

**Accommodating Multinationalism in Russia and Canada:
A Comparative Study of Federal Design and Language Policy
in Tatarstan and Quebec**

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Abstract

Federal institutional design is widely seen as one of the key forms of the accommodation of multinationalism. This thesis compares the experience of two multinational federations, Russia and Canada, specifically the cases of Tatarstan and Quebec respectively, to test this proposition. In these cases, regional leaders assert that the federal constitutional and institutional framework does not sufficiently address their claims for recognition and jurisdiction. Since the constitution and federal design are themselves disputed, the governance of these claims does not depend only on getting the institutions right. Rather the governance of multinationalism in Russia and Canada depends on the ability of elites to engage in ongoing processes of negotiation and accommodation.

To gain more insight into the role of federal design in accommodating multinationalism, the thesis features two policy case studies of the language issue. Language policy constitutes an appropriate and interesting arena to gauge the effectiveness of federal design to provide recognition and jurisdiction, because it is an area on which both federal and regional governments adopt legislation. Policy-makers in both cases believe they possess sufficient autonomy to carry out their objectives: a regime of parallel official languages in Tatarstan and the establishment and protection of the primacy of French in Quebec. Although language policies in Tatarstan and Quebec are examples of effective federalism, the overall constitutional disagreements persist.

The thesis finds that attempts to accommodate rather than solve Tatarstan's and Quebec's disagreements may yield better insight into the effectiveness of federal design in creating capacity to manage multinationalism. By engaging in negotiation, elites acknowledge the existence of each others' competing demands. These very processes which in Quebec and Tatarstan have often appeared in an *ad hoc* manner in turn structure and institutionalise federal-regional relations. These ongoing processes of negotiation provide a means to overcome the constitutional conflict and prevent constitutional deadlock.

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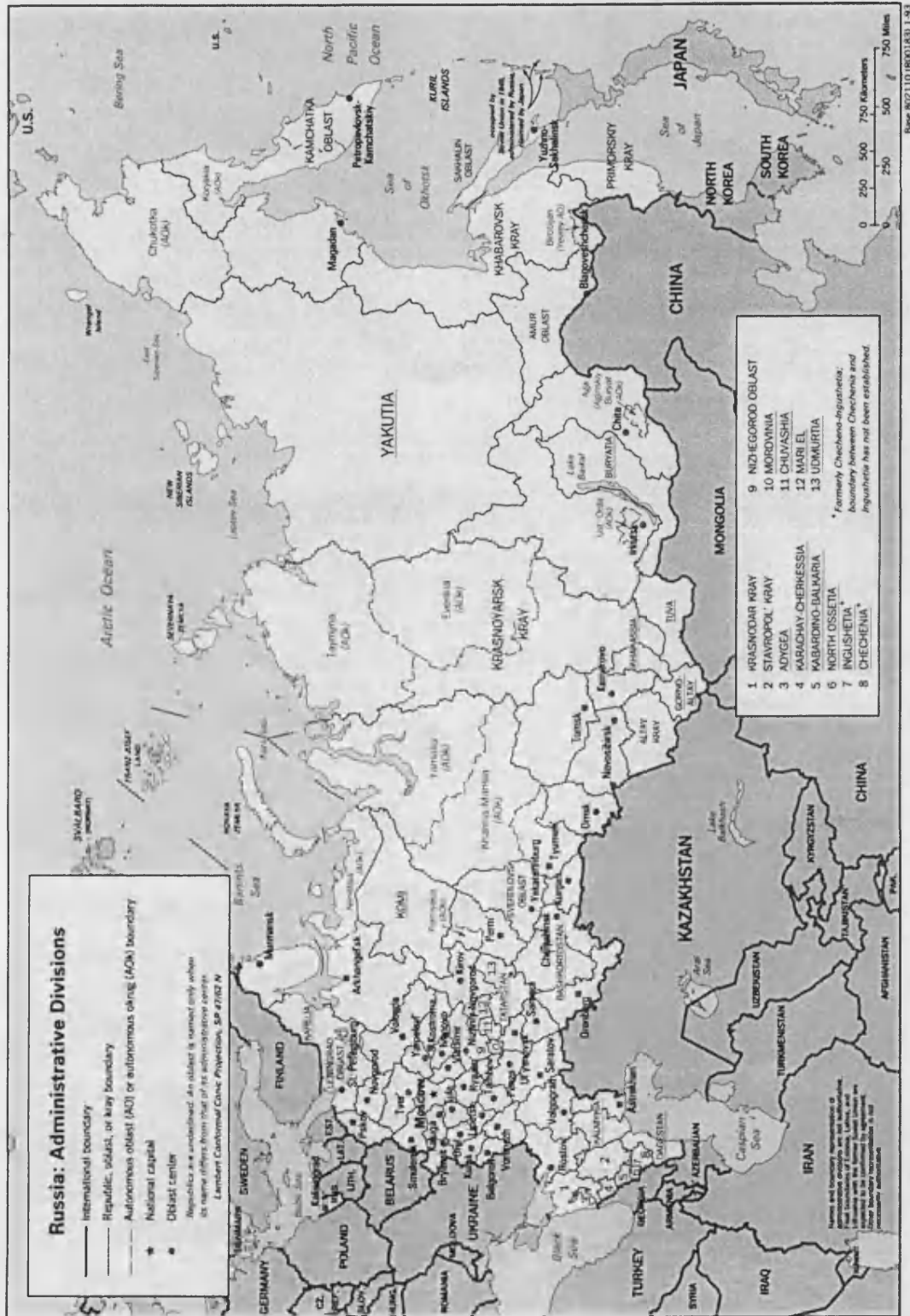
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Maps

Figure 1. Russia: Administrative Divisions (1994)



Perry-Castañeda Library Map Collection. Online source accessed 10 September 2005:
<http://www.lib.utexas.edu/maps/commonwealth/russiaaddivisions.jpg>

Figure 2. Canada: Administrative Divisions (2001)



Natural Resources Canada, *The Atlas of Canada*, Online source accessed 10 September 2005:

http://atlas.gc.ca/site/english/maps/reference/national/can_political_e/referencemap_image_view.

Note on Abbreviations Used

References to newspaper and electronic news sources are provided directly in the text, using the following abbreviations. All dates follow the format dd/mm/yyyy.

A&F: *Argumenty i Fakty*

CP: *Canadian Press*

Gazette: *Montreal Gazette*

G&M: *Globe and Mail*

IZV: *Izvestia*

IZVT: *Izvestia Tatarstana*

KV: *Kazanskie Vedomosti*

KP: *Komsomolskaya Pravda*

LD: *Le Devoir*

LP: *La Presse*

NG: *Nezavisimaya Gazeta*

NP: *National Post*

OC: *Ottawa Citizen*

RG: *Rossiiskaya Gazeta*

RRR: *Russian Regional Report*

RT: *Respublika Tatarstan*

RV: *Rossiiskie Vesti*

ST: *Sovetskaya Tataria*

TBDR: *Radio Free Europe/Radio Liberty's Tatar Bashkir Daily Report*

VE: *Vostochnyi Ekspres*

VK: *Vechernyaya Kazan'*

V&D: *Vremya i Den'gi*

ZP: *Zvezda Povolzh'ya*

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Chapter 1. Introduction

For many people, the prospect of continual rear-guard action to preserve the integrity of the federation is not inviting. We are consoled only in the thought that, as the world becomes more democratic, the trials and tribulations of multinational federations may become the norm (Norman, 1995: 137).

Diversity is the hallmark of multinational federations, in which cleavages – ethnic, linguistic, religious – cut across the state and through its component units. Within such states, some of the salient debates in contemporary politics are continuously played out: what kind of regime reconciles diversity and unity? What kinds of institutions promote stable governance? Successful governance of a unitary state or mono-national federation posits a need for common goals and principles, as well as a common language or languages. The challenge of multinationalism lies in the coexistence within the same state of different national groups, each with different, perhaps competing goals, languages, and concerns, some territorialised and others not. If governance is the process whereby citizens and rulers give answers to common questions, governance of a multinational society implies that although different questions are posed, they yield similar, or at least compatible, answers.

In multinational federations, the balance between unity and diversity is more tenuous since ethnocultural distinctions may coincide with the boundaries of federal units. In such a state, federalism provides self-government to the national group, creating a context to pursue particular policies and insulating the minority from the risk of veto by the larger society. Hughes and Sasse point out that while many analysts of post-Soviet states concentrate on multiethnicity as the destabilising factor, they have neglected to consider the challenge posed by territorialised nationalism (Hughes and Sasse, 2001: 8). In multinational federations, the form of territorialisation, rather than the existence of national diversity *per se*, is the politically salient factor, which leads to what Kymlicka calls the paradox of multinational federalism (Kymlicka, 2001: 113). While federal arrangements provide self-government and autonomy to accommodate minority claims, they institutionalise the diversity inherent in the state. As earlier work on the strengths and weaknesses of institutionalised nationality demonstrate (e.g. Brubaker, 1996; Bunce, 1999), the institutional solution of federalism may contribute to undermine state unity, or at least, provide an institutional basis and support for the perpetuation of difference. Bunce identified territorialised ethnicity as creating fracture points along which Communist-era federations broke (Bunce, 1999: 77-98). Sasse's study on Crimea is useful as it pushes us to examine a case where ethnic conflict was expected but did not occur and identifies factors, institutions

and behaviours that promote institutional stability and continuity (Sasse, 1999). Territorialised ethnicity and multinationalism are thus not necessarily destabilising *per se*. The paradox of multinational federalism illustrates that governance in a multinational federation is a balancing act involving a commitment to both shared-rule and self-rule where the issue of state stability is always in flux.

Acknowledging and managing diversity within a multinational federation raises the issue of institutional or federal design. This thesis seeks to address the role of federal design in maintaining stability in two multinational federations: Russia and Canada. The need for case-based research in these areas has recently been expressed by Tully, for whom “the point is not to start with some general thesis about diversity versus equality, or any other framework, but to examine actual cases to see what the conflict is about” (Tully, 2005: 94). In this thesis I focus on the cases of Tatarstan and Quebec in order to examine the nature of the conflict as well as the means employed to accommodate their claims within their countries’ institutional and political frameworks.

My interest in comparing these two cases was sparked by references encountered within Russia to Tatarstan as ‘the Quebec of Russia’. The reference is used as a cautionary tale illustrating two risks: the dangers of ignoring multinational diversity and the risk of the paradox of multinational federalism. However, it is simultaneously used as an example of successful federal design and accommodation. The president of Tatarstan, Mintimer Shaimiev, evokes Quebec to prompt Russia to recognise and accommodate his republic’s demands:

Will Russia cease to be multinational? There are republics, there are national autonomous territories, and they will not disappear. As international experience shows, refusals to address a state’s [multinational character] can become a headache in any state. Think of the headache Canada has with only one Quebec. Russia may end up having many more Quebecs (RT, 12.4.2002).

For Shaimiev, the fact that even in Canada, “a highly developed state”, the persistence of Quebec nationalism is a sign of the risks of failing to address the problems of multinational federalism (RT, 7.3.2002). Analysts see Quebec as an attractive model for Tatarstan because it has been able to “attract ever more resources from Ottawa because [it] has a credible but not yet successful independence movement” (Goble, 2001). In other words, nationalist claims and mobilisation potential are means of leverage to secure power and benefits. Russian political scientists such as Oracheva on the other hand, view Quebec as the archetype Russia must avoid at all costs: “the existence of a specific institutional framework allowed the Quebec nationalists to turn their claims into political actions after their electoral victory in the province” (Quoted in RRR, 23.4.1998). Institutionalising Quebec and accommodating its demands are here seen to perpetuate the paradox of multinational

federalism, providing an institutional basis for the articulation of claims and constitute a threat to the long-term stability of Canada's federal design. That Quebec is both a negative and positive example merits further examination.

What is at Stake?

In Tatarstan and Quebec, the federal constitution and federal design are contested. Two kinds of claims are articulated. First, leaders demand that the federal constitution better reflect their specificity. In Quebec, this demand is represented by long-standing claims for constitutional recognition of Quebec as a 'distinct society' within Canada. Tatarstan demands recognition that it constitutes a 'sovereign state united with Russia'. Claims for recognition address the question of status within federal design, and problematise the form of the overall federal structure. Second, leaders challenge the federal design of the state, arguing for a different division of powers and competences. In Quebec this challenge takes the form of demands for increased policy autonomy and constitutional guarantees of its jurisdictional prerogatives. In Tatarstan these claims are embodied in demands for bilateral asymmetrical federalism and increased protection of its autonomy.

In the empirical chapters of this thesis, I examine the articulation and evolution of these two claims and the ways in which they are addressed by federal leaders and within federal institutions. Since it is the constitutional design which is contested, the effective accommodation of claims depends not only on the design itself but also on federal practices within the states, and the extent to which political elites can devise cooperative mechanisms to respond to the claims emanating from Quebec and Tatarstan. The overall questions are the following: How does state-building and federal design come to terms with the existence of multinationalism? How does federal design address Tatarstan's and Quebec's demands for constitutional change? What is the role of federal practice in the promotion of stability of federal institutions? And finally, what does Canada's experience contribute to our understanding of federalism in Russia?

I argue that the governance of multinationalism in Russia and Canada depends on the ability of elites to engage in ongoing processes of negotiation and accommodation. Since the constitution and federal design are themselves disputed, the governance of Tatarstan's and Quebec's claims is not only a question of getting the institutions right. Thus, I seek to demonstrate that the absence of a consensus on the constitutional fundamentals does not necessarily lead to state instability. Rather, a combination of federal design and federal practice creates a basis for ongoing accommodation of Tatarstan's and Quebec's differences. By engaging in negotiation, elites acknowledge the existence of each others' competing claims. Thus, while the federal and federated units seek, ultimately, to

institutionalise or constitutionalise their competing claims, ongoing processes of negotiation provide a means to overcome the constitutional conflict and prevent constitutional deadlock. These very processes, which in Quebec and Tatarstan have often appeared in an *ad hoc* manner, in turn structure and institutionalise federal-regional relations. It is important to note that the consolidation of a federal institutional framework does not necessarily lead to the consolidation of a democratic regime (Stepan, 1999; Hughes and Sasse, 2001: 8-11). Federalisation and democratisation in Tatarstan remain distinct processes; the separation of regime stability and regime quality questions the long-term viability of these accommodation processes.

To sharpen the comparative perspective and gain more insight into the role of federal design in accommodating multinationalism, I focus on language policy. Language is chosen as a policy case study because it is a constant theme of discourse and state activity in both Tatarstan and Quebec across the political spectrum, from moderates to nationalists. In both cases, federal and regional governments have legislated on language. Thus, language policy constitutes an appropriate and interesting arena to gauge the effectiveness of federal design in providing the recognition and autonomy to Quebec and Tatarstan in order to carry out their objectives. As I examine further in the next chapter, a key theoretical assumption is that an institutional solution of individual and collective rights can help foster governance capacity in a multinational context and diffuse potential constitutional conflict or disagreement. The language case studies in this thesis allow us to test these assumptions. Leaders in Tatarstan and Quebec possess the competence and autonomy to implement most of their objectives in the field of language policy, yet the overall constitutional disagreements persist. This forces us to reconsider some of the assumptions about the challenges inherent in the governance of multinationalism.

The theoretical arguments advanced in the thesis are not new. The study's key contribution lies in a verification of the ways in which theoretical claims about the accommodation of the multinationalism and federal design work in practice.

Regarding the challenges of multinationalism, 'successful' accommodation depends on the institutional characteristics of the regime, on the nature of the unit's demands (a claim for outright secession will be difficult to accommodate, even among political leaders with the best intentions), and on the extent to which federalism provides a framework for ongoing negotiation and discussion of the claims. As Kymlicka reminds us, "... we can see the success of multinational federalism if we rid ourselves of the traditional assumption that a 'successful' political community is one in which questions of secession do not arise" (Kymlicka, 2001: 119). Similarly, successful accommodation depends on our abandoning the belief that success means that the constitution or federal design must be immune from

contestation. Kahn theorises that "... the act of negotiating mortgages reciprocity and entrenchment in future relations for an increase in autonomy in the present. But that autonomy is guaranteed by nothing but the last successful negotiated settlement" (Kahn, 1998: 37).

Federal design – one of the main means of responding to national units' claims for recognition and jurisdiction – represents a balancing act between majority and minority; shared- and self-rule. A particularity in both Tatarstan and Quebec is the persistence of claims for some measure of asymmetrical federal design. Yet the view prevalent among the majority of theorists of post-communist transition is the risk inherent in asymmetrical federalism of exacerbating the paradox of multinational federalism. The argument against asymmetry as a way of responding to claims for recognition and jurisdiction is predicated upon a normative argument, examined in greater length in the next chapter, which elevates the value of equality and state stability at the expense of recognition and difference. This thesis builds upon previous debates surrounding the benefits and risks of asymmetry and accommodation in order to relate them to the real-world cases of Tatarstan and Quebec. Existing studies give short shrift to empirical and case-based examinations of the ways in which federal institutions – asymmetrical or not – operate in practice in the Russian Federation. The policy case studies featured in this thesis, examinations of court cases, legislation and the comparison with Quebec serves to flesh out previous general arguments (e.g. Zverev, 1998; Hughes, 2001b) about the positive role of asymmetry. Gaining a better understanding of the ways in which federal institutions and federal politics are carried out in practice strengthens existing theoretical propositions, and provides a measure of their usefulness.

As I seek to demonstrate in this thesis, negotiation and settlement, although they do not "solve" the stateness dilemma, are evidence of a degree of stability and legitimacy. Political elites possess enough desire or trust to engage the other party to respond, to some degree, to ongoing claims. The thesis builds on Sasse's findings on post-Soviet Ukraine that accommodation of multinationality is a process as much as a result (Sasse, 1999). For his part, Tully points out that accommodating multinationalism – in other words engaging in a politics of recognition – is best viewed not as a finality but as unfinished and reiterative: "Any form of mutual recognition should be viewed as an experiment, open to review and reform in the future in response to legitimate demands for recognition against it, and so viewed as part of the continuous process rather than as the *telos* towards which the activity aims and at which it ends" (Tully, 2001: 20).

Definition of Concepts and Approach

Federalism denotes both an end (the institutional framework) and the means of accommodation (the process by which claims are accommodated). Federalism as an end is commonly conceived as an institutional form which divides power so that federal and regional governments are both coordinate and independent within given spheres of competence, and established in a written constitution (Wheare, 1946: 11). While Riker shares this definition, he is particularly concerned with identifying the incentives provided by the institutions to persuade players to remain within the federal system and be locked into the institutional and constitutional arrangement (Riker, 1964). In this thesis, the institutional framework – federal design – is defined as “an institutionalised division of power between a central government and a set of constituent governments, in which each level of government has the power to make final decisions in some policy areas but cannot unilaterally modify the federal structure of the state” (Amoretti, 2004: 9). The constitution plays a key role in establishing the balance between federal and federated units. But as Hughes points out, the objective inherent in many theories of federalism is the preservation of state integrity, not necessarily devising means to organise power to facilitate an accommodation of diversity (Hughes, 2001b: 37-9).

The study of federalism as an institutional structure alone is fraught with limitations. Federalism is more than just an institutional structure, but denotes a means of governance which promotes both self-rule and shared-rule. Federal practice, therefore, is the process whereby the extent and content of this autonomy are established: “... the study of federalism directs the attention of political science away from a principal concern with the nature of regimes to a principal concern with the character of political relationships – between political units, between governors and governed, between members of the body politic” (Elazar, 1987: 31-2). This leads Dikshit to argue that federalism is not only about a strict division of power but about inter-governmental relations and cooperation. For him, viewing governments in a federation as coordinate and cooperative facilitates the study of federalism as both means and end: “Modern federalism is, therefore, basically a federalism of functions rather than of powers – a federalism more of politics than laws” (Dikshit, 1975: 8). *Federalism* must be viewed as a continuing process, its institutions and instrumentalities evolving with time and changing needs. In this sense, it embodies the view that politics is unfinished business. It is recognition of the fact that issues cannot be immediately foreseen or forever resolved and as Duchacek contends, is “the whole point and the political merit of a federal formula” (Duchacek, 1987 [1970]: 193). The importance of federal design for many theorists and analysts of transition, as I examine in the next

chapter, reveals a teleological bias. Federal design is posited a means to an end, such as stability, symmetry or order. As I have argued above, a greater contextualisation of the institutions is required to better grasp the ways in which federalism helps create or hinder governance capacity. As Livingstone notes, “it is the operation, not the form, that is important; and it is the forces that determine the manner of operation that are more important still” (Livingstone, 1952: 88). The operation of federalism is related to the context: history, political configurations and the role and behaviour of political elites.

This composite definition of federalism carries with it assumptions regarding the role and importance of institutions. As I examine in the following chapter, the role of institutions in processes of post-communist transition is a matter of significant debate. In many of these debates, institutions are posited as defining the parameters of political activity, what March and Olsen define as “the routines, procedures, conventions, roles, strategies, organization forms, and technologies around which political activity is constructed” (March and Olsen, 1989: 22). As North points out, the role of institutions “is to reduce uncertainty by establishing a stable (but not necessarily efficient) structure to human interaction” (North, 1990: 6). In studies of political transition institutions are endowed with a foundational aura. They are the product of initial “high politics”, and once established are expected configure the political practice and subsequent rule-making and institution-building (Robinson, 2000: 2-3). The primary concern, thus, is to insulate institutions from political challenge. Elster defines this process as the institutionalisation of agency, where the “rules according to which political and distributional conflicts carried out are relatively immune from becoming the object of [...] conflict” (As quoted in Robinson, 2000: 3). Consequently, the stability of the state relies on the successful creation of formal first-order institutions, immune from negotiation and bargaining (Filippov, Ordeshook et al., 2004: 36).

However, the emphasis on institutions as foundation to politics is limiting and as North suggests, “gives us an inadequate and frequently misleading notion about the relationship between formal constraints and performance” (North, 1990: 53). Neo-institutionalism, with its simultaneous focus on institutions as “independent” and “dependent” variables, as configuring but also configured by agency, is a more useful framework for my purposes (Peters, 1996: 205). Since Quebec’s and Tatarstan’s constitutional disagreements consist of claims which contest their states’ formal institutions – the constitution, federal design – these institutions are not immune but wrapped up in politics and are the subject *and* object of political struggle. Indeed, as Hay and Wincott suggest, institutions may be viewed as structures whose functionality or dysfunctionality in a given context is an open question (Hay and Wincott, 1998: 954). The relationship between

structure and agency is a key element of the processes of fashioning consensus on the rules of politics and where institutional change “is seen to reside in the relationship between actors and the context in which they find themselves, between institutional ‘architects’, institutionalized subjects and institutional environments” (Hay and Wincott, 1998: 955). Thus, it calls for bringing the politics back into the study of institutions and institutional change to focus on the interaction between structure and agency in the fashioning of the rules of politics.

The value of such a process-based view of institutions and institutional change is twofold. First, it emphasises the role of agency. As Steinmo and Thelen write, outcomes do not result solely from institutions (Steinmo and Thelen, 1992: 2). While institutions serve to constrain and refract politics, agency and political choices also shape institutions. The relationship is dynamic. The effects of institutions are contingent, mediated by other institutional or non-institutional factors (Weaver and Rockman, 1993: 463). Second, it provides for a more contextual analysis of the processes of institution-making and institutional design. Gel'man contends that analysis of the processes of institutional choice in Russia's regions contributes to our understanding of the influence of institutions on political behaviour (Gel'man, 2000: 103). Sasse's study of multinationalism in Ukraine shows that processes of negotiation of institutional frameworks are part of the solution to conflicts in divided societies (Sasse, 2001: 95; Sasse, 2002).

Thus, the interplay between formal and informal processes, between formal institutional design and the politics that occur within are important in assessments of institutional performance (North, 1990: 53). Beissinger seeks precisely to determine the role of agency in the nationalism which characterised the late Soviet period by viewing nationalist mobilisation as an interaction between an existing institutional order and the actions of those seeking to alter or overturn that order through the production and multiplication of disruptive events (Beissinger, 2002: 19). Consequently, these events shape a new institutional order, which, in turn, is subject to disruption. Similarly, Gorenburg focuses on nationalist mobilisation within Russia's autonomous republics to show that it is not the existence *per se* of these units which determined successful nationalist mobilisation, but the ways in which nationalist appeals are formulated by a particular elite, the existence of institutional resources to support and perpetuate the appeals and importantly, the extent to which nationalists can elicit popular approval (Gorenburg, 2003: 5-18).

The paradox of multinational federalism, therefore, must be viewed within a larger context of competing political demands and political responses articulated by different levels of government, which beget institutional change or continuity. Changes in political structure create new and different opportunities and the basis for further elite activities. For

my purposes, then, whether federal design helps or hinders the accommodation of multinationalism will depend on the qualities of the institutional framework but also the behaviours and strategies of actors within this framework.

Methodology

As Coppieters (2001: 4) writes, “The strength of comparative federal analysis resides primarily in providing access to the wealth of experience of successful and failed federal practices”. I believe comparative analysis of these cases can yield useful findings, particularly to identify options, mechanisms and institutional configurations which may be overlooked when examining each case *sui generis*. The approach to the case studies in this thesis is configurative (Ragin, 1987: 3), aimed at examining the processes of accommodation as a configuration of relationships between institutions and actors (Katznelson, 1997: 96). The primary objective of the “focused comparisons” is to generate understanding as to the logic of politics as pertains to the role of federal institutions in the accommodation of multinationalism (Peters, 1998: 65).

The purpose of relating Tatarstan’s and Quebec’s respective claims and institutional and political responses is to draw attention to similarities and differences which may be underestimated. Tatarstan and Quebec constitute two key cases in studies of Russian and comparative federalism. As such, they provide an opportunity to refine our understanding of the challenges of multinationalism and the kind of institutional and political responses they elicit. Ultimately, the comparison identifies areas which existing theories and post-communist have overlooked and should be developed further. The policy cases in particular test theoretical assumptions about the role and appropriateness of a degree of asymmetry or collective rights in addressing multinationalism. In sum, the case studies and comparison aim to ground theoretical accounts of multinational federalism and Russian federalism in a more comprehensive and empirical manner.

My purpose is not to present the case of Quebec as a panacea, or point to elements of Canada’s political system which should be transplanted in Russia. Moreover, it is beyond the scope of this study to compare federal-provincial relations in Canada and Russia as a whole. The complexity inherent in a federation of 89 units versus Canada’s ten provinces and three territories would reduce the usefulness and validity of a comparative study. Within Canadian studies of comparative federalism, the case of Tatarstan – and Russia more generally – is not well-known. Similarly, in the context of studies of Russian federalism, analysis of the Canadian case is often superficial.¹ In recent years, a number of conferences

¹ For instance, Ross provides an erroneous appreciation of Canada’s division of powers (Ross, 2002: 10). Moreover, Oracheva’s and Goble’s analyses quoted above mistakenly blame Quebec nationalists for

and workshops have been organised in an effort to draw parallels between both countries and identify lessons for Russia's federal design (e.g. Solomon, 2003). Policy-makers in Tatarstan and Russia are keen to understand how federal experiences and institutions in Quebec and Canada relate to their own and how these can help.²

The focus of the thesis is on constitutional and federal design in Tatarstan and Russia; in Quebec and Canada. Besides policy case studies on language, I concentrate mainly on constitutional and institutional relations and policies. In the thesis, there is little discussion of the role of political parties, nor does it consider the international context and how it affects institutional and political developments or of elite interests, particularly economic interests in the discussion of federalism. I also leave aside the role of religion in Tatarstan. Although the place of Islam (and number of mosques) has grown in the republic since 1991, religion has not been a salient factor in nationalist mobilisation or in Tatarstan's claims vis-à-vis the federal government until now (a position confirmed in other studies of Tatarstan, such as Graney, 1999; Kondrashov, 2000). Presidential advisor Rafael Khakimov states that the Islam practiced in Tatarstan tends to be what he calls Euro-Islam, a pragmatic, non-politicised form (Interview with Khakimov, 2004). Demands for recognition of Tatarstan as a multinational, multilingual and multi-confessional state have trumped demands for its recognition as an Islamic republic.

Sources

The thesis is theoretically informed by studies of post-communist transition, federalism and multinational accommodation. It provides analysis of material from across a number of disciplines, and as such brings studies of transition and Russian federalism into greater contact with approaches developed by scholars of multinational federalism and minority rights. It is based on a wide array of primary sources and documentary evidence such as constitutions; laws; court rulings; as well as government reports available in Russian, English or French. This primary material is supplemented with semi-structured elite interviews of between thirty and sixty minutes in Kazan, Ottawa and Quebec City as well as newspaper and media reports accessed in Tatarstan during a period of fieldwork in Kazan in Spring 2004 and in Canada over the course of several shorter trips in 2003 and 2004. Through my fieldwork, particularly in Tatarstan, I sought to gain knowledge of the

perpetuating the stateness dilemma. Quebec's constitutional struggle is not only a struggle for secession; provincial governments of all stripes have demanded the federal constitution grant more recognition and jurisdiction.

² While in Kazan, I had the opportunity to attend no less than three international conferences on federalism and the benefits of comparative analysis, one of which was attended by officials from Canadian and Quebec governments. The conference in question was organised by the Kazan Institute of Federalism, entitled Scientific-practical Conference on Federalism in Russia, Canada and Belgium: The Experience of Comparative Analysis, Kazan, 17-18 May 2004.

processes and mechanisms which underpin language policy in the republic, on which little primary or secondary material exists. Moreover, it provided a crucial insight into elite perceptions of the language issue and of the state of federal-regional relations in Russia.

A Note on the Cases

The republic of Tatarstan is located 800km south-west of Moscow. The capital, Kazan, is located at the confluence of the Volga and Kama rivers. Measuring 68,000 square kilometres (0.3 per cent of Russia's area), it is Russia's eighth most populous region, with a population of 3.8M, of which 51 per cent are Tatars, 41 per cent Russians and the remaining eight per cent are members of other nationalities (Chuvash, Ukrainians, etc.) (Data from 2002 census). However, ethnicity and language competence do not necessarily correspond. The overwhelming majority of Tatars are fluent in Russian, whereas overall competence in Tatar is lower.³ The population of Tatarstan represents approximately three per cent of the overall population of Russia. State-wide, Tatars are Russia's largest national minority (3.8 per cent of the population). Two-thirds of Russia's Tatars live outside the borders of Tatarstan. Sunni Islam and Russian Orthodoxy are the traditional religions. Tatarstan is one of 89 "federal subjects" (territorial units) of the Russian Federation, and one of twenty-one republics. State-wide, Russian is the sole official language. In Tatarstan, both Tatar and Russian have the status of state languages.

Quebec (capital: Quebec City) is the largest province of Canada, measuring 1.5M square kilometres (15 per cent of Canada's total area). Quebec is the second most populous province (24 per cent of Canada's population), with 7.6M inhabitants, of which approximately 81 per cent are francophone, 8 per cent anglophone and 10 per cent allophone (speaking another language). 80 per cent of the population is of French descent. Quebec is one of ten provinces and three territories. French and English are the official languages of Canada. French is the official language of Quebec.

Overview of Thesis

In Chapter 2, I examine in greater detail how the challenges of multinationalism and multinational federalism are theorised. The chapter gives particular attention to the ways in which scholars have addressed the case of Russia in their frameworks. Scholars of Russia's transition from authoritarianism argue that national unity is a pre-requisite for stable

³ As Gorenburg notes, while 96.6 per cent Tatars in Tatarstan claimed Tatar is their native language in the 1989 census, respondents often gave the same answer to the question on native language as on ethnicity, thus overstating Tatars' competence in their native language (Gorenburg, 2005: 3). Subsequent studies have found that 97.4 per cent of rural Tatars and 65.1 per cent of urban Tatars consider themselves fluent in their native language (Iskhakova, 2001: 39-40; Gorenburg, 2005: 3-4).

institutions and regime consolidation. This chapter challenges this assumption and examines the way in which the lack of constitutional agreement can be bridged in multinational states.

Chapter 3 turns to the case of Tatarstan, examining the nature of its claims for recognition and jurisdiction. It focuses mainly on the expression of Tatarstan's demands for status, its 1990 Declaration of Sovereignty and 1992 Constitution, and on the federal constitution and institutions implemented by the federal government in 1993. I examine the nature of the constitutional disagreement which emerged between these two governments and the process which led to the conclusion of the bilateral treaty and a series of power-sharing intergovernmental agreements in 1994 to bridge the constitutional divides.

In Chapter 4, I follow the evolution of Tatarstan's claims during the Putin era. After 2000, federal reforms and increased political measures were adopted by the central government to reassert the primacy of the federal constitution and rollback the asymmetries which had appeared *de facto* since 1990. During this period, the nature of Tatarstan's demands evolved – by and large the republic now acknowledges Russia's constitution and accepts its place, as a federated unit, within Russia's federal design. But republican elites continue to demand differentiated status and argue in favour of federal practice which would be more protective of its jurisdiction and autonomy.

Chapter 5 focuses on language policy in Tatarstan. Demands for increased status and utility for the Tatar language was a feature of nationalist mobilisation at the end of *perestroika*. I provide an assessment of Tatarstan's language policy and show that its shortcomings are most often due to a lack of domestic political resolve rather than a constraining federal design. Indeed although tensions between the federal and republican governments exist, overall the extent to which Tatarstan has been able to implement its language policies demonstrates that federalism in Russia is conducive to the accommodation of demands for competence over language.

In Chapter 6, I examine the case of federal design in Canada and the responses to Quebec's claims for recognition and jurisdiction. This case is characterised by repeated failures and inability to accommodate Quebec's claims within the federal constitution. The persistent nature of Quebec's constitutional demands emphasises the importance and role of intergovernmental negotiation and agreements in developing *de facto* accommodation of the province's demands. I focus on the case of intergovernmental agreements on immigration to show that notwithstanding the constitutional conflict, accommodation of Quebec's claims is possible and ongoing.

Chapter 7 studies language policy in Quebec. In the province language was closely linked to questions of political status. Yet as I show, from the very beginning, Quebec possessed the constitutional and jurisdictional autonomy required to carry out ambitious

measures in the field of language. Although the federal government has too implemented language laws and policies, the objectives of which compete with Quebec's, I find that the overall situation is stable. The case of language in Quebec is, like Tatarstan, an example of successful federalism.

In Chapter 8, I seek to provide a more sustained comparison of the cases of Tatarstan and Quebec. Starting with a succinct examination of the ways in which claims for recognition, jurisdiction and language policy are addressed in both cases, I turn to analyse the characteristics of these regimes. Intergovernmental accommodation and negotiation has created federal stability in these cases. I examine some of the drawbacks inherent in an over-reliance on intergovernmentalism in a discussion of the importance of balance between institutions of inter-state and intra-state federalism. The chapter concludes with a consideration of some of the limits of institutional stability in these cases, which include disagreement on the role of the courts, territorial structure and political competition.

The concluding Chapter 9 summarises the main findings and research questions and reconsiders the proposal that Tatarstan is the Quebec of Russia. It draws conclusions on the prospects for continued accommodation of Tatarstan's demands within Russia's federal system.

Chapter 2. Multinationalism, Federalism, and Accommodation

Lack of consensus makes constitutional change necessary. The same lack of consensus makes constitutional change particularly difficult... Because the constitution lacked consensus, it had to be debated. But the same lack of consensus made it impossible to agree on a new one.
(Banting and Simeon, 1985: 25)

We can only hope to 'manage', not to solve, conflicts arising from ethnocultural diversity.
(Kymlicka, 1998: 3)

In the context of Russia's transition from authoritarianism, scholars, following Linz and Stepan (Linz and Stepan, 1996; 1997), have viewed multinationalism in Russia as characterising a 'stateness' dilemma, the resolution of which is considered an important precondition for the consolidation of stable (and democratic) federalism. The objective of this chapter is to demonstrate that the way in which the challenges of multinationalism are theorised by transitologists and many scholars of Russian federalism give short shrift to the difficulties inherent in developing the constitutional consensus which they deem is required.

The chapter proceeds as follows. First, I outline the challenges inherent in multinational federalism and the two kinds of claims made by a federation's minority national components: claims for recognition and jurisdiction. Second, the issue of designing federal institutions will be discussed, focusing on the ways in which these claims can be taken into account and the debates between symmetrical and asymmetrical federal design. Third, I examine the concept of 'stateness' in order to demonstrate transitologists' emphasis on the need for constitutional and institutional consensus occludes other facets of successful accommodation.

The Challenges of Multinational Federalism

When Stepan questions whether federalism, multinationalism and democracy can coexist, he reframes the terms of an ongoing debate (Stepan, 2001: 189). J.S. Mill believed "free institutions are next to impossible in a country made up of different nationalities", and that boundaries of government should coincide as far as possible with those of nationalities (Mill, 1964 [1861]: 297). For Almond, a state characterised by cultural homogeneity and overlapping memberships exhibits stable and effective government while one characterised by increased heterogeneity and segmented memberships results in ineffective governance (Almond, 1956; Barry, 1989: 104). Dahl was doubtful that a functioning democratic system could be maintained in a polity characterised by subcultural pluralism since it exerts a "dangerous strain" on the tolerance and mutual security required to consolidate a

democratic political system (Dahl, 1971: 5). For Linz and Stepan, a state encounters a 'stateness dilemma' "when there are profound differences about the territorial boundaries of the political community's state and profound differences as to who has the right of citizenship in that state" (Linz and Stepan, 1996: 16). They too posit that underlying diversities may jeopardise the legitimacy of the state's institutions as well as the outcome of regime transition. For them, "agreements about stateness are logically prior to the creation of democratic institutions" (Linz and Stepan, 1996: 26). In a multinational federation, however, reaching such agreements is an elusive prospect.

Bauböck identifies the specificity of multinational federations as the "political representation of perceived differences of collective identity through the division of federal units so that such groups exercise powers of self-government within some or all of the units" (Bauböck, 2000: 369). A stateness dilemma exists in such a state when a territorialised minority perceives itself as collectively different than the majority (of the state overall, or in relation to other federal units) and deserving of some kind of different treatment (Definition adapted from Amoretti, 2004: 2). Such a definition has the advantage of putting the issue of stateness front and centre: the state is called upon to deal with the national unit's demands and interests. Furthermore, politics in such a system are likely to reflect differences in perceptions of the political community and of institutions: "... both the majority and minority collectives are the product of processes of nation-building that to a certain extent will have to compete with each other when they try to make collective decisions within the same territory (division of powers, use of political symbols, institutions, presence in the international arena, languages, national holidays, educational curricula, etc.)" (Requejo, 2003: 26). In a multinational federation, managing the stateness dilemma is made complex by these competing policy demands and visions of the state and political community.

Kymlicka focuses on two "pivotal" issues for the successful management of diversity within a multinational federation: 1) how the boundaries of federal subunits are drawn and 2) how powers are distributed between different levels of government (Kymlicka, 2001: 93). O'Leary and Lustick formulate these issues in two tasks: right-sizing and right-shaping (O'Leary, Lustick et al., 2001: 1-14). Right-sizing is the articulation of "preferences of political agents at the centre of existing regimes to have what they regard as appropriate external and internal territorial borders" (Ibid.: 2). The choice of a strategy and institutional configuration (e.g. federalism, autonomy, consociationalism, control) is made at this stage. Once the institutional structure is established, "right-shaping" is the process whereby determinations are made on jurisdiction and competencies of territorial units and the size, shape, weight, and capacity of central and local governments (O'Leary, Lustick et

al., 2001: 10). Right-shaping, in other words, concerns more precisely issues of federal design.

In the period preceding and following the collapse of the Soviet Union, the boundaries of Russia's federal system were widely discussed. Tatarstan's efforts to raise its status to Union republic and secure a confederal-type relationship with Russia are examples of the right-shaping which occurred. In Canada, discussions about right-shaping occur mainly in the context of Quebec's proposals for secession. For the purposes of this thesis, I leave aside consideration of the issue of boundaries and right-sizing, and concentrate mainly on the second task, right-shaping. Within this task, Tatarstan and Quebec issue two sorts of claims: for recognition of their specificity (e.g. special status) and for jurisdiction (e.g. autonomy, asymmetry, division of powers). These claims for recognition and jurisdiction continually renew the stateness dilemma because many of the concrete demands address concerns such as citizenship, electoral systems, official languages and religions, rights of a group to special position in the polity (Horowitz, 1985: 187).

Shared sovereignty and shared jurisdictions within federal states creates a potential for tension between a conception of democracy as majority rule, and as power-sharing. Is the federation predicated on the norm of equal citizenship as the basis of political identity, where the central government is the main bearer and guarantor of national unity? Or, does it admit the possibility of divided sovereignties and multiple or nested identities and approaches to policy? The distribution of powers – right-shaping a multinational federation – is a balancing act between majority and minority, shared- and self-rule and the minority's claims for recognition and jurisdiction. In studies of federalism, the terms of this balancing act are those of symmetrical and asymmetrical federalism.

Federal Symmetry and Asymmetry

Federal symmetry is defined as “the extent to which component states share in the conditions and thereby the concerns more or less common to the federal system as a whole” (Tarlton, 1965: 861). In a symmetrical federation, the component units are miniature reflections of the same cleavages and identities of the political whole. In other words, it is one where presumably no stateness dilemma exists. Asymmetry, on the other hand, comes in different varieties. *Political* asymmetry characterises the cultural, economic, social and political conditions which affect the power and influence of component governments with each other and the central government. As Duchacek reminds us, all federations are asymmetric in some way or other since power, resources etc. are distributed in different ways (Duchacek, 1987 [1970]). For Tarlton, conflict is more likely in situations where the relationships between local and central authorities differ: “the degree of harmony or conflict

within a federal system can be thought of as a function of the symmetrical pattern prevailing within the system” (Tarlton, 1965: 871). Similar to the arguments surveyed above about national unity, federations in which asymmetry predominates are predicted to be more unstable. While political asymmetry is a naturally-occurring phenomenon, *constitutional* asymmetry characterises a division of powers between federal and regional governments (and within federal subunits) which is not uniform (See Watts, 1999: 63-8 for a discussion of political and constitutional asymmetries). Also prevalent is *de facto* asymmetry, arising from arrangements which are not entrenched in a constitution but are the result of demands and negotiation within specific policy contexts.

The challenge, as Hughes points out, is to determine “...whether built-in constitutional or institutional asymmetries are an exceptionally destabilising factor” (Hughes, 2001b: 38). The theoretical argument for symmetry in federal systems rearticulates the bias analysed above for stability over diversity, majority rule over power sharing. Power sharing is seen to lead to the institutionalisation of difference, which is seen as inimical to a stable federal polity. Stepan analyses federal systems on a demos-constraining to demos-enabling continuum, and concludes that constitutional asymmetries tend to be demos-constraining and threaten the equality of citizenship (Stepan, 2001: 340-1). In a textbook written for the Russian Ministry of Justice, Umnova concludes that “In an asymmetrical federation, as a rule, conflicts are inevitable and propagate as the division between subjects of the federation become permanent sources of unhappiness for those whose rights are unobjectively restricted” (Umnova, 1998: 40). Asymmetry, whether constitutional or *de facto*, is considered as zero-sum: rights or competence given to one group restrict the rights of others. Furthermore, Umnova’s remarks about asymmetry constituting “unobjective” restrictions challenge the legitimacy of differentiated rights and political asymmetry, because these depart from a norm of equality a constitution is expected to foster. But as Webber points out, “constitutional asymmetry is not so much about citizens getting *more* power as about where they exercise it” (Webber, 1994: 229).

Asymmetry is a means of right-shaping and distributing competence in order to respond to claims for recognition and jurisdiction. Constitutional asymmetries recognise the possibility that one-size-fits-all distributions of competence may not address the needs of particular federal units. The state recognises and takes steps to protect (or at least, devolves the competences required so the subunit has the powers to protect) its specificity. Linz and Stepan argue a regime of universal citizenship rights – a common ‘roof’ of state-mandated and -enforced individual rights – is adequate to promote stability and ensure respect of national minorities’ rights and claims (Linz and Stepan, 1996: 33). Such a prescription inevitably results in entrenching a degree of asymmetry. But talking asymmetry and

institutionalising asymmetry are two different processes. Indeed, Stepan believes individual rights must trump policies that diverge from the ideal of equality: “individual rights should be a property of the federal center”, and “any laws and social policies that violate this state-wide bill of individual rights must fall outside the constitutionally guaranteed policy scope of subunits” (Stepan, 2001: 198). In the end, “[t]hough formalized asymmetry may be defensible from any number of perspectives, it will most often be trumped by the equality principle in constitutional politics” (Milne, 1991: 286). As I examine in greater detail in Chapters 5 and 7 the tensions between individual rights guaranteed by the centre and regional competences to establish and manage minority language policy are an element of federal-regional resentment.

Just as civic state identity is posited to lead to more neutral and stable outcomes, symmetry and uniformity in rights and governmental competence are considered necessary to protect democracy. For Webber, the argument that asymmetry dilutes equality and rights is an argument for the nation in disguise: leaders are not really concerned with individual liberty, but assume that uniformity of treatment and symmetry is part of what being a country means (Webber, 1994: 253). The entrenchment of the Canadian Charter of Rights and Freedoms by Pierre Trudeau’s government is analysed as breaking with federal relationships (seen as “diverse, filtered, diluted, subject to mediation, and complicated”) to make the state-citizen relationship “systematised, centralised, uniform, constant, unilateral and direct” (John Whyte in Cairns, 1992: 79-80). Similar language is found Valentei’s criticism of Russia’s asymmetrical federalism: “everyone knows what separating one’s children into those who are favourites and those who are not can result in. The effect has been analogous, a total lack of respect on the part of the children towards the parents and towards one another”(Quoted in Smith, 1998: 1398). For Kymlicka, in the discussions about asymmetry creating different classes of citizens it is hard to avoid the conclusion that opposition to asymmetry is not rooted in latent ethnocentrism (Kymlicka, 2001: 105). Hughes goes further, stating that arguments in favour of federal symmetry and equalisation of federal units often cloaks outright hostility toward minority rights – driven by claims to promoting stability and ‘assimilation’ (Hughes, 2001b: 45). Asymmetrical federalism is rejected because it may contribute to perpetuate, rather than solve, a stateness dilemma.

Addressing the Stateness Dilemma

The grandfather of transition studies, Rustow, names national unity as a background condition for successful consolidation of democracy. For him consensus on “national unity” is deemed to exist when the “vast majority of citizens in a democracy-to-be have no doubt or mental reservation as to which political community they belong to” (Rustow,

1970: 350). Thus, it is theorised that “without some prior consensus on overarching national identity and boundaries little or nothing can be accomplished to move the system out of the protracted uncertainty of transition in to the relative calm [...] of consolidation” (Schmitter and Karl, 1994: 184). The more pluri-national, -lingual, -religious or -cultural a society is, the more complex these theorists posit politics will be in these regimes, thus making it harder to come to an agreement on institutional and constitutional fundamentals. Thus, just as Rustow before them, Linz and Stepan state the condition of stable state consolidation: the “congruence between the *polis* and the *demos* facilitates the creation of a democratic nation-state: it also virtually eliminates all problems of ‘stateness’ and should thus be considered a supportive condition for democratic consolidation” (Linz and Stepan, 1997: 24). This assumption, however, is increasingly challenged as unable to fully grasp the challenge of multinationalism. As Stephen May suggests: “the principal difficulty with the formulation of nation-state congruence [...] is its inability to accommodate and/or recognise the legitimate claims of nations without states, or national minorities” (May, 2001: 75).

In multinational states, what solutions do transition theorists suggest for forging consensus on national unity? In addition to a regime of universal citizenship rights, Linz and Stephan concede that in multinational and multicultural states, a hybrid approach may be warranted: “combining collective rights for nationalities or minorities with individual rights fully protected by the state is the least conflictual solution” (Linz and Stepan, 1997: 26). In other words, individual *plus* group rights may be an appropriate solution to stateness problems. For his part, Offe sees the politics of difference and identity conflict as intractable and suggests group rights are a possible antidote, useful particular in situations where a minority is territorialized (Offe, 1998: 123). However, claims that group rights constitute an antidote or least conflictual solutions are dubious because the crucial question of *how* a regime of individual and group rights is established is not addressed. As I examine throughout this thesis, political discussions and adoption of such mixed-rights regimes is an eminently conflictual affair, constituting the essence of politics in a multinational state. Moreover, I deal with two layers of institutional design – one based on territory (where claims are made regarding the place of the minority unit within federal design) and the other based on a particular minority group (where claims are made regarding specific policies, such as language). Group rights do not solve, but perpetuate and reframe the stateness dilemma.

As Kymlicka remarks, liberal approaches are wed to the idea “that people’s interest in cultural membership is adequately protected by the common rights of citizenship, and that any further measures to protect this interest are illegitimate” (Kymlicka, 1995: 107). In

Stepan and Linz's own framework, there is considerable tension between group rights (which they posit as a less conflictual solution) and individual universal rights. Indeed, they contrast *democratic politics* (which emphasise strong and equal citizenship rights and more conducive to democratic consolidation) to *nation-state politics* (in which policies are aimed at increasing cultural homogeneity) (Linz and Stepan, 1996: 25). This tension between "civic" and "ethnic" state-building is widespread in studies of the post-communist institutional design. Similar tensions exist between asymmetrical and symmetrical federal designs and the former promotes stable and democratic outcomes. For instance, it is unclear whether theorists such as Linz and Stepan would consider language policies carried out by federal subunits such as Quebec or Tatarstan as measures that promote equality or nationalisation. Kuzio calls for the need to decouple nation and stateness and suggests civic forms of state and identity lead to more stable regimes (Kuzio, 2001: 171-2). Civic, however, does not mean neutral or unproblematic. Policies of state-mandated and enforced universal rights must be contextualised as part of a deliberate strategy of given political actors, on which consensus may or may not have been achieved, and the legitimacy of which may be tainted by the processes by which the rights are entrenched. Kymlicka makes clear that the pursuit of civic integration nevertheless promotes a form of 'societal culture', which is territorially-concentrated and centred on a shared language, used in a range of public and private societal institutions (Kymlicka, 2001: 25). So-called civic approaches fail to address other facets of the stateness dilemma, namely claims for the recognition of difference, and for the legitimacy of difference. Leaders in Tatarstan and Quebec greeted their respective federal constitutions, which laid down a regime of individual rights (along with some collective rights) with scepticism, contending precisely that the basic law did not take account of their particular cultural, linguistic or historical interests. Furthermore, the state's constitution-building was not perceived as neutral, but as competing state-building strategies which sought to subordinate national identity to an overarching ideal of national identity and unity.

