction between the federation and the *sub’ekty*, all amendments introduced by the *sub’ekty* were thoroughly studied and a number were introduced into the draft law.

The demands of the regions, however, were not the only ones to be considered during the consultation process. Despite the overwhelming support that the draft law received in its first reading, the authors were aware of the reservations held by many groups in the Duma. In an effort to address the concerns of the Communist and nationalist factions in the Duma, the committee introduced amendments that strengthened the role of the state in the production sharing process.¹⁷ Steps were also

¹⁶ Stenogramma zasedanii, Biulleten’ No. 109 (09/06/1995) Federal’noe Sobranie - Parlament RF, Gosudarstvennaia Duma (Moskva: Izdanie Gosudarstvennoi Dumy), 31.

¹⁷ For example, allowing the state to monitor the accounts of investors. Ibid., 32.

taken to protect the interests of Russian oil and gas equipment manufacturers, many of which are located in non-natural resource producing regions. One of the primary concerns of these regions was that the domestic machine-building industry would not benefit from production sharing because foreign investors would be able to import their own equipment.¹⁸

Although many of the amendments introduced by the Committee for Economic Policy were intended to dispel the fears of some of the more skeptical members of the Duma, the draft was defeated in its second reading on June 9th. This defeat forced the authors back to the negotiating table with the prospect of having to amend the draft once again. Over the next few days, the committee made more changes to the law; changes that, in the opinion of Aleksei Mel'nikov, served to strengthen the interests and influence of the state in the production sharing process even further. Once again Mel'nikov made an impassioned plea to the law's skeptics:

I would like to say a couple of words about the importance of this law. First of all, it is important for the natural resources regions of Russia; this is first. But, it is no less important for the industrial regions of Russia. In particular, I gave the Communist Party of the Russian Federation faction a concrete list of enterprises and types of equipment which will be produced for these [PSA] projects. Any deputy who aches for the soul of our economy may look at this list and see the changes that can take place in our machine-building industry, where a colossal recession and a colossal decrease in the volume of production is [currently] taking place.¹⁹

Mel'nikov reminded the deputies that the draft had been thoroughly prepared and had the input and support of the oil and gas regions of Russia, as well as a series of multi-party Duma committees. This latest series of amendments, coupled with the appeals of

¹⁸ Ibid., 32.

the draft's supporters seems to have placated some of the traditional opponents of foreign investment in the natural resource sector. The Duma passed the law on both second and third readings on June 14th, thereby sending it to the Federation Council for further consideration and ratification.²⁰

Ratification Problems in the Federation Council

One would think that if a controversial piece of legislation such as the draft Law on PSAs could pass relatively unscathed through such a hostile body as the State Duma, its chances of being ratified by the Federation Council should have been fairly good. After all, the Federation Council is a far more "pragmatic" institution than the State Duma. Because many of its members have no direct party affiliations, it is considered to be less ideologically fractional or partisan than the Duma.²¹ Members of the Federation Council also spend less time in Moscow than their counterparts in the State Duma and, as a consequence, less time on the legislative business of the Council. Indeed, Council

¹⁹ Stenogramma zasedanii, Biulleten' No. 110 (14/06/1995) Federal'noe Sobranie - Parlament RF, Gosudastvennaia Duma (Moskva: Izdanie Gosudarstvennoi Dumy), 25.

²⁰ Ibid., 25. One Russian newspaper commented that many Communists and Agrarians were appeased by the fact that the law would encourage employment as well as investment in the domestic resource sector. Interestingly enough, the article also reported that Egor Gaidar's Russia's Choice Party had opposed the draft law largely as a result of friction between Gaidar and Grigorii Iavlinski, the head of IaBLoko, a party whose deputies had played such a significant role in the preparation of the draft law. See: Natal'ia Olenich, "IaBLoko podgotovilo podarok dlia investorov (IaBLoko Prepares a Present for Investors)," *Segodnia*, 15/06/1995, 2. It is also possible that the draft law's supporters were able to persuade opposing deputies with promises to support the latter's legislative initiatives when the time came. This type of "horse-trading" would occur later on in the production sharing law's journey through the parliament.

²¹ Despite the absence of formal party affiliations, a number of "factions" are evident in the Federation Council. The three main factions seem to be: the pro-El'tsinites, the Communist/Nationalists and the "Third Force" a group comprised of "strong manager" types headed by Moscow mayor, Iurii Luzhkov. The members of the latter group are dedicated more to their regions than to any particular ideological goal. See: John Webb, "Pragmatic Reformers Win Most Regional Russian Elections, Posing New Challenge for Yeltsin," *Cambridge Energy Research Associates Decision Brief*, March 1997, 8.

representatives have been routinely criticized for using the time they do spend in Moscow securing deals for the regions they represent rather than on legitimate Council business.²²

In spite of its more pragmatic nature, the production sharing legislation encountered many more problems in the Council than the Duma. One of the consequences of the Federation Council's rejection of the draft Law on PSAs was that it was sent to a conciliatory commission and amended to the point whereby some of the original authors of the draft actually voted against it in the final ratification vote.²³

The legislative odyssey of the production sharing law in the upper chamber began on a rather shaky note when many of the supporters of the draft law failed to attend the first session of debate on July 21st, 1995. This "mass" absence was largely the result of an ill-timed colloquy scheduled by Prime Minister Viktor Chernomyrdin. The colloquy, held in Tyumen', Western Siberia on July 20th and 21st, focused on the problems facing the fuel and energy complex. The stark reality of this scheduling error was that "many of the lawmakers supporting the PSA law were forced to choose between Moscow and Tyumen'. That really meant that they had no choice at all: If they wanted to take advantage of the opportunity to meet with the Prime Minister informally in the hope of winning tax benefits and other preferences for their territories, Tyumen' was the place to be."²⁴

²² Interview, Moscow, March 1997. Vladimir Shumeiko, the speaker of the Federation Council at the time, opened the Fall 1995 session with a warning to the members that the legislative work of the Council was suffering because members were spending more time achieving their own political goals and less time on legitimate Council business. See: Elena Tregubova, "Sovet Federatsii sdelał pervyi shag k sobiraniiu sovetkikh respublik (The Federation Council Takes a First Step Toward an Assembly of Soviet Republics)," *Segodnia*, 04/10/1995, 1.

²³ Aleksei Mel'nikov and Aleksei Mikhailov were Duma representatives on a joint Duma/Federation Council Conciliatory Commission that was convened in order to iron out the problems in the legislation. The significance of this commission will be dealt with later in the chapter.

²⁴ "Change of Venue," *Russian Petroleum Investor*, September 1995, 17.

The supporters of the draft that did attend the Council session were forced onto the defensive by the absence of their colleagues. Outnumbered by the draft's skeptics, they attempted to persuade the other representatives of the need to hear the opinions of members from regions that would be directly affected by the production sharing legislation. While the majority of the representatives agreed with this suggestion, there were some that felt that the emphasis on the resource regions unfairly marginalized the position of the other regions. A number of disgruntled representatives resented the "special treatment" being offered to resource regions and used the session as a platform in which they could air their complaints with relatively little opposition. For instance, in response to the pleas for postponement, A.A. Titkin, representing Tul'skaia oblast', an industrial/agricultural region near Moscow, retorted:

You said that the debate cannot take place without the heads of the oil regions...in the first place they must, how should I say, advise us what to do. Unfortunately, we in this room have already heard similar pronouncements when we examined the Chechen question. Several heads of the Caucasus regions said: it is a Caucasian matter. It has been dealt with, you know. One word: we are all sufficiently informed and understand very well that oil and gas and other natural resources are a national source of wealth that must be used not only in the interests of the oil regions and the oil branch but in the interests of the machine building and high technology branches too.²⁵

Such a response revealed a split between the resource and non-resource regions on the question of natural resource use and management. Even though resource regions such as Khanty-Mansiisk, Sakhalin and Tatarstan have for obvious reasons been more involved and interested in the problems of resource management than the non-resource regions, Titkin reminded those present that natural resources are a part of the national wealth. Therefore, any policies that affect the resource sector should be the

responsibility of all regions, whether they possess resources or not. This type of response was a firm indication that the representatives of the non-resource regions were not willing to concede authority over the question of production sharing to the resource regions.

In addition to raising the troubling question of whether resources belong to the regions where they are located or to the country as a whole, the debate over resource management also tapped into a number of other controversial issues that have dominated the political discourse of the post-Soviet period. One of these was the position and role of foreign investment in the economic development of the resource sector. The supporters of the draft law argued that foreign investment was a crucial ingredient in the oil sector's recipe for economic recovery. In their opinion, the only way to encourage such investment was by offering foreign oil companies financial and legal stability through a working production sharing regime.

Opponents of the draft law, on the other hand, were afraid that excessive foreign "interference" in the domestic oil sector of the type envisaged by the draft Law on PSAs would turn Russia into nothing more than a raw materials appendage of the West. It is important to note that many of the representatives actively expressing such views in the Duma and Federation Council debates came from non-resource producing regions. Communist and nationalist deputies and conservative representatives from the Red Belt²⁶ were especially prominent when the debate turned to the topic of foreign involvement.

²⁵ Zasedanie 24-ogo Sovet Federatsii, Federal'nogo Sobraniia, Biulleten' No. 2 (77), 21/07/1995 (Moskva: Izdanie Soveta Federatsii, 1995), 33.

²⁶ The Red Belt refers to the non-resource, mainly agricultural and industrial regions south of Moscow that tend to be dominated by Communist and nationalist parties and factions such as the Communist Party of the Russian Federation and the Agrarian faction.

Even Communist and nationalist representatives from resource producing regions were critical of what they felt were concessions made to foreign investors in the draft law. Such opposition proved problematic later on when the political and economic realities facing their constituencies forced them to reconcile their ideological beliefs with the obvious economic benefits that production sharing would bring to their regions.

Other issues appeared to cause divisions that cut across the boundary between the resource and non-resource regions. For instance, the problem of excessive executive control over the negotiation and conclusion of production sharing agreements, an important contributing factor to the Council's later rejection of the original draft, united Federation Council representatives from a diverse group of resource and non-resource regions.

The issue of executive control was first raised in the Federation Council debates by A.M. Tuleev, the head of the legislative assembly in Kemerovskaia oblast' in South Eastern Russia and L.I. Sablin the head of the regional legislature in the Nenets autonomous okrug (AO) in North Western Russia.²⁷ Both of these regions have mineral resources and, therefore, would stand to benefit from production sharing legislation. This is especially true in the case of the Nenets AO, a region that has some of the largest untapped oil deposits in the Russian Federation. Yet, it seems both of these men were prepared to delay the passage of the draft in order to support amendments that would check the power of the federal and regional executives over the production sharing process. Tuleev was particularly harsh in his criticism of the draft law. In his opinion the absence of legislative oversight would result in corruption and the uncontrolled

export of Russia's mineral resources. In a telling critique of the system of executive federalism, he argued:

there is no control on the part of the representative organs. There should at least be some system [of representative control] in the subjects of the federation. Practically all authorization meets with no competition on the basis of a private agreement between the highest bureaucrats of the government of the Russian Federation or the heads of administration [of the regions].²⁸

Leonid Sablin and Iurii Boldyrev echoed the sentiments expressed by Tuleev. Sablin added that the law contradicted several positions in the existing legislation on natural resources (he is referring here to the Law on Underground Resources) and encroached upon the interests of Russia and the regions. In contrast, his colleague and the governor of the Nenets autonomous okrug, Iurii Komarovskii, came out in support of the production sharing law.²⁹ Iurii Boldyrev, a representative from the industrial city of St. Petersburg, said that although he understood the significance of the draft law, in his view this version was unacceptable because:

it creates conditions for unchecked behaviour by the executive branch in an area involving the fate of our nation's wealth... The law makes no provision for a system of checks and balances, which is a must for the normal functioning of any democratic state. In fact, one can interpret the proposed version as giving the executive branch permission to decide the fate of Russia's natural resources arbitrarily and without any outside control - even though the resources in question may be worth more than the entire federal budget.³⁰

Boldyrev had held various posts in the Presidential administration from 1990 until 1992, when El'tsin dismissed him for exceeding his authority.³¹ Following his dismissal,

²⁷ Under the principle of "one lock, two keys", production sharing agreements would be scrutinized by the federal government and the executive branches of the *sub'ekty* in which the oil was located.

²⁸ Op. Cit., zasedanie 24-ogo Sovet Federatsii (21/07/1995), 22.

²⁹ "Rassmotrenie zakona 'O soglashiakh o razdele produktsii' otlozheno do oktiabria (Examination of the Law on Production Sharing Agreements Postponed Until October)", *Segodnia*, 28/07/1995, 4.

he became actively involved with reformers such as Grigorii Iavlinskii and Vladimir Lukin and, in 1993, they formed IaBLoko political bloc.³² Boldyrev, however, left IaBLoko in 1995 after a disagreement with Iavlinskii caused in part by their differing attitudes on the question of production sharing.³³ His political past may have given him a sizable axe to grind. But his argument that the unchecked power of the executive over the signing of production sharing agreements would breed corruption was generally accepted by both opponents and proponents of the law as a legitimate criticism of the draft. Even Aleksei Mel'nikov agreed that a well-functioning, legislative oversight mechanism would force government officials to act more responsibly when negotiating agreements. The question, in Mel'nikov's opinion, was whether a mechanism could be developed that could supervise the production sharing process without unnecessary bureaucratization.

As well as making a name for himself as a "corruption fighter", Boldyrev strengthened his role in the debate by championing the regional cause and, in particular, the cause of the regional legislatures. "On numerous occasions," he said in one interview, "I have made it known to the law's advocates that we cannot afford to pass a bill that completely excludes federal and regional legislatures from the decision making process involving the allocation of Russia's natural resources."³⁴ Rather than just focusing on the role of the Duma and the Federation Council in monitoring the

³⁰ "Man of the Moment," *Russian Petroleum Investor*, November 1995, 10

³¹ *Ibid.*, 9.

³² The first three letters of the name IaBLoko (apple in Russian) refer to the respective first initials of Iavlinski, Bodyrev and Lukin.

³³ *Op. Cit.*, RPI, November 1995, 9.

³⁴ *Ibid.*, 10.

production sharing process, therefore, it seems that Boldyrev's idea of "legislative oversight" included the regional legislatures.

Legislative oversight and the conflict between resource and non-resource regions were just two of a number of issues that emerged over the course of the debate in the Council. At the end of the first session on July 21st, the representatives still faced the difficult choice of whether to vote on the draft law in the absence of representatives from the resource regions. According to article 64, point 6 of the *reglament*, the procedural rules of the Federation Council, "[i]n the absence of the quorum necessary for voting [at least 90 voting members present], the head of the Council shall postpone the vote until the next session of the Federation Council."³⁵

Even though quorum was reached on July 21st, in spite of the absence of the representatives from the oil producing regions, Vladimir Shumeiko, the Speaker of the Council, firmly believed that it was impossible to discuss the law without the opinions of those absent. In order to postpone discussion, he invoked article 102 of the *reglament*: "In the event of the insufficient preparedness of the questions concerning the examination of a federal law, the Federation Council has the right to postpone (not to discontinue but to postpone) until the next session. A legal decision is taken by the majority of votes from the number of the existing deputies in the session."³⁶ In response to those who wanted to vote on the law, Shumeiko adopted a cautious approach, arguing that "[w]e don't need speed. Most important is quality."³⁷ Together with Mintimer Shaimiev, the President of Tatarstan and other key supporters of the draft law, he urged

³⁵ *Reglament Sovet Federatsii*

³⁶ *Ibid.*

³⁷ *Op. Cit., zasedanie 24-ogo Sovet Federatsii (21/07/1995), 37.*

those present to vote in favour of a postponement. The vote passed. Discussion was postponed until the next session on July 27th.

The Regional Question

By July 27th, six days after the stormy session on July 21st, many of the Council representatives from the oil producing regions had returned to Moscow to take part in the debate. Their presence gave the debate a much more evenly balanced and regionally-oriented flavour. Questions about the role and position of the regions in the production sharing process dominated the session. Representatives from the oil-producing regions played a prominent role, thereby justifying the earlier decision to postpone debate.

One of the issues that dominated the lengthy session was the relationship between the federal government and the regions in negotiating and signing production sharing agreements. Although many of the resource producing regions had participated in the drafting of the production sharing law, many regional officials were skeptical of the motives of the federal government. Since it was unclear at this stage how the federal government would divide profits from production sharing agreements with the resource producing regions, some local politicians felt that the law merely provided the federal authorities with a way to withhold oil revenues from regional and local governments.

Boris Ambarnov, the Vice-Governor of the Nenets autonomous okrug noted: “[t]he benefits and losses as a result of shifting projects to PSA terms need to be assessed much more carefully. Specifically, the distribution of resources between the local and federal budgets needs to be specified. Otherwise it is impossible to tell whether the

district loses or benefits from shifting.”³⁸ Ambarnov backed up his concerns with statistics. At the time, the Polar Lights joint venture accounted for almost half of the revenues of the okrug budget. The question was what would be the financial consequences of switching such an important project from the joint-venture/licensing system to production sharing and was the regional government willing to take such a risk?³⁹

A number of other factors, such as the complex nature of the Russian federal system and the demands of the non-resource regions, further complicated this question. As indicated in the introductory chapter, the Russian federal system is comprised of many different types of territorial entities. Although the constitution states that all the subjects of the federation are equal in their relationships with the federal government and with each other, a much more complicated arrangement exists in practice.

One of the features of Russian federalism that adds to this complexity is the relationship between autonomous okrugs (AO) and the oblasts or krais in which they are located. Historically speaking, autonomous okrugs such as the Khanty-Mansiisk AO in Tiumen’ oblast’ or the Nenets AO in Archangelsk oblast’ were subordinate to the oblast’ government. As chapters seven and eight of this study will outline in greater detail, this relationship has changed in the post-Soviet period. On the one hand, the okrugs are still considered to be parts of the oblasts. At the same time, they are autonomous territorial entities with budgets and systems of state administration, just like the other constituent members of the federation. In many oblasts, the confusion and political tension over the division of authority between the oblast’ and autonomous okrug has encouraged

³⁸ “On the List,” *Russian Petroleum Investor*, April 1996, 31.

interregional conflict, most notably in the area of natural resources. In a number of instances, Tiumen' and Archangelsk being prime examples, the autonomous okrugs contain the bulk of the particular region's natural resource wealth. This reality has not only empowered the okrug governments by giving them an economic lever with which to press for greater autonomy. It has also put the oblast authorities on the defensive, thus compelling them to fight for a share of the natural resources and a role in the management of the resource sector.

P.N. Balakshin, the Administrative Head of Archangelsk oblast' expressed the concerns of the oblasts at the outset of the Council session on July 27th. On the subject of negotiating and signing a production sharing agreement he asked: "if the autonomous okrug is located on the territory of a subject of the federation which is also a subject of the federation, is the [host] oblast' or krai separate from the autonomous okrug?"⁴⁰ The answer to this question, in his opinion, was no. He insisted that if an autonomous okrug is located on the territory of an oblast', it is necessary to sign a trilateral production sharing agreement between the federal government, the autonomous okrug' and the oblast' or krai in question.⁴¹

On what basis, one might ask, do the representatives of the oblasts such as Archangelsk claim the right to regulate natural resource use in another subject of the federation? According to Balakshin:

[u]ntil the formation of the present subjects of the federation, there was a single territory known as Archangelsk oblast'. For 50 years we invested our capital into the exploitation of the resources of the Nenets autonomous okrug, mastering its territory, knowing that

³⁹ Ibid., 31.

⁴⁰ Zasedanie 25-ogo Sovet Federatsii, Federal'nogo Sobraniia, Biulleten' No. 1 (78), 27/07/1995 (Moskva: Izdanie Soveta Federatsii, 1995), 20.

⁴¹ Ibid., 20. Presumably, the investor would also be included in this trilateral agreement.

it was a long-term plan. Then this okrug became an independent subject of the federation and the population manages everything that the oblast invested in over 50 years, and we have no relation to it. It is unjust.⁴²

In response to Balakshin's lament over the injustice of the present system, the representatives of the autonomous okrugs felt that the question of which governments should be parties to a production sharing agreement or any intergovernmental agreement for that matter had already been decided. Iu.V. Komarovskii from the Nenets autonomous okrug stated that Archangelsk oblast' and his okrug had already concluded a treaty governing interregional relations.⁴³ Alexandr Filipenko, the Administrative Head of the Khanty-Mansiisk autonomous okrug, added that a separate law was supposed to regulate the relations between the *sub'ekty* in question and, therefore this issue could not and should not be a theme for discussion at this particular session of the Council.

Of the 89 territorial units that comprise the Russian Federation, only a minority (12-15) can truly be considered "resource regions". Naturally, these regions had the strongest interest in the successful passage of the production sharing legislation; although, as noted above, the political elites in these regions did not always see eye to eye on many issues in the production sharing debate. A number of other regions (between 20-30) were interested in the draft law, but only if they thought they could benefit from the equipment orders related to production sharing projects.⁴⁴ Many of these equipment-producing regions had misgivings about the draft law in late July 1995. Lastly, "the remaining regions, and thus the majority of the Council, are at best

⁴² Ibid., 27.

⁴³ Ibid., 31.

⁴⁴ "Down to the Wire," *Russian Petroleum Investor*, November 1995, 5.

indifferent to production sharing legislation. At worst, they envy regions that stand to receive substantial inflows of foreign capital from production sharing projects.”⁴⁵ As one member from a Northern Caucasus republic commented: “[p]roceeds from PSAs will go to the raw materials producing regions and the federal budget. So why should we vote for the law?”⁴⁶

A great majority of industrial regions depend on federal subsidies and thus are wary about any reforms that may alter the system of collecting taxes and making payments to the federal budget. Such opposition to change puts these regions in direct conflict with leading resource regions that are net donors to the federal budget. The latter are angered by the fact that their resources are being used to subsidize other regions when they could be used to redress the problems that years of economic mismanagement and indiscriminate resource plunder have caused to their own economies.⁴⁷

The concerns of the subsidy dependent industrial regions were reflected both in the national press and in the Federation Council session on July 27th. The most important matter, in the opinion of representatives from industrial regions such as Riazan oblast’ and St. Petersburg, was the effect that the production sharing legislation would have on the budgetary position of the federal government and the regions receiving subsidies from the federal government. Representatives also raised other issues, such as the plight of domestic equipment manufacturers under the production sharing system.

⁴⁵ Ibid., 5.

⁴⁶ Ibid., 7.

⁴⁷ Op. Cit., Webb (1997), 10.

One of the most vocal representatives in the Federation Council debate on July 27th was V.N. Liubimov from Riazan oblast', south-east of Moscow.⁴⁸ He confronted Iurii Shafranik, then the Minister of Fuel and Energy and a supporter of the production sharing legislation, asking him to assure his constituents that Riazan oblast' would not lose the payments (subsidies) that come from the existing tax system when production sharing takes effect. Shafranik responded that Riazan would benefit from the production sharing legislation through industrial contracts, the expansion of the national economy, job creation and an increase in the revenue flowing into the federal budget.⁴⁹

It is interesting to note that E.V. Krest'ianinov, the head of the Federation Council Commission for Regulations and Parliamentary Procedures and a representative from Nizhnii Novgorod oblast', a non-resource region in Central Russia, supported Shafranik's position on this issue. In a speech to the Council Krest'ianinov declared:

I don't agree with my colleagues, in particular with deputy Liubimov, who say that this law is only directed at satisfying the interests of the natural resource producing regions. The processing industry [oil refining] is extended to all regions of the Russian Federation, to all subjects of the federation. And the Nizhnii Novgorod oil processing factory and the Riazan oil processing factory lack oil resources [to process]. Therefore, the passing of the present law and the broadening of deposits is of interest to all Russian regions.⁵⁰

In an effort to change the original draft, some representatives questioned whether production sharing would benefit domestic equipment manufacturers or merely subject them to stiff competition from foreign companies. Conservatives in the Federation Council and the Duma, together with a powerful group of members who represented the

⁴⁸ Other notable opponents of the draft law at this point in time were Vladimir Suslov from Tver Oblast' and Vladimir Sergeienkov from Kirov Oblast'. Tver and Kirov oblasts are both industrial regions near Moscow.

⁴⁹ Op. Cit., Zasedanie 25-ogo Soveta Federatsii (27/07/1995), 23.

⁵⁰ Ibid., 33.

interests of the heavy equipment manufacturing complexes in their respective regions, demanded guarantees that domestic enterprises would receive up to 70% of the equipment orders required under the production sharing agreements.⁵¹ The representatives of this group were concerned that the current draft not only failed to properly address the issue of domestic equipment quotas but that it also favoured the interests of foreign equipment manufacturers. Once again, Iuri Boldyrev from St. Petersburg, one of Russia's major manufacturing centers, was in the thick of the discussion. He argued:

if investors and their operators, under production sharing agreements, are entitled to import equipment into Russia free of customs' tariffs, value-added taxes and excise taxes [as the draft law stipulates], domestic producers will be placed at a disadvantage in relation to their western competitors. This means loss of orders, job cuts, and further economic decline. Our job as lawmakers is to protect the national economy and not to provide foreign firms with advantages over Russian companies. Thus, instead of giving tax breaks to Western investors, we will require that the PSA law include more provisions aimed at promoting the development of domestic manufacturing.⁵²

Even though evidence of a divide between resource and non-resource regions on a number of issues was clearly apparent, the Council debates and press reports suggest that this divide was by no means cast in stone. Some representatives from non-resource regions such as Nizhnii Novgorod and later Chel'iabinsk oblast' supported production sharing. At the same time, some resource regions or at least elements within the oil sectors of these regions shared the concerns of the equipment manufacturing counterparts

⁵¹ Op. Cit., "Change of Venue", RPL, 17.

⁵² Ibid., 18.

over the costs of neglecting the domestic industrial complex in the face of foreign competition.⁵³

Although domestic companies have the capacity to produce many of the equipment items required by the oil industry, Russia still imports an enormous amount of oil and gas equipment.⁵⁴ With Russian factories standing idle and the costs of purchasing expensive imported equipment reducing the profit margins of domestic companies, one analyst noted that the groundwork was laid “for a potentially powerful protectionist alliance between energy exporters [in the resource regions] and domestic engineering plants [in both the resource and non-resource regions], which need shielding from foreign imports.”⁵⁵

The session on July 27th ended without a vote. All sides expressed concern over the delays. Interestingly, Iurii Boldyrev asked that a postponement of debate until October not be granted “because it would mean losing too much time, something the oil regions do not need if they want to attract investment.”⁵⁶ Later on in the debate, however, it emerged that Boldyrev supported a delay in the vote so that a commission could be created to work on amendments to the present draft during the summer recess. The heads of several leading Russian oil companies and their supporters in the Council

⁵³ In 1996, the Petroleum Advisory Forum (PAF), a western based consulting firm for companies doing business in the Russian oil sector, in conjunction with the Committee for Productive Forces and Natural Resources of the Russian Academy of Sciences, produced an interesting study on the benefits of production sharing for the domestic economy. The study concluded that production sharing would benefit both the resource and non-resource regions by providing increased revenue for local, regional and federal budgets, employment and contracts for domestic equipment manufacturers and a multiplier effect that would be felt throughout the Russian economy. See: *Otsenka vozdeistviia na sotsial'no-ekonomicheskoe razvitie Rossii krupnomasshtabnykh investitsii v neftegazovye proekty v ramkakh shesti soglashenii o razdele produktsii* (Moskva: Komissia po izucheniiu proizvoditel'nykh sil i prirodnykh resursov rossiiskoi akademii nauk i neftianoi soveshchatel'nyi forum, 1996)

⁵⁴ Russia imported approximately \$5.3 billion worth of oil and gas equipment in 1994.

⁵⁵ Peter Rutland, “Russia’s Energy Empire Under Strain,” *Transition*, 03/05/1996, 7.

said they were disappointed with the delays, arguing that they were holding up a number of important projects.⁵⁷ As it turned out, such appeals fell on deaf ears and the Council postponed further discussion until the fall session.

Normally, the Federation Council would have been required to hold a vote. Article 105 of the constitution states that the Council must consider laws submitted by the Duma within 14 days. If this is not done, the draft law is considered approved and is sent directly to the President for approval, the final stage in the legislative process. But article 106 of the constitution requires the Council to approve all federal laws concerning taxes and duties. Furthermore, while the Council is obligated to begin its consideration of laws containing tax provisions within 14 days of the Duma submission, the debate may last indefinitely. Since the draft law in question would introduce a special tax provision, the Council was able to postpone the vote until a later session, a move that angered many of the law's proponents.

Another interesting institutional feature that could have affected the legislative process was the proposed use of absentee ballots as a voting mechanism. As previously noted, absenteeism has plagued the Council throughout its brief history. Even prior to the reforms of 1996, many Council members were also heads of the legislative and executive branches in the regions. The demands of being a high-level regional official meant that many representatives had very little time to properly carry out their duties in the upper house. Either they were unable to be physically present at Council sessions or, when they were in Moscow, the needs of their regions were often given priority over Council business.

⁵⁶ Op. Cit., Zasedanie 25-ogo Sovet Federatsii (27/07/1995), 16.

As the production sharing legislation passed through the federal parliament in 1995, the debate raged over reforms to the Federation Council. The main factions in the battle for Council reform were the *progressiskaia*, whose members favoured an elected Council and the *konservativnaia*, who supported the idea of Council members being delegated by the regional authorities.⁵⁸ While the debate concerning the benefits and shortcomings of elected and delegated senates was extremely interesting, it did not have a direct impact on the legislative course of the draft law on production sharing agreements. However, given the fact that the production sharing law encountered a number of delays in the Federation Council, it would be misleading to argue that the draft law had been removed from the effects of the reform debate in the upper chamber of the parliament.

For example, the absence of representatives from the resource regions in July triggered a debate on the problems of absenteeism and workload in the Council. A number of ideas had already been proposed to combat the effects of absenteeism. One proposal suggested that regional heads should relinquish their posts if they wanted to work permanently on the Council.⁵⁹ Another idea was to institute a system of deputies for Council members, who would be responsible for executing the responsibilities of members who were unable to attend the sessions as a result of sickness or some other valid reason. The deputy would possess the same rights, including the right to vote, that belong to the members of the upper chamber.⁶⁰

⁵⁷ Op. Cit., *Segodnia*, 28/07/1995, 4.

⁵⁸ Vsevolod Vasil'ev, "Closer to the Constitution," *Nezavisimaia gazeta*, 24/02/1995, 3.

⁵⁹ Anna Kozyreva, "Komu byt' senatorom (Who Will Be a Senator)", *Rossiiskaia gazeta*, 11/07/1995, 2.

⁶⁰ Op. Cit., *Nezavisimaia gazeta*, 24/02/1995, 3.

Following the disruptions on July 21st, the Council decided, on July 27th, to allow absentee ballots for the vote on the draft law. Supporters of the production sharing legislation felt that this system would permit the law to receive the necessary amount of votes to pass at the next session on October 3rd without requiring all of the law's proponents to be present. Institutional delays, however, meant that the ballots were not distributed until September 25th, almost three months after the decision to allow absentee balloting was taken and just over a week before the crucial session of the Federation Council. Since mail normally takes up to 2 weeks to deliver by parliamentary post, only 61 ballots had been received by October 3rd; not enough to guarantee the draft law's passage.⁶¹

Whether the delay in mailing the ballots was intentional or not is unclear. We can only speculate that those opposed to the law's passage may have played a role in causing a delay. Some speculated that the mailing error was orchestrated by the Speaker of the Federation Council Vladimir Shumeiko. One insider blamed the setback on Shumeiko's private connections and political leanings.⁶² Iurii Algunov, Shumeiko's spokesperson, said that the Speaker wanted more say for the regions in the approval process.⁶³ Whether Algunov was referring to the resource or non-resource regions (or perhaps both), however, is not clear. Lastly, Mikhail Subbotin, one of the authors of the draft suggested that Shumeiko engineered the defeat as a display of his political muscle. Apparently,

⁶¹ Aleksei Mel'nikov, "Proekt zakona o razdele produktsii imeet eshche odin shans (The Draft Law on Production Sharing Still Has One More Chance)," *Segodnia*, 24/10/1995, 3.

⁶² Rustam Narzikulov, "Razdel produktsii popal pod press pazdela aktsii," *Segodnia*, 10/10/1995, 1.; and Svetlana Lolaeva, "IaBLoko namereno bit'sia za zakon o razdele produktsii kak spartantsy pod Fermopilami," *Segodnia*, 10/10/1995, 2

⁶³ Steve Liesman, "Russian Oil Bill Still Alive," *Globe and Mail*, 06/10/1995, B7.

Shumeiko, who had been implicated by the Russian press in a number of unproven financial scandals, was trying to secure his position as the head of the Council.⁶⁴

Despite Shumeiko's unilateral decisions to reject the absentee ballots and call an impromptu vote on the draft law that almost certainly assured its defeat, not all the evidence suggests that he was an uncompromising opponent of the draft law. For instance, he argued in favour of a postponement of discussion on July 21st, when the representatives from the resource regions were absent from the Council session.⁶⁵ Moreover, it could be argued that Shumeiko's decision to cancel absentee balloting was not founded on his personal opposition to production sharing or on an attempt to secure more authority for the regions but rather on his desire to reform the Federation Council. After all, he opened the fall session of the chamber with a plea to the representatives to spend more time on Council business and less time on using the chamber for their own political goals.⁶⁶

Not all the explanations for the delays, though, centered on Vladimir Shumeiko. Iurii Boldyrev dismissed theories about high political intrigues. In an interview, he gave the following explanation:

[i]f you look at the composition of the Council of the Federation, you will see that 57% of its members are the heads of local and regional administrations. Moscow heavily influences them and often can "persuade" them by offering financial assistance, more favorable export quotas and other incentives. It was clear that if absentee ballots were included in the voting, the Russian government -which has actively been lobbying for the PSA law- would strongly pressure these deputies to support production sharing legislation. Those deputies who did not back the law did not want it forced on them and concluded that an ordinary vote was more logical. That vote would allow those who object to the law not to be present during the vote. Absentee

⁶⁴ Ibid., B7.

⁶⁵ One report linked this expression of support for production sharing to a proposed production sharing agreement between Kaliningradmorneftegaz (an oil company in Shumeiko's home riding of Kaliningrad oblast') and a German firm for deposits on the Baltic Sea shelf. Op. Cit., *Segodnia*, 10/10/1995, 2.

⁶⁶ Op. Cit., *Segodnia*, 04/10/1995, 1.

ballots would not have permitted such a strategy.⁶⁷

Other explanations concerning the problems befalling the draft law at this stage in its legislative journey have decidedly more ominous and conspiratorial overtones. One journalist suggested that certain parts of the banking and financial establishment opposed production sharing because they were set to gain from an earlier presidential decree guaranteeing them privileged access to state shares in the oil and gas industry that were due to be privatized. Presumably, such access would not be available under the production sharing regime outlined in the draft law.⁶⁸

The draft law was rejected by the Council on October 3rd and sent back to the Duma for further reconsideration. In a last ditch attempt to avoid changes that would be made by the Duma and a proposed conciliatory commission made up of representatives from the Duma and the Federation Council, the draft's supporters tried once again to include it in the Council agenda on October 24th. As expected, the opponents of the draft spoke against the inclusion, arguing that such a move would simply prolong the question of production sharing. Of course, what they failed to mention was that their option of returning the draft to the Duma and then subjecting it to the intense study of a special commission would probably mean an even longer delay. The draft's supporters, in particular Iurii Shafranik, the Minister of Fuel and Energy and a Federation Council representative from the oil producing region of Tiumen', felt that another vote should be allowed in order to include absentee ballots in the final total. Apparently, there were 95

⁶⁷ Op. Cit., "Man of the Moment", RPI 9-10.

⁶⁸ Op. Cit., *Segodnia*, 10/10/1995, 1.

such ballots in existence (over half of the representatives in the Council) and, according to Shafranik, the vast majority of these ballots favoured the draft.⁶⁹

In spite of the apparent support that the draft enjoyed in the Council, Vladimir Shumeiko and the majority of those present at the session believed that another vote with the inclusion of the absentee ballots should not be allowed for two reasons. First, the draft was not on the agenda for the day. Second, the Council had already decided to send it back to the Duma for further consideration. Again, the use of absentee balloting was called into question and the absence of the key supporters of the draft from the session sealed its fate.

Before the draft was send back to the Duma, the Federation Council made a number of suggested amendments and considerations.⁷⁰ One of the most important of these, from the perspective of this paper, concerned article 19, that which entrenched the control of the federal and regional executive branches over the regulation of production sharing agreements. In its recommendations, the Council stressed the need for:

- i. control, independent of the executive branch, over the conditions for concluding agreements
- ii. control on the part of the representative (legislative) organs of the subjects of the federation and the Audit Chamber of the Russian Federation

Through this particular suggestion, therefore, the Council not only attempted to strengthen the role of the regions in the production sharing process. It also championed the cause of the regional legislative branches and federal legislative bodies such as the

⁶⁹ Zasedanie 28-ogo Sovet Federatsii, Federal'nogo Sobraniia, Biulleten' No. 1 (84), 24/10/1995 (Moskva: Izdanie Soveta Federatsii, 1995), 14.

Audit Chamber. As it turned out, the Council's calls for legislative oversight and other changes in the legislation would be echoed loudly during the deliberations of the conciliatory commission, the final and perhaps most important stage in the draft law's meandering journey through the corridors of power.

The Oil Companies' Response

At this point in the law's protracted journey, there were clear signs of strain and disunity in the ranks of the draft's supposed supporters outside the parliamentary apparatus. This was especially true of the oil companies. The delays in the passage of the draft law frustrated the Petroleum Advisory Forum (PAF) and the foreign oil producers it represented. In October 1995, a letter signed by the PAF and 32 large international oil and gas companies communicated this frustration to President El'tsin.⁷¹ In domestic oil producing circles, however, support for the draft law began to wane. Executives from companies such as YUKOS, LUKoil and Sidanco admitted that they had done very little to support the production sharing legislation. Some executives, such as Vladimir Bogdanov, the head of Surgutneftegaz and an opponent of foreign investment, even lobbied against the original draft.⁷²

As one can well imagine, such differences did little to strengthen the already fragile alliance between domestic and foreign companies on the question of production sharing agreements. Under a production sharing system, three forms of cooperation

⁷⁰ Zamechaniia Soveta Federatsii po Federal'nomu zakonu "O soglasheniakh o razdele produktcii.", 03/10/1995.

⁷¹ "Nefianoi soveshchatel'nyi forum obespokoen situatsiei vokrug zakonoproekta 'O soglasheniakh o razdele produktcii (The Petroleum Advisory Forum Uneasy About the Situation Surrounding the Draft Law on Production Sharing Agreements)," *Segodnia*, 27/10/1995, 4.

involving foreign companies were possible. Western investors could take equity positions in or extend credits to Russian companies, they could enter a joint agreement with their Russian partners, or they could bypass Russian companies altogether by concluding a PSA directly with the Russian government. As it happens, most foreign companies seemed to prefer the last choice, because the differences in business approaches between foreign and Russian companies often led to conflicts and an inability to get things done.⁷³ Since foreign companies are required to have a Russian partner under the joint venture/licensing system, this particular feature of the Law on PSAs in part explains the guarded response of the domestic oil community to the idea of production sharing.

Roskomnedra's Response

Since production sharing is supposed to replace the existing system of licensing with a system of agreements between the investor and the state, it is quite natural that Roskomnedra would feel threatened by the Law on PSAs. After all, Roskomnedra was in charge of the licensing regime set out in the Law on Underground Resources; any move to replace this system would constitute a direct threat to its authority over the resources sector. In 1995, when the Duma and the Federation Council were debating the draft production sharing law, some of the fiercest critics of the legislation were Roskomnedra officials. Alexander Strugov, the head of Roskomnedra's licensing and legal department staunchly defended the committee's position. "The adoption of PSA legislation," he maintained, "does not repeal the Law on Underground Resources and does not relieve

⁷³ Op. Cit., "Down to the Wire," RPL, 8.

Roskomnedra of its duty to perfect the legal background for subsoil licensing. So we won't stay idle."⁷⁴

On May 18, 1995, Vladislav Shcherbakov, Roskomnedra's first deputy chairman, backed up these defiant words when he signed Order #65. This order provided a mechanism by which the Russian partners in joint ventures with foreign companies could transfer their exploration and production licenses to their joint-venture operations.⁷⁵ For Russian companies, there are certain advantages associated with the joint-venture model, such as the opportunity to deposit part of the company's earnings in an offshore bank account. The production sharing model, which allows foreign firms to sign agreements directly with the state, effectively bypassing Russian companies if the foreign company so chooses, posed a threat to the joint-venture/licensing system that was the cornerstone of Roskomnedra's authority in the resources sector.

Despite the fact that production sharing would seriously threaten the licensing system, Roskomnedra still found itself in a position to influence the process of signing production sharing agreements in early 1996. On January 19th, 1996, shortly after the formal adoption of the Law on Production Sharing Agreements, Prime Minister Viktor Chernomyrdin issued an executive order that put Roskomnedra in charge of drawing up the list of deposits that could be exploited under conditions of production sharing.⁷⁶ Roskomnedra's close ties with the regions may have provided the rationale for such a

⁷³ "Russia First," *Russian Petroleum Investor*, September 1995, 26.

⁷⁴ "License to Drill," *Russian Petroleum Investor*, July/August 1995, 19.

⁷⁵ *Ibid.*, 18. This move broke with the Russian tradition of not allowing the transfer of licenses from one legal entity to another.

⁷⁶ "The Short List," *Russian Petroleum Investor*, March 1996, 26-7

move. “It is physically impossible for Moscow-based officials to analyze all possible applications for PSAs that may come from Russian sub-soil users”, argued Strugov.⁷⁷

Another reason may have been the federal government’s desire to maintain tight control over the negotiation and signing of production sharing agreements. If production sharing became too common, some officials felt that it would have a detrimental effect on the federal tax base. Shcherbakov, for example, argued: “I have the impression that Russian sub-soil users regard PSAs as a way to avoid paying taxes. But they will be disappointed. The list of fields for which PSAs are eligible, in our opinion, should include only projects whose implementation is otherwise impossible [under existing conditions].”⁷⁸

Back to the Duma

Once the draft law had been rejected by the Federation Council and sent back to the Duma, its supporters felt that the easiest way to get it approved without altering its substance would be to bypass the upper chamber altogether.⁷⁹ Such a move is possible, but only if two-thirds or more of the 450 Duma deputies support a piece of legislation. The task of getting 300 deputies (a number that would have to include a sizable chunk of the Communist/nationalist bloc) to support even the most uncontroversial pieces of legislation has proved difficult in the past. Organizing this level of support for a bill as controversial as the draft Law on PSAs, therefore, would require some deft political

⁷⁷ Ibid., 27.