For stateness "fixers", the primary task is "to get the initial constitutional rules right" (Hanson, 2001: 133). Just as national unity is the background condition for stability, "the founding constitutional arrangements of any regime must surely be considered as one of the most important factors determining the future trajectory of the state" (Ross, 2000: 405). In other words, federalism, democracy, stability, and justice result from the constitutional order put in place. But little detail is given on the processes whereby consensus is achieved on the constitutional rules. To say the foundations are important is not to say how they are established and how they are implemented, especially in a multinational context where consensus on the very form and content of the state is challenged. Furthermore, a fixation on the importance of institutional design alone hinders

the consideration of other factors which may create conditions for consensus. The apolitical nature of the transitologists' approaches to stateness constitutes a significant lacuna of their theorisations. The fact that solving the stateness dilemma is placed prior to politics gives us little insight into the kind of institutional arrangement or political behaviour which may contribute to accommodating multinationalism. Hughes and Sasse emphasise the variety of factors which come into play – role of institutions, elites, regime type, and international context (Hughes and Sasse, 2001: 223-37).

Needed is better insight into the ways in which the stateness dilemma is expressed and addressed by governments within federal states. While the stateness concept arises in the context of transition studies, the argument that national unity – the congruence between *polis* and *demos* – is required to promote state stability and democracy is neither new nor unique to that discipline. Moreover, the theoretical assumptions do not correspond to a number real-world cases, such as Canada, Switzerland, Spain or Belgium, all governed democratically against a backdrop of unresolved stateness dilemmas. A stateness dilemma is more than the existence diversity. In a multinational federal state, the very structure of the state territorialises and perpetuates the existence of difference. The stateness dilemma is then expressed in the interplay between different levels of government and their different conceptions of the constitution and federal design. The institutional framework is the object of political struggle between elites at different levels of government. This thesis seeks to delve deeper into these questions by examining the role of federal design, asymmetrical federalism and federal practice in two precise cases, Tatarstan and Quebec.

The Myths of Statism and Constitutionalism

Asymmetry is an important factor in multinational federations because it uncovers debates on the form and content of the institutional structure, and reveals tensions between various governments' perceptions of the political community and identity within the state. Indeed, in the constitutional politics of Russia and Canada, the extent to which asymmetry is a factor which prevents or provokes instability and complaints of unequal treatment in favour of Tatarstan and Quebec is a key debate. Increased asymmetry for Quebec (whether in the form of constitutional recognition of the province as a distinct society, or the devolution of competence) is politically charged because of the unsettled consensus on whether Canada should be more or less centralised, more or less symmetrical, and indeed because of the ongoing debates regarding the consequences of asymmetry for unity and political community. Resistance to the constitutionalisation of asymmetry has led to the development *de facto* power sharing and asymmetry.

Similar conflicts of vision in Russia led to the signing between 1994 and 1996 of an unprecedented series of bilateral intergovernmental agreements between federal and regional governments. Hughes argues the treaties, while increasing the complexity of Russia's federal system, served a strategic purpose of defusing potential ethnic conflicts and regulating federal-regional conflict (Hughes, 1996: 43). For him, the treaties do not weaken federal institutions. Rather, in the context of the 1990s, negotiated asymmetrical federalism institutionalised a means of regulating the division of powers and managing elite differences (Hughes, 2001b: 54-61). Similarly, Zverev views Tatarstan's treaty as fixing a *status quo* in its relations with Russia, helping to institutionalise a degree of predictability in federal relations (Zverev, 1998: 143).

However, the scholarly consensus on asymmetry and bilateralism in Russia is overwhelmingly negative. The bilateral treaties are seen as "dangerous precedents" (Stoner-Weiss, 1997: 239) for the future stability of Russia's constitutional regime or as power-grabs by ethnic entrepreneurs (Solnick, 1995: 57; Treisman, 1996: 327). Stepan considers the bilateral treaties undemocratic (he calls them "a-constitutional"), mainly because they enshrine a norm of asymmetry and are not democratically sanctioned by parliament (Stepan, 2001). (But he ignores the difficulties and paradoxes involved in obtaining majority consent for measures aimed at a minority). The view which the Putin administration and Russian courts adopted after 2000 is that the treaties drained Russia's sovereignty and weakened the state. Sakwa concludes that the treaties and the asymmetric federalism they enshrine "not only granted differential rights to regional leaderships, but effectively established different gradations of democratic citizenship to those living in different parts of the country" (Sakwa, 2002: 2). Kahn concludes that the treaty practice hamstrung Russia's institutional development: "*ad hoc* bilateral negotiations that circumvent federal institutions weaken structures that already suffer from low levels of respect or even compliance" (Kahn, 2002: 4).

It is virtually impossible to discern these scholars' real intent: do they challenge asymmetry *per se* or seek to criticise the abuses which emerged in practice? In practice, Russia's model of negotiated federal-regional relations did indeed result in a system of "segmented regionalism", the characteristics of which are not conducive to the consolidation of federalism or democracy (Sakwa, 2002: 2). But judgement of the means and ends of asymmetry are commonly misconstrued in analyses of Russian federalism. For instance, when Ross contends bilateralism led to the rise of regional authoritarianism, he provides little detail on the nature of his presumed causal link between asymmetry and its consequences (Ross, 2002: 31). It is too easy to place responsibility for the institutionalisation of "regional fiefdoms", the under-implementation or infringement of

court rulings and constitutional norms in Russia to the existence of asymmetrical federalism alone. Rare are analyses of the way in which asymmetry contributes to accommodate stateness claims in a given context, and what alternatives were available at the time. This thesis seeks to provide a better contextualisation of the locus of asymmetry in Russia – why and how it emerged as a practice, which purpose it played to respond to Tatarstan’s demands for recognition and jurisdiction as well as its claims for autonomy in the field of language policy, and what the consequences of such asymmetrical federalism have been.

Two normative assumptions are prevalent in the discussion of asymmetry and bilateralism: emphasis on the central state as guarantor of order and on the constitution as main problem-solving mechanism. Transitologists and many scholars of Russian federalism adopt the perspective of the central governments in their quest to design stable institutions. Przeworski argues that it is institutional failure *at the centre* which provides a context for regionally-based nationalists to mobilise and promote an autonomy movement (Quoted in Dowley, 1998). Transitologists seek mechanisms that will engender centripetal processes, identification of component governments to the state as a whole, and also loyalty and allegiance to the central government. Kahn illustrates this objective well: “The component governments of a federation should consider the interests of the whole federal system, not just the singular pursuit of that component’s interests” (Kahn, 2002: 24). The assumption here is that an overarching sense of loyalty is necessary and that the right institutional framework can help manufacture it. It overlooks the fact that federalism is simultaneously a system of shared- and self-rule in which sovereignty is diffused and that loyalty may be bi-directional. In addition, it overlooks the fact that in a multinational federation, characterised by the existence of ethnic difference, the interests of the majority will likely conflict with those of the minority. Indeed, within the minority unit, the interests of the “whole federal system” are unlikely to be viewed as neutral but as an expression of the will of the state’s majority population or ethnic group.

The second assumption is about the role of a constitution to promote unity and stability. Bilateralism and asymmetry are considered to create “exceptions” to constitutional rules, or to what a constitution *should be*. As Filippov *et al.* note in their recent work on designing federalism, their primordial concern is to make so-called first order components of a constitutional order non-negotiable and irreversible (Filippov, Ordeshook et al., 2004: 71-5). This echoes Stepan’s prescription that a constitutional system must be self-enforcing, and that the rules of the game become the only ones in town (Stepan, 2000: 145-6). In the Russian context, the inability to get consensus on the ground rules is seen as jeopardising the entire enterprise:

Unfortunately, during a period of time when the rules of the political game were very much in flux, vagueness for whatever reason could and often did lead to serious problems with lasting legacies. The result is that many fundamental questions have been left unanswered, only deferred. And as questions mount, they have a tendency to turn into problems. Issues of the supremacy of laws, judicial review, nullification, and sovereignty have all remained unresolved problems in Russia (Kahn, 2002: 61).

The bilateral treaty process, in other words, only delayed problems and did not 'solve' the constitutional fundamentals. Stoner-Weiss suggests Russia must establish these fundamentals by implementing a working court system to implement law, a national party system to integrate centre and periphery and more democracy (Stoner-Weiss, 2004: 322-4). Although valid, such prescriptions are issued with the objective of reducing administrative complexity and eliminating asymmetry. Most prescriptions (Kahn's in particular) have tended to reaffirm the importance of protecting the federal constitution and reasserting the importance of law to foster allegiance and loyalty on the part of regional government, seeing treaties and asymmetry as obstacles to the development of such 'feelings', rather than the underlying condition of multinationalism. Many of these analyses throw the baby out with the bathwater. Arguing that asymmetry and differentiated rights weaken unity requires these scholars to explain why symmetry and equality are better at creating stability.

These diagnoses and policy prescriptions are based on the assumption that some sort of foundational agreement is required, and that a constitution must establish unchanging rules of the game. "A modern constitution, Tully reminds us, thus appears as the precondition of democracy, rather than a part of democracy" (Tully, 1995: 69). Divergences from the norm – in the form of bilateral negotiations, disagreements on the division of competences and efforts to revise the ground-rules – are seen as strikes against a constitutional consensus, and are thus reduced to harbingers of instability. "Stateness fixers" place too much emphasis on constitutionalism and legalism as a way out of stateness dilemmas. But in so doing, they reduce the usefulness of their theorisations in making sense of situations where constitutional consensus is elusive, why it is lost or gained. Legalism, as Gray writes, promotes an illusion that we can dispense with politics: "Whereas the adjudication of rights is – or at least imagines itself to be – unconditional and final, a political settlement can strike a balance among contending ideals and interests" (Gray, 2000: 117).

The arguments that symmetry and national unity lead to stable outcomes are strong from a liberal normative perspective. But they lack sufficient empirical or contextual foundation. Little effort has been made to see how asymmetry (*de jure* or *de facto*) turns vicious circles into virtuous ones. This is the purpose of the empirical analysis provided in this thesis. Hanson remarks that to say democracy is unconsolidated does not give us insight into what is good in the existing system and what if any sources of future stability

and development emerge from existing arrangement (Hanson, 2001: 137). The same can be said about Russia's and Canada's practice of asymmetrical federalism, and the way in which the politics of federalism create capacity for ongoing accommodation of multinationalism.

Paradoxes of Multinational Federalism

Measures to accommodate minority demands (asymmetry, differentiated rights) are often analysed as a "slippery slope": The institutionalisation of minorities and granting of protective rights makes it easier and likelier to mobilise for more power and more rights (Offe, 1998: 133). Diversity is seen as a challenge to unity, and policies which institutionalise diversity are seen as worsening rather than solving the problem, a conundrum Kymlicka calls the 'paradox of multinational federalism':

The very success of federalism in accommodating self-government may simply encourage national minorities to seek secession. The more that federalism succeeds in meeting the desire for self-government, the more it recognizes and affirms the sense of national identity amongst the minority group, and strengthens their political confidence (Kymlicka, 2001: 113).

In recent years, a number of works, mainly in political theory, have emerged which analyse the governance of multinational federations (Kymlicka, 1998; Kymlicka, 2001; Requejo, 2001), and multinational democracies (Tully, 1995; Gagnon and Tully, 2001). The accommodation of multinationalism in these works is seen as unfinished business: successful accommodation requires the development of mechanisms that provide a basis for ongoing constitutional dialogue, an ongoing politics of recognition. These theorists have generally steered clear of the sort of prescriptions provided by transitologists, but seek to demonstrate that democratic accommodation rests on mutual understanding, consent and shared sovereignty. For Erk and Gagnon, mechanisms and behaviours which foster federal trust may be more effective than attempting to reach agreement on a common purpose. Federal trust expresses the confidence which exists between the members of a federation on each other's integrity and commitment to finding a way to maintain the federal union. This is contrasted to federal comity (*Bundestreue*), a principle which like transitologists' solution to the stateness dilemma, requires allegiance to a common purpose: *Bundestreue* requires loyalty to trump autonomy (Erk and Gagnon, 2000: 94). In states where unity of purpose is elusive or contentious, we need to develop better capacity at identifying the institutions, practices and attitudes which foster federal trust, and engage governments in politics of accommodation. "Federalism does not provide a magic formula for the resolution of national differences. It provides at best a framework for negotiating these differences, and to make it work requires an enormous degree of ingenuity, goodwill, and indeed good luck" (Kymlicka, 2001: 118). Thus, the focus must be broader than on

institutional design alone, but must include behaviours and mechanisms which create capacity for the governance of difference and multinationalism.

Do federal institutions lay down the groundwork for federalism? In her thesis on the development of fiscal federalism in Russia, Pascal concludes that this *ism* – the process – matters a great deal in creating expectations of stability and consistency: “The development of federalism is not simply a matter of implementing an efficient and clear institutional design to delineate authority and jurisdictions. It is a process in which actors actively bargain over the definition and shape of the institutional environment” (Pascal, 2000: 193). Przeworski, looking at democracy in the context of transition, names three crucial aspects: democracy is a form of institutionalisation of continual conflicts; the capacity of particular groups to realise their interests is shaped by the specific institutional arrangements of a given system; and although this capacity is given *a priori*, the outcomes of conflicts are not determined uniquely through the institutional arrangements or elites within the system (Przeworski, 1986: 58). In other words, “democratic compromise cannot be a substantive compromise; it can only be a contingent institutional compromise” (Przeworski, 1986: 59). Over-reliance on constitutionalism occults the contingent nature of the political relations and processes which occur in a polity, especially if we look to the constitution as a foundational ideal: “Too often constitutions are seen as the rational, unified expression of a people rather than the products of an accidental history often seized upon in politically hazardous times. The ritualistic exercise of declaring and entrenching fundamental values in a constitution is often mistaken for an historical shortcut, an easy way to leap over the existential difficulties of actually securing or living out these principles in practice” (Milne, 1986: 58).

Conclusion

I use the word “accommodate” purposely. The existence *per se* of a stateness dilemma does not mean that state stability is impossible. Perhaps one difficulty is the fact that discussion of stateness has largely occurred within the paradigm of transition studies, for which transition leads to consolidation once “abnormality” leads to “normality”. Normality, here, designates *accountumance*, acceptance of institutions and predictability and consistent elite behaviour within institutions (O'Donnell and Schmitter, 1986). We need to question what ‘normality’ signifies within the context of a multinational federation where a degree of consensus on structural or institutional issues may exist but questions of identity, rights, jurisdiction and recognition are unresolved or are in evolution. Tully suggests the sort of shift required:

“We should focus on the field of interaction in which the conflict arises and needs to be resolved. [...] [A] conflict is not a struggle of one minority for recognition in relation to other actors who are independent of, unaffected by and neutral with respect to the form of recognition that the minority seeks. Rather, a struggle for recognition of a ‘minority’ always calls into question and (if successful) modifies, often in complex ways, the existing forms of reciprocal recognition of the other members of the larger system of government of which the minority is a member (Tully, 2005: 86).

For Kahn, the lack of consensus on sovereignty, autonomy, rule of law results in a lack of consensus on the merits and design of federal government (Kahn, 2002: 5). But lack of consensus does not imply a hopeless situation. Within a federal system, component governments may not be arguing against the system as a whole, but arguing for a reconfiguration of the institutional framework. The challenge during regime transition and the resulting de-institutionalisation is to identify and strengthen the mechanisms implemented to re-institutionalise multinationality (Hughes and Sasse, 2001: 229-33). Lack of consensus denotes continuing debate over the form and content of institutions, over the meaning of sovereignty and the extent to which it can be shared. Political elites in Quebec and Tatarstan have consistently been in favour of federalism, just a different kind of federal design, and different constellation of powers etc. Thus, the disagreement may endure but stability becomes a function of politics rather than only a function of the institutional ground rules. Especially if these ground rules are the subject of debate. Stateness, rather as being seen as an obstacle to state stability, can be seen as a *modus vivendi* (Gray, 2000: 25) of politics in multinational polities and as Keating writes, “nationality [is] a form of politics to be negotiated continually, rather than as a problem to be resolved once and for all, after which ‘normal’ politics can resume” (Keating, 2001: 3). As I turn to examine the cases of Tatarstan and Quebec in more detail, *accommodation* rather than *resolution* of constitutional disagreements is a better lens to examine and assess the capacity of federal design in addressing these disagreements and the stateness dilemma in the multinational federations of Russia and Canada.

Chapter 3. Accommodating Tatarstan's Status Claims

Tatarstan took as much power as it could. The rest is left to the federal bodies, and we are satisfied with this (Boris Yeltsin, June 1994).

Democratic Russia is a federal state. Alternatives to federalism do not exist. Our approach proceeds from the universally recognised conception that federations are based on divided sovereignty. The treaty is the act by which the federal centre recognised and recognises the republic's sovereignty (Mintimer Shaimiev, Annual Address, 26 March 2004).

The stateness dilemma in Tatarstan puts two different conceptions of federal design at odds. First, starting with the late *perestroika* period, Tatarstan's leaders issued claims for raising the republic's status to that of full-fledged and 'sovereign' federal unit within the Soviet Union. They continued to claim recognition of this status within the institutional and constitutional framework of the Russian Federation. As a 'sovereign' state, Tatarstan's leadership argued that powers must be delegated from the bottom up, and devised a confederal federal design in its 1992 constitution. Second, the federal design established by Russia's constitution conflicted with Tatarstan's concept of the state and federation. It ignored Tatarstan's sovereign status and moreover, established a hierarchical, if not hegemonic, division of competences. The 1994 bilateral treaty on delimitation of powers served to bridge the gap between these conflicting visions.

The objective of this chapter is to examine the constitutional and status ambiguities between Tatarstan's and Russia's constitutional and institutional frameworks and the solutions implemented to address them. I argue that the treaty did not solve the underlying constitutional disagreement nor did it attenuate the ambiguities of the federal design or delegation of competences. Instead, the treaty provides recognition of Tatarstan's claims for recognition and jurisdiction in the Russian federal system. By institutionalising a process of federal bargaining, the treaty provides leaders in Moscow and Kazan a powerful symbolic and political tool to overcome, or at least overlook, the constitutional impasse. The chapter is organised as follows. First, I examine the nature of Tatarstan's Soviet-era claims for status and jurisdiction. Then I turn to the way in which Tatarstan's leadership defined its status and its competences within Russia, contrasting this to the way in which Russia's constitution defines the place of Tatarstan within its federal design. I examine these conflicting views of constitutional status and federal design and the role played by the 1994 bilateral treaty to help bridge these constitutional divides.

Debates over Status and Structure during *Perestroika*

The issue of Tatarstan's place within the Soviet federal structure was raised several times during the twentieth century (e.g. during the re-drafting of the Soviet constitutions in 1936 and 1977) (Khakimov, 1997: 62). But the context and openness of *perestroika* provided impetus for a more widespread internal debate of Tatarstan's status and a more responsive central elite. In fact, conferences, petitions, press articles and demonstrations in the Tatar Autonomous Republic (TASSR)¹ occurred with increasing frequency on the republic's status within the RSFSR (of which it was an autonomous republic) and the Soviet Union (Graney, 1999: 89). Not unlike developments in other Soviet republics, public organisations appeared in the TASSR, such as the Tatar Public Centre (TPC), created in 1988. The TPC, while moderately nationalist, had a programme which was in line with similar organisations' positions during *perestroika*, advocating the advancement of democratisation and securing greater rights for the TASSR. Delegates at the founding TPC Congress in February 1989 were overwhelmingly Tatar (97 per cent), and gathered wide sections of the republic's academic, literary and political elite. In fact, one of the Centre's co-founders, Rafael Khakimov, worked at the time within the apparatus of the TASSR Communist Party and went on to become political advisor to Tatarstan President Mintimer Shaimiev. It is important to note the movement did not advocate secession from the Union, but advocated raising the status of the TASSR to that of Union republic (ST, 10.10.1989). Increasingly prevalent were public meetings and academic conferences on the need for upgrading the republic's position (Iskhakov, 1998b provides a chronology and analysis of these various events).

Two series of arguments are evoked in arguments in support of status change for the republic: economic and cultural. The TASSR was a donor region in the RSFSR and Soviet Union, which provoked resentment. Demonstrations in Kazan's Freedom Square in February 1990 attracted 8,000 and featured slogans "Tatarstan is not a milk cow (*doinaya korova*)" and "Union republic status for Tatarstan" (Iskhakov, 1998b). This argument is fuelled by the type of comparisons published in the press at the time. The TASSR and Lithuanian SSR had roughly the same area and population, but where the former had a per capita national income of 212 roubles, Lithuania's was 1,500 roubles (*Pravda*, 1.9.1990).

¹ The Tatar Autonomous Socialist Republic (TASSR) was synonymous with *Tataria* at the time. After it declared sovereignty, the republic changed its name to the Tatar SSR, or Tatarstan. The distinction is not territorial but historical and political. In a letter to the Chairman of the Committee on the Press of the Russian Federation in 1994, the speaker of Tatarstan's Supreme Soviet, Farid Mukhametshin, protested the continued use of *Tataria* in the Russian press. For him, "the name 'Tataria' goes along with the traditions of the bygone era of Soviet *Tataria* when the significance of the distinctive national and historical features of entire peoples and republics was minimised" (*Segodnya*, 18.5.1994). I use Tatarstan throughout the thesis for the sake of clarity.

Tatarstan, with an economic output of 25 billion roubles a year, did not have an industrial ministry and controlled only two percent of its enterprises while the Union controlled 80 per cent and the RSFSR eighteen percent (Tagirov, 2000). 'Economic nationalism' and the desire to free the republic from the exploitation of the centre is one facet of the economic argument (Walker, 1996).

A second facet of the argument for increased power over the economy is the context of Gorbachev's policies of *khozraschet* (regional budgetary self-sufficiency). *Khozraschet* increased the level of the regional leadership's accountability for its failures. This provided the impetus for republican elites to acquire more responsibility and competence over economic developments in order to minimise the risk of failures and jeopardising their positions.² Within Tatarstan, increased economic autonomy is linked with democratisation and federalism, as Kurchakov and Khakimov write: "The possibility of transition to democratic socialism is connected with the assertion of real economic independence and responsibility of union republics and autonomous formations for the comprehensive social and economic development of their territories and peoples..." (Kurchakov and Khakimov, 1989: 11). Thus, more power over economic matters provides the levers to make better use of resources and protect citizens from too dramatic a transition to the market economy (which would evolve into Tatarstan's policy of *soft entry into the market* during the 1990s).

The second series of arguments in favour of raising the TASSR's status is based on culture and language. Mainly confined to folklore, music and theatre until *perestroika*, the question of the utility of the Tatar language began to appear in the republican press in October 1987 (Iskhakov, 1998a: 15-6). Discussions about raising the status of the Tatar language to a state or official language started in earnest after 1987. A workshop in 1989 on the place of the Tatar language and the equality of nations was held and attended by prominent figures including M.Z. Zakiev, director of the Academy of Science's Institute of Language, Literature and History (IYaLI), and Rafael Khakimov (ST, 1.20.1989). The fact that a large proportion of membership of TPC and nationalist organisation members hailed from the cultural and academic intelligentsia ensured a prominent place for the language issue on the political agenda.

Just as the TASSR's economic weakness was linked to its political status, the endemic lack of utility of Tatar was raised in the context of its autonomous status within the RSFSR: "the peoples who lived within autonomous units were worse off in terms of cultural and socioeconomic development as those peoples who had Union republic status" (Zakiev and Sharypova, 1991: 18). In the RSFSR's autonomous republics, language

² Thanks to Jim Hughes for drawing my attention on this point.

education was not as widespread as in Union republics, but as Connor points out, children in the TASSR and Bashkir ASSR could expect ten years of primary education in their native languages (Connor, 1984: 257). In fact, in 1987-88, 995 Tatar schools (mostly concentrated in rural areas) operated in the republic. While Tatar was offered in preschool middle and professional-technical schools, it was not taught in specialised schools or in institutions of higher education. Tatar was hardly used in state structures, except in *Komsomol* and labour (*profsoyuz*) organisations. As a language of science and scientific research, Tatar was used only in the humanities. In mass communications, information, advertising and transport, Tatar occupied a second rate position, when it was used at all. Tatar-language programming was broadcast on television three hours a day and on the radio four hours a day (Iskhakova, 2001: 1-29). In 1989, although 95 per cent of urban Tatars claimed Tatar as their native language, only 36 per cent said they actually used it on a daily basis (Graney, 1999: 310). Among Russians in the republic the rate of Russian-Tatar bilingualism was placed at 1.1 per cent (Bairamova, 2001: 167). The lack of prestige and utility for Tatar was raised by Shaimiev, then First Secretary of the TASSR Obkom, in September 1989, who argued that language status was intimately linked to cultural survival (*national'naya samobytnost'*) (ST, 8.12.1989). Khakimov confirms the leadership's intention: "We wanted to be sure that the Tatar language would have state status, it would develop, and that Tatars would not disappear" (Interview published in Ovrutskii, 2000: 38). Thus, cultural and linguistic survival was another factor in Tatarstan's status claims.

In April 1990, the Soviet government introduced a package of laws to address the dissatisfaction of Union republics. This package included laws on secession, economic self-sufficiency, state languages and importantly, on the political status of union and autonomous republics. Tatarstan's leadership was quick to grasp the significance of the 26 April 1990 Law on the Demarcation of powers of the USSR and Members of the Federation (USSR, 1990a). This law equalised Union and autonomous republics, thus providing Tatarstan with the status it had been requesting. The law provides power over economic levers, granting autonomous regions the power to "independently resolve questions of production and economic facilities", and "ensure comprehensive economic, social, and cultural development on their territory, taking into account the interests of all peoples living therein" (art.4). More importantly, the law establishes the basis for a confederal relationship between the TASSR, Soviet state and Russian Federation: "The relation between the autonomous formations and the Union republics of which they are a part are determined by agreements and treaties concluded within the framework of the USSR constitution, the constitutions of the Union and autonomous-republics and the law" (art.1). In addition, the Law on the Languages of the Peoples of the USSR was adopted on

24 April 1990, granting the right to use both titular and the state language (Russian) as official. Through these laws, the TASSR obtained *de jure* equality of status and the competences over economic and cultural and linguistic issues it had claimed. The status conferred by these Soviet laws would indeed become the baseline for Tatarstan's subsequent demands vis-à-vis Russia. It is the very relationship with Russia, however, that remained the biggest unknown variable at the time.

The laws enacted by the Soviet government profoundly affected Russia's internal structure and its relationships with its component autonomous republics. Consequently, Russia issued its Declaration on State Sovereignty on 12 June 1990 in an attempt to consolidate its federal structure and stall its disintegration (RSFSR, 1990). Compared to the status conferred upon the TASSR in the 1990 Soviet laws, Russia's declaration was ambiguous on the place and status of autonomous republics within its constitutional structure. The declaration promised to "substantially broaden" the rights of autonomous republics but provided little detail on how powers would be distributed. In its declaration, Russia claimed full competence over its state structure (art.5), and affirmed the supremacy of RSFSR laws and disallowed Soviet laws which contradicted RSFSR sovereignty. Russia recognised the sovereignty of Union republics and of the Soviet Union and established that relations between it and Union republics would be determined by bilateral agreements (art.6). But the declaration was silent on a crucial point for Tatarstan's leadership – whether the Russia recognised Tatarstan's status as a Union republic as conferred by the 1990 law. In fact, nothing indicated that Russia would stop considering the TASSR as an autonomous republic within its federal structure, since by virtue of the declaration Russia's leaders disavowed any Soviet legislation which contradicted the RSFSR's 'sovereign rights'.

Since Russia seceded from the Soviet Union, the rights of its constituent units in the context of Soviet law were mooted. The ambiguities of the republic's place within the Soviet and Russian states prompted Tatar leaders to consider their own declaration of sovereignty. Nationalist groups and parties were particularly active in these discussions. The TPC held a plenum in June 1990 to discuss the content of an eventual declaration of sovereignty, as did the more radical *Ittifak* movement. These were accompanied by demonstrations in Kazan and other cities (Iskhakov, 1998b). Various drafts of the declaration as well as the debates of the Tatarstan State Soviet were reported in the republican press (e.g. numerous articles in ST during July and August 1990). In what is considered to be a move to constrain extreme nationalism and consolidate the Tatarstan's loyalty to the Russian federation (Kahn, 2002: 118-9), Yeltsin issued his fateful call to Tatarstan to take all the sovereignty it could swallow. Yeltsin explained to Shaimiev that he

did not seek conflict, and that “if you want to govern completely on your own – just go ahead” (Quoted in Kondrashov, 2000: 142).

Boris Zheleznov, a constitutional law professor at Kazan State University and co-author of Tatarstan's Declaration of sovereignty, relates that Yeltsin considered his August exhortation to sovereignty to be a political tool, and that the Russian president asked him to convey to Tatarstan's leaders they should not take his call too far (Interview with Zheleznov, 2004b). Consequently, if the republic acted on Yeltsin's call to go ahead and take sovereignty, any unilateral declaration would rest on ambiguous political and legal foundations: the TASSR's 1978 constitution allowed the republic only the right to participate in decisions about its state status (art.67) but forbade it from making changes to the state structure, a power which, constitutionally, belongs to the RSFSR alone (Zheleznov, 1996: 42). Yeltsin's exhortation is an example of how Russia's president tended to think not in institutional terms but in terms of the consolidation of political power and relationships. Russia's secession from the Soviet Union and Yeltsin's decision in 1993 to suspend the Constitutional Court and parliament illustrate how the centre did not consider itself particularly constrained by the existing constitutional framework. The instability of such a context is one factor behind the decision by Tatarstan's elites to secure their own institutional space.

Tatarstan declared sovereignty on 30 August 1990 (TSSR, 1990), signalling its intention to stick to the state structure established by the Soviet government in its April laws (Zverev, 1999: 97). As Shaimiev relates, the political context of these laws and Russia's Declaration of sovereignty forced Tatarstan to formulate its political and legal status and the basis for its participation in the Russian and Soviet states (ST, 30.8.1990). By its declaration, Tatarstan claimed Union republic status, exclusive possession of all its natural resources (art.2) and the supremacy of republican laws (art.5 and 6). On the basis of its status, the declaration affirmed its leadership's intention to conclude bilateral treaties with the USSR and RSFSR, and also sign the Union Treaty as a full-fledged constituent member of the Soviet federation (art. 5). The notion of sovereignty conveyed in Tatarstan's declaration departs from the conventional definition of the concept. Khakimov sought to reassure that Tatarstan did not share the Baltic States' more extreme view of sovereignty: in Lithuania sovereignty meant *secession* from the USSR whereas Tatarstan sought to “strengthen not abandon the Soviet state” (ST, 14.2.1991). Sovereignty, therefore, constituted an expression of a political programme: the republic claimed it constituted a state on par with, not subordinated to, the RSFSR and build its relationship with the Union and Russian governments on a bottom-up, treaty basis. The fundamentals of this political programme remained intact following the August 1991 putsch, failure of the Union Treaty negotiations

and collapse of the Soviet Union. Now, it would seek to have its status claims heeded by Russia and integrate the Federation as a founding and equal member, rather than a federal subject.

Following the collapse of the Soviet Union, the articulation of Tatarstan's status claims occurred in the context of increased nationalist mobilisation on the content and form of the Tatarstan state and its link with Russia. Indeed, nationalist groups were most active in Tatarstan in the period leading to the 1992 referendum on state status and the drafting of its constitution (Graney, 1999: 66; Kondrashov, 2000: Chap. 6 and 7). Radical groups criticised Shaimiev's and the TPC's policies as being too centrist and not doing enough to protect the interests of the Tatar nation. Consequently, *Ittifak* organised the first All-Tatar Congress (*Kurultai*), attended by Tatars from across the former Soviet Union. The Congress called for Tatarstan's complete independence from Russia, and adoption of Tatar as the republic's sole official language (Iskhakov, 1998c: 177-8). During the Congress, a Tatar National Assembly (*Milli Mejlis*) was elected to defend the interests of the Tatar nation. The powers which the Congress delegated to the *Milli Mejlis* included: confirmation of Tatarstan's government; Tatar language and cultural policy; appointing a Tatar national guard; the right to ban the activities of political parties and media opposed to Tatarstan's sovereignty (Resolutions and charters of the Congress in Iskhakov, 1998c: 164-71).

The republican elite quickly dismissed the legitimacy of these parallel institutions. For Vladimir Morokin, Russian People's Deputy from Tatarstan, by electing a *Milli Mejlis*, the Congress "created parallel power structures in an unconstitutional way" (RG, 7.2.1992). Khakimov welcomed the creation of the organisation, as long as it toned down its demands: a party which competed for power democratically and militated for official status for Tatar was fine, but to insist on the creation of a Tatar national guard was a step he feared would precipitate a crisis (ST, 1.2.1992). Shaimiev repudiated the ethnic nationalism and ethnocentrism of the Congress's proposals and sought to reassure Tatarstan's citizens – as well as Moscow – that he would continue to pursue autonomy in a "civilized and constitutional" manner. The path chosen by the "multinational people of Tatarstan" was the creation of "sovereign state based on the primacy of individual rights and the preservation of rights of its peoples" (ST, 25.12.1990). "Sovereignty", as Khakimov explains, is interpreted by the leadership "as an ideology for all of Tatarstan society" (Interview in Ovrutskii, 2000: 19). The concept of national and ethnic harmony in Tatarstan has been a constant theme in Shaimiev's rhetoric. In public speeches, he promotes a "republican identity", speaking of the rights of *Tatarstanty*, residents of Tatarstan and not only the rights of Russians or the rights of Tatars (Drobizheva, 2003; Interview with Khakimov, 2004). He was careful to reassure ethnic Russians in Tatarstan and leaders in

Moscow that sovereignty and the elevation of the Tatar language would not deprive Russians of their rights. Shaimiev played an important role in maintaining stability within the republic and Russian Federation in the early 1990s. He walked a thin line but successfully harnessed the claims of moderate Tatar nationalists by acceding to demands for language policies (which I examine in chapter 5), and also taking steps to promote and protect special status for Tatarstan within Russia.

The March 1992 referendum on Tatarstan's status represents an attempt by the leadership to harness nationalism and provide popular legitimacy of the leadership's strategy. The question put to the citizens of Tatarstan was the following: "Do you agree that the Republic of Tatarstan is a sovereign state, a subject of international law that builds its relations with the Russian Federation and with other republics and states on the basis of a treaty under which all parties are equal?" Walker notes the ambiguous wording of the question, e.g. "subject of international law" and "sovereign state" (Walker, 1996). The fact that these terms were retained instead of "self-determination" or "autonomy" is a signal that Tatarstan was committed to pursuing the political programme established in its declaration of sovereignty: not "secession", but special status and a confederal relationship with Moscow. This was a strong signal that republican elites sought a re-institutionalisation of a form of autonomous state, not separatism. A referendum on secession would likely have had a different outcome. Wording is a controversial issue in Quebec as well, where the terms "separation" and "secession" poll lower than "association" and "partnership". The Government of Canada enacted its Clarity Law (2000) in an effort to constrain Quebec to pose a "clear" question on secession during any future referendum.

Russia's leaders seized upon the ambiguities in the wording of the question to discredit the referendum. Vice-president Aleksandr Rutskoi urged the people of Tatarstan not to allow themselves to be swept away by the wave of nationalism, warning against "near-sighted politicians" seeking to gain "cheap popularity" by playing the nationalities card. Rutskoi, paradoxically emphasised the commonalities in Russia's and Tatarstan's histories – the common struggle against invasions of Napoleon and Nazi Germany – and the fact that both Russian and Tatars suffered during the Soviet era to plead Tatarstan's leaders and citizens to rethink the need for a referendum (RG, 13.3.1992). A group of Russian Peoples' Deputies challenged the clarity of the question before the Constitutional Court of the Russian Federation (RG, 6.3.1992). Deputies argued the referendum should be blocked on a procedural basis (three questions were asked to which only one yes or no answer was possible) and on a constitutional basis (deciding republican sovereignty is *ultra vires* Tatarstan's State Council).

The Constitutional Court handed down its ruling on 13 March 1992. It upheld Tatarstan's right to hold a referendum but limited it to issues which fell within the republic's exclusive sphere of competence. Insofar as the question proposes a change to Tatarstan's state structure and its position within Russia, the Court concluded it was unconstitutional. Similarly, the Court annulled provisions of Tatarstan's Declaration of sovereignty on the basis that the power to amend the state status of subjects of the federation is not within its jurisdiction. The ruling ignores the 1990 Soviet laws on which Tatarstan based its declaration, and places Tatarstan firmly within the constitutional framework of Russia: "The Court cannot ignore the fact that [...] Tatarstan's declaration of sovereignty fails to mention the republic is a component of the Russian Federation" (KSRF, 1992: par.1). The Court makes it clear that federal-regional relations in Russia must be based on the constitution and not on the basis of treaties. Moreover, treaties must respect Russia's constitution, which precludes any special status for the republic (KSRF, 1992: par.1). In the sole dissent, Justice Ametistov, the only court member appointed by Yeltsin, argued the RSFSR constitution allows for treaty-based relations and that moreover, he considered a Protocol signed by Russia and Tatarstan on 15 August 1991 established a precedent that Russia agreed with Tatarstan to base their relations on a negotiated treaty (KSRF, 1992).

The ruling is remarkable for two reasons. First, it is based on rather selective reading of the legal developments of the late Soviet period. Furthermore, it completely occludes the fact that in issuing its own declaration of sovereignty in 1990, Russia too violated the Soviet constitution. Second, the ruling is remarkable for the fact that it was practically ignored in Tatarstan and was not enforced by Moscow.³ The ruling prompted the Tatarstan State Council to clarify the purpose of the referendum: it was organised to elicit popular approval of the 1990 Declaration of sovereignty (art.1), not to approve secession from Russia or the unilateral modification of Tatarstan's boundaries (art. 2) (VSRT, 1992). The Constitutional Court's Chairman, Valerii Zorkin, called on the federal government to take steps to enforce his court's ruling. In an interview, he blamed the conflict in Tatarstan partly on "incorrect actions by the central authorities" that did not nip Tatarstan's sovereignty in the bud in 1990 (RG, 19.3.1992). For Sergei Shakhrai, Tatarstan's decision to ignore the court and proceed with the referendum was tantamount to a "coup d'état" (IZV, 17.3.1992). Yeltsin himself intervened with an appeal to the Tatarstan Supreme Soviet threatening the referendum would endanger the future of bilateral negotiations (RG, 20.3.1992). This was an empty threat, since bilateral negotiations on power-sharing agreements continued

³ It remained un-enforced until 2000, when two rulings by the Constitutional Court in June 2000 on republican sovereignty started the process of bringing republics' constitutions and statuses in line with the federal constitution. I examine this in greater detail in the next chapter.

unabated. Notwithstanding the legal ruling and political objections, the referendum took place peacefully: with 81.6 percent of Tatarstan electors turning out, 61.4 percent voted in favour and 37.2 percent against. While a breakdown of the vote by ethnicity is unavailable, the relatively high turnout and favourable votes indicate that a number of ethnic Russians in Tatarstan supported the referendum.

Entrenching Status: Tatarstan's 1992 Constitution

Having secured popular legitimacy of its status, Tatarstan's leaders sought to entrench it in a constitution. Zila Valeeva, vice-chair of the Tatar State Soviet, remarks that Moscow was thoroughly dissatisfied that the republic would adopt a constitution before the federal constitution-making process was complete. Mukhametshin sought to reassure Russian leaders by claiming the constitution was needed to address domestic concerns and block the spread of extremism and nationalism and promote interethnic and civic harmony, namely by declaring Russian and Tatar as equal official languages and protecting individual rights (*Pravda*, 21.11.1992). Since I trace the development of the language issue in a subsequent chapter, I proceed here with an examination of the entrenchment of Tatarstan's status and federal design.

In early 1992, the republican press featured articles on how Tatarstan's future constitution should reflect the republic's status in Russia. Does it belong, or not, in the Federation? (ST, 28.1.1992) Midkhat Faroukshin, Kazan State University political scientist and participant in the drafting process, expressed doubts (echoed by Tatarstan's leaders to this day) about the capacity of Russian federalism to accommodate Tatarstan's status: "As it is configured, [Russia] has always been and remains a federation on paper but unitary state *de facto* (*na dele*)" (ST, 19.1.1992). Consequently, Tatarstan leaders believed it was important to entrench the republic's sovereignty and the basis of its relations with Russia. During the State Soviet's debates over the constitution, Shaimiev intervened to define "associated status" to mean that Russia and Tatarstan would base their relations on a bilateral treaty, handle their problems jointly, and that Tatarstan's borders were inviolable (RG, 11.11.1992).

The 167-article constitution approved in 1992 expanded on the vision of Tatarstan as a "sovereign democratic state" which was established by the 1990 declaration of sovereignty (art.1). It reads more as the constitution of a sovereign state than of a federated unit: sovereignty is said to emanate from the people of Tatarstan, and only the people of the republic are empowered to change the republic's status (art.1 and 2). Article 59 established the supremacy of Tatarstan's laws and constitution.⁴ As Graney points out, Russia is

⁴ The supremacy of Tatarstan law is reaffirmed throughout the constitution: Tatar citizenship is pre-eminent (art.19); military service is set by Tatar, not Russian, law (art.58); Tatarstan Constitutional Court judges are

mentioned only twice in the constitution (Graney, 1999). First, in provisions on republican citizenship (art.19), which states that citizens of Tatarstan also possess Russian citizenship. Second, in article 61 and the key status provisions defining Tatarstan as a “subject of international law associated with Russia on the basis of a treaty on mutual delegation of authority”.

The document completely disregards the Constitutional Court's 1992 ruling that prohibited the republic from adopting provisions on its state status. This state status is the key element of its constitution, providing for a confederal federal design in which powers and competences are delegated from the bottom-up (*snizu-vernkh*). This position is wholly consistent with the status Tatarstan contends it obtained in 1990, and which its citizens approved in the March 1992 referendum. Like the 1990 Declaration of sovereignty, Tatarstan's 1992 constitution is a programmatic document, setting out the agenda for future federal-regional relations and development, and basing the bilateral relationship on a treaty which did not yet exist. In so doing, Tatarstan's leaders made a bet that Russia would conform to this agenda.

Counter-designs: Constitution and Federal Design in Russia

Russia too conducted discussions and negotiations on the content of a new constitution. Following Tatarstan's referendum on its status, the federal authorities signed the Federal Treaty⁵ with all but two federal subjects (Chechnya and Tatarstan). Tatarstan refused to sign the treaty, arguing it conceded less in terms of status and power than it would have received in the Union Treaty of 1991 (ST, 1.4.1992). Simultaneously, however, Tatar and Russian delegations met (30 March to 2 April 1992) to continue negotiations on a separate bilateral accord. The Federal Treaty maintained the existing three-tier federal structure (republics (ethno-territorial subjects), oblasts (territorial subjects) and autonomous *okrugs*) and consecrated strong constitutional asymmetries. Republics gained autonomous status while regions were treated as administrative units. The treaty acknowledges the “sovereignty” of republics, their right to self-determination and to the exercise “full state power” (art.3). Kahn notes the ambiguities and overlap in provisions on federal exclusive powers and joint powers. For instance, while the federal government has jurisdiction over federal taxation and tax collection, the power to establish principles of taxation is defined as a joint competence (Kahn, 2002: 124-32). The Federal Treaty, in sum, created a murky, if not unworkable, division of powers.

subject only to the norms established by the republican Constitution (Art 139) and no reference is made to Russian courts in Chapter 14 on the judicial system.

⁵ The Federal Treaty consists of three separate treaties, for republics, administrative bodies (*oblasts* and federal cities) and autonomous *okrugs*.

The Federal Treaty did not stem the tide of discontent. Regional leaders contested their second rate status while federal leaders objected to the confederal model of federalism which the Federal Treaty embodied. During the process of drafting the federal constitution, the ethno-territorial dimension was a key line of contention. Parliamentarians objected to the fact that no mechanism was in place to ensure the supremacy of Russia's constitution. Ramazan Abdulatipov, then Chairman of the Supreme Soviet's Council of Nationalities, framed the Federal Treaty as a political compromise but that it would not create a stable base for federal-regional policy (NG, 23.2.1993). Indeed, several regions declared themselves republics (e.g. Sverdlovsk in July 1993) to better profit from the economic advantages of republican status, notably ownership of natural resources. In his memoirs, Yeltsin admits that at the time it was not clear how to solve the problem of Russia's regions, but that work on the new constitution would help to clarify it (Yeltsin, 1994: 215).

Successive drafts of the federal constitution were published and even Yeltsin's "presidential draft"⁶ omitted differentiated status for republics. While the leaders of the republics sought to ensure their asymmetrical status was entrenched in the constitution, their claim to such status was strongly criticised. Republics based their differentiated status on the fact that they constituted a homeland to a titular nationality. Leonid Smirnyagin contested republics' claims for special status based on the fact they constitute homelands for national minorities by arguing that in many republics, the titular nationality was outnumbered by ethnic Russians, and in other cases the titular nationality was spread out throughout the country. Commenting on the Tatarstan case in particular, he writes "Its politicians are taking the lead in the struggle with the Federation for the regalia of statehood and miss no chance to emphasise their independence. However, in fact this independence expresses itself merely in a reluctance to pay federal taxes" (*Segodnya*, 22.6.1993). Republican status is viewed as a ruse to secure economic and other benefits. Leaders of predominantly ethnically Russian regions were unhappy that regions received fewer economic privileges by virtue of 'arbitrary' status and evoked the spectre of separatism (the chairman of Krasnoyarsk's Soviet, Vyacheslav Novikov called republican status a "bomb under Russia's future") to discredit differentiated status for republics (IZV, 24.6.1993). Governor Eduard Rossel justified the decision to raise Sverdlovsk's status to that of the Urals Republic on an argument of equality: "We are firmly convinced that all members of the Federation should be equal in terms of political, economic and legislative rights [...] and that the principle for dividing the country should be territorial" (IZV, 3.7.1993).

⁶ The President's draft was one of many circulating, including the 'Rumyantsev' or 'parliamentary' draft, which in contrast with Yeltsin's version, gave more powers to parliament (McFaul, 2001: 168-9).

For ethnologist Valerii Tishkov, “to say that power belongs only to the titular group is to embark on a disastrous path” (NG, 24.10.1992). Fear that titular status would lead to the disenfranchisement of ethnic Russians in republics was a key factor in these discussions, inspired particularly by the examples of the Baltic republics. Peoples’ Deputy Vladimir Morokin (a Russian from Tatarstan) argued Tatarstan’s constitution establishes “the preference for one nation over another—mild apartheid, so to speak” (RG, 7.2.1992). Oleg Rumyantsev, the secretary of Russia’s Constitutional Commission, evoked the situation in Yugoslavia to illustrate how the interests of Russian in Tatarstan are ignored, like those of Serbians in Bosnia (NG, 30.10.1992).

Fear of ethnic conflict, however, was not the sole motive in discussions about republics. Russia’s ethnofederalism was seen as contradicting democratic principles, and thus mortgaging the future stability of Russia’s nascent democracy: “In the long term, [asymmetrical ethno-federalism is] not sustainable, especially when it makes the creation of a common Russian (*rossiiskaya*) identity more problematic” (Oracheva, 1998). Consequently, proposals were made for the implementation of a civic identity (a pre-eminent *Rossian* identity in Tishkov’s parlance) (Tishkov, 1997; Tolz, 1998: 104-6; Opalski, 2001: 306-7). However, in a state as ethnically homogeneous as Russia⁷, there is little doubt that a policy of civic *Rossian-ness* (with Russian as the state language) would quickly create the conditions for increased assimilation of minorities. The argument in favour of diversity was articulated mostly by republican leaders during the constitutional negotiations. Sakha president Mikhail Nikolaev argued the preservation of differentiated status is desirable because it is a system which can “most fully reflect the diversity of the Russian Federation” because “What is characteristic of Tatarstan is not characteristic of Dagestan, and vice versa” (NG, 17.8.1993).

The constitutional conference which was formed to consider Yeltsin’s ‘presidential draft’ in June 1993 consisted of 762 members, including four representatives of each subject of the federation (RV, 8.6.1993) Khakimov criticised the composition as ignoring the rights and interests of Russia’s national units:

The triumph of a mechanical majority at the conference is causing profound disappointment in the forms of democracy that are taking shape. [...] Apparently the organisers of the conference decided to ensure a numerical superiority of votes so that the republics wouldn't even think of defending their interests (NG, 24.6.1993).

Tatarstan withdrew from the conference since the draft did not provide special status for the republic and as Shaimiev and Mukhametshin made clear, they believed the constitutional conference ignored the interests of republics and especially their right to self-

⁷ Russians account for over 80 per cent of the population; Tatars are the largest minority with 3.8 per cent (one-third of whom live in Tatarstan).

determination. Shaimiev repeatedly stated Tatarstan would not agree to a constitution which did not recognise the bottom-up, bilateral nature of its relationship with Russia (NG, 25.6.1992). In the meantime, the deadlock between the president and Supreme Soviet and inability to secure approval of the constitution provoked Yeltsin to issue his Decree no. 1400, which disbanded the parliament and gave him the power to rule by decree until a new constitution was approved and a new parliament elected (McFaul, 2001: 191-204). While federal leaders claimed that a majority of citizens approved the constitution in the December 1993 referendum, it was rejected by the populations of seven republics (NG, 18.12.1993). The vote was invalid in Tatarstan due to low turnout.

The federal design which emerged at the end of 1993 broke considerably with the asymmetrical federalism embodied in the Federal Treaty and in previous drafts. Article 5 established the basic principles of Russia's federal structure. While various types of federal subjects are maintained (republics, regions, autonomous regions, etc.), all subjects are equal (§1). §2 introduced a slight constitutional asymmetry by providing republics the right to establish constitutions while other federal subjects are allowed to implement charters. §3 states that the state structure of the Russian Federation is based on its state unity, the unity of executive power, the division of powers and competences between federal and regional bodies of state power and the equality and self-determination of the peoples of the Russian Federation. This section was interpreted in very different ways in the years after 1993 by regional and federal governments and the courts. Tatarstan's leaders argue this clause enshrines the principle of divided sovereignty, and thus empowered it to maintain its status of 'sovereign state'. Russia's courts, on the other hand, interpret the clause as precluding any joint sovereignty. I examine these conflicting interpretations in greater length in the next chapter. Another constitutional asymmetry is introduced by article 68 in favour of republics: they can adopt a state language in parallel with Russian (§2). For all intents and purposes, this is the extent to the constitutional asymmetries established by the 1993 constitution.

Although the Federal Treaty was incorporated into the constitution, the constitution's provisions on regional competence are supreme. Thus many of the powers acquired by republics (e.g. ownership of natural resources, the power to determine their state structures) were mooted. On the division of powers, article 71 lists exclusive federal powers while article 72 outlines areas of joint jurisdiction. Subjects of the federation are given all residual powers (art.73). However, a specificity of Russia's system of joint competences is established by article 76: subjects of the federation can legislate in areas of joint jurisdiction to the extent that they do not contradict federal law in the same area (§5). In other words, in all areas of joint jurisdiction, federal legislation is paramount.

The Russian Constitutional Court has upheld this division of competences in several rulings. In a 1997 ruling on the taxation system – a joint competence under the constitution (art.72§1(i)) – the Court found that:

even in the absence of a federal law on the general principles of taxation and charges, recognition of the right of subjects of the Russian Federation to regulate matters of joint jurisdiction ahead [of the federal lawmaker] would not automatically grant them the competence to resolve all issues relating to said principles to the extent to which they have universal importance both for the lawmakers of subjects of the Russian Federation and the federal lawmaker and, therefore, [the competence] must be regulated by federal law (KSRF, 1997: par.2).

In a similar case, the republic of Karelia challenged the federal Forestry Code on the basis that the Federal Treaty and its own bilateral treaty with Russia prevented the federal government from legislating on the use and protection of the forestry. The Court rebuffed Karelia, arguing that in case of divergences between provisions of the Federal Treaty, bilateral agreements and the federal constitution, only the latter is valid. Moreover, since the regulation of natural resources is a joint competence (art.72§1(v)), it is within the federal government's prerogative to legislate as it sees fit (KSRF, 1998a: pars.4-6).

The 1993 constitution provides the federal government with important powers of monitoring and control over the subjects of the federation. Article 77§2 establishes that in the exercise of joint competences, federal and regional bodies of executive power consist of a “unified system of executive power”. Moreover, the president is empowered to resolve differences between federal and regional bodies (art.85§1). The constitution allows the president to suspend normative acts of subjects of the federation which contradict the federal constitution, but does not define the concrete mechanism by which this is to be accomplished (art.85§2).⁸ The power of disallowance is controversial, since a key tenet of federalism is that federal and regional components of a federation are independent within the sphere of their competences. Similar provisions in Canada's 1867 constitution (s.90) led Wheare to classify Canada as a quasi-federation (Wheare, 1946: 15). Graham Smith interprets these clauses in Russia's constitution as a clear affront to the federal principle (Smith, 1998: 1395-6). In Canada, a total of 112 provincial laws were disallowed. The last case of disallowance occurred in 1943 (Bélanger, 2001). In Canada, this power is regarded as having fallen into disuse, and for all intents and purposes is archaic. In Russia, while the Yeltsin or Putin have not suspended a regional leader or legislature for failing to respect the federal constitution, regional laws and constitutions are regularly challenged by federal prosecutors and courts, as I examine in greater detail in the next chapter.

Although Russia's constitution establishes a centralised federal design and creates the basis for virtual federal hegemony in joint competences, several provisions add

⁸ The mechanisms by which the president could use his powers of disallowance were spelled out in federal laws passed in 1999 and 2003, examined in the next chapter.

flexibility. Thus, even if the basis for federal control is strong, the use of these powers is contingent on federal leader's decision to implement them. The constitution establishes the possibility of federal-regional coordination of policy and competences: article 78 (§2-3) permits the delegation of competences between levels of government, as long as this delegation "does not contradict the constitution or federal law". Article 11§3 allows the use of bilateral treaties and agreements as the means to delegate competences. Although article 11 does not specify the limits of bilateral delegation, the provisions in article 78 tend to limit the use of treaties to the existing division of competences, that is, an exclusive federal power cannot be turned into a joint power or given exclusively to a regional government.⁹ In 1993-94 these provisions on power-sharing provided crucial flexibility to Russia's federal design to accommodate Tatarstan's claims.

Bridging the Constitutional Divides: The 1994 Bilateral Treaty

Following the referendum in December 1993, Yeltsin issued an order which resulted in a round-the-clock effort to formalise a bilateral agreement with Tatarstan (NG, 16.2.1994). Scholars describe the treaties as *ad hoc* accommodations (Kahn, 2002: 4). In the case of Tatarstan, the treaty process was far from *ad hoc*, and as Hughes argues, *ad hoc* is often mistaken for *ambiguous* in the literature about the treaty (Hughes, 1996: 43). Indeed, delegations were in place for years (e.g. Sergei Shakhrai, Gennadii Burbulis negotiated for Moscow, Farid Mukhametshin, Rafael Khakimov, Marat Galeev for Tatarstan). Moreover, bilateral negotiations were ongoing and had already produced a number of intergovernmental agreements, the content of which remained secret for years. During 1992 and 1993, twelve intergovernmental agreements were signed.¹⁰

For Stoner-Weiss the treaty subverted Russia's constitution: "Tatarstan's stubbornness in particular led to the establishment of a dangerous precedent in centre-

⁹ In several rulings by the Russian Constitutional Court in June 2000 which I examine in the next chapter, the court stated that treaty provisions cannot overstep the division of powers established by articles 71-3 of the constitution.

¹⁰ In chronological order, the intergovernmental agreements and key points are the following: On economic cooperation (22 January 1992, grants ownership of natural resources within RT to its people); On oil transport and production (calls for cooperation); On cooperation on environmental protection (reaffirms that jurisdiction over issue is shared); On higher education (5 June 1993, reaffirms that education is area of joint jurisdiction, agreement to recognise diplomas issued by Tatar institutions and commitment to reach agreement on funding); On state Property (22 June 1993, property in RT belongs to the republic apart from list of exceptions stipulated in agreement); On defence industry and production; On the coordination of fight against crime; On division of competences in foreign economic relations (restates constitutional division of powers, and calls for coordination within areas of joint jurisdiction); On the military (reaffirms the existing constitutional division of powers and Russia's exclusive competences); On bank affairs, monetary, credit and currency policy (restates Russia's exclusive powers); On Customs (states the division of fees, taxes and revenues to both RT and Russia per agreement on budget cooperation); On budgetary cooperation (most substantial accord, setting RT's payments to federal budget (proportion of VAT to be transferred to federal budget to be determined in yearly agreements) and revenues which RT could keep (including accise taxes on alcohol, oil and gas, etc.).

periphery relations” (Stoner-Weiss, 1997: 239). Solnick qualifies Russia as an already very asymmetrical federation in 1994 (Solnick, 1998). Yet, as I have examined above, the 1993 constitution created very few *constitutional* asymmetries. The bilateral treaties created a number of *political* asymmetries which perpetuated the ambiguities and contradictions in Russia's and Tatarstan's constitutions and conceptions of federal design. But these scholars' assessments ignore (just as the Russian leadership in 1993 ignored) the precedents of the late Soviet period and the *status quo* which Tatarstan claimed deserved to be recognised. I argue that the 'dangerous precedent' in Russia-Tatarstan relations is not the bilateral treaty *per se*, but the lack of correspondence between their constitutions. Thus, it is not treaty relations which are inimical to federal stability, but the contradictions and asymmetries which resulted in practice and in political behaviours during the 1990s. The fact that Tatarstan shielded its laws from federal court rulings and from federal laws on the basis of its bilateral treaty is criticised (Kahn, 2002 provides an in depth assessment of the contradictions which emerged). But studies of legal contradictions and ambiguities have not addressed the question of why legal dissonance mattered and overlook the crucial significance of the treaty and treaty process as a tool for accommodating Tatarstan's claims and constitutional disagreements.

The lack of correspondence between Tatarstan's and Russia's constitutions, and indeed the different visions of federal design and political community they embodied, is striking. Russia's 1993 constitution, as I examined above, laid the groundwork for a centralised federation, and placed Tatarstan firmly within Russia's constitutional and federal order. Under its terms, Tatarstan is a republic within the Russian Federation (art.65), the status of which is determined by the federal constitution (art.66§1) and subject to the provisions analysed above on the division of competences. Tatarstan's constitution, on the other hand, hardly acknowledged Russia at all, defining it as a sovereign unit associated with Russia on the basis of an as of yet inexistent confederal treaty. In its constitution Tatarstan views itself as the source of authority and the delegation of competences as proceeding from the bottom-up. (Powers which were never really Tatarstan's to begin with – for instance, defence, state security and communications –were 'delegated' to Moscow in 1993 (NG, 15.1.1993)). For Tatarstan's leadership, the basis of this confederal relationship was laid in 1990, and confirmed by referendum and in its constitution.

While the 1994 treaty “On the Delimitation of powers and competences between the state bodies of Russia and Tatarstan” does not eliminate the contradictions between Tatarstan's and Russia's constitution, it provided a means to look beyond the conflict and bridge the constitutional disagreements. Negotiations on the 1994 treaty enshrined a process of intergovernmental accommodation. The accompanying intergovernmental

power-sharing agreement allowed for a regulation of shared competences, even though some of their provisions contradicted the federal constitution. The treaty's preamble defines Tatarstan as a "state united with Russia on the basis of the federal constitution, Tatarstan constitution and the treaty" (The text is published in Guboglo, 1997: 247-52). For Tatarstan's leaders, this is by far the treaty's most significant clause since it formalises the status which it claimed since 1990. The remainder of the document establishes the division of competences between both levels of government. Apart from a limited number of exceptions, competences which the constitution assigns to the federal government are identical to those in the treaty.¹¹ Significant contradictions between the treaty and federal constitution appear in the sections on Tatarstan's exclusive competences and joint powers; on issues which the constitution lists as joint but which the treaty delegates Tatarstan (art.2). These powers are mostly on economic issues, many of which were the subject of separate intergovernmental agreements (ownership and use of natural resources and state property; independent foreign economic activity; conversion of state enterprises; and the creation of a national bank).

The treaty establishes a norm of interpretation of shared competences which differs substantially from the federal constitution. Whereas the constitution's article 76 establishes a hierarchy between federal and regional law in areas of joint jurisdiction, the treaty prohibits either level of government of legislating in the other's sphere of powers and that conflicting laws on joint powers are to be resolved by joint agreement (art.6). By making bilateral political negotiation the main dispute settlement mechanism, the treaty sought to insulate Tatarstan's laws in areas of joint jurisdiction from judicial review. (But as I examined above, the Russian Constitutional Court did not consider itself bound by treaty provisions which contradicted the division of powers established by the federal constitution.) The treaty was signed by both presidents Yeltsin and Shaimiev, in Russian and Tatar. The intergovernmental agreements were signed for a five-year period and renewed in 1999 with the caveat they could be modified anytime on mutual agreement. No termination date was specified for the treaty, except that it cannot be amended or cancelled unilaterally. This notwithstanding, the treaty is subject to the requirements stipulated in the 2003 Law on the division of powers (examined in the next chapter) which rendered all treaties null and void unless approved by both federal and regional assemblies by July 2005.

The 1994 treaty bridged the gap, at least politically, between Tatarstan's and Russia's constitutions. For Shaimiev, the treaty and intergovernmental agreements "lent legitimacy to the relations of Russia and Tatarstan" and recognised "Tatarstan's sovereignty over the

¹¹ The exceptions concern federal powers which the treaty lists as joint, including citizenship, fiscal policy and regional development, the management of federal property and production and sale of arms.

decision to determine the powers which [it] leaves to [itself] and those powers which are delegated to Russia" (ST 15.2.1995). The Chairman of the World Congress of Tatars, Indus Tagirov frames the treaty's importance as legitimating and recognising Russia's and Tatarstan's sovereignty (ST, 30.3.1994). Indeed, for political advisor Khakimov, Russia's 1993 constitution is illegitimate since it was adopted without Tatarstan's consent but it "is recognised thanks to the treaty" (Interview in Ovrutskii, 2000: 37). The treaty responded to Tatarstan's claims for recognition and jurisdiction, as Mukhametshin makes clear on the occasion of its fifth anniversary: "Gradually Tatarstan obtained a new status within the Russian Federation, and has developed its own economic and political systems" (TBDR, 12.2.1999).

For his part, Yeltsin explained his rationale for signing the treaty in a national address on federal-regional relations in 1997:

In order to solve some very difficult and divisive problems with Tatarstan, in 1994 we used an entirely new kind of constitutional tool for the very first time. I'm referring to the bilateral agreement on the demarcation of powers between federal and regional government bodies. At the time, this tool served as a kind of emergency political first aid. It forestalled the danger of a split in the Federation (Yeltsin, 1997: 3).

In the same address, Yeltsin justified the extension of treaty practice to other subjects as providing regions with powers to address specific regional needs and problems: "We are going to live in a stable and prosperous state [...] whose might will grow from year to year through the riches and true independence of all its constituent regions" (Yeltsin, 1997: 3). Although the treaty violated the federal constitution (containing at least nineteen violations, according to Lysenko (1997: 184-6)), it was hailed by Russia's leaders as heralding the value of cooperation. For former Yeltsin advisor Mikhail Krasnov, "Formally [the treaty] contradicted several provisions of the constitution, but politically it was useful in that it initiated the search for compromises" (NG, 27.7.2001). The deputy representative of Tatarstan in Moscow, Mikhail Stoliarov concurs, adding the treaty helped "consolidate the country" (Stoliarov, 2003: 95). The treaty is deemed a valuable transitional tool since it "fixed the *status quo* between Russia and Tatarstan, thus ushering in a period of political predictability in Russo-Tatarstan relations" (Zverev, 1998: 143). Russian negotiator Sergei Shakhrai imputes the success in the negotiations to the unpoliticised and technical manner in which the negotiations were conducted (Shakhrai, 1997: 153). Khakimov, a member of Tatarstan's negotiating team, attributes success to the fact that intergovernmental coordination and negotiation occurred on three levels simultaneously (political, governmental and ministerial), each reinforcing the other (Khakimov, 1996: 75-6).

But as I have examined, the treaty did not 'solve' any of the underlying contradictions in both Russia's and Tatarstan's constitutions. It addressed Tatarstan's claims

for recognition. But on questions of jurisdiction, the treaty added confusion to Russia's federal design (Hughes, 1996: 43). Throughout the 1990s, Tatarstan's leaders used the treaty as a foil to legitimise laws which contradicted the federal constitution. Indeed, the treaty was interpreted in Tatarstan as allowing "treaty-constitutional federalism", argued as more responsive to regional differences than the "constitutional federalism" embodied in Russia's 1993 constitution (Khakimov, 1996: 70). The treaty-constitutional federalism of the 1994 treaty "means that Moscow does not demand that Tatarstan bring its Constitution into line with the Constitution of Russia" (Khakimov, 1996: 76).

Accommodating Conflicting Claims

Although the treaty responded to Tatarstan's demand for recognition, the persistence of constitutional disagreements on federal design, and particularly on the division of competences, led to a practice of a 'treaty-constitutional federalism'. This gave rise to contradictions in laws and policies, arising from ongoing conflicting interpretations of the federal and Tatarstan constitutions, as well as court rulings. I examine two examples below. The first example, regarding a constitutional requirement for candidates to the post of president of Tatarstan speak both state languages, illustrates the tenacity of Tatarstan's demands for jurisdiction. These provisions have been maintained in the face of political pressure and judicial challenge. The second case, on inter-budgetary relations, illustrates the way in which bilateralism created a basis for a stabilisation of Russia and Tatarstan's relationship. Tatarstan's agreement on inter-budgetary matters was a significant achievement in the 1990s granting the republic significant fiscal and financial advantages. In 2000, republican leadership decided to abandon the agreement and adhere to Russia's system of fiscal federalism. In this case, treaty-constitutional federalism provided a basis for a transition to more constitutional federalism.

Under article 108 of the 1992 constitution, only citizens of Tatarstan who speak its state languages can stand for election to the presidency. The law On the Election of the President of Tatarstan stipulated that the president must speak *both* languages (1995 version).¹² Neither document defines the precise standard of language knowledge required. Tatarstan insisted its status of republic allows it to keep these provisions intact even though the courts have deemed them unconstitutional. The law, however, was never enforced during the election campaigns, which Shaimiev handily won. Midkhat Faroukshin believes the government was reticent to apply to language requirement for it could have provided prosecutors grounds to overturn the elections' results or dismiss the republican government (Interview with Faroukshin, 2004).

¹² The provision was dropped from the 2004 version of the law.

Although it remained un-enforced, Tatarstan's leaders refused to follow a 2001 decision by the Russian Constitutional Court and have kept the language requirement in their constitution (art.91 in the 2002 version). The constitution of the Republic of Adygeia has a similar language requirement to Tatarstan's – stipulating candidates speak (*vladet'*) both state languages. Adygeia argued that it is within republic's sphere of competence to manage their state languages, following article 68 of the federal constitution. As such, bilingualism for presidential candidates is a prerequisite for the “successful execution of the president's duties” and not a basis for discriminating against potential candidates (KSRF, 2001b: par.1). The Court, however, viewed the issue as a violation of citizens' “passive electoral rights” – the right to stand in elections – and thus struck down the provision (Ibid.: par.1).¹³ Since the protection of electoral rights is a shared competence, federal subjects' legislation cannot reduce the level of protection that is offered by federal law and the federal constitution (KSRF, 2002). The Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities also criticised such provisions as limiting the objectives of the Framework Convention's article 15 to promote the participation of minorities other than the titular group in the political and electoral process (CoE, 2002: 26).

On the basis of these rulings, Tatarstan's Supreme Court struck down the language requirement in both Tatarstan's law on presidential elections and its constitution (in February 2001 and April 2004 respectively). In both cases, the courts refused to take account of the State Council's argument that it was within its power to legislate on matters pertaining to the republic's state languages (RT, 6.2.2003). Khakimov believes the language requirement will not be removed from the republic's constitution because it constitutes “not only a symbol but an important question of state, promoting balance in the republic” (Interview with Khakimov, 2004). For his part, Shaimiev argues the issue is a question of minority rights: he contrasts Tatarstan's provision, presented as fostering bilingualism and protecting multinationalism with Russia's constitution and electoral law seen as promoting assimilation.

“The Russian law on electoral rights does not establish norms regarding the knowledge of state languages in the subjects of the federation. In Tatar law there is a norm which states that only an individual who speaks two state languages – Tatar and Russian – regardless of nationality, may be elected president. I am told that Tatarstan's law limits the electoral rights of those candidates who do not speak Tatar. On the other hand, however, isn't it a limitation of the rights of 1.5 million Tatars, half of our electorate, if they cannot address their president in their native, and what is more, state language? Indeed in Russia a non-Russian speaker cannot be elected President” (Shaimiev, Interview in NG, 2.12.2000).

¹³ In a 1998 ruling on the constitutionality of Bashkortostan's law on the presidency, the court reserved judgement on a similar issue because while the law established a language requirement, the republic had not yet enacted any legislation on its state languages (KSRF, 1998b).

There are two dimensions to this statement: the federal government's attitudes to multilingualism and the tension between group and individual rights. On the first dimension, Shaimiev contends that even if multilingualism is not a concern for the federal government, this is not a compelling reason to prohibit a language requirement in Tatarstan. There is a concern that the centre is not sufficiently sensitive to the multilingual character of its subjects. The language requirement is a powerful political symbol. However, the fact the provision lacked precision and it was never implemented reveal the existence of a degree of ambivalence within Tatarstan on the effectiveness and utility of such a norm. Second, the statement reveals tension between conceptions of group and individual rights. The chairman of the Tatarstan State Council Committee on Science, Education, Culture and National Issues, Razil' Valeev, evokes this tension directly: "What is higher: one person's rights or those of a few million Tatar-speakers?" (Interview with Valeev, 2004) The right to stand for election is contrasted with the right of all citizens to receive information from and communicate with their president in Tatarstan's state languages. Tatarstan's Constitutional Court (whose role is examined in more detail in the following chapter) issued a contradictory ruling on these provisions and upheld the language requirement as it protects the right guaranteed by Tatarstan's constitution to communicate with and receive information from the state in both state languages (KSRT, 2003a). According to Valeev, the republic will not budge on the position and amend its constitution, since the language requirement is no different than any other job requirement (Interview with Valeev, 2004). The provisions remain in place, even though since 2004 Tatarstan's president is no longer elected but appointed by the federal president. While this has mooted the issue of the language requirement for the foreseeable future, a situation in which the Russian president appointed a candidate who does not speak Tatar to the Tatarstan presidency would almost certainly revive the polemic. This example serves to demonstrate how Tatarstan uses its claim to special status in Russia as a basis for maintaining legislation and constitutional provisions which federal courts reject as unconstitutional.

The second example addresses the intergovernmental agreement on budgetary cooperation signed in 1992. This agreement is undoubtedly the most significant of the bilateral accords from the perspective of the distribution of powers since it provided Tatarstan the right to withdraw from Russia's system of fiscal federalism and gave it independent sources of revenue to carry out "voluntarily delegated competences of the Russian Federation" (art.1, published in Guboglo, 1997: 416-18). The agreement mandated both parties to determine on a yearly basis the amount of VAT revenues which would be retained by the republic and how much would be forwarded to the federal treasury. The agreement's provisions were the subject of intense negotiations in March 1999, when all

intergovernmental agreements needed to be reviewed (TBDR, 16.2.1999). Negotiations were blocked on the percentage of tax revenue that Tatarstan would be allowed to keep. While all Tatarstan's bilateral agreements were renewed for a further five years, the protocol stipulates that the inter-budgetary agreement would be revised on a yearly basis (RF, 1999b).

The agreement was dropped in December 2000, when Tatarstan announced it "joined" Russia's inter-budgetary system and would open a branch of the federal treasury in the republic. Although the issue was reported to have been the subject of intense negotiations during 2000, little justification for the change appeared in the press. Tatarstan's Prime Minister Minnikhanov claimed the republic would lose 30-40 per cent of its revenues by joining the federal budget system (TBDR, 18.8.2000). Tatarstan, however, was amply compensated for the change with the *Federal Programme on Social-Economic Development of Tatarstan 2001-2006* promising transfers of 160 billion roubles over five years (RF, 2001b). This amount nearly matched the revenue which Tatarstan claimed it would lose by abandoning its bilateral agreement.¹⁴ The Federal Programme is winding down, the end of which is expected by Tatarstan's Finance Minister to create a budget shortfall of \$300 million in the next years (V&D, 9.12.2004). Federal Finance Minister, Alexei Kudrin, indicates that after the end of the special programme, Tatarstan will be eligible for federal funds through existing government investment programmes on equal terms with other federal subjects (TBDR, 8.8.2005).

For the purpose of comparison, Tatarstan's current position in Russia's fiscal federalism conforms closer to the practice in other federal systems, such as Canada's. Canada's constitution guarantees provinces the right to raise funds by direct taxation (s.92). But in addition to this, the Government of Canada uses two mechanisms to transfer funds to provinces. These are not *ad hoc* transfers, but established and recurring programmes. First, federal transfer payments are made to assist in the provision of programmes and services in healthcare, post-secondary education, and social services. Transfers are conditional: they must be used to fund policies in these areas. In 2004-05, federal transfers accounted for about 26 per cent of provinces' revenues. Transfers to Quebec for 2005-06 are estimated at nearly \$15.6 billion (Canada, 2005b; Canada, 2005c). Second, equalisation payments are made to provinces in order to reduce disparities between provinces. Payments are unconditional and based on an established formula. Quebec receives nearly half of the

¹⁴ Under the terms of its 1992 bilateral agreement (as revised in 1999), Tatarstan retained 75 per cent of income tax receipts as well as VAT and tax revenues (IZV, 25.11.2000). In 2001, Tatarstan fell in line with other federal subjects: it would keep only 40 per cent of income tax receipts and transfer all VAT and duties on oil and alcohol sales to Moscow (IZV, 25.11.2000; TBDR, 19.3.2001; 5.9.2001). Effects of the change were immediately visible: in 2002, Tatarstan transferred 160 per cent more to Moscow than in 2001 (RT, 18.3.2003): 49 per cent of taxes collected went to Moscow, 25 to the republican budget and 26 divided among municipalities (TBDR, 13.11.2002). In 2004, the republic was the largest contributor to the federal budget among federal subjects in the Volga Federal District (TBDR, 28.12.2004).

total of equalisation payments (Canada, 2005a). Although the issue of federal transfers are eminently political, as a matter of policy they are routine and not the object of *ad hoc* manipulations or bilateral exceptions. The 1992 intergovernmental agreement on inter-budgetary relations introduced significant political asymmetries in Tatarstan's favour. The agreement provided a basis for a long-term 'routinisation' of fiscal relations, and helped facilitate the republic's integration into Russia's fiscal space nearly a decade later.

Conclusion

As I have examined in this chapter, the treaty and agreements accomplished two things. First, they engaged Tatarstan and Russia's leaders in a process of intergovernmental negotiation, providing a degree of continuity and fluidity to their relations. The treaty, in sum, institutionalised a process of bargaining and political compromise (Hughes, 2001b: 62-63). Second, the accommodation of Tatarstan's claims for recognition, mainly through the 1994 treaty, bridged the contradictions which existed between the federal and republican constitutions by creating an alternative institutional channel, as well as a basis for political or patrimonial ties between Shaimiev and Yeltsin. Both sides agreed to close their eyes on the contradictions inherent in their constitutions and in the treaty itself. Meanwhile, the leaders of Russia and Tatarstan each infused their own meaning in the significance and role of the treaty and model of federal-regional relations it establishes. It appears we are in the presence of what Foley terms a constitutional abeyance:

"the element of dormant suspension implicit in what appear to be explicit constitutional arrangements, and the attitudinal habits of wilful neglect, protective obfuscation, and complicity in non-exposure, require to preserve the effectiveness of abeyance in deferring conflict and containing unresolved points of issue" (Foley, 1989: xi).

Shaimiev and Yeltsin concentrated not so much on the contradictions inherent in the constitutions and the unconstitutionality of some of the treaty's provisions, but on the importance of the process and of the symbol; the importance of the abeyance mechanism. Thomas would characterise the 1994 bilateral treaty as an example of an "unsettled settlement" (Thomas, 1997: xii). By not defining institutional arrangements in too much detail, the treaty built in a degree of flexibility, and simultaneously provides recognition and vindication of both parties' contradictory positions and federal visions. The political exigencies of the context led leaders to accept to live perhaps more in the spirit of federal accommodation than by the letter of the law.

For Walker the treaty forced Russia "to grow into federalism by negotiation" (Walker, 1996). I think it is appropriate to expand on this and add that the treaty forced Tatarstan to also grow into constitutional federalism. The treaty does not *solve* constitutional contradictions or establish a basis for a clearer division of powers. As Khakimov explains,

“It’s political, above all” (Interview in Ovrutskii, 2000: 36). It provided a basis for the metastability of Russia’s federalism, a view that Shakhrai holds: “the contradictory and unique experience of the “Tatarstan model” serves as a reminder” of the value of federalism in Russia (Shakhrai, 2001: 9).

In this chapter, I examined the nature of the constitutional disagreement – of the stateness dilemma – between Russia and Tatarstan, and the republic’s claims for recognition as a “sovereign state united with Russia” and for jurisdiction. The confederal model of federal design advocated by Tatarstan’s political elites was not reflected in the constitution adopted by the Russian federal government in 1993. The federal constitution, by contrast, implemented a federal design with a penchant for strong central control, which denied Tatarstan the status and powers it sought. The bilateral treaty signed in 1994 bridged these competing visions, and provided for recognition of Tatarstan’s status as a state “united” with Russia and for a confederal division of competences between the two states. But the treaty’s advantage – and the ambiguities and contradictions on which it rested – also constitute its greatest weakness. Tatarstan’s treaty lacks firm grounding within the federal constitution, and is predicated on leaders’ willingness to compromise on a number of contradictions and ambiguities. Because the stability of this system depends on a narrow institutional consensus and non-transparent executive relations, it is not insulated from a change in circumstances or leadership (Hughes, 2001b: 58). Putin’s accession to the Russian presidency in 2000 signalled the ascendancy of greater centralisation over bilateralism and the ‘unsettled settlement’. Putin’s federalism emphasises the importance of increased symmetry in federal-regional relations as a means of consolidating a power vertical under his control. This was the impetus for his speedy reforms of the federal system to eliminate the contradictions in Russia’s and Tatarstan’s constitutions.

Chapter 4. Collaborative or Hegemonic? Conflicting Visions of Federalism in Putin's Russia

As long as there is federalism in Russia, we are alive (Rafael Khakimov, April 2004).

Our county's internal diversities constitute its competitive advantage in the world arena. Therefore the contradictory and unique experience of the "Tatarstan model" must be put into the service of Russia (Sergei Shakhrai in *Nezavisimaya Gazeta*, 27 February 2001).

In this chapter, I examine the developments in federalism in Vladimir Putin's Russia. Putin's federal reforms represent a move away from the practice of asymmetrical negotiated federalism in favour of a centralising interpretation of the 1993 constitution. In other words, the objective was to settle many of the "unsettlements" – for instance, asymmetries and contradictions between federal and regional laws and constitutions – and reassert the primacy of the constitution and federal control. *A priori*, therefore, these reforms appear to target Tatarstan's differentiated status. Analysis of the nature of Putin's reforms and their implementation in Tatarstan provide a window on how Tatarstan's claims for recognition and jurisdiction have fared. Although republican elites continue to advocate a different model of federalism based less on federal control or hegemony and more on regional autonomy, they complied with many of Putin's reforms. Constitutional changes in Tatarstan acknowledge the republic's place within Russia, and increasingly, its leaders argue that Russia needs more, not less, federalism. The shift is significant – although Tatarstan continues to advocate a different model of federalism, it does so within the context of Russia's changing presidential politics and how this impacts on federal design. That is not to say that Tatarstan has abandoned its claims for recognition and jurisdiction. The 1994 bilateral treaty, although stripped of many of its operative and power-sharing provisions, continues to perform important political functions. The importance which Tatarstan's elites continue to attach to the treaty and to the model of cooperative federalism it embodies is intact: the treaty serves as a reminder of what federalism was and could be in the Russian Federation.

The chapter is organised as follows. First, I examine Putin's institutional changes to Russia's federal design, the federal government's conception of the division of competences, and key Constitutional Court rulings on the status of republics. Second, I analyse the counterview proposed by Shaimiev of the division of powers and federal design and turn to the way in which Putin's reforms were implemented in Tatarstan. Finally, I assess the role of Tatarstan's bilateral treaty in the current context.

Putin's Federal Reforms¹

Putin shows a keen awareness of the abuses of power that resulted from negotiated federalism and the lack of federal control over Russia's regions. For Kahn, Putin's reforms "... were, more than anything else, a reaction to Yeltsin's federal legacy of weak institutions and lack of consensus on basic questions of sovereignty and inter-governmental relations in a federal state" (Kahn, 2002: 277). Upon acquiring power in 2000, Putin set out to re-establish a 'power vertical' in the federal system, roll back the asymmetry which had come to characterise the system and restore federal-regional relations on the basis of the 1993 constitution. Of particular concern was the legislative and constitutional dissonance which existed between federal and regional governments. In 2000, Russia's Prosecutor General reported that 70 per cent of regional legislative acts deviated from federal legislation, and 34 per cent contradicted the federal constitution (Hyde, 2001: 731). According to the Russian Ministry of Justice, eighteen of twenty-one republican constitutions, and a third of 16,000 laws it examined contradicted federal law (Kahn, 2002: 173).

The reforms Putin carried out were not new but had been discussed since 1996. Whereas Yeltsin's attempts at federal reform had been ignored,² Putin followed up on his promises for change and implemented concrete reforms from the very start of his term. Putin's annual address to the Federal Assembly in July 2000 unveiled the strategic direction as well as the famous formula, 'dictatorship of the law'. Putin voiced much concern on the question of the effectiveness of the state: indecision and weakness of state structures reduced policy and governance capacity. The time had come to bridge the regional "islets of power" and reassert central power (Putin, 2000). Regional autonomy was seen to have taken the upper hand and created situations in which "... centrifugal forces had gained such momentum that they were threatening [to destroy] the state itself" (Putin, quoted in *RFE/RL Newslines*, 8.10.2002). Putin criticised the lack of transparency of bilateral treaties, arguing under Yeltsin: they were concluded "behind the backs of constituent units of the Federation" and "without any preliminary discussion and the securing of a public consensus" (Putin, 2002). Putin does not condemn the principle of treaty-making, conceding it was a way of responding to the political exigencies of the 1990s, and could be a means to accommodate regional specificities. But he stressed the need to "precisely determine where the powers of the federal bodies should be and where the powers of the

¹ See Cashback (2003) for a more detailed analysis of the federal reforms undertaken during Putin's first term.

² A 1996 presidential decree and 1998 government resolution were issued in an attempt to circumscribe the use of bilateral treaties, so that they were used only to regulate issues of joint control, or accommodate a federal subject's "geographical, economic, social, national or other specificity" (RF, 1996b: art.4; RF, 1998). In addition, the federal government enacted a law on the bodies of state power of the subjects of the federation which re-established the supremacy of the federal constitution and of its articles 71 and 72, on the division of competences (RF, 1999a). Under Yeltsin, these initiatives were never fully implemented.

subjects of the Federation [should be]" (Putin, 2001). In sum, Putin's objective was to consolidate the central government's power, strengthen its capacity to control the implementation of law and policy throughout the country and re-impose the authority of the federal constitution.

The most sustained push for reforms occurred between 2000 and 2002, a time when most of the institutional changes were implemented. Between 2002 and 2004, federal reform as a topic of discussion "all but disappeared from the centre's rhetoric", which was increasingly focused on administrative reform (Interview with Faroukshin, 2004). A renewed interest in federal reforms was sparked in late 2004 when the president abolished direct elections for regional leaders and again in 2005 with an announcement of the government's intention to rollback some of its earlier reforms and amend the division of competences.

Institutional Changes to Russian Federalism

Putin adopted a number of reforms to increase the federal government's monitoring and control capacity. The first reform restructured the presidential administration by reorganising the federation into seven umbrella administrative regions (federal districts) headed by an appointed plenipotentiary representative (PR) subordinate to the head of the Presidential Administration (Decree no.849, 2000; Decree no.97, 2001). The move aggregated the monitoring function, which existed under Yeltsin. Indeed, before 2000, a PR was appointed in each federal subject and the system was seen as unwieldy because of the large number of representatives and their lack of resources: the federal envoy often depended on the regional government for resources, thus compromising his authority (Clark, 1998: 37). Putin removed the influence of regional leaders on the activities of the representatives. He explained the territorial aggregation of this monitoring function was not a federal or constitutional but "managerial reform" to accomplish three tasks: 1) monitor the regions' conformity to federal law and the constitution, 2) coordinate the activities of federal-level officials in the regions and 3) analyse and report on the effectiveness of local law enforcement agencies (ITAR/TASS, 22.5.2000). The envoys' tasks were expanded in 2003 when Putin directed them to monitor the implementation of federal electoral law, land reform, and federal transfers to the regions (NG, 24.4.2003).

The creation of federal districts and representatives were designed to increase the centre's monitoring capacity and facilitate the implementation of a unified legal space. In practice, an envoy's effectiveness has depended on his particular personality, interests, ability and relationships (Mikheev, 2002, RRR, 27.9.2002). Reddaway and Orttung conclude the reform has successfully depersonalised the relations between the president and most

governors, except for relations with the leaders of Tatarstan, Bashkortostan and St-Petersburg (Reddaway and Orttung, 2004). For instance, within the Volga Federal District Tatarstan continues to take political issues up directly with Moscow, circumventing the office of the PR (Sharafutdinova and Magomedov, 2004). As I examine below, inter-elite relations continue to be the norm in the management of the Russia-Tatarstan relationship.

In a further effort to remove regional leaders from direct access to the levers of power in Moscow, a July 2000 law modified the composition of the Federation Council (FC) (RF, 2000a). Since 1995, leaders of regional executive and legislative branches sat in the upper chamber on an *ex officio* basis, providing regional leaders significant presence and influence at the centre. The law directs regional legislative and executive branches to select one representative each to sit in the FC. Unsurprisingly, regional leaders reacted strongly to the proposal and vetoed it. To secure passage of the bill, amendments were proposed to allow governors to keep their seats until their own terms expired, and ensure that the terms of incoming representatives were identical to the terms of the bodies which appointed them (Huskey, 2001: 114; Hyde, 2001: 729). Federation Council reform is considered to have produced dubious results. According to Gel'man, in many cases regional governments appointed Moscow-based lobbyists and business elites who maintain informal relationships with the Kremlin and who can wield their influence behind the scenes. A significant proportion of regional representatives have little or no connection to the region they represent. In some cases, governors appoint potential rivals to the FC to minimise their influence on decision-making within their region and strengthen their grip on the domestic political scenes (Gel'man, 2001: 2).

To compensate them for their removal from the Federation Council, Putin created the State Council, an intergovernmental forum where leaders of all 89 subjects meet on a quarterly basis. The body's presidium comprises the president and seven regional leaders, one per district, appointed for a six-month term (RF, 2000d). Although the body is consultative, its aim is to promote the participation of regional leaders in the "preparation and passing of important national decisions" (Putin, 2000). In its first five years, the State Council convened fifteen times, its presidium held forty-five meetings. Speaking on the occasion of the Council's fifth anniversary in Kazan, Putin concluded it evolved into "one of the most influential political institutions in the country" and constitutes an "extended government, able to find national solutions and approaches to complex problems" (Intertat, 26.8.2005). At the same session, regional leaders echoed Putin's positive appraisal, even though the institution had been greeted with scepticism in 2000. For Shaimiev, it plays "a useful and productive role". Luzhkov suggests the Council is the perfect forum to give regional leaders a more substantial role in the consideration of the federal budget (Intertat,

26.8.2005). The Council has become a key institution for discussion of federal-regional concerns (sessions on topics as diverse as housing, federal design, education policy and national security have been held). Although it is only a consultative body, it nevertheless performs a function of intergovernmental representation of regional interests.

Following the terrorist attack in Beslan in September 2004, Putin acted quickly to abolish elections for leaders of regional governments. The rationale for the change was a need for stronger executive control: "The bodies of executive authority in the centre and in the subjects of the Russian Federation [...] must work as a single integrated organism with a clear structure of subordination. Until now, such a system has not been put in place" (Putin quoted in RG, 13.9.2004). Shaimiev backed the reform guardedly, conceding Putin's rationale: "In many regions the people who come to power do so as protégés of capital or on the basis of populism", which hinders the ability of "the people at the helm [to] actually steer" (ITAR/TASS, 14.9.2004). Putin convened the State Council for closed-door sessions on the proposed reforms. Unsurprisingly, little dissent was voiced publicly by leaders for whom loyalty to the Russian president would become a job requirement. Thus, many approved the proposals, including Moscow mayor Luzhkov and St-Petersburg mayor Valentina Matvienko and argued the reform would provide the federal government the ability to instil discipline at the regional level and provide regional leaders with levers with which to govern (ITAR/TASS, 18.10.2004). Amendments were brought to the 1999 law on the bodies of state power to give the President the power to appoint regional leaders (RF, 1999a: art.5§3a), and a decree was issued to refine the administrative procedure: presidential representatives select a candidate "in consultation" with regional leaders, civil society groups and public organisations for the president's approval (RF, 2004).³ Once nominated, the regional assembly must confirm the choice. If the nominee is refused twice, the president is empowered to dissolve the assembly (RF, 1999a: art.9).

Although Tatarstan's State Council approved Putin's proposals by fifty-seven to nineteen votes (NG, 27.10.2004), at the United Russia party conference in November 2004 members from Tatarstan were outspoken in their criticism of Putin's proposals and suggested that the dissolution of regional assemblies be prohibited and a sunset clause be included in the law (NG, 11.11.2004). Shaimiev was supportive of the decision to appoint regional leaders but strongly criticised the power Putin gained to dissolve regional assemblies that vetoed his choice: "Under no circumstances can we agree with [those provisions]. The people elect Parliament, thus it is the voice of the people" (RT,

³ The original decree called on the presidential representative to establish a short-list of two candidates, to be submitted to the Head of the Presidential Administration. Putin's changes to the procedure, made in June 2005, increased representatives' powers: no longer needing to coordinate their choice with the presidential administration, they are free to nominate only one candidate for approval (RF, 2005b).

26.10.2004). In the meantime, many regional leaders including Shaimiev circumvented the procedures established by Putin's December 2004 decree by appealing directly to the Russian president to re-nominate them. Shaimiev reported that Putin asked him to accept a fourth term as president because the "price of stability in a republic like Tatarstan is too high" (RT, 12.03.2005). Consequently, Shaimiev submitted his pre-term resignation, was nominated by Putin and confirmed by the Tatarstan State Council on 25 March 2005. Simultaneously, Tatarstan's constitution was amended to suspend (not annul) the clauses on the election of Tatarstan's president. Both Shaimiev and Mukhametshin justified the move to suspend rather than rescind the clauses by saying they believed the suspension of elections is only temporary and the reinstatement of direct elections is "merely a question of time" (TBDR, 31.03.2005). Many incumbent governors have been reappointed and so far no nominations have been blocked by regional assemblies. While early to assess the consequences of this reform, analysts fear the anti-federal tendencies of the change, and the potential for conflict it creates should regional assemblies start to reject presidential nominees (see articles in NG, 14.9.2001 and 5.11.2004). By increasing Moscow's control over regional leadership, it will likely make it difficult to isolate the centre from future policy failures. Consequently, the reform could focus future discontent on the federal government, rather than diffuse it between it and the regions.

In addition to the changes affecting the place of regional leaders, Putin strengthened the federal government's ability to combat contradictions in legislation, dubbed the 'separatism in the legal sphere'. The 1993 constitution designates the president as guarantor of the federal constitution (art.80§2) and grants him the right to suspend legislative acts which contradict federal law or the constitution (art.85§2). The 1999 law on the bodies of state power was amended to give the president the power to dismiss regional leaders or parliaments who enact or fail to rescind contradictory legislation. However, this power is not discretionary as the courts have ruled that courts of three jurisdictions must concur that regional legislation is delinquent before the president can invoke the procedure. In 2000, a key tool was created in the struggle against legislative dissonance: the Federal Registry of Legal Normative Acts. All subjects of the federation are required to forward their normative legal acts to the federal Ministry of Justice for assessment (RF, 2000c, art.2). The purpose of the Registry is further defined in a government resolution: it "controls the correspondence of normative legal acts of subjects of the federation with the constitution of Russia and federal laws" and creates the "means to obtain information about the normative legal acts of subjects of the federation" (RF, 2000b, art.2). Thus, in addition to fostering more

transparency, the registry creates a material and institutional basis for the systematic analysis of the correspondence of regional and federal laws.⁴

Re-imposing Federal Supremacy in the Division of Powers

Following his 2001 Annual Address, Putin appointed a *Presidential Commission for the Demarcation of Powers Between the Federal, Regional and Municipal Levels of Government*, naming a former colleague from the administration of St Petersburg and trusted deputy, Dmitrii Kozak (then the deputy head of the Presidential Administration, now the Presidential Representative to the Southern Federal District), to direct its work. Kozak's Commission would eventually regroup the State Council working group headed by Shaimiev and Luzhkov's working group on state system reforms. The Commission's report, *Concept of Federal Reforms*, was presented to the State Council and regional leaders in early 2002. The *Concept* calls for a better division of powers in areas of joint competences to ensure tasks are executed and financed properly, and an increase in the centre's capacity to assess and control regional policy implementation. Kozak's model makes the federal government responsible for setting national standards, while regional governments are held responsible for the execution of policy. In such a system, bilateral power-sharing would be used only in exceptional circumstances to take into account "geographic or other particularities" (Concept, 2002). In the wake of the report, two laws were enacted. Approved in July 2003, the law *Amendments to the Federal Law On General Principles of the Organisation of Legislative and Executive Bodies of State Power of the Subjects of the Russian Federation* proposes a clear delimitation of federal-regional competencies and circumscribes the use of treaties. *On General Principles of Local Self-Government in the Russian Federation* was adopted in October in order to promote the economic and policy capacities of municipal government. Although both laws were the subject of intense scrutiny by Duma committees, the fundamental principles of Kozak's vision emerged unscathed.

Whereas issues of jurisdiction and accountability were left unanswered in Putin's previous reform initiatives, these laws establish a balance of interests and powers between orders of government and resolve ambiguities and unfunded mandates so "power becomes accountable to its citizens" (Kozak quoted in Tsvetkova, 2003). A key element in both laws is the reassertion of the supremacy of federal law and the federal constitution. In areas of joint jurisdiction, the laws enumerate the tasks which will be controlled by Moscow and those to be funded and executed by the subjects of the federation and by municipal

⁴ The Registry is a fascinating resource that lists normative acts of Russia's federal subjects, challenges made (by federal or regional prosecutors, or courts) and what action was taken by the regional government (whether the protest was acknowledged or challenged). It is available online: <http://www.registr.bcpi.ru>.

governments. A higher-level government is empowered to set policy objectives and charge lower-level governments with their implementation. In an attempt to eliminate the problem of unfunded mandates, the law forbids the delegation of powers to another level of government without an accompanying budgetary envelope, and empowers the delegating body to sanction or suspend leaders who misuse funds earmarked for a specific purpose (RRR, 7:28, 2002). The law on the state bodies of the subjects of the federation contains provisions which allow the federal government to assume financial control of regional governments whose deficits rise above thirty per cent (art.269§1b and §3). If an arbitrage court approves its petition, the federal government can retain this control for up to a year.

Article 267 of the law on the bodies of state power addresses bilateral intergovernmental agreements. Bilateral treaties can be pursued in exceptional circumstances, to accommodate the “economic, geographic or other peculiarities” of subjects of the federation. Ethnicity appears to have been downgraded as a reason to pursue bilateral power-sharing since the earlier (1999) version of the law listed ethnicity as a motive. In addition, the law adds several requirements, purportedly to increase the transparency of the process, the consequences of which would make concluding treaties increasingly difficult. First, all subjects of the federation have a right to consult and comment on draft treaties (art.267§5). Second, a treaty must be approved by both the federal and regional parliaments (art.267§4 and §8). Efforts to make the process more transparent and institutionalised may reduce its effectiveness. Since the law foresees treaties to be used to address regional particularities and entrench some degree of asymmetry, by requiring the approval of parliament, the law creates the potential for increased federal-regional conflict. The effectiveness of bilateral agreements is potentially reduced as a coping mechanism. Since all remaining treaties needed to be ratified by the federal assembly before July 2005, the law has effectively rendered them moot as operative documents.

Two years after the Kozak reforms effectively withdrew policy-making capacity in areas of joint jurisdiction, Putin announced during a State Council session in Kaliningrad on 2 July 2005 that powers would be handed back to regions. 114 competences will be handed back “to change the quality of the work of regional bodies and raise their role and accountability in the socio-economic sphere” (Putin, 2005). “The delegation of additional powers to regions [...] is not the result of some administrative itch (*zud*)” but designed to promote more effective economic policy (Putin, 2005). The president did not specify which powers would be transferred to the regions at this meeting, although it has been reported they include forestry management, veterinary services, the protection of historical monuments, science, education, housing, etc. (RG, 24.8.2005). When the State Council reconvened in Kazan on 26 August 2005, Putin confirmed a law was being drafted to ratify

the changes announced in Kaliningrad (RT, 27.8.2005). One competence he immediately handed over to regional leaders was the power to select the directors of federal agencies (of the Ministry of Justice, civil affairs, internal affairs, etc.) in the regions (The decree was presented at the State Council session in Kaliningrad: RF, 2005b).

Rostislav Turovsky believes the announcements reflect a realisation by Moscow that the strict power vertical does not sufficiently insulate it from unpopular decisions. For instance, the protests which occurred in many regions in response to changes in social benefits and housing policies demonstrated the centre's vulnerability (*Novaya Gazeta*, 7.7.2005). Now that regional leaders are federal appointees, Moscow is more comfortable delegating power back to regions knowing it possesses greater control over those exercising it. Moreover, although the law is forthcoming, Putin has made clear his conception of how the powers are to be exercised: "... competence, in the first instance, means responsibility. The federal centre will carefully observe how it is used" (Putin, 2005). It is not a reform aimed at increasing regional policy autonomy, since it is not 'competences' but 'duties' or 'obligations' (*obyazannost'*) that are to be delegated. Indeed, these reforms appear to be more about presidential power than about federalism.

Court Interpretations of Republican Status

At the same time as Putin adopted measures aimed at strengthening the centre's hand in its relations with regional governments, the Russian Constitutional Court (KSRF) handed down landmark rulings in June 2000 which asserted the supremacy of the federal constitution and provided the impetus for bringing republics' constitutions in line with it. While the Court issued rulings in the 1990s which already confirmed the supremacy of federal legislation in matters of joint competence (see Chapter 3, and especially the rulings on the fundamentals of the tax system (1997) and on the Forestry Code (1998)), the June 2000 rulings took aim at the most fundamental of republics' claims: that they constitute sovereign entities within Russia.

The 7 June 2000 ruling annulled provisions of Altai's constitution which defined the republic as sovereign, possessor of its natural resources and subject of international law. In addition, the Court rejected the republic's claims that its status was based on a bilateral treaty with Russia. Sovereignty, the Court ruled, is an attribute of the Russian people as a whole, and indivisible: "The Russian constitution does not allow any other bearer of sovereignty or source of power besides the multinational people of Russia" (KSRF, 2000b, Par.2.1). Moreover, the Court reasserted the equality of all subjects of the federation, and the supremacy of the federal constitution and laws: neither the 1992 Federal Treaty nor any bilateral treaty trump the provisions of the 1993 constitution.

On request from a group of State Duma deputies who challenged the constitutions of several republics, including Tatarstan's, the Court issued a Determination on 27 June 2000. Based on the 7 June ruling as well as its 1992 opinion on Tatarstan's referendum on state sovereignty, the Court concluded that "Sovereignty [...], the supremacy and independence of state power, the entirety of legislative, executive and judicial power on its territory and independence in international relations constitute essential characteristics of the Russian Federation as a state" (KSRF, 2000a: par.2.1). Sovereignty is indivisible: only Russia may sign international treaties and republics cannot claim to be subjects of international law or sovereign states. Tatarstan's claim to be "united" with Russia constitutes an "unconstitutional modification of its constitutional status" (KSRF, 2000a: par.3.2). Moreover, the republic cannot claim possession of natural resources or any other competences which contradicts the division of competences established by the federal constitution. In April 2001, Volga District presidential representative Sergei Kirienko complained that republics had not amended their constitutions to reflect the Court's rulings. The Constitutional Court answered with a clarification, stating any constitutional provision deemed to be unconstitutional is inoperative (KSRF, 2001a: par.3) and that its rulings apply to all federal subjects.