⁷⁸ Ibid., 25.

⁷⁹ On October 24th, 3 days prior to the votes in the Duma, the supporters of the draft law tried to put it on the Federation Council’s agenda, in the hope that it would pass on its second attempt. This attempt was opposed by Vladimir Shumeiko who succeeded in blocking the vote. Op. Cit., “Down to the Wire”, RPI, 4.

manoeuvring. In June, the draft had been passed only by the narrowest of majorities. In this second vote, a large portion of the members of the Communist and nationalist factions had to be persuaded to vote for a law they had consistently opposed in the past.

In the period leading up to the crucial votes on October 27th, the head of the reformist laBLoko faction and a supporter of production sharing, Grigorii Iavlinskii, organized "one of the biggest vote-swapping campaigns Russia has ever seen" in an effort to obtain the required two-thirds majority.⁸⁰ In exchange for supporting draft laws sponsored by the Communist and nationalist factions, Iavlinskii managed to convince many members of the main opposition factions (the Communists, the Agrarians, the Liberal-Democratic Party and National Salvation Front) not to vote against the production sharing legislation. Some members of these factions were even persuaded to support the law.⁸¹

In the end, however, their efforts were not enough. The chamber held three separate votes in an effort to overturn the Council's decision. The closest the draft law came to gaining a two-thirds majority was 281 votes, 19 fewer than needed to bypass the Federation Council.⁸² As a result of the failure to overturn the Council's decision and the obvious stalemate that would ensue if the unaltered draft was sent back to the upper chamber, a conciliatory commission was convened. The commission was charged with the task of amending the law so that it would be acceptable to a majority in the Council.

⁸⁰ Ibid., 5.

⁸¹ Some of the more prominent members to vote in favour of the draft law were: Valentin Zorkaltsev, the deputy chairman of the Communist faction in the Duma; Mikhail Lapshin, the head of the Agrarian Party and Sergei Baburin, one of the founders of the National Salvation Front. Ibid., 5.

The Conciliatory Commission

The commission was comprised of representatives from both chambers of parliament and jointly headed by Iurii Boldyrev and Sergei Glaz'ev, a deputy from the State Duma.⁸³ Among the commission's other members were a diverse group of people including: Aleksei Mel'nikov, Aleksei Mikhailov, Leonid Sablin, Iurii Shafranik and Vladimir Surenkov. Even before the commission began its deliberations, it was apparent that the opposing political affiliations of its members would lead to conflict rather than conciliation. Over the course of the next month or so, the battle over the text of the draft law would take place for the most part between two opposing camps: on the one side, Iurii Boldyrev, Sergei Glaz'ev and their supporters; on the other, Aleksei Mel'nikov, Aleksei Mikhailov and their supporters.⁸⁴

As mentioned earlier, Iurii Boldyrev had been a critic of the draft law since its inception. His colleague on the commission, Sergei Glaz'ev, was one of the leaders of the conservative Duma faction, the Congress of Russian Communities (KRO). He shared many of Boldyrev's concerns.⁸⁵ Both men welcomed this opportunity to make changes

⁸² Dnevnik zasedanii Gosudarstvennoi Dumy (27/10/1995), Federal'noe Sobranie - Parlament Rossiiskoi Federatsii (Moskva: Izdanie Gosudarstvennoi Dumy), 32-33.

⁸³ The members of the commission representing the Federation Council included: Boldyrev, Iurii Spiridonov, Valentin Tsvetkov, Leonid Sablin and Iurii Shafranik. The representatives of the State Duma were: Glaz'ev, Sergei Burkov, Aleksei Mel'nikov, Aleksei Mikhailov, Valerii Podmasko, Adrian Puzanovskii, Vladimir Surenkov, Vladimir Gusev, Boris Tretiak, Piotr Shelishch and Vladimir Semago. Two of the five representatives from the Federation Council were known as staunch antagonists of the original PSA draft (Boldyrev and Sablin). Two of the State Duma representatives were also opponents of the draft (Surenkov and Podmasko). As already mentioned, Glaz'ev and Puzanovskii also tended to oppose the draft as well. The other members either supported the law or had no definite position. Op. Cit., "Down to the Wire", RPI, 8.

⁸⁴ Rustam Narzikulov, "Zakon o razdele produktsii torpedirovan soglasitel'noi komissiei (The Law on Production Sharing Torpedoed by the Conciliatory Commission)," *Segodnia*, 01/12/1995, 1.

⁸⁵ According to one source, Glaz'ev is a prominent nationalist who favours a strong role for the state in the economy. Alexandr Lebed brought him in as his deputy and economic advisor when he was appointed to the post of secretary of the National Security Council by President El'tsin in October 1996. See: "The FSU

to the law and Boldyrev, in particular, seemed to relish battling against his former IaBLoko colleagues Mel'nikov and Mikhailov. It was even said that he "demonstrated miracles of scientific assiduity, conscientiously and thoroughly investigating the meaning of each proposal of the law."⁸⁶ In other words, Boldyrev meticulously scoured the draft, looking for weaknesses and shortcomings. In response to such pressure, Mel'nikov and Mikhailov and their allies spoke adamantly against any amendments that would change what one press report lovingly described as "their baby".⁸⁷

Although the commission held a record number of hearings throughout November 1995, a compromise version of the draft law was only achieved in its final meeting. Even then Mel'nikov and Mikhailov protested that a number of the changes introduced to the text had not been adopted by an agreed decision.⁸⁸ Furthermore, Mel'nikov argued that the amended version was not the one that the oil producing regions had been expecting. He added it was also doubtful that oil companies would want to invest the \$7-8 billion needed to revitalize the Russian oil sector under the conditions imposed by such a law.⁸⁹ Evaluating the work of the commission, Mel'nikov remarked that its suggestions for the law were "enormously ignorant and unprofessional". The lobbying arm of Roskomnedra, he quipped, was clearly visible in the amendments suggested during the debate.⁹⁰

After the Russian Elections," Cambridge Energy Research Associates: Former Soviet Union Watch (Autumn, 1996), 7.

⁸⁶ Op. Cit., *Segodnia* (01/12/1995), 1.

⁸⁷ Mel'nikov and Mikhailov were two of the principle members of the team that wrote the draft law. *Ibid.*, 1.

⁸⁸ Svetlana Lolaeva, "Nizhniaia palata sdelala vid, shto priniala zakon 'O soglasheniakh o razdele produktsii (The Upper Chamber Takes the View that the Law 'On Production Sharing Agreements' was passed)," *Segodnia*, 07/12/1995, 1.

⁸⁹ *Ibid.*, 1.

⁹⁰ Svetlana Lolaeva, "Dume ne udalos' preodolet' veto senatorov na zakon o razdele produktsii (The Duma Fails to Overcome the Senator's Veto of the Law on Production Sharing)," *Segodnia*, 28/10/1995, 2.

The commission made several controversial changes to the draft law. The most significant from the perspective of this paper involved the introduction of legislative oversight clauses in articles 2 and 19, and the insertion of a stronger domestic equipment clause in article 7. The commission's addition of article 2 (3) to the existing draft followed the legislative lead taken earlier by the Federation Council. It stated that:

Drafts of the stated federal laws [the law on the list of deposits that can be exploited under conditions of production sharing] and also draft laws on the introduction of changes and additions to these laws are to be introduced to the State Duma of the Federal Assembly of the Russian Federation jointly by the Government of the Russian Federation and the legislative organs of state power of the subjects of the Russian Federation in which the resources are located through a legislative initiative.⁹¹

As a result of this clause, the legislative branch at both the federal and regional levels of government would have considerably more control over the production sharing process. The State Duma would have to approve any new legislation on production sharing, including the lists of deposits eligible for exploitation under conditions of production sharing and any amendments to the existing law.

Changes in article 19 of the draft further reinforced the role of the legislative branch. For example, according to article 19 (1) of the draft passed by the Duma in June 1995:

State control over the execution of agreements [is to be carried out by] the federal organs of *executive power* in accordance with their competencies jointly with the organs of *executive power* of the corresponding subject of the federation, and also controlling organs created by the Government of the Russian Federation in agreement with the organs of *executive power* of the corresponding subject of the federation.⁹²

⁹¹ Itogovyi protokol zasedanii soglasitel'noi komissii palat Federal'nogo Sobraniia Rossiiskoi Federatsii po vyrobotke edinogo teksta Federal'nogo zakona "O soglasheniakh o razdele produktsii." 22/11/1995.

Here the reins of power are clearly in the hands of the executive branch or bodies created by the executive branch. The revised version of this particular clause, on the other hand, states that “[s]tate control over the execution of agreements [is to be carried out by] the federal organs of *state power* in accordance with their competencies jointly with the organs of *state power* of the corresponding subject of the federation.”⁹³ The use of the term “state power” challenges the exclusivity of executive power and provides a basis for legislative oversight in the administration of production sharing agreements.

The changes made in article 19 (1) impact greatly on other parts of article 19. For example, the original version of article 19 (3) declares:

Representatives of the controlling organs [the executive organs of state power] realizing control over the execution of agreements have the right to unimpeded access to the objects of installation in the agreement and also to documentation regarding the construction of stated work, exclusively with the goal of realizing the function of control over the execution of agreements.

The revised clause does not differ substantially from the earlier version, except that the representatives mentioned are not restricted to the executive branch. By virtue of article 19 (1), the representatives are members of the organs of state power, which could include members of the legislative as well as the executive branches of government.

Another interesting change made by the conciliatory commission was the addition of article 7 (2). This clause stated that “[t]he parties to an agreement must, in the agreed conditions, stipulate that not less than a certain part of the technical equipment for the mining of deposits and their processing... bought by the investor... must be produced on

⁹² Federal'nyi zakon “O soglasheniakh o razdele produktsii.” Priniat Gosudarstvennoi Dumoi 14/06/1995 (Federal Law “On Production Sharing Agreements.” Passed by the State Duma on 14/06/1995) [author’s italics].

the territory of the Russian Federation.”⁹⁴ The parties to an agreement, therefore, must agree beforehand exactly how much domestically-produced equipment must be used. This was clearly a response to criticism that production sharing would benefit foreign producers and equipment manufacturers at the expense of their Russian counterparts.

Among the other changes that the commission introduced to the original draft were:

- restrictions on the granting of oil fields (as PSAs) without competition
- limitations on the arbitrary transferral of rights received from the state (in the form of PSAs) for one deposit to another deposit
- the possibility of amendments in the conditions of the agreement at the request of one side in the event of unforeseen, important, changes in circumstances (in accordance with recognized international practices and the Civil Code of the Russian Federation)
- the need to obtain the agreement of all parties in order to discontinue or amend the conditions of an agreement
- the necessity of payments by the producers of pensions and other social funds
- the exclusion of articles in the law that allow for the avoidance of customs tariffs and quantity limitations (on the part of the producers)
- the approval, by law (and by the legislative branch) of large scale projects, including those on the Continental Shelf and in special economic zones and also of all agreements concluded without competition⁹⁵

Following the decision to adopt these amendments, Sergei Glaz'ev said that the conciliatory commission had achieved a compromise on the draft law that was based on the remarks made earlier in the year in the Federation Council. The result, Glaz'ev argued, was a better law that would allow for the signing of production sharing

⁹³ Op. Cit., Itogovyi protokol zasedanii soglasitel'noi komissii, 05/12/1995 [author's italics].

⁹⁴ Ibid.

agreements in Russia's favour. In response to the continued criticism of the original draft's supporters, Glaz'ev retorted: "if the writers of the original law had taken a more flexible approach, the law would have been adopted long ago."⁹⁶

As the main representatives of the pro-production sharing lobby on the commission, Mel'nikov and Mikhailov were quick to criticize a number of the amendments. In Mel'nikov's opinion, the two most damaging changes were those that affected Article 6, Paragraph 1 and Article 17, Paragraph 1 of the draft. The first states that any production sharing agreement concluded by means other than competition is subject to ratification by the Duma and shall be endorsed by a special federal law. As such, the transformation of a joint venture into a production sharing agreement must receive the approval of parliament and be endorsed by a special law because it is not being put out for competitive bidding.⁹⁷ Mel'nikov argued that this laborious procedure would dissuade or even prevent many participants in joint-ventures, until then the most common form of foreign participation in the Russian oil sector, from transferring to a production sharing system.⁹⁸

The reformers considered article 17, paragraph 1 just as damaging. One of the reasons why production sharing agreements are so popular with oil companies and investors is that they provide a stable legal environment in which to operate. "The essence of a production sharing agreement," argued Mel'nikov, "is in the inviolability of

⁹⁵ Iurii Boldyrev, "Ne nado pugat' inostrantsev i zaputyvat' svoikh (No Need to Scare Foreigners and Confuse Our Own)," *Nezavisimaa gazeta*, 28/12/1995, 4.

⁹⁶ Svetlana Lolaeva, "Razdel produktsii budut kontrolirovat' 'kompetentnye gosorgany' (The Competent State Organs Will Control Production Sharing)," *Segodnia*, 01/12/1995, 2.

⁹⁷ "Critics' Corner," *Russian Petroleum Investor*, February 1996, 29.

⁹⁸ To use a popular colloquialism, this particular provision has Roskomnedra written all over it.

its terms.”⁹⁹ Article 17 breached this inviolability by allowing one or more of the parties to the agreement to call the terms of the agreement into question in the event of changing circumstances (for example, a substantial change in the world price of oil). In Mel’nikov’s view, “unless this clause is deleted or its application expressly limited, production sharing agreements could become subject to constant inquiries and never-ending demands from government officials wanting to force investors to substantiate and prove that there has been no significant change in circumstances.”¹⁰⁰

Criticism of the commission’s work, however, was not limited to its substance. Mel’nikov, Mikhailov and the other supporters of the original draft on the commission accused the other members of the commission (in particular, Boldyrev, Glaz’ev and Adrian Puzanovskii, a member of the Duma Committee for Economic Policy) of clandestinely introducing changes to the draft law on the night before it was supposed to go before the Duma for a vote. According to Mel’nikov and Mikhailov, such changes were made without the consent or knowledge of the other members of the conciliatory commission. The Duma members only received the revised document 20 minutes prior to the vote and, thus, did not have time to check if it had been altered.¹⁰¹

Glaz’ev responded to such claims with a counter-charge that Aleksei Mikhailov had wrongly used his official position as the deputy head of the Committee for Economic Policy to lobby for support for the law among Duma deputies.¹⁰² Whether Glaz’ev and/or

⁹⁹ Op. Cit., “Critics Corner”, RPI, 28.

¹⁰⁰ Ibid, 28.

¹⁰¹ Svetlana Lolaeva, “Sozdateli zakona o razdele produktsii obvinili Sergeia Glaz’eva i Iurii Boldyreva v podloge (Creators of the Law on Production Sharing Accuse Sergei Glaz’ev and Iurii Boldyrev of Forgery),” *Segodnia*, 15/12/1995, 2.

¹⁰² Svetlana Lolaeva, “Sergei Glaz’ev obvinil odnogo iz avtorov zakona o razdele produktsii v podloge (Sergei Glaz’ev Accuses One of the Authors of the Law on Production Sharing of Forgery),” *Segodnia*, 16/12/1995, 2.

Mikhailov were guilty of such illegal and unscrupulous activities will probably remain a mystery. But what of Mel'nikov's original charge that some of the changes had been made without the agreement of the other members of the commission? Iurii Boldyrev attempted to clear up any confusion regarding the commission's decision making process in an article in *Nezavisimaia gazeta*:

[t]he only problem in the work of the commission was getting quorum in the middle of an electoral campaign [elections for the State Duma]... The members of the Conciliatory Commission... numbered 12 people. According to protocol, amendments had to have 7 or more votes in order to be adopted. But one of the members of the commission from the Duma did not attend any of the hearings. His faction suggested that he step aside. He himself agreed that his vote should not be taken into account. In this event, amendments were passed by the Duma side with a majority of only 6 [6 out of the 11 remaining members]¹⁰³

This, incidentally, was the reason why the commission was able to adopt the changes to articles 7 (2) and 19. In both cases, only 6 of the Duma representatives voted in favour of the changes. Normally, this would not have been enough to pass the changes. But under the circumstances outlined by Boldyrev, the changes were adopted and incorporated into the revised version of the draft law.

The Duma Revisited

On December 6th, the Duma once again discussed and voted on the draft Law on PSAs. But now it was a much different law from the one the deputies had voted on in June and again in October. The tables had been turned, so to speak, as the opponents of the previous draft were now the strongest supporters of the amended law and the authors of the original draft law spoke freely against the amended version and the conciliatory

¹⁰³ Op. Cit., *Nezavisimaia gazeta*, 28/12/1995, 4.

commission that had presided over the changes. Some deputies tried unsuccessfully to find support for another variant, one that would effectively negate the work of the commission. Others warned of the dire political and economic consequences of passing the amended version of the draft law. “As an author of the draft law”, said Aleksei Mel’nikov, “I responsibly declare that we will receive no investment under this law. We are simply misleading Sakhalin, Komi, Khanty-Mansiisk AO, which have the most advanced projects and are waiting [for this law].”¹⁰⁴

But not all the deputies from the resource producing regions opposed the new draft. For example, V.A. Ozerov, the head of the Association of the Legislative Organs of the Far East and Baikal stated that at the last assembly of the Association in Iuzhno-Sakalinsk (in Sakhalin oblast’), the members supported revisions in the draft. The draft was also examined at the assembly of the Association of Economic Cooperation of the Far East and Baikal. There, Igor Pavlovich Farukhdinov, the Governor of Sakhalin oblast’, a major oil producing region and the location of the first two (and only, at this point) operating production sharing projects, came forward in support of the legislation.¹⁰⁵

Further discussion in the Duma was short-lived as deputies in favour of the law were anxious to get the vote underway and deputies opposing the draft seemed resigned to the fact that their opposition to the new draft would fall on deaf ears. When the Duma eventually voted, a majority of 242 passed the revised draft; slightly more than the initial

¹⁰⁴ Stenogramma zasedanii, Biulleten’ No. 140 (06/12/1995) Federal’noe Sobranie - Parlament RF, Gosudarstvennaia Duma (Moskva: Izdanie Gosudarstvennoi Dumy), 18.

¹⁰⁵ Ibid., 19. Russia’s first two production sharing agreements, Sakhalin 1 and Sakhalin 2, were actually signed prior to this whole debate.

vote on the original draft in June but less than October's attempt to overturn the decision of the Federation Council.

Return to the Federation Council

In the aftermath of the Duma's decision to approve the amended draft, some degree of confusion reigned amongst the original supporters of production sharing (i.e. those that had supported the initial Duma draft) in the Federation Council. Despite their opposition to the changes, there was great pressure for them to ratify the law and send it to the President for his approval before the run-up to the Presidential elections in the summer of 1996. The political rhetoric surrounding the parliamentary election campaign of 1995 had already had a certain degree of influence over the course of the legislation. Indeed, the issue of Russia's national interest in the face of foreign concessions was evident in both the Council debates held in October and the electoral campaign that followed.

Although some of the law's more adamant supporters simply refused to accept the changes¹⁰⁶, others adopted a somewhat more pragmatic approach. In some cases:

the senator-heads of the resource producing regions, experiencing strong pressure from oil producing enterprises, were prepared to vote in favour of the law, not splitting hairs because of the changes introduced into the text. This attitude was very much demonstrated in the speech of Mintimer Shaimiev, the President of Tatarstan, who called upon his colleagues to support the law, in so far as without investment, there was no possibility of solving the problem of supporting resource producing companies.¹⁰⁷

¹⁰⁶ This was the case with both Mel'nikov and Mikhailov in the Duma.

¹⁰⁷ Svetlana Lolaeva, "Senatory odobrili zakon 'O soglasheniakh o razdele produktsii' (The Senators Approve the Law 'On Production Sharing Agreements')," *Segodnia*, 20/12/1995, 2.

As the president of one of Russia's strongest and most autonomous republics, Mintimer Shaimiev is probably the most powerful regional leader in Russia. His opinion, therefore, carries a lot of weight with his Council colleagues.¹⁰⁸ In many respects, Tatarstan represents a bridge between the resource and non-resource regions. While the republic has been a centre for oil production since the 1950s, it is also highly industrialized. One of the reasons why Shaimiev may have supported the revised law was that he was able to understand the plight of the non-resource regions and the amendments they had introduced regarding the domestic machine building industry. In a more pragmatic sense, Shaimiev probably realized that Tatarstan could benefit from such changes.

Another deciding factor in the minds of many representatives (especially those from resource-producing regions) may have been the fact that under the revised version, each subject of the federation could regulate production sharing agreements concerning deposits located in their particular region. Iurii Boldyrev made a point of emphasizing this fact during the final debate.¹⁰⁹

Thus, the choice was clear. The representatives could either vote in favour of a flawed law with the possibility of amending it in the future. Or, they could delay production sharing indefinitely by defeating the law, effectively sending it back to the Duma and another conciliatory commission with no guarantee that favourable changes would be made. The consensus in the Federation Council on December 19th was that a

¹⁰⁸ Mintimer Shaimiev, incidentally, is an opponent of absentee balloting. He feels that Council representatives should make more of an effort to attend the Federation Council sessions in person (this is in spite of the fact that the use of absentee ballots probably would have allowed the draft law to pass through the Federation Council unscathed and that Shaimiev was a supporter of the original draft)

¹⁰⁹ Op. Cit., *Segodnia* (20/12/1995), 2.

flawed law was better than no law at all. The representatives of many Russian and foreign oil companies reluctantly shared this view. The comments of one Moscow based representative of a western oil company summed up their restrained optimism: “[i]n Russia, one has to regard even a small step away from legislative chaos as substantial progress.”¹¹⁰ As such, the Federation Council approved the draft law “On Production Sharing Agreements”, with 113 representatives voting in favour and only 3 voting against (with 2 abstentions).¹¹¹

The draft was then submitted to President El'tsin for final approval. According to Russian legislative practice, the President has two weeks to decide whether he wants to veto the law and send it back to the Duma for further consideration. While El'tsin supported the concept of production sharing, some observers believed that he would veto the law. There was some concern that his advisors, especially those in the State Legal Commission, would urge him to do so. If the reader will remember, officials in the State Legal Commission had authored the draft that the Duma had rejected in February 1995. Since that initial vote, the Commission had kept an extremely low profile in the production sharing debate, thus contributing to the uncertainty regarding its position on the legislation.

These rumours, however, proved unfounded. Commission officials may have disagreed with the Duma's initial choice of drafts, but, like the President, they supported the concept of production sharing and were not willing to jeopardize the passage of the law. As Anatoly Kirin, the deputy head of the Commission's analytical division

¹¹⁰ “Lesser Evil,” *Russian Petroleum Investor*, February 1996, 20.

¹¹¹ Zasedanie 32-ogo Sovet Federatsii, Federal'nogo Sobraniia, Biulletin' #1 (90), 19/12/1995 (Moskva: Izdanie Soveta Federatsii, 1995), 35.

commented: “[a] presidential veto could relegate the PSA law to the parliamentary dustbin, leaving Russia with no legislation governing foreign investment in the energy industry.”¹¹²

Another possible reason why El'tsin might have vetoed the law stems from his opposition to the amendments made by the conciliatory commission; in particular those which limited the executive's control over the approval of production sharing agreements. Although never one to shy away from a confrontation with the legislature, the Communist “victory” in the December 1995 parliamentary elections and the realization that the draft would die if sent back to the legislature persuaded El'tsin not to challenge the Duma on this issue. With the reassurance that a flawed law is better than no law and that the law could be amended at a later, more politically conducive date, President El'tsin signed the draft into law on December 30th, 1995.¹¹³ This act effectively ended the first and perhaps most significant chapter in the ongoing production sharing debate.

¹¹² “Near-Death Experience,” *Russian Petroleum Investor*, October 1995, 33.

¹¹³ “Zakon o SRP podpisan,” *Nezavisimaaia gazeta*, 04/01/1996, 4.

Chapter Four

Explaining the Theoretical and Practical Implications of the Federal Production Sharing Debate

Looking back on the legislative odyssey of the draft Law on Production Sharing Agreements, one is struck by two simple yet significant facts. The first is that politics and policy making was shaped by the wider context in which it took place.¹ Second, this context influenced and, to a certain extent, was influenced by both the ideological positions and political biases of the political and societal actors involved in the policy process and by the content of the policy in question. The policy making process, therefore, involved a complex and multidirectional series of interactions among ideas, individuals and institutions.² In order to understand how this activity led to policy decisions, it is necessary to examine this context and determine the relationship of these features to the individuals and groups that came into contact with the policy as it passed through the political system.

The political context in contemporary Russia is based on a number of structural and ideological cleavages. Some of these cleavages are institutionally based. In other words, they arise as a result of conflict between competing institutional structures and

¹ Kenneth Shepsle observes: "Politics takes place in context, often formal and official (as in a legislative, judicial or bureaucratic proceeding) but often informal as well (as in a club or faculty meeting)." See: Kenneth A. Shepsle, "Studying Institutions: Some Lessons from the Rational Choice Approach," *Journal of Theoretical Politics*, 1/2 (1989), 134-5.

societally defined rules. Examples include the struggle for legislative supremacy between the executive and legislative branches of government and the territorial divisions that characterize the Russian federal model. Other cleavages are more socio-ideologically oriented. An example is the ongoing conflict between the respective supporters of state control and marketization over the future of economic reform. Together these cleavages influence the policy making process by providing the structural basis and impetus for the development of a complex and crosscutting web of policy coalitions involving individuals, groups, organizations and state bodies from all parts of the political system.

Whereas context and institutions play a significant role “in the definition and articulation of interests, the dissemination of ideas, the construction of market behaviour, and the determination of policy”³, it is also important to remember that this context is not static. Nor is the line of causality between the context and the individuals responsible for developing and adopting policy unidirectional. This is particularly true in transitional states such as the Russian Federation. Over the past several years, Russia’s institutional structure has undergone an almost continual process of modification and adaptation. And, more often than not, the policy makers are the primary instigators of such changes. In many instances, these institutional or contextual modifications, a process which the literature refers to as institutional dynamism, have been so controversial that they have aggravated rather than mediated the divisions that exist within the polity.⁴ The point is

² Peter Hall, *Governing the Economy: The Politics of State Intervention in Britain and France* (New York: Oxford University Press, 1986), 5.

³ *Ibid.*, 5.

⁴ Sven Steinmo, Kathleen Thelen and Frank Longstreth (eds), *Structuring Politics: Historical Institutionalism in Comparative Analysis* (Cambridge: Cambridge University Press, 1992), 21.

that students of politics and, above all, students of transitional polities should be prepared to treat the institutional and societal features that embed the contextual cleavages within the political system as both independent and dependent variables.

This chapter will relate the factual evidence provided in the previous chapter to the theoretical positions discussed in chapter one in order to demonstrate how the cleavages that characterize contemporary Russian politics influenced and, in turn, were influenced by the production sharing debate. Of particular interest will be the manner in which the context structured the various intergovernmental relationships that had such an important effect on the policy process during the production sharing debate. Part one will focus on the conflict between the legislative and executive branches of government and how this conflict formed the basis for the alliances that would feature prominently in the legislative debate. The second part will examine the intergovernmental cleavage and the ways in which the structural composition of the Russian federal system influenced the policy making process. Part three will look at the question of economic reform and the effect that the ideological and pragmatic positions of the main participants in the debate had on the draft as it passed through the legislature.

Interbranch Conflict in the Russian Federation

The troubled relationship between the legislature and the executive has been an enduring and, in many respects, damaging feature of the nascent Russian state. The conflict between the two branches of government has its origins in the immediate aftermath of the Soviet collapse and the struggle over the direction of political and economic reform. Although far from cordial and cooperative during the initial stages of

reform, relations between the legislature and the executive reached a new low in September and October of 1993. At that time, President El'tsin, having grown frustrated with the political machinations of his legislative counterparts in the Council of Deputies, unilaterally dissolved the legislature. When the deputies resisted, El'tsin resorted to violence and, with the help of the armed forces, forcibly ejected them from their offices in central Moscow.

Following the dissolution of the federal legislature and the emasculation of the regional *soviets* or legislative councils (many of which had supported their colleagues in the federal legislature), the President was in a position to force through a new constitution that entrenched the political authority of the executive branch. Under this new constitution, "not only does the President exercise considerable cabinet authority, he also has what are probably the strongest legislative powers of any president in the world."⁵ On many occasions since the adoption of the new constitution, President El'tsin has contributed to the disunity between the two branches by using his immense constitutional power to bypass the legislative branch and his own Prime Minister, and to divide and rule his rivals.⁶

The wider conflict between the two main branches of government and the events of 1993, demonstrated the importance of institutions and institutional development in contemporary Russia. "Political actors," argue Kathleen Thelen and Sven Steinmo, "...are not unaware of the deep and fundamental impact of institutions, which is why

⁵ Robert Orttung and Scott Parish, "From Confrontation to Cooperation in Russia," *Transition*, 13/12/1996, 17

⁶ El'tsin was often shown on the evening news meeting with the Prime Minister and his closest advisors at the Kremlin. The meetings were obviously staged for the television cameras and featured a dominant El'tsin berating a silent Viktor Chernomyrdin (in much the same way as a parent would scold a child).

battles over institutions are so hard fought.”⁷ President El’tsin’s drive to curb the power of the legislature and install a constitution that significantly increased the power of the executive branch is a perfect example of the type of institutional dynamism that exists in states undergoing a significant and wholesale political transition. This institutional dynamism, which “results from deliberate political strategies to transform structural parameters in order to win long-term political advantage”, demonstrates quite clearly how rationally motivated political actors attempt to mould the institutional setting in which they operate.⁸

During the course of the production sharing debate, the legislative-executive struggle alluded to above had a notable influence on the draft law’s passage through the legislature. Most significantly, at least from the point of view of this study, the disagreements between supporters of the legislative and the executive branches over the content and tenor of the draft Law on PSAs actually caused the emergence of cleavages at both the federal and regional levels. These intragovernmental divisions, in turn, led to alliances between elements at the centre and elements at the periphery.⁹ The emergence of crosscutting alliances between elements of the federal and regional governments on issues stemming from the production sharing debate builds upon traditional notions of centre-periphery relations by adding a new dimension to our understanding of federal politics. Indeed, the presence of federal-regional alliances enhances our understanding of

⁷ Op. Cit., Steinmo et al, 9. The use of the words “battle” and “hard fought” is particularly relevant in the Russian case.

⁸ Ibid., 21.

⁹ Federal scholars prefer the terms “federal” and “regional” instead of “centre” and “periphery”.

Russian federal politics by dispelling ideas of regional “unity” in the face of federal pressure.

The Presidential Decree #2285, “On matters pertaining to production sharing agreements in the use of underground resources”, was a decision of the executive. The fact that the President is able to issue decrees of this nature is an indication of the power of the executive. Under the terms of the decree, production sharing agreements were to be entered into by the federal government and the executive of the relevant local authorities. This early attempt to institutionalize what amounted to executive federalism over the production sharing process would not only set the tone for future interbranch clashes at the federal level. It would also have a marked effect on relations between the executive and legislative branches at the regional level.

The power of the executive, while considerable, is not absolute. Since decrees carry less legal weight and are less detailed than laws, it was clear that more extensive production sharing legislation would be needed.¹⁰ One of the most important structural features of the Russian political system is that laws, unlike decrees, must be adopted by the legislative branch before they are submitted to the President for final consent. This set the institutional stage for conflict between the executive and legislative branches over the terms and conditions of the draft law.

The conflict between the legislative and executive branches was evident at the very beginning of the production sharing debate. According to article 104 of the Russian constitution, the State Duma is responsible for choosing the particular version of a draft law to be tabled for debate in the legislature. In the case of the Law on Production

Sharing Agreements, the Duma rejected the draft compiled by an intergovernmental commission under the auspices of R.G. Orekhov, the official representative of the President and the head of the State Legal Commission, in favour of a draft that had been written by members of its own Committee for Economic Policy. The important question is: did the Duma, an institution that has been traditionally hostile to the President and the executive branch, reject the "Presidential" draft as a result of its hostility to the President or because it disagreed with the substance of the draft? First and foremost, the deputies opposed the centralist, executive dominated nature of the Presidential draft. But the fact that the Communist and nationalist-dominated Duma supported the alternative version that had been written by laBLoko deputies and other reform-minded individuals, suggests that the hostility of some conservative deputies to the President and the executive branch was greater than their distaste for the supporters of marketization and economic reform.

How can we interpret such manouvering from a theoretical standpoint? Perhaps the best explanation comes from the traditional rational choice school and its newer institutionalist variant. The former would argue that President El'tsin made a rational decision to put production sharing on the agenda by issuing a decree and, then, by supporting one of the versions of the draft law presented to the Duma. The Duma deputies, on the other hand, followed their rational motivations, which were to oppose the executive branch, by rejecting the Presidential version of the draft.

Rational choice institutionalists would perhaps modify this argument by adding that although both the President and the members of the Duma acted in a rational and strategic manner, the institutional context in which they were operating played a hand in

¹⁰ A decree is a sort of statement of intent, whereas a law outlines the legal framework in much more detail.

shaping their rational motivations. In the Russian constitutional system, the President wields considerably more authority than the legislature. On many occasions, he has used this authority to achieve certain goals at the expense of the legislature. The fact that the President possesses so much authority has in turn provided the legislature with the resolve, if not the means, to oppose the President and the executive. As such, one could argue that the institutional framework that perpetuates the struggle between the legislature and the executive plays a key role in structuring the rational, self-interested motivations of politicians in both branches of government.

One of the ironies of the draft's passage through the legislature, as seen in the context of the interbranch conflict, was that opposition to the draft's "executive bias" was strongest in the Federation Council. At the time, the Council was not only supposed to be more loyal to the President and less politically divided than the Duma, but its members were also supposed to be more individualistic. That is to say, they were said to be motivated more by the pragmatic concerns of the regions they represented than by the ideological concerns of a particular party or faction. Although the method of appointing the Council has now been changed, in 1995 the representatives of the executive and legislative branches of the regions still dominated the upper chamber. This provided a structural-institutional context for conflict and regional infighting over the questions of executive dominance and executive federalism.¹¹

¹¹ The present Federation Council is comprised of two representatives from each region: the head of the regional legislature and the head of the regional executive. In 1995, each region also had two members, but there was no legal or constitutional requirement that the members had to be the *heads* of the executive and the legislature. Nevertheless, Article 95 of the federal Constitution did stipulate that, "[t]he Federation Council shall be composed of two representatives from each member of the Russian Federation - one from its representative and one from its executive body of state authority." See: Article 95, *Konstitutsia Rossiiskoi Federatsii* (Moskva: INFRA, 1997)

The presence of representatives from both the legislative and executive branches in the Federation Council, coupled with the provisions outlined in the draft regarding executive control over the process of production sharing and the tumultuous history of legislative-executive relations in Russia, encouraged various types of coalitions and conflicts to emerge. These included: interregional alliances between representatives from opposing sides in the production sharing debate; intra-regional conflicts between representatives from single regions; and federal-regional alliances or, as Sidney Tarrow would say, alliances between elements at the centre and elements at the periphery.

For instance, representatives from the legislative branches of resource producing regions such as Aman Tuleev (Kemerovskaia oblast') and Leonid Sablin (Nenets autonomous okrug) joined with Iurii Boldyrev, a representative from the legislature in industrial St. Petersburg, in opposition to the provision that gave control over the negotiation of PSAs to the federal and regional executives. In doing so, they voiced their disapproval over the lack of legislative oversight in the process of negotiating and adopting PSAs. In Sablin's case, a clear split between him and Iurii Komarovskii, the head of the executive branch in the Nenets autonomous okrug, was evident. Boldyrev, in turn, was allied with Duma deputies such as Sergei Glaz'ev and federal bodies such as Roskomnedra on this and other issues involving production sharing.

The fact that representatives from the legislative branches of supposedly disparate regions joined forces to oppose the draft's "executive bias" dispels the idea that the non-resource and resource regions were always on opposite sides in the debate. The presence of informal "anti-executive" coalitions between representatives from the resource and non-resource regions suggests that the interbranch cleavage contributed to the

development of such alliances. Furthermore, the evidence also reveals the effect of institutionalized interbranch conflict on the development of the other inter- and intragovernmental relationships mentioned above.

While it would be difficult to portray such a tangled network of relationships using traditional models of centre-periphery politics and intergovernmental relations, there are intergovernmental models that accommodate such crosscutting conflicts and alliances. Daniel Elazar's matrix is an example of such a model. One of the notable features of Elazar's matrix, at least from the Russian perspective, is that the main branches of government and the links between these branches and the regional governments are actually incorporated into the model.¹² This feature makes the matrix model particularly relevant to the study of Russian federalism.

Of course, Elazar's matrix is an ideal type, designed to show how a presidential federal system should work in theory (see figure one). Several modifications are needed in order to adapt this model to the Russian reality (see figure two). First, the matrix model presumes that the different branches of government are separated. This is only partially true in the Russian case since the federal cabinet must be approved by the legislature and the heads of the regional executives are automatically members of the upper chamber of the federal legislature.

Second, Elazar presents the various branches as equals, aligned along the four sides of a square. In the Russian case, a trapezoid might be a more appropriate model since the executive is clearly the most powerful branch and the other branches (administrative, legislative and judicial) have differing degrees of authority. The four

unequal sides of this quadrilateral, therefore, represent the unequal strengths of the branches of government in Russia. This imbalance also affects the strength of the interbranch and intergovernmental relations. The predominance of executive federalism, for example, means that the relationship between the regions and the federal executive is considerably stronger than say the relationship between the regions and the federal judiciary. I symbolize this unevenness by using different sized arrows to link the regions with the various federal branches.

Although the institutional context appeared to have an effect on the coalitional struggles that characterized the legislative process, some attention should also be focused on the role that individuals played in this process. While many individuals influenced the draft's passage through the legislature (Aleksei Mel'nikov, Vladimir Shumeiko, Sergei Glaz'ev, to mention a few), Iurii Boldyrev was the focal point of opposition to the original version of the law. He, among others, championed the legislative cause by insisting on the principle of legislative oversight.

The question is what were the motivations for his actions? It could be argued that he had his own rational, self-interested motivations for pursuing this line of argument. In other words, he had his own axes to grind with IaBLoko and the Presidential Administration. It is also possible that as a key member of the Audit Chamber¹³, an institution that is accountable to the legislature, he was simply caught up in a larger struggle between rival institutions from the legislative and executive branches. The basis for such conflict was clearly evident. After all, it was no secret that the President's

¹² Elazar's model is based on the American federal system of government. Russia's federal system closely resembles this model of government.

control over federal expenditures through the Finance Ministry had brought him into conflict with bodies such as the Audit Chamber on numerous occasions in the past.¹⁴

The controversy surrounding questions of executive dominance, executive federalism and legislative oversight was revisited at the conciliatory commission stage of the legislative process. Like the Audit Chamber, the conciliatory commission was set firmly within the legislative branch's sphere of influence. According to Article 105 (4) of the federal constitution,

[a] federal law shall be considered adopted by the Federation Council if more than half of the general number of its deputies have voted for it or if it has not been considered by the Federation Council within fourteen days of its submission. If the Federation Council rejects a federal law, the two houses may set up a reconciliatory commission to settle the dispute.¹⁵

It was during the conciliatory commission deliberations that the provisions dealing with legislative oversight over the production sharing process were added to the draft. Two of the most influential members of the commission were the Chairman Sergei Glaz'ev (also the Chairman of the Audit Chamber) and the Deputy Chairman Iurii Boldyrev. As members of the Audit Chamber, and thus firmly allied to the legislative cause, it is easy to see why these two individuals in particular would have insisted on a legislative check on the control of the executive branch over the production sharing process. In many respects, their decision can be explained by the particular structural features of the Russian political system. The institutional dominance of the executive branch led to an interbranch struggle which, in turn, prompted the legislature and the

¹³ Among its other tasks, the Audit Chamber is responsible for monitoring the preparation, adoption and implementation of the federal budget on behalf of the legislature.

¹⁴ Op. Cit, Ortung and Parish, 19.

bodies and individuals under its control to attempt to curb the executive's power by insisting on legislative oversight in important policy areas such as production sharing.

Given the evidence presented here, it would be misleading to present the legislature as totally bereft of political influence. In spite of the fact that the executive has played a dominant role in the post-Soviet period, the production sharing debate demonstrated the power of the legislature to influence the policy making process. The successful introduction of amendments designed to expand the role of the federal and regional legislatures over the production sharing process was a clear example of the legislature's ability to hold its own against the executive.

It is important to bear in mind that broader political realities helped the legislature to assume a dominant position in relation to the executive during the production sharing debate. Overall, the executive played a muted role in the legislative process. Although the President and his closest advisors supported the draft law, they seemed reluctant to become involved in the debates raging in the Duma, the Federation Council and, most importantly, the conciliatory commission hearings.

The main reason for this was the upcoming parliamentary elections in December 1995 and, to a lesser extent, the presidential elections the following June. Neither the President nor his advisors and ministers were going to risk being drawn into a political battle that could jeopardize their electoral campaign. As one observer commented, "a fight against the law would perfectly suit the election campaign pursued by the pro-Communist deputies under the "Russia-is-being-pillaged" banner."¹⁶ The government and its closest political allies did not want to advertise the fact that they supported

¹⁵ Op. Cit, Konstitutsiia Rossiiskoi Federatsii, Article 105 (4).

foreign involvement in the Russian resource sector through the production sharing legislation. This, coupled with the already low personal popularity of El'tsin and anyone associated with the President, convinced El'tsin and his staff to allow the draft to pass through the legislature without a fight.