The June 2000 rulings did not break ground. The Court had already ruled in its 1992 decision on Tatarstan's referendum that republics could not make changes to their constitutional status. The rulings did, however, remove any remaining ambiguities regarding republics' claims to be sovereign entities: only Russia can claim sovereignty. Moreover, claims that republics possess special status, or in the case of Tatarstan, that it is "united with Russia" are unconstitutional. One major difference with the Court's previous rulings on the federal structure was the impetus they provided to bring regional legislation, and especially republics' laws and constitutions, in line with federal law. While previous rulings had been ignored, in the context of Putin's Russia, they signalled the beginning of campaigns by federal prosecutors to rid regional law books of contradictory provisions in their effort to establish legislative and constitutional coherence.

Visions of Federalism in Putin's Russia

Putin's institutional reforms, taken with the Constitutional Court's rulings, provide an impression of the centre's vision of federal design and federalism. Foremost, federalism is about symmetry in the federal government's relations with the subjects of the federation, and between the subjects themselves. The Constitutional Court rejected an interpretation of the constitution that allowed subjects of the federation to possess sovereignty, even in areas of exclusive regional competence. Effectiveness and political stability are conceived as

emanating from a strong and unified system of executive governance, and I would add, dominance. Indeed, the Kozak reforms reflect a view of the division of competences as hegemonic, aiming less at protecting regional autonomy than providing measures for federal control over implementation of policy in Russia's regions. "The division of powers", Putin explained, "is not like a Chinese wall between centre and regions" (IZV, 19.7.2001). Similarly, Putin's federal reforms minimise the role of power-sharing or shared sovereignty because this "aggravates the problem of inequality" among subjects of the federation and between them and the federal government (IZV, 19.7.2001). Reforms of federal design under Putin question the extent to which Russia still constitutes a federal political system. Presidential control over the appointment of regional leaders further cements Moscow's control and the view that regions are executors rather than initiators of policy. Federal reforms consolidate a model of hegemonic federalism – with tendencies toward centralised authoritarianism – which emphasises central control over regional autonomy or self-rule.

To get a better idea of the way in which this vision of federalism has been implemented in Russia, I turn to examine how these reforms were received and acted upon in Tatarstan. Tatarstan's political elite, while complying with many of these reforms, continue to articulate a different vision of federalism. The areas of continued disagreement – Tatarstan's persistent claim to sovereignty and its call for jurisdictional autonomy – are a useful foil to grasp the extent to which consensus has been achieved over federal design.

Tatarstan's Competing Vision of Federalism: Collaborative versus Hegemonic

The reaction in Tatarstan to Putin's various initiatives was a mixture of public opposition and agreement. It was clear that the balance of power shifted in favour of the centre once Putin gained power. Shaimiev welcomed Putin's efforts to create a single legal space in Russia and supported, if sometimes only tacitly, the Russian president's reform programme. For Shaimiev, legal dissonance and contradictions which emerged during the 1990s needed to be clarified, but in a different way than Kozak would eventually suggest:

"We adopted a lot of different laws to reach some definite political and economic goals in a short period. We've done a lot, now it's time to fix this mess. It's necessary to make a clear division of [competences], what belongs to the center and what to the subjects of the federation, without interfering with each other's exclusive powers" (TBDR, 16.10.2000).

In 2001, Putin appointed Shaimiev to direct a State Council working group on the division of powers, which was subsequently folded into Kozak's working group on federal reforms. Regional leaders and republics were not shut out of the reform process, even if the resulting laws did not please all participants. As Lankina notes, regional support for the law on the division of powers was secured by giving them a voice in the process. Moreover, in exchange for their support of the law on municipal government, governors obtained powers

to select or remove municipal leaders and control over municipal spending (Lankina, 2003). Although Shaimiev criticised provisions of the Kozak report and of the laws which emerged from it, in the end he complied while underlining that Tatarstan possessed a different conception of federalism. This has become Tatarstan's principal reaction to Putin's federal reforms: they are criticised but endorsed with the leadership making it clear it remains committed to an alternate conception of federalism.

One of the main objectives of Shaimiev's working group was to correct the imbalance in the distribution of competences in the federal constitution. For Tatarstan's president, the division of competences in the 1993 constitution permits federal control by stealth: since federal law in areas of shared jurisdiction is supreme, subjects of the federation are reduced to execution rather than elaboration of policy (Interview in Goble, 2000). As I examined above, this is the view entrenched in Kozak's reform bills, and it is the way in which Russia's courts interpret regional laws which diverge from federal legislation on matters of joint jurisdiction.

What Putin called "separatism in the legal sphere" Shaimiev sees as a sign that the federal principle needs to be better implemented in Russia. The working group's report, the *Draft Concept of State Policy on the Division of Competences and Powers between Federal, Regional and Municipal Bodies* (hereafter *Concept*, cited as GSRF) proposes a model of federal design in which the centre would legislate to establish strategic orientations while giving regional government more latitude to implement the law according to local needs and particularities. The *Concept* outlines the lacunae in Russia's federalism: there are too many shared competences, each level of government's respective rights and obligations are not well demarcated, and Moscow interferes too much in regional and shared jurisdictions (GSRF, 2002: 101-3). Furthermore, the constitution does not define the terms it uses to denote each government's powers and obligations. The report objects to the wide interpretation which the centre has given of its right to establish "general principles" in areas of joint jurisdiction in order to shut out regional governments from legislating in these areas (GSRF, 2002: 105). In their rulings on issues of joint competence, Russia's courts have tended to adopt similarly broad interpretations.

The *Concept* outlines a number of reforms to Russia's federal design, which I summarise as falling into three categories: the need for a model of cooperative federalism; a clearer division of powers; and the use of treaty relations. First, it establishes a wholly different normative vision of federalism. It argues federalism must be viewed as both an institutional structure (*ustroistvo*) and principle of political behaviour; as providing the means for self- and shared-rule (GSRF, 2002: 103-4). In this sense, cooperative federalism is contrasted to the existing model and practice of hegemonic federalism in Russia. Under a

model of cooperative federalism, shared sovereignty is possible as is increased cooperation in fields of joint jurisdiction. The purpose of such a change of vision is to “promote better relations between the central and regional governments” and “increased respect for and support of the political, cultural and national diversities of Russian society” (GSRF, 2002: 104). Regional autonomy, therefore, is a key component of this vision.

Second, the implementation of a model of cooperative federalism must begin with a reform of the division of competences. Constitutional competence implies a right to make policy and obligation to carry it out. This is the same principle which guided the work of Kozak's working group and the State Council's sessions in July and August 2005 on the division of powers. However, the Kozak reforms did not reorganise the constitutional division of powers but provided detailed lists of which level of government was responsible for financing and implementing given tasks. As I discussed above, these reforms emphasise compliance over autonomy. Mukhametshin indicates that 300 federal laws exist in areas of joint jurisdiction, and few provide clear direction on the rights and obligations of each level of government (TBDR, 1.7.2002). Tatarstan's leaders argued federal laws in areas of joint and regional jurisdiction should also be subject to review and that harmonisation of conflicting legislation should not only be a top-down phenomenon. Shaimiev's *Concept* calls for federal law-makers to be more attuned to regional legislative and policy approaches and create more room for regional and municipal governments to tailor legislative initiatives to their specific needs and goals (GSRF, 2002: 114). Three levels of competence are envisioned: strategic (federal), territorial (regional) and local (municipal). Russia would keep its power to set national objectives, but the other levels of government would gain more latitude to determine how these objectives should be implemented (GSRF, 2002: 104). In this *Concept*, “subsidiarity”, defined as giving competence to the level of government most suited to carry it out, should trump hierarchy and verticality (GSRF, 2002: 116). It provides no detail on how such a system would be implemented or how it would operate. While subsidiarity is advanced as being more dynamic and cooperative, in a federation of 89 members one wonders how workable it would be. The report argues that Russia's constitution already contains many of the mechanisms that could facilitate a transition to cooperative federalism, such as article 11 which foresees the use of bilateral agreements (GSRF, 2002: 108-9).

Third, bilateral treaties are given an important role in this model of cooperative federalism. The *Concept* rejects the way in which treaties were used under Yeltsin. Treaties in the 1990s often contained unconstitutional provisions and delegated exclusive federal or joint powers to regional governments. Shaimiev's report makes it clear that treaties should not establish “treaty-constitutional” relations or contravene the constitution. They should

be used as tools to determine priorities in the regulation of joint competences, take regional concerns into account or help resolve conflicts between central and regional governments (GSRF, 2002: 120-2).

Shaimiev's *Concept* was presented to the State Council Presidium on 26 December 2000. Although its contents were controversial, the Presidium approved and recommended it be brought to the attention of the full State Council (RF, 2001c). But the report was never scheduled for consideration (GSRF, 2002: 106n1). It received minimal coverage in the republican press, apart for *Zvezda Povolzh'ya* which published an excerpt and the journal *Kazan Federalist* which published the report verbatim. Shaimiev defended his vision, arguing that "Russia's power and strength reside in the strength and independence of its regions" and that stability "can only be ensured by diversity and not blind unification" (IZV, 19.2.2001). For Dmitrii Kozak, the implementation of the report's provisions "would lead to the destruction of the unity of the country's legal system [...] and to separatism among Russia's well-off regions" (Quoted in East European Constitutional Review, Fall 2001). This assessment was echoed by State Duma members whom the Kremlin appointed to consider the report (TBDR, 19.2.2001). The Kremlin's dissatisfaction with Shaimiev's *Concept* prompted Putin to appoint Kozak to head a separate working group on the division of powers, into which Shaimiev's working group was incorporated.

Although little came of Shaimiev's report, I focus on it because of the alternate vision of federalism it articulates. Two features are remarkable. First, it does not call for outright constitutional reform. Although its implementation would significantly change the way federalism is practiced in Russia, Shaimiev illustrates that on paper the 1993 constitution already provides a basis for cooperative federalism. Second, the Concept does not challenge the federal government's role to legislate on matters of state importance or to set state-wide approaches. Instead it argues that in areas of joint jurisdiction, more attention needs to be paid to regional specificities. Thus, although the report itself reads like a series of idealistic proposals, its principles inform many of Tatarstan's arguments on the changes required to Russia's federal design. This belief in the value of a more cooperative federalism sheds light on the way in which Tatarstan implemented Putin's federal reforms, and on the nature of its persistent claims for recognition and jurisdiction.

Reacting to Putin's Federalism: Legislative Harmonisation

At the same time as Shaimiev's working group drafted its concept of federal design, Tatarstan's leadership began implementing Putin's federal reforms. A Commission was created under the aegis of the Volga district presidential representative, Sergei Kirienko, to

bring Tatarstan's legislation in line with the Russian constitution.⁵ Kirienko sought to clarify that the law, not personalities, was to guide legislative the process: "It is not the personal relations of Sergei Kirienko and Mintimer Shaimiev that count in this case, it is the necessity of the unification process... Conciliation commissions must not rely on any other documents than the two constitutions" (Quoted in TBDR, 30.10.2000). The Commission's inaugural meeting classified forty-five laws as constituting "political conflicts", linked to competences which Tatarstan claimed had been delegated by the 1994 treaty, including property and natural resource rights (ZP, 14-20.9.2000). Mukhametshin argued that since Tatarstan had assented to neither the Federal Treaty nor the 1993 constitution, the bilateral treaty was the only link between Moscow and Kazan and its provisions needed to be respected. Since the contradictions were "political, not juridical" they needed to be discussed by Putin and Shaimiev instead of the conciliation committees (VE, 28.9.2001, Sharafutdinova and Magomedov, 2004: 160). Shaimiev reported that he had taken up these "political conflicts" with Putin and that the Russian president agreed the harmonisation committees needed to take the treaty's provisions into account (RT, 14.11.2000). Thus, contrary to Kirienko's wishes, non-transparent executive negotiations appear to have informed the harmonisation process. Notwithstanding Putin's attempts to depersonalise federal-regional relations, it is clear that inter-elite negotiation and mediation have retained their importance as mechanisms of accommodation.

Federal prosecutors, however, were indifferent to the nuance between political and juridical contradictions. Soon after the Constitutional Court's June 2000 rulings, Russian Deputy Prosecutor General Alexander Zvyagintsev challenged twenty republican laws including the constitution because they placed "[Tatarstan's] legal system outside the federal legal system" (Interview in Interfax, 26.6.2000). On orders from Russian's Prosecutor General, Tatarstan's own prosecutor also issued challenges. The Tatarstan State Council's Permanent Commission on Legislation began considering prosecutors' protests in late 2000. Results were immediately apparent. Chief Federal Inspector in Tatarstan, Marsel Galimardanov, reported that as of January 2001, 89 of 115 documents challenged had been harmonised with federal law (TBDR 11.01.2001). In his year-end summary of the State Council's activities, Mukhametshin calculated that the parliament spent a majority of its 2001 session dealing with harmonisation (Interview published in RT, 28.12.2001). In 2001, prosecutors challenged seventy-three laws, thirty-one of which were amended and seventeen rescinded. Of thirty-seven protests that went to court, Tatarstan won only three

⁵ Several bodies were established to work on legislative and constitutional harmonisation in addition to the Kirienko commission: a joint Tatar-Russian commission on the constitution, committees of the Tatarstan State Council and a republican Constitutional Committee.

cases (RT, 28.12.2001). The Federal Registry of normative acts still lists Tatarstan as the biggest offender among Russia's federal subjects: as of 31 December 2004, nineteen acts (or 20 per cent of total state-wide) were found to contradict federal law. Ninety-two laws contain provisions which violate federal law.⁶ What explains the persistence of legal dissonance?

During the harmonisation process, Tatarstan's Prosecutor, Kafil Amirov, reported that twelve republican laws were "more progressive" than Moscow's (TBDR 30.1.2001).⁷ But the Federal Registry does not include federal laws and these are not subject to similar assessment by the Ministry of Justice. Consequently, State Council deputies protested the double-standard and claimed federal laws should be held to the same standard. In fact, deputies found at least twenty federal laws that violated the federal constitution but were told federal prosecutors are not empowered to protest federal laws (RT, 28.12.2001). In a speech given in Kazan, Yurii Chaika, Russia's Minister of Justice, stated that "federal laws need to be respected since Russia is a federal state", but better regional legislation could be used to replace outdated federal laws (RT, 14.11.2000). This is a possibility Shaimiev also raised in his *Concept*. However, in the absence of a mechanism to implement such a procedure, prosecutors and judges have no basis to dismiss federal challenges. This has prompted Shaimiev to complain about the asymmetries of the harmonisation process: "while Moscow needs efficient vertical power, it should be concerned about what might happen if central officials, including prosecutors, act too vigorously". "Federal ministries", he continued, have "begun to trespass on Tatarstan's power" (Interview published on *Gazeta.ru*, 7.3.2001).

Constitutional Harmonisation and Tatarstan's 2002 Constitution

Tatarstan's constitution was also the subject of intense scrutiny: between 1999 and 2001, 103 complaints were filed (RT, 28.12.2001). In May 2000, a federal-regional expert group was created to harmonise Tatarstan's constitution with the federal constitution.⁸ The group, which included jurists from Tatarstan and the federal Presidential Administration, undertook a detailed analysis of every article of Tatarstan's 1992 constitution. In response, Tatarstan's State Council formed a Constitutional Committee in September 2000 to implement the expert group's findings. The main obstacle to harmonisation was

⁶ Summary posted on <http://www.bcpj.ru/svodka/svodka.html>, accessed 11 February 2005.

⁷ He listed these laws: on a tax to eliminate housing slums; on private detectives and security activities; on illegal drug trade and usage; on violations to the land code; on the minimum wage; on land resources; on farms; on the restoration of the Latin script; as well as the Tatarstan's water, land, and forestry codes (TBDR, 6.9.2000).

⁸ The Expert group on harmonisation of the Russian and Tatarstan constitutions: *Gruppa ekspertov po soglasovaniyu KRT s KRF i federal'nymi zakonami*.

disagreements about Tatarstan's status: Moscow's negotiators pressed Tatarstan to drop provisions that it is 'united with Russia' and clearly specify its place within Russia (VE, 28.9.2001). Tatarstan's leaders explained the persistence of constitutional contradictions by the fact that the republic had adopted its law before Russia and the treaty bridged the differences. Like the 'political issues' which arose during the work on legislative harmonisation, disagreements on Tatarstan's constitution were reserved for further discussion by presidents Shaimiev and Putin. Bilateral, closed-door meetings between both presidents were held in the Fall of 2002, which Shaimiev qualified as "very detailed" on the issue of Tatarstan's state structures (TBDR 24.10.2001), and that consensus was reached between the heads of state on the changes that were required to Tatarstan's constitution (Tatar-Inform, 12.11.2001). The secretive nature of these discussions and their outcomes makes it difficult to assess the basis of their agreement, or whether there was any consensus at all.

Nonetheless, the Tatarstan State Council's Constitutional Commission worked on amendments from 2000 to 2002. The drafting process received wide coverage in republican press and media (particularly in RT, ZP, and VK in January-April 2002). 1242 amendment proposals were received, including 273 from State Council deputies, 319 from municipal bodies, 404 from public organisations and citizens (including 73 from the Tatarstan New Century movement, 32 from the Tatar Public Centre, 8 from Ittifak), and 149 from media organisations. Of these proposals, the Commission considered 514 amendments, refused 286, passed 126 and 102 were withdrawn (RT, 2.4.2002). The draft constitution was approved in first reading on 28 February by a margin of 116 to 1 (TBDR, 28.2.2002) amid intense debate on the wording of the provisions on Tatarstan's sovereignty and citizenship. Federal prosecutors indicated the draft constitution was unsatisfactory and did not resolve contradictions. Parliamentary committees deliberated another month before the State Council resumed debate on second reading on 29 March 2002. On the eve of the debate, Mukhametshin stated that although federal authorities were urgently pushing for harmonisation, contradictions would remain in the final document (TBDR, 28.3.2002). During the State Council's debates, Shaimiev argued that unless article 61 (on Tatarstan's status) was amended there was no point in amending the constitution at all since it was the biggest point of friction with Moscow (TBDR, 1.4.2002). Perhaps the insistence on the need to review the expression of Tatarstan's status provides a clue on the agreement reported to have been reached by Shaimiev and Putin. The State Council approved the draft in second and third readings on 19 April and the constitution was signed into law by Shaimiev a week later. Three-quarters of the constitution's articles were reworked, and it was shortened to 124 articles (from 167 in the 1992 version). Conscious that the document

still contained provisions which contradicted federal law, Shaimiev was stoic: "We should be able to formulate our principles and have enough courage to defend them for the benefit of the future federation" (TBDR, 29.4.2002).

Whereas the 1992 constitution placed Russia at arms' length, the 2002 version acknowledges Tatarstan is a subject of the federation and recognises the constitutional division of powers (All references to Tatarstan, 2002). Article 1 contains the most significant provisions, both in terms of recognition of Tatarstan's status in Russia and preservation of its ambiguities. The provision defining Tatarstan as "united with Russia on the basis of the Russian and Tatar constitutions and the bilateral treaty" was maintained (art.1§1). But no claim to sovereignty in areas of exclusive federal or joint jurisdiction is made: Tatarstan exercises its sovereignty only within the spheres of competence which belong to it exclusively. The constitution drops Tatarstan's claim to being a "subject of international law" but asserts its right to engage in international relations and trade on matter within its jurisdiction (art.1§4). The provision on the existence of republican citizenship is maintained, but contrary to the 1992 version, Tatarstan citizenship is automatically granted to Russian citizens living in the republic, and citizens of Tatarstan are simultaneously citizens of Russia (art.21). Compared to the 1992 constitution, the latest version represents a remarkable change in Tatarstan's stance. Whereas the claim for recognition (its status as "united with Russia") is maintained, Tatarstan positions itself more as a federated unit of Russia than as confederal partner.

The constitution maintains provisions on the inviolability of Tatarstan's territory (art.5) and that its status cannot be changed without its consent (art.1§3). To further entrench its status and democratic legitimacy, article 1 of Tatarstan's constitution can be changed or rescinded only by referendum (art.123). By evoking the 1992 referendum, the leadership seeks to insulate Tatarstan's status claims from further challenges and court rulings. Notwithstanding previous Constitutional Court rulings which found that Russia's federal subjects cannot unilaterally amend their status, this article places Tatarstan's citizens as bearers of sovereignty and source of authority (art.3). Consequently, the status of Tatarstan as 'united' with Russia is framed as the expression of popular will and not the leadership's whim.

As Mukhametshin makes clear, the ambiguities which remain in the amended version are not accidental: "In many provisions of the new constitution there are contradictions. But we consciously maintained our course because Tatarstan has its own position, especially on the question of sovereignty over the competences which are determined [by the 1994 treaty]" (RT, 30.4.2002). The constitution maintains ambiguous provisions on republican competences, including citizenship, the place of the treaty and

most significantly, its claim to sovereignty. Although the document clearly circumscribes the norm of sovereignty to those powers over which Tatarstan has exclusive jurisdiction, its lawmakers deliberately ignored the Constitutional Court's June 2000 rulings by maintaining a claim to sovereignty. Compared to the 1992 version, the current constitution does not advocate a confederal state structure. The centre's prerogatives are recognised, a big difference with the 1992 constitution in which Russia is mentioned only twice. The underlying constitutional disagreement, about status and the way in which republican jurisdiction should be protected in federal practice, remain.

Indeed, federal challenges of these remaining ambiguities have not abated. Russian Deputy General Prosecutor Zvyagintsev issued protests against the 2002 constitution, arguing the State Council ignored court rulings by maintaining provisions on republican sovereignty (articles 1, 11, 23, 121), citizenship and on the bilateral Tatar-Russian relationship (TBDR 15.3.2002). Almost as soon as the State Council had passed the constitution, it created another commission to consider the latest challenges. Mukhametshin refused to concede that the norm of republican sovereignty in the new constitution was unconstitutional, accusing prosecutors of interpreting the federal constitution in "in their own way" (TBDR, 9.9.2002). For him, the new constitution addressed Russia's concerns and the rulings of the Constitutional Court: limited sovereignty, "expressed by the possession of full state power outside Russia's field of competence", is both lawful and adheres to article 73 of the federal constitution (Interview published in RT, 6.2.2003). The Tatarstan Supreme Court began hearings to consider the prosecutor's challenges in January 2003 (TBDR, 27.1.2003).

However, the proceedings ground to a halt while the Russian Constitutional Court considered a case brought by Bashkortostan and Tatarstan challenging prosecutors' power to challenge their constitutions in courts of general jurisdiction. The Constitutional Court ruled that even if the basic law of a subject of the federation was found to violate federal law, it was not sufficient grounds to declare the document *unconstitutional*. Before, a prosecutor would ask an administrative or civil court to ascertain the constitutionality of a regional constitution. The Constitutional Court ruled that constitutions of subjects of the federation are not 'ordinary legal acts' and have a special relationship with the constitution of the Russian Federation. Consequently, only the Constitutional Court is empowered to ascertain constitutionality (KSRF, 2003: par.4.3). This unexpected ruling added several hurdles to the centre's ability to challenge federal subjects' basic laws. Yet, it does not appear the ruling signalled a more region-friendly attitude but was a way for the Constitutional Court to secure its own authority vis-à-vis the Russian Supreme Court and other courts which were usurping its competence in this area.

Following this ruling, in December 2003 the Tatarstan Supreme Court resumed Zvyagintsev's case against the Tatarstan constitution (TBDR, 24.3.2004). After years of procedural and legal wrangling, the Court ruled in March 2004 that provisions of Tatarstan's constitution (on sovereignty, state status, republican citizenship) contradicted federal law (and not the federal *constitution*) (TatarInform, 31.3.2004). In June 2004, the Tatarstan Supreme Court invalidated Tatarstan's 1990 Declaration of state sovereignty and its claims to sovereignty and ownership of natural resources. Marat Galeev, who represented the State Council during the hearings, argued that the Court should not consider the declaration a legal act, but a political document endowed with symbolic importance (Tatar-Inform, 17.6.2004).

All the provisions adopted to express Tatarstan's differentiated status have been invalidated. The 1990 Declaration of sovereignty and constitutional provisions on its sovereignty and status are inoperative. But Tatarstan's leadership has refused to officially rescind the provisions. Galeev's argument about the symbolic value of the provisions is part of the explanation. Two additional reasons are used to justify their refusal to rewrite these articles of the republican constitution. First, Tatarstan's leaders argue that sovereignty in a federal system is divisible. Shaimiev states this position clearly:

“[Article 1 of the Tatar constitution expresses] our view regarding federalism [and] our principal position.... Can anyone show me any academic works proving that a state can exist without sovereignty? [In our constitution], we speak of limited sovereignty within the framework of our powers... This doesn't violate the Russian constitution. Moreover, it seems to me that not everybody has read the Russian constitution to the very end. In its last part, there is a section about sovereign republics within the Russian Federation (Quoted in RT, 24.4.2002).

Second, the Tatarstan Constitutional Court (which is separate from the Russian Constitutional Court) issued a ruling which vindicates Tatarstan's position and is used to counter federal claims. Twenty-nine State Council deputies asked the Tatarstan Constitutional Court (KSRT) provide an interpretation of the first article of Tatarstan's 2002 constitution and its relationship to the federal constitution. Since Article 5 of the federal constitution defines republics as states, the appellants maintained Tatarstan's constitutional claim to sovereignty was not out of line since it only included “full command and independence in resolving questions emanating from its exclusive sphere of competences” (KSRT, 2003b: Par. 2). The KSRT agreed that sovereignty is an attribute of states, and that Tatarstan can claim sovereignty (*samostoyatel'nost'*) over the power which belongs exclusively to the republic (KSRT, 2003b: Par. 7). In its determination, it provides a detailed analysis of the historical context of Tatarstan's political-legal status, from the 1978 constitution to the 1990 Declaration of sovereignty and 1992 ruling by the Russian Constitutional Court. Tatarstan's Court found that the republic is entitled to claim the status

of subject of international law (*pravosub'ektnost'*) in areas where it has international and economic contacts, and reaffirms the republic's state-legal status as defined by both the Tatar and Russian constitutions *and* the 1994 treaty.⁹

The Tatarstan Constitutional Court has issued rulings which directly contradict prior rulings of Russia's Constitutional Court. How and why are such competing court rulings significant? First, the conflicting rulings point to a gap in Russia's constitution on the place and competence of republican constitutional courts. The chairman of Tatarstan's Constitutional Court explains his court is independent from Russia's: each court has its own competences determined by the division of powers in the federal and republican constitutions, and their decisions are final and cannot be appealed (Nafiev, 2001: 94). Zheleznov points out that no mechanism is in place to determine which ruling must be enforced (Conference presentation by Zheleznov, 2004a). This is a novel situation which has not yet been addressed (Author's conversation with Zheleznov, 2004b). Second, in the absence of a conciliation procedure (and Zheleznov contends constitutional amendment may be required to rectify the situation), the colliding rulings become the object of political struggle. Each level of government can claim "its" court vindicates its position. Most of my interlocutors in Tatarstan were critical of Russia's Constitutional Court and the motives it uses in its rulings (Author's interviews with Faroukshin, Galeev, Khakimov, Valeev, 2004). They see federal judges as being politically biased in their rulings on sovereignty since in many of their academic publications, judges including former Court chairman Marat Baglai have admitted the existence of partial sovereignty for components of a federation. As a result, the Russian Constitutional Court continues to be seen as responding to political rather than only legal criteria in their rulings (Conference presentation by Nafiev, 2004, Faroukshin in TBDR 12.11.2002). Conversely, it is hard to conceive that the Tatarstan Constitutional Court would rule against republican interests. Although Putin's federal reforms and court rulings have eliminated the legal basis of Tatarstan's claims to special status and jurisdiction, they remain politically sensitive and salient issues.

The Fate of the 1994 Bilateral Treaty

Since it was signed in February 1994, the treaty is considered to be the cornerstone of Tatarstan's relationship with Russia: it recognised Tatarstan's differentiated status, its special relationship with the Moscow with respect to the delegation of powers, and it provided a bridge between Russia's and Tatarstan's constitutions. But the treaty did not

⁹ In a separate ruling, the KSRT provided an interpretation of the constitutional provisions on republican citizenship (articles 5 and 21). The court upheld the powers delegated to the republic in the 1994 treaty (art.3§13), namely Tatarstan's competence to establish its own citizenship, but adds that Russian citizenship is primary: one must be a citizen of Russia to become a citizen of Tatarstan (KSRT, 2003a: par.5).

insulate the republic from Putin's federal reforms even if it was invoked to justify the persistence of legal and constitutional contradictions. One of Putin's priorities in 2000 was to review the treaty practice. He charged the Kozak working group to revise all treaties and identify those which should be rescinded. As a result, twenty-eight of forty-two treaties were abolished.

Seeking to pre-empt a challenge of Tatarstan's treaty, Shaimiev reiterated on the sixth anniversary of its signing in 2000 that the treaty had "become an ideology for Tatarstan" and its people would "not accept attempts to infringe in any way on the relations it establishes" (RRR, 1.3.2000). During a visit to Kazan, Putin emphasised that the relations between Russia and Tatarstan should be based on the constitution. "Experience has shown that at the time, that treaty was the right solution, and maybe even the only viable one" but "the constitution stipulates that all Federation members are equal" and "Tatarstan [...] understands that" (RRR, 19.4.2000, IZV, 7.19.2001). Kozak signalled his working group would not target Tatarstan's treaty, stating that disagreements between Tatarstan and Russia had been solved thanks to the "constructive and wise position of Mintimer Shaimiev, President Putin, and the federal government" (Transcript of ORT interview quoted in TBDR, 23.4.2002), in other words, non-transparent negotiations.

It is unclear, however, how these disagreements were solved. The future of the treaty and uncertainties over whether it would be renewed were the subject of political discussions. Although it is difficult to track the outcome of these closed-door discussions, what is clear is that parties have been involved in negotiations over a new version of the agreement. A republican commission was formed on 3 June 2002 to begin drafting amendments to the 1994 treaty. Mukhametshin who chaired the commission stated "there would be no talk of renouncing the treaty", but that they would seek to amend the treaty so that the republic's interests, especially its "national-territorial" interests, were protected (RT, 8.6.2002). Mukhametshin subsequently announced the creation of a Russia-Tatarstan working group on the examination of the bilateral treaty, co-chaired by himself and Sergei Kirienko. Since 2002, announcements have been made regularly that the treaty is almost ready for presidential approval.¹⁰ Khakimov indicated that the persistent stumbling blocks in the negotiations are Tatarstan's claim to be "united with Russia", and its powers in foreign economic relations (Interview with Khakimov, 2004). Mukhametshin downplays expectations regarding the contents of a revised bilateral agreement: "I do not think we will be successful in obtaining additional financial preferences, but we will try and preserve some competences" (RT, 23.11.2004). For Faroukshin the treaty is merely a shell. He is

¹⁰ For instance, the working group announced in late 2004 that a treaty would be ready in June 2005, in time for the celebrations of Kazan's millennium. Meanwhile, the deadline has come and gone.

pessimistic about the ongoing negotiations estimating that a revised agreement will be “empty” since Tatarstan possesses little power to constrain Moscow to make significant concessions (Interview with Faroukshin, 2004).

The 2003 law on the bodies of state power set July 2005 as the deadline for bringing existing treaties in line with federal law. Consequently, for all intents and purposes Tatarstan's treaty is invalid and irrelevant as a legal/constitutional document (Interview with Faroukshin, 2004). Nevertheless, Tatarstan leaders continued to profess their confidence in the model of federal-regional relations which the bilateral treaty represents. The treaty provides recognition of Tatarstan's place in Russia's federal order, which is of utmost symbolic importance. For Shaimiev, the treaty is important because it “gave Tatarstan a voice, something we really value” (TBDR, 17.7.2001). Tatarstan's political elites have shifted their emphasis when speaking of the document's importance and role. In a 2004 roundtable about the treaty's significance, Khakimov – an architect of the original agreement – implied it was a transitory tool: “In the period of transition from a unitary to federal country, a concrete mechanism was needed to found the relations between subjects and centre on democratic principles. The 1994 treaty fulfilled that role, and constituted a guarantee of stability in that volatile period” (RT, 14.2.2004). In the wake of constitutional rulings which have annulled republican sovereignty, Galeev believes while the “...treaty is not operative but its constructive inertia continues to work” (RT, 14.2.2004).

Conclusion

Putin's federal reforms sought to restore the federal constitution as the basis of relations between Russia's federal and regional governments. “The aim”, Sakwa writes, “was to achieve constitutional federalism rather than the ad hoc asymmetrical federalism that had emerged under Yeltsin” (Sakwa, 2004: 137). In many respects, Putin has achieved in reasserting the central place of the constitution in Russia's federal design. His reforms have been successful in eliminating legal and constitutional dissonance. But the reforms to the division of powers, the appointment of regional leaders point to the implementation of a model of hegemonic federalism in Russia based less on regional autonomy but on control by and from Moscow. Recent announcements of plans to delegate powers back to regions are evidence, however, that a process federal-regional accommodation still exists. Moscow is inclined to respond to regional demands for increased authority, especially if, as is the case, it is clearly in the centre's interests. However, in many respects, “personalism” still outweighs “proceduralism” in Russia's federative relations (Reddaway, 2002). By controlling the appointment of regional governors, Putin has acquired even more power to influence regional politics.

Tatarstan's reactions to Putin's reforms and the extent to which they were implemented in the republic provide a window on whether the reformed system constitutes a basis for future stability, and for stable accommodation of Tatarstan's specificities and claims. Although the use of "sovereignty" by Tatarstan was always somewhat ambiguous, in the current context, claims for sovereignty can be interpreted as claims for autonomy. In the 2002 constitution, Tatarstan no longer defines itself at arms' length from Russia but as a subject of the Russian Federation. A degree of consensus on federal design has emerged. Yet, the persistence of Tatarstan's claims for recognition, and the continued importance – even if it is only symbolic – on concluding a new bilateral treaty demonstrates that Tatarstan's elite cling to a different model of federalism. Tatarstan's leadership emphasises Russia's need for 'real' federalism and the protection of federal subjects' autonomy. Shaimiev repeated his vision during meeting of the State Council in Kazan:

"The division of competences between the subjects and federal centre in any state is one of the key questions. There must be an overall legal space, uniform rules of state policy, and an understanding of the general values of society. We cannot consider democracy as anarchy or the "power vertical" as a negation of federalism. Democracy is based on law, and federalism on a clear differentiation of powers, where each level of government knows its rights and responsibilities (Intertat, 26.8.2005).

Shaimiev, in essence, continues to argue that the constitutional disagreement must be addressed: he seeks a consensus on the place and autonomy of Russia's constituent units within Russia's federal design. Yet it appears that such a balance has not yet been achieved. For Marat Galeev, Putin's federal reforms have not reassured Tatarstan that its autonomy is something the centre considers worthy of protection: "Current legislation looks more and more like that of a unitary state... While Tatarstan argues that having autonomy and regulatory [rather than only executory] power is important and should belong to the subjects of the federation, it does not have the administrative resources to remedy the situation within current conditions" (Interview with Galeev, 2004).

In Tatarstan, there appears to be a sense that for the time being, the pendulum has shifted toward central control, and that the republic must bide its time. The processes of intergovernmental mediation, prominent during the 1990s, continue to function. Negotiations on a bilateral treaty are ongoing. Similarly, although the courts have struck down provisions on republican status from Tatarstan's constitution, federal authorities have not sought to force the republic to rescind the provisions altogether. While the federal government does not share Tatarstan's concerns, it has not sought to directly oppose them either. Constitutional ambiguities and intergovernmental negotiation continue to operate as coping mechanisms. However, it is clear that for the republican elite the balance of power has shifted toward the centre. Shaimiev, who sees in Putin's power to dissolve regional assemblies that refuse to ratify his choice of governor a violation of democratic principles,

ultimately backed down, stating that “confrontation in the actual political situation would [lead to] crisis” (RT, 26.02.2005). In many interviews and discussions I conducted in Tatarstan, the phrases “within current conditions, within the current situation” often came up, reflecting ambivalence about the current state of federalism, but also a degree of hopefulness that ‘real’ federalism is still possible. As Khakimov remarks, “Only Tatarstan continues to speak for federalism, and as long democracy lives in Tatarstan, we will not veer from that” (Interview with Khakimov, 2004). Even in the context of Putin’s centralising reforms, the persistence of political discussions and legal interpretations of the extent to which Russia’s constitution can and should foster a truly federal separation of powers and way to exercise power in Russia is evidence of the value of the federal idea in Tatarstan, and the Russian Federation.

Chapter 5. Language Policy in Tatarstan: Status and Jurisdiction in Practice

The choice of sovereign statehood entailed from the very beginning the development of a new national linguistic setting (Minnullin, 2002).

In the era of globalisation, Tatars need above all to protect their republic, statehood and constitution since these are the structures necessary for the development of language and culture. The preservation of statehood ensures the survival of our people and our language (Mintimer Shaimiev's address to delegates at World Tatar Congress, 29 August 2002).

In this chapter, I examine the way in which Tatarstan's claims for recognition and jurisdiction are contextualised and implemented in the specific policy area of language. It is a field in which both Tatarstan and Russian governments enact policy, and constitutes a place where one can measure the effectiveness of federal design at providing recognition and the jurisdiction required to devise and manage language policies. Language in Tatarstan has been a consistent theme of nationalist discourse and state activity, across the spectrum from radicals to moderates. Scholars have tended to examine Tatarstan's language policies in the context of its claims to sovereignty: "The most striking feature of the Tatar identity debate in the last seven years has been the growing importance attached to language, not only in identity construction and preservation, but in the fulfilment of statehood as well" (Rorlich, 1999: 390). Gorenburg analyses language as part of the nationalist mobilisation in the republic (Gorenburg, 2003). For her part, Graney views language as one way in which republican leadership endowed its "sovereignty project" with concrete policy content (Graney, 1999; 2001: 265). The objective of this chapter is to identify the legislative and constitutional frameworks which determine issues of jurisdiction over language, and provide an assessment of policies which have been implemented.

As a rejoinder to the previous chapters, I address the relationship between Tatarstan's status and jurisdictional claims and its policy-making capacity in language. Since group rights are proposed as solutions to the stateness dilemmas identified in Chapter 2, this chapter examines Tatarstan's competences in language and the extent to which its policies correspond with policy-makers' objectives. Does the republic possess enough power to implement its policies? Are they policies hampered by lack of jurisdiction? I find the language situation is generally stable in the republic. In the area of language policy, Tatarstan possesses a lot of leeway in order to implement desired language policy and practices. Policy failures are not due to a constraining centre but to lack of political will

within the republic to carry out and enforce policy. Consequently, language policy is an example of successful federalism in Tatarstan and Russia. The constitutional asymmetry created in the 1993 federal constitution provides Tatarstan with the *de jure* power to establish Tatar as a state language and implement measures to protect Tatar. It is federal design itself, rather than the intergovernmental and bilateral processes examined in previous chapters, which creates governance capacity in this sphere. Although points of friction exist between Moscow and Kazan, they are based more on issues of overall federal design and the status of Tatarstan as a republic than on strictly linguistic issues.

The chapter is organised as follows. I examine why and how language was on the political agenda during *perestroika* and how competence over language policy was institutionalised in Tatarstan's and Russia's constitutional and legal frameworks. I then turn to trace the implementation of Tatarstan's language law, concentrating on four issues: the institutional structure created to support language policy-making; developments in media and publishing; education; and finally, an assessment of the policy's overall results. I address the federal-regional dimension of language policy and focus on the case of script reform before concluding the chapter with an examination of the Russian Constitutional Court's November 2004 ruling on the constitutionality of Tatarstan's language regime.

***Perestroika* and Opening of the Language Question in Tatarstan**

The political context of *perestroika* provides insight into the nature of the language demands articulated by Tatarstan's leaders. Ethnic mobilisation in Union republics (especially the Baltic republics) was closely followed in Moscow and Kazan. The package of laws adopted by Soviet authorities in April 1990 was an attempt to control the unravelling of the Union. In addition to the Law on the Demarcation of the powers between members of the federation (examined in Chapter 3), the Law on the Languages of the Peoples of the USSR was adopted on 24 April 1990 to give Union and autonomous republics the right to determine the legal status of languages within their territories and raise titular or national languages to state language status (USSR, 1990b: art.4). This law provided *de jure* recognition of a practice which was widely prevalent *de facto* among Union republics in 1989. The Estonian SSR's law "On Language" declared Estonian to be the sole state language. The language laws adopted by most other Union republics (the Belarus, Moldovan, Kazakh, Kirghiz, Tajik, Turkmen and Uzbek SSRs) in that time provided official or state status for the titular language and preserved a role for Russian (as an official language, or a language of "interethnic communication"). Just as the Soviet law on the Demarcation of powers elevated the status of autonomous republics such as Tatarstan, the language law innovates

by recognising their power to establish “state languages” and engage in “linguistic state-building” (*lingvoetatizm*) (Neroznak, 2002: 8).

‘Linguistic state-building’ is one reason language reform was on the agenda in Tatarstan. As Graney shows, establishing state status for Tatar bolstered Tatarstan’s overall ‘sovereignty project’ and status claims. By establishing its titular language as state language and devising its own language policy, Tatarstan’s leaders engaged in the institutional practices associated with their newfound ‘sovereign’ status (Graney, 1999: 244). Concern over the poor state of Tatar within Tatarstan was another reason language reform figured prominently on the political agenda. In almost every interview I conducted, my interlocutors were quick to point out the dismal state of Tatar in 1989-90. During the perestroika period, Tatar was taught for two hours a week in 9091 Tatar-language groups in Russian and mixed schools. In the TASSR, there were 995 Tatar schools in 1987-88 and 1059 schools in 1988-89 (Iskhakova, 2001). But these schools were more prevalent in rural areas. In Kazan only one Tatar school existed in 1990, a fact repeated to me in several interviews (with Iskhakov, Minnullin and Valeev, 2004). The republican press reported at the time on the lack of qualified personnel in Tatar and bilingual schools (ST, 10.2.1989). For Khakimov, political action was necessary because “We wanted to be sure that the Tatar language would have state status, it would develop and Tatars would not disappear” (Interview in Ovrutskii, 2000: 38).

As Damir Iskhakov, an ethnologist in the Academy of Sciences of Tatarstan and currently deputy leader of the World Tatar Congress remarks, raising the status and use of the Tatar language was not a new phenomenon, but a return to the situation prevalent earlier in the twentieth century (Interview with Iskhakov, 2004). During the early Soviet period, Tatar had the status of a state language and was widely used within state structures and education (Khairullin, Gorokhova et al., 1998: 17 *infra*). Script reform was also implemented: a Latin-based alphabet replaced Arabic as the basis for the written language. Stalin’s policy of assimilation (*slivaniie*) adopted after the fifteenth Congress of the VKP(B) led to the contraction of Tatar in the public sphere and education, and the script was changed to Cyrillic in 1939 (Khairullin, Gorokhova et al., 1998: 200-02). Subsequent policies of the Soviet regime (on education, for instance) are regarded as having contributed to the weakening of Tatar (Bairamova, 2001: 154-75). Today’s policy-makers underline the importance of the policies of the 1920s and 1930s. A collection of laws, decrees and policies from that era published by the Tatarstan Academy of Sciences is exemplary of the continuity which leaders want to impart to current policies and the model for future thinking on language policy in the republic (Khairullin, Gorokhova et al., 1998).

Responding to concerns about the state of Tatar, Shaimiev stressed the need to teach both national languages to republican children (ST, 8.12.1989). In a shrewdly-titled article *Not Privileges, but Protection* Khakimov wrote that a language law is necessary to guarantee a right to education in both Tatar and Russian and create the basis for the use of Tatar in official and professional activities (Khakimov, 1990). Both Shaimiev and Khakimov were quick to stress the importance of tolerance and bilingualism and reassure Tatarstan's Russians that raising the status of Tatar would not come at the expense of the rights of Russian speakers. The Presidium of the TASSR Supreme Soviet created a committee headed by the director of the Academy of Sciences' Institute on Language, Literature and Art (IYaLI), Mifratikh Zakiev, to draft a language law (ST, 7.12.1989). In addition, Tatar lessons were broadcast on state television from 1988 onwards, and from 1989 to 1991 the state Russian-language newspaper published a weekly column *Let's Speak Tatar (Pogovorim potatarski)* (ST, 27.9.1989).¹

Language was also on the agenda of Tatarstan's nationalist parties. At its founding congress, the Tatar Public Centre (TPC) resolved "The optimal solution for the cultural development of the republic is complete bilingualism..." (Iskhakov, 1998d: 118-9). The TPC was committed to developing the sovereignty of Tatarstan and protecting the state status of Tatar in order to "restore balance" between Tatar and Russian (ST 14.2.1991) but did not repudiate the status of Russian as language of "interethnic communication" in the republic. This also happened to be the same approach adopted by the Committee drafting the language law (Iskhakov, 1998b). Many nationalist movements and groups issued demands for state status for the Tatar language, the development of schools and transition to the Latin script (Iskhakov, 1998d; 1998c reproduces the programmes of nationalist parties and organisations). One key difference between moderates and radicals, however, concerned the place of the Russian language. *Ittifak* resolved that all state officials be required to be bilingual (Ittifak, 1991: 15-25). Such a move would have eliminated the overwhelming majority of Russians from official and state positions, but also, ironically, many ethnic Tatars more competent in Russian than Tatar.

Although the status of the Tatar language was a key element of nationalist programmes and was mentioned in the declaration of sovereignty and 1992 constitution, the implementation of concrete language policies lagged behind. What these documents did is raise the juridical status of the Tatar language, declaring Russian and Tatar to be the republic's state languages (TSSR, 1990: art.3; Tatarstan, 1992: art.4). While Shaimiev characterised language as a "central issue" in 1990, language policies and measures "required

¹A sign of the times, the first column was devoted to providing Russian-Tatar translations of expressions such as *perestroika*, *glasnost*, interethnic (*mezhnatsional'nye*) relations, language, nation, democratisation, etc.

a separate decision” to be addressed in a law rather than in the declaration of sovereignty (ST, 30.8.1990). Two years later, during debates on the constitution Shaimiev intervened to ensure a clause on language status was inserted in the constitution but again deferred discussion of concrete mechanisms and policies until after it was adopted (ST, 25.1.1992; 27.2.1992).

Although work on a language law proceeded throughout this period, little discussion of the committee’s work filtered into the press.² From the reports that exist, the committee appears to have struggled with two major issues. First, members wanted the law to implement measures that would “protect the language for real”, and raise the level of effective legislative protection of Tatar (ST, 6.2.1992). The concern here surrounded the actual policy tools which would be put in place to raise not only the status but utility of the language. Second, there was significant debate on whether the linguistic model should be based on constraint or voluntary use of Tatar. For instance, in plenary debates of article 15, State Council members disagreed whether the provision should read “proceedings are conducted in “Tatar *and* Russian” or “in Tatar *or* Russian””. A compromise was reached on a more ambiguous wording: “proceedings are conducted in the state languages of Tatarstan” (ST, 8.7.1992). Aleksandr Salagaev, who heads Tatarstan’s Russian Cultural Society, expressed concern that draft provisions in the law requiring all teachers to learn both state language provided too short a deadline (1997 was the date suggested) and “will lead to the exclusion of Russian-language candidates” (IZVT, 5.14.1992). Andrei Beliaev expressed consternation at the fact that Tatarstan’s language policies were not the subject of wider public consultations but tended to be presented as a *fait accompli* in the press (VK, 26.8.1994). Indeed, after the draft language law was published in the republican press (ST, 5.30.1992), little reaction or comments were published in the weeks before the final version of the law was approved in July 1992 (ST, 25.7.1992).

Constitutional and Legislative Frameworks of Tatarstan and Russia

The 1992 Law on Languages of Peoples of Tatarstan (all references to the amended version (Tatarstan, 2004b) establishes both Tatar and Russian as equal state languages (art.3) and enshrines the principle of non-discrimination and of freedom of choice (art.2). Although the law also regulates the use of Russian and other languages, particular attention is given to the needs of Tatar speakers, and the specific tasks of Tatar-language renewal

² I was unable to obtain stenographic records of the proceedings of the committee drafting the language law. An official at the Central State Archive informed me it was too early to access documents pertaining to the period 1990-94.

(opening schools and creating a native-language education system, training specialists).³ In education, the law establishes a policy of free choice of the language of instruction (art.7 and 8). Although parents are free to choose the language of instruction, the law prescribes the study of Russian and Tatar as a subject in preschools, general, middle and specialised middle schools (art.9). Moreover, Russian and Tatar must be taught “in equal amounts”, a requirement maintained in the republic’s Law on Education (Tatarstan, 1997: art.6§1 and ch.2). In the public sector, the law creates a regime of official bilingualism in public administration and state affairs, permitting the use of Tatar and Russian in the proceedings of state bodies and materials published by the state (art.10-17). Both languages are used on state signs and street signs (art. 20 and 23). I provide a discussion of how these legislative provisions work in practice in the section on implementation, below.

On the federal side, the 1993 constitution creates a constitutional asymmetry for republics to name a state language in addition to Russian. Russia’s Law on Language of the Peoples of the Russian Federation (RF, 1991, references to the version as amended in 2002) establishes Russian as the state language, and reasserts the constitutional guarantee of republics’ right to establish state languages (art.3). The law allows for the use of other minority languages in areas where their speakers are concentrated. Russian is the language of state proceedings (parliament, courts). The law does not prohibit the use of other languages and allows citizens to use a translator in the event they do not speak the state language (art.18). The 2005 Law on Russian as the State Language of the Russian Federation, enacted to protect the status and role of Russian, preserves republics’ constitutional asymmetry. Although the law stipulates that the use of Russian is mandatory in a number of fields, such as the proceedings of federal state bodies, elections, court proceedings including court of the subjects of the federation, communication with the subjects of the federation (RF, 2005a: art.3), it adds that such obligations “must not be interpreted as a negation or depreciation of the right to use the state languages of republics” (art.1§7). Thus, conscious efforts have been made to preserve the autonomy of republics with regard to language policy.