Intergovernmental Cleavages Over Production Sharing

As one delves deeper into the issues and problems that confronted the production sharing draft, it becomes apparent that the intergovernmental cleavage was an equally prominent feature in the debate. This cleavage acted as both a structural or contextual influence over the legislative process and, as we saw in the previous section on legislative/executive relations, as a focal point of influence. The term intergovernmental cleavage not only refers to the relationship between the federal government and the regions, but also to the relationships that exist within and between these entities. Of particular interest in this study are interregional relationships (conflicts and alliances between regions), intra-regional relationships (conflicts and alliances within a particular region) and the manner in which these relationships encourage alliances between elements at the centre and elements at the periphery. This section will explore these relationships in greater detail as a means of understanding how the Russian federal model influenced and was influenced by the production sharing debate.

Although Russia is a young federation, it has already encountered many of the problems and dilemmas evident in mature federations. These problems have been

¹⁶ "Change of Venue," *Russian Petroleum Investor*, September 1995, 19.

compounded by the fact that the country is undergoing a dramatic political, economic and social transformation. In this context, issues such as the division of power and regional disparities become even more divisive. The simple truth is that in a period of political and economic turmoil, those who have political authority and economic wealth are often reluctant to share it with those who do not.

Some of the problems facing the nascent Russian Federation are the result of legacies from the Soviet period. For example, the structural foundations of the country's asymmetrical federal system and the problems that have arisen as a result of this system are a legacy of the Soviet model of territorial administration. During the Soviet period the highly centralized nature of the authoritarian system contained the threat posed by territorial asymmetries. The disintegration of central control prior to and immediately following the Soviet collapse has strengthened the disruptive potential of these federal features by allowing the constituent members of the Russian Federation to press for more autonomy from the federal government. Thus far, the federal government has responded to the demands of the regions in a variety of ways, ranging from compromise and bilateral negotiations to violence and armed conflict. None of these responses, however, has provided a long term, mutually acceptable solution to the problems of federalism and intergovernmental relations.

As noted in the introductory chapter, asymmetries exist on many different levels. There are disparities in terms of the regions' level of economic development and their potential for future development. There are also differences in the amount of formal and informal autonomy possessed by the regions. Again, this is in part a legacy of the Soviet period, when regions were placed in an asymmetrical territorial hierarchy based on ethnic

criteria. The persistence of this hierarchy into the post-Soviet period has caused a number of interregional disputes, all of which have had an impact on intergovernmental relations and the political process.

A second structural feature of the Russian federal model that has caused conflict, especially between the federal government and the regions, is the principle of concurrent jurisdiction. While concurrency is a common way of dividing authority in federal states, such a system requires cooperation, a clear legislative basis and a mutually acceptable system for resolving disputes if it is to function properly. Although steps have been taken in Russia to create a legislative framework to manage concurrency, this framework, like most parts of the political system, is still in its formative stages. The mechanisms for resolving disputes also face a similar dilemma. In the Russian case, the Constitutional Court, the traditional arbiter of federal-regional disputes in federal systems, is weak. The onus for resolving disputes, therefore, has fallen on the executive at the federal and regional levels, a development that has in turn stoked the fires of executive-legislative conflict.¹⁷

At present, the regions are able to influence the policy-making process in areas of concurrent management on two levels. At the federal level, they are represented in both chambers of the parliament and are frequently called upon by federal committees to help formulate policies. At the regional level, they often take it upon themselves to enact their own legislation in a particular policy field. The legislative process surrounding the draft

¹⁷ According to article 85 (1) of the Russian constitution: "The President of the Russian Federation may use reconciliatory procedures in order to settle differences between the bodies of state authority of the Russian Federation and the bodies of state authority of the members of the Russian Federation, as well as between the bodies of state authority of the Russian Federation members. If no agreement is achieved, he may send the case to the appropriate court."

Law on PSAs is an example of the former. The latter process will be dealt with in the second part of this study when the legislative efforts of Tatarstan and Khanty Mansiisk will be examined in greater detail.

In addition to the structural-territorial composition of the federation and the widespread use of concurrency as a principle of legislative management, the institutional structure of the federal legislature enhances the effect of the intergovernmental cleavage over the policy making process. The Federation Council, whose membership represents all of the 89 regions in the Russian Federation, is the most obvious forum for regional interaction at the federal level. The regions, however, are also represented in the State Duma. Half of the 450 deputies elected to the Duma represent regional constituencies and although this institution tends to be dominated by factions and blocs based on ideology rather than geography, a number of regionally based factions have emerged in recent years. The most prominent of these is the "Regions of Russia" faction, one of the main political blocs in the Duma. As a result of this institutional structure and the individuals and groups that work within the structure, regional concerns have played a dominant role in shaping the policy process at the federal level.

But how did intergovernmental cleavages influence the legislative progress of the draft law on production sharing? In the initial stages of the debate, when the different versions of the draft law were presented to the Duma for consideration, the Presidential draft was criticized for being too centrally oriented and lacking in input from the regions. Aleksei Mel'nikov, one of the authors of the rival draft, attempted to gain the support of regionally-minded deputies by emphasizing the fact that the regional governments had played an important role in drafting his version of the law. Although regional concerns

were not the only reason why the Presidential draft was eventually rejected, they were voiced on many occasions throughout the debate and most certainly influenced the outcome of the vote.

As the debate progressed in the Duma, the concerns of the regions resurfaced on a number of occasions. The early sessions revealed the first signs of a split between the resource and non-resource producing regions on the question of production sharing. Despite assurances that production sharing would also produce economic benefits for non-resource/industrial regions, the investment flowing into the oil sector under a production sharing system would benefit the resource regions above all others. Many of the non-resource regions, therefore, viewed the law as a mechanism for perpetuating economic disparities between them and their resource producing counterparts. These concerns forced the authors of the draft to make changes to the law, in particular changes that favoured the domestic machine building complex.

Naturally, the regional voices became stronger and louder once the legislation entered the Federation Council. The composition of the Council, with a large proportion of its membership made up of high-level officials such as the regional governors, almost had a disastrous effect on the draft during the opening stages of the debate. The ill-timed colloquy on the oil and gas industry organized by Prime Minister Viktor Chernomyrdin in Tiumen' meant that many of the resource region representatives on the Council were absent.

The absence of so many key players from the Council session had a number of consequences. First, it jeopardized the draft's passage through the Council and gave the opponents of the law (especially those from the non-resource regions) the opportunity to

voice their concerns virtually unopposed. It was only the intervention of the draft's supporters who actually attended the session that saved it from being sent back to the Duma. Second, the absence of so many members renewed calls for structural change to make the Council more effective. While the first of these consequences demonstrates the structural influence that institutions have over the policy process, the second shows how institutions undergo change as a result of this process, thus lending support to the idea that institutions should be treated as both independent and dependent variables.

It was in the Federation Council debates, however, that the divisions first seen in the Duma between the resource and non-resource regions and the more general problems of asymmetrical federalism and concurrency became more profound. The argument that the Council should have waited for the representatives from the resource producing regions before conducting a serious discussion on the draft legislation provoked anger on the part of the representatives of the non-resource regions. Although such a move seemed logical given that the resource producing regions would be most affected by the legislation, the non-resource regions felt marginalized by this request.

Their responses revealed a much deeper division over the broader and politically controversial issue of resource ownership; the question of whether Russia's resource wealth belongs to the country as a whole or the territories in which it is located. The realities of concurrency made answering such a question even more difficult. In effect, the absence of an adequate legal (institutional) framework for managing areas of concurrent jurisdiction and the confusion that reigned as a result of the numerous conflicting federal and regional laws on resource management and ownership was having a damaging effect on the legislative process.

The question of ownership was only one of a number of issues in the production sharing debate that divided the non-resource and resource producing regions. At times, it seemed that some of the non-resource regions envied the benefits that production sharing would bring to their resource producing counterparts. Even though the supporters of the draft insisted that production sharing would benefit the country as a whole and not just the resource producing regions, the industrial regions were worried that any changes in the existing system of resource management and taxation would jeopardize their economic positions.

Rational choice theorists would argue that this was simply a self-interested response on the part of the non-resource regions. It is also possible to detect two other possible motives for such behaviour. First, the non-resource regions could have been reacting against the economic disparities present in the system. Second, their anger could have been directed at the passing of the old system. In all of these cases, however, the response was a reaction to structural changes taking place within the resources sector.

The conflict between the resource and non-resource regions was not the only interregional division to affect the progress of the production sharing legislation. Since the collapse of the Soviet Union, there has been some confusion regarding the position of the regions in relation to each other and to the federal government. The concepts of asymmetry and symmetry have existed side by side and have been used freely by both the regions and the federal government in order to legitimate their competing demands for authority and autonomy. For example, in their attempts to counter the power of the republics, many oblasts insist that Russia is a symmetrical federation. On the other hand, many of these same oblasts still adhere to the idea of asymmetry in regard to their

relationships with other territorial entities such as autonomous okrugs. During the Soviet period, the okrug governments were subordinate to the authority of the oblast' governments. In the post-Soviet period, however, the okrugs, many of which are rich in natural resources, have been granted *de jure* equality with other subjects of the federation. This enhanced status has prompted them to push for greater *de facto* autonomy from their "host" regions.

This oblast'-okrug division was clearly apparent during the production sharing debate. The representatives of the oblasts were clearly worried that they would be excluded from production sharing agreements involving resources located on the territory of "their" autonomous okrugs. Some oblast' representatives even decried the fact that after years of working together and pouring countless resources into the development of the okrugs, the oblasts were to be excluded from the enormous windfall of investment and profit that production sharing would bring. The autonomous okrugs, on the other hand, seemed less concerned about the repercussions of production sharing. In some cases they even attempted to reassure the representatives from the oblasts that their position would still be taken into account.

The oblast'-okrug conflict is interesting from a number of perspectives. In addition to being an institutional legacy of the Soviet period and yet another example of regional division, it is also characteristic of the confusion that characterizes contemporary Russian federalism. Moreover, it is an example of how policy and policy content can influence the broader political context. Although the division existed prior to the production sharing debate, the policy debate clearly exacerbated relations between the two types of territorial entity.

The Federation Council debates highlighted many of the interregional divisions that existed over the question of production sharing; the most obvious being the conflict between the resource and non-resource producing regions. Even though the idea of production sharing was able to command significant support at both the federal and regional levels of government, this did not mean that those supporting the idea had achieved consensus on all matters relating to the debate. The difficulty of dividing authority between the federal government and the regions, for example, was one of a number of problems that revealed cracks in the pro-production sharing coalition. As such, while many regions supported the legislation in principle and the coalition remained relatively united throughout the debate, it should be noted that many regions were also somewhat skeptical of the federal government's role in policing and controlling the production sharing process.

Despite the problems between the federal government and the regions over the issue of concurrency, evidence of informal alliances between the centre and the periphery became more apparent as the debate shifted to the conciliatory commission stage. Reformers who did not represent any particular region (for instance, Aleksei Mel'nikov and Aleksei Mikhailov) defended the interests of the resource producing regions by opposing changes that would, in their opinion, act as a barrier to foreign investment. Their views in turn were shared by people such as Iurii Shafranik, the Minister of Fuel and Energy.

The efforts of Mel'nikov and the other supporters of the draft were countered by the likes of Boldyrev and Glaz'ev, who championed the cause of the non-resource regions and, in particular, the machine building complex in the industrial regions. The

lobbying efforts of Boldyrev and Glaz'ev were supported by a number of organizations and individuals. The most significant of these were Roskomnedra and the Deputy Minister of Fuel and Energy, Vadim Dvurechenskii. The division between Roskomnedra and the Ministry of Fuel and Energy had been evident throughout much of the post-Soviet period, so it is really no surprise that the two bodies would be on opposing sides in the production sharing debate. The apparent split between Iurii Shafranik and his deputy, Vadim Dvurechenskii, however, is more interesting because it reveals a conflict of opinion *within* a government agency that was supposed to be a supporter of production sharing. Like Boldyrev and the other opponents of the original draft law, Dvurechenskii was a proponent of increased domestic involvement in production sharing projects. Although he supported foreign investment, he adopted a "Russia First" stance that distanced him from the some of the law's more reform-minded proponents.¹⁸

The final Duma and Federation Council debates revealed yet more divisions between the regions; this time regarding the amendments introduced by the conciliatory commission. By this time, however, the positions of the resource regions and many federal supporters of production sharing were no longer uniform. Some just wanted the draft to become law. They had waited too long for the legislation to be adopted and were not prepared to fight for new changes when such changes could be made, incrementally, after the law's adoption. The representatives of large and powerful oil producing republics such as Tatarstan and Sakhalin thought that a flawed law was better than no law at all. Some reformers, on the other hand, continued their opposition to the changes and even voted against the new draft. They vowed to fight the changes through

¹⁸ "Russia First," *Russian Petroleum Investor*, September 1995, 24-27.

legislative means and oppose any other “changes” that might jeopardize the law’s ability to attract investment.

The Debate Over Economic Reform

Contemporary Russian politics is often portrayed as a struggle between the supporters of market reform and those who oppose sweeping changes to the economic system inherited from the Soviet Union. In reality, however, the situation is much more complex. Although most individuals and groups can be roughly divided based on their views on privatization and the role of the state in the economy, it is possible to identify a large number of differing positions on the question of economic reform. In fact, in addition to various shades of *dirigistes* and market reformers, even the current “status quo” has its supporters in those who have profited from the economic and political chaos that has descended over Russia during the last decade.

In comparison to the interbranch and intergovernmental cleavages discussed in the preceding sections, the struggle over economic reform is more ideological. It also tends to involve outside actors to a larger extent; although, the links between them and their allies in the state sector were also evident in the previous sections. Throughout the production sharing debate, the various complexes that dominate the Russian economy were able to use their influence and contacts in the legislature and the government in order to lobby for changes that would benefit them.

One of the clearest examples of the power of an industrial lobby to affect change was the case of the machine-building lobby. Its success in pressing for changes in the draft legislation was due in large part to its contacts at both federal and regional levels of

government. The ability of the machine-building industry to influence the legislative course in the face of opposition from the supporters of the original draft suggests that it still occupies a position of considerable strength in Russian political circles. As V.V. Razuvaev has argued, the strength of the machine-building sector and the corresponding weakness of the fuel and energy sector can be explained by the positions of the two complexes during the Soviet period. Judging by their influence in the production sharing debate, it appears that the machine-building complex has retained its political hegemony in the post Soviet period.

The private sector in the Russian oil industry can be divided into three basic categories: foreign investors and oil companies; domestic oil companies; and the domestic industrial (machine-building) complex. The last category is comprised of companies that produce machinery and equipment for the resource sector. Foreign oil companies were generally united in their support for production sharing. One of the leading proponents was the Petroleum Advisory Forum (PAF), an international agency that represents the interests of a number of leading foreign oil and gas corporations. The PAF argued that the licensing system should be abolished and replaced with a new regime based on production sharing. Not even the authors of the original draft, it seems, were prepared to support such a drastic and radical transformation.

On the whole, domestic resource companies showed qualified support for production sharing. At times, they appeared unsure about the question of foreign involvement in the Russian oil sector. Some even opposed the idea of foreign investment in the domestic economy altogether. Many of these companies had profited from the economic and legal chaos surrounding the broader transition. It is possible, therefore,

that they were in favour of maintaining the status quo rather than supporting a new regime that, if properly implemented, would dramatically change the existing system. Lastly, there is the domestic machine building sector. It was only prepared to support the production sharing initiative if it felt that it could benefit and not be hurt by foreign competition. This was certainly the basis on which it supported amendments to the original draft law.

In order to understand the position of the private sector in relation to the other participants and the manner in which it was able to influence the legislative debate, it is necessary to explore its relationship to the factions that dominated the federal parliament. The Duma's rejection of the original draft on second reading was largely the result of opposition from the Communist/nationalist bloc, the factions that championed the cause of the domestic machine building industry. It was in response to such pressure that the authors of the draft were forced to modify the law to include clauses to protect domestic interests from foreign competition. When the draft finally passed and was sent to the Federation Council, an informal coalition between the dirigiste factions, the representatives from the non-resource, industrial regions and the machine building complex was clearly apparent. All of these groups criticized the draft for providing what they perceived as concessions to foreign companies.

This coalition, however, was by no means solid. In the Duma debate following the Council's rejection of the law, it appears that ideology was sacrificed in favour of pragmatic political goals. It was at this crucial phase in the legislative process that one of the clearest examples of crosscutting alliances between disparate groups surfaced. Although Grigori Iavlinskii's attempt to amass the two-thirds majority needed to bypass

the Council ultimately failed, the alliance he fashioned included representatives from a wide variety of factions and was a prime example of pragmatic vote-swapping between rationally-motivated elites.

It could also be argued that the prospect of obtaining future support from the reformist ranks for Communist and nationalist sponsored legislation was not the only reason why so many “ideological opponents” of production sharing threw their weight behind the legislation at this critical stage in its legislative journey. Many Communists and nationalists recognized the benefits of production sharing for their constituencies and for the economy as a whole. Although these deputies had problems reconciling this fact with their ideological skepticism of foreign investment and privatization, it is possible that their desire to bring economic development to their beleaguered regions influenced their decision to support the legislation in its original form.¹⁹

The alliance between the opposing factions, though, was short-lived as the struggle over the draft continued into the conciliatory commission phase. As well as defending the interests of the resource regions, reformers on the commission represented the oil companies, while their opponents claimed to speak on behalf of the machine building sector (among other interests). The commission proceedings and the whole debate about investment and the role of foreign companies were also profoundly influenced by the upcoming parliamentary elections (scheduled for December 1995). The political tension surrounding the run-up to the election campaign made reformers

¹⁹ Some Communist deputies did try to couch their decision in ideological rather than rational, pragmatic terms. Vladimir Semago, a Duma deputy and leading member of the Communist Party commented, “It is wrong to think that Communists are against the PSA law. I adhere to the position of Vladimir Lenin, who hailed foreign concessions and actively introduced them in the early years of the Soviet regime.” See: “Down to the Wire,” *Russian Petroleum Investor*, November 1995, 8/17.

more cautious of their ties with foreign companies. In the heat of the electoral campaign, a very fine line existed between protecting Russia's national interests (by supporting legislation that encouraged investment and economic development) and what nationalists called "selling out the country to foreigners." The critics of the draft on the commission, therefore, were able to use the political climate to their advantage, becoming more vitriolic, critical and hard-line in the process. They realized that they could use the nationalist/ protectionist angle to push through changes in the law. Moreover, they were aware of the political capital that could be made for their parties and factions from appearing to defend Russia's national interests.

Many of the amendments made by the conciliatory commission had their roots in the struggle between the supporters of market reform and state control. Among these were provisions that protected domestic producers of technical equipment from foreign competition, prevented companies from avoiding customs tariffs and obligated investing companies to make payments to social security and pension funds. Perhaps the most significant and controversial amendment was the one that allowed the state (or any of the parties to a production sharing agreement) to review the terms of an agreement in the event of changes in circumstances. Such a change cast into doubt the inviolability of an agreement and was vehemently opposed by the supporters of production sharing.

Conclusions

The production sharing debate reveals a myriad of interconnected relationships, conflicts and crosscutting alliances. This lends support to the theory that the basis of the policy making process is the interaction between institutions, individuals and ideas. In

keeping with this theme, the preceding two chapters have examined the relationships between the federal and regional governments and the ways in which the main institutional cleavages of the Russian political system have structured and have been structured by these relationships.

This analysis of the production sharing issue has also provided an insight into an important feature of the federal state: the influence that the regions have over the federal policy making process. From the evidence at hand, it seems that the regions made a significant contribution to the legislative process; although the effectiveness of this contribution was reduced by the interregional and intra-regional conflicts that divided the periphery. Still, such divisions are to be expected in federal states. The issue is whether the federation in question possesses the institutional framework needed to resolve these differences. Established federations such as Canada, the United States and Germany have functioning institutional mechanisms for mediating intergovernmental conflict. In the case of Russia, I argue that institutional confusion, coupled with the various other cleavages underlying the political system, are having a disruptive effect on Russia's ability to reconcile intergovernmental differences.

So far, this study has looked primarily at policy-making at the federal level and the influence that the regions and their representatives are able to exert over this part of the legislative process. There is, however, another equally important side to the policy equation in the natural resources sector. Since natural resources fall under the concurrent jurisdiction of the federal and regional authorities, no study of resource policy would be complete without an examination of legislative initiatives at the regional level. Of the numerous resource regions that participated in the federal production sharing debate, two

in particular, Tatarstan and Khanty Mansiisk, have used the powers granted to them under the system of concurrency to develop comprehensive legislation on natural resource use and production sharing agreements. These cases are the focus of the second half of this study.

PART THREE: REGIONAL CASE STUDIES

Chapter Five

Tatarstan's Rise to Prominence in the Post-Soviet Period

Given the complexities of the policy making process in the Russian Federation, it is important that scholars view this process from a number of different perspectives. The first part of this study examined the policy making process in the oil sector at the federal level. A detailed analysis of the production sharing debate and the passage of the Law on Production Sharing Agreements demonstrated how the structural and procedural features of the Russian federal model aggravated and were aggravated by the main political, economic and social cleavages that divide the Russian polity.

While this case study has enhanced our understanding of how policy is formulated, developed and adopted in Russia, it provides only partial insight into the policy making process in this transitional federal state. In order to fully understand the policy process in contemporary Russia, it is also necessary to look at how the regional governments have reacted to the political choices made at the federal level. This is especially true in areas of concurrent jurisdiction where the regional governments are able to develop their own policy frameworks, either in response to or independently of those adopted by the federal government. More often than not, this regional legislation

conflicts with or even blatantly contradicts federal law. This has led to what has been dubbed “a war of laws” between the federal and regional governments, a situation that has complicated the policy making process even further.

In an effort to present a more complete picture of the policy making process in the Russian Federation, the second part of this study will explore the policy initiatives of two separate regions, the Republic of Tatarstan and the Khanty Mansiisk autonomous okrug, to the Law on Production Sharing Agreements. As the first two constituent members of the federation to adopt comprehensive legislation on natural resources, Tatarstan and Khanty Mansiisk serve as examples of how the regions have managed the challenges posed by the system of concurrent management in this sector of the economy. No doubt, other regions will follow their lead. In fact, recent reports indicate that regions such as the Republic of Sakha, Sakhalin oblast’ and the Nenets autonomous okrug are busily preparing their own legislation on natural resources and production sharing. But for the time being, the laws adopted in Tatarstan and Khanty Mansiisk represent the clearest illustrations of regional legislative initiatives in the natural resources sector.

The next two chapters will focus in particular on the case of Tatarstan. Chapter five will discuss Tatarstan’s position within the federation by exploring its political and economic evolution during the late Soviet and post-Soviet periods. Specifically, the chapter will concentrate on the relationship between the republican and federal governments prior to, during and after the signing of the February 1994 bilateral treaty on the delimitation of jurisdictional subjects and the mutual delegation of authority. Chapter six will provide a more detailed examination of the republic’s response to the challenges of reform and policy coordination in the oil sector. Of particular interest will

be the question of whether the 1997 Law on Oil and Gas, Tatarstan's legislative response to the federal Law on Production Sharing Agreements and other developments in the oil sector, actually entrenches republican sovereignty in this area.

Tatarstan: The Long and Winding Road to Greater Autonomy

The Republic of Tatarstan, located about 800 km east of Moscow in the Middle Volga region, has been described as both the "locomotive of federal relations"¹ and the "dog that didn't bite".² While these labels may seem contradictory, both aptly sum up the republic's struggle to find its place in the political confusion that exists in post-Soviet Russia. As the ethnic and historical homeland of the Volga Tatars, the republic has always harboured aspirations of sovereignty. The existence of an independent Tatar "state" in the Middle Volga region, however, was thwarted on several occasions in the past. The most notable of these followed the conquest of the Kazan' Khanate by Ivan *Grozny* (the Terrible) and its incorporation into the expanding Russian empire in 1552, and the dissolution of the briefly independent Idel-Ural state by the Soviet government in 1920.

The most recent attempt to expand the autonomy of the region began in the political confusion at the end of the Soviet period. The government of the then Tatar Autonomous Soviet Socialist Republic (ASSR) appealed to the Soviet government for a change in the republic's status from an ASSR to a Union Republic. The Tatarstani

¹ Tamara Zamiatina, "Federalizm ili dezintegratsiia-tretego ne dano (Federalism or disintegration-there is no third way)," *Segodnia*, 25/02/1994, 21.

² Edward W. Walker, "The Dog that Didn't Bite: Tatarstan and Asymmetrical Federalism in Russia," *Harriman Review* (1997). As cited in: John W. Slocum, "Homeopathic Nationalism: the Case of

government argued that a number of factors, ranging from the size of the republic and its ethnic importance to its economic weight within the wider Soviet economy, justified the change. In the opinion of many Tatarstani elites, smaller, less economically powerful regions such as Estonia and Moldavia had union republic status, so why should Tatarstan be denied this privilege?

The answer to this question is based largely on geography. Whereas the existing union republics, such as those in Central Asia and the Baltic region, were all located on the borders of the Soviet Union, Tatarstan was situated in the heart of Russia. According to the Soviet constitution, union republics had a *de jure* right to separate from the Soviet Union. Since separation was possible in both a *de jure* and as future events would indicate *de facto* sense, extending the title of "union republic" to the Tatar ASSR could have seriously jeopardized the territorial integrity of the largest union republic, the Russian Soviet Federated Socialist Republic (RSFSR).

It was partly in response to the impasse over the granting of union republic status, that the government of the Tatar ASSR became the first of a series of autonomous republics to issue a formal declaration of sovereignty in August 1990. This declaration had wide support among the population of Tatarstan and in other regions, many of which were preparing and adopting declarations of their own. It is also interesting to note that the President of the RSFSR, Boris El'tsin, supported the republican government's political aspirations. In a speech in Kazan' shortly after the declaration of sovereignty, El'tsin encouraged the people of Tatarstan to "take all the independence they could

swallow.” Although in the months and years that followed federal officials grimaced when reminded of El'tsin's remark³, his “generosity” at this time was indicative of the type of strategic favouritism shown by both Russian and Soviet officials in their attempts to build alliances of support in the regions.

The declaration of sovereignty and a subsequent 1991 declaration asserting the supremacy of republican legislation over federal legislation were given popular confirmation in a referendum held on March 21, 1992. Throughout 1992, the Tatarstani government refused to pay taxes to the newly created Russian Federation because its leaders believed that the republic was not receiving a fair share of the wealth generated in Tatarstan. Relations between Moscow and Kazan' reached a low point in the period leading up to and immediately following the referendum.⁴

The Tatarstani government's sovereignty campaign of 1991 and 1992 should not be understood as an attempt to achieve full independence from the Russian Federation. Rather, it represented a bid to extract the maximum amount of autonomy from the federal government and entrench this autonomy in a bilateral treaty. Granted, the republican government did push for sovereignty or full jurisdiction in a number of key policy areas, including natural resources. At the same time, it was also content to place limits on its sovereignty by maintaining political and economic ties with the Russian Federation and allowing the federal government to assume control over specified policy areas.

³ “Report on the Tatarstan Referendum on Sovereignty: March 21, 1992.” U.S. Commission on Security and Cooperation in Europe, 14/04/1992, 3.

⁴ According to one report, Russian military forces were assembled on the Tatarstani border on the eve of the referendum in a classic Soviet-style attempt to “persuade” the republic not to carry out the vote (OMRI Russian Report, 25/09/1996)

Consequently, the popular affirmation of the Tatarstani government's declaration of sovereignty strengthened its resolve to expand the republic's autonomy by concluding a bilateral treaty with the Russian Federation. Unfortunately, this was not the type of relationship that Moscow had hoped to build with the members of the federation. Instead, the federal government's answer to regional demands for increased autonomy came in the form of the Federation Treaty, a series of multi-lateral intergovernmental agreements with the republics and the other *sub'ekty*. All but two of the constituent members of the federation eventually signed the Federation Treaty. Only Tatarstan and Chechnya refused to commit themselves to this agreement.⁵

Although relations between Kazan⁶ and Moscow worsened in 1992 and 1993, the federal and republican governments still attempted to reach a compromise on the issue of Tatarstan's position with the federation. Shortly after Kazan's rejection of the Federation Treaty, the two governments began to discuss the possibility of negotiating a bilateral agreement on the delegation of political and economic power.⁷ Over the course of the next two years, high-level negotiations between the two governments ebbed and flowed with the political tide. Some analysts argue that Moscow was forced to compromise with the Tatarstani government, whereas others are careful to add that the bilateral agreement eventually signed by the two governments in February 1994 (hereinafter referred to as the February Agreement) contains concessions by both sides. As such, the February Agreement was a document that was influenced as much by the realities of federal

⁵ Vera Tolz, "Regionalism in Russia", RFE/RL Research Report, 2/9 (26/02/1993), 4.

⁶ Kazan' is the capital of Tatarstan.

⁷ "Federativnii dogovor budet podpisan segodnia (The Federation Treaty will be signed today)," *Rossiiskaia gazeta*, 31/03/1992, 1.

politics in Russia as by Kazan's clear refusal to accept nothing less than a bilateral agreement.

Even though it is generally believed that political concerns were the driving force behind the February Agreement, it is also important to consider the role that economic factors played in convincing Moscow and Kazan' to come to some kind of agreement on the division of power. Like its Soviet predecessor, the Russian economy is characterized by a high degree of structural integration. Both Russia and Tatarstan rely on each other for different forms of economic support. Russia needs Tatarstan's oil and contributions to the federal tax system (Tatarstan is a donor or "have" region), while many industrial enterprises in Tatarstan still require financial assistance from the federal government and supplies from other regions in the Russian Federation.⁸

In addition to the importance of Tatarstan to the Russian Federation in terms of military-industrial and natural resource production, one must also remember that Tatarstan straddles (and depends on) major energy pipelines and communication routes between European Russia and Siberia and the Far East.⁹ The unilateral closure of these communication and distribution networks by the federal government could effectively cut Tatarstan off from the outside world. Thus, it appeared that neither side could afford to maintain the deadlock indefinitely because of the long-term damage it might have inflicted on the economic stability of the republic and of the country as a whole.

As the first comprehensive bilateral treaty between the federal government and a constituent member of the federation, the February Agreement ushered in a new phase in

⁸ Aleko Adamesku, "Condemned to a Partnership," *Rossiiskie vesti*, 16/02/1994, 1.

⁹ Op. Cit., U.S. Commission on Security and Cooperation in Europe, 3.

the construction of the post-Soviet federal state in Russia. The agreement represented a shift away from the symmetrical federalism outlined in the constitution to a looser, more flexible and, in many respects, more complicated asymmetrical model. Since the conclusion of the February Agreement, the federal government has negotiated bilateral agreements with more than thirty republics and regions. Some politicians and observers argue that this trend towards “treaty federalism” or “bilateralism” has weakened the federation by reinforcing divisions between the regions and adding yet another layer of laws to an already confusing and contradictory administrative system (chapter six will examine this issue in greater detail). Others, however, point out that these treaties have achieved the important goal of peacefully preserving the territorial integrity of the federation by committing the largest and most assertive regions to membership within the Russian Federation.

Treaty Federalism: Reinforcing Asymmetry?

While treaty federalism has provided a temporary solution to the problem of accommodating demands for greater autonomy from the regions, there is some doubt as to whether the bilateral treaties will stabilize and improve intergovernmental relations in the long term. Critics of treaty federalism argue that this process contributes to asymmetrification of the Russian Federation not only by reinforcing the basic division between treaty and non-treaty regions but also by differentiating treaty regions.

In the initial stages of treaty federalism era (1994-1995), the federal government only signed treaties with republics, thereby encouraging the asymmetrification of the federation along politico-territorial lines. In 1996, however, the federal government

broke with this pattern by including other constituent members of the federation in the bilateral process. There are two generally accepted reasons why the El'tsin government altered its strategy. First, some of the leaders of more assertive regions such as Sverdlovsk oblast' began to put pressure on the federal government, demanding similar rights and authority as the republics. This alone probably would not have been enough to convince the federal government to expand the treaty signing process. The federal government's desire to rebuild its relations with the regional governments in the run-up to the December 1995 parliamentary elections, however, provided an additional motivating factor. Consequently, the poor showing of the pro-government forces in the parliamentary elections and the threat of a El'tsin defeat in the 1996 presidential elections strengthened the federal government's desire to curry favour with certain regional governments.¹⁰

One of the main flaws of treaty federalism is that the process of treaty negotiation has little or no structural or legislative basis. Treaties are simply negotiated by high-level officials from the federal and regional governments in what amounts to a classic case of executive federalism. The differences between the various treaties suggest that a model or pattern does not exist, beyond the general distinctions that distinguish republican treaties from those of the oblasts, krajs and autonomous okrugs. Clear differences between and within these groups of regions are apparent. Factors such as timing, the

¹⁰ In January 1996, the federal government signed bilateral treaties and side agreements with Sverdlovsk oblast', Kaliningrad oblast', Orenburg oblast' and Krasnodar krai. See: *Sbornik dogovorov i soglashenii mezhdru organami gosudarstvennoi vlasti Rossiiskoi Federatsii i organami gosudarstvennoi vlasti sub'ektov Rossiiskoi Federatsii o razgranichenii predmetov vedeniia i polnomochii* (A Collection of the Treaties and Agreements Between the Organs of State Power of the Russian Federation and the Organs of State Power of the Subjects of the Federation on the Demarcation of Objects of Jurisdiction and Authority) (Moskva: Izdanie Gosudarstvennoi Dumy, 1997)

economic prowess or importance of the region in question and the leadership and bargaining skills of the regional authorities in relation to their federal counterparts play a significant part in ensuring that each treaty will be different.

In theory, the treaties are supposed to clarify the relationship between the federal and regional governments. In practice, however, this goal is often frustrated by the fact that the legal status of the treaties is unclear and that they often conflict with the federal constitution and other federal legislation. The federal government argues that the federal constitution takes precedence over any treaty. Treaty regions such as Tatarstan, on the other hand, assert the paramouncy of their bilateral treaty.

Another important feature of treaty federalism is the lack of transparency inherent in the process. In addition to negotiating and signing the treaties behind closed doors, the governments involved often do not publish all of the side agreements. In this way, the federal and regional governments are able to hide politically unpopular compromises. Moreover, as one observer has commented, this lack of transparency “is an intrinsic part of the federal government’s bilateralism strategy... because it gives flexibility to negotiate on a case-by-case basis.”¹¹

The fact that each treaty is tailored to meet the needs and circumstances of the particular region may indeed add a certain amount of flexibility to the federation. Critics, however, charge that this *ad hoc* method of federal construction creates new cleavages between the treaty regions by giving some regions more authority and sovereignty than others. As noted above, the pattern of asymmetry is complicated. Although it is no longer possible to categorize treaty and non-treaty regions based on

their politico-territorial characteristics, certain distinguishing characteristics do separate the regions that have signed treaties. Chapter six will provide a more detailed comparison of several treaties in the area of natural resources. The following section will examine some of the general differences between the treaties signed by the regions.

One senior official in the Tatarstani government maintained that Tatarstan's treaty is different (special) because it is a treaty on the mutual delegation (*vzaimnoe delegirovanie*) of authority. This essentially means that the federal government and the government of Tatarstan have decided to "voluntarily" limit their sovereignty in certain jurisdictions.¹² In theory, this assumes that both states entered the treaty negotiations with full sovereignty and decided to delegate certain areas of jurisdiction to the other party. Of all the treaty regions, only Tatarstan, Bashkortostan and Kabardino-Balkar (all republics) have signed bilateral treaties that are based on this concept of mutual delegation.

Some general differences exist between the treaties signed by the republics. For example, the preamble to the Tatarstani treaty describes Tatarstan as "a state joined with the Russian Federation." The treaties of other republics offer less sovereignty. Bashkortostan is described as "a sovereign state within the Russian Federation", while the Kabardino-Balkar republic is simply "a state within the Russian Federation." Although these differences are symbolic, they nevertheless reinforce the highly asymmetrical character of the federation. On the one hand, they distinguish republics from each other, effectively laying the basis for asymmetry within asymmetry. On the

¹¹ James Hughes, "Moscow's Bilateral Treaties Add to Confusion," *Transition*, 20/09/1996, 42.

¹² Interview, Kazan', November 1997.

other hand, they differentiate the republics from other regions. None of the oblasts or autonomous okrugs that have signed bilateral treaties is described as a “state”.

It goes without saying that the larger republics support the idea of Russia as an asymmetrical federation along politico-territorial lines. In 1995, the leaders of Tatarstan, Bashkortostan and Sakha issued a joint declaration to the federal government demanding that each bilateral treaty should take into account the differences between the federation subjects.¹³ President El'tsin has supported this position, saying that the treaty between the federal government and Tatarstan is not a model for the other regions. Vasilii Likhachev, the Speaker of the Tatarstani State Council and the Deputy Speaker of the Federation Council recently echoed the opinions contained in this declaration. “The example of Tatarstan,” Likhachev argued, “says that today, you can have different levels of constitutional-legal construction. Tatarstan has given itself a very high level...But can the other regions of Russia move up to this level? Today, unfortunately, with my deep respect towards my colleagues in the Federation Council, I can certify that not all can move to this level.”¹⁴

The February Agreement

In the bilateral treaty between Russia and Tatarstan, it is apparent that it had both a symbolic and a practical significance for both governments. Symbolically, the treaty represented a compromise between the demands of the two sides. Tatarstan acknowledged its inclusion in rather than just its association with the Russian Federation

¹³ Op. Cit., Hughes (1996), 41.

¹⁴ Larisa Usmanova, “Konstitutsiia Tatarstana - eto... (The constitution of Tatarstan is...)” *Kazanskie Vedomosti*, 06/11/1997, 5.

and Moscow recognized Tatarstan's demands for a comprehensive bilateral agreement that distinguished the republic from the other members of the federation.¹⁵ The February Agreement actually consists of a main treaty and 13 side agreements which outline the relationships between and the jurisdictions of the two governments in a variety of matters ranging from the sale and transportation of oil and oil products to cooperation in the battle against criminal activities. The main treaty provides a general framework for the delimitation of jurisdictional subjects (areas) and the mutual delegation of authority, while the side-agreements "flesh out" the responsibilities and powers of the two governments in greater detail.

The agreement went beyond the boundaries established in the 1992 Federation Treaty by giving Tatarstan more control (at least in a legal sense) over a number of key areas of political and economic power. As such, powers that were outlined in the Federation Treaty as areas of concurrent jurisdiction between the federal government and the governments of the constituent members of the federation were placed under the sole jurisdiction of Tatarstan.¹⁶ The most notable areas are:

-the ownership, use and management of the land, minerals, water and forests and other natural resources and also state enterprises, organizations and other movable and non-movable state property located on the territory of the Republic of Tatarstan.

-participation in international relationships, regulating relations with foreign states and concluding agreements with them that do not contradict the constitutions of the Russian Federation and the Republic of Tatarstan and this agreement.

¹⁵ Liubov Tsukanova, "A Formula of Cooperation is Found," *Rossiiskie vesti*, 16/02/1994, 1.

¹⁶ Ludmilla Dmitrievskaia i Rashid Teunaev, "Chto budet s regionalnoi ekonomicheskoi reformoi? (What will happen with regional economic reform?)" *Nezavisimaia gazeta*, 16/03/1994, 1.

-carrying out external economic activities.¹⁷

In addition to transferring a considerable amount of *de jure* authority to Tatarstan, the main agreement and the side agreements seek to reconcile the incompatibilities of the federal and republican constitutions by acting as a bridge between them.

The February Agreement was the product of a long and, at times, arduous process of negotiation and compromise. Each round of negotiations, beginning in August 1991 prior to the collapse of the Soviet Union and ending in February 1994 with the signing of the treaty, was affected by the broader political events taking place in the republic and the federation as a whole. Round one (August 1991-March 1992), for example, began in the wake of the August coup that precipitated the Soviet collapse and ended with the controversial Tatarstani referendum on sovereignty and the republic's rejection of the Federation Treaty. Round two took place during the tense period following the referendum on republican sovereignty when relations between Tatarstan and the federal government were at their lowest ebb. The final and most important round weathered the political turmoil surrounding El'tsin's violent battle with the Duma and the shelling of the White House.¹⁸ At times, therefore, the negotiations seemed to be influenced as much by outside events as by the substantive issues being discussed by the two sides.¹⁹

¹⁷ Dogovor Rossiiskoi Federatsii i Respubliki Tatarstan "O razgranichenii predmetov vedeniia i vzaimnom delegirovanii polnomochii mezhdru organami gosudarstvennoi vlasti Rossiiskoi Federatsii i organami gosudarstvennoi vlasti Respubliki Tatarsan, Moskva, 15/02/1994.

¹⁸ Hafeez Malik, "Tatarstan's Treaty with Russia: Autonomy or Independence," *Journal of South Asian and Middle Eastern Studies*, 28/2 (Winter 1994).

¹⁹ According to one report, Mukhamed Sabirov, the Prime Minister of Tatarstan at the time, said that shortly before the treaty was signed the federal government had threatened to close the oil pipeline that connects Tatarstan with the rest of Russia in an effort to force concessions from the republic. In addition, it was also said that Tatarstani President Mintimer Shaimiev was so shocked by the strong showing of Vladimir

One of the most interesting aspects of the bargaining process was the gradual consolidation of the negotiating teams. In the earlier rounds, the negotiations were fairly open and included representatives from various parts of the two governments.²⁰ During the later rounds of negotiations, however, a number of the original negotiators were jettisoned and the talks were conducted at the highest levels of government. The decisive round took place in January 1994 and consisted of high-level meetings between delegations headed by the Russian Deputy Prime Minister Iurii Iarov and Tatarstani Vice President Vasilii Likhachev. It was also reported that a series of meetings occurred between the two Presidents, Boris El'tsin and Mintimer Shaimiev. The February Agreement, therefore, was a product of an extended and complicated process of executive federalism with the number and level of the participants in this process became gradually more limited as the talks entered the critical stages. The most important participants in January 1994 were high-level delegations from the federal and republican governments, headed of course by El'tsin and Shaimiev

Shaimiev and Executive Rule in Tatarstan

Internal Politics in Tatarstan. Russian political scientist Vladimir Gelman has described regional regimes in Russia since the dissolution of the Duma in October 1993 as being “characterized by a strong executive branch whose leaders act in an arbitrary fashion,

Zhirinovskii's Liberal Democratic Party of Russia in the 1993 parliamentary elections that he decided it was necessary to support El'tsin by signing the treaty.

²⁰ During the opening rounds, for example, the Russian team included people such as Oleg Rumiantsev, Gennady Burbolis, Nikolai Riabov, Sergei Shakrai and President El'tsin. The Tatarstani team included: Raphael Khakimov, Vasilii Likhachev, Farid Mukhamedshin, Mukhamed Sabirov and President Shaimiev.

limited only by existing power relations and a set term of office.”²¹ Gelman’s interpretation of political life in the Russian Federation is based in part on Guillermo O’Donnell’s work on “delegative democracies”. According to O’Donnell, “delegative democracies are regimes that have all the formal attributes of a democracy but do not reflect the characteristics of representative democracy or show signs of devolving into authoritarianism.”²² In Gelman’s opinion, some of the prime examples of regional leaders who operate in this manner are Kalmykia’s Kirsan Ilyumhinov, Moscow’s Iurii Luzhkov and Tatarstan’s Mintimer Shaimiev.²³

Individuals and groups at the local level in Tatarstan seem to share Gelman’s general views on regional politics in Russia. Observers of Tatarstani politics characterize Shaimiev as an all-powerful politician who controls most aspects of political life in the republic. Some even accuse him of using electoral fraud and other underhanded and illegal methods to limit opposition activities and maintain power. Shaimiev won the first republican presidential election in 1991 and was reelected in 1996, winning 97.5% of the popular vote in an unchallenged election campaign. Despite accusations and some evidence that he has misused his power, Shaimiev has remained a popular leader among both Tatars and Russians in Tatarstan. Indeed, his ability to steer a moderate path between Tatar and Russian nationalists, use his authority and persuasiveness to conclude agreements with the federal government and maintain a level of relative economic

²¹ “Regional Regimes Are Delegative Democracies,” *OMRI Russian Regional Report*, 1/5 (September 25, 1996).

²² *Ibid.* See: Guillermo O’Donnell, “Delegative Democracy,” *Journal of Democracy*, 5/1 (January 1994), 55-69.

²³ *Ibid.* For more information on Kirsan Ilyumzhinov see: Sergei Blagodarov, “Kirsan-khan, ili pochemu v Kalmykii vse liudi schastlivy (Khan Kirsan, or why everyone in Kalmykia is happy).” *Komsomol’skaia pravda*, 13/11/1997, 1/2.

stability during the harsh transition to a market economy have made up for his political shortcomings in the eyes of many citizens in the republic.²⁴

Shaimiev's power is based on his control over a variety of key structures and processes in the republican government; institutions such as the broadcast media and the Central Electoral Commission, and "the entire rural sector of the republic."²⁵ Among his many powers, the republican president can appoint and dismiss local heads of administration (mayors and district heads), providing he has the approval of the city or district council in question.²⁶ Many of the deputies in the State Council have direct ties to the executive branch or are members of the economic-financial elite of the republic, the latter being closely tied to the political elite.²⁷ As one western observer has asserted, it is "no exaggeration to say that legislative, executive and judicial powers in Tatarstan are in the hands of a small and tightly-knit group, the clientele of President Shaimiev."²⁸

Whereas some of the main motivations and actors behind the February Agreement have already been outlined, more needs to be said about the role of the Tatarstani government and, in particular, Mintimer Shaimiev, in the negotiating process. Many Tatar nationalists viewed the February Agreement as a "sell-out". The treaty, however,

²⁴ The popularity of the Shaimiev government may be changing as a result of the economic crisis that has gripped Russia during the past few months. According to one source, "Tatarstan's population, largely abandoned by the government, is coping [with the economic crisis] in a variety of different ways. It seems that the elite only needs its people during election campaigns, but no elections are in sight, so the government apparently decided to let the people suffer alone for now. No wonder that President Mintimer Shaimiev has been on vacation for three weeks in Turkey and his prime minister, along with the president's son, is racing cars in Kursk." See: **EastWest Institute (EWI): Russian Regional Report, 3/39 (01/10/1998).**

²⁵ "Tatarstan: The Balance of Political Power," **Conflict Management Group, Bulletin #3, October 1994.** As cited in Slocum (1997), 15. It is also interesting to note that in June 1996, Shaimiev passed a decree imposing fines of up to 30 million roubles (\$US 5,900) on those who insult him. (OMRI, 25/06/1996)

²⁶ John Lowenhardt, "The 1996 Presidential Election in Tatarstan," **Journal of Communist Studies and Transition Politics, 13/1 (March 1997), 133**

²⁷ Op. Cit., Slocum (1997), 23.

²⁸ Op. Cit., Lowenhardt (1997), 133.

was as much a product of Shaimiev's deft political manoeuvring - his ability to consolidate power and rein in opposition at the republican level and his relationship with the federal executive - as it was a result of the political and economic realities facing Tatarstan.

In the tense period following the collapse of the Soviet Union, Shaimiev consolidated his political position in the republic by promoting a form of Tatar nationalism that not only appealed to moderate nationalists (many of whom Shaimiev has co-opted into his government), but one that also did not threaten the large ethnic Russian community in Tatarstan.²⁹ John Slocum has aptly described this as "homeopathic nationalism". In other words, "the implementation of a diluted program of Tatar nationalism designed to prevent a stronger, more virulent strain from taking hold with potentially disastrous affects for the stability of both the internal politics of Tatarstan and its fragile accommodation with the Russian federal government."³⁰ By diffusing the political influence of more radical Tatar nationalists and allaying the fears of the Russian population, this course of homeopathic nationalism has strengthened Shaimiev's hold over the internal politics of the republic. At the same time, it has allowed him to present a credible and non-threatening case for greater Tatarstani autonomy to the federal government.

External Relations. Although Tatarstan's relationship with the federal government has been far from consistent, in recent years it has become cordial and cooperative. This is

²⁹ According to the most recent census, 43% of the republic's population of 3.5 million people is comprised of ethnic Russians. Ethnic Tatars constitute 48%.

³⁰ Op. Cit., Slocum, 1.

due in large part to the links between the federal and republican executive branches.

According to one source, “[i]t’s all based on personal relations between Shaimiev and Moscow. In practice, the local elite is almost completely independent. But Shaimiev understands that Tatarstan is a subject of the Russian Federation. He doesn’t say it but he realizes it.”³¹ A more critical observer has remarked that El’tsin and Shaimiev have “an agreement about the *delimitation of arbitrariness*.”³²

For all their differences, Shaimiev and El’tsin have pursued very similar political paths. Both spent their formative years as Communist Party (CPSU) officials, eventually becoming high-ranking regional leaders.³³ Moreover, they are both moderate reformers who seek to provide a balance between neo-conservative shock therapy and a return to a state dominated economy. In many respects, therefore, intergovernmental relations between Tatarstan and the Russian Federation are as much a product of the shared experiences and philosophies of their respective leaders as they are the result of political, economic and geographical factors.

During the post-Soviet period, the republican government has cultivated close relations with the federal government, other regions and, in some cases other states. Shaimiev, for example, has tried to reinforce Tatarstan’s regional economic ties by signing economic cooperation agreements and creating joint ventures with other regions.³⁴ Republican officials also play an active role in several regional associations,

³¹ Geoffrey York, “Tatarstan Forges Model of Independence,” *Globe and Mail*, 13/04/1998, 9.

³² *Op. Cit.*, Lowenhardt (1997), 139.

³³ Prior to his entry into national politics, El’tsin was the head of the CPSU in Sverdlovsk oblast’. Shaimiev was Minister for Irrigation in the Tatar ASSR and rose to the head of the republican CPSU in 1989.

³⁴ In June 1996, Shaimiev signed an economic cooperation treaty with Moscow Mayor Iurii Luzhkov (OMRI, 12/06/1996) - just one of many treaties signed with regional governments across the Russian Federation.

the most important being the “Great Volga Association.” On a political level, Shaimiev has been a close supporter of Viktor Chernomyrdin and the centrist “Our Home is Russia” (OHR) bloc.³⁵

As alluded to above, many of these elite relationships are legacies of the Soviet period. The ties between the current crop of leaders and policy makers at both the federal and regional levels can often be traced back to their days as Communist Party officials during Soviet times. One senior official in the current Tatarstani government commented that the republican leadership worked very closely with the federal government and particularly the Prime Minister, Viktor Chernomyrdin, during the negotiations surrounding the February Agreement and the various side treaties. Many of the key participants were good friends with Chernomyrdin and had known him since his days as the head of the Soviet gas industry. Without such support and networks, the official remarked, it would have been very difficult to reach the level of consensus needed to conclude such an important agreement.³⁶

The joint commission that is supposed to regulate the February Agreement meets infrequently (approximately once a year). As such, most of the regulation of the treaty and the day to day problems of interpreting and monitoring the treaty takes place in meetings between El'tsin and Shaimiev and other high-level officials in the federal and republican governments. The fact that the heads of the regional executive and legislative branches are also representatives in the Federation Council facilitates these meetings. As the respective heads of the executive and legislative branches in the republic, Mintimer

³⁵ In the 1995 parliamentary elections, Our Home is Russia received the highest percentage of votes in Tatarstan (28%): *Nezavisimaya gazeta*, 20/12/1995, 1-2.

³⁶ Interview, Kazan', November 1997.

Shaimiev and Vasilii Likhachev spend a considerable amount of time in Moscow and come into contact with federal and regional leaders on a regular basis. Likhachev even serves as the Deputy Speaker of the Federation Council. There are numerous reported examples of this ongoing process of executive federalism, as well as evidence of other meetings between high-level officials from the republican and federal governments.

-on April 12, 1995, the Tatarstani Prime Minister Farid Mukhamedshin, who was in Moscow on Federation Council business met with Prime Minister Victor Chernomyrdin to discuss the problems of carrying out the intergovernmental agreements aimed at realizing the bilateral treaty between Tatarstan and Russia.³⁷

-in January, 1996, President Shaimiev met with Viktor Chernomyrdin, Russian Vice President Oleg Soskovets, the Minister of Fuel and Energy Iurii Shafranik and the President of Inkombank Vladimir Vinogradov in Moscow to discuss a wide variety of issues ranging from economic reform to the development of medium and small businesses and industry.³⁸

-on January 23, 1997, the Speaker of the Tatarstani State Council and Deputy Speaker of the Federation Council, Vasilii Likhachev met with Vladimir Potanin, the newly appointed (by El'tsin) co-chair of the Tatarstan-Russia bilateral treaty commission to discuss a variety of matters including: Russian and Tatarstani economic and financial cooperation, the military-industrial complex, and a decision to hold a meeting of the bilateral commission in March. Potanin, incidentally, is the head of ONEKSIMbank and one of the richest entrepreneurs in Russia.³⁹

-in February 1997, a meeting was held between the head of the Presidential Administration Anatoly Chubais and Vasilii Likhachev concerning the implementation of the bilateral treaty and relations between Moscow and Kazan'.⁴⁰

-in August 1997, Shaimiev spent the day at El'tsin's Moscow residence to discuss the necessity of continuing work on the treaty.⁴¹

³⁷ "Vstrecha F. Mukhamedshina s V. Chernomyrdinym (Meeting of F. Mukhamedshin with V. Chernomyrdin)," *Respublika Tatarstan*, 13/04/1995, 1.

³⁸ "Vstrecha v Moskve (Meeting in Moscow)," *Respublika Tatarstan*, 27/01/1996, 2.

³⁹ "Tatarstan budet kurirovat' Potanin. V ramkakh Dogovora (Tatarstan will smoke Potanin. Within the framework of the treaty)," *Vremia i den'gi*, 25/01/1997, 2.

⁴⁰ *Segodnia*, 14/02/1997, 1.

⁴¹ *Pravda*, 19/08/1997, 1.

As noted above, the most important product of the executive dominated negotiating process was the February Agreement. During these negotiations, controversial topics and terms such as “independence” were purposely avoided. The two sides resorted to using much more ambiguous terms like “sovereignty” and “the mutual delimitation of powers” and focusing instead on issues where agreement could be reached. Furthermore, the republican government “preferred to negotiate with executive structures rather than have the bilateral treaties subject to parliamentary debate.”⁴²

The Prime Ministers of Tatarstan and the Russian Federation even decided that for a certain period of time, the text of some of the side agreements to the treaty would not be made public. According to one source, “[d]eputies to the Tatarstan Supreme Soviet [members of the legislative branch and, therefore, not part of the regional executive] wanting to familiarize themselves with the texts were told to read them in a special room in the presence of an officer of the Cabinet of Ministers, and were not allowed to copy the texts or to read them into a dictaphone.”⁴³ This example merely reinforces the idea that republican politics, like federal politics throughout most of the post-Soviet period, has been dominated by the executive branch.

⁴² Op. Cit., OMRI, (25/09/1996). Although there seems to have been little “internal” opposition from within the republican government, in a newspaper interview, Vasilii Likhachev, the Chairman of the Tatarstani State Council (legislature) did express some concern that the draft laws, agreements and treaties dividing authority between the federal and regional governments encroached upon the powers of the legislative branch. Likhachev added, these documents were often not voted on or ratified by the legislative branch.

⁴³ Op. Cit, Lowenhardt (1997), 143.

The Tatarstani Transition: “Slower Reforms - Higher Stability”

Another one of the distinguishing features of Tatarstan’s post-Soviet evolution has been the republic’s transition to democracy and the market economy. Indeed, many have hailed “Tatarstani model” as an example of successful reform. Some of the most important elements of this model have already been discussed (mild authoritarianism and moderate nationalism being the Tatarstani government’s answers to the problems of political instability and inter-ethnic disputes). Another significant foundation of the model, however, is the idea of economic nationalism. By emphasizing the territorial and economic objectives of the republic rather than narrow ethnically-based interests, economic nationalism is a concept that appeals to many groups in Tatarstan, regardless of their ethnic origin. Economic nationalism, therefore, ties in with the larger goal of creating a non-ethnic Tatarstani citizen who supports a territorially rather than ethnically-based vision of an autonomous Tatarstan.

An important indicator of the republic’s autonomy within the federation is its ability to control the process of economic reform. According to one government official, when Russia embraced “shock therapy” in 1992, the Tatarstani government responded by rejecting such a drastic reform program.⁴⁴ Instead, policy makers in Tatarstan had their own conception of economic reform, the essential thrust of which was contained in the slogan *medlennee reformy - vyshe stabil'nost'* (slower reforms - higher stability). Officials in Tatarstan argue that a more gradual pace of reform coupled with the implementation of measures aimed at protecting the citizens of the republic from the harsh realities of the transition have fostered a higher level of stability in Tatarstan than

in other regions.⁴⁵ The Tatarstani government claims that it has even forged ahead of the federal government in a number of areas, including privatization, land reform and tax policies aimed at attracting foreign investment. As a result, the republic has become a favoured destination for foreign investment.⁴⁶

Not everyone, however, is convinced of the virtues of the Tatarstani economic model. Critics have labeled it the "Prussian version" transition: one where the ruling elite and the bureaucrats acquire all the wealth! Others have questioned the republican government's claims of progress towards a market economy. They argue that while Tatarstan did opt out of the federal privatization program (1992-1994) and instituted its own system of privatization, this system has allowed the republican government to retain a majority share in many of the newly-created joint-stock companies.⁴⁷ There is also some evidence that the social welfare elements of the model have not succeeded in providing even the minimum of protection from the harsh conditions of the economic transition. The electoral gains posted by Communist Party leader Gennady Ziuganov in the 1996 federal presidential elections were particularly evident in rural areas of Tatarstan - traditionally areas of support for Shaimiev. One observer noted that this increase in support for the Communists "should be blamed not only on the fact that so many people had not received wages or pensions for a long time, but particularly on the

⁴⁴ Interview, Kazan', November 1997.

⁴⁵ A realistic minimum income, price controls on essential items during the initial stages of reform and other forms of social security.

⁴⁶ A number of multinational corporations, including General Motors and the French oil company Totale, have made significant investments in Tatarstan (*Globe and Mail*, 13/04/1998). In 1995, Tatarstan placed third out of all 89 members of the federation (behind Moscow city and Tiumen oblast') in terms of attracting foreign investment (OMRI, 06/02/1996).

⁴⁷ L.M. Drobizheva, A.R. Aklaev, V.V. Kotoreeva, and G.U. Soldatova, *Demokratizatsiia i obrazy natsionalizma v Rossiiskoi Federatsii 90-x godov* (Moscow: Mysl', 1996), 236 (as cited in Slocum (1997))

shameless conduct of the heads of administration who have turned into Bais.⁴⁸

Consequently, a combination of the harsh economic conditions faced by most of the population in Tatarstan and a reaction against the favourable position of Tatarstani elite led to an electoral backlash against Shaimiev and the candidate he actively supported in the election, Boris El'tsin.⁴⁹

Another controversial aspect of the Tatarstani model has been the use of revenues obtained from the sale of oil and oil products to subsidize the republican economy. The manner in which the republican oil industry has supported other, less efficient sectors of the republican economy such as agriculture and, in a broader sense, contributed to the autonomy of the republic within the federation will be addressed in the next chapter.

Conclusions

The signing of the bilateral treaty between Tatarstan and the federal government in February 1994 signified a turning point in the political evolution of both Tatarstan and the Russian Federation. As the first such treaty between a constituent member of the federation and the federal government, it distinguished Tatarstan, at least in a *de jure* sense, from the other regions and provided the catalyst for a new era of treaty-based asymmetrical federalism. From an analytical perspective, the lengthy negotiations surrounding the treaty also yielded a number of valuable insights into both the internal

⁴⁸ Op. Cit., Lowenhardt (1997), 140. A "Bai" is a term that refers to a local leader or strongman. Shaimiev has been dubbed "Ba-Bai" - the Grandfather of the Bais.

⁴⁹ Ibid., 140-1. As indicated in footnote 21, the fact that Tatarstan's population has basically been left to fend for itself in the current crisis while the republican elite take expensive and frivolous vacations has caused a considerable amount of popular discontent.

and external politics of the republic and the importance of executive federalism as a tool of intergovernmental relations.

On a republican level, the treaty could be considered as a political victory for Mintimer Shaimiev and his particular vision of Tatarstan. By acting as both a symbolic and a legal entrenchment of Tatarstan's autonomy, the treaty has served to elevate Shaimiev's social standing as a defender of republican autonomy.⁵⁰ As a result, this has reinforced his control over the political life of the republic.

In principle, the main text of the February Agreement appears to provide Tatarstan with sole jurisdiction in matters ranging from external economic relations to the management of oil and other natural resources. A more in-depth analysis of the various side agreements that flesh out the provisions contained in the main treaty, however, reveals several important constraints on the republic's ability to act without the prior negotiated approval of the federal government. In spite of these restrictions, the Tatarstani government has continued to argue the republic's case for sovereignty in its oil sector. The recently passed Law on Oil and Gas is an excellent example of this type of "strategy of defiance". One of the most important aspects of the law is its provisions in the area of production sharing. Rather than trying to encourage coordination and harmonization with the federal Law on Production Sharing Agreements, the Law on Oil and Gas attempts to entrench the republic's control over the production sharing process, thereby exacerbating the legal and jurisdictional confusion that already exists in this policy area.

⁵⁰ No matter how confusing this may seem given the conflicts and contradictions between the treaty, the federal and republican constitutions and all the other laws and agreements that are supposed to divide authority between Tatarstan and the federation.

With these issues in mind, the next chapter will examine and evaluate the Tatarstani government's attempts to use resources and resource policy to strengthen the republic's autonomy within the federation. Part one will look at the main structural constraints facing the Tatarstani oil sector, the importance of natural resources to the Tatarstani economy and the role that oil revenues have played in the republic's economic transformation during the post-Soviet period. The second part will explore the confusing legal and jurisdictional framework that governs the Tatarstani oil sector and the question of whether Tatarstan's formal sovereignty over areas such as the oil sector and production sharing actually exists in practice.

Chapter Six

The Tatarstani Oil Industry: a Catalyst for Economic and Political Autonomy?

At one point in the not so distant past, Tatarstan was the jewel in the Soviet oil industry's crown. In the 1950s and early 1960s, the republic was the country's largest producer of crude oil and thus an important engine for the post-war economic expansion of the Soviet state. Even though the oil fields of Tatarstan have now been surpassed by even larger discoveries in Western Siberia, the Far East and the Caspian Sea, oil still plays an important economic and political role in the republic. During the post-Soviet period, revenues from oil production have fueled the political aspirations of the Tatarstani government by allowing it to reinforce the economic and political autonomy of the republic within the Russian Federation. As one republican newspaper put it: "Oil is power. The degree of influence of the head of a republic or territory...is, for the most part, determined by his ability to control the allocation of oil."¹

Although oil is recognized as an important ingredient in Tatarstan's recipe for greater autonomy, the republican oil sector faces a number of structural problems that limit its overall effectiveness and thus its ability to act as a foundation for the republican government's autonomy project. The main problem confronting the Tatarstani oil sector over the past two decades has been the dramatic decline in oil production. Between 1975

¹ **Respublika Tatarstan**, 06/09/1997, 10.

and 1992, oil production has plummeted from 103 million tons per year (t/y) to 30 million t/y.²

The decline in production is not necessarily a result of the lack of oil. Tatarstan still has significant deposits of oil and bitumen. These deposits, however, cannot be effectively exploited without access to modern technology, both at the wellhead and at the refinery stages of the production process. The technology in question is expensive and, more often than not, can only be purchased for hard currency from western drilling and equipment companies. Securing access to the necessary technology through western investment, therefore, is one of the reasons why Tatarstan's representatives at the federal level have supported the federal Law on Production Sharing Agreements and other government initiatives that seek to encourage western investment in Russia's oil sector.

In addition to the problems of declining production and access to western investment and technology, a number of other factors have hampered the development of Tatarstan's oil sector. The first concerns the republic's limited local refining capacity. The Soviet system of industrial organization left Tatarstan with a legacy of dependence on refineries outside the republic. The republic is connected to these refineries by pipelines controlled by the federal government. This low refining capacity not only restricts the republic's ability to decide where and when its oil will be refined. It also places limitations on the republic's capacity to produce and sell refined petroleum products. These products are much easier to export and are more profitable than crude oil.

² This decline notwithstanding, Tatarstani oil still accounted for 7.4 % of all the oil produced in the Russian Federation.

A second structural impediment to greater autonomy in the oil sector is Tatarstan's dependence on oil pipelines to markets in Western Russia, the Near Abroad and Western Europe. As indicated above, the pipeline network is a legacy of the Soviet period and is controlled by the federal government through a monopoly firm called Transneft'. Geographically enclosed, oil-producing regions such as Tatarstan must negotiate usage quotas with the federal government on a regular basis. As one observer has concluded, the resulting paradox of all these constraints is that "just as oil provides incentive for Tatarstan to pursue a course of maximum political and economic autonomy, the structure of the oil industry places firm limits on Tatarstan's capacity to independently exploit its oil resources."³

Despite these problems and structural impediments, the oil industry remains Tatarstan's main source of hard currency earnings and the revenues from the sale of oil and oil related products represent a sizable amount of the republican budget. Oil revenues have allowed the republic to assist other, less productive areas of the economy such as agriculture and improve social security programs, thereby lessening the impact that the economic transition has had on the population.⁴ Without such assistance, Tatarstani officials argue that the republican economy might have collapsed, a situation that would have resulted in serious political disturbances.⁵

There are numerous examples of the republican government's economic largesse. In 1996, for example, the government prevented the bankruptcy of local petro-chemical companies that owed considerable back taxes to the republican budget by abolishing

³ John W. Slocum, **Homeopathic Nationalism: the Case of Tatarstan**. Paper prepared for presentation at the 2nd Annual Convention of the Association for the Study of Nationalities, New York City, 24-27 April 1997, 19.

excise duties on oil and gas. This move not only allowed the companies to increase their output and resume paying taxes, but, more importantly, it saved the government from having to deal with the negative social consequences of closing down these firms.⁶ In a speech to the State Council in January 1997, President Shaimiev announced the launching of several measures designed to help republican industries, such as the granting of tax credits for seasonal purchases of resources by enterprises in the light and textile industries and the dismissal of fines for debts.⁷ As one observer has noted, the government's program of economic assistance is most evident in the agricultural sector, one of the least efficient and underproductive areas of the republican economy.⁸

While some would argue that providing economic assistance to struggling firms and sectors of the economy is a necessary measure in the short term, many are concerned about the negative impact this type of subsidization will have on the republican economy. Many economists argue that subsidization retards the process of reform in unproductive areas of the economy.⁹ There is also some skepticism regarding the political motives behind such a policy of subsidization. Much of Shaimiev's grassroots support comes from rural areas. If he does not to divert revenues from the sale of oil to the agricultural sector, he will risk losing the support of the conservative nomenklatura in these rural areas who have grown used to the uncontrolled distribution of oil revenues and are

⁴ Viktor Minin, "Opyt' ekonomicheskikh reform Tatarstana (Tatarstan's experiment of economic reform)," *Komsomol'skaia pravda*, 30/03/1995.

⁵ *Ibid.*

⁶ "Oil Industry Experiment in Tatarstan," *OMRI Russian Regional Report*, 1(8), 16/10/1996.

⁷ "Ot stabilizatsii k ekonomicheskomu rostu (From stabilization to economic growth)," *Vremia i den'gi*, 23/01/1997.

⁸ *Op. Cit.*, *Komsomol'skaia pravda*, 30/03/1995.

⁹ Terry Lynn Karl, *The Paradox of Plenty. Oil Booms and Petro-States* (Berkeley: University of California Press, 1997)

reluctant to part with this privilege.¹⁰ In addition to using oil revenues to secure the support of rural elites, some critics have accused the republican government of outright deception in an effort to win popular support. In the opinion of John Lowenhardt, “[t]hanks to the income from oil exports (in 1995 Tatarstan produced 25 million tons), Shaimiev has managed to have the population believe that the economy is working, by subsidizing agriculture on a grand scale.”¹¹

The problems associated with using oil revenues as a basis for economic development have been outlined by Terry Karl in her recent book *The Paradox of Plenty: Oil Booms and Petro-States*.¹² One of Karl’s main arguments is that states benefiting from oil revenues often use this income to pursue development paths that are harmful to other sectors of the economy. “Easy access to the high rents generated by petroleum,” states Karl, “creates a structural bias against agricultural and industrial activity and the productive activity that does occur is highly subsidized.”¹³ The economic and political circumstances of Karl’s case studies (Venezuela, Nigeria, Algeria and other petro-states during the 1970s oil boom) may be different than those facing present-day Tatarstan. The continuing problems of the Tatarstani agricultural sector, however, support the validity of her assertions regarding the negative effects of oil revenue subsidization. In the case of Tatarstan, such subsidies may appear to provide a short-term respite from the problems of the transition. But when oil revenues start to decrease and eventually dry up, Tatarstan may be left with an inefficient economy in need of drastic reform.

¹⁰ Op. Cit., *Komsomol'skaia pravda*, 30/03/1995.

¹¹ John Lowenhardt, “The 1996 Presidential Election in Tatarstan,” *Journal of Communist Studies and Transition Politics*, 13/1 (March 1997), 133-134.

¹² Op. Cit Karl (1997)

¹³ *Ibid.*, 53.

In addition to using oil sector revenues to cushion the republic's economic transition, the Shaimiev government has pursued a number of other policies that are designed to bolster the republican economy and strengthen Tatarstan's autonomy in the oil sector. Some of these policies have had a direct impact on the organization of the republican oil industry while others involve changes to the legal environment in which the industry operates. On an organizational level, the republican government has become very active in the oil sector by taking a particular interest in Tatneft', Tatarstan's biggest oil producing firm and the fourth largest oil producer in Russia. The government, which owns approximately 30% of Tatneft', has decreased local and excise taxes in order to allow the firm to flourish despite the pressures of the broader economic transition taking place in the Russian oil industry.¹⁴

The Tatarstani government has also sought to protect the company from federal incursions and threats. For example, Shaimiev recently pressured the federal government to reverse its decision to restrict Tatneft's access to export pipelines because the firm had not paid its taxes. In 1996, Shaimiev publicly defended the company from federal threats of bankruptcy in a meeting with Viktor Chernomyrdin.¹⁵ Tatneft' has also benefited from Tatarstan's active policy of encouraging bilateral relations with other regions and foreign states. The republican government has signed a number of cooperation agreements with other regions (Moscow, Samara) and countries (Ukraine, Belarus) in an effort to gain favourable access to refineries and other types of oil processing plants.¹⁶ It is in this

¹⁴ *St. Petersburg Times*, 26/01/1998.

¹⁵ *OMRI*, 29/10/1996. It should be emphasized, however, that this patronage probably does not come without a price. Shaimiev and his family have been accused of siphoning company profits away from Tatneft'.

¹⁶ For example, in July 1995, Ukraine and Tatarstan signed an agreement on establishing the Ukrtatneft' financial industrial corporation. See: *OMRI*, 12/07/1995.

regard that Tatneft' enjoys the advantages of Tatarstan's heightened status within the federation.¹⁷

The republican government, in conjunction with Tatneft', has also taken steps to improve Tatarstan's refining capabilities by building a new, state-of-the-art oil processing plant in Nizhnekamsk, a city in North Eastern Tatarstan. The new processing plant, which is the result of five years of intense discussions within the republic, will allow Tatarstan to process a large portion of the oil it produces. As such, the new refinery will bolster the republic's autonomy in the oil sector by reducing its dependency on outside refineries and the federally controlled pipeline system that connects Tatarstan to these refineries. Ironically, an oil refinery has actually been in operation at Nizhnekamsk for some time. This refinery, however, was neither large enough to handle the volume of oil produced by the republic's oil producers, nor was it capable of refining the heavy, highly sulfurous oil produced in Tatarstan. The position of the existing refinery was further marginalized by the fact that its relationship with Tatneft' became strained following the collapse of the Soviet Union. According to one source, this separation was welcome news to the federal government, which was struggling with separatist-minded republican governments throughout the Volga region at the time.¹⁸

The Confusing Legal Environment of Tatarstani Oil Politics

Given the regional and national importance of the Tatarstani oil industry, it seems that this area of the economy would constitute a good yardstick for measuring the

¹⁷ One of the key provisions in the February Agreement gives Tatarstan a considerable amount of autonomy in terms of negotiating and signing agreements with other states.

¹⁸ Aidar Salimgaræev and Shamil' Idiatullin, "Tatarstan nachinaet stroitel'stvo NPZ mirnogo urovnia (Tatarstan starts construction on a world-class oil processing plant)," *Vremia i den'gi*, 07/08/1997, 1.

autonomy of the republic in relation to the Russian Federation. In addition to strengthening its autonomy in the oil sector through organizational measures such as taking an active interest in Tatneft' and building a new oil processing refinery in Nizhnekamsk, the Tatarstani government has also attempted to provide a legal foundation for republican sovereignty over the republic's natural resource wealth. This legal foundation is based on a variety of different documents and agreements ranging from republican laws and decrees to the bilateral treaty and other intergovernmental agreements between the federal and republican governments. Some of these documents make general references to natural resources, while others deal with specific issues such as production sharing and export quotas. Although their aim is to clarify the legal environment of the natural resources sector, more often than not this overlapping and often contradictory legal framework merely adds to the jurisdictional confusion that plagues this particular area of the economy.

It is probably best to begin with a summary of the general laws and agreements that govern natural resources and how they deal with the issue of jurisdiction. As noted in previous chapters, article 72 (c) of the federal constitution places natural resources such as oil in the list of concurrent powers shared by the federal and regional governments.¹⁹ Article 9 of the Tatarstani constitution, however, states that "[t]he land, its resources, water, forests and other natural resources... guaranteeing the economic independence of the republic...are national [republican] property."²⁰ The February Agreement, a document that was supposed to act as a bridge between the federal and republican constitutions, is ambiguous about the status of natural resources. Article 2 (6)

¹⁹ **Konstitutsiia Rossiiskoi Federatsii, stat'ia 72.**

²⁰ **Konstitutsiia Respubliki Tatarstan, Kazan', stat'ia 9.**

of the main agreement proclaims: “[t]he State Bodies of the Republic of Tatarstan shall execute the authority of state power and shall...decide issues of the possession, use and disposal of land, mineral wealth, water, timber and other resources...located on the territory of the Republic of Tatarstan”. The side agreement on “The Sale and Transportation of Oil and Oil Products” (Appendix 3), on the other hand, outlines a number of areas where the sovereignty of Tatarstan in this area of jurisdiction is restricted by the federal government.²¹

According to Appendix 3, federal bodies such as the Ministry of Fuel and Energy (Mintopenergo) must approve a number of vital operations in the Tatarstani oil sector.

For example, article 1 states:

[t]he transportation of oil and oil products through the main oil pipeline and oil product pipeline will be carried out on the basis of an agreement, of annual and quarterly calculations of outputs and deliveries of oil, approved by the Ministry of Fuel and Energy (Mintopenergo) of Russia in agreement with the Government of the Republic of Tatarstan...²²

The treaty goes on to stipulate that Tatarstan must obtain the agreement of Mintopenergo and other federal organs of state administration or operate in accordance with federal laws and regulations in no fewer than 6 different areas. These include: determining the annual output volume and deliveries of oil and oil products beyond the boundaries of the Republic of Tatarstan (article 2), the transportation of oil and oil products (article 3), customs restrictions (article 6), the transportation of oil beyond the boundaries of the Russian Federation (article 7), enterprise operations (article 8), and negotiating the term of the agreement (article 9). By requiring the republic to consult with Moscow, all of

²¹ Signed in June 1993, this accord is one of the thirteen appendices to the February Agreement.

these clauses effectively restrict Tatarstan's ability to exercise sovereignty over its oil industry.

Other intergovernmental agreements further obfuscate the conflicting provisions outlined in the federal and republican constitutions and the February Agreement. In the agreement "On economic cooperation" (signed in January 1992), one of the first treaties to be signed between the federal and Tatarstani governments, Russia conceded that the then Tatar SSR independently controlled the exploitation and development of natural resources (in particular, oil and oil products) on its territory.²³ It is important to note, however, that this control was to some extent compromised by a sub-clause stipulating that Russia was to receive a share of the oil through mutually beneficial annual agreements.²⁴

The issue of mutual agreements and negotiated quotas was raised again in the treaty "On external economic relations" and, of course, in the treaty on the production and transportation of oil and petrochemicals that has already been mentioned. According to article 2 of the former treaty, questions of external economic relations lying within the sphere of the concurrent jurisdiction of the Russian Federation and the Republic of Tatarstan include, among other areas, "the establishment of quantitative restrictions on the export of products subject to quota restrictions, produced in the Republic of Tatarstan, including oil and petrochemical products..."²⁵

²² Soglasenie mezhdru Pravitel'stvom Rossiiskoi Federatsii i Pravitel'stvom Respubliki Tatarstan o realizatsii i transportirovke nefli i produktov nefekhimpererabotki, Moskva, 05/06/1993.

²³ Soglasenie Pravitel'stva Rossiiskoi Federatsii s Pravitel'stvom Respubliki Tatarstan ob ekonomicheskom sotrudnichestve. Stat'ia 6.

²⁴ Ibid.

²⁵ Soglasenie mezhdru Pravitel'stvom Rossiiskoi Federatsii i Pravitel'stvom Respubliki Tatarstan o razgranichenii polnomochii v oblasti vneshneekonomicheskikh sviazei.

Amongst the confusion of this legal labyrinth, one point is clear. Tatarstan is not free to decide on its own how to conduct its energy production or foreign trade, despite being allotted these areas in the main treaty.²⁶ One observer has suggested that Moscow has “little choice but to cede *de jure* authority over natural resources to Tatarstan, thereby ratifying the power that Kazan had already seized.”²⁷ The republic may indeed exert *de facto* control over some of the day-to day operations of its oil sector through its involvement with Tatneft’ and other parts of the republican oil industry. Nevertheless, as the previous section on the side agreements to the bilateral treaty suggests, a number of important areas still exist in which the Tatarstani government must cooperate with the federal authorities.

The fact that the Tatarstani government participates in such negotiations suggests that it accepts the duality between the symbolic sovereignty granted to the republic in the main text of the bilateral treaty and the realities of concurrent management in the resource sector. Publicly, the Shaimiev government proclaims the republic’s sovereignty over its natural resources, a position that is enshrined in the February Agreement. The agreement in turn acts as an important symbol of Tatarstan’s new relationship with the Russian Federation. It is, in itself, a reflection of the changes that have taken place in federal-regional relations since the end of the Soviet period. At the same time, however, the Tatarstani government realizes, at least privately, that its sovereignty is limited by the measures built into the treaty (the side agreements) and by the geographical and economic realities that confront the republic in the post-Soviet period.

²⁶ Elizabeth Teague, “Russia and Tatarstan Sign Power-Sharing Treaty,” *RFE/RL Research Report*, 3/14 (April 8, 1994), 27.

If Tatarstan is supposed to be at the forefront of the movement for greater regional autonomy in the Russian Federation, how does the republic compare to other *sub'ekty*? Chapter five outlined some of the general differences between the treaty regions, revealing how and why treaty federalism has created asymmetries between both the republics and other regions and between specific regions in these sub-groups. To what extent do these differences exist in the natural resource agreements signed by the various republics and regions?

According to article 3, section 5 of the bilateral treaty between Bashkortostan and the Russian Federation (signed in August 1994), Bashkortostan has legislative jurisdiction over questions and decisions regarding its natural resource wealth, as long as such decisions have the agreement of the federal organs of state power.²⁸ The Tatarstani treaty does not include this latter stipulation and thus we can conclude that Tatarstan, at least in a *de jure* sense has more autonomy over its natural resource wealth than its neighbour, Bashkortostan. Bashkortostan's side agreement on the protection and use of natural resources further reinforces the republic's connection to the federal authorities.²⁹ Article 2 states that while Bashkortostan exerts independent control over the protection and use of its natural resource wealth, this exclusive control does not extend to the concurrent and federal areas of jurisdiction outlined in articles 1, 2 and 3 of the

²⁷ Laurence S. Hanauer, "Tatarstan's Bid for Autonomy: Tatarstan as a Model for the Devolution of Power in the Russian Federation," *Journal of Communist Studies and Transition Politics*, 12/1 (March 1996), 72.

²⁸ Dogovor Rossiiskoi Federatsii i Respubliki Bashkortostan "O razgranichenii predmetov vedeniia i vzaimnom delegirovanii polnomochii mezhdru organami gosudarstvennoi vlasti Rossiiskoi Federatsii i organami gosudarstvennoi vlasti Respubliki Bashkortostan, Moskva, 03/08/1994.

²⁹ Soglashenie mezhdru Pravitel'stvom Rossiiskoi Federatsii i Pravitel'stvom Respubliki Bashkortostan o razgranichenii predmetov vedeniia i vzaimnom delegirovanii polnomochii v oblasti okhrany okruzhaiushchei sredy i ispol'zovaniia prirodnykh resursov, 25/05/1994.

Federation Treaty.³⁰ Therefore, like Tatarstan, the provisions contained in the more detailed side agreement place limits on Bashkortostan's autonomy in the resource sector.

In comparison, the bilateral treaties and agreements of other republics outline an even greater role for the federal government. For example, sections 2 and 3 of the main treaty between the federal government and the Republic of Komi, an oil-producing region in Central Russia, describe natural resources as a matter of concurrent jurisdiction between the republic and the federal government.³¹ The side agreement on natural resources outlines the actual demarcation of authority over natural resources. Articles 1 and 2 delineate the responsibilities and authority of the federal and republican governments respectively, while article 3 outlines a number of areas where the two sides are expected to cooperate.³² In the case of Sakha, a republic in Eastern Siberia, the main treaty also rests largely on the principle of concurrency between the federal and republican governments. Article 1 outlines some of the areas in which the republican government has exclusive control but article 2, section 2 (c) places natural resources firmly under the concurrent jurisdiction of Moscow and Yakutsk (the capital of Sakha).³³

This brief overview of some of the other republican treaties and agreements suggests that differences do exist between the republics. Possible explanations for these differences range from the political and economic weight of the republic, the historical circumstances underlying the republic's relationship to the federal government, the leadership skills of the republican elites and their particular relationship to the federal

³⁰ If the reader will remember, Bashkortostan signed the 1992 Federation Treaty. Tatarstan did not.

³¹ Dogovor "O razgranichenii predmetov vedeniia i polnomochii mezhdu organami gosudarstvennoi vlasti Rossiiskoi Federatsii i organami gosudarstvennoi vlasti Respubliki Komi," Moskva, 20/03/1996.

³² Soglasenie mezhdu Pravitel'stvom Rossiiskoi Federatsii i Pravitel'stvom Respubliki Komi o razgranichenii polnomochii v oblasti okhrani okruzhaiushchei sredy i ispol'zovanii prirodnykh resursov, Moskva, 20/03/1996.

elite. As chapter five explained, Tatarstan enjoys a position of first among equals in the Russian Federation. It is a net donor to the federal budget and therefore an important cog in the Russian economy. Bashkortostan is the only other donor-republic. Furthermore, for over a decade, Tatarstan has been at the forefront of the movement for autonomy and devolution in the Russian Federation. The other republics, including Bashkortostan, have been supportive of and involved in this process, but not to the same extent as Tatarstan.

Given the “exclusive” nature of the negotiations behind the bilateral treaties, one would expect the personal relations between federal and republican elites to play a key role in the negotiating process. In spite of the conflicts that occurred prior to the signing of the bilateral treaty between Tatarstan and the Russian Federation, a great deal of respect still exists between the members of the El'tsin and Shaimiev governments. While a similar relationship exists between the federal leadership and republican leaders such as Bashkortostan's Murtaza Rakhimov, the leaders of other republics do not exert the same level of influence.