Russia’s law on language describes the competences of the federal government and republics. The federal government regulates Russian as a state language and funds the

³ The law was rewritten in 2004 to provide better recognition of the status and rights of the speakers of other languages: “On the State Languages of Tatarstan and other languages in Tatarstan”. Exchanges between the Russian government and the Advisory Committee on the Framework Convention for the Protection of National Minorities shows the Committee was concerned that Tatarstan’s legislation did not provide sufficient support of the rights of non-titular groups within the republic (CoE, 2002: 13). Tatarstan’s language law allows the use of other languages in state services: citizens unable to address state bodies or courts in the republic’s state languages can do so in their native tongue, or use a translator. Moreover, the law protects the right to education in the “native language of the people of Tatarstan”. For instance, a number of Chuvash and Udmurt schools operate in the republic.

teaching of Russian as a state language in the country's schools (art.10), and cooperates with republics to develop their state languages (art.6). The law grants republics the power to publish laws and conduct the proceedings of state bodies in their state language and Russian (art.13 and 16). In education, republics have the competence to provide and fund education in their state language (art.29§8). According to Russia's Law on Education, the federal government is responsible for setting the state-wide educational curriculum (*uchebnyi plan*) and subjects of the federation devise and deliver the regional component of the federal curriculum. Approximately one-third of the federal curriculum is devoted to the regional component, which includes courses on national languages (not Russian), local and regional history, culture and geography (RF, 1996a: art.29§8).

While officials in Tatarstan do not criticise the division of competences in the field of education, they decry Moscow's lack of responsiveness to the challenge of teaching more than one state language. An official within the Cabinet of Ministers' Department on Languages, Faria Shaikhieva, mentions that the federal curriculum "does not foresee Tatarstan's needs as a bilingual republic, in which two state languages are mandatory subjects and in many cases one additional national language is taught" (Interview with Shaikhieva 2004). The problem is that the federal curriculum foresees that republics will teach only one other state language and is not clear on the place of other national languages (such as Chuvash, Udmurt, etc.) within the regional component of a republic in which these national languages are not titular. Since all languages other than Russian fall within the regional component, there is pressure on the time allocated for other subjects within the regional curriculum. As Valeev point out, "Moscow is concerned with the quality of Russian taught in schools but does not show the same level of concern for other languages" (Interview with Valeev, 2004). Whereas the federal government implemented its Federal programme on the Russian language to "reinforce the role of the Russian language in education" (RF, 2001a), Kim Minnullin deplores the fact that the federal government has not implemented a similar programme for any other language (Minnullin, 2004a). In addition, since the federal government is responsible for establishing educational curricula, it has the power to increase or decrease the time allocated to the regional component. A compression of the regional component would potentially limit Tatarstan's ability to deliver Tatar-language education and region-specific content (Interviews with Galiakhmetov, 2004; Minnullin, 2004b; Shaikhieva, 2004). Nevertheless, as things currently stand, although the federal government is not perceived to be as responsive as officials would like, the federal constitutional and legislative framework has enabled Tatarstan's leaders to enact an ambitious language programme.

Implementation of Tatarstan's Language Policy

Tatarstan adopted its language law in 1992 but concrete policy initiatives and bodies to oversee their implementation were not put in place until 1994. Having the law on the books did not guarantee its realisation, however. As McAuley notes, the absence of a commitment by Tatarstan's leadership to implement concrete policy goals jeopardised the stated goal to preserve the republic's Tatar heritage (McAuley, 1997: 85). As I examine in this section, political commitment is a key factor in the implementation of language policy in Tatarstan. I focus on a number of policy goals which were implemented (institutional structures, media and publishing activities, education) and conclude with an assessment of overall results of Tatarstan's language policy.

The State Programme on the Preservation, Study and Development of the Languages of the Peoples of Tatarstan (State Programme) was enacted in 1994 to execute the 1992 language law and, more importantly, set concrete policy objectives (Tatarstan, 1994a). The programme includes 126 measures, 67 of which are devoted explicitly to Tatar. None address Russian exclusively (Gorenburg, 2005: 12). For the Chairman of the Tatarstan State Council Committee on Culture, Science and National Affairs, Razil' Valeev, "more attention was given to Tatar than Russian on purpose because Tatar was in a worse situation. It is only natural to give more assistance to the weakest of both languages" (Interview with Valeev, 2004).⁴ While much has been published by way of assessment of Tatarstan's language policy in Russian, it is mainly quantitative in character and analyses the evolution of the number of schools, classes, media outlets etc. opened in the republic. Little material is available in English. Furthermore, there is comparatively less critical assessment of the policies' strengths and weaknesses and how the existing approaches, institutions and political context affect language policy capacity.

Institutional Structures

As part of the State Programme, a *Committee of the Cabinet of Ministers on the Realisation of the Law on Languages* was created as a permanent body to coordinate the activities of government bodies, scientific and educational institutions in order to promote a unified approach to the implementation of language policy (Tatarstan, 1994b: art.1). The committee is headed by Tatarstan's Prime Minister, with the Vice Premier and head of the IYaLI as co-chairmen. There are another thirty members, including the heads of ministries and state bodies, parliamentarians, academics and linguists, and representatives of local government.

⁴ Just as Tatarstan's Law on languages was redrafted in 2004 to provide better recognition of the rights of non-titular groups in the republic, the recent version of the State Programme (entitled the *State Programme on the Preservation, Study and Development of the State Languages of Tatarstan and other languages in Tatarstan, 2004-2014*) includes measures that specifically address Russian and other languages.

The IYaLI provides organisational and technical support. This Committee is tasked with overall control of the implementation of the law and State Programme and preparation of concrete proposals to attain the legislative objectives. Several sub-committees are in place to develop policy on specific issues (on legislative amendments, place names, or to draft a law to police violations of the language law). The Programme designates a cornucopia of bodies to execute the programme's measures such as ministries, local governments, the IYaLI, Tatarstan's Academy of Sciences, institutions of higher education, publishing houses, etc. In 1996, in an effort to bolster the institutional presence of language policy within the state apparatus, a Department on the Realisation of the Law on Languages (DL) was created within the Cabinet of Ministers. As its manager Kim Minnullin relates, "When I started in 1996, all I had to work with was a copy of the 1992 law and 1994 State Programme" (Interview with Minnullin, 2004b). Thus, four years after the adoption of the law, and almost two years after the State Programme came into existence, Tatarstan was still at the beginning of the implementation process.

The Cabinet issued periodic decrees following 1994 in an attempt to spur progress on some concrete measures. But according to Valeev, the execution of language policy was seriously hampered by a "lack of motivation" (*defitsit zhelaniya*) on the part of republican leadership (Interview with Valeev, 2004). Many of the policy tasks enumerated in the State Programme were ignored or postponed. For instance, the Cabinet was expected to draw up a list of posts in the bureaucracy which would be designated bilingual before the end 1994, a task which was never carried out even after additional resolutions were issued. Similarly, progress toward the creation of a Tatar National University was much slower than the deadlines set by the Programme. Three reasons appear to explain the lack of motivation to fully implement language policy in Tatarstan: financial obstacles, organisational insufficiencies, and institutional incapacity.

First, republican budgetary constraints and under-funding of language policy prevented the full execution of measures included in the State Programme. The budget contained appropriations for the realisation of the programme, but as Table 5.1 demonstrates, in the mid 1990s the level of financing fluctuated from year to year (See *Vedomosti Gosudarstvennogo Soveta Respubliki Tatarstan* for the yearly data, 1994-2004).

Table 5.1. Budgetary Appropriations for Implementation of Law on Languages

	1995	1996	1997	1998	1999	2000	Total
Appropriation (thousands of roubles)	4000	4898	5660	6000	6000	7200	33758
Financing	3275	2455	5500	4485	6000	7200	28915
Financing as percentage of appropriation	82	50	97	75	100	100	85

State-wide budget constraints had repercussions for other bodies, such as media and publishing companies, libraries and cultural organisations which were unable to execute their policy commitments (RT, 22.05.1997). In addition, municipal governments, responsible for the delivery of language education, faced significant shortages. Irek Arslanov, manager of the Department on Nationality Affairs of the City of Kazan, notes that only 30-50 per cent of the sums budgeted for the implementation of language policy at the municipal level were actually dispensed for that purpose (KV, 1.7.1999).

Second, the “declaratory nature” of the law and many policy obligations in the Programme did not lead to the creation of adequate mechanisms for their implementation (Ganiev, 1997: 114; Iskhakova, 2003). Damir Iskhakov argues the “law is like air since no mechanism is in place to realise language policy” (Interview with Iskhakov, 2004). For example, although bilingual street signs were put up during the 1990s, Iskhakov signals there is nowhere to go to complain about the quality of the Tatar language and have grammatical or typological errors corrected (Interview with Iskhakov, 2004). A further example is provided by Kim Minnullin. The State Programme did not lead to the implementation of procedures to sanction the violation of the language law. A sub-group of the Cabinet Committee worked on such a law; it was never finalised. Finally, a provision on the violation of the language law was included in the Administrative Code of Tatarstan (Tatarstan, 2002: art.3.5), but sets only penalties not the means of enforcement. As Minnullin points out “we have not reached the moment when we can say how this provision should work, how we know when the law is violated and how violations are punished”(Interview with Minnullin, 2004b).

Institutional incapacity is the third factor. Even though the Cabinet Committee was created to oversee the implementation of the language law, Ganiev and Tatarstan’s Cabinet called for the creation of an overarching power structure for the execution of language policy (Ganiev, 1997: 115). The current body, the Department of Languages, consists of three people. And although it has been successful in many of its activities (outreach, conferences, the publication of dictionaries, pedagogical material and studies of language policy and language law in Tatarstan), “the difficulty is that the Department does not have its own ministry or structure to defend its interests or coordinate activities” (Interview with Minnullin, 2004b). The preamble of the 2004 State Programme describes the institutional lacunae: there is an absence of an infrastructure to provide research support and coordination, there is no centre responsible for setting language standards, attest professional qualifications, test language, or provide translation services to government (Tatarstan, 2004a). This has resulted in a diffusion of language policy within the state. Consequently, since language does not present a common front within the apparatus of

government, it has been easier to push language issues to the backburner and harder to promote coordination of the various dimension of language policy. Minnullin says that his proposals for the creation of such a body fall on deaf ears, because political leaders refer language either to the Cabinet Committee or the IYaLI. As Minnullin points out, IYaLI regroups language specialists but “they are not specialists of the politics of language” (Interview with Minnullin, 2004b).

It is unclear to which extent the creation of a more centralised body within government would advance the implementation of language policy. Indeed, there is no guarantee that a more hierarchical coordination mechanism would foster additional political motivation. As the manager of the Department of Education of the City of Kazan relates, municipal governments are rarely consulted in policy-making and expected only to execute the policy. There is no outlet or mechanism to share information about experiences and innovations of policy delivery at the municipal level which could prove beneficial (Interview with Galiakhmetov, 2004). Perhaps better horizontal coordination of language across government would be more beneficial than adding another level of hierarchical control. The 2004 State Programme provides for the creation of an institutional structure to optimise the realisation of the language law, which would be responsible for developing research and analysis, related not only to linguistic issues but also to the relations between Tatarstan’s national groups and languages (Tatarstan, 2004a: part 3).

Media and Publishing

The 1994 State Programme set objectives to increase the Tatar content of information media (print, TV, radio), including the creation of new Tatar-language programming. In the area of media and publishing, significant quantitative progress was accomplished. In terms of written materials, as of April 2004, 517 newspapers and magazines were in circulation in Tatarstan: 421 in Russian, ninety in Tatar, five in Chuvash and one in Udmurt (Pozner, 2004). In 1998, the Tatar Ministry of Information reported that the republican publishing house *Magarif* had edited 526 books, 89 per cent in Tatar, with a circulation of 10.8 million copies (Khairullin, Minnullin et al., 1999). While funding for many publications is provided from the republican budget,⁵ the demand for Tatar-language newspapers comes exclusively from Tatar-speakers (See Table 5.2).

Progress has also been made regarding the amount of Tatar-language programming on republican television and radio. At the end of the 1980s, three hours of Tatar

⁵ The media market in Tatarstan has undergone significant centralisation since 1992. The state holding Tatmedia was created in 2003 and comprises over 100 media outlets including state-funded newspapers and other media. In the private sector, 2 holdings dominate: Efir (which controls several radio stations, as well as the newspapers *Vostochnyi Ekspress* and *MK v Tatarstane*) and STS (which is part of the Russia-wide holdings of the American-owned StoryFirst Communications group) (Shaforostov, 2004).

programming were available on television and four hours on the radio (Iskhakova, 2001: 51). By the mid-1990s, 70 per cent of radio broadcasts and 54 per cent of republic-produced television aired on the State television and radio company (GTRK) (which represents 45 per cent of total output) was in Tatar (Davis, Hammond et al., 2000: 204). In May 2001, a new republican network, *TNV* (*Tatarstan Novyi Vek*, or *Tatarstan New Century*), was created to counterbalance Moscow's increasing control over the Tatarstan GTRK (Coalson, 2004).⁶ Ilshat Aminov, the head of the new network, explained that since the GTRK allots only 2.5 hours a day for Tatar-language programming, TNV would broadcast in both state languages of Tatarstan, in equal amounts (TBDR, 9.8.2001). TNV is available to 99.5 per cent republican residents, to residents of Bashkortostan and some programming is rebroadcast on networks throughout Russia. In August 2002, TNV launched a radio station (*Bulgar FM*) which is billed as the Tatar *Mayak*: it broadcasts round-the-clock in Tatar and Russian, alternating from one language to the other every three hours (RT, 23.08.2002). In addition to TNV, another twenty radio and TV stations operate in Tatarstan, of which three broadcast in Tatar, seven in Russian, and the balance in both languages (Pozner, 2004). During the evening, channels such as TNV, GTRK (Rossiya) and the private *Efir* offer both Tatar and Russian news programming. As with written media, demand for Tatar-language programming is driven mainly by Tatars: 75.6 per cent of Tatars claimed to tune in to Tatar broadcasts while 90.7 per cent of Russians follow programming in Russian only (Table 5.3). Paradoxically, although the overwhelming majority of Russians do not follow Tatar-language programming, 55.3 per cent believe that enough Tatar material is broadcast. A majority of Tatars believe, for their part, that the quantity is insufficient (Table 5.4).

Table 5.2: Newspaper Readership, by Language and National Group (in %)
(Iskhakova, 2001: 51)

	Tatars	Russians
Publications in Tatar	14.1	—
Publications in Russian	49.6	99.2
Publications in both languages	36.3	0.8

⁶ The federal government assumed control over the Tatarstan branch of the State Radio-Television Company in 2003. The decision to create TNV will likely protect Tatar-language broadcasts from the recent reorganisation by the federal government of regional branches of the federal GTRK. Before, regional branches of the GTRK received funding from Moscow but were managed by Russia's regions. Under the change, the federal government cut the financial support and airtime reserved for regional programming by half (to 360 hours), and stipulates this time can be used only for news programming. Thematic programming or programming about regional social or political issues must be cut or financed exclusively by the regions (NG, 24.1.2005). The issue garnered little reaction in Tatarstan and Shaimiev issued a decree liquidating the holdings of the Tatarstan branch of the GTRK in February 2005. Goble fears the change will strengthen the "information vertical" in Russian broadcasting and lead to a dramatic drop in the amount of programming available in Chuvash, Marii and Karelian, which do not benefit from the same level of republican support as Tatar in Tatarstan (Goble, 2005).

Table 5.3: Radio and Television Audience, by Language of Programming and National Group (in %) (Iskhakova, 2001: 51)

Language of programming	Tatars	Russians
Tatar	9.8	0.1
Russian	14.6	90.7
Both	75.6	9.2

Table 5.4: Opinions on the Quantity of Tatar-language Programming, by National Group (in %) (Iskhakova, 2001: 51)

	Tatars	Russian
Entirely sufficient, perhaps too much	4.0	22.9
Entirely sufficient	28.6	32.4
Often insufficient	30.6	5.8
Completely insufficient	24.2	2.7
No answer	12.5	36.1

Education

The State Programme's objectives in the field of education were ambitious, aimed at establishing a system of Tatar-language education and instruction; devising educational curricula; training teachers; and publishing pedagogical material, dictionaries and support materials. In the field of higher education, the Programme called for the creation of a Faculty of Tatar language and literature at Kazan State University and the creation of a Tatar National University. Indicators show that progress in this area have been very visible. As Valeev points out, policy-makers were concerned foremost with increasing the quantity of schools and availability of Tatar in order to redress the endemic weakness of Tatar-language education (Interview with Valeev, 2004). In 1990, only one Tatar school existed in Kazan. Thirty-five schools were subsequently opened in the capital during the 1990s (Interview with Galiakhmetov, 2004). In the republic, 1132 Tatar schools and eighty-one Tatar lyceums and gymnasias existed in 2003. Within Russian-language schools, 2814 Tatar-language streams were in place (n.a., 2003). In 1999, 70 per cent of Tatar children attended Tatar-language preschools and kindergartens, up from 23.5 per cent in 1992 (Khadiullin, 1999: 62). The key education provision of the 1992 language law, requiring Russian and Tatar to be taught in equal amounts, has been respected. Tatar and Russian as state languages are studied in all general schools and institutions of professional education, and consequently 99.7 per cent of Tatarstan's pupils study Tatar. While all Tatars study Tatar as a state language, it is the language of instruction of only 51.9 per cent of them (Tatarstan, 2005). Table 5.5 illustrates the evolution of Tatar-language education between 1990 and 2004.

The lack of teachers qualified to teach in Tatar schools was a significant problem in the early 1990s: there was a deficit of 1070 teachers in ninety-five republican cities in 1993-94 (Iskhakova, 2001). This deficit has dropped as measures were implemented to train

teachers and cadres. Current, teachers and cadres receive training within the Kazan State Pedagogical Institute, the Kazan State University and Tatar National Humanities Institute. Similarly, there was a deficit of quality textbooks and pedagogical materials. Through the financial support of the State Programme, *Magarif* and *Kheter* publish forty textbooks and more than thirty methodology texts a year, with a combined print run of one million copies (n.a., 2003). Since 1992, 1000 books (14.5 million copies), eighty dictionaries (550,000 copies) have been published by the republic's Tatar-language publishers (Minnullin, 2002).

Table 5.5: Dynamics of Development of Tatar-Language Education in Tatarstan

	1991	2004
Total schools with Tatar as language of instruction	1069	1210
Percentage of pupils taught in native Tatar language	29.8%	51.9%
Total pupils studying Tatar language (as percentage of all pupils)	28.5%	99.7%
Source: RT 22.02.2001, Tatarstan 2005		

While the quantitative indicators are positive for primary and general schools, Tatar has not fared as well within institutions of higher education. "The lack of a unified system of Tatar-language education", explains the manager of the Department of Education of the City of Kazan, "hampers the effectiveness of the law" (Interview with Galiakhmetov, 2004). According to a study by Garipov and Faller, no more than 10 per cent of students within higher education receive instruction in Tatar throughout the duration of their studies, and about 20 per cent have regular lectures or courses in Tatar (Garipov and Faller, 2003: 179). The 1994 State programme does not stipulate mechanisms for the implementation of the language law in higher education, which Razil' Valeev concedes was a significant lacuna (Interview with Valeev, 2004). Although the offer of Tatar language instruction is restricted at this level, demand for Tatar-language instruction may itself be limited: the lack of utility of Tatar within higher education and then on the job market may help explain why only half of Tatars attend Tatar-language primary and high schools.

Middle-specialised institutions of education and higher education fall within the jurisdiction of the Russian Federation, and are not directly affected by Tatarstan's language legislation. The federal government provides financing for higher education, and in 2001 the Ministry of Education ordered Tatarstan's institutions of higher education to cease using federal funds to provide teaching in Tatar (Yusupov, 1997: 16-7, TBDR 26.07.2001). Just as in primary and secondary education, the federal educational curriculum provides 15-20 per cent of time for the delivery of a regional component, financed by Tatarstan.⁷

⁷ Textbooks are published from republic funds, but according to Mukharyamova et al., these books are either translations of Russian Ministry of Education-approved texts (to encourage a "unified standard"), or are commissioned without tender, which has produced results of varying quality (Mukharyamova, Morenko et al., 2004: 16).

Therefore, the problem of integrating Tatar in higher education is not necessarily due to a lack of opportunity, but of political will. At a session of the State Committee on Culture, Science, Education and National Questions in June 2004, participants learned that it is up to individual institutions to decide how, if at all, to integrate Tatar into their curricula. The Council of Rectors of Tatarstan never finalised a joint approach on the delivery of the national-regional component of the curriculum within their institutions. Consequently, Tatar instruction is organised on an *ad hoc* basis. Tatar is offered in fifteen of Tatarstan's twenty-two institutions (Mukharyamova, Morenko et al., 2004: 14). Overall, only five percent of students in institutions of professional education receive instruction in Tatar, and 32 per cent within institutions of higher education (VE, 25.06.2004).

In institutions like Kazan State University (KGU) of the Kazan State Pedagogical University, parallel Tatar groups have been established. Students reading political science or sociology at KGU, for instance, may have a Tatar language requirement, but instruction in core topics will be provided in Russian. The possibility to write term papers or exams in the subjects in Tatar depends on individual instructors' abilities and openness (Interview with Nizamova, 2004). Recent research finds between 55 and 70 per cent students attending Tatar-language schools who apply to university find it "advantageous" to write their entrance exams in Russian. The number is even higher for more "prestigious" schools like the Kazan State Medical University (Mukharyamova, Morenko et al., 2004: 11). The authors explain their findings by the lack of Tatar-language preparatory courses and the fact that Tatars use Russian-speaking tutors to prepare their exams. More pernicious, however, is the lack of established procedures regulating the use of Tatar in entrance exams. Although a right to write entrance exams in either language exists, uncertainty as to how this is conducted in individual institutions had led many applicants to use Russian rather than jeopardise their chances (Mukharyamova, Morenko et al., 2004: 13).

In his annual address to the State Council, Tatarstan president Shaimiev rebuked the Minister of Education for proceeding too slowly on the question of development of Tatar language education (Shaimiev, 2004). Consequently, the second State Programme for 2004-14 includes measures to increase coordination in the field of higher education and develop a unified system of Tatar-language education (Tatarstan, 2004a: par 3.4). Significantly, during his presentation to the State Council's hearings on higher education in June 2004, Mukhametshin refused to lay the blame on the federal government, but stressed that national language education within Tatarstan's institutions of higher education is a republican issue (RT, 24.06.2004). Long-standing (and long-postponed) plans to create a Tatar National University have resulted not in the establishment of a wholly new institution, but in the consolidation of three existing institutions (Kazan State Pedagogical University,

the Tatar American Regional Institute and Tatar State Humanities Institute) to create the Tatar State Humanities and Pedagogical University (TGGPU). The decision, announced in July 2005 seeks to respond to the need for a unified Tatar-language education system (Intertat, 4.7.2005). The federal government approved its registration (VE, 11.8.2005). For Razil' Valeev, the objective of a Tatar university is to train specialists and cadres to take up positions in the bilingual republic. The plan is to provide teaching in three languages – Tatar, Russian and English – and prepare lawyers, administrators, diplomats and teachers, which traditional universities have been unable to provide in sufficient quantities (Interview with Valeev, 2004). One concern about the role of a dedicated university is the effect it will have on Tatar-language education in the republic's other institutions. Although it promotes a unified system of Tatar education, Kim Minnullin fears that by creating a parallel system, 'traditional' universities will disengage from the task of providing Tatar-language instruction (RT, 24.06.2004). If the republic's other institutions were to revert to a provision of Tatar-language services and education which is perceived as only optional, the result would be self-defeating.

Language Utility

As the previous sections illustrate, Tatarstan's language policy has been successful in increasing the supply of education, media and publishing. For Valeev, the reforms of the 1990s needed to address the *quantity* of Tatar (schools, publications, reviving the Tatar language), but "the next step needs to address the *quality* of the Tatar language" (Interview with Valeev, 2004). This concerns chiefly the issue of language utility and functionality. In his study of minority languages in Russia, Neroznak concludes that "the lack of correspondence between the legal status and utility level of language" poses serious problems for titular languages (Neroznak, 2002: 16). Thus, even in Tatarstan, where considerable efforts have gone into language planning, strong contradictions exist between the status and the functions of the Tatar language (Interview with Minnullin, 2004b).

One problem is the linguistic asymmetry prevalent in Tatarstan. The legislation creates a model of Tatar-Russian bilingualism in the republic. However, the demographic situation (Tatars account for just over half of the republic's population, Russians for 43 per cent) and the asymmetry in Tatars' and Russians' competence in the other language are obstacles to the establishment of Tatar as *functionally* equal to Russian (Interview with Bairamova, 2004). Whereas only 0.5 per cent of Tatar respondents in the study in Table 5.6 respond they have no knowledge of Russian, 81.6 per cent of Russians state they possess no competence whatsoever in Tatar. The 2002 Russian census revealed a slight rise in Russians'

level of competence in Tatar: ten percent of Russians respond they understand it; another ten per cent say they can speak it (Musina, 2005).

Table 5.6: Levels of Competence in Tatar and Russian Languages, by National Group (in %) (Iskhakova, 2001: 35)

	Competence in Tatar		Competence in Russian	
	Tatars	Russians	Tatars	Russians
Fluent	65.1	1.2	84.9	97.9
Speak, read but not write	11.2	1.0	3.6	1.1
Speak, but not read nor write	12.1	1.5	1.8	0.7
Speak with difficulty	7.8	2.5	8.4	0.1
Understand, but not speak	2.7	12.1	6.8	0.2
Not at all	1.1	81.6	0.5	—

Russian continues to service a majority of spheres (education, professional activities, and communication) and remains the main language of inter-ethnic communication. Russians are unlikely to use Tatar to communicate, read, or in a work setting (Bairamova, 1997: 8-12; Bairamova, 2001). Tatar, on the other hand, does not service all spheres of activity. In education, Tatar is not as prominent as Russian as a language of work or scientific research and publication. Even for many Tatars, Tatar is a functional *second* language (Bairamova, 1993). Gorenburg shows that language policies have not resulted in changes to overall speaking patterns and has not proved successful “in reversing the trend toward a decrease in Tatar language knowledge and use among ethnic Tatars” (Gorenburg, 2005: 18). In the academic field, candidates prefer to write dissertations in Russian because there are more Russian-speaking specialists and a larger readership (Interview with Bairamova, 2004). Thus, although many of the policy measures implemented by the government since 1994 have tackled supply-side problems, demand for Tatar policies has not risen as quickly.

Among Russian-speakers, nine years of mandatory study of Tatar is not considered sufficient to develop fluency. In my informal interviews and discussions with Russian-speakers and parents of Russian pupils, while some criticised the fact that Tatar-language education was a requirement, they were more critical of the quality of the textbooks and pedagogical materials available for Tatar as a second language. Moreover, they deplore the fact that compulsory study leads only to a limited knowledge of the Tatar language (350-400 words and expressions) (Interviews with Ovrutskii, 2004; Salagaev, 2004). This has led Bairamova to question whether bilingualism should be the policy objective. Policy-makers “measure success in a different way as a linguist” (Interview with Bairamova, 2004). For her, the policies implemented since 1992 have led to “significant” achievements in terms of raising the status of Tatar and raising Russians’ and Tatars’ exposure to the language (Ibid.).

Since the road to full bilingualism is likely to be long, fluency in both languages may remain too high a standard for the time being.

Although the official policy of linguistic equality has not led to full-fledged equality of use and utility of both languages, language policy in Tatarstan is not a factor of political instability. In that sense, Tatarstan's approach – official bilingualism and a policy of free choice of the language of instruction – has been successful to develop what Iskhakov (1998a: 25) calls parity of esteem (*paritetnyi natsionalizm*) between Russians and Tatars (Interviews with Bairamova, 2004; Minnullin, 2004b). The policy has led to greater respect of the place of Tatar and Russian within the republic. As Sagitova remarks, the rise in status and respect for Tatar has contributed to curtail the everyday resentment and discrimination to which Tatar-speakers were subjected in the late Soviet period (Interviews with Sagitova, 2004; Valeev, 2004). The linguistic front is characterised by tolerance. This is in line with the republican leadership's attempts to fashion a sense of Tatarstani (*tatarstanski*) identification among the republic's residents, as I examined in Chapter 3. Thus, bilingualism becomes a characteristic of being a resident of Tatarstan, a *Tatarstanets* (Drobizheva, 2004). Recent polling data appears to confirm the acceptance by Tatars and Russians of the bilingual nature of the republic: in 2002, 90 per cent of Tatars and 70 per cent of Russian agree with the view that both languages should be state languages (Conference presentation by Musina, 2005). Among Russians, positive opinion of Tatar as a mandatory topic in school rose from 13 percent in 1990 to 61 per cent in 1993 and has stayed at that level (Iskhakova, 2001: 51). Among both Russians and Tatars, there is an overwhelming consensus the president of the republic should speak both languages (Bairamova, 2001: 181; Iskhakova, 2003).

Although the law and State Programmes have raised the status and official presence of Tatar, the development of functional bilingualism must be seen as a long term objective (Garaev, 2002). The 2004 State Programme deplored the fact that language issues have become, during the 1990s, a second-order concern (Tatarstan, 2004a: preamble). Language policy has been treated as a one-off affair, especially after the law and policy were first put in place. The policies were developed, enacted and achievements measured (the quantitative assessments surveyed in this chapter point to a significant recrudescence of the presence of the Tatar language in the republic), but the need for continued efforts and innovative policy, especially a context of budgetary constraint and more pressing social and economic issues, is overlooked. By mentioning that language policy must raise the quality of the language, Valeev signals he is aware of the challenge (Interview with Valeev, 2004). For Minnullin, this challenge requires increased policy and monitoring capacity of language issues and language policy within the government apparatus in order to promote language priorities in a more sustained and professional way (Interview with Minnullin, 2004b). While it is too

early to know whether the State Programme for 2004-14 will respond to these needs, political resolve will be a crucial factor in its implementation. Before it was implemented, twenty-five per cent of the funds budgeted by the 2004 State Programme were cut prior to receiving presidential approval in Fall 2004. One main difference between the draft and final versions of the Programme was the sources of financing. Whereas the draft Programme directly earmarked resources from the republican budget, the final version states that funding of many tasks will come from the operating budgets of the organisations responsible for their implementation. Language policy commitments may subsequently be squeezed by competing priorities. Thus, the inadequacies of Tatarstan's language policies are likely to remain a consequence of endogenous factors and a lack of resources and political commitment.

Status and Jurisdiction in Language: The Federal-Regional Dimension

Although Tatarstan's language policy makers evoke the lack of support they receive from Moscow, none of my interlocutors characterised federal policy as a hindrance to the exercise of the republic's prerogatives. While they are critical of the general direction of Putin's federal reforms and of recent developments in federal-regional relations, a consensus exists that republican policy-makers possess the competences required to implement their objectives. That is not to say that the federal constitutional and legal framework has no influence. Indeed, federal law has forced several changes in Tatarstan's language policies. For example, the Cabinet of Ministers issued a resolution in June 1996 which required bilingual labels and documentation in the sale of products such as pharmaceuticals and food products (Khairullin, Minnullin et al., 1999: 53-7). Because such a requirement contradicted federal legislation, the resolution was amended to require labelling of good produced in Tatarstan only. This limited requirements was also found to contradict federal legislation, and the labelling requirement dropped altogether (Interview with Minnullin, 2004b). As I examine in Chapter 7, federal law in Canada requires all packaging to be bilingual. Quebec's language legislation added more stringent requirements, requiring instruction booklets, guarantees and other information provided with consumer goods be made available in French. In Tatarstan, the few producers providing bilingual packaging do so on a voluntary basis.

Script reform

Script reform has been one of the significant and persistent areas of federal-regional conflict. This issue has been the object of legislation, counter-legislation and competing court rulings by Tatarstan's and Russia's Constitutional Courts. Script reform was a topic of

academic and political discussion throughout the 1990s. Impetus for implementing the change was provided by Tatar deputy (and later Russian State Duma member) Fandas Safiullin, who brought the issue for discussion at the Second All-World Tatar Congress in 1996. Congress delegates voted unanimously in favour of script reform.⁸ Consequently, the Cabinet Committee on the Realisation of the Tatar language law studied the experiences with the Latin-based alphabet of the 1930s (called *Yanalif*, the Tatar acronym for *new alphabet*) and involved seventeen republican organisations (including the Tatar Academy of Sciences, the Ministries of Culture and Education, the unions of Writers and Journalists) in the decision-making process on script reform (Minnullin, 1999, RT, 9.22.2001). The 1999 “Law on the Restoration (*Vosstanovlenie*) of the Tatar Alphabet on the Basis of the Latin Script” established the 34-letter Latin-based alphabet to be used and set a ten-year implementation period (from 2001 to 2011, projected to cost \$4.7M), during which both Latin and Cyrillic scripts would coexist (art.3). The law required a State Programme on Implementation be put in place to manage the transition (art.4). As part of this transition, the Ministry of Education implemented pilot programmes in two to three schools in each region of Tatarstan to teach Tatar in the Latin script. The Minister reported the experiment was successful: pupils demonstrate fast progress in using the Latin script (Kharisov, 2002).

Dozens of articles for and against the reform appeared in republican print media, and arguments ensued over the linguistic and political justifications for the reform. Most arguments in favour were of a linguistic or philological nature. Republican elites sought to emphasise the continuity of the reform. Its very name, Law on the *Restoration* (*Vosstanovlenie*) was meant to link Tatarstan’s 1999 law with the period from 1927 to 1939 when Tatar was based on a Latin script (KV, 12.10.1999). The multilateral process by which the law was adopted tends to support Tatar policy-makers’ claims that the reform was intended to be a linguistic rather than explicitly political project. Although LDPR leader Vladimir Zhirinovskiy insinuated a Latin alphabet was chosen over Arabic because “Turkey paid Tatarstan more than Saudi Arabia” (TBDR, 12.1.2001), Minnullin justified the decision as a means to further the development of the Tatar language and because the Latin-based alphabet more faithfully renders the sounds of Tatar (Minnullin, 1999). It is this linguistic argument which was most prominent in the republican press. The Cyrillic script is considered deficient as it does not render Tatar sounds properly, and includes letters, the sound of which do not exist in Tatar (including E, Yo, Ts, Shch, Yu, Ya, Zh). Furthermore, the change was said to be a means to reduce linguistic interference – Tatar learned in

⁸ Tatarstan’s leaders have legitimised their approach to script reform as being the result of a unanimous decision of the world’s Tatars and argue it is a decision in the best interest of the Tatar nation. Opponents, on the other hand, criticise that many delegates came from Tatar communities in other countries where Latin scripts are already commonly used and do not understand the situation of Russia’s Tatars.

Cyrillic was often spoken with Russian sounds (Wertheim, 2003: chap. 2). By separating the scripts, for philologists, each language could better develop (Minnullin, 1999; Interview with Minnullin, 2004b).

The promotion of Tatarstan's participation in the Internet and high-tech was another prominent argument in favour of script reform. Khakimov argued that a Latin-based Tatar is easier to use on the Internet than Cyrillic, thus contributing to "make Tatar more useful in IT" (Interview with Khakimov, 2004, V&D, 5.4.2001 and 27.7.2001). Tatarstan's government has signed agreements with Microsoft to develop a Tatar operating system and software (TBDR, 22.4.2005). This is conjugated with a desire to make it easier for Tatars from Tatarstan to communicate with the outside world, with Tatars in other countries, and facilitate a *rapprochement* with the Turkic world. For Rafael Mukhammetdinov, one of the leaders of the nationalist *Ittifak* organisation, script reform is as an opportunity to differentiate Tatarstan from Russia and pose an act of national self-determination, "whereby Tatarstan removes the eyeglasses made in Moscow to keep the republic focused on that city, and puts on normal eyeglasses to see the world in another way, straight and clearly" (ZP, 28.12.2002).

Tatarstan's script reform, although adopted unanimously at the World Tatar Congress was the object of increasing opposition within Russia. The Latin script is a huge symbolic issue, demonstrating a potential disconnect between Tatarstan and Russia. Consequently, Shaimiev's 2001 Annual Address sought to reassure observers that Tatarstan's adoption of the Latin script did not represent a step away from Russia but was a purely linguistic decision, over which Tatarstan possessed the requisite constitutional competence (NG, 1.3.2001). Russia's Supreme Mufti and groups of Tatars from outside Tatarstan evoked concern that script reform would cut them off from Tatarstan (V&D, 12.10.2001, RG, 22.9.2001). In an open letter published in *Rossiiskaya Gazeta* in September 2001, prominent Tatars from outside Tatarstan called for the transition to be cancelled, arguing script reform would separate the majority of Russia's Tatars from cultural and linguistic developments in Tatarstan (NG, 20.10.2001). Reactions to this letter were swift and personal. Valeev disqualified the letter by insinuating that ninety percent of the signatories did not speak Tatar fluently (RG, 22.9.2001) and Rafael Khakimov alleges the letter was either faked or instigated by Moscow (Interview with Khakimov, 2004).

However, Shaimiev's support for script reform weakened in 2002. While he called for the experiments in Tatarstan's schools to continue, he stated there was "no rush" to complete the transition to the Latin alphabet. At the 2002 All-Tatar Congress, he openly backed off the idea:

“At the last Congress we decided on a transition to the Latin script for the Tatar language. The law on the restoration of the Latin script has not been abolished. Nevertheless I have doubts about the timing of the transition, and these are tied to the unity of our people. [...] It could be that Tatarstan changes to Latin, but that in the rest of Russian regions Tatars will use Cyrillic. Does this not weaken our nation? I think you [the Congress] must thoroughly discuss this question” (RT, 30.8.2002).

Moreover, it appears that political motivation for carrying out the script transition was also lacking, since the state programme which was supposed to specify the timetable and provide resources for the transition was adopted late. In addition, once the law was adopted, script reform never seemed to rally wider social and public support, and appeared motivated by bureaucratic interests. Sagitova relates that the relatively difficult socio-economic context of the republic makes it difficult to create support for script reform (Interview with Sagitova, 2004). For Faroukshin, left on its own script reform would probably have fizzled out due to a lack of political impetus and public interest (Interview with Faroukshin, 2004). However, the federal government’s intervention and decision to directly forbid Tatarstan’s reform gave the issue a new lease of life. Furthermore, it raised the issue from a linguistic problem to a constitutional one (Discussion with Drobizheva, 2004). The federal government’s intervention provoked resentment and a belief that it was unjustly interfering within Tatarstan’s competences (Interview with Sagitova, 2004), represented Moscow’s “imperial mentality” (Interview with Valeev in VE, 8.2.2002) and was representative of the “crisis of federalism” in Russia (Interview with Iskhakov, 2004).

An amendment to Russia’s language law was put forward by a group of Russian State Duma deputies, who sought to forbid the script change on the basis it threatened national security. Deputy Head of the Duma Committee on Nationalities Affairs and one of the bill’s co-sponsors, Kaadyr-ool Bicheldei, from Tyva, argued that script reform posed a threat to Russia’s integrity and consequently the federal government needed to act to prevent republics from falling into the sphere of influence of foreign states (*Itogi*, 11.6.2002). Sergei Shashurin, a deputy from Tatarstan, stated script reform opened the door to Turkish expansion and threatened Russia’s integrity (TBDR, 13.3.2002). A second line of arguments in favour of the amendments, perhaps more serious and harder to dismiss as Tatar-bashing, concerned Russia’s responsibility to preserve the unity of the country’s educational space and the unity of its peoples (TBDR, 20.9.2002, 21.09.2002). Anatolii Nikitin, member of the Duma’s Committee on Nationalities Affairs, explained during debates on the amendment that his committee was motivated by two concerns. First, since territorial boundaries do not coincide with the actual distribution of Tatars in Russia, “it is very difficult to determine whether it is the will of the entire people to adopt the proposed script.” Second, the right to choose an alphabet must be balanced with “the right of citizens to live in a united

educational and cultural field and the right to equal access to information” (Stenogramme of Duma Proceedings, 5.6.2002).

The federal amendments were widely supported by Russia’s Federal Assembly and signed into law by Putin in December 2002. The provision added to Russia’s Law on languages stipulates that the state languages of Russia and its republics must be written in Cyrillic, unless prescribed otherwise by federal law (RF, 1991: art.3§5). Tatarstan’s State Council urged Putin to veto the law, arguing it was *ultra vires* the federal government. Although Putin signed the law, he suggested that “further development of Russia’s legislation on the languages of its peoples must be carried out through a dialogue between the two chambers of the Russian State Council and the legislative bodies of the federation” (IZV, 13.12.2002). A committee dialogue would likely take years, and considering the margin of victory (336 deputies approved the law in final reading) it is rather doubtful the Federal Assembly will grant Tatarstan an exemption in the near future.

Shaimiev, who had cooled on script reform as a linguistic issue, seized on Russia’s legislative initiative as an issue of national self-determination: “The development of language is the exclusive right of a nation, as affirmed in a number of international documents which by the way Russia has signed. Unfortunately, this is not the first instance of federal interference in the republic’s exclusive powers” (Shaimiev, 2004). The issue was transformed, as Valeev put it, from “philological question to a political [one]” (RT, 9.22.2001). This led the State Council to ask the Tatarstan Constitutional Court to provide an interpretation of the constitutionality of the republic’s Law on the Restoration of the Latin script. The State Council argued that since Tatar is the state language of Tatarstan, competence over script reform belongs to the republic. In the ruling handed down on 23 December 2003, the Court found that the power granted by the federal constitution to establish a state language “necessarily assumes a right to determine its alphabet” (KSRT, 2003c: par.3). Furthermore, since script was not a competence which was included in the federal constitution’s provisions on the division of powers (articles 71 and 72), the Court concluded it was a residual power and therefore belonged exclusively to subjects of the federation (Ibid.: par.5). The Tatarstan Constitutional Court’s ruling, based on the federal division of powers and constitution, was the argument used by the government in its subsequent appeal to the federal constitutional court.

But the political leadership was not unanimous on the course of action following its ‘victory’ in Tatarstan’s Constitutional Court. State Council Chairman Mukhametshin did not want to take a confrontational approach and appeal to the Russian Constitutional Court. Consequently, the Council took the legislative route (as Putin suggested in 2002) and petitioned the Federal Assembly to annul its law (RT, 22.01.2004, 30.01.2004). Moreover,

many leaders were not confident the Russian Constitutional Court would find in Tatarstan's favour. Valeev explains that getting a "fair decision from the Russian Constitutional Court" would be difficult "because in recent times it makes not legal but political rulings" (IZV, 25.12.2003). Notwithstanding its reticence, the State Council reversed its course and appealed the constitutionality of Russia's law to federal constitutional court. When asked to explain this change of strategy, Valeev responded that it was a response to federal prosecutors' challenge of the legality of Tatarstan's law. Since "they raised the stakes, we decided to appeal" (Interview with Valeev, 2004).

Constitutional Court Ruling on Tatarstan's Language Laws

The Russian Constitutional Court heard the appeal at the beginning of October 2004. It considered two issues simultaneously: Tatarstan's appeal on the constitutionality of Russia's move to prohibit script reform and a challenge of Tatarstan's policy of mandatory bilingual education. I return to the latter below. Elena Mizulina, the Federal Assembly's representative to the Court argued "the change of script within one of Russia's republics represents a limitation of citizen's rights and freedoms. The transition to the Latin script separates citizens of Tatarstan from the rest of Russia" (NG, 6.10.2004). This argument echoes Nikitin's, quoted above, framing Tatarstan's script reform as a question of individual rights. Since script reform affects Tatars everywhere in Russia (a majority of which live outside Tatarstan) a change of alphabet is an issue of national importance and falls under the heading of the protection of citizens' rights, a *joint* competence in the federal constitution. Whereas Tatarstan's Constitutional Court ruled that power over script reform was a residual power, the federal Constitutional Court placed it within a wider context.

In its ruling, the Court did not accept Tatarstan's claim that the regulation of republican state languages was its exclusive competence: "since the status of state languages of republics affects [...] the rights and freedoms of the citizens of the Russian Federation in the spheres of education and culture, it cannot be an area of exclusive republican competence" (KSRF, 2004: par.2). The Court found Tatarstan's script reform was carried out "without considering the requirements and guarantees of the Russian constitution in the area of language", and "could lead to the limitations of the rights of citizens who live outside the republics to use their native language or freely choose their language of communication" (Ibid.: par.4§2). In addition, *contra* Tatarstan's argument that its law was only a "linguistic reform", the Court ruled that the "establishment of one or another script of a state language [...] depends not only on the special features of a language's phonetics" but "must take into account historical and political factors, national and cultural traditions" (Ibid.: par.4§1). The Court identifies some of these factors: the "historical realities of the

Russian Federation”, where languages of the peoples of Russia have traditionally and historically based on Cyrillic (Ibid.). As with the 1992 ruling on the constitutionality of Tatarstan’s referendum, the Court does not consider Soviet-era precedents and specifically the fact that until 1939 Tatar had never actually been written in a Cyrillic script.

The Court did not retain Tatarstan’s jurisdictional argument. Instead it approved the purpose of the federal amendments as strengthening “the principles of state integrity and the constitutional guarantees of the right to cultural and national development” (Ibid.: par. 4§3). For the Court’s Chairman, Valerii Zorkin, Russia’s legislation “promotes, in the interests of state unity, the harmonisation and balanced functioning of a pan-federal language and the languages of republics and seeks to maximise their interaction within Russia’s linguistic space without preventing the realisation of the rights of citizens in the linguistic sphere including the right to use one’s mother tongue” (*Ria novosti*, 16.11.2004). Khakimov criticised the ruling as a “political-legal” decision (NG, 17.12.2004), precisely the sort of ruling he expected from the Russian Constitutional Court (Interview with Khakimov, 2004). Shaimiev gave the ruling a positive spin: it “does not limit Tatarstan’s right to keep working on the Latin problem” (TBDR, 19.11.2004). In fact Tatarstan’s Ministry of Education announced that the experiment on teaching Tatar with a Latin script will continue unabated in sixty-two republican schools (IZV, 17.11.2004). For Shaimiev, the republic will pursue this experiment for five years in order to build a better case to petition the federal government to grant it permission to adopt script reform (NG, 17.12.2004). Mukhametshin stated that Tatarstan would not appeal the Court’s ruling (TBDR, 22.11.2004).

Although republican leadership stated they would not challenge the ruling, Fandas Safiullin founded the Latin Front, an umbrella organisation reuniting 63 civic groups from four regions in addition to the World Tatar Congress, Institute of History and IYaLI. The Front calls for the right to use the Latin script, and seeks to force Russia to respect international law and its “commitments to protect the rights of people and nations” (Safiullin, 2004). Valeev stated that if the government would not appeal the Constitutional Court’s ruling to the European Court of Human Rights, then residents or civic groups could do so since Russian legislation prevents Tatars from asserting their rights to self-determination (TBDR, 22.11.2004). Meanwhile, the Latin Front has issued a call to UNESCO to take measures to “defend the linguistic rights of the Tatar people” and the “violation of the linguistic rights of the Tatar people” (Safiullin, 2005, *Tatarinform*, 13.1.2005). Pending any further resolution by international bodies, the issue remains unsettled.

Another justification for the leadership's muted reactions to the ruling on script reform is the fact Court simultaneously upheld Tatarstan's education regime. Tatarstan resident Sergei Khapugin seized the Court to rule on the constitutionality of the provisions of Tatarstan's language and education laws which require both state languages be taught in equal amounts. In 2001, the Russian-language daily *Vechnyaya Kazan'* organised a public meeting at which parents and Tatarstan Ministry of Education officials discussed the issue of compulsory Tatar-language education. Parents echoed Khapugin's claims that mandatory lessons in Tatar take time away from learning Russian, and consequently diminishes competence in Russian speaking and writing. Khapugin argued that Tatarstan's requirement violates the equality of Russian pupils, compared to pupils of other subjects of the federation (RG 6.10.2004). Furthermore, he challenged Tatarstan's power to impose requirements in education policy on the basis it is not a sovereign state (VK 18.12.2001, TBDR 18.12.2001). Although the federal Constitutional Court accepted his appeal in 2002, it did not hear the case until two years later.

The Constitutional Court found that the study of both Russian and Tatar as state languages in the republic does not contradict the federal constitution or pose a limit to the constitutional right to receive an education. The language requirement, on the contrary, is in line with the principles enounced in federal education legislation which seek to protect "a system of national education and regional cultural traditions within a multinational state" (KSRF, 2004: par.3.1). "The Tatarstan legislator is entitled, following Article 68 in conjunction with article 43 as well as federal legislation, to require the study of Tatar as a state language as a condition of completing general education" (Ibid.). Furthermore, as long as the Tatar component complies with the federal educational curriculum (Ibid.: par.3.2), it does not contradict federal legislation on education. As for Khapugin's claims that Tatarstan violated the equality of pupils, the Court found that as long "as measures designed to protect and development teaching of Tatar as a state language of Tatarstan [...] do not impede on the functioning or study of Russian as a state language of the Russian Federation", they do not violate equality rights (Ibid., par.3.1). Therefore, republican requirements conform to the norm of equality established in the federal constitution to the extent they do not allow differential treatment of Tatar or Russian. The Court did not consider international standards in its ruling, even though Russia is subject to the norms of the Council of Europe's Framework Convention on National Minorities which require the Russian government to take steps to protect and develop the right to minority language education. The ruling is based solely on the rights and norms contained within the federal and republican constitutions and legislation.

For Shaimiev, the Court's opinion on Tatarstan's language law and requirements was "more important" than its findings on the issue of script reform (NG, 17.11.2004). It was a significant ruling since it was the first case in which Tatarstan's jurisdiction over language policy and language education was confirmed by the court (RT, 18.11.2004). It confirmed the legitimacy of the constitutional asymmetry in Russia's 1993 constitution, which provides republics the right to establish and manage their state language. Although republican leaders were unhappy with the court's ruling on script reform, their reaction would no doubt have been far less restrained had its right to carry out bilingual education been quashed.

Conclusion: Federal Design and Language Policy

Republican status and constitutional asymmetry have provided both recognition of Tatarstan's status and competence over language. The bilateralism and intergovernmental agreements which characterised other aspects of Tatarstan's relationship with Russia has not been a feature of its interactions in the area of language. Russia's existing federal design is recognised as providing the autonomy required for Tatarstan's policy-makers to implement their objectives in this field. Policy failures are largely due to republican constraints, such as the lack of financing, or of organisation and political support.

Nevertheless, as Kim Minnullin explains, republican policy-makers are critical of the lack of support received by Moscow. He has no counterpart or interlocutor in Moscow with whom it is possible to coordinate policies, or share experiences (Interview with Minnullin, 2004b). He considers the federal government has not shown enough awareness of the challenges inherent in implementing bilingualism and language policy in the republic. Similarly, the Advisory Committee on the Framework Convention for the Protection of National Minorities also points to the absence of mechanisms to coordinate and implement Russia's language legislation, such as the absence of a ministry for nationalities affairs, as a limit of the effectiveness of the centre's support for national minorities (CoE, 2002: 12).⁹ For Shaimiev, this lack of federal support shifts the burden on Russia's federal subjects:

Republics are necessary to preserve and develop national cultures in Russia. The centre does not play an active role in these issues. For example, neither Tatars nor any of the other various peoples in Russia have radio or television stations on the federal level even though they conscientiously pay their taxes. The republics are dealing with this alone (RRR, 24.1.2001).