The question that naturally follows a discussion of the differences between the various republics is do the bilateral treaties of the regional governments reinforce the politico-territorial asymmetries created by treaty federalism? If we consider the treaties signed by the federal government and resource-producing regions such as Irkutsk oblast' and the Ust' Ordinskii-Buriatskii autonomous okrug, Perm oblast' and the Komi-Perm autonomous okrug and Sakhalin oblast', it is apparent that some differences do exist. All three treaties consider natural resources to be a matter of concurrent jurisdiction, in accordance with the norms expressed in article 72 of the Russian constitution. Perhaps

³³ Dogovor “O razgranichenii predmetov vedeniia i polnomochii mezhdou organami gosudarstvennoi vlasti Rossiiskoi Federatsii i organami gosudarstvennoi vlasti Respubliki Sakha,” Moskva, 29/06/1995.

the most interesting aspect about the Irkutsk and Perm treaties is that they include the autonomous okrugs located within each respective region. Chapters seven and eight will provide a more detailed examination of the issues that arise from this problematic relationship and the steps taken by the oblasts, krajs and autonomous okrugs to clarify their relations within the constitutional-legal order.

The Law on Oil and Gas and the Question of Production Sharing

Tatarstan's quest for greater autonomy or even sovereignty in the oil sector did not end with the February Agreement. Since 1994, the republican government has taken a series of bold legislative steps toward the goals of further revitalizing its oil sector and entrenching its control over its natural resource wealth. The most important of these measures are contained in the 1997 republican law "On oil and gas".

The Law on Oil and Gas serves a number of different purposes. As a legislative document, the law regulates the development of the republic's oil and gas fields, guarantees the protection of the environment through the rational exploitation of resources and the security of working conditions, and defends the interests of the people of Tatarstan by securing their right to own property and use resources.³⁴ In an economic sense, the law has been designed to help the Tatarstani oil sector cope with the problems of natural resource exploitation and production. It is in a political sense, however, that the law has created the most controversy. Adopted in June 1997, this piece of legislation proclaims Tatarstan's sovereignty over the republic's oil and gas resources and therefore reconfirms, at least in a legal sense, the general provisions contained in the main body of

³⁴ "Soglasheniia o razdele produkcii: Tatarstan vyrvalsia v lidery (Production sharing agreements: Tatarstan breaks free into the lead)," *Interfax AiF*, 30/06-06/07/1997, C10.

the February Agreement. By ignoring the principle of concurrency in this area of government, the Law on Oil and Gas challenges the validity and authority of federal laws such as the Law on Production Sharing Agreements on matters relating to natural resources.

At the time of its adoption, some observers suggested that the Law on Oil and Gas would “provoke a wave of revolt both in the Duma and in the regions [who were] dissatisfied with the privileged position of Tatarstan after the conclusion of the special agreement [the February Agreement] with Russia.”³⁵ While it is largely unclear how the other regions responded to the law (it is possible that some, especially other resource-producing regions, may have even supported the law), it seems that the reaction of the State Duma to the Law on Oil and Gas was not favourable. Furthermore, according to one senior official in the republican government, the individuals and groups that opposed the Law on Oil and Gas were the same people that resisted and criticized the 1994 February Agreement.

The question that still remains, however, is does the Law on Oil and Gas provide a basis for Tatarstani control of its natural resources? Upon closer examination, the law’s lofty proclamations of republican sovereignty in the oil sector, like those of the February Agreement, are restricted by companion agreements and enabling legislation that outline the need for cooperation and negotiation between the federal and republican governments in this area. The gap between the statutory declarations of the Law on Oil and Gas and the reality of the enabling legislation and other resolutions that operationalize the provisions of the law is clearly apparent in the area of production sharing.

³⁵ Galina Pechilina, “Tatarskie nefianiki poluchili pochti vse, chto khoteli (Tatarstani oil producers got almost all they wanted),” *Kommersant’ daily*, 07/05/1997, 5.

One of the most important aspects of the Law on Oil and Gas is its provisions on production sharing agreements. As explained in chapter three, the federal Law on Production Sharing Agreements encountered numerous problems and delays as it passed through the federal parliament. In addition to delaying the passage of the Law on Production Sharing Agreements, critics of production sharing in the State Duma and the Federation Council have also stalled vital enabling legislation such as the law on the list of resource deposits that can be produced under conditions of production sharing. This legislation must be adopted before a working production sharing regime can be operationalized in Russia.

In light of these developments (or lack thereof as the case may be), the Law on Oil and Gas could be viewed as a reaction to political impasse at the federal level. Production sharing is very important to Tatarstan and Tatneft' because under the present licensing system, the majority of Tatarstan's oil fields cannot be profitably exploited. A working production sharing regime would pave the way for greater foreign investment and access to the type of technology that companies working on the highly viscous, difficult deposits located in Tatarstan will need if they are to be developed in a profitable manner.³⁶ In the view of Rinat Galeev, the General Director of Tatneft',

[t]he adoption of the law "On oil and gas" with the adopted amendments can have a positive effect on the situation in which Tatar oil producers have found themselves in connection with the emergence in 1995 of the federal law on production sharing agreements. Today this law does not work in a practical sense in the absence of a law defining the list of oil fields which can be exploited under conditions of production sharing.³⁷

³⁶ Galina Pechilina, "Chtoby razbogatat', nado umet' delit'sia (In order to get rich, it is necessary to know how to share)," *Respublika Tatarstan*, 06/02/1997, 6.

³⁷ "O nefte, o dolgakh i sportivnoi slave (On oil, on duties and sporting fame)," *Vremia i dengi*, 04/03/1997, 2.

The Law on Oil and Gas, however, represents much more than just a regional response to federal “foot-dragging” in the area of production sharing. The law, argues one senior official in the republican government, has a political as well as an economic significance. It is a legal document that further defines or clarifies issues of jurisdiction and the position of the oil and gas sector in the republic.³⁸ This particular official shares the opinion of many republican policy makers when he says that the February Agreement declared Tatarstan’s control over its natural resources and the Law on Oil and Gas realized this control by resolving the question of the political status of resources in the republic.³⁹

Even though many republican politicians state publicly that the law has, once and for all, clarified the legislative situation in the republican oil sector, the reality is not as clear. If anything, the law seems to have muddied the legislative waters even further by adding a new and conflicting set of laws to an already confusing system of administration. According to the Law on Oil and Gas, the republican Cabinet of Ministers⁴⁰ is responsible for negotiating, granting and fulfilling production sharing agreements in Tatarstan. While there are fleeting references to the federal Law on Production Sharing Agreements and other federal resource legislation, the republican law firmly states that federal legislation is only valid if it does not contradict the constitution of Tatarstan and the bilateral treaty between Tatarstan and the Russian Federation.⁴¹ This challenges the idea of the superiority of federal legislation in cases of conflict between federal and regional laws.

³⁸ Interview, Kazan’, November 1997.

³⁹ Ibid.

⁴⁰ The Cabinet of Ministers is the part of the executive branch of government in Tatarstan.

⁴¹ Zakon Respubliki Tatarstan “O nefi i gaze,” glava 2, stat’ia 5.

The law also states that the Cabinet of Ministers, in accordance with legislation put in place by State Council⁴², is responsible for compiling the list of oil fields in Tatarstan that can be developed under conditions of production sharing. The republican list legislation, which was passed at around the same time as the Law on Oil and Gas, declared that Tatarstan, as a sovereign state, does not have to obtain permission from the State Duma of the Russian Federation for the right to exploit its resource deposits under conditions of production sharing.⁴³ In a rather contradictory manner, however, the resolution goes on to “instruct” the federal and republican governments to carry out “negotiations” concerning the division of authority on questions of the exploitation of oil deposits in Tatarstan under conditions of production sharing.⁴⁴

Yet another piece of this confusing legislative puzzle is the resolution “On the approval of the list of resource deposits and hydro-carbon fields on the territory of the Republic of Tatarstan, the right to the use of which may be granted under conditions of production sharing”. This resolution was adopted by the Tatarstani State Council on April 14th, 1997.⁴⁵ First, it is interesting to note that in a subsequent amendment to this legislation, adopted on May 22nd, 1997, the State Council decided to exclude the words “in accordance with the federal laws ‘On underground resources’ and ‘On production sharing agreements’” from the preamble of the original resolution. This was a clear attempt by the republican government to distance Tatarstan from federal legislation on natural resources.⁴⁶

⁴² The State Council is the legislative branch of government in Tatarstan.

⁴³ Op. Cit., *Kommersant’ daily*, 07/05/1997, 5.

⁴⁴ Ibid.

⁴⁵ Postanovlenie Gosudarstvennogo Soveta Respubliki Tatarstan “Ob utverzhdenii perechnia uchastkov nedr i mestorozhdenii uglevodorodnogo syr’ia na territorii Respubliki Tatarstan, pravo pol’zovaniia kotorymi predstavliaetsia na usloviakh razdela produktsii,” 22/05/1997.

⁴⁶ Ibid.

This resolution also includes a list of 8 oil deposits in Tatarstan that the republican government has deemed eligible to be developed under conditions of production sharing.⁴⁷ Given the fact that the list is headed with the title “The list of deposits, subject to exploitation under the conditions of the law of the Russian Federation “On production sharing agreements”, it appears that the Tatarstani government recognizes the legitimacy of the federal Law on PSAs on republican territory. This, in effect, contradicts earlier declarations of republican sovereignty in this policy area.

In spite of the lofty proclamations of the Law on Oil and Gas, enabling legislation such as the various list resolutions reveals that Tatarstan does not exercise total sovereignty in terms of controlling the production sharing process. Officials at Tatneft’, in contrast to many of their counterparts in the republican government, seem to share this view and, as a result, tend to be much more pragmatic about Tatarstan’s prospects in the area of production sharing. In a recent interview, Renat Muslimov, the Head Geologist of Tatneft’ commented: “perhaps, in the conditions of production sharing, the Russian government agreed to delegate its authority to the subjects of the federation. And perhaps not. This question must be decided in Moscow. It needs to go before the federal government and the State Duma.”⁴⁸

The probable course for resolving the legal contradictions contained in the various pieces of legislation that lay the administrative foundation for production sharing will be negotiation between the federal and republican governments. These negotiations, in Muslimov’s opinion, will be very difficult. Although he believes that “the indisputable

⁴⁷ Only one (Romaskinskoe) of the eight deposits on this list was included on the first federal list passed in 1997. A further two (Bavlinskoe and Novo-Elkhovskoe) were included on the second list approved in 1999.

⁴⁸ “Zakon dolzhen rabotat’ (The law must work),” *Respublika Tatarstan*, 28/08/1997, 3.

merit of the new law [Law on Oil and Gas] is the introduction of the practice of developing oil fields under conditions of production sharing,” he also admits that:

...there is not a step from the declaration of the new approaches to their realization in practice. I think that the real work under conditions of production sharing at the Romashkino field will not start before two years. For this to happen, it is necessary to do the following. First the Central Commission for Development at the Ministry of Fuel and Energy (Mintopenergo) - RF must approve the work (hopefully they will be prepared beforehand and then we will not lose time on this). Second, the governments of Russia and Tatarstan must agree on a number of principal questions. For example, what will be the composition of the commission which must be created for overseeing the work done under conditions of PSAs. In accordance with the Russian legislation on this question, representatives of the federal and republican governments and the investor must be included in such a commission. Has the Russian side decided to delegate its authority to Tatarstan or keep this authority for itself? In what way will the profits of production be divided between the Russian Federation and the Republic of Tatarstan?⁴⁹

A bilateral commission, comprised of members appointed by both governments, has already been proposed to oversee work carried out under production sharing agreements. It appears, however, that many of the questions regarding the actual mechanics of the production sharing process and the roles and responsibilities of the federal and republican governments in this process have yet to be resolved. Given the importance of these issues to both the federal and republican governments and previous experience in matters of this nature, it is likely that the resolution of conflicts will occur at the highest levels of government either through the commission or through existing intergovernmental channels.

⁴⁹ Renat Muslimov, “My boimsia tol’ko zakulisnoi igry, no ne chestnoi konkupentsii (We are only afraid of underhanded games, but not honest competition),” *Ploshad’ svobody*, #21 (August 1997), 4.

Conclusions

Throughout the post-Soviet period, the government of Tatarstan has attempted to use its oil resources as a catalyst for greater republican autonomy. Oil revenues have provided the financial capital for the subsidization of other, less affluent, sectors of the republican economy and the republic's distinctive program of economic and social reform. The Tatarstani government has also taken an active interest in expanding and strengthening the republican oil industry by concluding numerous bilateral agreements with other regions and states and spearheading the development of Tatneft'. Perhaps the most significant example of Tatarstan's drive for formal sovereignty in this policy area was the adoption of the Law on Oil and Gas. In addition to asserting the republic's sovereignty over its oil and gas resources, the Law on Oil and Gas demonstrates the Tatarstani leadership's commitment to production sharing, a process it hopes will further strengthen the republican oil industry in years to come.

Despite these measures, it is apparent that Tatarstan faces a number of major barriers in its quest to exercise sovereignty over its oil resources. Structural problems such as declining levels of oil production, limited local refining capacity and the republic's dependency on federally-controlled pipeline systems and other distribution networks have hampered Tatarstan's ability to act independently of the federal government. These structural barriers are compounded by the legal restrictions that bind the republican government into a series of difficult and complicated bilateral negotiating processes with the federal government.

These "restrictions" are clearly evident if one considers the issue of production sharing. The Tatarstani government claims sovereign control over this area of

jurisdiction through the Law on Oil and Gas. But in actual fact, the republican government finds that its ability to control the production sharing process is limited by the need to negotiate with the federal government through the bilateral commission or in meetings between high-level officials from both governments. This reality not only undermines the lofty ideals of republican sovereignty contained in the February Agreement and the Law on Oil and Gas. It also establishes what amounts to a system of *de facto* concurrency for managing intergovernmental relations between Tatarstan and the Russian Federation in the oil sector; a system that the republican government seems to accept, if not in their public pronouncements, then in their private negotiations with Moscow.

Chapter Seven

“Matreshka Federalism”: The Case of the Khanty Mansiisk Autonomous Okrug

The Russian Federation is comprised of an extremely diverse set of regions, each displaying its own individual characteristics as well as shared features that are common to all the constituent members of the federation. The previous two chapters focused on Tatarstan and its unique relationship both with the federal government and within the Russian Federation. Throughout the post-Soviet period, Tatarstan’s relations with the federal government have dominated the politics of the republic. The driving force behind the Tatarstani government’s political and economic program has been to secure greater autonomy from Moscow. Consequently, Tatarstan’s partial success in terms of bolstering its autonomy has in part formed the basis for asymmetrical federalism, a federal arrangement that Tatarstan and a number of other regions in the Russian Federation seem content to support and perpetuate.

Although a number of other regions share Tatarstan’s political and economic goals, the task of maximizing regional autonomy within an asymmetrical federal structure is not an overriding policy objective of all the members of the Russian Federation. In fact, many regions oppose the principle of asymmetry, arguing instead that all the *sub'ekty* should be treated as equals. While it is probably true that most regions would like to gain some measure of autonomy in relation to the federal

government, many simply do not have the political and economic resources to sustain such autonomy and are content to rely on Moscow for assistance and support. Other regions face threats to their position within the federation from other *sub'ekty* and thus stress the need for equality and cooperation with Moscow in order to preserve and reinforce their autonomy.

One of the unique features of contemporary Russian federalism is the autonomous okrug or district. An autonomous okrug is a region that is located within another region. Students of Russian federalism have labeled this unprecedented interregional relationship “matreshka federalism”, in reference to the matreshka or nesting dolls in which smaller dolls are contained within larger ones. The relationship between an autonomous okrug and its “host” region (a krai or an oblast’) is mired in legal ambiguity and institutional confusion. In a constitutional or legal sense, both the autonomous okrug and the “host” region are equal and autonomous subjects of the federation. At the same time, however, each autonomous okrug is considered to be a part of its host region. Furthermore, the two regions in question have closer political and economic ties with each other than they do with other regions.

Matreshka federalism is a legacy of the Soviet period. Officially, the Soviet government under Josef Stalin created the autonomous okrugs in the 1930s as national homelands for some of the Soviet Union’s smaller ethnic groups. In reality, however, the creation of a whole new level of territories within the Soviet federal structure was a part of the central government’s strategy to divide and rule the farther reaches of the Soviet Union. Under the terms of the 1936 Soviet constitution and the 1937 RSFSR constitution, the legal and political status of autonomous okrugs was lower than that of oblasts and

krais. An okrug's organs of state power, therefore, were subordinate to the organs of state power of the krai or oblast in which it was located.

This relationship persisted until the constitutional changes of the 1970s modified the status of the autonomous okrugs. The revised 1977 Soviet and 1978 RSFSR constitutions provided the autonomous okrugs with a greater degree of autonomy by strengthening their links with national institutions. Okrugs were given representation in the highest organs of USSR state power and the right to legislative initiative. Moreover, they were regulated on the basis of an all-Russian law on autonomous okrugs. In spite of these changes, the okrugs were still considered parts of their "host" kraia or oblasts; as such, their budgets were still a part of the larger regional budget and the oblast or krai authorities still had the power to change decisions made by the okrug administration.¹

The gradual but limited development of okrug autonomy in the late Soviet period has intensified during the post-Soviet period. The 1992 Federation Treaty enhanced the political status of the okrugs within the federation by giving them direct relations with and guaranteed representation in federal organs of state power. The 1993 federal constitution strengthened this autonomy by providing a legal basis for the equality of the okrugs with other members of the federation. The Russian constitution recognizes the autonomous okrugs as equal subjects of the federation in terms of their relations with federal organs of state power and the other members of the federation. The constitution also outlines the okrugs' right to a charter, to form regional organs of state power and local self-government, to have property and a budget. In terms of jurisdiction and

¹ Vladimir Kriazhkov, "Status avtonomnykh okrugov: evoliutsiia i problemi (The status of autonomous okrugs: evolution and problems)," *Rossiiskaia federatsiia*, 2/1996, 50.

authority, the constitution also states that autonomous okrugs have areas of concurrent jurisdiction with the federal government, the ability to pass laws, guaranteed and equal representation in the Federation Council and the right to submit legislative initiatives to the State Duma.²

In keeping with the general lack of clarity and transparency inherent in the contemporary Russian federal structure, confusion and ambiguity are the dominant features of the relationship between the autonomous okrugs and their host regions. Like the issue of concurrent jurisdiction, the federal government initially avoided the difficult task of defining the legal parameters of oblast'/okrug and krai/okrug relations. Since 1995, Moscow has made some attempts to clarify this relationship, but has yet to comply with the 1993 constitution and pass a law on relations between autonomous okrugs and their host regions.

Part of the reason for this delay may simply be that there is no easy solution. At the time of the Soviet collapse, it was convenient and politically expedient to retain the territorial divisions that had existed in the Soviet federal model. While the centralized Soviet system precluded interregional conflict, decentralization, democratization and destabilization in the late Soviet and post-Soviet periods have encouraged such divisions to arise. Over the past decade, the politics underlying the relationship between the autonomous okrugs and their host regions has changed in response to the broader transformation taking place in the Russian Federation. The institutional relationships,

² Ibid., 50. According to article 104 of the Russian constitution, the legislative organs and the head of the regional executive and legislative branches of government (as members of the Federation Council) have the right to submit legislative initiatives to the State Duma for consideration.

however, have remained static or, at best, have only been altered in a superficial manner, thus providing the basis for interregional conflict.

Another problematic feature of contemporary Russian federalism is Moscow's attempt to appeal to a wide variety of regions with different opinions on the question of symmetry and asymmetry. The federal government's ambivalent stance on this issue has given rise to a conflicting set of rules about the nature of the federation. The ambiguous relationship between the autonomous okrugs and their host regions encapsulates this conflict. On the one hand, the constitution considers the okrugs to be equal subjects of the federation. At the same time, it asserts that the okrugs are parts of the oblasts or kraia in which they are located.³ The result is legal confusion and, in the case of some regions, conflicts that have the potential to threaten the political and economic stability of the okrug, the host region and the country as a whole.

In an effort to understand the complex set of relations underlying matreshka federalism and assess their impact on the policy making process in the oil sector, the next two chapters will focus on the Khanty Mansiisk autonomous okrug. Khanty Mansiisk is one of two autonomous okrugs located within a larger territorial entity known as Tiumen' oblast'.⁴ Throughout much of its history, the okrug was politically subordinate to Tiumen' oblast'. During the post-Soviet period, however, the relationship between Khanty Mansiisk and Tiumen' has undergone a considerable evolution. In addition to

³ Even the Constitutional Court has demonstrated a certain amount of ambivalence toward this question. In its most recent ruling on this matter, the Court decided that it was the responsibility of the regions in question to regulate their relations. "Po delu o tolkovanii soderzhashchegosia v chasti 4 stat'i 66 Konstitutsiia Rossiiskoi Federatsii polozheniia o vkhozhenii avtonomnogo okruga v sostav kraia, oblasti," *Sebranie zakonodatel'stva Rossiiskoi Federatsii*, 29/1997, 3581.

⁴ Tiumen' oblast' is divided into three parts: South Tiumen' (also referred to as Tiumen' proper); the Khanty Mansiisk autonomous okrug; and the Yamalo Nenets autonomous okrug.

achieving constitutional equality with the other members of the federation, the okrug administration has asserted its autonomy from Tiumen' oblast' and, in particular, has sought to gain more control over the region's bountiful natural resources and the revenues that flow from the sale of these resources. The Tiumen' oblast' government, on the other hand, has tried to preserve the unity of the oblast', a course of action that has been motivated, to a large extent, by the economic dependence of Tiumen' proper (the southern part of the oblast') on natural resource revenues from the okrugs.⁵

This chapter will examine the problems and challenges facing Khanty Mansiisk as it attempts to carve out its own regional identity, yet at the same time remain a committed member of the Russian Federation. In doing so, this case study will demonstrate that the centre-periphery axis is only one way of conceptualizing federalism and intergovernmental relations in the Russian Federation. Indeed, the example of Khanty Mansiisk and Tiumen' suggests that federal scholars should recognize the important role that interregional relationships (both conflictual and cooperative) play in terms of shaping the federal polity. Part one will summarize the historical evolution of the okrug since the early Soviet period and the okrug administration's response to the complex set of problems that have confronted the region in the post-Soviet period. The second part will explore Khanty Mansiisk's evolving relationship with Tiumen' oblast', with a particular focus on the legal and political conflicts that have resulted from their differing attitudes toward federalism and intergovernmental relations. Part three will examine Khanty Mansiisk's relationship with the federal government and other regions.

⁵ Although natural resources are located in all three regions, Khanty Mansiisk and Yamalo Nenets are particularly well-endowed, while the economy of Tiumen' proper is oriented more around agriculture.

This chapter's analysis of the historical, political, economic and institutional context that forms the basis for Khanty Mansiisk's position within the federation and shapes its relations with other federal members will serve as a useful foundation for a more in-depth study of the politics of oil in the region.

Historical Evolution and Contemporary Challenges

The Khanty Mansiisk autonomous okrug is located in Western Siberia, approximately 2800 km east of Moscow. It forms the central portion of Tiumen' oblast', a vast region that stretches from the Kara Sea in the High Arctic to the borders of Kazakstan in Central Asia. In terms of size, the okrug covers a territory of 534.8 thousand square kilometres, making it slightly smaller than Ukraine and slightly larger than Spain. Most of this territory is made up of swampland and marsh (44.3%), and forest (44%). The remainder is comprised of arable land (3%) and rivers/lakes (6.6%). With a population of only 1.3 million people, the okrug is home to less than 1% of Russia's total population. It is interesting to note, however, that the okrug population has grown by 1 million during the past 30 years. This is a testament to the importance and rapid development of the oil industry in the region. Most of the region's inhabitants, therefore, are newcomers from other parts of what are now the Russian Federation and the independent states of the Former Soviet Union.

Khanty Mansiisk (or the Ostiako-Vogul'skii autonomous okrug as it was originally known) was created on December 10th, 1930, as a national homeland for the

Khanty Mansiisk is one of Russia's (and the world's) largest oil producing regions and Yamalo Nenets contains some of the world's largest deposits of natural gas.

Khants and Mansii, the indigenous aboriginal tribes in the region. At this time, the okrug was sparsely populated and underdeveloped. Although the region had long been a place of exile for prisoners of the Tsarist and, later, Soviet regimes, it had no rail connections with European Russia and very little industry. The economic and industrial development of the okrug began in the 1960s when large deposits of oil were discovered in its vast expanses of forest and swampland. The region's largest cities of Surgut, Nizhnevartovsk and Nefteugansk are all products of this rapid development and as such are intimately connected with the oil industry. Nizhnevartovsk in the eastern part of the okrug, for example, is basically a service centre for the giant Samotlor oil field.⁶

Khanty Mansiisk produces approximately 70% of Russia's total oil output. It has more than 500 oil and gas deposits with established reserves of 20 billion tons and projected reserves of 35 billion tons. In addition to being Russia's largest oil producer, second largest electro-energy producer and third largest gas producer, the okrug also contains many other resources and minerals including gold, quartz, iron-ore, bauxite and coal.⁷ As a result of this enormous natural resource wealth, Khanty Mansiisk is a net donor to the federal budget. In 1996, the okrug transferred more than 60% of the taxes collected in the okrug (23 trillion roubles - more than 20 medium sized oblasts with a

⁶ Like many new (post-revolutionary) cities in Russia, these cities have a very Soviet feel about them: wide boulevards; treeless, windswept squares; grandiose cultural and administrative buildings; and row upon row of high-rise apartment blocks. In contrast, the town of Khanty Mansiisk, which is the capital of the okrug, is rather more sedate and provincial. It still has a number of wooden buildings (even in the downtown core - the municipal library is situated in a very quaint wooden blockhouse, near the main administrative building), lots of forested areas and parks and very few high-rise complexes. The town is nestled in a valley at the confluence of two of Russia's greatest rivers, the Ob' and the Irtysh. These features prompted one resident to label the town "the Russian Switzerland".

⁷ Sergei Sobianin, "Oblast' - ne nachal' nitsa, okrug - ne podchinennyi (The oblast' is not the boss, the okrug is not the subordinate)," *Rossiiskaia federatsiia*, 19/1996, 30.

combined population of 40-45 million) to the federal government.⁸ Every tenth rouble in the federal budget and 30% of Russia's hard currency earnings come from the okrug. Moreover, Khanty Mansiisk is consistently in the top 10 Russian regions in terms of economic potential and, as a result, is one of the main destinations for foreign investment.⁹

In spite of this enormous resource wealth and future economic potential, Khanty Mansiisk, like many other northern regions, has its fair share of problems. In many respects, their sources can be traced to the Soviet period. Successive Soviet governments saw the North as simply a supplier of raw materials to fuel economic expansion in the more industrialized parts of the country. Throughout the past 30 years, the okrug has endured what the present governor of Khanty Mansiisk, Alexandr Filipenko, referred to as "the merciless exploitation of the oil branch" with very little compensation from the central government.¹⁰ One source estimated that 6 million tons of oil worth the colossal sum of \$0.5 trillion was taken from the okrug during the Soviet period.¹¹

While this type of development strategy and the revenue it brought to the central budget may have eased the problems of the country as a whole, it left its mark on the okrug in terms of infrastructural backwardness, a legacy of environmental degradation and a lack of economic diversification. In fact, 80% of settlements in the okrug are not electrified, 90% are without gas and more than 80% of the roads do not have hard

⁸ Maria Volgina, "Neftianiki poka ne bastuiut (For the time being oil workers are not on strike)," *Novosti Iugri*, 06/02/97, 2.

⁹ Vladimir Gurzhii, "Sergei Sobianin: Severianam dostaiutsia krokhi ot neftianykh bogatstv (Sergei Sobianin: The crumbs of oil wealth are inherited by Northerners)," *Segodnia*, 20/10/1995, 5.

¹⁰ Vladimir Efimov, "Proverennaia zhizn'iu praktika - osnova dlia dvizheniia vpered (Examining life in practice - a basis for movement forward)," *Rossiskaia gazeta*, 27/08/1996, 6.

¹¹ *Ibid.*

surfaces. Practically all goods have to be imported into the region, resulting in higher prices. Moreover, many towns and communities depend on the resource industry for their economic well-being. When world resource prices fall or when political and economic uncertainty dissuades investment and development in the resource sector (as is the case at present in Russia), these towns face unemployment and a considerable drop in their standard of living. In the words of one local observer, "[a]las, unemployment has become a serious and actual problem for the whole okrug. The reduction of industrial production ...geological prospecting work [and] oil and gas output brings with it a considerable fall in the demand for work."¹²

In the post-Soviet period, regional politicians argue that more emphasis should be placed on using the remaining resource wealth to benefit the okrug. Although they stop far short of declaring economic or political independence from the Russian Federation, these politicians advocate greater economic and financial autonomy for okrug in relation to Moscow and, more importantly, Tiumen' oblast'. Some steps have been taken in this direction. However, much work needs to be done if the okrug is going to overcome the heavy legacies of the past and meet the challenges of economic diversification in the future.

One of the most prominent political figures in the okrug is Alexandr Filipenko, the Governor of Khanty Mansiisk since 1991. Like many other members of the regional political elite, Filipenko worked in the okrug during the development boom of the 1960s and held posts in various parts of the Communist Party apparatus. During the 1970s, he

¹² "Bezrobotitsa - problema ser'eznaia (Unemployment - a serious problem)," *Tiumenskaia pravda*, 29/05/1996, 1.

worked for the okrug *ispolkom* and eventually rose to the position of First Secretary of the Berezovskii *raikom* in 1983. Boris El'tsin originally appointed Filipenko governor in 1991. In 1996 he won the first okrug gubernatorial election and thus has maintained a strong and consistent presence in the region throughout the post-Soviet period. Essentially conservative in political orientation but well aware of the need for economic reform, Filipenko is extremely interested in the internal economic development of the okrug and of the North in general.¹³ He is also considered a strong figure who is capable of negotiating with the numerous 'oil generals', the men who lead Russia's petroleum companies and play such an important role in the okrug's economy.¹⁴

Unlike many other regions, relations between the Governor and the other parts of the okrug administration are cordial and cooperative. Filipenko has a very good working relationship with his deputy, Vladimir Karasev and enjoys good relations with the members of the Duma, the legislative branch of the okrug government. The fact that Sergei Sobianin, the current head of the okrug Duma, was Filipenko's deputy for several years strengthens the close relationship between the executive and legislative branches. There is little doubt, however, about who is in charge. In the words of one okrug official, "the Duma speaks about what should be, but Filipenko speaks about what is!"¹⁵

While cordial relations between the various branches of government seem to have provided Khanty Mansiisk with a certain amount of political stability, the okrug is not totally free from the types of political disputes that exist in other regions. One of the challenges facing the okrug government in the post-Soviet period concerns the fate of the

¹³ "Press konferentsiia - u glavii administratsiei (Press conference with the head of the administration)," *Novosti Iugri*, 08/02/1996, 4.

¹⁴ *OMRI Russian Regional Report*, 1/10 (30/10/1996).

small but significant aboriginal community and its place within the okrug. As many observers have correctly pointed out, Khanty Mansiisk's status as an autonomous okrug (and as an equal subject of the federation) is a direct consequence of its aboriginal population. The reality is that without this population, the region would probably still be a *raion* or district of Tiumen' oblast' with very little political or economic autonomy, let alone equal status within the federation.

Cut of the 1.3 million people who live in the okrug, only about 60,000 are officially designated as *malye narody severa* (Small Peoples of the North), the collective Russian term for the aboriginal peoples.¹⁶ The problems confronting the *malye narody* in Khanty Mansiisk and throughout Russia are very similar to those facing aboriginal communities in North America and other parts of the world. In Russia, however, the uncertainties of the political and economic transition have compounded problems such as domestic violence, unemployment, alcoholism and the disappearance of the traditional lifestyle. Although the Soviet regime destroyed many aspects of traditional native culture, there is a certain amount of nostalgia among the aboriginal population for the stability that existed during Soviet times. Now that this stability has disappeared, the aboriginal population has become extremely wary of market reforms.

Since the majority of the aboriginal population lives in non-urban, resource producing areas, much of its anger is directed at oil producers and other companies involved in oil sector development. Native leaders such as Tat'iana Gogoleva, the President of the okrug aboriginal association "Iugra Salvation" and a deputy in the

¹⁵ Interview, Khanty Mansiisk, May 1998.

¹⁶ Iurii Sosin, "Tiimenskii krai - obshii dom (Tiumen' region - a common home)," *Svobodnaia mysl'*, 11/1996, 95-104.

Khanty Mansiisk Duma, have confronted the okrug government and oil companies in three separate areas. These include: ecological concerns such as the impact of oil sector development on native lands and the okrug's ecosystem; economic relations with oil producers and the issue of monetary and material compensation for aboriginal communities and individuals in oil producing areas; and political representation and consultation on oil sector legislation.

In response to these concerns, the okrug government has tried to act as a mediator between the aboriginal community and the oil producers. In 1998, for example, an international conference was held in Khanty Mansiisk, the okrug capital, on the indigenous peoples, oil and the law. This conference brought together academics, native leaders and representatives from other regions and countries to discuss, among other issues, the question of improving relations between the aboriginal community and the oil companies.¹⁷

The okrug Duma Committee for the Small Peoples of the North has also worked closely with the Assembly for the Small Peoples of the North on finding solutions to the concerns of the aboriginal community and its leaders. It is through this committee that the okrug operates many of the programs designed to help the aboriginal population deal with the problems of the transition. The okrug government has also attempted to involve aboriginal leaders in the legislative process, both informally by seeking their advice at the committee stages and, in a more formal manner, by providing the aboriginal population with guaranteed representation in the okrug Duma. Whereas these measures do provide

¹⁷ Proceedings of the International Conference on "Indigenous Peoples, Oil and the Law", Khanty Mansiisk, Russian Federation, March 23-25, 1998.

the aboriginal community with a voice in okrug affairs, many aboriginal leaders argue that this voice is still not as strong as it should be. For example, six seats in the okrug Duma are supposed to be reserved for aboriginal representatives. At present, however, members of the aboriginal community hold only two of these seats.¹⁸

Some observers, especially those who support the unity of Tiumen' oblast', have accused the largely Slavic (ethnic Russian and Ukrainian) industrial-economic, financial and political elites in the okrug of supporting aboriginal rights as a means of bolstering the autonomy of the okrug and protecting their own political and economic interests.¹⁹ Given the economic support that Tiumen' proper receives from the okrug, it is equally plausible that elites in Tiumen' support the unity of the oblast' simply as a means of preserving their own economic position. While there is only limited evidence to suggest that officials in the oblast' and okrug governments support such views, these types of accusations have soured relations between the oblast' and okrug governments in recent years.

Khanty Mansiisk's Relationship with Tiumen' Oblast'

Many studies of Russian federalism focus on the struggle between the federal and regional governments over questions such as regional autonomy, taxation and subsidies. The case of Khanty Mansiisk highlights a different yet equally important feature of the complex and constantly evolving system of intergovernmental relations in the Russian Federation: interregional conflict. Unlike regions such as Tatarstan, the main challenge

¹⁸ Spisok izbrannykh deputatov Dumy Khanty-Mansiiskogo avtonomogo okruga.

¹⁹ Op. Cit., Sosin (1996).

to the autonomy of the okrug does not come from the federal government, but rather from Khanty Mansiisk's "host region", Tiumen' oblast'.

Khanty Mansiisk's legal position in relation to Tiumen' is confusing, to say the least. The federal constitution and the Federation Treaty provide the legal basis for the equality of all 89 subjects of the federation, a figure that includes the 10 autonomous okrugs. At the same time, these documents also reinforce the inequality of some *sub'ekty* in relation to others by stating that autonomous okrugs are located within their respective host regions. In the case of Khanty Mansiisk, this essentially means that the okrug occupies the ambiguous position of being both an autonomous, equal subject of the federation and a part of a larger territorial entity.²⁰ As one observer has noted, the result is "[i]ncredible confusion. Where the boundary of authority lies, neither the constitution nor the Federation Treaty can give an honest answer."²¹ Legal experts in Moscow have even coined a new term for such regions. They refer to Tiumen' oblast' as a *slozhno-sostavlennyy sub'ekt federatsii*. Loosely translated, this means "a complexly structured subject of the federation."²²

The sheer number of conflicting documents that attempt to codify the okrug's legal status reflects the complicated nature of Khanty Mansiisk's relations with Tiumen'. As noted above, neither the Russian constitution nor the Federation Treaty has sufficiently resolved the issue of the okrug's status. In many respects, these documents

²⁰ It would be comparable to Northern Ontario being considered a separate province and, at the same time, a part of Ontario.

²¹ "Iugra - valiutnyi chekh strany (Iugra - the country's hard currency cheque)," *Rossia*, 9/10, 1996, 40-41.

²² *Ibid*, 41. Some officials in Khanty Mansiisk, on the other hand, have adopted a less formal approach to characterizing the oblast's political status. For example, on the desk of one Surgut official, an observer found a huge toy dragon with three heads. "This is a model of Tiumen' oblast'," explained the owner. "one body and three governors." *Ibid*, 41.

have merely added to the legal confusion. The constitution states that as subjects of the federation, the okrugs are allowed to have their own charter, budget and system of executive, legislative and state power. This document, however, is very vague regarding relations between autonomous okrugs and their "host" regions. For the most part, it avoids the controversy of defining this relationship. Article 66 (4) declares that "the relations of autonomous areas that form part of a territory or region may be governed by federal law and a treaty between the bodies of state authority of the autonomous area and, respectively, the bodies of state authority of the territory or region."²³ The Federation Treaty, on the other hand, actually consists of three separate documents that create legal and political distinctions between the various *sub'ekty*, but say little about relations between them.²⁴

At the present time, the federal law referred to in the constitution on relations between autonomous okrugs and their host regions does not exist. There have been some attempts to pass such a law, but the process has been mired in controversy and conflict. One version of the draft law passed first reading in the State Duma on November 17, 1995, after almost 11 months of discussion involving the Committee for Federal Affairs and Regional Policy, various subjects of the federation and other State Duma committees. This draft had been submitted by the Tiumen' oblast' Duma, a body that includes a majority of representatives from the region's two okrugs. Suggested amendments to this draft law numbered almost 150, of which the committee approved over 100. Needless to say, the organs of state power of the Khanty Mansiisk and Yamalo

²³ *Konstitutsiia Rossiiskoi Federatsii*, stat'ia 66 (4).

²⁴ Separate treaties were signed with the republics, the oblasts and krais, and the autonomous okrugs and other territorial entities.

Nenets autonomous okrugs recommended many of these amendments, especially those in the area of natural resources.²⁵

Even after undergoing considerable modification, many okrugs, including Khanty Mansiisk, were still not happy with the draft. According to the Association for the Autonomous Okrugs of the Russian Federation (AAORF): "The members of the [AAORF] are practically unanimous: they believe that this draft law not only does not solve the existing problems, but that it masks them in even tighter knots. We think that this law is needed by those who want to exacerbate the situation and not stabilize it."²⁶

Although the okrugs genuinely opposed many of the provisions in this draft law, it is likely that their opposition also stemmed from the fact that a governmental body representing Tiumen' oblast' had proposed the draft. There have also been suggestions that the draft became caught up in the wider struggle between the executive and legislature at the federal level. The Duma apparently passed the draft because it contradicted the executive dominated constitution. Conversely, the okrug's rejection of the draft was supported by President El'tsin and several other federal ministries.²⁷ After finally being passed by the State Duma, the draft was sent to the Federation Council for further consideration. The Federation Council, however, was unable to agree on the draft and in turn submitted it to a conciliatory commission for further modification. It still languishes, unpassed, in the federal parliament and the convoluted process of defining oblast'/okrug relations continues.

²⁵ Federalnyi zakon "Ob osnovakh otnoshenii kraia ili oblasti s vkhodiashchimi v ikh sostav avtonomnymi okrugami. Priniat Gosudarstvennoi Dumoi 13/06/1997. Also see: V. Ul'ianov, "Eshcho odin shag na puti k soglasiu (Still one more step on the path to agreement)," *Tiumenskaia pravda*, 16/10/1996, 1.

²⁶ "Assotsiatsii avtonomnykh okrugov - piat' let (The Association of Autonomous Okrugs - 5 years)," *Novosti Ingri*, 20/02/1997, 2.

In January 1997, the Governors of Khanty Mansiisk, Yamalo Nenets and Tiumen' signed a treaty on economic, legal and socio-cultural cooperation.²⁸ In part, this agreement meets the objectives outlined in the federal constitution regarding okrug/oblast' relations; it is important to remember, though, that it is only an agreement on cooperation and, as such, it has limited legal force. As we will see in the following chapter, its provisions on natural resources offer no firm guarantees that Tiumen' proper will continue to benefit from or have any control over resource production in the okrugs.

Under populist governor, Alexandr Filipenko, there has been a concerted attempt to increase Khanty Mansiisk's autonomy from Tiumen' proper. Filipenko does not object to Khanty Mansiisk being considered a part of Tiumen oblast', but he does oppose the idea of the oblast' being a single, unified entity with, for example, a single oblast' budget.²⁹ At the same time, Filipenko is cautious about using the term "autonomy" to refer to the okrug's attempt to distance itself from Tiumen'. In the contentious world of Russian regional politics, autonomy has many different meanings. To okrug politicians, it signifies equality and an end to Tiumen' oblast's interference in okrug affairs. In contrast, to politicians in Tiumen' proper, autonomy means separation and the disintegration of the oblast'. Speaking on behalf of the okrug's political elite, Filipenko diplomatically states that "we aspire to conduct ourselves with sufficient restraint

²⁷ "Budni postredstva (Everyday occurrence)," *Novosti Iugri*, 20/04/1996, 3.

²⁸ Dogovor mezhdy organami gosudarstvennoi vlasti Tiumenskoi oblasti, Khanty-Mansiiskogo avtonomnogo okruga, Yamalo-Nenetskogo avtonomnogo okruga (Treaty between the organs of state power of Tiumen' oblast', Khanty Mansiisk autonomous okrug, Yamalo Nenets autonomous okrug), 29/01/1997.