Republican status is the key to Tatarstan's ability to implement its language policies. In the context of Putin's federal reforms and the rise of concerns about increasing unitarism in the

⁹ Putin abolished the Ministry for Federation Affairs, Nationality, and Migration Policy in 2001 and replaced it with a minister without portfolio, charged with the implementation of nationalities policy within federal agencies. This post was abolished in February 2004. Following the Beslan attacks, Putin announced the creation of a Ministry for regional and nationalities policy.

federation, the link between state status and language is made more directly. Razil' Valeev contends: "for a language to be a state language, we need to have a state. Russia must create the conditions for its various components and nationalities to have access to education, culture, and status. It has no other option than accommodate the nations within it" (Interview with Valeev, 2004). This highlights the political dimension of language. The republican leadership is conscious that language is a marker of identity and difference with Russia. The importance of the issue has steadily grown during the 1990s.

The 2004 ruling by Russia's Constitutional Court framed the issue as one of constitutional competence. Tatarstan's jurisdiction over language is linked to its constitutional status of republic and the asymmetry created in article 68 of the federal constitution which grants republics the right to establish state languages. Policy capacity thus rests on this competence to name a state language, in addition to the provisions of the federal law on education, which allows the republic to require and deliver education in Tatar and other languages as part of the regional curriculum. Thus, while constitutional status has facilitated the protection of Tatar, language issues remain politically charged, demonstrated by discussions over the constitutional requirement for bilingual presidential candidates and the Latin script reform. While the balance between state status, jurisdiction and language policy is stable at present, the balance is contingent on the stability of federal design – particularly the role and place of republics – and the extent to which elites use language as an issue to mobilise popular support or nationalism.

Chapter 6. Federal Design in Canada and Accommodating Quebec

By forcing a centralism perhaps acceptable to some provinces but not to Quebec, and by insisting that Quebec must be like the others, we could destroy Canada. This became my doctrine of federalism. I wanted to decentralize up to a point as the way to strengthen, indeed to establish and maintain, unity (Lester B. Pearson, 1975).

Constitutional difficulty is simply the price of being Canadian. Canada just happens to be one of those countries that is committed, as a condition of its survival, to engage in a constant act of self-justification and self-invention. Constitutional dialogue among regions and languages is the very condition of our collective survival (Michael Ignatieff, 2005).

This chapter examines the nature of Quebec's 'stateness dilemma' – the constitutional conflict – which is a persistent feature of federal-provincial relations. Although many of Tatarstan's claims were first voiced during a time of regime change and transition, its demands for recognition and jurisdiction have endured. Quebec's demands were not the result of regime change. Its challenges to federal design emerged partly as a result of domestic political changes, including a rise in nationalism, and partly in response to the federal government's own strategies. The comparative interest of this chapter is to show that the absence of agreement on the constitutional fundamentals and persistence of Quebec's claims have not led to federal paralysis. Negotiation and accommodation persists, notwithstanding the existence of a salient stateness dilemma. Intergovernmental negotiations and *ad hoc* agreements are prominent in the accommodation of Quebec's claims for recognition and jurisdiction.

Multitudes of analyses and works already exist on the Quebec-Canada constitutional conundrum. My purpose here is to examine the nature of the stateness dilemma in Quebec, what attempts are made to accommodate Quebec's claims in order to identify the mechanisms, practices and actors at work in this process and to establish a basis for the comparative analysis with Tatarstan in Chapter 8. The chapter proceeds as follows. First, I examine the contested visions of Canada's constitution and of Quebec's place within the federal order. These visions, particularly whether confederation is a pact between two founding peoples or ten equal provinces, has played a key role in Quebec's demands for constitutional recognition since the 1960s. Second, I survey various attempts at constitutional change in Canada throughout the 1970s and 1980s and the failures to reach constitutional consensus on Quebec's demands. To finish, I turn to the processes of intergovernmental negotiation which exist between Quebec and Canada to show that failure

to agree on the constitutional fundamentals has not been an impediment to the accommodation of Quebec's demands.

Contested Narratives: Constitution-Making and the Federative Pact

Contrary to Russia, where Tatarstan's claims and constitutional disagreements were articulated during the actual constitution-making process between 1990 and 1993, Quebec's claims appeared over a longer period of time, and are articulated in relation to long-standing perceptions and interpretations of Canada's federal design. This section surveys some of the main factors in the evolution of Canadian federalism and the competing notions of the purpose and content of the 1867 constitution. I examine two main constitutional disagreements: the issue of provincial autonomy in Canada's division of competences and the status of Quebec within the federation.

The division of competences established by the British North America Act, 1867 embodies the ambivalence which existed at the time between federal and unitary government. As Houle remarks, "the choice to federate was not based on a deep reflection: it did not seek to increase democratic rights or weaken state power by dividing it among two levels of government. It is essentially pragmatic reasons which led to its adoption; it was adopted as a necessary evil, out of inability to negotiate a legislative union" (Houle, 1999: 242). Indeed, since many of Canada's founding fathers favoured a legislative union over federalism, the compromise reached in 1867 provides for a fairly centralised federal design, at least on paper (LaSelva, 1996: 173). Wheare classifies Canada's constitution as quasi-federal based on the powers of the central government (residuary powers, as well as powers of reservation and disallowance, effectively giving the centre a veto over provincial legislation) (Wheare, 1946: 21). In addition to the usual competences reserved for the centre, Canada's federal government enjoys the power to appoint judges of provincial courts, lieutenant governors and to raise revenue by any means of taxation (s.91) and through customs and excise taxes (s.122). Provincial governments, for their part, obtained competences considered to be of local interest—education, social services, municipal government (s.92)—and can raise funds through direct taxation only. Contrary to Russia's constitution, there are much fewer joint competences in Canada. The areas of shared (concurrent) jurisdiction are old age pensions (s.94A), with agriculture and immigration (s.95) defined as joint powers where federal law is paramount (like Russia, federal law trumps provincial law in these two areas).

In the decades following confederation, Prime Minister John A. Macdonald did not recoil from using the centre's powers to strike down provincial legislation. Provincial leaders, particularly Ontario Premier Oliver Mowat challenged the use of the powers or

reservation and disallowance on the basis that federal overreaching overrode provincial jurisdiction. The UK Joint Commission of the Privy Council, Canada's court of last resort at the time, handed down several rulings during the late 1800s which recognised the equality of federal and provincial governments and their sovereignty within their respective jurisdictions (LaSelva, 1996: ch.2; Romney, 1999: part 2).

Notwithstanding the existence of a fairly clear-cut division of competences, federal *practice* in Canada did not adhere to the conception of constitutional competences as “water-tight compartments”. Many of the competences which were of local interest at the time, such as education, health, labour and social assistance came to matter more in the twentieth century. Moreover, for provincial governments, whose revenue-raising capacity was limited, the rise in demand for these services entailed additional costs. Concerned that the existing federal design and its compartmentalised jurisdictions impeded national unity and national needs, the federal government struck the Royal Commission on Dominion-Provincial Relations (Rowell-Sirois Commission) to consider modifications to the distribution of powers and means to reach a better balance between jurisdictional responsibility and funding capacity (Canada, 1940). The Commission proposed provinces rely more fully on federal financial transfers for the realisation of their policy commitments. In other words, provinces would forego their constitutional autonomy in areas of exclusive jurisdiction to facilitate the organisation of national programmes. The Commission also proposed that an equalisation programme be implemented in order to reduce the fiscal disparities between the more and less prosperous provinces and to permit the latter to provide public services comparable to those of their wealthier counterparts. This has become a mainstay of Canada's system of fiscal federalism.

Unable to change the federal division of powers, the federal government began instead to implement shared-cost programmes with provincial governments. In exchange for federal financial transfers, provinces adhered to national standards and programmes. Referred to as the federal spending power, this practice arises from “the power of parliament to make payments to people or institutions or governments for purposes on which it does not necessarily have the power to legislate” (Trudeau, 1969: 4). As constitutionalist Peter Hogg notes, the spending power is not explicitly mentioned in the constitution but has been inferred from federal government's powers to levy taxes, legislate in relation to public property and appropriate federal funds (Hogg, 1985: 124). Provincial governments, of course, are free to refuse to enter a shared-cost programme but in so doing renounce federal funds.

The spending power has been a persistent irritant in the Quebec-Canada relationship. Quebec Premier Maurice Duplessis subscribed to a more literal reading of the

1867 constitution, claiming that federalism must be based on the principle of provincial autonomy, which the spending power clearly disregards (Duplessis, 1946: 455; 1950: 17). In Tatarstan too, leaders argue for a strict interpretation of the federal principle and for a ‘watertight’ interpretation of constitutional jurisdictions. However, contrary to the Russian constitution, which explicitly foresees the supremacy of federal law in joint competences, the spending power in Canada has evolved largely outside the federal design and led to a *de facto* circumvention of the division of powers. Rejecting federal interference in provincial jurisdictions, the Duplessis government refused to participate in a shared-cost programme on university finance. In addition, the government struck a Royal Commission on Constitutional Problems (the Tremblay Commission) which concluded in 1956 that the spending power had resulted in a distortion of the division of powers and was evidence of the “fundamental divergences” that had appeared between Quebec’s and Ottawa’s interpretations of federal design (Quebec, 1956: 286). The blurring of jurisdictional boundaries and provincial autonomy constitutes the first aspect of Quebec’s claims.

Recognition of Quebec’s status within Canada is the second area of contention, where long-standing interpretations of Canada’s ‘constitutional moment’ clash. In 1867, federation for French Canadians was considered the best means to facilitate the coexistence of both national groups and the protection of French Canadian culture. Indeed, the word *Confederation* was retained chiefly because the term would be more acceptable in Quebec and would ensure the proposal was approved (McRoberts, 1997: 12-3). A long-standing belief in Quebec is that Confederation constituted a pact between Canada’s two founding peoples. For French-Canadian nationalist Henri Bourassa, the Canadian constitution represents a double contract: “One was concluded between the French and English of the old province of Canada, while the aim of the other was to bring together the scattered colonies of British North America. We are thus party to two contracts – one national and one political” (Quoted in McRoberts, 1997: 20).

Romney and McRoberts argue this interpretation of Canada as a compact has been forgotten or deliberately occluded in political debate (McRoberts, 1997; Romney, 1999). Romney in particular argues that what has become the dominant interpretation of 1867 – that it was an act of nation-building – misconstrues the motivations and beliefs of the founders, for whom constitution was foremost a way to obtain provincial self-government and divided sovereignty. With the passage of time, the compact theory of confederation has increasingly been disqualified as myth, construed as a theory by francophones to legitimate Quebec’s specificity (Romney, 1999: 242). For my purposes, the historical veracity of the compact theory matters less than its political relevance to the debates of the last fifty years. As Fernand Dumont writes “It is of little importance if the Confederation was at the outset

really a compact between two nations that explicit texts established. What is important is that the French Canadians saw it as such an agreement and based their behaviour in the common house upon this belief' (Quoted in Erk and Gagnon, 2000: 98). The same is true in Tatarstan, where claims for a confederal relationship with Russia are based on Soviet-era equalisation of autonomous and Union republics. Following Russia's Declaration of sovereignty and the collapse of the Soviet Union, Russia's Constitutional Court denied Tatarstan's claim to special status and ignored the Soviet legislative foundation of this status. In both these cases, claims for special status and recognition have come to be based more on political rather than strict legal precedent.

In an attempt to come to terms with the rise of Quebec nationalism, Prime Minister Lester B. Pearson formed the Royal Commission on Bilingualism and Biculturalism (B&B Commission) in 1963 with a mandate "to inquire into and report upon the existing state of bilingualism and biculturalism in Canada and to recommend what steps should be taken to develop the Canadian Confederation on the basis of an equal partnership between the two founding races..." (Canada, 1967: xxi). The Commission's *Preliminary Report* noted that one of the fundamental divergences in Canada concerned the nature of the constitutional agreement. Although many Quebecois accept the concept of two founding peoples and the need for equality between them, anglophones in the rest of the country do not consider dualism to be a legitimate interpretation of the constitution, seeing 1867 as a bargain between provinces, not two cultural groups (Canada, 1965: 162). One of the co-chairs and most ardent defenders of the dualist vision of federation, André Laurendeau, articulated his vision most clearly in the so-called *blue pages* of the B&B report. For him, dualism required recognition and the devolution of competences to Quebec in order to protect and promote its linguistic and cultural difference. Laurendeau argued that failure to recognise Canada's dualism would only stoke resentment:

As soon as ... [a] ... minority [such as Canada's francophones] is aware of its collective life as a whole, it may very well aspire to the mastery of its own existence and begin to look beyond cultural liberties. It raises the question of its political status. It feels that its future and the progress of its culture are not entirely secure, dominated by a majority composed of the other group. Consequently, it moves in the direction of greater constitutional autonomy. Ideally, the minority desires the same autonomy for the whole of the community to which it belongs; but where it cannot attain this objective, it may decide to concentrate on the more limited political unit in which it is incontestably the majority group (Canada, 1967: xlvii-iii).

The logical extension of this argument was that Quebec required greater autonomy, if not constitutional asymmetry, to protect its place within Canada. For Michael Oliver, the Commission's Director of research "[t]he crucial insight [...] was that a stable base for French-English cooperation cannot be achieved just by increasing French minority rights in Canada as a whole (seen as a single community) but must also involve the exercise of a set of powers, adequate for community development, by a community jurisdiction (Quebec) in

which the country-wide minority (Francophones) is a majority” (Oliver, 1993: 326). National unity, in other words, depended not only on measures adopted by the federal government, but would be strengthened by providing additional powers of self-rule to Quebec.

The electoral victory of the *Parti Québécois* (PQ) in 1976 provoked a similar exercise in constitutional problem-solving. Federal Prime Minister Pierre Trudeau created the Task Force on Canadian Unity (Pépin-Robarts Commission) to advise the government on strategies to foster national unity. The Task Force concluded that a thorough restructuring of Canada’s federal design was needed in order to accommodate Canada’s dualism (two cultures) and its regionalism (provinces). The report advocated radical decentralisation and the adoption of an almost confederal division of powers (Canada, 1978: ch.7, recommendations 47-64). Most importantly, the Commissioners believed that Quebec’s claims for recognition needed to be explicitly entrenched in the constitution.

The essential condition in recognizing duality within Canada at the present time is to come to terms with modern Quebec. Quebec will continue to be the pillar of the French fact in all of North America; it will perform this function inside the Canadian federal system or outside it. So the challenge is not to try to confer on Quebec a role that it has in any case played for centuries, but to demonstrate that it is a role which can be played more effectively within a restructured federal system which is expressly cognizant of Quebec's distinctiveness and its sources (Canada, 1978: ch.3).

The Task Force argued the best way to preserve national unity and counter separatism in Quebec was to devolve all powers regarding the preservation of its heritage, such as language, culture, civil law, research and communications, as well as taxation and relations with foreign countries. These powers would be made concurrent, thus preserving the federal government’s ability to implement national programmes unless a province chose to exercise its prerogative to withdraw. In addition, the report suggested the constitution be amended to include a procedure to manage intergovernmental delegation of powers (Canada, 1978: ch.4.4). Its radical recommendations were squarely rejected by Trudeau and were shelved. As a recent book concludes, the Pépin-Robarts report is a debate that never took place (Wallot, 2002).

In this section I surveyed some of the long-standing interpretations of Canada’s federal design and constitution. I turn now to examine how these conceptions of the political community, and particularly Quebec’s claims for jurisdiction and recognition were received, accommodated or rejected. It is useful to keep in mind the recommendations of the B&B and Pépin-Robarts commissions as they have influenced the responses of political leaders at both provincial and federal levels throughout the process. In these reports, addressing Canada’s constitutional dilemma depended on accepting, if not entrenching, the country’s inherent dualism. It meant acceding to a firmly federal, if not confederal, view of

the country. It is worthwhile to retain two points. First, the commissions surveyed above, as well as many of the constitutional reforms I turn to below, have the objective of “solving” Quebec’s constitutional dilemma. Second, elites matter a great deal in Canadian federalism. As Cairns (1985: 135) notes, “the constitutional struggle [...] in Canada cannot be understood without reference to the clashing wills, ambitions, and visions of that small group of political leaders who happened to be on the stage when the time came for Canadians to have that constitutional rendezvous with destiny which they had so long avoided”. The competition between leaders and governments, proposals and counterproposals, is a key dynamic in the events examined in the remainder of this chapter.

The Quiet Revolution and Opting-Out

Quebec’s challenges to Canada’s federal design began in earnest in the 1960s. This period, dubbed the Quiet Revolution, witnessed growth in the structures and functions of the Quebec state, with the nationalisation of public utilities and creation of *Hydro Québec* and *Caisse de dépôt*, the establishment of ministries of Education and Culture. For Jean Lesage, the Liberal Premier, a more activist provincial government would endeavour to make Quebecois ‘masters of their destiny’ (*maîtres chez nous*). Thus, the historical claims of provincial autonomy are given a nationalist impetus: “Quebec does not defend provincial autonomy as principle alone, but because autonomy is the concrete condition not only of its survival which is now assured but also of its assertion as a people” (Lesage, 1964: 42). Lesage considered that to become *maîtres chez nous*, a reorganisation of the federal system was necessary and should be based on the following principles. Quebec is the political embodiment of French Canada possessing particular traits it has a right to value and duty to protect. The constitutional framework must provide opportunities for the francophone national community to set objectives and the means to attain them. To do so, Quebec must control the economic, social, administrative and political levers in order to realise the aspiration of its people while acting within the context and confines of Canada’s federalism (As related in PLQ, 1980). In the context of the time, Lesage believed these demands could be addressed within Canada’s existing federal design.

At the time, Quebec’s claims for jurisdiction fell on the ears of a receptive Ottawa. Indeed, this epoch is referred to as the heyday of *cooperative federalism*, characterised by pragmatic power-sharing between the Quebec and federal governments. Jean Lesage presented his “theory of provincial needs” in 1960 in which he reiterated many of the Tremblay Commission’s conclusions on the need for provincial autonomy. His theory called for the federal government to cede taxation powers to provincial governments to give them the resources to fulfil their constitutional responsibilities (Morin, 1994: 156-7).

Although the federal government did not entertain this demand for constitutional change, the federal Liberal party campaigned in 1963 in favour of “opting out”, or “contracting out”. These were arrangements whereby a province that withdrew from shared-cost programmes would be provided financial or fiscal compensation in order to establish a comparable programme of its own (Smiley, 1970: 72-3).

Once the Pearson government was in power, opting-out was a major topic of discussion at the federal-provincial conference in March 1964. The opportunity to opt-out was made available to all provinces. But in 1965 only Quebec availed itself of the opportunity to withdraw from four shared-cost programmes in exchange for tax abatements. The Established Programmes (Interim Arrangements) Act of 1965 transferred twenty tax points to Quebec for a trial period of five years, after which the arrangement was supposed to be made permanent. In exchange, the provincial programmes were subject to verification by Ottawa (Vaillancourt, 1992). Similar agreements were concluded over student loans and youth allowance programmes. Pensions are another policy area in which opting out was permitted. The constitution defines pensions as a joint competence. When the federal government announced its plan to create a national pension scheme in 1964, Quebec countered with its own plan. Since Quebec threatened to veto the constitutional amendment which was required to implement the federal programme, bilateral negotiations were held to broker a compromise. The compromise – the right to opt-out of the federal programme – was again made available to all provinces but only Quebec went ahead and created its own pension regime. The agreement was hailed as a success for both parties: Lesage claimed he was able to obtain recognition of Quebec’s special status while Pearson was congratulated for brokering a successful resolution to the confrontation with Quebec (McRoberts, 1997: 42).

Opting-out creates *de facto* asymmetry in the delivery of policy but not necessarily in its elaboration. This contrasts with the experience in Russia, where the intergovernmental treaties and agreements tended to devolve full competence over policy-making and implementation to federal subjects and negate a priority-setting or monitoring role for the federal authorities. Moreover, since many of the treaties and agreements were secret and signed with an exclusive group of regions, the practice appeared to subvert rather than stabilise Russia’s division of powers. Indeed, Putin’s federal reforms, and especially the Kozak reform bills sought to restore the federal government’s control capacity. Even in competences which the Russian centre devolved to the regions, it retains the power to sanction leaders for failing to carry out policy or using the funds for other purposes. In Canada, Pearson did not consider the asymmetries created by opting-out to be destabilising. The power was available to all provinces, thus did not consecrate any *de jure* constitutional

asymmetries. Moreover, the practice was deemed an appropriate response to Quebec's claims for jurisdiction:

"We might make provision for Quebec to develop *de facto* jurisdiction in certain areas where she desired it most. Although the federal government had to retain intact certain essential powers, there were many other functions of government exercised by Ottawa which could be left to the provinces. By forcing a centralism perhaps acceptable to some provinces but not to Quebec, and by insisting that Quebec must be like the others, we could destroy Canada. This became my doctrine of federalism. I wanted to decentralize up to a point as the way to strengthen, indeed to establish and maintain, unity" (Pearson, 1975: 239).

For Lesage, opting-out was a pragmatic solution to jurisdictional disputes: "Quebec wishes to point out that particular status is not necessarily an objective in itself. Initially, it may very well be the result of an administrative development and, subsequently, a constitutional one that, while applicable in principle to the other provinces, in practice would be of interest only to Quebec for reasons of its own" (Lesage, 1965: 4). For Claude Morin, a minister in the Lesage government who would later join the PQ, the cooperative federalism of the 1960s was win-win for both Quebec and Ottawa. Although Quebec did not conquer new constitutional territory it halted the federal government from occupying provincial competences (Morin, 1976 [1972]: 9). While bilateral treaties in Russia played a similar role and were hailed as means by which Russia's federal subjects could implement policy which was more closely tailored to their regional needs, opting-out as a practice more closely resembles the proposals made by Shaimiev in his 2002 *Concept* of federal reforms. Rather than view federal legislation in areas of joint jurisdiction as automatically supreme, Shaimiev calls for a greater regional role in implementing policy, the general principles of which would still be established by Moscow. Similar to opting-out, the arrangement would be available to regions that desired increased autonomy, and probably lead to a degree of *de facto* asymmetry in the delivery of policy.

Competing Claims, Competing Federal Design

Opting-out went a long way to address Lesage's and Quebec Liberals' demands. His successor, Daniel Johnson, sought to entrench Quebec's specificity and Canada's linguistic and cultural dualism in the constitution. In other words, in addition to the powers Lesage claimed, Johnson wanted Quebec's distinctiveness reflected in the constitution. Power plus recognition became the leitmotiv of the province's demands vis-à-vis the central government: "... if in a ten-partner Canada Quebec is a province like the others, the situation is different in a two-partner Canada. As the homeland and mainstay of French Canada, Quebec must assume responsibilities which are peculiar to her; and it goes without saying that her powers must be proportionate to her responsibilities" (Johnson, 1968: 53-71). Johnson shows a keen understanding of the challenges of multinationalism: "What is

possible and desirable in a bi-national country is not national unity [...] but national union, national harmony, based on the respect of legitimate particularisms” (Johnson, 1990 [1965]: 92).

Pearson was conscious that the underlying constitutional questions, particularly regarding the recognition of Quebec, would need to be addressed eventually. “I believe that particular provisions for Quebec, as well as for other provinces where required to ensure the fulfilment of particular needs, can be recognized and secured in the constitution without destroying the essential unity of our Confederation” (Speech quoted in McRoberts, 1997: 45). However, a change of leadership in Ottawa in 1968 as well successive changes of leadership in Quebec modified the *status quo* and brought the Pearsonian practice of negotiated federalism to an end. Many of Pearson’s colleagues within the federal Cabinet opposed his approach to Quebec and use of opting-out as an accommodation mechanism. The Minister of Finance, Mitchell Sharpe and Pierre Trudeau, who succeeded Pearson as Prime Minister in 1968 had objected to opting-out since 1963. For Trudeau, too much decentralisation led down the slippery slope to separation. Opting-out placed certain provinces on a different foot in relation to Ottawa. Trudeau felt, in contrast, that federalism could not work unless the provinces “are in basically the same relation toward the central government” (Quoted in Simeon, 1972: 68). Moreover, he believed that by giving additional powers and resources to Quebec only bolstered its administrative capacity and legitimacy to demand even more power. In other words, Pearson’s practice of de facto asymmetrical federalism perpetuated the paradox of multinational federalism evoked in Chapter 2, which led the possibility of increased conflict and a dilution of the bond of citizenship: “... when a tightly-knit minority within a state begins to define itself forcefully and consistently as a nation, it is triggering a mechanism which will tend to propel it towards full statehood” (Trudeau, 1968: 188). Consequently, the interim arrangements which were agreed upon in 1965 were never made permanent. Instead, they were renewed on a yearly basis until 1977, when the federal government abolished some of the programmes from which Quebec had opted out. To this day, however, Quebec has retained five tax points which were devolved by the 1965 arrangement (Vaillancourt, 1992: 350-1).

For Trudeau, ensuring a strong and united federal state and maintaining the essential link of Canadian citizenship throughout the country were seen as means to counter the rise of nationalism and separatism in Quebec. The contrast between Trudeau’s vision of the way to foster Quebec’s belonging is diametrically opposed to those that emerged from the B&B and P  pin-Robarts Commissions.

One way of offsetting the appeal of separatism is by investing tremendous amounts of time, energy, and money in nationalism, *at the federal level*. A national image must be created that

will have such an appeal as to make any image of a separatist group unattractive. Resources must be diverted into such things as national flags, anthems, education, arts councils, broadcasting corporations, film boards; the territory must be bound together by a network of railways, highways, airlines; the national culture and the national economy must be protected by taxes and tariffs; ownership of resources and industry by nationals must be made a matter of policy. In short, the whole of the citizenry must be made to feel that it is only within the framework of the federal state that their language, culture, institutions, sacred traditions, and standard of living can be protected from external attack and internal strife. (Trudeau, 1968: 193)

In Quebec, where the federal spending power was already a source of resentment, Trudeau's proposals to use the powers and competences of the federal government to instil a strong sense of national unity could not but provoke resentment among nationalists. Trudeau's concern with restoring the primacy of the federal state and of a strong state-wide identity resonates with some of the decisions taken by Putin since 2000. Many of Putin's federal reforms stem from the belief that Yeltsin's practice of asymmetrical federalism had weakened the integrity of the state and reduced the visibility and importance of state-wide institutions. In addition to the reforms I examined in Chapter 4, Putin made symbolic gestures, such as reviving the Soviet-era anthem, and ensuring the Russian flag was flown on federal buildings and visible in Tatarstan's court rooms. Reforms that reasserted the central place of the federal constitution were aimed at restoring "country's unity *de jure* and *de facto*" (Putin, 2003).

In Canada, Trudeau's vision of a strong and united Canada emphasised the differences between the federal and provincial governments. Increasingly, both tiers of government would represent competing conceptions of federal design. These competing visions were particularly prominent in negotiations on constitutional reform. From 1968 to 1971, multilateral federal-provincial negotiations were held on constitutional reform. Gordon Robertson, Clerk of the Privy Council at the time, emphasises the importance of Trudeau's role. "From the time he accepted the inevitability of pursuing the problem [constitutional reform], Trudeau realized that if he was to succeed, it could only be with an agenda laid down by the federal government and relentlessly pressed by him personally" (Robertson, 2000: 269). Provincial elections in Quebec in 1970 brought Robert Bourassa, leader of the Quebec Liberal Party and federalist, to the negotiating table. He was, *a priori*, amenable to constitutional reform. Bourassa was convinced "Federalism constitutes the best means for Quebecois to meet their economic, social and cultural objectives. [...] The government endeavours to reinforce Canadian federalism" (Bourassa, 1971: 2738-9).

The negotiations on the constitutional amendment package, also called Victoria Charter, produced consensus on an amendment formula which would have conferred a *de*

facto constitutional veto to Quebec over future constitutional change.¹ However, Quebec's inability to secure a provision to constitutionalise the practice of opting-out was one factor which led to its refusal to approve the Victoria Charter. Quebec proposed that a new article be included in the constitution (94A) to make provincial law in social policy paramount. In other words, the federal government would have to consult provincial governments before it created a shared-cost programme. Moreover, the provision guaranteed a right to withdrawal from any federal programme in an area of provincial jurisdiction with a right to fiscal compensation in order to carry out its own programme. Robertson relates that Quebec's demands, coming at the end years of multilateral and bilateral discussions shocked the other participants (Robertson, 2000: 283). Although the accord failed, it established one element of Quebec's long-standing constitutional claims for jurisdiction, namely a constitutional right to withdraw with compensation from federal programmes.

The failure of the Victoria Charter put Trudeau's plans for constitutional reform on hold. Meanwhile in Quebec, the rise of the popularity of the *Parti Québécois* (PQ) and the evolution of nationalist sentiment, among federalists as well, led to a hardening of the constitutional claims. Bourassa demanded that any future attempts at constitutional change take account of Quebec's distinctiveness: "Quebec will seek to obtain recognition by the rest of Canada of its particular responsibility with regard to ensuring the permanence and development of the French culture. Quebec cannot abandon this responsibility to others and must obtain the constitutional guarantees which it requires" (Bourassa, 1975: 1).

Constitutional Change in Canada

The election of the PQ in 1976 introduced a new dimension to the accommodation of Quebec's demands. For the PQ, Ottawa's promise of "renewed federalism" was illusory. Instead, Quebec must act on its own to propose a new arrangement with Canada: sovereignty-association. Its manifesto, *The New Quebec-Canada Agreement: the Government of Quebec's Proposal for an Agreement as Equals: Sovereignty-Association* (Quebec, 1980), consists of both a description of Quebec's place in the Canadian federation and an assessment of Canada's failure to recognise Quebec's specificity and grant it the policy competences it desired.

Although certain federal laws attempted rather late to develop bilingualism within central institutions, it shows that francophones were never considered, in Canada, as forming a society with a history, culture and its own aspirations. They constituted at most an important linguistic minority, without collective rights or particular powers necessarily called, as it was long believed in English Canada, to blend into the Canadian whole (Quebec, 1980: 12).

¹ The amendment formula in the Victoria Charter required the consent of Ontario, Quebec, and at least two Atlantic and two Western provinces in order to make any subsequent changes to the constitution.

Besides its failure to recognise Quebec as constituting a people worthy of constitutional recognition, the federal government jeopardised Quebec's autonomy: "the central government is increasingly able to play a role which should normally belong to the Government of Quebec, the only which truly belongs to the Quebecois nation" (Quebec, 1980: 24). Just as Tatarstan sought in its 1992 referendum to entrench the basis of its confederal relationship with Russia and the legitimacy of bottom-up delegation of competences, sovereignty-association in Quebec was proposed as a means for Quebec to secure exclusive competence in taxation, international relations, etc. and delegate other competences to the federal level. Having set out its vision of Quebec and Canada, the PQ asked the electorate to give it a mandate to negotiate an agreement of sovereignty-association with Canada.²

The Quebec Liberal Party (PLQ) countered the PQ's project with its own manifesto: *A New Canadian Federation* (PLQ, 1980). The Liberals offered a more positive vision which did not reduce the Canadian federal experience to a series of "failures, retreats, defeats, threats and dangers" but remained optimistic that "the Canadian federal framework offers Quebec two chief assets: the possibility to flourish freely [...] within the Quebec territory and also to participate, without renouncing its identity, to the advantages and challenges of a larger and richer society" (PLQ, 1980: 10). PLQ Leader Claude Ryan argued that a reformed federal framework could recognise Quebec's specificity and provide the means necessary to ensure Quebec's protection and development. While he agreed with Trudeau on the need for a charter of rights, he claimed decentralisation of power and constitutional affirmation of dualism were required (PLQ, 1980: 22). Both Quebec parties advocated the need for constitutional change in Canada, and for recognition of the province's status. In Quebec, sovereignty-association was rejected by the same margin as Tatarstan's electorate approved sovereignty in 1992: 60/40.

Tatarstan's referendum campaign was accompanied by federal threats, the Constitutional Court's ruling which pre-emptively struck down its status claims, and ongoing back-room negotiations with Moscow on intergovernmental agreements. During Quebec's referendum, Trudeau committed that he would undertake substantive reforms of the Canadian constitution in the event of a No vote but remained coy as to the concrete measures he had in mind (McRoberts, 1997: 158-9). Following the referendum, increasingly

² The 1980 referendum question: "The Government of Quebec has made public its proposals to negotiate a new agreement with the rest of Canada, based on the equality of nations; this agreement would enable Quebec to acquire the exclusive power to make its laws, levy its taxes and establish relations abroad – in other words, sovereignty – and at the same time, to maintain with Canada an economic association including a common currency; no change in political status resulting from these negotiations will be effected without approval by the people through another referendum; on these terms do you give the Government of Quebec the mandate to negotiate the proposed agreement between Quebec and Canada?"

dismayed at the lack of progress in multilateral negotiations with the provinces, Trudeau proposed the federal government would undertake unilateral reforms to the constitution. Dubbed the *People's package*, the proposal “was deliberately designed to appeal to Canadians from all regions of the country directly over the heads of recalcitrant premiers who had vetoed constitutional renewal [...]” (Behiels, 2004: 64).

Since the 1867 constitution contained no amendment procedure, several provinces including Quebec challenged the federal government's proposals to amend it unilaterally. The provinces argued a constitutional convention existed that required provincial consent for constitutional change. The Supreme Court of Canada found that a constitutional convention did indeed exist:

A substantial degree of provincial consent – to be determined by the politicians and not the courts – was conventionally required for the amendment of the Canadian Constitution. The convention existed because the federal principle could not be reconciled with a state of affairs where the federal authorities could unilaterally modify provincial legislative powers (SCC, 1981).

In line with its view of Confederation as a compact, Quebec argued that *unanimous* provincial consent was required to amend the constitution. The Court refused to recognise that the convention required unanimous consent, leaving it up to political actors to best determine what degree of consensus was required: “Conventions by their nature develop in the political field and it will be for the political actors, not this Court, to determine the degree of provincial consent required” (SCC, 1981). The ruling illustrates that there was no existing institutional or constitutional constraint on the ethnic or linguistic majority's ability to overrule the minority in Canada. Moreover, the Supreme Court buried any legal basis for Quebec's interpretation of constitution as a compact. Similarly, Russia's Constitutional Court 1992 ruling struck down Tatarstan's status claims adopted on the basis on Soviet-era laws. These rulings provided confirmation that Quebec's and Tatarstan's claims for special status rely not on legal but political justifications.

Following the Court's ruling, Trudeau and all ten premiers met in Ottawa in November 1981 to negotiate a constitutional amendment package. A coalition of eight provinces including Quebec issued two demands. First, they sought an amendment procedure requiring consent of two-thirds of provinces representing 50 per cent of the total population (the “7/50 rule”). Second, the bloc of eight wanted to entrench the right to opt-out of shared-cost programmes with compensation. Moreover, the coalition opposed Trudeau's idea of submitting the final package to a state-wide referendum. During the negotiations, Lévesque reneged on his commitment to other provincial leaders that a referendum should not be held and abandoned his province's longstanding claim for a constitutional veto (McRoberts, 1997: 165). This led to the dissolution of the coalition, and

an all-night negotiation session during which Trudeau and all premiers except Lévesque approved the deal which became the Constitution Act, 1982.

The Constitution Act patriated the constitution and made Canada (rather than Westminster) responsible for any future amendments. The document's main innovations with regard to Canada's constitutional framework are: the entrenchment of an amendment procedure (s.38§1) and of equalisation payments (part III), recognition of Canada's multicultural heritage (s.27) and Aboriginal treaty rights (part II). By far the most significant change to the constitution is the inclusion of the Charter of Rights and Freedoms. The Charter establishes a series of guarantees of individual rights, mobility rights, and entrenches pan-Canadian bilingualism and individual official minority language education rights (ss.16-23, see next chapter). A provision included at the last minute at the premiers' insistence is the notwithstanding clause, which empowers provincial legislatures to suspend the application of sections 2 and 7-15 of the Charter. For observers, the constitutional changes implanted "a new conception of the Canadian political community and of the role the federal government should play as a 'national government', the government of all Canadians" (McRoberts quoted in Cairns, 1992: 54). Indeed, the 1982 constitution embodies two competing conceptions of Canada as a political community: Canada as a federal state emphasising the importance of shared but separate jurisdictions and provincial identities, and the Charter which defines Canadians as a united community of equal rights-bearers (Cairns, 1992: 197-9). Kymlicka considers that through the Charter English-Canadians "adopted a form of pan-Canadian nationalism which emphasises the role of the federal government as the embodiment and defender of their national identity" (Kymlicka, 1998: 166). The Charter's emphasis on individual rights further challenges the standing of Quebec's government as the legitimate representative of the interests of Quebecois.

The Government of Quebec refused to assent to the constitutional changes. It appealed to the Supreme Court that the changes were unconstitutional since they had been made over Quebec's express objections. However, the Court rebuffed its claim, maintaining constitutional convention required only "substantial provincial consent" (SCC, 1982). Quebec was thus subjected to a constitution which its government had not approved. Political leaders of all parties considered the adoption of the Constitution Act, 1982 without Quebec's approval as a betrayal of the federal pact. For Oliver, in choosing to stick to the minimal 'substantial consent' instead of securing Quebec's approval, the federal government chose "legality over legitimacy" (Oliver, 1999: 66). As a result, Laforest contends the 1982 settlement marred the legitimacy of Canada's institutions, something periodically emphasised by the National Assembly and Quebec Government (Laforest, 1995: 44). For instance, on the Charter's twentieth anniversary, the National Assembly resolved on 17

April 2002 “that it never adhered to the Constitution Act, 1982 the consequence of which was to diminish the powers and rights of Quebec without [its] consent [...] and remains unacceptable for Quebec” (Quebec, 2002).

In Tatarstan, the 1993 constitution, and importantly the failure to secure Tatarstan’s demands and consent, was similarly criticised. The “illegitimacy” of the federal constitution became a basis for republican elites’ decision to adopt unconstitutional legislation. In Quebec, although leaders did not flout the new rules, the National Assembly invoked the notwithstanding clause in all provincial legislation until 1986 to signal its discontent. While in Russia the 1994 bilateral treaty was quickly adopted to bridge the constitutional conflict, a solution was not so forthcoming in the case of Quebec, although another change of leadership in Ottawa and Quebec City created the context for an attempt at bridging the constitutional divide.

Attempts to Bridge the Constitutional Divide

In 1984, Brian Mulroney’s federal Progressive Conservatives campaigned on a platform to mend the constitutional rift, and consequently swept 80 per cent of seats in Quebec. Lévesque and Mulroney opened a dialogue on the means to secure Quebec’s adherence to the 1982 constitution based on a number of provincial demands including a constitutional veto, modification of the division of competences, and importantly, the entrenchment in the constitution of Quebec’s national specificity (Quebec, 1985). When the PQ was defeated at the polls in 1985, Robert Bourassa’s PLQ continued the dialogue but with one major caveat: “recognition of Quebec’s specificity is a prerequisite to any negotiation on Quebec’s adherence to the Constitution Act, 1982” (Rémillard, 1986: 8). The federal government’s caveat was for Quebec to cease invoking the notwithstanding clause in provincial legislation. At a conference on renewed partnership between Quebec and Canada, Quebec’s Minister of Intergovernmental Affairs, Gil Rémillard enumerated five conditions for securing Quebec’s assent to the 1982 constitution: explicit recognition of Quebec as a distinct society; enhanced powers in immigration; a limit on the federal spending power; a constitutional veto; and participation of Quebec in the nomination of Supreme Court judges (Rémillard, 1986; 1987). These demands, made by a federalist PLQ government, were less radical than the conditions proposed earlier by the PQ. Indeed, Lévesque had asked for a fundamental reorganisation of the division of powers and that Quebec receive exclusive power over language policy, which would have required amending s.23 of the Charter and effectively taking aim at one of the key achievements of the 1982 reforms (Quebec, 1985: 17-20, 26-30). Bourassa’s Liberals, instead, reasserted Quebec’s traditional demands. First, a commitment by the federal government that it would restrain

its use of the spending power, or provide the means for Quebec to opt-out of national programmes. Second, Quebec sought to supplement the 1982 constitution with a clause recognising the dualism of the Canadian federation and Quebec's distinct status.

These demands constituted the basis of a constitutional amendment package negotiated and agreed upon by federal and provincial leaders in a closed-door multilateral process. Dubbed the Meech Lake Accord, its architects believed it would remedy the 'betrayal' of 1982. As constitutionalist Peter Hogg writes, "The *Constitution Act, 1982* failed to accomplish one of the goals of the constitutional discussions that had followed the Quebec referendum, and that was the better accommodation of Quebec within the Canadian federation" (Hogg, 1988: 3). The Meech Lake Accord addressed Quebec's five conditions. The constitution would be augmented by an interpretive clause, whereby the "Constitution of Canada [would] be interpreted in a manner consistent with the recognition that Quebec constitutes within Canada a distinct society". On immigration, the federal government committed to incorporate the principles of the Quebec-Canada Cullen-Couture Agreement (which I examine below), and extend a right to all provinces to conclude bilateral agreements on immigration with Ottawa. Regarding the nomination of the Supreme Court, under the Accord the federal government would nominate candidates based on provincial recommendations. On the spending power, Meech contained a guarantee that "reasonable compensation" would be available to any province that opted out of national shared-cost programmes within areas of exclusive provincial jurisdiction as long it implemented a similar programme.

Although the premiers agreed to the Meech Lake Accord, it required unanimous ratification by all legislatures by June 1990. In the meantime, several signatories had been replaced, and many groups, notably Aboriginal and women's groups, protesting the lack of public participation in the process, mobilised against the Accord. Meech, although drafted with Quebec's demands in mind, was careful to offer all provinces the right to exercise the same powers. However, the asymmetry inherent in the distinct society clause was vehemently criticised. Constitutional experts were adamant that the clause would have no impact on the division of powers, and since it did not provide concrete definition of the term "distinct society", it would "be relevant only where other constitutional provisions are unclear or ambiguous and where reference to the ideas of linguistic duality or distinct society would help to clarify the meaning" (Hogg, 1988: 12). Pierre Trudeau emerged from retirement to criticise the provision: "No one is special. All Canadians are equal, and that equality flows from the Charter" (Trudeau, 1988a: 34). For him, enshrining dualism was tantamount to dividing the Canadian people (Trudeau, 1988b: 45-6). But most important for Trudeau was the vision the Meech Lake Accord enshrined:

...when we talk about a distinct society, and particularly when we enshrine that into the Constitution as an operative clause, we are, by definition, by the actual meaning of the terms, working towards or promoting a provincialist view of Canada. Not national patriotism [...]. I think that if we have a federal and not a confederal country, we have to have a national government, a national parliament that will speak out for all Canadians (Trudeau, 1988a: 32).

Trudeau's interventions, coupled with the mobilisation of many groups who feared the recognition of Quebec's duality might unduly affect equality rights and multiculturalism, had made the Accord unpopular by 1990. The failure of the Manitoba and Newfoundland legislatures to ratify the Accord before the deadline consecrated its demise. The failure of Meech, on the eve of Saint-Jean Baptiste Day in 1990, was greeted as yet another failure to respond to Quebec's aspirations and the perpetuation of 1982's betrayal. This failure prompted several federal Tory MPs to defect and found a nationalist political party, the *Bloc Québécois*, within the federal parliament.

Failure notwithstanding, the constitutional front continued to be characterised by frenetic activity between 1990 and 1992. Four commissions – two in Quebec, two on the federal level – worked to find a way to solve Canada's constitutional imbroglio. In Quebec, the Constitutional Committee of the PLQ published *A Quebec Free to Choose* (the Allaire report) in January 1991 which reiterated the view of Confederation as a "solemn pact" and the persistent importance of recognising Canada's dualism. Thus, notwithstanding the legal rejection of Confederation as a pact, its symbolic and political value remained intact. The Bélanger-Campeau Commission, whose recommendations were endorsed by the Bourassa government, laid the blame for the crisis squarely on the 1982 constitution.

The *Constitution Act, 1982* and the principles it enshrines have indeed engendered a hitherto unknown political cohesiveness in Canada. It helped bolster certain political visions of the federation and the perception of a national Canadian identity which are hard to reconcile with the effective recognition and expression of Quebec's distinct identity (Quebec, 1991: 33).

The fact the Charter enshrines the principle of equality – of individual rights and of provinces – makes it increasingly difficult to conceive how Quebec will be able to obtain constitutional recognition of its claims for status and jurisdiction without offending the values of symmetry and equality. Indeed, "the vision of an exclusive national Canadian identity emphasises the centralisation of powers and the existence of a strong "national" government. This vision [...] based on the equality of individuals limits Quebec's ability to be a different society" (Quebec, 1991: 36). The Commission recommended the government call a referendum on Quebec's constitutional future following an eighteen months-long period of reflection to consider the available options.

Faced with a potential Quebec referendum, the federal government engaged in its own attempts to find solutions to the constitutional crisis. Contrary to past constitutional conferences which were mainly intergovernmental affairs, the Citizens' Forum on Canada's

Future cast a wider net and solicited input from public organisations and individuals. The testimony received by the Forum confirmed the resistance outside Quebec to entrenching any mention of Quebec's specificity, as witnesses feared it would thus obtain privileges unavailable to other provinces (Canada, 1991: Part II, §4). Based on these findings, the government formed the Beaudoin-Dobbie Commission to make proposals for constitutional changes, which formed the basis of the Charlottetown Accord (Canada, 1992). The Charlottetown Accord proposed changes to Canada's federal institutions (moving toward an elected upper chamber and more provincial input on the selection of Supreme Court justices). Its key provision, however, was the so-called *Canada clause*. The Canada clause was an interpretative section which distilled the essence of the Canadian character, including recognition of Quebec as a distinct society within Canada, as well as the values of diversity, egalitarianism, etc. Contrary to the clause on distinct society in the Meech Lake Accord, the Canada clause was not aimed exclusively at recognising Quebec's dualism, but defined Quebec's distinctiveness as a characteristic, among others, of Canada. All government leaders, including Quebec's, approved the Charlottetown Accord. But 54 per cent of the electorate rejected it in a state-wide referendum. The failure of Charlottetown also brought an end to multilateral attempts to amend the constitution.

After its electoral victory in 1995, the Parti Québécois implemented its key platform, a referendum on the sovereignty of Quebec. The PQ's and Premier Jacques Parizeau's vision was embodied in Bill 1, *Act Respecting the Future of Quebec, or Sovereignty Bill*. The preamble clearly expresses the level of discontent:

We entered the federation on the faith of a promise of equality in a shared undertaking and of respect for our authority in certain matters that to us are vital. But what was to follow did not live up to those early hopes. The Canadian State contravened the federative pact by invading in a thousand ways areas in which we are autonomous, and by serving notice that our secular belief in the equality of the partners was an illusion.

The Bill authorises the National Assembly to proclaim Quebec's sovereignty, after an offer of "economic and political partnership" was made to Canada (s.1). The bill provided a one-year timeframe to negotiate such a partnership. The PQ secured the agreement of the federal *Bloc Québécois* and Quebec's third party *Action démocratique du Québec* (ADQ) to campaign jointly in favour of the project.³ The campaign was waged on the practical consequences of the vote. While proponents of Bill 1 argued that under a new partnership, Quebec could keep the Canadian currency and access to the Canadian economic space, Ottawa countered that secession was the real issue. In a televised address, federal Prime Minister Jean Chrétien sought to clarify the stakes of the vote: "Hidden behind a murky

³ The question put to the electorate: "Do you agree that Quebec should become sovereign after having made a formal offer to Canada for a new economic and political partnership within the scope of the bill respecting the future of Quebec and of the agreement signed on June 12, 1995, Yes or No?" The bill is the Sovereignty Bill and the agreement mentioned is the one between PQ, BQ and ADQ.

question is a very clear option. It is the separation of Quebec. A Quebec that would no longer be part of Canada” (25 October 1995). On October 30, the referendum failed by the slimmest of margins: 50.58 per cent voted no, a margin of 1.16 per cent, or 54,288 votes. The PQ remained in government until 2002. It is Quebec’s main opposition party and remains committed to promoting and acceding to sovereignty once it is returned to power (PQ, 2001).

In these preceding sections, I have illustrated the failures of securing constitutional consensus. What lessons can be drawn from these various attempts? As Smiley writes, “The stability of political systems is overwhelmingly a matter of the relation between internal conflicts of these systems and their institutional capacity to give authoritative resolution to such conflicts” (Smiley, 1971: 328). The nature of Canada’s constitutional disagreement is twofold. First it concerns the nature of the federal bargain and Quebec’s place in the Canadian federation. Second, Quebec challenges the constitutional division of powers, the federal government’s increased fiscal capacities and what it perceives as federal interferences within provincial prerogatives.

Although the underlying constitutional conflict remains unaddressed, one important characteristic of the constitutional politics in Canada is that elites have continued to engage each other. It constitutes an ongoing process of negotiation and mediation. During the early 1990s, constitutional conflict in Tatarstan led to political crisis, including unilateral declarations of sovereignty, the seizures of constitutional jurisdiction and competence and refusals to heed court rulings. Constitutional disagreement in Quebec has not created the same degree of institutional disruption. Constitutional disagreement and ongoing discussions on means to bridge the disagreement have become one among many characteristics of the politics of Quebec and Canada, as Banting and Simeon illustrate:

Lack of consensus makes constitutional change necessary. The same lack of consensus makes constitutional change particularly difficult... Because the constitution lacked consensus, it had to be debated. But the same lack of consensus made it impossible to agree on a new one (Banting and Simeon, 1985: 25).

Canada’s constitutional politics are marked, as I have examined, by elites and leaders, electoral and political uncertainty and the competitive relationships between governments that advocate different, sometimes contradictory visions of the political community and federal design. The failure to address Quebec’s demands in the constitutions builds a degree of instability and uneasiness into politics. The threat of Quebec sovereignty remains present but unrealised. In Tatarstan, by contrast, although the bilateral treaty did not solve the underlying constitutional conflict, it infused a comparatively more important degree of constitutional stability. By confirming the republic’s status of “united with Russia”, the treaty provided symbolic recognition, and importantly, minimised the persistence of the

disagreement regarding Tatarstan's status. A significant difference in Tatarstan, however, is the absence of a persistent sovereignty movement. The continuity of elites and absence of political competition, factors which I examine in more detail in Chapter 8, increase the stability of the bilateral relationship.