²⁹ Evgeniia Nikitina, "Esli chasto ogliadyvat'sia nazad, mozhno i spotknut'sia (If we look back often, we may stumble), *Novosti Iugri*, 04/04/1996, 3.

because the word “autonomy” - today, it is, as has become clear, something that has negative connotations.”³⁰

Whereas Khanty Mansiisk’s political elites have expressed their support for the autonomy of the okrug, opinion polls suggest that the general population may still have some reservations about it. Many of Khanty Mansiisk’s inhabitants came to the okrug during the Soviet period and as such still consider themselves citizens of Tiumen’ oblast’ rather than citizens of the okrug. Moreover, they feel that the autonomy issue distracts the government’s attention from other, more important concerns such as unemployment, living conditions, the wage payments crisis and narcotics.³¹ Politicians in Tiumen’ proper have used these concerns to bolster their own claims for the unity of the oblast’. Officials such as Tiumen’ Governor Leonid Roketskii argue that okrug autonomy is something that “is needed only by ambitious politicians who dream that the disintegration [of the oblast’] will satisfy their private or corporate interests.”³²

In response to these accusations, many observers say that the Tiumen’ administration’s rationale for supporting the unity of the oblast’ is to protect the economic interests of Tiumen’ proper and the oblast’ elites. Such an explanation is entirely plausible. Compared to Khanty Mansiisk and Yamalo Nenets, Tiumen’ proper has a greater per capita percentage of pensioners and unemployed persons. Furthermore, the large agricultural and industrial sectors of Tiumen’ proper have suffered as a result of the broader economic crisis. Between 1993 and 1996, okrug officials estimate that the

³⁰ Op. Cit., *Rossiiskaia gazeta*, 27/08/1996, 6.

³¹ Interview, Khanty Mansiisk, May 1998. Khanty Mansiisk is apparently located on a major Asia-Europe drug trafficking route.

³² Mikhail Kushtapin, “L’vov-Tiumen’: bilet v odin konets (L’vov - Tiumen’: a one-way ticket),” *Rossiiskaia gazeta*, 05/10/1996, 2.

Khanty Mansiisk contributed more than 2 trillion roubles to the oblast' economy. Oblast' politicians understand that without this financial support, Tiumen' proper would face considerable economic and financial hardship, a situation that could undermine their political positions.

Even though the federal government has supported Roketskii and his attempts to preserve the unity of the oblast' in the past, some observers have suggested that the federal commitment to the unity of the oblast' may eventually give way to financial considerations. According to one source, it is possible that the federal government would gain more in the form of revenues from two totally autonomous okrugs (Khanty Mansiisk and Yamalo Nenets) than it would lose in additional subsidies to a separate Tiumen' proper.³³ If this is true, then Moscow's lack of direction on the question of the legal status of autonomous okrugs could be a calculated effort to cause interregional conflict and the eventual dissolution of Tiumen' oblast'.

Financial and political considerations, it seems, have influenced all sides in this debate. The overriding importance of natural resources to the economies of both Khanty Mansiisk and Tiumen' proper has aggravated interregional relations. The Tiumen' government argues that between the 1960s and 1991, almost all investment in the oblast' was directed at the development of the oil and gas complex, much of which is located in the okrugs. They contend that the oil sector and the cities that grew up around it were all built with national and all-oblast' interests in mind, not the narrow interests of the okrugs. Given the "sacrifices" that the oblast' has made for the development of the

³³ John Webb, "Pragmatic Reformers Win Most Regional Russian Elections, Posing New Challenge for Yeltsin," Cambridge Energy Research Associates: Decision Brief, March 1997, 6.

okrugs, many political elites in Tiumen' proper feel it is time for the okrugs to support the development of the southern part of the oblast'. As the debate over the 1995 Law on Production Sharing Agreements in chapter three revealed, this is a common attitude among oblasts and krajs that now feel "cut off" from their wealthier okrugs.³⁴

Politicians in Khanty Mansiisk downplay accusations that they are intent on dismantling the oblast'. They merely want to secure the type of political and economic autonomy that will allow for the future development of their okrug. Although Khanty Mansiisk has a great deal of economic potential, as mentioned earlier, the okrug faces enormous developmental challenges. Moreover, okrug elites are highly critical of the way in which "so-called" development occurred in the past. Commenting on previous development strategies, Alexandr Filipenko paints a very different picture of the okrug's economic evolution during the Soviet period: "from our land, 6 million tons of oil for the sum of 0.5 trillion dollars was literally taken. We were absolutely destitute. From our wealth, the local inhabitants received negative consequences in the form of all sorts of ecological calamities."³⁵

One of the ironies of this political infighting between elites in the okrug and oblast' governments is that many of these officials worked together in Khanty Mansiisk during the Soviet period. In public, they often maintain that their relations throughout the post-Soviet period have remained cordial and cooperative. It is apparent, though, that the continuing problems surrounding the legal position of the okrug in relation to the

³⁴ Similar sentiments were expressed by representatives from Archangelsk oblast' in relation to the Nenets autonomous okrug.

³⁵ Op. Cit., *Rossia*, 41.

oblast' and the division of revenues from resource wealth have strained these relations and contributed to the political rhetoric between okrug and oblast' officials.

During the past several years, two issues in particular have dogged relations between the oblast' and the two okrugs: the adoption of the Tiumen' oblast' charter in June 1995; and the elections for the governor of Tiumen' oblast' in December 1996. The conflict between the oblast' and the okrugs initially flared up as a result of a number of highly controversial provisions outlined in the Tiumen' charter, the oblast's version of a constitution. In a very clearly worded challenge to the legitimacy of this charter, E. Kerpel'man, the Deputy Speaker of the Khanty Mansiisk Duma stated: "the okrug dumas do not agree with many of the articles in this charter, in so far as they perceive them as an encroachment on the rights and interests of the population of the autonomous okrugs and their organs of state power."³⁶ Critics argue that the charter considers the okrug to be a part of the oblast' and thus challenges the okrug's legal status as an autonomous and equal subject of the federation.³⁷ Particular opposition has been directed at articles that challenge the budgetary independence of the okrugs. As the next chapter will demonstrate, the charter has also created controversy by outlining a role for the oblast' government in the regulation of the resource sector in the okrugs.³⁸

In addition to the furor over the oblast' charter, the question of okrug participation in the oblast's gubernatorial elections has also strained oblast'-okrug

³⁶ "Ne ispol'zuite liudei kak material dlia politiki (Don't use people as fodder for politics)," *Novosti Iugri*, 13/02/1997, 2.

³⁷ Konstantin Katanian, "Ravnopravy li sub'ekty federatsii (Do the subjects of the federation have equal status)," *Nezavisimaia gazeta*, 19/06/1996, 2.

³⁸ In its examination of the Tiumen' oblast' charter, the Russian constitutional court decided that all the subjects of the federation are equal, even if one is located within another. The court ruled that the Tiumen' charter violated this principle and, therefore, should be changed. *Ibid.*, 2.

relations. One press report even compared the impact that this issue had in terms of “reshaping the administrative and political map of Russia” to that of the Chechen War or Tatarstani demands for autonomy.³⁹ The problem initially arose when the two okrugs refused to participate in the 1996 elections for the Governor of Tiumen’ oblast’. At the time, many regions were holding their first post-Soviet, democratic, gubernatorial elections. Previously, President El’tsin had appointed the governors of many Russian regions including Tiumen’, Khanty Mansiisk and Yamalo Nenets.

The administrations of both Khanty Mansiisk and Yamalo Nenets felt that the involvement of the okrug populations in the elections could serve to legitimize and extend the authority of the oblast’ governor over the okrugs. In the opinion of Alexandr Filipenko: “the election of the governor of the oblast’ on the territory of the okrug could either be the basis for political blackmail or for closer, mutually beneficial cooperation.”⁴⁰ Either way, the governments of both okrugs felt that their participation in the election would jeopardize the status of the okrugs as equal and autonomous subjects of the federation. In a terse warning to the Tiumen’ oblast’ administration, Filipenko added that even if the elections did involve the okrug, the newly elected Tiumen’ governor may find that his position in the okrug is a post without any rights.⁴¹

Originally, all three regions were supposed to hold their elections on different days. In an attempt to ensure equal levels of voter participation throughout the whole oblast’, President El’tsin issued a decree stating that the elections must be held on the

³⁹ Rustam Arifzhanov and Sergei Chugaev, “Tiumenskii peredel (Tiumen’ remodeling),” *Izvestiia*, 08/10/1996, 2.

⁴⁰ Leonid Kostylev, “A. Filipenko delit’ Rossiïu ne nameren (A. Filipenko does not intend to share with Russia),” *Tiumenskaia pravda*, 22/10/1996, 1.

⁴¹ *Ibid.*, 1.

same day.⁴² In response to the decree, the Tiumen' oblast' Duma switched the date of the oblast' election from December 22nd to October 27th, the same day as the Khanty Mansiisk gubernatorial election.⁴³ Tiumen' and Moscow hoped that this would also convince Yamalo Nenets to change its election date from October 13th to October 27th. This did not happen. In fact, the newly elected Governor of Yamalo Nenets, Iurii Neelov, argued that since there is no provision in Russian law for electing the governor of one region in the territory of another, the T.umen' gubernatorial elections would not take place in his okrug until a power sharing agreement had been signed between the oblast' and the okrug. Khanty Mansiisk made similar demands. When President El'tsin's First Deputy Chief of Staff, Aleksandr Kazakov failed to resolve the situation, El'tsin was forced to postpone the Tiumen' election until December.⁴⁴

As scheduled, Khanty Mansiisk held its election on October 27th and for a time, it looked as if neither okrug would participate in the rescheduled Tiumen' election. Only considerable federal pressure and the continued diplomacy of Aleksandr Kazakov and Rem Viakhirev, the head of the massive Russian resource conglomerate Gazprom, eventually convinced both okrugs to comply.⁴⁵ This episode demonstrates the complex and politically charged nature of the relationship between Khanty Mansiisk and Tiumen' proper. Moreover, it provides a good indication of the political aspirations of the okrugs and the lengths they will go to preserve their autonomy.

Despite Khanty Mansiisk's aspirations for autonomy over political processes such as the gubernatorial elections, both Khanty Mansiisk and Yamalo Nenets still send

⁴² Ukaz Prezidenta RF "O vyborah glavi ispolnitel'noi vlasti Tiumenskoj oblasti, Moskva, 15/10/1996.

⁴³ OMRI Russian Regional Report, 1/5, 25/09/1996.

⁴⁴ OMRI Russian Regional Report, 1/8, 16/10/1996.

deputies to the Tiumen' oblast' Duma. In fact, deputies from the okrugs actually command a majority in the oblast' Duma. This effectively places considerable control over the legislative politics of Tiumen' proper in the hands of the okrugs (or their representatives). Strangely enough, the okrug officials to whom I spoke did not seem to think that this situation in any way jeopardized the autonomy of Tiumen' oblast' or the okrugs. This feature of the political system in Tiumen' oblast' actually received very little attention, prior to, during and after the electoral conflict.

Future Directions in Oblast'/Okrug Relations

The experiences of other regions in the area of oblast'/okrug relations provide some useful lessons for Khanty Mansiisk and Tiumen'. Thus far a number *slozhno-sostavlennyi sub'ekty federatsii*, including Irkutsk oblast' and the Ust'-Ordynskii Buriatskii autonomous okrug, and Perm oblast' and the Komi-Perm autonomous okrug, have signed trilateral treaties with the federal government.⁴⁶ Supporters have hailed these agreements as an important step in the evolution of okrug-oblast'/krai relations. While this may be true, a brief survey of the agreements reveals that they focus primarily on centre-periphery relations and in doing so avoid some of difficult decisions regarding the relationship between autonomous okrugs and their host regions.

In the main treaty between Irkutsk oblast', the Ust'-Ordynskii Buriatskii autonomous okrug and the Russian Federation, the representatives of all three

⁴⁵ *Krasnyi Sever*, 18/12/1996.

⁴⁶ Alexandr Blokhin, "Mnogoglavnyi zmei separatizma (The multi-headed snake of separation)," *Rossiiskaia federatsiia*, 21/1996, 30.

governments are signatories.⁴⁷ The signatories of the side agreements, however, include only the representatives of the federal government and the oblast'; this despite the fact that the agreements clearly make reference to the okrug and its inclusion in the territory of the oblast'. Given the level of autonomy demanded by Khanty Mansiisk, it is unlikely that such a treaty could provide a model for Tiumen oblast'.

The treaty between Perm oblast' and the Komi-Perm autonomous okrug follows a similar pattern as the Irkutsk treaty, with the representatives of all three governments included in the list of signatories. But unlike the Irkutsk treaty, it contains no side agreements. With regard to clarifying the relationship between the oblast' and okrug, article 15 of the treaty states:

Relations of the oblast' and the autonomous okrug are determined by the existing treaty, in addition to [other] agreements and also a treaty and agreements on mutual relations between the organs of state power of Perm oblast' and the organs of state power of the Komi-Perm autonomous okrug in accordance with part 4, article 66 of the constitution of the Russian Federation.⁴⁸

The treaty itself provides little guidance on the matter of oblast'-okrug relations, focusing mainly on the division of powers and responsibilities between the federal government and the region as a whole rather than a specific division of powers between the oblast' and the okrug. It is doubtful, therefore, whether such a treaty would help to clarify the interregional relationship between Khanty Mansiisk and Tiumen'.

⁴⁷ Dogovor "O razgranichenii predmetov vedeniia i polnomochii mezhdru organami gosudarstvennoi vlasti Rossiiskoi Federatsii i organami gosudarstvennoi vlasti Irkutskoi oblasti i vkhodiashchego v ee sostav Ust'-Ordynskogo Buriatskogo avtonomnogo okruga," Moskva, 27/05/1996.

⁴⁸ Dogovor "O razgranichenii predmetov vedeniia i polnomochii mezhdru organami gosudarstvennoi vlasti Rossiiskoi Federatsii i organami gosudarstvennoi vlasti Permskoi oblasti i organami gosudarstvennoi vlasti Komi-Permiatskogo avtonomnogo okruga," Perm, 31/05/1996.

Khanty Mansiisk's Relationship with the Federal Government

Given the enormous resource wealth in Khanty Mansiisk, the history of resource exploitation in the region and the fact that the okrug is a net contributor to the federal budget, it is unusual that the okrug government is content to maintain its current political status within the federation. After all, other regions, with far less wealth, have demanded changes in both their relationships with the federal government and their status in relation to other regions. Perhaps the most prominent examples are Tatarstan's successful attempt to redefine its relations with Moscow on the basis of a bilateral treaty and Sverdlovsk oblast's unsuccessful attempt to have its status upgraded to that of a republic.⁴⁹ Demands such as these have placed a considerable amount of pressure on the fragile bonds that hold this asymmetrical federation together.

In addition to demanding changes in political status, many regions have challenged the federal government's role as principal lawmaker by adopting laws that contradict federal legislation.⁵⁰ Even in areas of concurrent jurisdiction, such as natural resources, the Russian constitution clearly states that regional laws are not supposed to contradict federal legislation.⁵¹ Article 26 of the Law on Production Sharing Agreements says that the regional legislative and executive organs of state power have a three month period in which to adapt their normative, legal acts in accordance to its provisions. Nevertheless, this has not stopped regions such as Tatarstan from adopting legislation on

⁴⁹ James Hughes, "Moscow's Bilateral Treaties Add to the Confusion," *Transition*, 20/09/1996, 39-43. Also see: Gerald M. Easter, "Redefining Centre-Regional Relations in the Russian Federation: Sverdlovsk Oblast," *Europe-Asia Studies*, 49/4, June 1997, 617-635.

⁵⁰ One recent report indicated that the federal Ministry of Justice estimated that between one-third and one-half of all regional laws were unconstitutional. See: Natan Shklyar, "Russian Regions 1998: Year in Review. Economic Crisis Strengthens Governors," *IEWS Russian Regional Report*, 04/01/1999

⁵¹ *Konstitutsiia Rossiiskoi Federatsii*, stat'ia 76 (5).

production sharing that conflicts with the federal Law on PSAs. One of the main challenges facing Russia at this point in its post-Soviet transition, therefore, is the task of harmonizing federal and regional legislation.

It has been argued that resource wealthy regions have the greatest interest in declaring economic sovereignty from the federal government, primarily by asserting control over their natural resource wealth.⁵² While some regions have issued such declarations in an attempt to wrestle control over their natural resource wealth away from the federal government, it seems that different concerns motivate the political aspirations of other regions in this policy area. Despite the fact that Khanty Mansiisk is one of the richest resource regions in the Russian Federation, the okrug's fight for greater autonomy has been directed more at Tiumen' oblast' than at Moscow. As Sergei Sobianin, the head of the okrug Duma, indicated: "[we] never said that we wish to declare ourselves a republic, to separate, to receive more than other subjects of the federation. On the contrary, we always confirmed that we unquestioningly subordinate ourselves to the constitution of the Russian Federation and her laws."⁵³ As the next chapter will demonstrate, the Khanty Mansiisk government, unlike many other resource producing regions in the Russian Federation, has placed added emphasis on cooperation with the federal government in areas such as the harmonization of resource legislation and the practical management of the resource sector.

Khanty Mansiisk's problematic relationship with Tiumen' proper and the whole question of the okrug's political position in relation to Tiumen' oblast' are the main

⁵² Gail W. Lapidus and Edward W. Walker, "Nationalism, Regionalism, and Federalism: Center-Periphery Relations in Post-Communist Russia," in Gail W. Lapidus (ed), *The New Russia: Troubled Transformation* (Boulder: Westview Press, 1995), 105.

reasons why the okrug is anxious to maintain good political, economic and constitutional relations with the federal government. The Russian constitution guarantees the okrug's constitutional status. As such, the government of Khanty Mansiisk adheres faithfully to its provisions. In the past, okrug-Moscow relations were always a part of the larger Moscow-Tiumen' oblast' relationship. Since the Soviet collapse, however, Filipenko has tried to distance the okrug from Tiumen' oblast' by conducting direct relations with Moscow. His position as a member of the Federation Council, for example, has helped to strengthen the okrug's direct ties with the federal government.

Another way in which many regions interact with the federal government has been through the presidential representatives - the appointed representatives of the federal government in the regions.⁵⁴ Presidential representatives are often characterized in a negative light as "agents of the centre". In some respects, such a characterization is correct. The representatives are supposed to act as the "eyes and ears" of the President in the regions. And while it has been argued that they have little actual power (often as a result of the actions of wary regional governments), they are responsible for keeping the President informed about the political situation in the regions. In addition to monitoring legislative activity and trying to ensure that regional laws comply with their federal counterparts, presidential representatives act as federal ombudsmen or the "public face" of the federal government in the regions.

In contrast to many other regions, the current presidential representative in Khanty Mansiisk, Vladimir Kurikov, has actually helped the development of relations

⁵³ Op. Cit., *Segodnia*, 20/10/1995, 5.

⁵⁴ There are no "official" presidential representatives in the republics.

between the okrug and the federal government. As a former deputy head of the okrug administration, Kurikov enjoys good relations with Filipenko, other members of the okrug executive and the legislative branch. Kurikov's office is in the main administration building in Khanty Mansiisk, just down the hall from the offices of Filipenko and other key members of the okrug administration. He is well suited, both politically and in terms of location, to his role as mediator or middleman between the regional and federal governments; a fact that is reflected in the cordial and cooperative relations that currently exist between the okrug and the federal government.

Khanty Mansiisk's Relations with Other Regions

Khanty Mansiisk interacts with other regions in the federation through a variety of institutions and associations. Like all the subjects of the federation, the okrug has two representatives in the Federation Council. At present, these are Alexandr Filipenko and Sergei Sobianin. Their presence in Moscow on a regular basis does much to enhance the profile of the okrug and promote interregional cooperation and interaction between Khanty Mansiisk and the other members of the federation. Generally speaking, both Filipenko and Sobianin play an active part in the Council sessions and committee meetings.

The okrug is also a member of several inter-regional associations. Membership in some of these associations is politically based. That is to say, the association in question is comprised of regions with similar political status. Membership in other associations is based more on economic or geographical criteria. An example of the first type of regional association is the Association of Autonomous Okrugs of the Russian Federation

(AAORF). Khanty Mansiisk and Yamalo Nenets played a leading role in the creation of the AAORF. In fact, Sergei Sobianin was the head of this association for a period during the mid-1990s.

Some of the AAORF's primary goals are the coordination of okrug activities in areas such as socio-economic programs, the defence of native interests and the promotion and support of legislative initiatives concerning issues affecting the okrugs at the federal level. Although each okrug will usually respond to a particular initiative or draft law individually rather than collectively through the AAORF, they will also be discussed during the meetings of the association.

In the words of Sobianin, the AAORF is "sufficiently legitimized by a presidential decree and a federal resolution."⁵⁵ Sobianin commented in one interview that he knew of no other interregional association that has such a collection of "legitimizing documents".⁵⁶ The association has 10 members (all the autonomous okrugs in the federation) and it seems that most, if not all, have experienced problems and conflicts with their host regions. The association, in conjunction with the federal government and the krais and oblasts in question, have attempted to address these problems in a variety of ways and with varying degrees of success. For example, the AAORF was instrumental in the creation of a roundtable on okrug/oblast'/krai relations in the Federation Council.

The association members have also pushed for clearer legal recognition of their status both within the federation and in relation to the oblasts and krais in which they are located. As noted above, a number of legislative initiatives have attempted to codify

⁵⁵ Op. Cit, *Segodnia* (20/10/1995), 5.

⁵⁶ Ibid.

these relationships. These include the draft federal law on relations between autonomous okrugs and the krais and oblasts in which they are located and the various agreements that have been signed between individual okrugs and krais/oblasts. The Khanty Mansiisk-Yamalo Nenets-Tiumen' treaty on cooperation outlined in greater detail in the following chapter is an example of such an interregional agreement.

Khanty Mansiisk's membership in other regional associations is based more on the okrug's geographical and economic links with neighbouring Siberian regions. The primary objective of interregional associations such as "Arctic Cooperation", a group of northern resource regions, and the more powerful "Siberian Agreement" is to promote the wider interests of Siberia in relations with the federal government. The Siberian Agreement was established in November 1990 in response to the economic failure and political instability caused by Gorbachev's reform program. Under these conditions, the founding members felt:

that the best way to secure Siberian interests was to create an inter-regional organisational structure which could effect political lobbying of the centre in a coordinated and powerful fashion and thereby ease the painful regionalisation of reform and the transition to the market. In particular, the Siberian leaders aimed to win a much higher share of the wealth generated from Siberian natural resources for local use.⁵⁷

Khanty Mansiisk, along with Tiumen' oblast' and a number of other prominent regions from Eastern and Western Siberia, the Altai and the Urals regions belong to this association. It therefore acts as an important mechanism for cooperation between the okrug and the oblast' in their relations with Moscow.

Conclusions

This chapter has provided the general institutional context underlying matreshka federalism and the problematic relationship between the Khanty Mansiisk autonomous okrug and Tiumen' oblast' in the post-Soviet period. Matreshka federalism, a term that refers to the unique federal phenomenon of regions within regions, is yet another example of how institutional confusion has had an impact on the politics of post-Soviet Russia. As the case of Khanty Mansiisk and Tiumen' clearly demonstrates, the legal ambiguities that underlie the relationship between autonomous okrugs and their host regions have provided the basis for interregional conflicts that could threaten the political and economic stability of the federation. Until the institutional framework underpinning this relationship is clarified and solidified, it is likely that the two regions will continue to battle for political authority; a disconcerting thought given the economic importance of the region to the Russian Federation.

The next chapter will explore many of these issues in greater detail by examining the politics of intergovernmental and interregional relations in Khanty Mansiisk's oil sector. Since the collapse of the Soviet Union, oil politics in the okrug have followed many of the trends discussed in this chapter. On the one hand, there has been a concerted attempt by the Khanty Mansiisk administration to enhance the okrug's control over the lucrative oil resources located in the region. Part of this strategy involves minimizing Tiumen' oblast's control over and involvement in the okrug's oil sector. On the other hand, the okrug's reaction to the issue of production sharing and its own legislative

⁵⁷ James Hughes, "Regionalism in Russia: The Rise and Fall of the Siberian Agreement," *Europe-Asia Studies*, 46/7 (1994), 1135.

initiatives on natural resource use suggest that the Khanty Mansiisk administration, unlike many other regional governments, supports the idea of federal-regional legislative harmonization and cooperation in the management of natural resources.

Chapter Eight

Oil Politics and the Production Sharing Debate in Khanty Mansiisk

Many accounts of the economic and political transition in post-Soviet Russia have focused on the negative impact that the reform process has had on the health of the national economy. But it is also important to remember that the problems associated with the economic reform process have placed tremendous pressure on governments at the regional and local levels. In fact, one could argue that the success of the country's reform program depends on the ability of the regional governments to cope with the harsh economic realities of the transition period.

Past experience has demonstrated that economic and financial instability at the regional level often triggers intergovernmental conflicts that threaten the political unity and stability of the federation. The federal government's inability to cushion the impact of the economic transition at the regional level has prompted some regions to declare economic sovereignty and even withhold tax payments to the federal budget. Economic disparities between regions have contributed to interregional tensions and increased pressure on the federal government from poorer regions to strengthen efforts at equalization and redistribution. These types of issues have in turn ignited an intense debate over the future of the federation. Periodically, certain politicians renew their calls for the replacement of the present model, which is asymmetrical and includes both

ethnically based and non-ethnically based subjects of the federation, with a system of equal, non-ethnically based regions. Although such a plan has been dismissed as impractical and impossible, the fact that it continues reach the political agenda is proof that the structure of the federation is by no means cast in stone.

The preceding chapter discussed some of the general political and economic circumstances that underpin interregional disputes between autonomous okrugs and the oblasts and krajs in which they are located. The Soviet collapse had a dramatic effect on the relationship between okrugs and their “host” regions. In many cases, the economic wealth and potential of the okrugs far surpasses that of the host regions. During the Soviet period, this situation did not pose a huge problem because the economic wealth from the okrugs was redirected through the central government back to the host region or directly from the okrug to the host region in question. The governments of the host regions also had significant political and legal authority over the okrugs that allowed them to benefit from such economic activities as the exploitation of natural resources in the okrugs.

In the post-Soviet period, however, financial subsidies from the federal government have decreased considerably. Richer okrugs still make significant contributions to the federal budget, but the federal government redirects less money back to the host regions. Moreover, increases in okrug autonomy (especially political and budgetary autonomy) have transformed the relationship between the okrugs and their host regions. With their newly established status as equal subjects of the federation, okrugs have become more politically and economically (financially) introverted. In other words,

they are more likely to be concerned with their own economic development than the economic problems of the oblast' or krai in which they are located.

One of the main causes of interregional conflict within Tiumen' oblast' is the dispute between the Tiumen' oblast' administration and the governments of Khanty Mansiisk and Yamalo Nenets over the resource wealth in the okrugs. Officials in Tiumen' believe that these resources belong to the whole oblast' rather than just the okrug where they are produced. They argue that during the Soviet period, people from all over the oblast' contributed to the development of the oil industry in Khanty Mansiisk. The okrug, therefore, should continue to divide the fruits of this industry equally among the various parts of the oblast'. Although Tiumen' proper does receive some of the revenues from the sale of okrug oil, the oblast' government is afraid that these may decrease over time as the okrug seeks to expand its political and economic autonomy.

With these issues and problems in mind, part one of this chapter will explore the development of the Western Siberian oil sector in the Soviet and post-Soviet periods and the ways in which oil politics has contributed to interregional tensions between Tiumen' and Khanty Mansiisk. Part two will examine the issue of production sharing. This section will focus in particular on the reasons behind the okrug administration's attempts to harmonize its legislation on production sharing with the federal production sharing system and its continuing efforts to prevent Tiumen' oblast' from interfering in the management of the okrug's oil sector.

The Western Siberian Oil Sector During the Soviet Period

Oil production in Western Siberia, a region commonly referred to as the Soviet oil sector's "third generation", began in the mid to late 1960s and was based primarily on the development of the Samotlor oil field in Khanty Mansiisk.¹ The field was discovered in 1965 and commercial development of its estimated 3 billion tons (21.9 billion barrels) of crude oil reserves began in 1969. At the time, it was Russia's largest known oil field and one of the 10 largest oil fields in the world. Since 1969, Samotlor has yielded over 2 billion tons of oil. The vast majority of this oil was exported and sold for approximately US\$200 billion; money that was used by the Soviet authorities to purchase the food and consumer goods that helped to shore up the Soviet regime until its collapse in 1991.

In spite of the massive size of the reserves at Samotlor and other fields in this region, oil production in Western Siberia started to decline more rapidly than expected in the first half of the 1970s. Technically speaking, this decline was largely the result of the particular methods of oil extraction used by the Soviets. In order to maximize output, Soviet oilmen flooded wells with water at a very early stage in a field's development, a recovery method often frowned upon in the West because of the damage it causes to wells. While there are measures that can be taken to minimize the damage from flooding, it seems that the Soviets were more concerned with reaching output targets set by the central planners than preserving the geological structure of the oil reservoirs in question. In most cases, Soviet oilmen simply abandoned individual wells when the water content exceeded the content of oil. This practice had both short-term and long-

¹ The first and second generations of Soviet oil production were located in Baku/Azerbaijan and the Volga-Urals region, respectively.

term consequences for the Western Siberian oil industry. In the short term, production fell as the number of viable oil wells decreased. In the longer term, the damage caused by water flooding and well abandonment has complicated the redevelopment of Western Siberian oil fields in the post-Soviet period.

In response to this decline, Leonid Brezhnev, the Soviet leader at the time, instituted a crisis program designed to bolster output. The importance of the Western Siberian oil industry to the Soviet government was reflected in the fact that by the beginning of the 1980s this program had become an enormous Siberian energy offensive that “threatened to monopolize most of the growth in Soviet industrial investment.”² In fact, energy spending, including funds allocated for the Siberian oil sector, absorbed nearly 90% of the 44 billion roubles that had been set aside for industrial development. As a result, other industrial sectors in the Soviet economy were left with stagnant investment budgets.³ In the latter part of the Brezhnev era, therefore, Soviet economic policy was dominated by two sectors: fuel and energy, and the military-industrial complex.⁴ This imbalance not only crippled the process of economic development in other sectors of the economy such as the civilian machinery sector. It also set in motion some of the economic abnormalities that would contribute to the downfall of the Soviet Union a decade later.

Some scholars have argued that the fuel and energy complex had less influence than other key sectors of the economy (i.e.: the military-industrial and agrarian complexes) over the policy making process in the late Soviet period and the early post-

² Thane Gustafson, *Crisis Amid Plenty: The Politics of Soviet Energy Under Brezhnev and Gorbachev* (Princeton, NJ: Princeton University Press, 1989), 36.

³ *Ibid.*, 39-40.

Soviet period.⁵ This brief overview of Soviet investment policy during the 1970s and 1980s, however, suggests that the fuel and energy complex was one of the priorities of successive Soviet governments. As one observer suggested in the late 1980s: “Soviet industrial policy has been energy policy, and that remains just as true for Gorbachev, so far, as for his predecessors.”⁶

While the priorities and influence of the central government were clear, to what extent did the authorities in the Soviet Union’s oil producing regions have a say over the direction and scope of oil sector policies? In examining the case of Khanty Mansiisk, the Soviet Union’s largest and most profitable oil producing region in the 1970s and 1980s, it seems that the regional governments concerned had considerably less input into the policy making process than they have in the post-Soviet period. This was especially true of the okrug government. Local authority over matters concerning the oil sector was generally considered decorative or symbolic in character. “Real power over the flow of oil and gas,” it has been argued, “was located in Moscow and, to some extent, in Tiumen’. Nothing fell to the lot of Khanty Mansiisk and Salekhard.”⁷

There is evidence to suggest, however, that the Tiumen’ oblast’ authorities may have had some influence over Brezhnev’s decision to initiate the oil campaign in the late 1970s. At this time, the development of Siberia and the North was a very important goal of central government as well as the powerful Siberian academic lobby and, of course, the regional authorities. Consequently, all three viewed the development of the oil sector

⁴ *Ibid.*, 41.

⁵ V. V. Razuvaev, “Neftiane kompanii v rosiiskoi politike (Oil companies in Russian politics),” *Kentavr*, 2/1995, 43.

⁶ *Op. Cit.*, Gustafson (1989), 58.

as a means to “civilize” and modernize Siberia.⁸ In 1977, prior to and during the initial phases of the energy campaign, officials in Tiumen’ lobbied the central government for greater investment in Western Siberian oil. Moreover, once the campaign was fully underway, scientists and economists in Tiumen’ oblast’ and other regions in Siberia began campaigning to change Moscow’s policies through submissions to Gosplan and a series of popular books on the subject of oil development in Siberia.⁹ The important role played by the regional government and the members of the academic community based in Tiumen’ oblast’ partially explains the position of the present oblast’ government on the questions of oblast’ unity and oblast’ involvement in the control and regulation of the oil sector in Khanty Mansiisk.

The Development of the Western Siberian Oil Sector in the Post-Soviet Period

Since the fall of the Soviet Union, the Russian oil sector has undergone some radical changes. Privatization, deregulation and decentralization have all affected the monolithic organizational structure inherited from the Soviet Union. Chapter two discussed the ways in which these changes have influenced the general parameters of the oil industry. This section will concentrate to a greater extent on the question of how structural reforms have affected oil-producing regions such as Khanty Mansiisk.

Throughout much of the Soviet period, the local administration of the oil industry was under the control of the state in the form of the central oil and gas ministries. In return for this dominance, the oil sector provided for the social and economic needs of

⁷ Sergei Kolchin, “Sotsial’naia tsena tiumenskoi nefi (The social price of Tiumen’ oil),” *Neft’ i kapital*, 1/1996, 37. Salekhard is the capital of the Yamalo Nenets autonomous okrug.

⁸ Johnson’s Russia List (#3032), 27/01/1999.

the population in oil-producing regions. As a result of the quasi-privatization and decentralization of Russia's oil industry in the post-Soviet period, regional administrations in oil-producing regions have acquired more autonomy over their resources. While many regions recognize this increased autonomy as a positive development, there are also some negative consequences associated with the changes. The financial predicament of the federal government has severely curtailed its traditional role as a supplier of social and economic goods in the regions. Moreover, the quasi-privatized firms that have taken on some of the responsibilities for managing the oil sector have found that the need to be profitable limits their ability to provide for the social needs of the population, or even for their respective workforces.

Over the past few years, domestic oil companies such as LUKoil, YUKOS and Gazprom have played an increasingly important role in the political life of the oil-producing regions. Regions like Khanty Mansiisk, for example, have even been described as "tribal seats" of these large energy conglomerates. Even though many regions have acquired a greater degree of autonomy in relation to Moscow, it is important to bear in mind that the emerging fuel and energy complex and the "oil generals" who control this complex have placed new limits on this autonomy.¹⁰

The majority of these oil generals support the political status quo that underpins unity of Tiumen' oblast'. At the same time, they also realize that the organizational and regulatory structure of the oil sector has changed dramatically. Most decisions regarding the day-to-day affairs and operations of the oil sector are now made in the okrug, not in

⁹ Op. Cit., Gustafson (1989), 49.

¹⁰ Rustam Arifdzhanov and Sergei Chugaev, "Tiumenskii peredel (Tiumen' redivision)," *Izvestiia*, 08/10/1996, 2.

Tiumen' or in Moscow.¹¹ As such, the generals have taken steps to solidify and enhance their position within the political structure of the okrug. For instance, both local and nationally based oil companies seem to be very well represented in the Khanty Mansiisk Duma. Out of a total of 23 deputies, 10 have direct links to the oil industry. The majority of these representatives are general directors or presidents of local oil companies.¹²

Okrug officials insist that most oil companies working in Khanty Mansiisk support the okrug government and its attempts to create a legislative framework for the oil sector. Nevertheless, relations between the oil companies and the okrug government are not without conflict. Some regional politicians are critical of the fact that many of the oil companies that used to be registered in the okrug have now become parts of larger concerns that are registered in Moscow. Since companies pay most of their taxes to the region in which they are registered, the result is that Khanty Mansiisk receives less tax revenue from oil producers in the okrug.¹³

The recent decline in production and investment has had a dramatic impact on the towns and cities that grew up during the oil boom of the late 1960s. This is especially true in places such as Nizhnevartovsk, a one-industry city in Khanty Mansiisk that is dependent on the redevelopment of the Samotlor oil field for its very survival.¹⁴ The problems of cities like Nizhnevartovsk affect not only the economic health of the okrug, but also the flow of tax revenue to the federal budget. Even in 1994, prior to the national

¹¹ Iurii Morozov, "I chto zhe dal'she? (And what now?)" *Tiumenskaia pravda*, 25/10/1996, 1.

¹² *Spisok izbrannykh deputatov Dumy Khanty-Mansiiskogo avtonomnogo okruga*, 1998.

¹³ Sergei Sobianin, "Traditsiia beskonfliktnosti (A tradition of non-confrontation)," *Rossiiskaia federatsiia*, 19/1996, 31.

debate over production sharing, observers of the regional oil sector articulated the need for investment:

It is time for relations between the federal organs of power, the parliament, the government and the President and the Northern territories to take shape. What will happen with the North, its potential and infrastructure? The Russian economy, yes and all Russia, its happiness is hardly worthwhile without the North. Stimulating an increase in production must become an all-national problem. The solution to the problem, it seems to me, is in additional financing and attracting investment.¹⁵

Okrug Legislation on Regulating Resource Use

In order to respond to the challenges of attracting investment, regulating the exploitation of natural resources and managing the complex set of relationships between the federal and regional governments, oil producers, the aboriginal community and the local population, the okrug government has constructed a regulatory system for natural resource use. The centrepiece of the system is the okrug law "On natural resource use"; however, its legislative base consists of approximately 70 laws, resolutions and agreements, including concurrent resolutions between the okrug and federal ministries and departments. This regulatory system was created over a period of three years (1993-1996) and is modeled in part on the Energy Resources Conservation Board, a system used in Alberta, a Canadian oil-producing province, since the 1930s.

The legacy of previous attempts to exploit and produce the okrug's natural resource wealth provided the rationale for a new system of resource regulation. As noted

¹⁴ Olga Maslova, "Prodakshin Shering po russkii (Production sharing in Russian)" *Novosti Iugri*, 04/02/1997, 2; and "Problema Samotlora (The problem of Samotlor)," *Novosti Iugri*, 12/04/1997, 1

¹⁵ T. Golubtsova, "Khanty Mansiisk – ne Kuwait, no zdes' formiruemsia 80% valiutnogo reserva strana (Khanty Mansiisk is not Kuwait, but 80% of the country's hard currency reserves are here)," *Novosti Iugri*, 10/05/1994, 2.

above, the absence of an effective and efficient system for regulating resource production during the Soviet period meant that the central authorities exploited the okrug's oil and gas deposits in a "barbarian-like" manner.¹⁶ The okrug government is determined to redress this pattern and provide a sound basis for future resource production and conservation. Another reason for introducing the new system is to provide a framework for relations between the various groups and organizations affected by resource production. According to one observer, everyone wants a bigger share of the economic pie; hence, a rational and mutually acceptable system for allocating the okrug's resource wealth is necessary.¹⁷

Adopted in 1996, the Law on Natural Resource Use was the first ever attempt by a region in the Russian Federation to provide a legislative base for regulating the use of natural resources.¹⁸ It is a comprehensive document that deals with a variety of activities and areas in the sector. These include: access to resources, the formulation of conditions of natural resource use, the exploitation of resources, environmental protection and the defence of traditional resource use by the aboriginal population, and the basic conditions of licensing agreements and relations with oil companies.¹⁹

¹⁶ Ol'ga Bolmatova, "Virtual'naia real'nost' i mnogoe drugoe: v KhMAO sozdaetsia pervaiia v Rossii sistema upravleniia nedrami (Virtual reality and much more: the first system for managing resources in Russia is created in KhMAO)," *Neft' i kapital*, 10/1996, 36. Among the most notable dysfunctional features of Soviet production practices were: excessive water-flooding, failure adopt measures needed to prevent damage to oil reservoirs, excessive drilling of new wells (and premature abandonment of existing wells) and inconsistencies in the construction of field histories (a vital component in the reconstruction/redevelopment of oil fields in the post-Soviet period). See: John Webb and Gary N. Wilson, "New Production-sharing Agreements for Old Oil: The Next Wave?" **Cambridge Energy Research Associates: Private Report**, April 1999.

¹⁷ *Ibid.*, (Bolmatova, 1996), 38.

¹⁸ *Zakon Khanty-Mansiiskogo avtonomnogo okruga "O nedropol'zovanii"* (g. Khanty Mansiisk, 09/04/1996)

¹⁹ Oleg Teplov, "Razvitie nefianogo zakonodatel'stva Rossiiskoi Federatsii (The development of the Russian Federation's oil legislation)," *Neft' i kapital*, 10/1996, 16.

Prior to being adopted by the okrug Duma, the law encountered little opposition from internal or external sources. In order to ease the passage of the law, the okrug administration initiated a process of consultation with leading oil companies in the region. No doubt the presence of so many oil company executives in the okrug Duma facilitated this process. According to Viktor Karasev, Khanty Mansiisk's Deputy Governor: "we work together with [the oil companies] on all draft laws: for example, we consulted the companies three times, line by line, about the okrug law "On natural resource use" and also about the law "On the participation of [Khanty Mansiisk] in production sharing agreements."²⁰

While some hailed such cooperation as valuable and necessary, not all groups were totally supportive of the law. For instance, during the legislative debates, Tat'iana Gogoleva, the head of the aboriginal group "Iugra Salvation" and a Duma deputy, expressed reservations. Gogoleva was concerned that the law did not properly address the question of protecting tribal rights, a situation that could result in conflicts between the aboriginal population and the oil companies in the future. In response to Gogoleva's concerns, an additional article was passed to create a special, trilateral commission involving representatives from the okrug government, the oil companies and the aboriginal community. The commission would resolve disputes between the aboriginal population and the oil-producing companies working in tribal areas.²¹ In spite of the continued skepticism of aboriginal leaders in the okrug, it should help to facilitate

²⁰ Op. Cit., Bolmatova (1996), 38-39.

²¹ "Snachala zakony. Vybory podozhdut (First the laws. The elections wait)," *Novosti Iugri*, 16/04/1996, 2. In addition to the tri-lateral commission, there are also regulations in other legislation that seek to protect tribal interests. For example, all licenses and contracts for exploration and production projects must

interaction between the various parties in the future. From the perspective of the oil companies, this is necessary because the local tribes are collective owners of the land they inhabit and, therefore, a company must obtain their permission to conduct operations on tribal lands.²²

Okrug-Federal Relations in the Oil Sector

Unlike many other resource-producing regions in the Russian Federation, Khanty Mansiisk has adopted a particularly cooperative approach in relations with the federal government. Indeed, legislative harmonization and intergovernmental consultation seem to be the defining principles underlying the relationship between Khanty Mansiisk and Moscow. In fact, the Law on Natural Resource Use is so close to federal legislation that it prompted one official to comment: "94% of the text of the proposed draft law duplicated federal norms and, therefore, contains practically nothing new."²³

The okrug authorities view their Law on Natural Resource Use as a means to fill in gaps and address inconsistencies in federal legislation, rather than as a challenge to the authority of the federal government. Provisions on issues ranging from aboriginal rights and environmental protection to production sharing agreements tailor the law to the specific conditions present in the okrug without contradicting the norms contained in federal legislation. In order to achieve such a consensus, the okrug government worked

include a special clause outlining the amount of money companies will spend on community development. See: "Rational Remedy," *Russian Petroleum Investor*, November, 1995, 56.

²² *Ibid.*, (RPI, November, 1996), 56/59.

²³ "Put' k nedram okazalsia koroche, chem k budushchemu biudzhnetemu (The path to natural resources turns out to be shorter than that to a future budget)," *Novosti Ingri*, 19/09/1995, 2. The official in question was V. Nazarov, a member of the working group assessing the draft and an advisor to Aleksandr Filipenko on questions of natural resource use.

closely with the federal authorities during the drafting stages.²⁴ In the opinion of Oleg Teplov, a member of the Institute of Legislation and Comparative Jurisprudence and a participant in this consultation process, it is the intention of the okrug administration that this and future okrug legislation on natural resources will function side by side with federal legislation in regulating all aspects of hydro-carbon development and production.²⁵

In addition to the Law on Natural Resource Use, there are a number of other instances of intergovernmental cooperation between the okrug and the federal government in natural resource regulation. For instance, the representatives of Roskomnedra, the Ministry of Fuel and Energy and the okrug administration have signed several joint ordinances dealing with issues such as territorial commissions for developing oil and gas fields and reserves. Cooperation has also been encouraged through the establishment of various joint commissions and executive bodies. According to Vladimir Karasev, “[a] system of cooperation has been established with federal ministries and departments, the [okrug] Committee for the Utilization of Natural Resources, the [federal] Ministry of Fuel and Energy and the [federal] Economics Ministry for making joint decisions, establishing expert commissions on a competitive basis and drafting bills and legislation.”²⁶ Some concrete examples of this system of cooperation are the establishment of a joint commission for setting up a budgetary and

²⁴ Interview, Khanty Mansiisk, May 1998.

²⁵ Op. Cit., Teplov (1996), 17.

²⁶ Vladimir Karasev, “Investment Will Be Recouped,” *Passport to the New World*, January/February 1995, 151.

organizational plan for the okrug's oil sector²⁷ and the creation of Khanty-Mansiiskgeolkom, a territorial branch of Roskomnedra.²⁸

Okrug-Oblast' Relations in the Oil Sector

Given the enormous resource wealth in Khanty Mansiisk and the historical connection that the okrug has with Tiumen' proper, it is not surprising that the oil sector and the lucrative revenues that flow from this sector have become dominant issues in the political discourse between these regions. Over the past few years, changes in the allocation of oil resources between Tiumen' proper and Khanty Mansiisk have been the source of much interregional conflict. Under the terms of the 1991 Presidential Decree "On the development of Tiumen oblast'", the region as a whole was allocated 20% of the total volume of oil produced. Half of this quota was given to the oil and gas enterprises in the region. The Tiumen' government, which at the time was the dominant administrative body in the region, retained the other half.²⁹

The adoption of the Russian constitution in 1993, however, had a dramatic and disruptive effect on this arrangement. Since the new constitution elevated the status of the autonomous okrugs to equal subjects of the federation, the distribution of the quota changed considerably. In the case of Tiumen' oblast', the greater part (77%) of the quota was given to the okrugs, whereas Tiumen' proper only received 23 per cent.³⁰ This turn

²⁷ The commission includes representatives from the federal Ministries of Economics, Fuel and Energy and Natural Resources, and the okrug administration. Interview, Khanty Mansiisk, May 1998.

²⁸ *Op. Cit.*, Karasev (1995), 151.

²⁹ Kathryn Stoner-Weiss, *Local Heroes. The Political Economy of Russian Regional Governance* (Princeton: Princeton University Press, 1997), 179.

³⁰ Arild Moe and Valeriy A. Kryukov, "Joint Management of Oil and Gas Resources in Russia," *Post-Soviet Geography and Economics*, 39/7 (1998), 593.

of events had an important impact on future relations between the oblast' and the okrugs as well as their respective positions on the question of the okrug's resource wealth. Khanty Mansiisk's "windfall" only strengthened the okrug administration's desire to retain a greater share of oil revenues for local development. Tiumen's "loss" on the other hand, seems to have intensified the oblast administration's efforts to reestablish its position within the okrug's oil sector.

The realities facing both regions are clear. In the post-Soviet period, Khanty Mansiisk has acquired greater control over the governing apparatus at the okrug level. As indicated in the previous chapter, the Russian constitution enshrines Khanty Mansiisk's right to administer a number of government functions that were previously under the control of the oblast' government. The corresponding shift in resource wealth from the oblast' to the okrug has allowed the okrug to carry out these newly-acquired responsibilities. At the same time, it has jeopardized the economic position of Tiumen' proper and relationship between the oblast' and the okrug.

Both the Tiumen and Khanty Mansiisk charters reveal the confrontational positions taken by each regional government in the wake of the quota decision. In recognition of its relationship with Tiumen' oblast', the 1995 Khanty Mansiisk charter contains articles which outline the areas of jurisdiction that the okrug has transferred to the oblast' (article 28) as well as those that the okrug administers concurrently with Tiumen' (article 29). Natural resources, however, are clearly demarcated as a concurrent responsibility of the okrug and the federal government (article 20).³¹

³¹ Ustav (Osnovnoi zakon) Khanty-Mansiiskogo avtonomnogo okruga (Izdanie Dumy KhMAO, 1995g)

In contrast, article 22 (2) of the 1995 Tiumen' oblast' charter claims that the legislation of the oblast' and the okrug, in accordance with federal legislation, regulates natural resource use in the oblast'. Article 22 (3) asserts that "the arrangements on the territory of the oblast', including the territory of the autonomous okrugs, of resource deposits and other natural resource establishments, having an all-oblast' significance, are the common property of all the inhabitants of the oblast' and are an area of concurrent jurisdiction between the oblast', the okrug and the federal government." This article also states that questions regarding the use and management of these resources will be decided jointly by the organs of state power of the oblast', the okrug and the federal government, in accordance with federal laws and intergovernmental agreements.³² The problem is that the agreements currently in existence provide little or no concrete legal authority for the oblast' over natural resources located in the okrugs. For example, article three of a 1997 intergovernmental agreement signed by the governors of Tiumen', Khanty Mansiisk and Yamalo Nenets outlines the spheres and forms of cooperation between the okrugs and the oblast' in the area of natural resources, but provides no formal guarantees of oblast' authority in either okrug.

Both the public statements of okrug officials and the legislative initiatives of the okrug government reinforce Khanty Mansiisk's position on the oblast's role in the okrug's oil sector. Okrug officials such as Sergei Sobianin argue that the provisions outlined in the oblast' charter on this subject contradict the Russian constitution.³³ According to Sobianin, the federal constitution considers natural resources to be a matter

³² *Ustav (Osnovnoi zakon) Tiimenskoi oblasti (Izдание Tiimenskoi oblastnoi Dumy, 1996g)*

³³ *Op. Cit, Sobianin (1996), 31.*

of concurrent jurisdiction between the federal government and the government of the region in which the resources are located. The constitution is actually not that detailed; it merely states that natural resources are an area of concurrent jurisdiction between the Russian Federation and the subjects of the Russian Federation. As an equal subject of the federation, however, Khanty Mansiisk is a separate region and not just an appendage of Tiumen' oblast'. But without a comprehensive federal law on relations between the okrugs and their host regions, Khanty Mansiisk's legal position is still unclear and open to interpretation.

Khanty Mansiisk has reiterated its position on this matter in the Law on Natural Resource Use. Article one states that relations between resource users on the territory of Khanty Mansiisk are regulated equally by federal legislation on natural resources, the present law and other normative acts of the okrug. Similarly, article six says that federal laws and other normative acts of the Russian Federation, together with the present law and other normative acts of the okrug regulate the state's relations with investors (including those in the area of production sharing). In both cases, there is no mention of Tiumen' oblast' or of a role for the oblast' authorities in regulating or managing the natural resources of the okrug. As such, the law is consistent with other okrug legislation on natural resources. At the same time, this law strongly underlines the okrug's commitment to concurrency and legislative cooperation and harmonization with the federal government. In many respects, therefore, it seems that the okrug is using concurrency and its constitutional status as a subject of the federation to prevent Tiumen' oblast' from interfering in its natural resource sector.

One of the ways in which the oblast' government has tried to reestablish its position within the okrug's oil sector is through its relationship with the various oil companies that work in the okrug. For example, the oblast' government enjoys particularly close relations with the Tiumen Oil Company (TNK), the company that currently holds the license to redevelop the Samotlor oil field. As the chairman of TNK, the oblast' Governor Leonid Roketskii could use his position to recover some of the authority lost by the oblast' over the past few years.³⁴ Roketskii does not seem to have any reservations about speaking his mind on this issue and has waded into the oil sector debate at both the national and okrug levels on several occasions in the past. At a joint meeting of the Khanty Mansiisk, Yamalo Nenets and Tiumen' dumas in 1994, he even accused the heads of the okrug and many others of conducting a "clearance sale" of Russia's oil wealth.³⁵

Whereas this type of rhetorical statement is often used by opponents of oil sector reforms, it is interesting to note that Roketskii has received praise from reformers in recognition of his support for the federal Law on Production Sharing Agreements.³⁶ Tiumen' proper does have some oil resources and thus could also benefit from production sharing. In this sense, therefore, Roketskii's remarks should not necessarily be interpreted as a pronouncement on the direction of reform per se, but rather as a veiled

³⁴ Op. Cit., Webb and Wilson (1999).

³⁵ V. Kopnov, "My rabotaem v ramkakh zakona (We work within the framework of the law)," *Novosti Ingri*, 10/11/1994, 4.

³⁶ In a letter to a local newspaper in support of Roketskii's gubernatorial campaign, Grigorii Iavlinskii, the head of the reformist Yabloko party in the State Duma stated: "[t]he present governor, Leonid Iulianovich Roketskii promoted the realization of [the Law on PSAs] in every way possible." See: "Uvazhaemye zhiteli Tiumenskoii oblasti (Esteemed inhabitants of Tiumen' oblast')," *Tiumenskaia pravda*, 15/12/1996, 1.

criticism of Khanty Mansiisk's attempt to limit the oblast' government's involvement in the okrug's natural resource sector.

On the other hand, the Tiumen' governor could have reservations about the way in which production sharing will change the revenue distribution system. Under the current system (the system that is based on the federal Law on Underground Resources), payments for resources extracted on the territory of an autonomous okrug are channeled through the budget of the krai or oblast' in which the okrug is located.³⁷ Under a production sharing system, however, these payments would go directly to the okrug, effectively bypassing the oblast'.

Although the Tiumen' oblast' Duma and administration advocate a unified regime for exploiting fossil fuels in the oblast', there is some evidence to suggest that the oblast' government recognizes Khanty Mansiisk's authority over the natural resources located in the okrug. In 1996, for example, the Tiumen' oblast' Duma passed a law "On the list of the immediate deposits of licensed resource allotments available in Tiumen' oblast' which can be granted under conditions of production sharing agreements." According to Vladimir Tolstykh, the deputy head of the Committee for the Use of Resources of the oblast' administration, this law designates 19 deposits and allotments in Tiumen' proper, but none in Khanty Mansiisk or Yamalo Nenets.³⁸

³⁷ Federal'nyi zakon "O vnesenii izmenenii i dopolnenii v Zakon Rossiiskoi Federatsii 'O nedrakh'", *Sobranie zakonodatel'stva Rossiiskoi Federatsii*, #10, 06/03/1995, article 42.

³⁸ "Tiumen' priniala zakon o razdele produktsii v nefte dobyche (Tiumen' passes a law on production sharing in resource output), *Finansovye izvestiia*, 26/12/1996, 2. It should be remembered that representatives from the okrugs form a majority in the oblast' Duma. As such, they may be more inclined to support the autonomy of the okrugs in this matter than the oblast' administration.

Khanty Mansiisk and the Production Sharing Debate

A number of studies have shown that the possession of vast deposits of natural resources does not necessarily constitute a panacea for the political and economic problems facing a country.³⁹ In fact, the resources in question often cause more problems than they solve. This study suggests that this may be the case in post-Soviet Russia. The federal government relies heavily on taxes from the oil sector, its largest and most regular source of budgetary revenue. The government's dependence on such taxes, however, is one of the factors that has made many politicians wary about introducing production sharing legislation; the idea is that any change in the status quo could seriously jeopardize the government's already precarious financial situation. At present, the oil sector is over-taxed and in desperate need of reform. If this situation continues, the government (or, at least, those elements within the government that oppose oil sector reforms) could be accused of slowly killing the proverbial goose that is laying the golden eggs.

The parties with the biggest stake in the outcome of this legislative struggle are the oil producing regions. Some regions, such as Tatarstan, have grown impatient with the political impasse in the reform process at the federal level and, through their own legislative initiatives, have tried to take control of the situation at the regional level. Granted, the success of this initiative has been limited by a number of constraints that bind Tatarstan to the national oil sector regime. But the republic's direct and independent approach has sent a strong signal to the federal government and the

³⁹ I am thinking in particular of *Crisis Amid Plenty*, Thane Gustafson's work on Soviet oil politics (see footnote 2) and Terry Lynn Karl's recent book *The Paradox of Plenty: Oil Booms and Petro-States* (Berkeley: University of California Press, 1997)

opponents of production sharing regarding the need for reform in this important sector of the economy.

Other oil producing regions have adopted a somewhat less conflictual approach. It could be argued that regions such as Khanty Mansiisk have no choice but to cooperate with the federal government because its position within Russia's asymmetrical federal structure is weaker than that of Tatarstan. Some observers have also pointed out that Khanty Mansiisk's overriding importance to the national economy has limited its autonomy in the oil sector.⁴⁰ In this sense, cooperation with the federal government appears to be the okrug's only option.

At the same time, it seems that Khanty Mansiisk's conflictual relationship with Tiumen' oblast' has drawn the okrug even closer to the federal government. The need to distinguish itself as a separate subject of the federation has conditioned the okrug's ideas regarding issues such as concurrency and cooperation with the federal government. The institutional foundation of Khanty Mansiisk's autonomy from Tiumen' oblast' is the federal constitution, a document that clearly demarcates natural resources as an area of concurrent jurisdiction. In contrast, Tatarstan's political aspirations are based on the ideas and provisions contained in its bilateral treaty with the federal government, a document that provides the republic with control over its natural resource wealth.

In a number of respects, the problems facing the oil sectors in Khanty Mansiisk and Tatarstan are very similar. Both are established oil producing regions whose oil sectors are largely dependent on the redevelopment of large, existing fields. The problem is that many of the deposits in these fields cannot be exploited profitably under the

present system; most require expensive equipment and reservoir management techniques that are simply not available in Russia. As such, extensive investment and assistance from Western companies will be needed to help organize and finance redevelopment. This brings us back to one of our original problems: how can Russia attract the vast quantities of investment needed to carry out field redevelopment? In the opinion of government and oil sector officials in regions such as Khanty Mansiisk and Tatarstan, the most effective way of attracting the necessary investment is through a working production sharing system.

Whereas Tatarstan's economy is more diverse than that of Khanty Mansiisk, the oil sector plays a crucial role in the economic life of both regions. In both cases, production sharing not only represents an opportunity to resurrect the fortunes of their former "giants" but also has the potential to provide financial security and economic stability in the future. "In my opinion," argues Sergei Sopianin:

the only salvation is the Law on Production Sharing Agreements. It proposes another system of taxation in which a determined part of each ton of oil produced would be given to the okrug. We would know precisely from the quantity of oil produced from each well how much would go to us, how much to the state and how much to the enterprise. Thus, problems would be removed. Territories would receive a stable source of financing for all their social programs.⁴¹

Although Khanty Mansiisk and Tatarstan face a similar predicament and seem to be united in their support for the concept of production sharing, they have adopted different approaches to developing a regional legislative framework for production sharing. Unlike Tatarstan, which pressed ahead with legislation that contradicted the

⁴⁰ Op. Cit., Moe and Kryukov (1998), 599.

⁴¹ Vladimir Gurzhii, "Sergei Sopianin: Severianam dostaiutsia krokhi ot neftianykh bogatstv (Sergei Sopianin: the crumbs of oil wealth are inherited by Northerners)," *Segodnia*, 20/10/1995, 5.

federal Law on Production Sharing Agreements, the production sharing provisions in Khanty Mansiisk's Law on Natural Resource Use and other production sharing related legislation emphasize the need for cooperation with the federal government and legislative harmonization with federal laws.⁴²

For instance, part three of the Law on Natural Resource Use outlines the areas of concurrent jurisdiction between the federal and okrug governments and the powers of the okrug authorities. Article 11 reiterates the federal position that natural resources are an area of concurrent jurisdiction. Among the responsibilities detailed in this section are agreement on the conditions of production sharing agreements, and the determination of a procedure and conditions for collecting payments for natural resource use... and also payments from the parties in a production sharing agreement. This article also underlines the need for cooperation in the establishment of the proportions of payment distributions between the budgets of the federation and the okrug.

Even article 13, which outlines the "sole" responsibilities of the okrug government, states that the development and adoption of the laws of the okrug and other normative acts in the sphere of natural resource use are to be carried out in accordance with federal legislation. This section also provides a legal basis for executive federalism by stating that agreements on the distribution of state shares of production in production sharing agreements will be concluded between the organs of state power of the okrug and the organs of executive power of the Russian Federation.

⁴² The Law on Natural Resource Use emphasizes cooperation between the okrug and federal governments in areas such as the regulation of relations between the state and investors, agreement on the conditions of PSAs, property issues, and revenue-sharing and payments for resource use. Even article 13 of the law outlining the responsibilities of the okrug makes reference to federal laws such as the Law on Production Sharing Agreements.

Another piece of okrug legislation that deals with the issue of production sharing is the law "On the participation of the Khanty Mansiisk autonomous okrug in production sharing agreements, the exploration, prospecting and production of mineral resources on the territory of the autonomous okrug."⁴³ One local observer commented that the purpose of this law is to consolidate the okrug's "right to the piece of the pie from which all Russia eats." The law outlines, in greater detail, the basic provisions on production sharing contained in the Law on Natural Resource Use. In a similar manner to other resource legislation, the law bases the okrug's right to participate in the regulation of production sharing agreements on its status as an equal subject of the Russian Federation. Consequently, there is no mention whatsoever of Tiumen' oblast' in any of the law's 42 articles. Article one, however, does reiterate the idea that the okrug will participate in production sharing agreements in accordance with the provisions outlined in the Russian constitution, federal laws, as well as the decrees and laws issued by the okrug.

It is through this law that the okrug Duma passed a list of 74 resource deposits that it feels should be eligible for PSA status. This list, in turn, forms the basis for negotiation with the State Duma over the question of which deposits are included on the national list.⁴⁴ The first list, passed by the State Duma in 1997, contained seven deposits, two of which (Samotlor and Krasnoleninskoe) are located in Khanty Mansiisk. Strong opposition in the State Duma to production sharing made the process of adopting this list excruciatingly difficult. The Duma rejected the original list of 127 deposits (20 of which

⁴³ Zakon Khanty-Mansiiskogo avtonomnogo okruga "Ob uchastii KhMAO v soglasheniakh o razdele produktsii, poiske, pazvedke i dobyche mineral'nogo syr'ia na territorii avtonomnogo okruga," Khanty-Mansiisk, 31/08/1996.

were located in Khanty Mansiisk) and a shorter list of 26 deposits. The eventual adoption of the shorter, seven deposit list was the result of strong lobbying by representatives from Khanty Mansiisk (in particular Vladimir Medvedev and Aleksandr Lotorev) and, strangely enough, Aleksandr Puzanovskii an Agrarian faction member and Piotr Romanov, a member of the Communist Party. Given the fact that the Agrarians and the Communists have traditionally been hostile to concept of production sharing, this is an interesting example of cross-factional cooperation.

The second list of deposits has had an equally problematic passage through the State Duma. Recently, several fields in Khanty Mansiisk (Tailokovskoe, Polunekhskoe and Ai-Yaunskoe) were reportedly cut from this list because the okrug and Tiumen' oblast' could not agree which region has jurisdiction over them. Many members in the State Duma are afraid that similar conflicts will occur between other okrugs and their host regions. Some possible examples include Archangelsk oblast' and the Nenets autonomous okrug in Northern Russia, and Krasnoiarsk krai and the Evenkiiskii autonomous okrug in Central Siberia.⁴⁵ This jurisdictional battle between Tiumen' and Khanty Mansiisk is yet another indication that the struggle for control over the okrug's resources is far from over.

The list negotiations are only one of many ways in which the okrug interacts with the federal government on production sharing. First of all, it should be remembered that representatives from Khanty Mansiisk in the State Duma were key supporters of the law during its turbulent passage through the federal parliament. Since the adoption of the

⁴⁴ "Produksiiu – po spravedlivosti bezrobotitsu – von, Iugorsku – nezavisimost' (Production [sharing] – fairness for the unemployed, independence for the Iugri [inhabitants of the okrug])," *Novosti Iugri*, 05/09/1996, 2.

federal Law on PSAs in 1995, these same representatives have lobbied hard in favour of substantive amendments that would make the law more “investor-friendly”. The efforts of federal-level representatives from Khanty Mansiisk and other regions have also been supported by the organs of state power in the okrug. In April 1998, the Khanty Mansiisk Duma adopted a legislative initiative “On the introduction of changes and amendments to the federal law on production sharing agreements” and submitted it to the State Duma for consideration.⁴⁶

There are a number of reasons why the okrug government would adopt such an initiative. Although officials in the okrug have tried to operationalize a production sharing system by adopting regional-level legislation that seeks to adapt the federal law to regional conditions, they also realize that it is necessary to change federal legislation on production sharing in order for the whole system to operate in a more effective manner. This philosophy reflects the okrug’s strong support for concurrent management, legislative harmonization and cooperation rather than confrontation with the federal government. Initiatives like the one above also reinforce the political status of the okrug within the federation. By submitting draft legislation to the State Duma, the okrug government is exercising and asserting its constitutional right as an equal subject of the federation, distinct from Tiumen’ oblast’ or any other member of the federation, to legislative initiative.⁴⁷

⁴⁵ **EWI Russian Regional Report**, 04/02/1999.

⁴⁶ **Postanovlenie o zakonodatel’noi initsiative Dumy Khanty-Mansiiskogo avtonomnogo okruga po vneseniiu proekta federal’nogo zakona “O vnesenii izmenenii i dopolnenii v Federal’nyi zakon ‘O soglasheniakh o razdele produktsii’ v Gosudarstvennuiu Dumy Federal’nogo Sobraniia Rossiiskoi Federatsii,” Khanty-Mansiisk, 28/04/1998.**

Conclusions

The issue of oil sector reform and the particular problems associated with the production sharing debate illuminate a number of important features of politics in the Khanty Mansiisk autonomous okrug. The most significant of these, from the perspective of this study, are the okrug's relations with Tiumen' oblast' and the federal government. During the post-Soviet period, Khanty Mansiisk has attempted to distance itself from the oblast' and reinforce its status as an equal, autonomous member of the Russian Federation by developing a legislative framework for regulating its vast resource wealth. Although the okrug government has expressed a continued willingness to provide economic assistance to Tiumen' proper, it has little desire to involve officials from the oblast' government in the management of the okrug's oil sector.

Khanty Mansiisk's autonomous stance in relation to Tiumen' oblast', however, is not replicated in its relations with the federal government. Unlike Tatarstan and a number of other more assertive regions, Khanty Mansiisk has willingly cooperated with the federal government in matters concerning the regulation and management of the resource sector. This willingness to cooperate can be explained by factors such as the historical evolution of the okrug within the Soviet Union, the economic importance of the region to the Soviet and later Russian economies and the cordial relationship between the federal and okrug administrations. This study, however, argues that the okrug's desire to distance itself politically and economically from Tiumen' oblast' has also strengthened its cooperation with the federal government and its observance of federal

⁴⁷ *Konstitutsiia Rossiiskoi Federatsii*, stat'ia 104.

constitutional norms. For Khanty Mansiisk, the federal constitution is the ultimate guarantor of its status as a subject of the federation. Adherence to the norms outlined in the constitution (in particular, the idea of concurrency), therefore, serves as an expression of the okrug's loyalty to this document and to the Russian Federation and, at the same time, a means of distinguishing itself from Tiumen' oblast'.

The production sharing debate in Khanty Mansiisk reveals the extent of this cooperation and provides an interesting comparison with other, less cooperative regions such as Tatarstan. On the one hand, the two regions face similar problems in the oil sector and support the idea of production sharing because it could provide a viable solution to these problems. On the other hand, they have adopted different strategies for operationalizing a production sharing regime. Tatarstan has passed regional legislation that attempts to reinforce and strengthen its sovereignty over its natural resource wealth. Khanty Mansiisk, however, seems willing to cooperate with the federal government in the construction of a national production sharing system.

Again, part of the rationale behind this cooperative stance is the okrug's desire to distinguish itself politically and economically from Tiumen' oblast'. From a political perspective, the fact that Khanty Mansiisk is taking part in a joint initiative with the federal government (without the involvement of Tiumen' oblast') reinforces its autonomy in relation to the oblast'. In an economic sense, production sharing will provide the okrug with greater financial autonomy, in the form of increased investment in the okrug economy and additional revenue. Having said this, it is also important to emphasize that the issue of okrug-oblast' relations in this matter has not yet been fully resolved. Problems over jurisdiction continue to affect the status of production sharing

projects in the okrug and must be resolved if production sharing agreements are to be fully operationalized.

PART FOUR: COMPARATIVE INSIGHTS AND CONCLUSIONS

Chapter Nine

Oil Politics and Federalism: Russia and Canada in Comparative Perspective

The question of whether Russia can be compared to other countries has encouraged an important methodological debate among students of contemporary Russian politics. Many area specialists argue that Russia is unique and that any attempts to juxtapose its evolving political structure with those of other states (be they transitional or established) must be undertaken with extreme caution, if at all. While students of comparative politics share this sense of caution, they also feel that “[i]t is precisely the objective of comparative sociology and political science, in their efforts to become more explanatory than descriptive, to insert each study - partial, regional, sectoral – into a larger context.”¹ Is the Russian Federation unique or does it exhibit some of the same structural, political and economic characteristics evident in other federal states? The only way to answer such a question is to compare Russia with other countries.

Russia is obviously not alone in its struggle to manage the complex set of intergovernmental relationships that exist in a federal system. Nor is it the only federal state that has had to deal with the problems and challenges of oil sector reform. The politics of oil and other natural resources has had an enormous impact on the stability and

unity of federal states around the world. Conflicts over jurisdiction, revenues and a host of other issues have caused considerable intergovernmental and interregional friction in oil producing federations and regionally divided quasi-federal and unitary states ranging from Indonesia and Nigeria to Canada, Venezuela and the United Kingdom. The experiences of all these states undoubtedly illuminate the general problems of managing natural resources in regionally divided polities. Russia's special situation, however, necessitates the careful selection of candidates for comparative study.

At first glance, developing countries such as Nigeria and Indonesia appear to be particularly relevant to the study of oil politics and intergovernmental relations in Russia. Many of the political and economic problems these countries faced following independence are similar to those encountered by Russia during its post-Soviet transition. For example, after years of centralized rule under colonial administrations, federal structures were grafted onto existing institutional frameworks and patterns. Like Russia, the nascent Nigerian and Indonesian federations were forced to develop new institutional frameworks and deal with the other political and economic challenges posed by the transition to democracy. The federal experiments of both Nigeria and Indonesia, however, were short-lived. At best, they serve as reminders of what could happen to Russia if its federal system gives way to a period of authoritarian centralization. As examples of the causes and consequences of protracted intergovernmental and interregional conflict and negotiation, their comparative worth is limited.

In the search for comparative cases, the question that confronts students of post-Soviet Russia is can a transitional state be compared to established, democratic

¹ Mattei Dogan and Dominique Pelassy, *How to Compare Nations: Strategies in Comparative Politics* (Chatham, NJ: Chatham House Publishers, 1990), 10.

federations such as Canada, Germany and the United States. Should we look to these states in a positive sense as examples of what the future may hold for Russia? Are these states examples of how a federation should work or have they also encountered some of the problems evident in transitional federations? More importantly, is it possible to bridge the conceptual and theoretical gaps between transitional and established federations so that effective comparison can take place? While there are no definitive answers to these questions, they contain issues that comparativists and post-Sovietologists must take into consideration.

Of all the established federations, Canada is perhaps the best example of the impact that prolonged political divisions over resources can have on a federal state. Although democratic and developed, Canada has not been spared the problems of intergovernmental and interregional conflict in the resource sector. We need only recall the furious debate over the energy sector in the 1970s and early 1980s, and the political consequences of this struggle to realize the immense strain that resource politics has placed on the Canadian federation. As one senior political leader put it: "[m]ore than any other subject in Canadian politics, resource management has brought into stark relief the difficulties inherent in the Canadian federal system."²

Skeptics of such a comparison might argue that the historical, institutional and social differences between the two states undermine the utility of comparison. After all, Canada, unlike Russia, is an established federation, possessing legitimate and recognized mechanisms for resolving intergovernmental differences. The institutions of executive federalism, although lacking in legal structure, are a regular feature of government

activity. The decisions of the Supreme Court, in its capacity as an interpreter of the constitution and a referee for federal-provincial disputes, are accepted. As one of the oldest “modern” federal states, Canada is clearly at a different stage in political development than its Russian counterpart.

Having said this, one could argue, as many observers of Canadian federalism have done, that the energy issue, like that of Quebec in the 1990s, demonstrated some of the shortcomings of the Canadian federal structure. The most apparent of these was the ambiguities and overlap inherent in the division of powers. And even though the energy disputes of the 1970s were eventually resolved, the process was marred by years of costly and disruptive conflict and a bad “aftertaste” that soured intergovernmental and interregional relations in the decades that followed.

With these issues in mind, the following summary of the problems faced by Canada will serve a number of purposes. First, it will highlight the similarities and the differences between Russia and Canada by outlining some of the main features of the Canadian federal model, resource situation and approach to resource management. Second, the comparison will lead us to some generalizable conclusions about the concepts and theories discussed in the preceding chapters; in particular, the role of institutions and individuals in the political process. Third, the Canadian case will be used to shed some light on Russia’s current predicament and perhaps to suggest some possible avenues for this country’s future development as a resource-producing federation.

² Roy J. Romanow, Q.C., “Federalism and Resource Management,” in J. Owen Saunders (ed), *Managing Natural Resources in a Federal State* (Toronto: Carswell, 1986), 1.

Canada: Intergovernmental Conflict in an Established Federation

The purpose of this section will be to examine Canada's attempts to accommodate intergovernmental and interregional differences in its resource sector, with a view to comparing and contrasting the Canadian case with that of post-Soviet Russia. While it is true that the differences between an established federal state such as Canada and a transitional federation such as Russia complicate the task of comparison, these differences should not impede the process of finding institutional features, political circumstances and geographical realities that are common to both states. In spite of their different historical trajectories, it seems that both states have faced similar challenges and problems in their respective oil sectors. For example, the struggle over resources in Canada in the 1970s raised many of the same types of issues that have confronted Russia throughout the 1990s and, in particular, during production sharing debate.

In order to avoid making inappropriate or rash comparisons, it is probably best to begin by comparing the general geographical and political realities facing these two federal states. The first and perhaps most striking similarity between the two countries is the important role that geographical factors play in terms of shaping the structural features of federalism and resource politics. Energy resources in Canada, as in Russia, are unevenly distributed throughout the country. As such, "[p]olitical realities emerge when producer provinces and regions must interact with consumer provinces and when the national government must devise policies that balance these sources and concerns within the physical limits set by nature."³

³ This statement, made by G. Bruce Doern and Richard W. Phidd in *Canadian Public Policy* (Toronto: Methuen, 1983), 455, could just as well be used to describe the current situation in post-Soviet Russia.

Another important dimension of this complicated matrix of intergovernmental and interregional relations and disputes is the role of multinational and other foreign corporations in the domestic economy. In Canada, these corporations have played a dominant role in the development of the resource sector. Although their position in Russia is currently limited, they look certain to expand their interest once a stable legal framework is in place. In both cases, foreign companies have become entangled in the broader political and ideological conflicts that occur between the various levels of government. Some politicians, especially those on the right of the political spectrum, have applauded their role in resource sector development. At the same time, their presence has often been decried as a threat to national sovereignty and used as an excuse for expanding state control over the resource industry or favouring domestic enterprises.

A third feature is the political or constitutional framework in which resource policy takes shape. Here the experiences of Russia and Canada are both similar and divergent. According to the Canadian constitutional division of powers, the ownership of land-based resources is a provincial concern, whereas natural resources are a matter of concurrent jurisdiction between the federal government and the regions in the Russian Federation. As students of Canadian politics will attest, however, federal authority over taxation and interprovincial trade has reinforced the *de facto* concurrency of the resource sector. Furthermore, much of the land where exploration and production has taken place in Canada is "Crown" or federally owned land. Therefore:

while it appears that the provinces have sufficient constitutional authority to decide when, how and under what conditions natural resources will be developed, there are also ample grounds to justify a federal presence in this policy area. A natural consequence of this situation of substantial jurisdictional overlap is, of course, federal-provincial conflict.⁴

⁴ G. Bruce Doern and Glen Toner, *The Politics of Energy: The Development and Implementation of the NEP* (Toronto: Methuen, 1985), 161. Doern and Toner cite several such constitutional "bases" for federal

The production sharing debate demonstrates that Russia is also grappling with the complicated question of federal-regional jurisdiction in this policy area. Although federal laws are supposed to have supremacy over those passed by the regional governments, several, more assertive regions have challenged this supremacy by adopting laws that contradict federal legislation on natural resources. The ambiguous nature of concurrency as a system for allocating power and the use of bilateral treaties to resolve conflicts between the federal and regional governments have also complicated the policy making process in the Russian resource sector.

Another aspect of resource politics (or politics in general) in federal states is the role of ideology and other competing political, economic and geographical positions on the direction and outcomes of the political debate. In their work on resource politics in Canada, G. Bruce Doern and Richard W. Phidd have stressed the influence of partisan elements (ideological conflict between elites and political parties) over interests at both the regional and federal or national levels of government. Commenting on partisan conflict during the implementation of the NEP, they state: "the partisanship was intense, often highly personal, among the leaders involved, but underlying these disputes were genuine historical principles and grievances as well as visions of Canada."⁵ Similarly, the conflicts that arose during the production sharing debate often involved highly personal exchanges between individual leaders representing the federal and regional governments. Moreover, many of the issues that punctuated the debate were

involvement in this provincial area of jurisdiction. These include: the trade and commerce power (section 91(2) of the Canadian constitution) which gives the federal parliament jurisdiction over all aspects of interprovincial and international trade; and the emergency power of section 9, which gives the federal parliament extensive authority to legislate and maintain "peace, order and good government". See Doern and Toner (1985), 159.

⁵ Op. Cit., Doern and Phidd, 458.

ideologically based. Indeed, the groups involved viewed the production sharing debate as a way of projecting or reinforcing their particular ideological vision of Russia's future.

Intergovernmental Conflict and Canadian Energy Politics. Now that some of the general features of resource politics in Canada and Russia have been outlined, it is possible to conduct a more specific analysis of the interaction between the policy making process and intergovernmental relations in the Canadian oil sector. The following section will examine the energy disputes of the 1970s and early 1980s, with a particular focus on the political and economic consequences of the National Energy Program. This notable and, in many respects, notorious chapter in the history of Canadian federalism will provide some valuable insights into Russia's current predicament, as well as some general conclusions about the intergovernmental and interregional conflicts caused by the politics of resource management.

The dramatic rise in oil prices following the OPEC embargo against the United States and the Netherlands in 1973 was the first in a series of events that would have a resounding impact on the tenor and mood of Canadian federalism in the last quarter of the 20th century. The first oil shock created an imbalance in the political and financial equilibrium that had existed since the 1950s and paved the way for a period of intense intergovernmental and interregional conflict. Rising world oil prices led to a divergence in the policy directions of the resource-producing provinces led by Alberta and the federal government and resource-consuming provinces, the most prominent being Ontario. Naturally, Alberta demanded that the domestic price of oil be allowed to rise,

while the federal government sought to curb price increases in the interests of consumers and manufacturing interests located mostly in Eastern Canada.⁶

In September 1973, the federal government froze the price of oil and imposed a tax on oil exports to the United States. As expected, such a move elicited a strong reaction from the Alberta government. In addition to criticizing the federal policies as a clear intrusion into an area of provincial jurisdiction, the government of Alberta took matters into its own hands by raising the royalties payable from production on federally-owned Crown lands. The federal government blocked this move by disallowing the tax deduction for royalty payments, in turn making exploration less attractive. Consequently, this only contributed to the rising tension between the two governments.⁷

In the period that followed, confrontation gave way to guarded cooperation over issues such as pricing policy. Despite the fact that the federal government passed the Petroleum Administration Act in 1975 in which it assigned itself the authority to set oil and gas prices unilaterally, price changes were agreed upon in a series of federal-provincial conferences. This situation persisted until the second global oil shock at the end of the 1970s and the introduction of the National Energy Program.⁸

Cooperation aside, Alberta's anxiety over federal incursions into a supposedly provincial area of jurisdiction was heightened by two controversial rulings in the Supreme Court of Canada: the 1977 *Canadian Industrial Gas and Oil Ltd. vs Saskatchewan (CIGOL)* and *Canada Potash vs Saskatchewan* cases. Both cases dealt with areas that fell under federal jurisdiction: indirect taxation in the case of CIGOL and

⁶ Susan Blackman, Janet Keeping, Monique Ross and J. Owen Saunders, "The Evolution of Federal/Provincial Relations in Natural Resources Management," *Alberta Law Review*, 32/3 (1994), 516.

⁷ *Ibid.*, 516-7.

⁸ *Ibid.*, 517.

interprovincial and international trade in the Canada Potash case. In keeping with the constitutional division of powers, the Supreme Court ruled against Saskatchewan in both cases, thereby reinforcing the ability of the federal government to interfere in provincial resource matters by using its trade and taxation powers.⁹

Relations between the federal government and Alberta entered a new and even more conflictual phase in the wake of the 1979 Iranian revolution, the subsequent doubling of the world price of oil and the defeat of the Progressive Conservative government under Joe Clark in December 1979 federal election. The dramatic increase in oil prices caused by events in Iran forced the federal government to reconsider its policy of allowing incremental increases in the price of oil in concert with the rising world price.¹⁰ Moreover, the election of the more state-oriented, eastern-based Liberal Party under Pierre Trudeau, provided the catalyst for a comprehensive reorientation of the federal government's policy towards the energy sector and a worsening of relations between the federal government and the resource-producing provinces through the National Energy Program.

The National Energy Program (NEP) was announced in October 1980. Supporters argued that it was designed to respond to a number of perceived shortcomings in the Canadian energy sector. These included: the problem of foreign domination in the domestic oil industry, the vulnerability of Canadian industry to resource price fluctuations, and the uneven territorial distribution of the country's resource wealth. The federal government intended to respond to these problems by increasing the proportion of the domestic oil and gas industry owned by the Canadian government and domestic

⁹ Ibid., 518-519. Also see: John Erik Fossum, *Oil, the State and Federalism: The Rise and Demise of Petro-Canada as a Statist Impulse* (Toronto: University of Toronto Press, 1997), 46.

interests. It also established a petroleum pricing and revenue sharing program that satisfied the needs of industry and consumers in the non-resource producing regions.¹¹

Needless to say, the NEP provoked enormous opposition in the oil-producing provinces of Western Canada. The government of Alberta, the most vehement opponent of the NEP, viewed the program as a deliberate attempt by the federal government to limit its control over the energy resources located in the province.¹² Understandably, the governments of the western provinces wanted to benefit from the high prices that had resulted from the global oil boom. For years, they argued, the West had been forced to pay elevated or artificially high prices for Eastern Canadian manufactured goods. The NEP, in their opinion, was simply a continuation of this unfair policy of subsidization.

In response, the federal government and the eastern provinces pointed out that the West had long enjoyed favourable treatment at a cost to the federal government and the other provinces. For example, agricultural provinces such as Alberta and Saskatchewan had benefited from federally subsidized freight rates for transporting grain to eastern ports since the late 19th century.¹³ Federal policies had also protected western oil from cheaper foreign imports before the price increases of the 1970s by providing a guaranteed market for domestic oil in Ontario.

¹⁰ Op. Cit., Doern and Toner (1985), 93.

¹¹ One of the rationales behind the NEP was the fact that the increase in domestic oil prices throughout the 1970s had made Alberta very rich. Ironically, under the existing funding formula, Alberta's wealth made Ontario a "have-not" province for the first time in its history. The money owed to Ontario in equalization payments would have put a severe strain on the federal government; hence the need to divert more oil revenues away from Alberta and into federal coffers. Op. Cit., Blackman et al (1994), 519.

¹² Richard J. Van Loon and Michael S. Whittington, *The Canadian Political System* (Toronto: McGraw Hill, Ryerson, 1987), 528.

¹³ Rand Dyck, *Canadian Politics: Critical Approaches* (Toronto: Nelson, 1996), 141. The Crow's Nest Pass Act (or Crow Rate) was passed in 1879 and provided a low rate for transporting western grain to eastern ports. It was reduced by the federal government (under Trudeau) in the 1970s and finally abolished in 1995.