In Russia, as I examined in Chapter 4, there is more uncertainty regarding the federal division of competences and Tatarstan's autonomy. As I outlined, Tatarstan's bilateral power-sharing agreements have faded into the background, with Tatarstan increasingly subject to the division of powers of the 1993 constitution. In Quebec, although demands for constitutional protection of provincial jurisdiction have failed, Canada's federal design has proven flexible to provide the basis and means for ongoing intergovernmental negotiation to address the province's claims.

Intergovernmental Negotiations and Accommodation

One recurrent characteristic of federal-provincial politics in Canada is the importance of intergovernmental relations. The government of Quebec, especially after the Quiet Revolution, assumed a role as catalyst of social and political change, but also as protector of Quebec's cultural and linguistic specificity. Provincial governments are the main representative of provincial interests in Canada's federal system, and the federal government's primary interlocutors. The governmentalisation of federal-regional interactions has led to an increase of what Simeon calls "political federalism" and to the appearance of an array of institutions and practices to support these processes (Simeon, 1972: 38; 2002: 15). Intergovernmentalism is the hallmark feature of Canadian federalism, and the principal way in which policy is made and delivered in the system.

The existence of various forums of intergovernmental mediation ensures a modicum of intergovernmental communication and cooperation even during period of acute political tension. In the second section of this chapter, I examined the practice of opting-out which was implemented in the 1960s. Although Pierre Trudeau was critical of the effects of opting-out, intergovernmental agreements have remained a key mechanism for the accommodation of Quebec's demands. Power over immigration is one such case, where agreements were reached at several moments (in 1971, 1975, 1978 and 1991). Each subsequent accord reinforced the dynamic of cooperation and granted Quebec more competences and resources. Immigration is defined as a joint power where federal law is paramount (s.95). It is similar to the powers which Russia's constitution defines as joint. The manner in which Quebec's immigration accords have been concluded provide an interesting parallel with the kind of power-sharing agreement Tatarstan claims is possible

under Russia's constitution, and the kind of approach Shaimiev has repeatedly stated is required in Russia.

The initial agreement was signed in 1971. The *Lang-Cloutier Agreement* authorised Quebec to station an immigration officer within Canadian immigration offices overseas to provide information to prospective immigrants about working and living conditions in Quebec. The agreement clearly states, however, that Quebec would have no power over the recruitment of immigrants bound for Quebec (Canada-Quebec, 1971). The Minister of Manpower and Immigration, Otto Lang, pointed out that the powers obtained by Quebec were available to any other province who requested them (House of Commons Debates, 19.5.1971: 5960). The 1975 Agreement broadened the scope of bilateral cooperation, particularly to secure the immigration to Canada of a greater number of French-speakers. It is the federal minister of Immigration, Robert Andras, who wrote to his Quebec counterpart to express concern about the downward trends of francophone immigration to Canada (LD, 5.28.1974). Signed in 1975, the *Andras-Bienvenue Agreement* sought to "encourage immigration to Quebec of French-speaking or potentially French-speaking immigrants who have the ability to integrate rapidly and successfully into both Quebec society and Canadian society" (Canada-Quebec, 1975: preamble). The Accord required that Quebec immigration officials be consulted on applications for immigration to Quebec (art.6). The accord was criticised not so much for the *de facto* asymmetry in created in favour of Quebec, but for the possibility it provided Quebec to "discriminate" against non-francophone immigrants (G&M, 20.10.1975; Gazette, 24.10.1975).

As I examined above, the period following the PQ's election in 1976 was characterised by increased federal-provincial tension. This notwithstanding, the governments of Quebec and Canada signed the *Cullen-Couture Agreement* in 1978 which established an unprecedented degree of power-sharing on immigration. This agreement enlarged Quebec's prerogatives: not only was it consulted regarding immigration to Quebec, but it obtained the right to establish its own selection criteria based on the province's demographic, socio-cultural and labour market needs and conditions. The accord sought to give power to Quebec to select immigrants that "contribute to [its] social and cultural enrichment, taking into account its specifically French character" (Canada-Quebec, 1978: preamble). Cullen-Couture instituted a federal-provincial committee responsible for joint setting of immigration levels in accordance with Quebec's needs. Again in 1978, Ottawa was careful to underline that the asymmetry created was *de facto* only and not limited to Quebec: "...every concession and every agreement we have reached with the province of Quebec is available to each of the provinces of Canada. [...] Some are not interested in getting into the selection criteria at this time" (House of Commons Debates, 21.2.1978: 3061). For

McWhinney, the agreement is a testament of the resilience of Canada's federal design and to the effectiveness of the negotiating teams: the "agreement was no doubt facilitated by the relative low public profiles and low-key personalities of the two ministers concerned, who concentrated on their technical responsibilities" (McWhinney, 1979: 109). Quebec's minister of Immigration reported at the time that the agreement was the best Quebec could achieve: only sovereignty would give the province more power in this field (G&M, 21.2.1978).

The failed Meech Lake Accord would have entrenched the provisions of the Cullen-Couture agreement in the constitution. Ottawa and Quebec agreed in 1991 to sign a new agreement "in order to provide Quebec with new means to preserve its demographic importance in Canada, and to ensure the integration of immigrants in Quebec in a manner that respects the distinct identity of Quebec" (Canada-Quebec, 1991: preamble). The *Canada-Quebec Accord* provides Quebec with exclusive competence over the selection, reception and integration of independent immigrants (Canada retains competence over refugees and other categories). Under the accord, Canada withdraws from the provision of linguistic and cultural integration services and instead compensates the Government of Quebec for providing them. In line with previous agreements, a joint committee was created to oversee the implementation of the accord and, importantly, discuss and set immigration levels. Although an amendment procedure was included, the agreement has no termination clause. Contrary to the Cullen-Couture agreement, the 1991 intergovernmental agreement remains in force until both parties consent to change or rescind it.

For federal Immigration Minister Barbara McDougall, greater autonomy for Quebec was a way to respond to Quebec's cultural specificity: "both governments are convinced about the indisputable contribution that immigrants make to Canada's French-language culture which is centered in Quebec. Their integration is fundamental, and we are aware of how vitally important it is to assuring the broader objectives" (McDougall, 1991: 1). The agreement is a win-win for Ottawa and Quebec, as it addresses Quebec's "legitimate needs" while protecting the overall coherence of federal immigration policy (McDougall, 1991: 2). For Quebec's Minister of Intergovernmental Affairs, the accord was in line with Quebec's view of federalism (G&M, 6.2.1991). Quebec's new jurisdiction over language training and settlement for immigrants (and the 32 per cent of federal funding consented to Quebec to carry out these programmes) are a "recognition of Quebec's distinct society and Quebec reality" (Gazette, 9.2.1991) and evidence that Canada's federal system can and does succeed in recognising Quebec's interests (McRoberts, 1993: 295). The agreement on immigration was designated as an example of constructive federalism:

The current system is not perfect, but it is full of possibilities. We have only to take a close look at those possibilities to discover that there are ways of adapting, updating and renewing our policies. Through administrative agreements of various kinds, like the one we are signing today, our current federal system can continue to serve Canadians well, in all regions of this country, and help them fulfil their fair and just aspirations (McDougall, 1991: 4).

However, other provincial leaders resented even these *de facto* asymmetries. Alberta Premier Ralph Klein stated clearly “We feel, and have felt for a long time, that it’s inherently unfair that Quebec is the only province that has control over immigration” (CP, 5.9.1995). Whereas Quebec received twelve per cent of Canada’s immigrants, it received 37 per cent of federal funds for resettlement (G&M, 10.11.1995). In response to the claims Quebec’s agreement was unfair, bilateral accords on immigration have been reached with all provinces, on matters such as selection, settlement, etc.⁴

The intergovernmental agreements on immigration are important for two reasons. First, they confer a degree *de facto* recognition of Quebec’s specificity. Although it is insufficient to bridge the constitutional conflict, it is an example of the flexibility inherent in Canada’s federal design to take the province’s needs into account. Second, they point to ongoing processes of accommodation, illustrating the role of elites and the importance of their willingness to negotiate. There is no constitutional obligation for the federal government to accommodate Quebec’s demands for greater influence on the immigration process. Since federal law is supreme in immigration, the federal government could just as well legislate on its own. In Russia, in all areas of joint control federal law is supreme, yet the constitution provides similar means and mechanisms to allow for joint approaches the policy, such as the agreements in Quebec on immigration.

Immigration is only one example. Hundreds of administrative accords and agreements were signed between Ottawa and Quebec during the 1990s. Many of these agreements are the result of inter-departmental and inter-ministerial negotiations and discussions (many of these on routine matters: information sharing, agriculture, minority-language education) (List obtained by author of intergovernmental accords, 1990-2003). The structures and institutions of federalism broker cooperation on ongoing policy initiatives. A deal on healthcare reached between the federal and provincial governments in September 2004 included a special side-deal for Quebec. A first in this kind of multilateral agreement, Quebec Premier Jean Charest welcomed the deal as a victory for Quebec and turning a new page in history (LD, 18.9.2004). For Prime Minister Paul Martin, the protection of Quebec’s jurisdiction in healthcare is “very important to Quebec [...] and that was reflected in [the] agreement” (G&M, 17.9.2004). Significant in this deal is the fact that all federal party leaders supported asymmetry for Quebec, and provincial premiers, although

⁴ All the federal-provincial agreements are available on Citizenship and Immigration Canada’s website: <http://www.cic.gc.ca/english/policy/fedprov.html>

they expressed some concern, did not object to the special provisions afforded to that province (LD, 18.9.2004). The significance was not lost on federal Minister Pierre Pettigrew: “I am pleased that the term asymmetric federalism, which has worried so many people for so long, can be implemented after many years of work, and that we can talk about a reality which is necessary for Quebec” (LD, 17.9.2004).

An additional example of policy cooperation is a recent accord on parental leave, reached in March 2005. The accord comes at the end of an eight-year long struggle, negotiations and court rulings. Quebec’s National Assembly unanimously adopted Law 140 in 2001 creating a parental leave programme which is more generous than its federal counterpart. The Quebec Court of Appeals issued a reference in January 2004 which found that the sections of Canada’s Employment Insurance Act that establish benefits for parental leave are beyond the federal government’s jurisdiction (Quebec (A-G) v Canada (A-G), 2004). But as it was a Reference, the Quebec Court did not invalidate the federal law. Although the federal government appealed the ruling, which was heard by the Supreme Court of Canada in January 2005, Ottawa and Quebec reached an agreement which allows both programmes to coexist. The federal government liberated fiscal space (worth \$750M) to allow Quebec to manage part of the employment insurance contributions of Quebec citizens in order to establish its parental leave programme (LD, 1.3.2005). For federal Minister Jean Lapierre, this asymmetric agreement underlines “the flexibility of federalism [...] and is an example of federalism at work” (LD, 2.3.2005). BQ leader Gilles Duceppe countered, however, by discrediting such a claim: “We cannot pretend there is asymmetry in a field of competence which belongs to Quebec” (LD, 2.3.2005). Although it will be interesting to see how the Supreme Court interprets the jurisdictional issue, the delegation of powers demonstrates the ability and commitment of political leaders to reach compromise and agree on differentiated approaches to shared policy objectives.

However, as Duceppe’s statement illustrates, the limits of intergovernmentalism are clear. Since they only address Quebec’s demands *de facto*, the underlying constitutional conflicts are not resolved. It appears unlikely, however, that political leaders in Canada will agree to entrench asymmetries or recognition for Quebec *de jure*. The Calgary Declaration, signed by all provincial premiers except Quebec in 1997 recognised the “unique character of Quebec society” (s.5), but stressed that all citizens and all provinces of Canada were equal however diverse in their characteristics (ss.1-2). The declaration establishes what will most likely govern provinces’ approach to any changes to the constitutional division of powers for the foreseeable future: “If any future constitutional amendment confers powers on one province, these powers must be available to all provinces” (s.6). Moreover, asymmetry for Quebec, even if only *de facto* and available to all provinces, remains a controversial

mechanism. Former Saskatchewan Premier Roy Romanow argues that the asymmetry institutionalised in the healthcare accords “breaks the country” (LP, 17.9.2004). Public opinion remains critical of asymmetry for Quebec, even when it is clear that special provisions are available to all provinces (Seidle and Bishop, 2005: 2).

The process which led to the adoption of the Social Union Framework Agreement (SUFA) illustrates another limit of intergovernmentalism. As a means to accommodate multinationalism, *de facto* processes depend on leaders’ ability and willingness to continue to respond to Quebec’s demands. When it was signed in 1999, federal and provincial leaders hailed SUFA as the advent of an era of “cooperative federalism”. Indeed, the Agreement provides for increased consultation and coordination of social policy. Regarding the federal spending power, under SUFA the federal government agrees to consult provincial governments on new Canada-wide programmes or initiatives within provincial jurisdiction, and obtain the consent of a majority of provincial governments before the programme is implemented (s.5). Quebec refused to sign the Agreement, arguing it further muddied the constitutional division of powers and would have further institutionalised the central government’s spending power. The inability to guarantee Quebec’s autonomy in areas of social policy creates what Noël calls “federalism with a footnote”: federal-provincial protocols and agreements are signed but with a footnote indicating that Quebec “shares the same policy concerns” but “does not intend to adhere to the federal-provincial” approach (Noël, 2000: 4). Quebec’s withdrawal creates a form of *de facto* asymmetry, but as Noël points out, “it is not a form of asymmetry that responds to Quebec’s demands for recognition and autonomy. On the contrary, this new brand of federalism changes the rules of the game without the consent of the Quebec government, it reinforces the federal spending power, and it contributes to advance a new pan-Canadian vision of social policy that will affect Quebec, with or without its approval” (Noël, 2000: 17). Although Quebec’s refusal is unlikely to lead to its exclusion of future initiatives or funding, it is an indication of the persistence of the underlying constitutional conflict: “It is obvious that a Social Union which does not take account of Quebec’s vision of Canadian federalism will aggravate the problem. There is a parallel with the entrenchment in 1982 of a Charter of individual rights, based on values which are shared between Quebecois and other Canadians but which separated them because Quebec’s specificity and consent were ignored” (Dufour, 1998: 10).

Conclusion

In Quebec, not only nationalist parties push for increased recognition and jurisdiction. Indeed, such demands have been voiced by governments of all stripes. In its 2001 policy platform, Quebec Liberals offered electors a vision of Quebec within Canada.

Although the PLQ is ready to continue to pursue *ad hoc* and intergovernmental negotiations, considering it “fruitful avenue of accommodation”, it calls for constitutional recognition of Quebec’s specificity and the need to address these long-standing issues (Pelletier, 2001: 63). Quebec’s leaders continue to call for two things: constitutional recognition and better respect of the federal principle and of provincial jurisdictions. Stability of the constitutional conflict is a function of which parties are in power in Quebec and Ottawa, the nature of the political and issues under consideration at any given time, and importantly, on each side’s general willingness to accommodate each other’s demands. McWhinney considered the *Cullen-Couture Agreement* as heralding perhaps an effective model of federal-regional relations:

This mode of federal problem-solving through administrative arrangement between the two levels of government through direct negotiation remains, however, one of the most hopeful approaches to constitutional change. [...] Pending some break in the longstanding impasse over amendment machinery to the federal constitution, this is the best solution possible. Any fundamental constitutional changes depend on the existence of a prior national consensus. In the meantime, we have a pragmatic, gradualist approach to constitutional change through the development of special administrative glosses upon the original constitutional charter – an imaginative and constructive arrangement, building ultimately on the idea of federal comity (McWhinney, 1979: 109).

The persistence and unsettled nature of the constitutional issue has led, in effect to the development of intergovernmental modes of accommodation. As I have shown the effectiveness of these forms of accommodation rests on actors’ ability to continue to engage with one another. For Webber, this demonstrates that “constitutions are not meant to resolve all our conflicts” but “merely suggest a framework through which we can wrestle with them through time” (Webber, 1994: 29). The ongoing constitutional disagreement, and the fact that political actors and parties in Quebec and Canada have an interest in continuing to raise these issues ensures that Quebec’s claims, and the constitutional conflict, remains at the forefront of politics. One point of difference with Tatarstan is the democratic backdrop against which Quebec’s demands are articulated and responded to. Political competition is a process whereby the claims of Quebec’s leaders are debated, aggregated and represented in the provincial and federal political arenas. This remains underdeveloped in Russia, where negotiation of Tatarstan’s claims has further undermined the development of a similar democratic backdrop, due to the executive focus of elite relations and the consolidation of the federal and republican leadership.

Chapter 7: Federal Design and Language Policy in Quebec

Some people look upon language conflicts with cynicism, if not indifference, as if these were yet another episode of the great Canadian drama (Coulombe, 1995).

The French language needs Quebec independence as much as a fish needs a bicycle (Jacques Henripin, 2000).

The centrality of language as a political and national concern makes it interesting in the context of the present study. It provides a good case to examine the proposal that implementing a regime of collective rights is a means of solving a stateness dilemma. Language was an important element of Tatarstan's nationalist revival and of its claims for differentiated status. It is a crucial component of national identity in Quebec. A key difference between the cases is the extent to which language, territory and community are linked in the province, as former Premier René Lévesque explains:

Essentially, language makes Quebec the only Canadian province [...] which is radically (in the proper sense of the word) different from the rest of Canada. It makes Quebec the centre and homeland of a compact cultural group, deeply rooted and rapidly evolving [...] which sees itself as a national group. Democratic control over provincial institutions in Québec provide the Québécois people a powerful platform for its collective affirmation and self-determination (Quoted in Chevrier, 1997: 18).

The purpose of this chapter is to examine the extent of Quebec's legislative autonomy over language policy in the context of its ongoing claims for recognition and jurisdiction. Similar to my examination of Tatarstan, this chapter focuses on the extent to which federal design in Canada provides autonomy to implement and manage language policy. Both federal and provincial governments pursue separate language policies. Quebec seeks to protect and foster the existence of a French-language society whereas Canada's approach is based on its objective to create a bilingual state and the protection of the country's language minority communities. This provides a glimpse into the nature of federal-provincial relations in this area and the means to gauge whether language is an area of federal-provincial conflict or accommodation.

The chapter proceeds as follows. I provide a brief historical overview before examining Quebec's language laws and policies in greater detail. I then consider the federal government's language legislation and court rulings on Quebec language law. These provide a particularly useful glimpse of the limits of Quebec's legislative autonomy in the field of language policy. I conclude with an assessment of Quebec's language claims and the extent to which the province possesses sufficient autonomy to carry out its policy objectives.

Historical overview

Language is considered by many commentators, including Supreme Court Justice Michel Bastarache to be “a dominant theme in Canadian political history” (Bastarache, 1986: 32). Until 1867, however, language policy in Canada vacillated between attempts to assimilate French speakers and *de facto* toleration of the language. The 1763 Royal Proclamation created the Province of Quebec but limited French civil and criminal law and sought to prevent Roman Catholics (mostly francophones) from participating in government or the civil service. After Quebec’s British governors urged London to change the situation, the Quebec Act, 1774 re-established civil law in Quebec and eliminated the Test Oath. Although language was not an explicit provision of the Act, in practice laws were enacted in both languages and bilingualism practiced in the courts (Bastarache, 2004b: 23). When the Constitutional Act of 1791 partitioned the Province of Quebec into Lower Canada (today’s Quebec, population 140,000 francophones and 100,000 anglophones) and Upper Canada (population 10,000, mostly anglophones), each territory obtained its own legislative institutions. Procedural bilingualism was preserved in Lower Canada. In Upper Canada, English remained the normal language of proceedings until it was made official in 1839 (Bouthillier and Meynaud, 1972).

Following the 1837 rebellions in the Canadas, the Durham report of 1839 identified the existence of linguistic and ethnic differences as a source of enduring conflict in the colony and recommended political union of both Canadas and rapid assimilation of French Canadians as the solution. The union of both provinces would ensure the demographic preponderance of anglophones, and following the wisdom of the time, it was expected “that the French, when once placed, by the legitimate course of events and the working of natural causes, in a minority, would abandon their vain hopes of nationality” (Lord Durham’s Report). The Union Act, 1840 implemented Durham’s recommendation and declared English to be the sole language of Canada (article 41). Nevertheless, *de facto* bilingualism was reintroduced in the legislature in 1841, and article 41 was abrogated by Westminster in 1848.

The British North America Act 1867 provides constitutional recognition, albeit of a limited nature, of language rights. Section 133 establishes official bilingualism in the legislative and judicial institutions of the federal government and Quebec. This is the sole reference to language competence in the constitution, as neither sections 92 (division of powers) or 93 (education) mention language. Compared to Russia, where a constitutional asymmetry was established to allow republics to exercise competence over language, language is not formally assigned to a specific order of government in Canada. Indeed, the Supreme Court of Canada has affirmed that either level of government is free to legislate on

language within their respective jurisdictions (Leckey and Didier, 2004: 525). Within the federal government, this minimal official bilingualism would remain largely unchanged until the federal government adopted its Official Languages Act in 1969.

In Quebec, language stayed at the margin of politics until the 1960s. Except for two laws¹, the provincial government did not legislate on language issues. One major reason for government's inaction is that the Church was the main provider of education and health services. Language remained intimately linked to religion, with French declared to be guardian of faith. In its report on the division of powers and the *malaise* of Canadian federalism, the Tremblay Commission viewed Quebec as a national homeland (*foyer national*) and the political centre of the French Canadian civilisation but did not address the place of language or language planning (Quebec, 1956; Bouthillier, 1981). Increasingly, however, the endemic weakness of French in the workplace and industry in Quebec called into question the reliance on the Clergy as the main protector of the language (Bouthillier and Meynaud, 1972: 41).

The Quiet Revolution and the rise of Quebec's demands for increased recognition and power within Canada also provoked reflection on the place of language in Quebec society. In Tatarstan as well, discussion of political status brought a discussion of the role and place of Tatar. As part of Jean Lesage's project to make Quebecois *maîtres chez nous*, the provincial government adopted a more assertive role in the planning and protection of culture. One aspect of this project was to orient Quebec as the homeland of Quebecois, rather than French Canadian, culture. Consequently, the government took over many of the tasks which had hitherto been accomplished by the Church. A Ministry of Cultural Affairs was created in 1961, a Ministry of Education in 1964. The *Office de la langue française* (OLF) was founded in 1961 and made responsible for monitoring and enriching the quality of the French language in Quebec. While the OLF was initially created to oversee the quality of French, it increasingly adopted more assertive stances, calling on government to the adopt measures to counter the prominence of English within Quebec's public service and ensure immigrants to Quebec were better integrated into French culture. Guy Cholette, former director of the OLF, remarks these demands point to an increasing awareness of the linkages between Quebec's linguistic needs and the political and economic context, and that government would need to play a more active role (Cholette, 1993: 25).

The linkage between language and politics, between Quebec's status and the protection of French, is further illustrated in a 1965 White Paper by Cultural Affairs

¹ The Lavergne law (1910) required public utilities to provide their customers with information in both English and French. The Duplessis government enacted a bill in 1937 (and abrogated it in 1938, following public and political pressure) which declared the supremacy of French versions of laws.

minister Jean Laporte. The policy paper proposed French become the language of thought, expression and communication in all activities of the francophone majority (Laporte, 1965; Bouthillier and Meynaud, 1972). The White Paper saw the government of Quebec as the motor of cultural and language policy: “The task of restoration is, in the present, of such breadth that it requires the firm and enlightened intervention of the only government in which this people [French Canadian] is represented: the Government of Quebec. At stake is the preservation [...] of cultural identity, and such a task cannot be undertaken but by the government in which the people fully recognises itself – the Government of Quebec” (Laporte, 1965: 21-22). Although the White paper was shelved, it illustrates the shift which occurred during the Quiet Revolution. In his pamphlet *Égalité ou indépendance, Union nationale* leader Daniel Johnson proclaimed that Quebec needed to act on the causes of the weakness of the French language. “In sum, to make and steer history, economics, politics, all in French, that is what I call acting upon the causes; [...] that which can ensure the status of the language and give us a Quebec where everyone will speak French” (Johnson, 1990 [1965]: 11). In the context of nationalist mobilisation and in the midst of increasing socio-economic modernisation of the francophone population, a redefinition of Quebec as the centre of a national community had occurred. In Tatarstan, language demands figured highly in the programmes of nationalist organisations and parties at the end of *perestroika*, when similar pressures to use political power and newfound political status to protect and revive the Tatar language.

The newly-created nationalist parties *Rassemblement pour l'indépendance nationale* (RIN) and *Parti Québécois* (PQ) brought the issue of language and political status to the forefront. For RIN leader Pierre Bourgault, a transition to radical French unilingualism was the only solution to reverse the *status quo* and remedy the situation in which were “slaves in their own country, forced to learn English to find work (Bourgault, 1966). PQ leader René Lévesque advocated a more moderate path by advocating primacy for French while respecting the linguistic rights of Quebec’s anglophones. Most moderate Tatar nationalists, such as the TPC, argued in favour of equalising the status of Tatar and Russian, not for the primacy of Tatar. In Quebec, a consensus took form at the end of the 1960s on the necessity to promote and protect the French language in Quebec, which was intimately connected to the expression of a political and societal identity (Bouthillier and Meynaud, 1972: 42). Language policy would increasingly become the expression and illustration of the importance of Quebec as a political and culture centre.

Implementing Language Policy in Quebec

Jean-Jacques Bertrand's *Union nationale* government made the first foray into language legislation in December 1968. Its hand was forced by a June decision by school boards in Saint-Léonard, a Montreal suburb, which forced all immigrants (in this case many children of Italian descent) to attend French language schools in order to stem the tendency of immigrants to enrol in English-language schools.² The government overruled the school boards with Bill 85 which reinstated parents' right to choose the language of instruction. But the bill was withdrawn in the face of significant opposition by Quebec francophones. To mollify increasing opposition, the government created the Commission on the Situation of the French Language in Quebec (Gendron Commission) to propose measures to ensure the development of French. When riots in Saint-Léonard greeted the beginning of the 1969 school year, the government responded with Bill 63, the *Law to Promote the French Language in Quebec*. While law did not change the *status quo* of free choice of the language of instruction, it required French be taught in English schools. This, coincidentally, is the approach to language education adopted in Tatarstan. In Quebec, however, a regime of bilingualism in education was widely condemned as a retrograde measure, stoking the ire of nationalists and contributing to the party's defeat at the polls in 1970 (Gémar, 1983: ch.2).

Gendron Commission

The Gendron Commission's 15,000-page report concentrated on three issues: the weakness of French in the workplace, the nature of the constitutional protection of language rights, and the use of French among Quebec's minority groups (Quebec, 1972a; Quebec, 1972b; Quebec, 1972c). A key principle behind the Commission's recommendations was the need to affect change on a socio-economic level in order to redress the place of French. In the workplace, the Commission concluded French was far from predominant on the Quebec labour market, lacking both status and utility.

French appears useful only to francophones. In Quebec, it is a marginal language since non-francophones have little need for it and that a good number of francophones, in important tasks, use English as often and sometimes more than their mother tongue. And this, despite the fact that francophones in Quebec, constitute a strong majority of workers and of the population (Quebec, 1972a: 111).

Commissioners assigned the blame directly on the "little enterprise or initiative" shown by the Quebec government to promote the use of French (Quebec, 1972a: 129).

The second volume, on language rights, considered the options available to the government should it seek to legislate on the status of the French language. It proposed a

² The St-Léonard crisis was an example of some of the pressures exerted upon French at time: until the 1960s, the population of St-Léonard was 99 per cent francophone. In 1967, as a result of immigration, francophones accounted for 60 per cent of the population (Plourde, 1988: 11).

number of options – maintaining the *status quo*, declaring French the official language, or declaring both English and French as national languages. Contrary to Tatarstan, which had no legislative authority to even raise the official status of Tatar before the Soviet Union passed its language laws in April 1990, the Gendron Commission highlighted that very few constitutional limits existed *a priori* constraining Quebec’s legislative prerogatives. Besides the constitutional protection afforded to English within the Quebec legislature and courts by s.133 of the federal constitution, the province was otherwise unconstrained. It recommended Quebec make French the official language of the province (and grant English the status of *national* language) and establish French as the language of communication and of work (Quebec, 1972a: Recommendations 1-10). The report’s third volume addressed the need for immigrants to integrate within the French-language community, rather than into English-speaking schools and communities. One of the measures suggested was the renegotiation of the 1971 federal-provincial treaty on immigration to give Quebec greater input into the federal government’s policy-process in order to attract greater numbers of francophone immigrants to the province. This was achieved with the 1975 and 1978 agreements on immigration. Overall, the Gendron Commission provided both the analytical resources and impetus for the government to make the next move, and foreshadows the main axes of subsequent language policy: official status for French, francisation³ of the workplace, and reforms to language education.

Bill 22

In 1974, Robert Bourassa’s government followed up on many of the Gendron Commission’s recommendations by enacting Bill 22, the *Law on the Official Language*. The law proclaimed French as the official language of Quebec (s.1) and the language of public administration. Bill 22 responded to the stark assessment of the situation of French in the workplace by introducing measures to promote the francisation of businesses. The *Régie de la langue française* was created to oversee the francisation and certification process. Regarding the language of instruction, the law required that children demonstrate “sufficient knowledge” of English in order to enrol in English-language schools (s.41). It did not, however, elaborate on how this criterion should be applied. Instead, the Ministry of Education issued a decree a year later to cap the enrolment in English schools (Plourde, 1988: 17). Bill 22 innovated by raising the status of the French language. However, the law

³ The *Grand dictionnaire terminologique* defines francisation as the “process which aims at the generalisation of French as language of work and of communication within public administration and companies”. Online source accessed 25 August 2005: <http://oqlf.gouv.qc.ca/ressources/gdt.html>.

put an end to the co-equal status of English in the province, which had existed since the eighteenth century.⁴

Nevertheless, the Bill did not satisfy the desires of Quebec nationalists. The provisions on francisation were considered too ambiguous: the law did not spell out how rigorous the *Régie* should pursue the process and how to evaluate a firm's adherence to criteria (McRoberts, 1993). As Gémard (1983) points out, Bill 22 is an instrument of language promotion, whereas Quebec needed a language policy which would be an instrument of social promotion.

The authors of Bill 22 did not or were unwilling to understand that it was impossible to satisfy both anglophones and francophones... Bill 22 is ambivalent, located between past and future, between Bill 63 and Bill 101, between anglophones and francophones. It is at the doorstep of a societal project, a hope which was not realised (Plourde, 1988: 19).

The PQ criticised the law as not going far enough to raise the status and utility of French. For Smith, this meant “the PQ must change its attitude and show real leadership in the defence of our linguistic interests” (Smith, 1975: 15).

Bill 101 – Charter of the French Language

Such was the dissatisfaction with bills 22 and 63 that the new PQ government mandated Cultural Affairs Minister Camille Laurin in 1976 to undertake a “profound revision of the Law on Official languages to give French the place it deserves in Quebec society”, and propose policy on the official language, public administration, language of work and commerce, advertising and on access to English-language instruction (Quoted in Picard, 2003: 241). As a diagnostic of the linguistic situation, Laurin's White Paper reiterated many of the findings of the B&B and Gendron commissions: the number of French-speakers was in decline outside Quebec, immigrants to Quebec tended to integrate into English-speaking society and the French language lacked utility in the workplace and in commerce. “We have let ourselves be convinced that English is the language of the modern world, of science and of administration” (Laurin, 1977: 15). Quebec is one province out of ten and “French [...] is far from a daily concern in the nine other provinces” (Laurin, 1977: 12). Within the province, language is a marker of difference which must be protected, and consequently its language policy must be based on the premise that French in Quebec is not only a mode of expression, but a way of life: “It is a matter of protecting the existence of an original culture and developing it to its fullness – a mode of being, thinking, writing, creating, meeting [...]” (Laurin, 1977: 19). Yet, the White Paper was careful to state that the

⁴ Prime Minister Pierre Trudeau called for a study on the constitutionality of Quebec's law. Eugene Forsey challenged Quebec's decision to grant French a privileged status (LD, 18.7.1974 and 8.9.1974). However the government of Quebec was wholly within its jurisdiction to adopt these changes.

promotion of French should not come at the expense of minorities in the province, particular its English-language population.

The White Paper proposed the government enact a *Charte de la langue française* (*Charter of the French Language*, hereafter *Charte* or CLF) to vigorously assert the place and role of French in Quebec in a less ambiguous manner than existing legislation. Laurin arranged for his bill to be the administration's first, "the first gesture to make since language is the very foundation of a people by which it recognises itself and is recognised [...]" (Quoted in Plourde, 1988: 23). Once the White Paper was tabled, the draft *Bill 1* was ready in six weeks. For Laurin, there was no question that language reform was a step toward political sovereignty – an act of national self-affirmation and political responsibility. Premier René Lévesque did not share this enthusiasm, considering it a "humiliation" to have to enact a language law. He saw it as a prosthesis which only a colonised society needed to adopt (Plourde, 1988: 24-5). In contrast, Tatarstan's language law is far from being seen as a humiliation, but rather a confirmation of its status and newfound autonomy to raise the status of Tatar and adopt more active measures to protect native language and culture.

There was considerable debate and resistance within the Lévesque cabinet on a number of Bill 1's more coercive provisions, particularly concerning the place and rights of minorities in the province. The Premier believed French unilingualism in advertising was excessive (Laurin, 1999: 93) and rejected the characterisation of French as Quebec's *sole* official language: "Quebec's Anglophone minority represents approximately one million citizens whom the government must treat in a civilised manner. The government must not go to extremes with this bill and must not act as an aggressor vis-à-vis the minority" (Quoted in Picard, 2003: 269). The bill limited access to English-language schools to children of parents who had received part of their education *in English in Quebec*. This so-called Quebec clause is contrasted to a Canada clause, under which children of parents who received part of their education in English *in Canada* could attend English schools in Quebec. Although the final version of the law retained the Quebec clause, Cabinet added a provision to authorise reciprocity accords with other provincial governments, which tied the right to English-language instruction for citizens of other provinces who moved to Quebec to the existence of a similar right to French instruction for that province's francophone minority. For Lévesque, this was an acceptable compromise: "I myself would have preferred the Canada clause because it respected the flow of internal migrations and extended the right to instruction in English to all Canadian children whose parents were authentic Anglophones. For want of this, reciprocity, as the word indicates, provides a give-and-take approach" (Quoted in Proulx, 1989: 123). The contrast with the Tatarstan's approach to language education is striking since the model adopted in the republic is one of

free choice, imposing no similar constraints on access to Russian-language instruction for either Russians or Tatars.

The *Charte* was the object of ten Cabinet meetings, province-wide consultations and legislative committee hearings. To avoid a drawn-out clause-by-clause approval of all the amendments to the original bill, Laurin reintroduced the bill as Bill 101 which was adopted in August 1977. François Rocher, one of the *Charte's* architects, notes that the law “clearly opted for a unilingual French Quebec state” (Rocher, 2002: 22) and constitutes a powerful instrument of national self-affirmation (Rocher, 1992b: 166). The preamble states that French is a “distinctive language” used by Quebecois to express their identity and should therefore become the language of the state, the “normal and usual” language of work, instruction, communications, commerce and business in the province. The CLF proclaims the official language of Quebec is French (s.1), and that only French is to be used in legislative and court proceedings in the province (ss.7-13). The constitutionality of these last measures was challenged in Quebec Superior Court.⁵ Chief Justice Jules Deschênes ruled that the constitutional protection afforded to English in Quebec was the result of a joint political decision, and to change it required “another decision of the same nature” (QSC, 1978: 282). The decision was upheld by the Supreme Court of Canada in 1979 (SCC, 1979), and the next day the National Assembly passed Bill 82 to enact English-language versions of laws and reinstate the use of English in the Quebec legislature and courts. As I have examined in Chapters 3 and 4, Tatarstan often adopted unconstitutional legislation in order to make a wider argument about its status. Camille Laurin stated that the Quebec Cabinet was all too aware that these provisions on the use of English were unconstitutional but had acted purposefully (Picard, 2003: 265). The measures “protested [...] the injustice of a political regime which had imposed this obligation to the province of Quebec only when it had provided all other provinces all the means to anglicise its francophone minorities. Although invalidated [...], these provisions would find their place in the constitution of a sovereign Quebec” (Laurin, 1999: 94).

In education, as mentioned above, the *Charte* restricted access to English-language instruction to children of parents educated in English in Quebec (ch.8). French is a mandatory subject in English schools in primary and secondary education.⁶ The *Charte* creates a right to work in French and prohibits employers from firing employees for

⁵ The Gendron Commission had considered the constitutionality of such a change. While some jurists suggested it was within Quebec's power to modify s.133 as far as it applied to the province, the Commission recommended the government respect the constraints of s.133 and maintain bilingualism in the legislature and courts (Quebec, 1972b).

⁶ Within French schools, the situation is quite different, and has only recently changed. After 2000, English was introduced as a mandatory subject from Grade 5 onwards in French schools. As of 2005, English is taught from Grade 1 (Quebec, 2001a: chap.3, LP 22.3.2005).

knowing only French (ch.6). Its provisions on francisation are much more coercive than those contained in Bill 22. The law requires businesses of more than fifty employees to obtain certificates of francisation. Enterprises employing more than 100 employees are required to create workplace “francisation committees” of at least six people to devise and implement their language plan. This was aimed at increasing workers’ and managers’ knowledge of French, ensuring it is used as the main language of communication in the workplace. In addition it is a process by which the quality of the terminology employed in all manuals, communications etc. can be verified (ch.5). The CLF requires that all packaging, instruction manuals, contracts, etc. be published in French. Firms incorporated in Quebec are required to have a French name. The law restricts the use of any other language in public advertising and signage in the province. Compared to Tatarstan’s law, the *Charte* is far more coercive in its provisions and methods. This is due, partly to the constitutional context, which affords Quebec with the jurisdiction to legislate in such matters whereas Tatarstan’s legislative competence is more restrained.⁷

Also different from Tatarstan’s approach are the institutional mechanisms put in place by the *Charte* to oversee its implementation. Although the government decided against creating a ministry to manage language policy, a minister is assigned to oversee its application, in addition to several additional bodies. The *Commission de toponymie*, in existence since 1911, was retained and is responsible for establishing norms regarding place names and geographic terminology. The *Office de la langue française*, created in 1961, was made responsible for the francisation and certification of Quebec businesses. Bill 101 created the *Conseil de la langue française* to monitor the linguistic situation and advise the minister and the *Commission de protection de la langue française* (CPLF) to execute the law. The CPLF, colloquially referred to as the ‘language police’, was intended to enforce the law’s provisions on advertising and signage and respond to public complaints. The three principal bodies – the *Office*, *Conseil* and *Commission de protection* – together play complementary roles: manager, counsellor and controller.

The absence of a ministry or overarching coordinating body was considered a significant oversight. In a 1986, the government concluded language policy initiatives were dispersed and ill-coordinated, increasingly mired in bureaucratic infighting between the various bodies. A commission consequently proposed that Quebec’s language bodies be consolidated to promote better priority-setting and policy-making (Quebec, 1986: 44). In Tatarstan the implementation of the language law was initially overseen by the Cabinet Committee on the law on languages, but the myriad of academic, governmental and other

⁷ Several of provisions of the *Charte*, notably on education and advertising were struck down after the Canadian Charter of Rights and Freedoms was adopted. I examine these court cases below.

bodies responsible for the execution of specific tasks and policies significantly hampered coordination. Although the Department on Language was created in 1996, its manager, Kim Minnullin, claims the language issues must be given an increased institutional presence, similar to the body created in Quebec in 1988 (Interview with Minnullin, 2004b). Indeed, in 1988 the *Secrétariat à la politique linguistique* (SPL) was created to assist the minister responsible for the Charter in her tasks. The Secretariat's mandate includes overall coordination of the implementation of language policy and the coherence of the government's and language bodies' interventions on language issues, supervision of legal challenges and modifications to the law and promotion of Quebec's language policy abroad (SPL, 2001: 9; Interview with Dumas, 2004; SPL, 2004). Jean-Claude Rondeau, appointed to head the SPL in 1989, refers to the Secretariat as a "mini-ministry" because of the horizontal coordination it accomplishes (LP, 30.3.1989).

The SPL is a small outfit, consisting of the Associate Deputy Minister Guy Dumas, Director Jacques Gosselin, four professionals and three support staff. The Secretariat establishes the triennial strategic plan, determining the priorities, objectives and performance evaluation criteria for all the organisations which implement language policy (SPL, 2001; 2005). For Dumas, the fact the Secretariat was maintained by subsequent governments demonstrates that leaders, regardless of party affiliation, have reached a "common vision of the linguistic question in Quebec" and agree on the benefit of coordination (Interview with Dumas, 2004). Further evidence of this consensus was provided in August 2004 when Dumas was appointed to the Deputy Ministers' Forum, a coordination body composed of top civil servants which holds biweekly meetings. This appointment underlines the need for horizontal coordination of language issues, especially since language impacts a large number of Quebec's laws and vice versa (Interview with Dumas, 2004). In addition to these bodies, a permanent inter-ministerial committee on language policy convenes on a yearly basis to consider the need for changes to the *Charte*.

Overall, the law implemented wide-ranging language policy in Quebec. Although many provisions were challenged and amended, its objectives remain intact. As I examine in the section on assessment, below, it has played an important role in the preservation and development of French in the province. Over the years, the *Charte* has become a powerful political symbol and manifestation of Quebec's identity and distinctiveness. It is, as Rocher states, a "sacred cow" (Rocher, 1992b: 106) in Quebec politics, and confirms the importance of the government's role in the preservation and promotion of French. Tatarstan's language law, although it also reflects the importance of the republican government's status and competence over language, has not attracted the same degree of public awareness or enthusiasm. In the republic, language policy-making appears to be more

of a bureaucratic and parliamentary process compared to Quebec, where linguistic issues attract wider media attention and public resonance.

Language Law and Policy in Canada

In Russia the federal government's interventions in language policy are minimal, limited essentially to provisions which have established the autonomy of republics to carry out their language policies and to measures to protect the status and visibility of Russian and enhance the quality of Russian-language education. In Canada, however, the federal government has played a more active role in the field of language. It is worthwhile remembering that English and French are official languages in Canada. The main axes of federal intervention in language are the promotion of official languages and the implementation of the language provisions in the Canadian Charter of Rights and Freedoms. The constitution of 1867 created a limited regime of bilingualism within the federal parliament and courts. Over the next century, advances in language policy at the federal level were piecemeal, confined to increasing the visibility of French on stamps (1927), banknotes (1936) and on family allowance cheques (in Quebec in 1945, 1962 in other provinces). Simultaneous interpretation was introduced in the House of Commons in 1957.

As I examined in the last chapter, the rise of concern over the status and utility of French in Quebec prompted Pearson's government create the Royal Commission on Bilingualism and Biculturalism. The Commission concluded Canada was experiencing a profound crisis, especially in relation to the developments in Quebec, where the Quiet Revolution was changing views of itself and of its place in the federation. The "equal partnership" at the base of the federal system was seen as seriously prejudiced by the lack of presence of French within the institutions of the federal government. The commission concluded that the endemic weakness of French in the rest of the country and within the federal administration prejudiced francophones' sense of belonging. Thus, raising the status and visibility of French within the federal government and in the rest of the country was seen as means to address the crisis of federalism and constituted one element of the federal government's strategy to respond to Quebec's claims for increased recognition (Canada, 1967).

The federal government responded by adopting the Official Languages Act, 1969 (OLA). The Act created an obligation for the federal government to provide services and communications in both official languages in designated areas. It also created the Office of the Commissioner of Official Languages to play the role of ombudsman and linguistic auditor of the federal government's progress and activities in terms of the equality of the

two official languages (Newman, 2004: 8-9). In addition to increasing the presence of French within federal institutions, the B&B Commission recommended that the federal government take steps to institute a state-wide system of minority language education. The purpose of such a policy was the preservation of bilingualism, and of minority language speakers and communities throughout the country. The Commission suggested a personal rather than territorial policy because the former would have served to promote the *status quo*: providing “recognition of only the majority’s rights and to oppression of the official language minorities” and “[depriving] minority groups en bloc of essential language rights” (Canada, 1970: Book 1: 86).

The federal government included this recommendation in its 1969 White Paper on the constitution, and sought to include language rights in a proposed Charter of rights. The failure of constitutional talks in 1971 meant that the federal government would need to secure provincial cooperation in order to implement its minority language programme. Since education is a provincial competence, Ottawa reached an agreement with provincial leaders in 1970 in order to implement its Bilingualism in Education Programme (BEP). The programme was renamed the Official Languages in Education Programme (OLEP) in 1979 and exists still today (Hayday, 2001). Under this programme, the federal government contributes toward the costs of providing official language education (to official language minorities) and second-language instruction (for members of the linguistic majority).⁸ Thus, the programme does not affect the provision of French-language instruction in Quebec: in Quebec, OLEP assists the government to provide English-language instruction and English-language education to francophones. (For more detailed analysis of these programmes, see Hayday, 2001; Behiels, 2004; Hayday, Forthcoming 2005). At the time, the federal government lacked the specific legislative authority to carry out its policy, relying instead on its spending power and the agreement of provincial leaders. The programme was not especially controversial in Quebec, however, since it already possessed a well-funded system of English-language education (Hayday, Forthcoming 2005). This is a point of significant difference with Russia where Tatarstan deplores the lack of assistance by the federal government in providing the support, both political and financial, for minority language education.

The Canadian Charter of Rights and Freedoms, adopted in 1982, significantly altered the protection afforded to language rights in Canada. Indeed, its articles 16-23 are a departure from the limited language rights regime which existed until then under the 1867 constitution. The Charter commits the federal government to provide services in both

⁸ For the period 2003-04, the Department of Canadian Heritage disbursed \$135.5M and \$66.2M respectively for these programmes (PCH, 2004a: 28).

official languages and creates a constitutional obligation to protect minority language rights.⁹ Language rights are conferred the highest degree of constitutional protection since they are shielded from recourse to the notwithstanding clause (s.33§1, Bastarache, 2004b: 7), and modifications to this section of the Charter are subject to unanimous consent of all provinces and federal government (s.41). The Charter's section 23 on minority language education rights is probably the most significant provision on language, and a significant area of conflict with Quebec. Section 23 requires provincial governments to provide minority language education where sufficient demand exists. Access to such minority language instruction is guaranteed by the Canada clause – that is, it is available to children of parents educated in the language of the minority anywhere in Canada (s.23§1b). Besides establishing a guarantee for provincial language minorities, this section sought to overturn the limitation created by Quebec's language law and the Quebec clause in order to preserve freedom of movement in the country. As MacMillan remarks, the framers did not seek to completely alienate Quebec since they exempted Quebec from the requirements of s.23§1a of the Charter, which defines *mother tongue* as the criterion for access to minority-language education (MacMillan, 1998: 80). Presently, the criterion which applies to Quebec is Canadian *citizenship*, which gives Quebec the competence to compel immigrants to attend French-language schools (even if these individuals' *mother tongue* is English). The constitutional asymmetry created in this section has preserved one of the key objectives of Quebec's language policy, namely to ensure that newcomers to the province attend French-language schools.

In 1988, the federal government significantly overhauled its Official Languages Act to adapt its provisions to this new constitutional framework. Whereas the 1969 version of the law was seen as containing mostly declaratory instruments creating few tangible, enforceable obligations, the 1988 version sets out more precise objectives (McRae, 1998: 79). The OLA carries a much clearer sense of mission – the federal government's desire to protect linguistic duality in Canada, especially its commitment to assisting and developing official language minorities (s.2). The law's operative sections are given quasi-constitutional status, trumping any other act of parliament. Furthermore, the law guarantees that complaints brought to the attention of the Commissioner on Official Languages obtain remedy in federal court.

The 1988 version of the law included two parts which are not subject to court remedy, but are statements of government policy. Part VI commits the federal government to promote the equitable participation of both language groups in federal institutions. Part

⁹ Bastarache notes that the courts have yet to rule on the extent to which all these provisions create obligations for governments to provide services in the language of the minority (Bastarache, 2004b: 26-9).

VII contains a commitment to enhance the vitality of the English and French minority communities, support their development, and foster the full recognition and use of both English and French in Canadian society (s.41). As Newman notes, the realisation of these commitments depends in large part on securing the cooperation of provincial governments (Newman, 2004: 23). The Commissioner of Official Languages has called on Parliament to clarify its obligations and the legal scope of Part VII, in essence to make the objective legally enforceable (OCOL, 2005: 10-1, Interviews with Tremblay, Boileau et al., 2004). A bill tabled by Senator Jean-Robert Gauthier is currently before the House of Commons' Standing Committee on Official Languages. The proposed amendments to the OLA would subject Part VII to court remedy, thus create positive obligations for the federal government to promote minority language groups. The issue raises a potentially contentious issue for Quebec. Enhancing the role of the federal government in the protection of Quebec's English-language minority – one consequence of the proposed bill – “could be seen as interference in Quebec's competences” (Interview with Sauvageau, 2004). Quebec's objective to develop a French-language society is seen to conflict with the federal government's objective to raise its involvement in the protection of Quebec's English language community. For Benoît Sauvageau, former Bloc Québécois spokesperson on official languages, the Bloc's desire to preserve the linguistic balance in Quebec has led it, paradoxically, to vote against proposals which would strengthen the place and visibility of French in the rest of the country. Ideally, the Bloc would like to see a degree of asymmetry included in the bill whereby the federal government would play a greater role to protect francophones in the rest of Canada but not anglophones in Quebec (Interview with Sauvageau, 2004). This is unlikely to happen as it runs counter to thirty years of federal language policy. It is an illustration, however, of the type jurisdictional disputes which currently exist in the field of language.

The federal government's activities in language policy are not limited to these legislative and constitutional instruments alone. As part of a renewed push to promote the vitality of official languages in education, community development and the federal public service, the federal government introduced its *Action Plan for Official Languages* in 2003, with a commitment of \$751M over five years (Canada, 2003). In addition, the Department of Canadian Heritage manages a large number of programmes and policy initiatives (such as the Development of Official-Language Communities Programme, and Enhancement of Official Languages Programme) (PCH, 2004a: 28). The federal government provides funding to Radio-Canada, the national French-language public broadcaster, supports broadcasting and publishing activities in the French language (to develop French-language programming and publications, books, magazines, etc) through a variety of different

departments and agencies (See PCH, 2004b for a breakdown of interdepartmental funding and programme commitments). In its 2001 constitutional policy, the Liberal Party of Quebec (PLQ) acknowledges the benefits of the federal government's activities.