In addition to driving a wedge between the western provinces and the federal government, the political fallout from the NEP also aggravated the historical cleavage between the western provinces and their counterparts in Central Canada. As noted above, the western provinces are oil-producers, while the eastern provinces, in particular Ontario, with few oil and gas resources of their own, are oil-consumers.¹⁴ Traditionally, the West had resented its status as a raw materials “appendage” of Central Canada. The West also felt that provinces such as Ontario and Quebec held a position of “first among equals” in a supposedly symmetrical federal state. This attitude was reinforced by the fact that the NEP helped the manufacturing industry in Central Canada cope with the oil crisis and, at the same time, prevented Western Canadian oil provinces from benefiting to the full extent from the increase in global oil prices.

Doern and Phidd have pointed to the role that ideological differences played in the NEP debate. While this is certainly true with respect to the ideological barriers that divided the free market-oriented, Progressive Conservative government of Peter Lougheed in Alberta from the more state-oriented federal Liberal government under Trudeau, it is important to note that the Progressive Conservative Party was also in power in Ontario. William Davis, the Premier of Ontario in 1980, argued that Ontario deserved the “assistance” provided by the NEP because the province had been more than generous in subsidizing the other regions in the past. In response to Lougheed’s criticism of Ontario and the provincial government’s support for the NEP, Davis remarked: “the record on our sharing of our wealth is clear. Ontario corporate profits, Ontario farmer’s incomes, Ontario wages have all been taxed by the national government and redistributed

¹⁴ Eastern provinces such as Newfoundland have substantial offshore deposits, but these have mainly been developed in the post-NEP period.

nationwide to advance development elsewhere to help build schools, roads and hospitals in other provinces.”¹⁵ In spite of the shared political convictions of the Alberta and Ontario governments, therefore, it seems that regional interests largely prevailed over ideology with regard to the NEP; a phenomenon that has also occurred in Russia during the production sharing debate.

The reaction of the oil companies to the NEP was also mixed. As expected, foreign multinationals opposed the federal government’s “discriminatory” attempt to increase domestic and state control over the Canadian oil sector. Moreover, they denounced the price controlling and revenue sharing aspects of the program because this would affect their ability to maximize the returns on their investments. In response, many foreign companies lobbied their home governments in the U.S, the U.K. and the Netherlands, and the International Energy Agency to put pressure on the Canadian government. They also announced exploration cutbacks and project cancellations that had a significant impact on the economies of the oil producing provinces. For example, the abandonment of the Cold Lake Heavy Oil Project in the fall of 1981 and the Alsands Project in April 1982 represented major economic losses for Alberta.

Even though the major Canadian energy companies were supportive of the “Canadianization” initiatives in the NEP, they shared the multinationals’ opposition to the pricing and taxation features of the program. Smaller Canadian companies, on the other hand, were more certain about their opposition to the program. First, the size of these companies limited their ability to capitalize through Canadianization. Second, the people who were in charge of the smaller firms embodied “the strictly independent, free

¹⁵ Op. Cit., Doern and Toner (1985), 278.

enterprise concept of small business.”¹⁶ As such, they were extremely wary of any increase in government control over the industry or any government-sponsored policies that threatened the independence of private business.

The long-term consequences of the NEP were both political and economic. In September 1981, Alberta and the federal government signed an energy agreement that bridged some of their differences.¹⁷ By this time, however, the damage had been done. The program caused a mini-recession in the Alberta oil industry at a time when the provincial economy should have been booming. The economic downturn, coupled with reductions in world energy prices after 1982 prevented the NEP from achieving its main goals.¹⁸

It was from a political standpoint, however, that the NEP would have the greatest impact. First, the intergovernmental and interregional conflicts caused by the program became entangled with the deliberations surrounding the patriation of the constitution in the early 1980s. In return for supporting the federal government’s amending formula, a key part of the repatriation process, the provincial authority over natural resources was reinforced through addition of article 92A.¹⁹ More importantly, however, the shock waves of the NEP conflict were felt long after the program was abandoned in the mid-1980s. By contributing to western alienation, this dispute fanned the existing conflictual features of Canadian federalism during this period and had a profound effect on both

¹⁶ Ibid., 246.

¹⁷ Ibid., 273.

¹⁸ Op. Cit., Fossum (1997), 175-176.

¹⁹ Article 92A confirmed the provinces’ exclusive legislative authority over exploration, development, conservation, and management of non-renewable resources. It also enhanced the provinces’ ability to impose new indirect taxes on resources and gave them new jurisdiction over interprovincial trade in resources (with the understanding that federal legislation still has paramountcy). Op. Cit., Blackman et al (1994), 523.

intergovernmental relations and the national political environment in the 1980s and 1990s.²⁰

Insights from the Canadian Case. In their introductory remarks in *The Politics of Energy*, Doern and Toner remark:

Energy policy [in general and during the NEP period] was a summation of the Canadian body politic, embracing issues of nationalism, regionalism, foreign ownership of the economy, partisan conflict, theories and beliefs about Canada's resource heritage, bureaucratic growth and state intervention, and the realities of international dependence and Canada-United States relations.²¹

With a few name changes, this statement could easily apply to post-Soviet Russia.

Generally speaking, the production sharing debate in the Russian Federation, like the energy conflicts experienced by Canada in the 1970s, has demonstrated the extent to which intergovernmental, interregional, ideological and international disputes are reflected in a single policy area or program.

What other parallels can be drawn between Canada's experiences in the resource sector and the current political imbroglio over production sharing in Russia? In what respect do the circumstances and outcomes of the two cases differ? Can a comparison illuminate our understanding of the causes and consequences of intergovernmental and interregional conflict in the energy sector? What can the Canadian case tell us about Russia's future as a resource-producing federation?

This chapter revealed a number of similarities between the experiences of Canada and the Russian Federation. In Canada, federal and provincial responses to the energy

²⁰ The political fallout from the NEP almost singlehandedly derailed the Liberal Party's status in Western Canada. It could also be argued that the program's "contribution" to the sense of western alienation was an

crisis inflicted considerable damage on the relationship between the federal government and the governments and populations of the western oil-producing provinces. Similarly, the production sharing issue also widened the cleavages that exist between the Russian federal government and the various regions. As we saw in chapter three, the federal production sharing law became a magnet for regional discontent over a whole series of issues ranging from economic reform and executive-legislative relations to the future of the federation. Many regions (especially non-resource producing regions) opposed the federal government's plans to create a production sharing regime, while others forged ahead with their own legislation because they felt the federal law was inadequate and/or overstepped its jurisdictional boundaries.

In addition to causing intergovernmental tension, the NEP and the production sharing debate also had an important impact on interregional relations. Despite the similar ideological orientations of the governments in Alberta and Ontario, their self-interested desire to protect their respective economic positions compelled them to take opposing sides in the NEP debate. Ontario's "collusion" with the federal government merely contributed to Western Canada's sense of alienation and the idea that provinces such as Ontario were considered first among equals in the Canadian federation. On the other hand, Western Canada's rejection of the NEP and its criticism of Central Canada engendered a new sense of provincial "self-esteem" in Ontario. As a consequence, Ontario became even more determined to fight for its own interests, deviating somewhat from its traditional role as a national reconciler.²²

important catalyst behind the rise of the Reform Party.

²¹ *Op. Cit.*, Doern and Toner (1985), 2.

²² Richard Simeon and Ian Robinson, *State, Society and the Development of Canadian Federalism* (Toronto: University of Toronto Press, 1990), 244.

In Russia, the debate over the federal production sharing law revealed a distinct cleavage between the oil producing regions of Eastern Russia, which supported the original “investor friendly” version of the law and the industrial regions of Western Russia, which did not. It could even be argued that the numerical superiority of the industrial regions, both in the State Duma and the Federation Council was an important factor behind the successful moves to amend the original draft law and the subsequent legislative reaction of oil-producing region: such as Tatarstan.

Although the motives behind the NEP and the Law on Production Sharing Agreements were different²³, they also caused similar types of conflicts and cooperation between government and business interests. The restrictive measures of the NEP and the later drafts of the PSA law provoked criticism from multinational oil companies and their supporters at the federal and regional levels. The reaction of domestic companies in both countries, however, was mixed. Generally speaking, domestic companies were less supportive of the law than their foreign counterparts. The fear that foreign companies would outmatch them in an open investment environment seemed to weigh heavily on their minds.

In addition to these contextual parallels, this comparison reveals some important similarities regarding the impact of institutional features on intergovernmental relationships. In both cases the cleavage between the federal government and regional or provincial governments was a product of ambiguities in the constitutional division of powers. The Canadian federal government’s control over Crown lands, and various economic levers such as interprovincial trade, and taxation and pricing policy allowed it

²³ The NEP was aimed at limiting foreign involvement in the Canadian oil sector, while the (original) purpose of the PSA law is to attract foreign investment.

to influence and legislate in a policy area that was supposed to fall under the exclusive jurisdiction of the provincial governments. On several occasions, the provincial governments responded to such intrusions by attempting to legislate in areas that were assigned to the federal government. As one observer of Canadian oil politics has noted:

the somewhat ambiguous constitutional division of overlapping powers left considerable room for federal actions to influence activities within provincial bounds, and for provincial activities to influence federal actions. This had the potential to exacerbate the problem of overload, especially when each level of government used the available instruments to expand its jurisdictional control.²⁴

Similarly, the ambiguous nature of concurrent management in post-Soviet Russia has aggravated relations between the federal government and many of the resource-producing *sub'ekty*. In some instances, the shortcomings of federal legislation prompted the regional governments to fill in the legislative gaps by creating their own legal frameworks for resource management. In others, the regions have acted because they feel it is their right to do so. Whatever the reason, it is evident that the confusion underlying the principle of concurrency has complicated intergovernmental relations and jeopardized the reform process in the Russian oil sector.

In an effort to compensate for the institutional shortcoming of their respective federal systems, politicians in both countries relied on executive federalism to resolve intergovernmental and interregional differences. Federal-provincial negotiations over pricing policy in Canada and federal-regional negotiations over quotas and pipeline access in Russia are just two examples of such intergovernmental diplomacy. But while some of these efforts were successful, executive federalism alone was often not enough to

²⁴ Op. Cit., Fossum (1997), 39.

bridge the divide between the governments. Both countries would probably benefit from a more organized and regularized system of executive federalism where the governments concerned are able to respond to problems and discuss policy options in a more efficient manner.

Although Canada's response to the energy crisis is by no means a model for dealing with intergovernmental conflict, some its institutional features could prove valuable to Russia. One of the differences between the Canadian and Russian systems is the absence of an effective and non-partisan conflict resolution mechanism. In Russia, the weaknesses of the Constitutional Court and the judicial branch have thus far prevented them from playing a dominant role in the resolution of disputes between the federal and regional governments. This contrasts with the Canadian case, where the Supreme Court was able to render and enforce its decisions on federal and provincial jurisdiction in several landmark cases. The lesson here is that until the Russian judiciary is able to reach a level of political authority comparable to its Canadian counterpart, the fundamental ambiguities inherent in the system of concurrent management will continue to plague intergovernmental relations and the reform process in the resource sector.

A number of other problems complicate the Russian case. Its federal structure is, without a doubt, far more complex than Canada's. The Russian federal government has to deal with 89 subjects of the federation and six different types of regions. Uncontrolled decentralization in the late Soviet and post-Soviet periods has muddied the jurisdictional waters. The resulting gap between *de facto* and *de jure* authority is wide and often unclear. Furthermore, Russia's federal institutions, like the rest of its political and economic system, are in a state of transition. All of this merely contributes to the

institutional confusion that currently exists in the Russian Federation.

The fact that Canada, an established and relatively stable democratic federation, experienced a similar period of conflict is an indication not only of the divisive nature of resource politics in federal states, but also of the enormous task facing the Russian Federation. Russia must cope with many of the same types of issues that plagued Canada in the 1970s and 1980s and it must do so in the midst of a period of profound and unprecedented transition. Given these circumstances, it is a wonder that Russia has managed to remain a united territorial entity, let alone reach some compromises on highly controversial issues such as intergovernmental relations and reform in the resource sector. Nevertheless, the challenge confronting Russia at this critical point in its post-communist transition remains the task of getting its institutional house in order. This will not necessarily prevent future conflicts from arising, but it may help to resolve those conflicts in a more efficient and amicable manner.

Chapter Ten

Oil Politics and the Evolution of Russian Federalism in the Post-Soviet Period: Conclusions

The changing political topography of post-Soviet Russia provides a fascinating setting for observing and evaluating the interaction between nascent institutional structures and the political process in a transitional state. This study has explored an important aspect of this transition: the impact of federalism and intergovernmental relations on the policy making process. It viewed the development and influence of federal institutions and processes through the lens provided by the oil sector, a highly contentious arena for intergovernmental interaction and conflict. On a more specific level, the study employed the production sharing debate, a controversial element in the broader reform process in the oil sector, and several regional reform initiatives to illustrate the complexities and confusion that characterize the emerging Russian federal model.

The first half of the dissertation looked at the evolution of the federal Law on Production Sharing Agreements, a piece of legislation that lays the foundation for a national resource management system based on production sharing agreements between the state and investors. In addition to exposing the complexities of the legislative process in Russia, the production sharing debate illuminated the institutions of intrastate federalism and the capacity of the subjects of the federation to influence the policy making process at the federal level of government.

The debate revealed three main sources of conflict, all of which were influenced to some extent by federalism and intergovernmental relations. Interregional cleavages constituted one source of conflict. These cleavages occurred primarily between resource-producing regions that supported production sharing and non-resource regions that expressed skepticism about the overall benefits of this aspect of the reform process. The production sharing debate also aggravated the longstanding conflict between the executive and legislative branches of government. Executive-legislative disputes often cut across the traditional centre-periphery axis, pitting members of the federal and regional executive branches against their legislative counterparts. Finally, this policy debate underscored the impact that ideological cleavages between supporters and opponents of reform have had on the legislative process. In part, this ideological cleavage solidified along regional lines. For example, it appeared that some regions, mainly those involved in the production of natural resources, were more supportive of production sharing than other regions. Altogether, the production sharing issue revealed the extent to which the structural-institutional features of the emerging federal system influence and are influenced by the political cleavages that exist in post-Soviet Russia.

Since natural resources are constitutionally designated as an area of concurrent jurisdiction between the federal and regional governments, no study of resource politics in the Russian Federation would be complete without an examination of regional initiatives in this sector of the economy. The second half of the dissertation, therefore, focused on the problems of resource management from the regional perspective. Chapters five and six examined the case of Tatarstan, an oil-producing republic in Central

Russia and a strong proponent of regional autonomy. During the post-Soviet period, Tatarstan's natural resource wealth has provided an important catalyst for the republic's struggle for autonomy within the Russian Federation. The Tatarstani government's attempts to develop an alternative system of resource management have fuelled the republic's conflict with the federal government, a dispute that typifies the fractious nature of centre-periphery relations in contemporary Russia.

Chapters seven and eight juxtaposed the Tatarstani case with that of the Khanty Mansiisk autonomous okrug, Russia's largest oil-producing region. Whereas Tatarstan's attempts to assert its autonomy are directed primarily at the federal government, Khanty Mansiisk is presently engaged in a struggle for autonomy with another region. The okrug's ambiguous legal-territorial status in relation to its host region, Tiumen' oblast', has led to significant interregional tension. The economic importance of Khanty Mansiisk's oil wealth has exacerbated this tension by hampering attempts to clarify okrug-oblast' relations and threatening economic development and investment in the resource sector.

The dissolution of the highly centralized Soviet state precipitated the rapid and often uncontrolled devolution of power to the regional level of government. Both the Tatarstani and Khanty Mansiisk cases demonstrated the increasingly important role that regional actors play in the political life of the Russian Federation. These two cases also revealed the institutional confusion that characterizes the Russian federal model. In all, conflicting federal and regional legislation and an overall lack of transparency and consistency in federal-regional relations have impeded efforts to resolve pressing intergovernmental and interregional conflicts. It appears that any future initiatives in this

area will require a greater level of institutional transparency, harmonization and coordination in relations between the federal government and the regions.

In an effort to develop some broader comparative insights about resource politics and federalism, chapter nine compares the Russian case to that of Canada in the 1970s and 1980s. Comparative linkages such as these serve as important conduits for integrating the study of Russian federalism into the field of comparative federalism and intergovernmental relations. Canada's energy wars demonstrated that Russia is not alone in its struggle to balance the demands of oil sector reforms with the geographical, political and economic cleavages that exist in federal states. Although different in terms of their level of political development, both countries exhibited many of the same underlying conditions and used similar institutional mechanisms to resolve intergovernmental differences.

Having said this, it is evident that Russia faces a far more daunting set of circumstances than its Canadian counterpart. Canada's intergovernmental disputes over energy prices and the National Energy Program were eventually resolved by a combination of executive federalism, judicial arbitration and changing international circumstances. Russia, on the other hand, must contend with the absence of an effective and impartial mechanism for resolving intergovernmental disputes, a far more complicated federal structure and the added problems of the post-communist transition. All of these factors have so far limited its ability to develop an integrated system of resource management.

Production Sharing, Russian Politics and Comparative Federalism

Over the past decade, students of Russian government and politics have embraced the task of charting and evaluating the development of federalism and intergovernmental relations with a mixture of enthusiasm and caution. While the opportunities for original research in this area are great, so too are the problems and challenges of tracking a “moving target”. Yet, in spite of the empirical, methodological and even logistical difficulties of studying the political evolution of post-Soviet Russia, scholars have succeeded in laying a solid and ever growing empirical foundation. This particular study owes a great debt to those scholars, both Russian and Western, who have blazed a path through the Russian political wilderness. At the same time, however, it has created its own trail and, in doing so, has made a number of important contributions to our understanding of politics and government in post-Soviet Russia.

First, the study goes beyond the general parameters established in the existing literature on federalism and intergovernmental relations in the Russian Federation by examining the evolution of intergovernmental relations in a specific policy area. The production sharing debate revealed that intergovernmental interaction and the legislative disputes it engendered were products of the harsh economic and financial realities of the post-Soviet period. Quite simply, economic scarcities coupled with the enormous financial potential of natural resources such as oil and gas pitted regions against each other and against the federal government. At the same time, it is important to note that other factors that have encouraged political conflict in the oil sector. For example, the transitional nature of the Russian federal structure and the jurisdictional ambiguities underlying the principle of concurrency and the other attributes of the federal system

have produced a confusing institutional environment that encourages the emergence of intergovernmental and interregional disputes.

Second, the study expands our understanding of federalism and intergovernmental relations in the Russian Federation. Thus far, most studies of Russian federalism have focused on the problematic relationship between the federal and regional governments. This is to be expected given that the basic premise behind the principle of federalism is the division of power and authority between these two particular orders of government. In keeping with this centre-periphery theme, this account exposed a number of different conflicts between the federal and regional governments. Many of these conflicts resulted from jurisdictional disagreements and the problems inherent in managing areas of concurrent jurisdiction. The contradictions between the federal Law on PSAs and Tatarstan's Law on Oil and Gas, for instance, provided a clear example of the broader legal and jurisdictional disputes that have complicated relations between the federal and regional governments throughout much of the post-Soviet period.

In addition to revealing the complex web of interaction between the federal and regional governments, the production sharing debate demonstrated that a variety of other intergovernmental relationships influence the policy making process in post-Soviet Russia. For instance, the dispute between Roskomnedra and Mintopenergo over licensing and production sharing provided a good illustration of how intra-governmental conflict can complicate the legislative process. Although Roskomnedra does have closer links to the regions through its regional affiliates and Mintopenergo is clearly a part of the federal administrative apparatus, this type of dispute does not fit readily into the centre-periphery axis provided by traditional models of federal politics. Similarly, the

tacit alliance between federal and regional supporters of the legislative branch was an example of intergovernmental cooperation that cut across the centre-periphery axis.

The most pronounced intergovernmental relationships were those that developed between the subjects of the federation. The clearest examples of such relationships were the informal alliances that emerged among the resource-producing regions and the non-resource regions in response to the production sharing legislation. The conflict between these two sets of regions not only had a significant impact on the tenor and content of the final law. It also dispelled any notions of regional unity in the face of pressure from the federal government.

Not to be forgotten in this matrix of intergovernmental relations are private and quasi-private actors such as domestic and foreign resource companies, and the various industrial complexes. In some cases, the oil companies and their counterparts in the other industries assumed an autonomous role in the production sharing debate. Foreign oil companies lobbied in favour of the PSA legislation, usually through umbrella organizations such as the Petroleum Advisory Forum. On the whole, the domestic oil companies were less supportive of the PSA law, while other industries demanded changes in the legislation in order to guarantee their interests. Despite their differences, all of these concerns interacted with officials and politicians in the political sphere on a regular basis throughout the policy making process.

The presence of private and quasi-private actors was also evident at the regional level of government. In Tatarstan, the republican government is intimately involved with the largest local oil producer, Tatneft'. In Khanty Mansiisk, large oil companies such as LUKoil and YUKOS play a dominant role in the Western Siberian oil industry and in

local politics. The fact that many of these companies and their affiliates are represented in the okrug Duma and company officials and representatives are consulted regularly by the okrug government about policy proposals and decisions gives an indication of their weight in regional political circles.

All of this activity underscores the need to recognize the contribution made by private actors to the legislative process in Russia. Whether these actors function as autonomous entities or as allies or parts of a broader political cause, their influence within the policy communities that coordinate and engage in legislative activity has clearly grown since the Soviet collapse. Indeed, any study that underestimates their role risks presenting a skewed picture of the post-Soviet reality.

On a more general level, this study creates a series of linkages between the study of Russian federalism and intergovernmental relations and the broader field of comparative federalism. In order to explain the development of federalism in post-Soviet Russia, I drew on the vast theoretical and comparative literature available to students of comparative federalism and intergovernmental relations. For example, Daniel Elazar's *matrix model* and Sidney Tarrow's *theory of new localism* provided the theoretical basis for a discussion of intergovernmental relations that transcended the traditional centre-periphery divide. These approaches accentuated the importance of interregional and intra-governmental relationships without undervaluing the role played by centre-periphery relationships in federal states.

Other sources played an integral role in strengthening the study's theoretical and conceptual foundations. The literature on Canadian federalism furnished the conceptual framework for ideas such as executive federalism and intrastate federalism. As well as

using the literature on comparative federalism to illuminate the Russian case, this study also makes a significant contribution to that literature by introducing and explaining the importance of several unique features of the Russian federal model. Federalism is an overarching concept that encompasses many different types of intergovernmental relationships. In his typology of federal political systems, Ronald L. Watts identifies 10 such arrangements, ranging from the more familiar federations and confederations to the lesser-known federacies, condominiums and leagues.¹ Despite this vast array of different federal systems, however, it seems that none can adequately capture some of the atypical features of contemporary Russian federalism.

For instance, *matreshka* federalism can and should be regarded as Russia's contribution to the typology of federal systems. This unprecedented territorial arrangement reemphasizes the importance of interregional relations within the complicated web of intergovernmental relationships that exists in post-Soviet Russia. *Matreshka* federalism also serves as an example of the cleavages that divide the federation along regional lines. If left unchecked and unmediated, such interregional conflicts, especially those between resource-rich okrugs and their host regions, have the potential to threaten Russia's financial stability as well as impede the delicate process of economic reform at the regional level.

From an institutionalist perspective, the chapters on *matreshka* federalism and the case of Khanty Mansiisk revealed the difficulties associated with adapting Soviet institutional legacies to fit the changing political realities of the post-Soviet period. As is the case in many transitional states, political developments in post-Soviet Russia have

¹ Ronald L. Watts, *Comparing Federal Systems in the 1990s* (Kingston: Institute of Intergovernmental Relations, Queen's University, 1996), 8-9.

outpaced institutional reform. Consequently, existing institutional structures are incapable of coping with the realities of the new political order and the demands for further change.

The conflicts underlying the relationship between Khanty Mansiisk and Tiumen' are also indicative of the broader struggles over institutional reform in transitional polities. Even though institutional dynamism is an unavoidable and necessary part of the process of reform, it is evident that the failure to resolve the enduring problems associated with the process of institutional construction can have a detrimental effect on the political and economic links that bind a transitional federation together.

Although not wholly unique, another feature of contemporary Russian federalism that is certainly distinct and deserving of further study is the experiment with bilateral treaties or "treaty federalism". Many federations have used multilateral treaties as a means of reconciling intergovernmental differences. In some instances, such treaties have provided the basis for intergovernmental harmony and cooperation. In others, the complexities of crosscutting and conflicting regional demands and federal-regional disputes have prevented their ratification. Russia's experience with multilateral treaties has been mixed. Many scholars have pointed to the failure of Gorbachev's Union Treaty, a comprehensive multilateral agreement between the various union republics, as an important factor in the eventual collapse of the Soviet Union. In 1992, the Russian federal government convinced most of the constituent members of the federation to sign the multilateral Federation Treaty. The project, however, was marred by the fact that Tatarstan and Chechnya refused to comply and that the treaty itself was not included in the 1993 Russian constitution.

The failure to entrench Tatarstan's status within the federation through the Federation Treaty became the catalyst behind Russia's experiment with bilateral treaties. Since the adoption of the inaugural treaty between Tatarstan and the Russian Federation in February 1994, many other regions have signed bilateral treaties with the federal government. In this sense, treaty federalism has become a central part of the federal government's regional policy.

The question of whether these bilateral treaties clarify or further complicate the relationships between the federal government and the regions is a difficult one to answer. In the short-term, the bilateral treaties normalize intergovernmental relations between the federal and regional governments by preserving the territorial integrity of the federation and by providing regional leaders with important symbolic recognition of their public claims for autonomy. Their value in the longer term, however, is not as clear. The status of these treaties in relation to the Russian constitution has not been adequately clarified. Furthermore, many of their provisions conflict with existing constitutional norms. Therefore, rather than providing a solution to intergovernmental impasse, treaty federalism often contributes to the jurisdictional ambiguities that complicate intergovernmental relations and hamper the legislative process.

Neo-Institutionalism and the Post-Soviet Transition

During the past two decades, neo-institutionalist scholars have transformed comparative politics with their calls for a more institutionally-sensitive account of politics and the policy making process. Indeed, neo-institutionalist interpretations of developments in a variety of settings have made a significant contribution to our

understanding of politics and government. Recently, students of Russian politics have begun to consider the applicability of neo-institutionalist ideas to the post-Soviet transition. The question, however, is what strain of neo-institutionalism best explains the unusual circumstances faced by Russia at this stage in its political development.

In an effort to explain the evolution and influence of institutional structures in the post-Soviet context, this study has focused on two particular variants of neo-institutionalist thought: historical and rational-choice institutionalism. The former argues that institutional legacies are important determinants of political outcomes, while the latter emphasizes the key role that institutions play in terms of influencing the strategic motivations of individual political actors. Both of these theoretical approaches have something to offer to the Russian case. By stressing the importance of existing institutional structures, historical institutionalism accounts for the influence of Soviet institutional legacies and post-Soviet institutions on the reform process. The rational choice perspective in turn provides a number of important insights into the process of institutional development and the strategic institutional choices made by politicians in a transitional state.

The nascent federal model has served as both as a framework for structuring politics and as an object or part of the broader political and economic transformation affecting contemporary Russia. During the debate over the Law on Production Sharing Agreements, intrastate bodies such as the Federation Council and, to a lesser extent, the State Duma served as mechanisms through which the regions influenced the policy-making process at the national level. The production sharing debate also revealed that regional governments and their representatives in Moscow have enhanced their presence

in the policy making process at the federal level by participating extensively in the elaborate system of policy committees and hearings, as well as submitting their own legislative initiatives.

Such regional participation had both positive and negative effects on the political process. In a positive sense, the regions contributed to the policy debate, making sure that the law responded to issues and concerns that were important at the local level. On a more negative note, many of the delays that frustrated the passage of the law through the parliament were the result of interregional and federal-regional disputes. Unfortunately, these types of conflicts and the political impasse they cause are a reality of political life in most, if not all, federal states. The fact that they are influencing the political process in post-Soviet Russia perhaps serves as a measure of just how far this country has traveled from the centralized system that existed during Soviet times.

Oil politics is also affected by the manner in which the powers and responsibilities of government are divided between the federal government and the constituent members of the federation. One of the defining features of the division of jurisdictional authority in the Russian Federation is the widespread use of concurrency. Originally, the authors of the federal constitution felt that such an approach would avoid the highly contentious task of dividing powers into watertight compartments. In many respects, though, concurrency has complicated the political process by providing an institutional basis for intergovernmental conflict in areas such as natural resources.

While it is probably still too early to judge the overall effect of concurrency on the long-term development of the oil sector, the production sharing debate did reveal some of the benefits and the drawbacks of this method of dividing power. For

proponents of cooperative federalism, concurrency is an important and even necessary institutional foundation for collaboration between the federal and regional governments. In spite of the conflictual nature of federal politics in contemporary Russia, it appears that evidence of such collaboration does exist. For example, the case of Khanty Mansiisk demonstrated that regional governments are capable of producing legislation in areas of concurrent jurisdiction that seeks to cooperate with rather than contradict federal laws.

One could argue that such cooperation was a result of federal pressure. Khanty Mansiisk is Russia's most important resource producing region and as such the federal government would certainly be opposed to any significant policy deviations in regional legislation. This study, however, revealed that Khanty Mansiisk's cooperative stance was also conditioned by its own political objectives; namely, a desire to distinguish and distance itself from its host region, Tiumen' oblast'. By harmonizing its legislation on natural resource use with existing federal legislation, Khanty Mansiisk expressed its support for the norms and ideas contained within the federal constitution, a document that entrenches the okrug's status as an equal subject of the federation.

Evidence of cooperation notwithstanding, concurrency remains a problematic method of allocating authority in this transitional federation for a number of reasons. First, the failure to adequately define the parameters of concurrent management has contributed to the broader problem of legislative overlap and contradiction. Tatarstan's Law on Oil and Gas and its controversial provisions on production sharing are an example of the persisting "war of laws" between the federal and regional governments. If left unresolved, such conflicts will continue to have a damaging effect on

intergovernmental relations, the investment climate and the wider process of economic reform in the Russian Federation.

Second, the absence of a clear and mutually acceptable mechanism for resolving legislative disputes between the federal and regional governments has exacerbated the confusion that exists in areas of concurrent jurisdiction. In most federations, the resolution of disputes between the federal government and the subjects of the federation falls under the purview of a constitutional court. In Russia, however, the historical weakness of the Constitutional Court and the judicial branch has inhibited their ability to act as arbiters of political conflicts. The experiences of other federations such as Canada suggest that strengthening the judicial branch's authority will only improve the effectiveness and organization of the Russian federal system. The problem is that the major political actors may not accept changes to the existing "system" if these changes infringe upon their ability to control political outcomes.

Until now, the governments in question have relied on a process of ad hoc executive bargaining as a means of reaching agreements and resolving disputes. For transitional and politically divided federations, executive bargaining, or executive federalism as it is more commonly known, provides an expedient way for political elites to reach decisions on difficult issues. Such intergovernmental diplomacy, however, is problematic in a number of respects. First, it displays certain undemocratic features that run counter to the broader goals of the reformist agenda. In Russia, supporters of the legislative branch argue that uncontrolled executive bargaining will provide a breeding-ground for corruption and anti-democratic behaviour on the part of the executive branch. Proponents of legislative rights also oppose executive federalism because it limits their

ability to participate in and control the reform process. Overall, this opposition has resulted in a longstanding conflict between the two main branches of government that has often disrupted the legislative process. This unfortunate situation was clearly apparent during the production sharing debate, where the interbranch dispute had a dramatic impact on the passage of the Law on PSAs through the federal parliament.

In spite of the criticism that executive federalism has endured, its importance as a functional element of the Russian federal system is still apparent. Two particular institutional features have strengthened the role of executive federalism in Russian political practice. First, executive federalism is partially institutionalized through the unique composition of the Federation Council. During the production sharing debate, many of the representatives in the Council were also the heads of the executive and legislative branches of government in the regions. Council sessions brought these elites together and provided an organized forum in which they could discuss problems and interact with each other and with officials from the federal government on a regular basis. Arguably, the composition of the Council also institutionalized the conflict between the legislative and executive branches.

Second, the significance of executive federalism has been strengthened by treaty federalism. As the case of Tatarstan clearly demonstrates, treaty federalism encapsulates the strange duality underlying the relationship between the federal and regional executive branches in the Russian Federation. On the one hand, the bilateral treaties reinforce the symbolic or public autonomy enjoyed by regional elites and their regions. At the same time, these treaties entrench the process of private negotiation between federal and regional elites, thereby perpetuating the system of executive federalism.

Whereas the bilateral treaties are the most obvious products of executive federalism, this study revealed that the members of the regional executive branches also engage in negotiations with their federal counterparts in other areas. In the oil sector, officials from Tatarstan and the Russian Federation meet on a regular basis to discuss matters such as export quotas and access to oil pipelines. The Tatarstani government's willingness to participate in regular intergovernmental meetings with the federal government suggests that the republican government tacitly accepts the duality between the symbolic autonomy outlined in the bilateral treaty and the realities of concurrent management in the resource sector. In the case of Khanty Mansiisk, the okrug government regularly consults officials from the federal government about the okrug's legislation on natural resource use.

Although much of this activity takes place behind closed doors, the fact that it does occur and that it produces agreements is an indication that a system of intergovernmental relations is evolving and that the executive branch is playing a key role in its operation. Nevertheless, Russia would probably benefit from a more organized and institutionally-grounded system of intergovernmental diplomacy. Regular meetings between officials from the federal and regional governments would encourage closer intergovernmental interaction and cooperation. Such a system would also provide a more transparent, accountable and politically acceptable means of reaching decisions.

Many accounts of constitutional politics in Russia have emphasized the awesome power of the executive in relation to the legislature. The federal legislative branch is often portrayed as a fractious, fragmented institution that is incapable of mounting a serious challenge to the more organized, unified and constitutionally powerful executive

branch. The production sharing debate revealed a different side to this story. First, it demonstrated the ability of the legislative branch to delay and alter legislation as it passes through the federal parliament. The introduction of legislative oversight provisions to the draft Law on PSAs was a clear demonstration of legislative power. Second, the production sharing debate suggested that the executive branch is not always unified. The conflict between the Ministry of Fuel and Energy and Roskomnedra (the precursor to the Ministry of Natural Resources) over fundamental issues such as production sharing and licensing demonstrated that the executive branch was by no means united behind one particular approach to resource management.

Throughout the post-Soviet period, Russian lawmakers have been confronted with many difficult choices regarding the organization and structure of the federal system. The institutional legacies of the Soviet period have played a key role in structuring the political options of the post-Soviet elite. One example of an institutional legacy that has affected the development of Russian federalism is the system of territorial division inherited from the Soviet Union. With a few exceptions, the territorial divisions that existed during Soviet times have persisted into the post-Soviet period. In addition to the basic territorial divisions, the Russian Federation has also inherited the regional political and economic asymmetries that were caused by Soviet planning methods and the particular geographical characteristics that distinguish certain regions or groups of regions from others. In many federal states, such asymmetries (especially those of wealth and economic potential) cause interregional conflicts that threaten the stability of a federation. This has clearly been the case in the Russian Federation.

The production sharing debate exposed a number of interregional cleavages. Perhaps the most significant of these is the basic division between resource-producing and resource-consuming regions. On the whole, resource-producing regions supported the original, reform-oriented Law on Production Sharing Agreements, while their resource-consuming counterparts were more skeptical of the changes implicit within the new legislation. The cleavage between resource and non-resource regions is not wholly a product of the post-Soviet transition. Its origins stem from the Soviet period when the central government mercilessly plundered the resource-producing regions to fuel industrial expansion in the more developed parts of the country.

Decentralization and other changes that have taken place during the post-Soviet period, however, have given the resource regions a new sense of autonomy and purpose. Not only do they expect to be fairly compensated for the resources they “export” to other regions and countries, they also want the revenues from the sale of these resources to be used for economic and social development in their regions. For the resource regions, production sharing represents an opportunity to encourage such development. The non-resource regions, on the other hand, are generally apprehensive about the economic consequences of production sharing. They are worried that production sharing will allow the resource-producing regions and the oil companies to retain a greater share of the profits and benefits of oil sector production. In their view, this situation could have a number of harmful effects on their economic development, ranging from higher energy prices to fewer subsidies from the federal government.

In addition to acting as structural determinants of the political process, the institutional features of the Russian federal model are also dynamic entities that function

as objects of change within the broader transitions taking place in post-Soviet Russia. Over the past decade, Russia's institutional context has undergone a significant process of development and adaptation. More often than not, politicians and other officials have been the primary instigators of such changes. Political actors have made decisions about retaining certain institutional features of the previous regime and adding new institutions to the emerging structural framework. These political actors are motivated by their own rational concerns as well as the constraints placed on them by competing forces within the polity. One of the outcomes of the process of functional interaction and transition is institutional confusion and contradiction. Such confusion, in the form of poorly designed, overlapping and even absent institutions, has had a detrimental effect on the intergovernmental relationships that play such an important role in the political process.

This study has touched on some of the broader institutional transformations taking place in the Russian Federation. The most important of these involved the federal constitution, the bilateral treaties signed between the federal government and certain regions, and the laws and agreements that attempt to define the relationship between the autonomous okrugs and their host regions. In many respects, the surrounding political environment has influenced the evolution of these institutions. The present Russian constitution, for example, was in part a product of the legislative-executive struggles that characterized the early post-Soviet period. President El'tsin's violent emasculating of the legislature in October 1993 essentially allowed him to push through a document that reflected the dominance of the executive over the legislative branch.

In contrast, the bilateral treaty between Tatarstan and the Russian Federation was the result of political compromise and negotiation rather than conflict. As chapter five

demonstrated, the treaty was a product of protracted negotiations between high-level officials from the federal and republican governments. Both sides used the negotiating process to reinforce their particular view of federalism, a situation that only contributed to the confusion underlying the relationship between Tatarstan and the Russian Federation.

A third instance of institutional dynamism is the ongoing discussion of a law regulating autonomous okrugs and their host regions. Whereas both the autonomous okrugs and their respective host regions are aware of the consequences of a continued legislative stalemate, neither side seems willing to give its consent to a law that could jeopardize its respective political and economic position. As chapter eight indicated, this deadlock is already having some negative economic effects in regions such as Khanty Mansiisk and Tiumen'.

Perhaps the most obvious example of institutional dynamism in contemporary Russia is the development of new legislative frameworks. The primary purpose of these legislative frameworks is to flesh out the general concepts and principles contained in broader documents such as the constitution and the bilateral treaties. Given the enormous political significance of these new frameworks, it is quite natural that such legislation is the object of intense bargaining and competition between rival political and economic elites. This was certainly true in the case of the Law on PSAs. The law's problematic journey through the Russian parliament in 1995 revealed the sheer complexity of the multidirectional matrix of alliances and conflicts that characterizes the legislative process in post-Soviet Russia. The law also instigated a process of institutional dynamism at the

regional level, thus providing observers of Russian politics with further evidence of federalization and the development of intergovernmental relations.

The Future of Russian Federalism and Oil Sector Reform

In early 1999, President El'tsin signed into law a series of amendments to the 1995 Law on Production Sharing Agreements, as well as enabling legislation needed to implement a production sharing regime. Reformers argue that these changes and additions will pave the way for the operationalization of a working production sharing regime by encouraging western companies to invest the huge amounts of capital necessary to reinvigorate the Russian oil industry.

How will these developments affect intergovernmental relations in the Russian Federation? An influx of capital could aggravate these relations, as the regions (both oil producing and oil consuming) and the federal government attempt to capture their share of the wealth generated by resource production. On the other hand, an increase in investment at the regional level and the resulting multiplier effect throughout the economy could have a positive impact on the financial situation facing both the regions and the federal government. Either way, an investment boom will be a test of the mechanisms for regulating intergovernmental relations contained in the production sharing legislation and other agreements between the federal and regional governments.

Conversely, the failure of the amendments to boost the level of foreign investment in the Russian oil sector can only have a negative impact on intergovernmental and interregional relations. First, the continued absence of investment will have a damaging effect on the economies of the resource producing regions. And, since many resource

regions are also donor regions, their economic decline would also spell considerable financial hardships for the federal government and the regions that rely on federal subsidies. Second, stagnant or declining investment levels could further aggravate conflict between the regions, as they fight amongst themselves for a share of these scarce resources.

The broader questions raised by these varied scenarios underscore the difficulties associated with institutional development, intergovernmental and interregional relations, and the future of the reform process in the Russian Federation. Will the federal and regional governments take active steps to clarify institutional confusion by promoting a mutually acceptable process of legislative harmonization and dispute resolution? How will the Russian federal model cope with interregional tension caused by regional disparities in economic development? Will the conflict between the supporters of symmetry and asymmetry continue to hamper the process of institutional development and reform? How will all these tensions and conflicting viewpoints affect the general cohesiveness of Russia as a federal state? Is the Russian Federation destined to meet the same fate as its Soviet predecessor?

In a recent article on the problems of reform and Russia's latest descent into financial chaos in August 1998, a respected observer of the post-Soviet scene concluded:

Russian democracy will not be able to survive if the economy continues to deteriorate for a sustained period of time. Russia needs a quick economic turnaround that will create more propitious conditions for the consolidation of liberal democracy in the future. Ironically, however, the most surprising outcome of Russia's recent financial meltdown has been the demonstration of democracy's resilience, not its weakness. Declarations of the demise of Russian democracy are premature.²

² Michael McFaul, "What went wrong in Russia?" *Journal of Democracy*, April 1999.

To a certain extent, the same can be said of Russian federalism. Despite all the warnings that the Russian Federation is doomed to experience the same fate as the Soviet Union or Yugoslavia, the territorial integrity of the federation has been preserved throughout a period of draconian economic reform, wholesale institutional change and political instability. The federation's ability to withstand the trauma of continued political and economic transition, therefore, should not be underestimated. Granted, the Russian Federation has its fair share of intergovernmental and interregional problems; conflicts that are largely the result of the institutional confusion that has characterized the transition period. Thus far, however, it seems to have weathered the initial phases of the federalization storm and, in many respects, bears a greater resemblance to democratic federations in other parts of the world than its Soviet predecessor. One can only hope that this resemblance will continue to develop in trying period that lies ahead.

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