Canadian federalism is also a phenomenal springboard for the French language. We must admit that Quebec is not solely responsible for promoting the French Fact in North America; federal institutions have played an important role in this area for a long time. Organisations such as Radio-Canada, the National Film Board, the Arts Council, Telefilm Canada, the national museums and Parks Canada have made an important contribution, in their own way, to the preservation and development of our collective heritage, and the identities of Canada and Quebec (Pelletier, 2001: 53).

Since Confederation, the federal government's interventions in the field of language policy have grown. From a regime of limited constitutional bilingualism, the adoption of the OLA and most importantly the Charter of Rights consecrated a shift toward official bilingualism and constitutional protection of Canada's minority languages. Through these constitutional and legislative instruments, the federal government is committed to protecting the vitality of Canada's official languages and their speakers. The measures provide a statement of Canada's vision of itself as a bilingual where both languages are worthy of recognition and protection. Through its programming and funding commitments, the government promotes French-language culture and make cultural products widely available.

Federal and Quebec approaches to language illustrate the competing conceptions of the political community they seek to promote. One of the underlying objectives of federal language policies is that by facilitating bilingualism and the presence and status of French, it may contribute to fostering a greater sense of national unity, perhaps helping to placate Quebec's claims for recognition. In practice, these objectives appear to compete. Quebec's objective to protect its status of a French-language society contrasts with Canada's objective to promote a bilingual state and a sense of national identity which embraces both official languages. These competing objectives have led to resistance in Quebec of measures which could raise the status of the French language in the rest of the country. Since much of the federal government's activities are centered on the protection of minority language communities, its interventions in Quebec are considered as outside interventions and demonstrate that "not enough attention is paid to the fact that the federal government can intrude on Quebec's language competences" (Sauvageau, 2003: 73). However, when compared to Russia, characterised by far less positive federal support of minority language communities, Canada's actions to promote French outside Quebec increases the availability of French-language cultural and information products, of which Quebecois are also consumers and beneficiaries. In Russia, support for Tatar language policies, media and cultural products are virtually exclusively the responsibility of the republican government.

Thus, although the legislative approaches of the federal and Quebec governments compete, they are nonetheless complimentary in their efforts to protect the French language (Interview with Cardinal, 2004).

Court rulings

The courts have played a significant role in mediating Canada's and Quebec's approaches and interpreting the extent of Quebec's constitutional autonomy in language policy. This role has increased even more since the Charter of Rights and Freedoms was enacted. Since then, the Supreme Court of Canada (SCC) has become "the ultimate arbiter of the full range of mandated individual and minority rights" (Behiels, 2004: xxvii). The legal arena has become the principal forum where Quebec and Canada's language regimes, and by extension their respective visions of community, have collided. In the 1970s, the federal government was careful not to attack the *Charte* directly, preferring instead to support groups who challenged its provisions, or by joining actions to argue against (or as the case may be, in favour of) Quebec's language law. I examine several rulings on the law's provisions on education as well as rulings on the provisions on the language of advertising and signage.

In 1984, the Supreme Court ruled on a matter brought by several Protestant school boards and citizens of Quebec which challenged the constitutionality of the "Quebec clause" in light of s.23 of the Canadian Charter. This case is the clearest example of collision between federal and provincial language regimes, and between Quebec's law and a constitution it did not approve. The Court ruled that

"The framers of the Constitution unquestionably intended by s. 23 to establish a general regime for the language of instruction, not a special regime for Quebec; but in view of the period when the *Charter* was enacted, and especially in light of the wording of s. 23 of the *Charter* [...], it is apparent that the combined effect of the latter two sections [of Quebec's language law] seemed to the framers like an archetype of the regimes needing reform [...]" (SCC, 1984: 79-80).

For the Court, the Charter was intended to place the principles of freedom of movement and guarantee of minority language education ahead of Quebec's desire to integrate newcomers to the province into the French-language system of instruction. Although s.23 created a constitutional asymmetry to permit Quebec to retain a degree of control over access to English-language schools, the government protested the imposition by Canada of a clause which embodied an ideal of linguistic dualism which Quebec did not recognise. As the Minister responsible for the *Charte*, Claude Ryan, wrote in 1989, "Quebec does not want to sacrifice its competence in language to an ideal of Canadian unity which does not guarantee the preservation of its own distinct character" (Ryan, 1989: 1-2). Although the legitimacy of the constitution was challenged, the Court's ruling was observed.

Two rulings were issued in December 1988 on the limits imposed by the *Charte* on advertising and signs. The Government of Quebec argued that the purpose of the CLF – to enhance the status of French in Quebec and ensure the province’s French appearance (*visage linguistique*) – compelled it to restrict the use of other languages, and such restrictions were justifiable under s.1 of the Canadian Charter’s (LD, 3.12.1988).¹⁰ The SCC ruled that the provisions of the law were contrary to the guarantee of freedom of expression found in both the Quebec and Canadian Charters of rights. However, the Court did not disagree with the purpose of Quebec’s legislation, just with the means employed to attain its objectives. It ruled there is a “rational connection between protecting the French language and assuring that the reality of Quebec society is communicated through the “*visage linguistique*””, but that the limits prescribed were not “necessary for the achievement of the legislative purpose or proportionate to it” (SCC, 1988: 718). Since the premise was justifiable, the Court suggested that “requiring the predominant display of the French language, even its marked predominance, would be proportional to the goal of promoting and maintaining a French “*visage linguistique*” in Quebec and therefore justified under the Quebec *Charter* and the Canadian *Charter*” (*Ibid.*: 781). Ensuring the predominance of French rather than banning other languages was a measure the Court deemed was a legitimate means to respect both the legislator’s purpose and citizens’ rights to freedom of expression.

The rulings were handed down in an already charged political atmosphere. In April 1988, 25,000 people marched in support of Bill 101 in the presence of PQ and labour leaders and some federal MPs (*Gazette*, 18.4.1988). Armed with a petition signed by 101,000 people in support of Quebec’s language law, the president of the nationalist *Société Saint-Jean Baptiste* called on the provincial government to protect Bill 101 and invoke the notwithstanding clause to exempt the *Charte* from the Canadian Charter (LD, 18.4.1988). Thus, even after the Meech Lake Accord had been signed (although not yet adopted), nationalist feeling was high. Quebec nationalists clearly indicated that any decision of the Court against the CLF would be seen as illegitimate interference. Consequently, the public and political reaction to the ruling was somewhat predictable. Nationalists condemned the decision, while Premier Robert Bourassa put on a straight face claiming the ruling confirmed the province’s “right to legislate in linguistic matters” (*G&M*, 16.12.1988). The *Conseil de la langue française* urged Claude Ryan to take measures to protect the “symbolic value” of French-language signage and the message unilingual signs convey, that “only one

¹⁰ Section 1 reads: “The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”.

language is official in Quebec—French” (Guy Rivard quoted in LD, 14.12.1988). For Ryan, the ruling underlined fundamental differences between Canada’s and Quebec’s language policies and that the legitimacy of a ruling by a court on which six justices were not from Quebec would not be accepted by the Quebec public (LP, 10.2.2004). This is curious language coming from a Quebec federalist, even more curious because the Court had struck down the law’s provisions based on articles of Quebec’s own Charter and Rights of Freedoms, adopted even before the *Charte* (Interview with Gosselin, 2004).

Nevertheless, within a week of the ruling, the government enacted Bill 178 to suspend its application by invoking the notwithstanding clause regarding the violations of freedom of expression. The law, in essence, permitted Quebec to ignore the Court’s ruling. Bill 178 maintained the requirement that exterior signs be unilingual. While the law played well within Quebec, reaction in the rest of Canada was unanimously negative, largely because the use of the notwithstanding clause is viewed as a radical option. Federal Prime Minister Brian Mulroney condemned the bill and pressed Bourassa to reconsider (LD, 22.12.1988). Provincial leaders in Western Canada were reported to be relieved: “By passing Bill 178, Quebec had rejected bilingualism. In Western Canada, bilingualism is perceived as part of a federal effort to placate Quebec, and if Quebec no longer wants it, what point is there to it?” (FP, 11.1.1989). In May 1993, the United Nations’ Human Rights Committee condemned the bill, finding it contradicted several articles of the International Covenant on Civil and Political Rights (Communications nos. 359/1989 and 385/1989, 1993). Quebec adopted a substantial package of amendments to the *Charte* in 1993 (Law 86, 1993 LQ Ch.40) bringing the law in line with the Court’s 1984 and 1988 rulings. The law incorporates the Canada clause and rescinded Bill 178, adopting instead the approach which was suggested by the Court: it allowed the use of other languages in public signs and advertising as long as French is “clearly predominant”.¹¹

Three long-awaited decisions on provisions regarding access to English-language education were handed down in March 2005. Consistent with its 1988 *Ford* and *Devine* decisions, the Court did not strike down the law but disagreed with the specific mechanisms employed to reach its objectives. In *Gosselin*, the case involved francophone parents’ claims to a right to send their children to publicly-funded English language schools. In Quebec, this is a right which is guaranteed to the English-language minority. The Court was asked to weigh the constitutional right to minority language education (granted in s.23 of the Charter) against the right (also guaranteed by the Charter) to equality. The Court disagreed

¹¹ Regulations adopted by the Governor-in-Council further refine this criterion. French is considered to be “clearly predominant” if the space given to French and the lettering used is at least twice the as large as that of the other languages, and that the sign does not reduce the visual impact of the French text (RSQ ch. C-11, r.10.2).

with the parents, refusing the argument based on equality and providing a contextual reading of the purpose of both s.23 of the Charter and the CLF. “If adopted, the practical effect of the appellants’ equality argument would be to read out of the Constitution the carefully crafted compromise contained in s.23 of the *Canadian Charter of Rights and Freedoms*. This is impermissible” (SCC, 2005a: par.2). The constitutional compromise is based on a consensus that differentiated treatment is not only legitimate but required in the Canadian context:

In the context of minority language education, equality in substance as opposed to mere formal equality may *require* differential treatment as the Court noted in *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3, at para. 31: “Section 23 is premised on the fact that substantive equality requires that official language minorities be treated differently, if necessary, according to their particular circumstances and needs, in order to provide them with a standard of education equivalent to that of the official language majority” (SCC, 2005a: par.15).

Since the appellants were members of the francophone majority in Quebec, the Court ruled that their claim to have their children educated in French did not fall within the purpose of s.23 of the Charter. The federal government argued in favour of the *Charte* in this case, as the Commissioner for Official Languages, Dyane Adam, explains, “as [members] of the majority accede to the schools of the minority, the schools are transformed into immersion schools, thus practically cancelling the rights of the minority to have its own schools” (LD, 1.4.2005). The Court defended Quebec’s legislative authority to impose differentiated treatment of its francophone minority, and illustrates another significant difference with Tatarstan, where its law does not constrain Tatar-speakers to attend Tatar-language schools. Russia’s Constitutional Court has upheld Tatarstan’s requirement to learn both languages, but only to the extent it does not discriminate against the use and place of Russian in education.

In *Solski*, the limits on access to English-language schools were challenged not by francophones but by immigrants to Quebec and Canadian citizens who had moved to the province. The *Charte* limits access to English schools to children of parents who received the “major part” of their education in English in Canada (s.73§2). The Quebec government applies a quantitative calculation (time spent in school, for example) to quantify “major part”. For instance, Quebec rejected a right to English-language instruction of Anglophone children who attended French immersion schools in Ontario on the basis that the “major part” of their education had not been in English. The Court found that employing quantitative, arithmetic means was too limited and did not accord with the principles embodied in s.23 of the Charter (SCC, 2005b: par.33). Although the Court invalidated the way in which the language Charter was implemented in practice, it recognised Quebec’s jurisdiction in decisions regarding access to English-language schools.

Since 1988, the Supreme Court's rulings demonstrate that Quebec is not immune from Canada's constitutional and federal context. Even though the 1982 Charter imposed additional requirements, the Court has recognised Quebec's autonomy and the legitimacy of the *Charte's* objectives. Reflecting on the significance of the *Ford* ruling, Yalden remarks "the Court was largely sympathetic to what Bill 101 had set out to achieve, and sought simply to refine the means used to achieve its objectives so that they might better conform to principles enunciated in its preamble and in Quebec's Charter" (Yalden, 1989: 983).

Assessing Quebec's Language Policy

Nearly twenty years after the *Charte* was adopted, the PQ government of Jacques Parizeau undertook a major review of the language situation and assessment of the law's successes and failures. Consequently, an inter-ministerial committee was created by Louise Beaudoin, then minister of Culture and responsible for the application of the *Charte*, in September 1995. Its report is the first substantial evaluation of Quebec's language legislation. In Tatarstan, during the discussions on the second State Programme, no similar wide-ranging horizontal evaluation of the law's successes and failures was conducted, due I surmise to a lack of administrative and analytical capacity. Indeed, Tatarstan's State Programme for 2004-14 calls for the creation of a research and policy body which would more consistently track linguistic developments and the effects of language policy.

Quebec's inter-ministerial report is unequivocal in its assessment of the effects of the Canadian constitutional framework on Quebec's language policy. Canada's constitution "reduced the latitude available to Quebec to ensure the quality and radiance of the French language in Quebec". The federal OLA and Quebec's *Charte* are viewed as dichotomous. Their "competing" objectives are "harmful to the realisation of [Quebec's] objectives". The report, penned under a PQ government in the wake of the 1995 referendum, ties language to the province's status within Canada. "Without constitutional modifications or even accession to sovereignty, Quebec will not be master of its language policy" (Quebec, 1996d: 41-2).

This is a paradoxical statement, since this bleak assessment of Quebec's legislative handicaps does not correspond with the many successes outlined by the inter-ministerial report. Many areas identified as problems in the 1972 Gendron Commission report and 1977 White Paper are viewed as examples of progress (Quebec, 1996d: See section 3). In the workplace, francophones occupy the place justified by their demographic proportion. The salary disparities between francophones and anglophones have almost completely disappeared and there are greater numbers of francophones in management position. Thus, the objective of making French the "normal and habitual" language of work was attained,

with the exception of Montreal where French continues to struggle. The francisation of Quebec enterprises and businesses progressed reasonably well. In commerce and service industries, services are provided in French (in 95 per cent of business studied, it was possible to obtain service in French) (Quebec, 1996d: 98-100).

In education, almost all immigrants to Quebec attend French-language school, a dramatic reversal of the situation prevalent in the 1960s and 70s. Whereas ten percent of immigrants to the province attended French schools before the *Charte* was enacted, 78.5 per cent received instruction in French in 2002. 95 per cent of new immigrants enter the French-language school system (McAndrew, 2002: 70). It is no surprise, therefore that education is considered to be one of the law's most marked achievements (Bouchard and Bourhis, 2002: 12-3). Bilingualism has also risen among anglophones and allophones in the province.¹² When compared to the data examined in Chapter 5 regarding the lack of effective bilingualism among Tatarstan's Russians and the virtual absence of Russians (and nearly half of the republic's Tatars) from Tatar-language schools, Quebec's successes in reversing the situation prevalent in the 1960s and 70s appears even more remarkable. The committee called for the development of a new indicator to measure language use. Rather than relying on categories such as mother tongue or language spoken at home, French as the language of public use (*langue d'usage public*) is promoted as a better indicator of the use of French in the province (Quebec, 1996c: 33, 35). Whereas 83 per cent of Quebecois use French in the home, 87 per cent admit to using French as their main language of public use (Oakes, 2004: 545).¹³ Such an indicator could provide useful in the case of Tatarstan. The most common indicator of language use in the republic is mother tongue/native language, which is acknowledged to be a poor indication of actual language competence, let alone language use (Gorenburg, 2005: 3).

Finally, the report considers one of the law's major goals – to provide Quebec and Montreal with a predominant French appearance (*visage français*) – and concludes it was achieved. The desire of francophones to be *maîtres chez eux* and to live their language has been most visibly manifested in French-language signage and advertising (Quebec, 1996d: 93). Many if not most of the *Charte's* objectives were attained. The remaining problems and obstacles to language policy in Quebec are due less to a constraining Canadian federal design than to global and domestic factors. These problems include ensuring the power of attraction of French in Montreal and in business, protecting the vitality of French in the

¹² In 2001, two-thirds of anglophones and almost three-quarters of allophones claimed to possess knowledge of French. Between 1991 and 2001, bilingualism among anglophones rose from 59.4 to 67.2 per cent and from 46.6 to 50.5 per cent among allophones (OQLF, 2005: 24-34).

¹³ Statistician Charles Castonguay argues such an indicator is a red herring. Although it may reveal the use of French, it hides the precariousness of the situation of the French language, especially in Montreal (Castonguay, Dubuc et al., 2002).

context of globalisation and in Quebec's increased international and trade interactions as well as in information technologies, and ensuring the Government continues to show the example as spearhead and motor of language policy in Quebec.

Already in 1985, the president of the *Conseil de la langue française*, Michel Plourde, warned against relying on the false security provided by the existence of the law (Plourde, 1985). Although the *Charte* is the centrepiece of Quebec's approach, law must be complemented by a social and international approach to language policy (Quebec, 1996: 11-2). In Tatarstan too, policy-makers have realised the limits of relying too much on a legislated approach to promote increased language utility. Effective language policy depends on concerted action, the development of more cooperative rather than only coercive interventions. The lack of political motivation to carry on with language policy and extend its application is a source of ineffectiveness in both Tatarstan and Quebec.

For example, francisation of Quebec businesses is an area in which the inter-ministerial committee concluded progress was stalled. Certification is considered overly bureaucratic, tending to promote institutional francisation without necessarily reaching the rank-and-file. The Committee concluded that it could be re-energised by extending the law to include medium-sized businesses (10-49 employees). A tripartite working group (including labour, employers and government) was formed to study the proposal but concluded that a legal approach was inappropriate. It suggested, instead, that political commitment would be more effective than an extension of legal coercion. A clear demonstration by government "to show francisation is not a problem, but an asset and advantage" was suggested to be a more fruitful approach (Quebec, 1996a: 11). Indeed, the cooperative approach appears to have borne fruit. In 2004, the *Office québécois de la langue française* reported a record certification rate of 76 per cent (OQLF, 2004: 19). Between 1997 and 2002, the CPLF reported that 92 per cent of violations to the law had been resolved without recourse to legal action (of 17,303 complaints handled, 5,277 were withdrawn and only 805 handed over to prosecutors) (CPLF, 2002: 13). The majority of public complaints received are about the poor quality of written French on or the unavailability of French-language versions of consumer products. Therefore, the CPLF adopted a sectoral approach and sought to secure the compliance of manufacturers on a cooperative and case-by-case basis (CPLF, 2002: 14-5). Thus, although Quebec's language agencies have at their disposal a fairly effective stick, increasingly the carrot of consensus is seen as the preferable means. As part of its priority setting exercise for 2005-08, the OQLF intends to resolve 90 per cent of violations of the law without recourse to the judicial system (SPL, 2005: 14). Although Tatarstan possesses little coercive ability to sanction violations or ensure compliance with its law; its policy-makers believe acquiring such coercive capacity would be helpful. In contrast,

Quebec, where coercive measures and capacity exists, is moving toward concertation and cooperation to ensure adherence to the *Charte*.

The inter-ministerial report was critical of the government's own language policy: its internal policy had not been reviewed since 1977 and the *Charte* was unevenly applied in state bodies. The lack of compliance by the Tatarstan government to its language law and programmes is seen as an impediment to the policy's coherence and credibility. In Quebec, the *Government Policy on the Use and Quality of French in the Administration* (Quebec, 1996b), adopted in the wake of the inter-ministerial report, subjects state bodies to the same requirements as any other large entity in the province. Governmental bodies must ensure the laws and regulations which they oversee are in line with the *Charte's* objectives, undergo certification and report on application of language policy in their yearly reports. The *Policy* reiterates that French is the language of administration in Quebec by establishing guidelines for the exclusive use of French in the publication of documents and communication with the public, governments or corporations in Quebec. (Any correspondence in a language other than French is printed on plain paper instead of letterhead, is unsigned and carries the mention "Translation"; only the original French document is signed) (Quebec, 1996b: s.10).¹⁴

Language policy in Quebec possesses the kind of institutional support which Minnullin has repeatedly stated is needed in Tatarstan (Interview with Minnullin, 2004b). However, even with a comparatively larger institutional presence and financial support, Quebec's inter-ministerial report concluded that government needed to better coordinate its policy obligations and ensure they are met. Institutional presence and capacity do not compensate the lack of political commitment or planning.

"All policies adopted by the government must take language policy into account, support and confirm it, especially in the areas of education [French as mother tongue, second language...], of immigration and the integration of immigrants to a French-language society, in social and health services. Similarly, the behaviour the public administration as a whole must illustrate, to all citizens, that French is the official language of the state" (Quebec, 1996c: 43).

For instance, immigration and integration are areas where the need for coordination is most visible. Of the 350,000 residents of Quebec who do not speak French, half are immigrants (Quebec, 1998). Forty per cent of immigration to Quebec is a result of criteria established by the 1991 Canada-Quebec Accord on immigration. In other words, Quebec has a voice in the selection of this category of immigrants. Under the 1991 Accord, integration (including French language teaching for new arrivals) is Quebec's prerogative, providing it the opportunity to take steps to ensure immigrants are given opportunities to integrate in

¹⁴ Even if the law mandates French unilingualism in the public service, Gosselin points out that over eighty per cent of content available on state bodies' websites is available in English, and in many cases in Spanish (Interview with Gosselin, 2004).

Quebec's French language culture (Carens, 1995: 27, 29; Symons, 2002: 34-40). However, Quebec's *Ministère des Relations avec les citoyens et l'Immigration* noted in 1998 that integration programmes and use of funds was not sufficiently-well coordinated, nor did they always meet the needs of their clients. Consequently, the Ministry assumed the coordination of and accountability for integration programmes (Quebec, 1998), many of which have sustained budget cuts in recent years. Immigration is an area in which federal-provincial cooperation resulted in additional prerogatives for Quebec. Yet, it is not federal intervention which handicaps Quebec's ability to integrate its immigrants, but provincial policy failures and lack of integrated approaches and funding.

Four years after the inter-ministerial report, the PQ again launched an assessment of the status and future of the French language in Quebec. Whereas the previous effort was more policy-based, the *Estates-General on the Situation and Future of French in Quebec* (also known as the Larose Commission), announced in June 2000, adopted a wider approach, seeking to place language policy within a political perspective. For Lucien Bouchard, "The preservation of French is a victory that took over 300 years, which was hard-won, and which is constantly threatened by the ocean that encircles us", thus conferring a "particular duty in Quebec to check and see where we are in terms of the protection of our language" (Gazette, 21.3.2000). PQ militants were critical of the lack of activity of the Parizeau and Bouchard governments on language issues. The Larose Commission provided an opportunity for public reflection, debate and mobilisation on the law's successes and failures.

The Commission concluded that "enormous progress" has been made in language in Quebec but warns nonetheless that progress is not "irreversible" (Quebec, 2001a: 10). The socio-economic context in which English is increasingly the *lingua franca*, stagnation of the francisation process and proliferation of bilingual signs are seen to threaten the place of French in Quebec. Similar to the findings of the 1996 report, the Commission criticises the government of Quebec, among other things, for increasing its offer of bilingual rather than unilingual, public services. It concluded the francisation certification process needed to be extended to small and medium businesses. Moreover, it required government commit more resources to language policy, having found that budget outlays to Quebec's language bodies had fallen (in real terms) from \$38M in 1980 to \$22M in 2000, and personnel fell from 497 in 1980-81 to 273 in 2000-01 (Quebec, 2001a: 179). As in the 1996 report, the Larose commission argued that the Canadian constitutional context constrains Quebec's legislative prerogatives. Yet many of the obstacles identified – such as the power of attraction of English – are related more to the overall context of increased international ties, the

generalisation of English in processes of economic and cultural globalisation than to limitations imposed by the federal constitutional framework.

The Larose Commission issued 149 recommendations, many of which were designed to increase governmental coordination, increased teacher training and resources, etc. (Quebec, 2001a: 226-49). Regarding the symbolic importance of Quebec's *Charte*, the commission recommended it be given quasi-constitutional status, to cement the recognition of Quebec as a French-language state (chap. 2). In addition, the committee recommended the government implement Quebec citizenship to better articulate Quebecois' attachment to common values and institutions in Quebec: citizenship would embody the fact that learning French in Quebec is a fundamental right and that for immigrants, arriving in Quebec is not the same as arriving in Canada (Chap. 1). More than anything, these measures were symbolic.

The *Secrétariat à la politique linguistique* drew up a shortlist of thirty recommendations to be considered in greater detail by the government (Interview with Dumas, 2004). The more political recommendations, such as Quebec citizenship, were dropped. The changes which resulted from the Larose recommendations were institutional in nature. The *Conseil de protection* and *Office* were amalgamated to increase the coordination and coherence of government's language policy. The body which emerged, *Office québécois de la langue française* (OQLF), was integrated more closely to the SPL, since the Associate Deputy Minister was given permanent representation (LD, 15.5.2002). The OQLF was made responsible for all administrative and inspection tasks. Prior to the change, both CPLF and OLF dealt with public complaints. While the former responded to complaints (some 3,000 a year) on infractions regarding signs, advertising and the quality of French in commercial material, the OLF addressed those arising from workplace certification. More importantly, however, the reform is an additional sign that the government is committed to cooperative and concerted efforts in order to promote compliance with the law. The fact that the CPLF was reviled as the "language police" while the OLF accomplished its francisation certification in a more consensual and cooperative manner was not lost on policy-makers (Interview with Dumas, 2004). In Quebec, while many of the law's coercive aspects are still in place, cooperation and consensus are perceived to be more effective to generate compliance, and more importantly, maintain consensus on the necessity and legitimacy of the *Charte's* objectives.

In Tatarstan, republican authorities have to resort to cooperation and voluntary compliance with its language law because of their lack of legislative and constitutional prerogatives to adopt more coercive provisions. However, Quebec possesses comparatively more legislative autonomy (over education, for instance) and policy capacity (coercive instruments and abilities) than Tatarstan. Paradoxically, while the constraints imposed by

the Canadian constitution are a persistent complaint in Quebec (in policy reports, and academic commentary such as in Gosselin, 2003; Sauvageau, 2003), policy-makers in Tatarstan evoke the lack of support of the federal government but rarely complain that its legislative autonomy is constrained, even though it possesses comparatively less power in the field of language.

Conclusion: Quebec, Canada and Language Balance

Provincial and federal approaches to language policy embody different conceptions of the state and of the political community. But as I have examined in this chapter, the ways in which language and language competence have evolved have established certain complementarities. The 1982 Charter of Rights and Freedoms has directly collided with some provisions of Quebec's *Charte* and embody different approaches to language rights – Ottawa's personal language regime versus Quebec's territorial regime. But overall the constitutional framework and judicial rulings tolerate the coexistence of these approaches.

Policy-makers in Quebec, like in Tatarstan, believe that balance over language questions has been largely attained in the province. While complaints about constitutional constraints are recurrent, Gosselin is more circumspect: "The federal nature of the Canadian state imposes certain obligations and limits on Quebec", but overall the constitutional framework is not a hindrance to Quebec's objectives (Interview with Gosselin, 2004). For Supreme Court Justice Michel Bastarache, the Court has affirmed the fundamental nature of language rights, and that cases now before the Canadian courts tend to seek clarification on the application of language rights rather than challenge the existence of the right altogether (Interview with Bastarache, 2004a). The Supreme Court has consistently reaffirmed the legitimacy of the *Charte's* objectives. For Benoît Sauvageau, "Quebec does not contest the division of powers over language. We have reached a balance on linguistic questions. The *Charte* is a model which allowed Quebecois to make French their official language while protecting linguistic rights of the minority" (Interview with Sauvageau, 2004).

PQ militants periodically call for a more coercive application of Quebec's language law (during the hearings of the Estates-General, and most during the PQ's policy convention in June 2005). Yet during the convention, two-thirds of delegates refused to approve a more coercive language policy platform. As the PQ MNA Elsie Lefebvre argues, "There are other ways of advancing French in Quebec. This is a debate which is ill-perceived and our [less coercive] course of action is more positive and more inclusive" (LP, 5.6.2005). Jacques Henripin is convinced Quebec already possesses the competence required to successfully carry out its language policy:

“The French language needs Quebec independence as much as a fish needs a bicycle. This well-known slogan applies perfectly to the linguistic question not only because the pre-eminence of French in Quebec is already assured within the federal framework but because the sovereignty project will not increase francophones’ linguistic security” (LP, 19.5.2000).

Indeed, claims that Canada’s constitutional framework is a limit to Quebec’s language prerogatives do not stand up to the data on the status of the Quebec language. In its 2004 annual report, the OQLF concludes that the results achieved in language progression and policy in Quebec, although positive “have not led to the full generalisation of utilisation of French in Quebec” (OQLF, 2004: xvii). The obstacles to such generalisation which are commonly offered include: the power of attraction of English, immigrants (particularly in Montreal) are more likely to use English rather than French, foreign and economic relations are mainly conducted in English and the language of information technologies is English. Clearly, the issues related to the general predominance of English within the context of globalisation are difficult to address by legislative means. Quebec’s language bodies have concluded as much and their emphasis on sectoral and cooperative approaches to the enforcement of Quebec’s law demonstrates that the challenges faced by French require wider, more societal and horizontal approached to language planning. Success in facing these challenges depends less on Quebec’s status within Canada than on the way it uses its existing prerogatives to adapt its policy to these circumstances.

Quebec possesses the constitutional and legislative autonomy required to carry out its policy objectives. Like Tatarstan, language policy in the province illustrates the way in which federal design, and particularly a regime of collective rights, can assist in the accommodation of multinationalism. However, in terms of the theoretical debates examined in Chapter 2, the case studies of language policy in Quebec and Tatarstan show that devolution or protection of autonomy in a field as central to identity and difference as language has not led to the resolution of the stateness dilemma. The paradox is that while both Quebec and Tatarstan possess the competence required to put a distinctive stamp on their language policies and promote and protect this national specificity, claims for recognition and jurisdiction have not abated. Group rights – policy capacity over language – though part of a successful strategy for accommodating claims, did not ‘solve’ the stateness dilemma in these cases. The persistence of territorial claims highlights the challenges inherent in devising means to accommodate the claims of territorialised minorities within multinational federations.

Chapter 8. Comparing Federal Design and the Accommodation of Multinationalism

Canada is increasingly becoming an experiment in democracy, but it has not ceased to be a federal experiment. Federalism is important in Canada not only because it accommodates territorial particularisms, but also because it protects ways of life and expresses a will to live together (LaSelva, 1996: 133).

I have no doubt that unitary tendencies are a temporary phenomenon. We must live through them. Russia does not have a future without federalism (Mintimer Shaimiev during World Tatar Congress, 29 August 2002).

The principal assumption made in this thesis is that federal design of an institutional framework is only part of an effective political response to multinationalism. Indeed, successful accommodation depends on developing a context that is conducive to facilitating ongoing adjudication, negotiation and balancing of claims for recognition and jurisdiction. Looking at the cases of Tatarstan and Quebec, I find that institutional design does indeed matter in the accommodation of multinationalism. But since disagreement persists on the “constitutional rules of the game”, accommodation is facilitated by additional means, namely intergovernmental and inter-elite negotiation. Elites play a key role. The stability of these mechanisms of intergovernmentalism depends in turn on fostering a degree of agreement and trust among elites on the stability of a political system’s institutions such as courts, territorial structure and political competition.

The dimensions along which Quebec and Tatarstan are compared in this chapter are the following. These cases exhibit similarities in the kind of claims which are advanced. Moreover, a common point is the persistence of claims for recognition and jurisdiction. The mechanisms employed to accommodate these demands are similar, particularly intergovernmental and inter-elite negotiation and a reliance on institutions of inter-state federalism. In the field of language, although significant demographic and contextual differences exist, Tatarstan and Quebec possess similar degrees of competence and autonomy to establish and carry out policy in this area. As I examine below, these cases also exhibit several substantial differences, especially regarding the nature of their respective political regimes. Quebec is a functioning democracy, where the rules of the political game – for instance elections, representation, and the role of the courts – are accepted and contribute to structure its relationship with the federal government. Tatarstan’s transition to democratic rule is incomplete. Its hybrid regime exhibits characteristics of procedural

democracy but is marked by a higher degree of constitutional ambivalence illustrated by the contradictions between the Russian and Tatarstan Constitutional Courts, comparatively less citizen engagement and involvement in governance and a consolidated political elite.

Simeon (2002: 3) provides a realistic, if contradictory assessment of the capacity of federalism as a means to providing definitive solutions to managing multinationalism:

[...] there is a profound ambivalence about federalism – the sense that *yes*, federalism is an effective institutional form for managing territorially based conflicts; but *no*, it entrenches and perpetuates the very conflicts it is designed to alleviate. *Yes*, in principle federalism enhances the quality of Canadian democracy – but *no*, the secrecy of executive federalism produces a democratic deficit. *Yes*, federalism can contribute to effective, responsive policy-making, but *no*, the difficulties of divided jurisdiction, and the transaction costs involved in coordinating across eleven governments can result in a joint decision trap.

Throughout this chapter, the ambivalence of federalism must be kept in mind, as many practices and structures carry both advantages and disadvantages. I begin by contrasting my empirical findings and comparing the ways in which Tatarstan's and Quebec's claims for recognition and jurisdiction have been addressed. I then examine language policy in each case to show that, contrary to theoretical expectations, the delegation of collective rights and autonomy over language has not solved the constitutional conflict, although it does contribute to create a context of trust and stability. I then consider the basis for the ongoing accommodation of multinationalism in Canada and Russia. Both cases are characterised by a preponderance of intergovernmental regulation as the means to address claims for recognition and jurisdiction. Indeed, the failures to entrench claims within Russia and Canada's constitutions have given rise to a complex system of intergovernmental and inter-elite accommodation. Although intergovernmental relations appear to be a key element of the accommodation strategies, their effectiveness relies on two factors which I examine in the final section: a commitment by elites to continue to engage each other, and the existence of an overall institutional "superstructure" which fosters trust and institutional continuity.

Accommodating Claims for Recognition

Russell defines claims for recognition as affecting the "mega-constitutional" dimension of a state, which goes "beyond disputing the merits of specific constitutional proposals and addresses the very nature of the political community on which the constitution is based" (Russell, 1994: 30). Both Russia and Canada are characterised by failures to provide constitutional resolution of Tatarstan's and Quebec's claims for recognition. Tatarstan's insistence it constitutes a sovereignty state "united" with Russia, even in the face of court rulings and political reforms which have hollowed out its meaning or prohibited it outright, demonstrates that underlying 'mega-constitutional' differences

persist. In Canada, changes were made to the constitution in 1982 over Quebec's explicit objections. Subsequent attempts (in 1987 and 1992) to address the province's status claims and entrench its status of "distinct society" failed. Consequently, "In Quebec, [constitutional] debates cannot ignore the [...] "national question"" (Rocher, 1992a: 21).

Although Russia's 1993 constitution does grant Tatarstan the status of republic, this was not sufficient for its ruling elite. Instead, it is the conclusion of a bilateral treaty in 1994 which was successful in bridging the "mega-constitutional" disputes by recognising Tatarstan as a "state united with Russia". For State Council speaker Farid Mukhametshin, the treaty provided the republic "a new status within the Russian Federation" and gave it the ability to develop "its own economic and political systems" (Quoted in TBDR, 12.2.1999). The Russian Constitutional Court has ruled that the federal constitution does not recognise Tatarstan's status of united or sovereign and has effectively mooted the recognition conferred by the treaty. Federal reforms in Russia reduced many of the jurisdictional political asymmetries which Tatarstan had obtained in its power-sharing agreements. Tatarstan itself has amended its constitution to reflect its position within Russia: it no longer challenges the integrity of the Russian state but articulates its status claims within the context of Russia's federal design. Nevertheless, the fact that Tatarstan continues to insist on the need for a new treaty – even if it does not contain special privileges – points to the importance of recognition, even if it is only symbolic and political.

In Quebec, no such progress on recognition has been achieved. On the contrary, the constitutional politics of Canada are marked by repeated failures to entrench Quebec's status claims within the constitution. "Mega-constitutional" conflict here concerns Quebec's desire to be recognised as distinct, and the inability and/or unwillingness of the federal and provincial governments to concede this status. Reacting to the Victoria Charter in 1971, Claude Ryan complained Quebec could not accept the constitutional amendments because they "consolidate the preponderance of the central government over the affairs of Canada and [...] reduce Quebec to the rank of a province like the others, without regard to its problems and priorities" (LD, 22.6.1971). Claims that the bilingual and bicultural nature of the province should be officially recognised, thus entrenching a constitutional asymmetry, was met by counterarguments such as Pierre Trudeau's: "Federalism cannot work unless all provinces are basically in the same relation to the central government" (Quoted in Simeon, 1972: 68). Quebec's conception of itself as national homeland is thus contrasted to provincial leaders' (and many federal leaders') vision of Canada as a single community of equal provinces, and of equal rights-bearers (Cairns, 1992: 55-7). The entrenchment of asymmetrical status for Quebec is seen as violating the equality of citizens and provinces. The attempts to provide para-constitutional recognition – notably a parliamentary motion

recognising Quebec as distinct (Canada, 1995) and the Calgary Declaration of 1997 – did not have the same results as in Tatarstan. Such attempts, although they recognise Quebec’s distinctiveness and unique character, do not entrench this status in the constitution. Recognition is unresolved and constitutes a persistent undercurrent in provincial and federal politics.

Accommodating Claims for Jurisdiction

While the failure to obtain constitutional recognition is at the root of the ‘mega-constitutional’ conflicts in both cases, Tatarstan and Quebec’s claims for jurisdiction are articulated within their countries’ federal design. The paradox is that a document which provokes resentment regarding recognition is simultaneously used as the reference for jurisdictional demands. Indeed, in Quebec and Tatarstan leaders argue not necessarily for radical change in the division of powers established in their constitutions, but for a more literal reading of its provisions in order to better protect regional autonomy.

Based on its claim to be “united with Russia”, elites in Tatarstan contended they had a confederal relationship with Russia in which competences were to be delegated upwards, not downwards. Thus, even after the 1993 federal constitution was implemented, Tatarstan argued its bilateral treaty laid the basis for “treaty-constitutional” relations, which in many cases ignored provisions of the federal constitution. A series of bilateral intergovernmental agreements were signed between 1992 and 1994 which institutionalised political asymmetries, especially regarding budgetary and fiscal capacity. As I examined, Russia’s constitution provides a detailed list of exclusive federal and joint competences. Federal law is supreme in areas of joint control, but Tatarstan enacted legislation throughout the 1990s in these areas based on their interpretation of their “treaty-constitutional” relationship. Faced with considerable legislative dissonance, Putin’s federal reforms were successful in reducing Tatarstan’s discretionary and unilateral exercise of authority. Legislative and constitutional harmonisation reasserted the supremacy of federal law in areas of joint jurisdiction. The bilateral agreements faded into the background as well, as Tatarstan joined Russia’s system of fiscal federalism.

While the republic operates largely within the confines of Russia’s federal design, the political rhetoric in both cases is similar, with Tatarstan’s leaders continuing to claim that regional autonomy must be better protected. The division of powers in the existing federal constitution provides a basis for centralised, even hegemonic, control by federal authorities. For Shaimiev, “Unfortunately, in areas of joint jurisdiction federal laws are adopted which regulate everything and anything without leaving room for regional initiatives” (NG, 1.3.2001). Shaimiev calls, in contrast, for a more cooperative federalism, in

which the rights and obligations in areas of joint jurisdiction would be more clearly established for each level of government. Shaimiev's *Concept* of federal reforms presented in 2002 seeks to ensure that regions are not reduced to being executors of federal policy but retain a degree of autonomy. Putin's recent announcement that the federal government will delegate the exercise of 114 joint competences to the regions is evidence of an ongoing process of intergovernmental mediation and coordination. Moreover, it shows there is a degree of flexibility inherent in Russia's federal design to accommodate Tatarstan's claims for jurisdiction and policy autonomy. The extent to which Putin's latest changes will result in increased autonomy for Russia's regions remains, however, to be seen.

In areas of joint jurisdiction, Russia's constitution allows for the supremacy of federal law. In contrast, the division of competences in Canada's constitution provides a clearer picture of the powers which belong to provinces. Notwithstanding the 'watertight' compartments established by Canada's constitution, federal practice is characterised by the use of the federal spending power and resulting blurring of jurisdictional boundaries. Thanks to its higher fiscal capacity, Ottawa has used its spending power to create shared-cost programmes: conditional grants are offered in exchange for compliance with national policies. Over time, provincial governments have come to rely on federal financial support, without which it would be difficult to meet their obligations or citizens' expectations. The Tremblay report considered the rise of the federal spending power as marking "a fundamental divergence of interpretation of Canadian federalism" (Quebec, 1956: 286). In practice, state-wide standards mean federal standards in areas of provincial jurisdiction, which is interpreted in Quebec as a violation of the federal principle and "imposition by a majority upon a minority nation" (Telford, 2003: 36). The Tremblay report recommended that the federal government must respect the division of powers and provincial autonomy established in the constitution (Quebec, 1956: 299).

The insistence of Quebec's leaders for greater respect of its autonomy has led to its claim for a right of withdrawal from federal shared-cost programmes with compensation. Federal and provincial leaders have been reticent to entrench the right of withdrawal in the constitution. The Meech Lake Accord included a provision which would have extended the right of withdrawal to all provinces, as long as it "carries on a program or initiative that is compatible with the national objectives" (s.106A). The failure to constitutionalise the right of withdrawal has led to a reliance on the practice of 'opting-out'. Since the 1960s, with the original agreements which allowed Quebec to opt-out of federal pension and social policies, intergovernmental agreements have been the main vector of accommodation of Quebec's claims for jurisdiction. Federal-provincial agreements on immigration, and most recently agreements on healthcare and family leave have led to the development of a complex

network of *de facto* asymmetries. A characteristic of this intergovernmental accommodation is the fact that it is not entrenched in the constitution: asymmetries are created *de facto*, not *de jure*, and powers made available to Quebec are generally available to other provinces. But the practice has promoted a certain flexibility and capacity to accommodate, *ad hoc* if necessary, Quebec's demands for autonomy.

Both Quebec and Tatarstan advocate a view of competence as "watertight compartments", in which the integrity of their jurisdiction is guaranteed. Yet, the realities and complexities of policy-making do not necessarily correspond with such a compartmentalised conception of competence. Quebec opposed the Social Union Framework Agreement in 1997 based on an argument it opposed the federal principle and legitimised federal interference in provincial jurisdictions. As a negotiating position, claims for "watertight" compartments evoke the balance between federal and regional autonomy, between shared- and self-rule. In reality however, as Dufour analyses, the benefits of shared programmes may outstrip the principle of autonomy: "even if Quebec's position on the federal principle is pertinent, its total refusal of a federal role in social policy is antiquated. It minimises the reality of the last fifty years, during which the federal spending power was exercised on Quebec soil with consequences which were not always negative for citizens" (Dufour, 1998: 8). For his part, Shaimiev argues not for total regional autonomy. Federal law "should determine only general principles. Regional law would supplement it by its consideration of local specificities" (NG, 1.3.2001). The federal government can exercise its power to establish general policy objectives, but should increase the autonomy of regions in the implementation of these objectives.

The resistance to entrench asymmetries *de jure* in the constitution has led to the consolidation of intergovernmental negotiation and agreement as a principle means of accommodating claims for jurisdiction. In both cases, it is not necessarily the actual constitution which is the subject of resentment, but political practices which have emerged: Russia's preponderant role in areas of joint jurisdiction and Canada's use of the spending power and intrusions into provincial competences. Consequently, regional demands for increased regional autonomy tend to be secured in an *ad hoc* manner, as problems or demands arise. Below, I return to consider the institutional mechanisms which support these intergovernmental processes.

Accommodating Language Policy in Tatarstan and Quebec

I focused on language as a policy case study within my study of Tatarstan and Quebec to test the proposition that in states where consensus on national unity is elusive, granting collective rights for minorities constitutes part of the solution to the stateness

dilemma, or unity problem. In both Quebec and Tatarstan, language is an important marker of difference. In both cases, language constitutes a key element of identity. Similarly, in both cases, claims for recognition and autonomy are made on the basis of this linguistic difference and specificity. However, I have found that substantial policy-capacity in language is not accompanied with a decrease in demands for recognition and jurisdiction. The constitutional disagreement persists, notwithstanding relatively successful execution of language policies. Yet, the autonomy over language policy and the constitutional asymmetries which exist to support this capacity undoubtedly diffuse conflict potential. Federal design which stymied instead of supporting Quebec and Tatarstan's language policies would likely have provoked resentment and contestation.

One key difference between Quebec and Tatarstan is the disparity in their respective demographic situations and policy objectives. In Quebec, francophones constitute 80 per cent of the population. French is the main language of public use for nearly 87 per cent of the population of Quebec (Oakes, 2004: 545). Ethnic Tatars constitute just over half and Russians 42 per cent of the population of Tatarstan. While the overwhelming majority of Tatars possess some level of competence in Russian, 81.6 per cent of Russians do not possess any competence in Tatar (Iskhakova, 2001: 39). As I examined, even among Tatars, the use of Tatar is far from universal; for instance, only fifty per cent of Tatar children attend Tatar-language schools. Different demographic situations influence the choices and objectives of language policy. Consequently, a direct comparison of the policies implemented would be of limited use. More useful for my purposes is a comparison of language policy within their respective constitutional contexts. This provides a means to assess the extent to which Tatarstan and Quebec possess the autonomy they deem is required to carry out their objectives.

Quebec's *Charte de la langue française* (*Charte*) benefits from large public and political support in the province. It is, Rocher writes, a political "sacred cow" (Rocher, 1992b: 106). Court challenges or legislative amendments to the law are instant political and media events. Contrast this to the situation in Tatarstan: although the law is celebrated by political leaders and elites, it does not elicit the same degree of public support or national fervour. In Quebec, autonomy in language policy is considered to be the key to the survival of the language: "The fundamental principle of Quebec's language policy is that if French is to survive and thrive in North America, it can occur only if it is given maximal chances and protection in Quebec, the only territory where it is the language of the majority" (Gosselin, 2003: 10). For Camille Laurin, Quebec's language law sought to "make Quebec a French-language society" instead of the bilingual Quebec which had existed until then (Laurin, 1977: 34-5). As a result, the *Charte* imposes limits on the right to English-language

instruction, guarantees a right to work in French and imposes the francisation of workplaces. A series of bodies exist to verify compliance and sanction violations.

This is probably the most significant difference with Tatarstan: whereas Quebec's law is more coercive and defensive in nature, language policy in Tatarstan raised the status of Tatarstan and attempted to foster bilingualism. Tatarstan's language law is nowhere near as coercive. Its objective was not to make Tatarstan a Tatar-speaking society, but to raise the status and utility of the language. The point of departure – in 1990 Tatar was all but absent from the public and state spheres – led to a policy aimed at making Tatar equal at least in status to Russian. The law does not impose a language of instruction: children are free to receive instruction in the language of their choice. Indeed, the requirement that Tatar and Russian be taught as a subject in equal amounts is an achievement of which policy-makers are particularly proud. This points to a gradual rise in the importance of the language issue, and the increasing place it occupies on the region's political agenda.

The Canadian constitution does not assign jurisdiction over language to a specific level of government. Quebec is free to legislate on language use in areas within its jurisdiction (Leckey and Didier, 2004: 524). This competence was challenged, and in several cases was found to infringe on constitutional rights to expression, access to English-language education, and the constitutional obligation to use English as a language of Quebec's legislature and courts. Although the rulings provoked considerable reaction, the law's provisions were amended. Tatarstan's competence over language is guaranteed by article 68 of the federal constitution, which creates a constitutional asymmetry providing republics the right to establish a state language. Contrary to Quebec, Tatarstan does not possess the legislative competences to constrain the use of Russian in the workplace, advertising and product labelling. Bilingual packaging, for instance, was found to contradict federal law and is available when producers voluntarily agree to provide it. As I examined in Chapter 5, the voluntary character of Tatarstan's language policy has not affected the fact Russian remains a language with greater utility and that a large proportion of Tatar schoolchildren continue to attend Russian-language schools. To raise the number of Tatars enrolled in Tatar schools policy-makers cannot use coercive means but must increase the incentives. This is a complex task, which the State Programme on the Languages of Tatarstan for 2004-14 attempts to address with measures directly aimed at increasing the utility and functionality of Tatar. It will be interesting to revisit the issue in five to ten years to gauge whether the utility of Tatar has risen, and if not, whether this could lead to calls to implement a more coercive and defensive policy. Aidar Gymadiev, a former member of the Cabinet Department on Language and currently the editor of *Sabantuy* believes republican leaders adopted too careful an approach and "should have implemented a more assertive

policy in the 1990s” (Interview with Gymadiev, 2004). Demographic evolution – particularly after the generation currently in Tatar-language schools enters the workforce – may contribute to strengthen the place and role of Tatar language and culture. If the utility of Tatar stagnates, and the State Programme fails to address the issue of the quality of Tatar in the republic, can we expect a shift, like that implemented in Quebec in 1974 and 1977, toward a more forceful assertion of the place and role of Tatar?

For the time being, however, the constitutional constraints on Tatarstan’s language policy capacity do not appear to be especially controversial. One exception was the decision to prohibit the transition to a Latin script, regarded in Tatarstan as an illegitimate federal interference on a purely linguistic issue. This case notwithstanding, policy-makers in Tatarstan are satisfied with the competences they possess to carry out their language policy. Consensus within Tatarstan, between Russians and Tatars, and on the legitimacy of the republic’s competence to carry out language policy, appears to be achieved. It is an example of a successful federalism and of successful use of constitutional asymmetry. It counters Petrov’s assertion that “Russian federalism serves as a ritual rather than as a function” (Petrov, 2004: 213). In the field of language, federal design provides the tools and powers required to implement most of Tatarstan’s current policy objectives. In Canada, as a constitutional issue, balance has also been achieved on Quebec’s language policy. The *Charte* is recognised to have attained many of its objectives and is an effective tool to protect the vitality of French in the province. This leads McRoberts to point out that autonomy over language is an example of the success of federalism: “the PQ government demonstrated not the need for independence but the possibilities for meaningful change even within the existing federal structure” (McRoberts, 1993: 293).

One interesting difference between Tatarstan and Quebec is the extent of the federal government’s own interventions and support in the area of language. Although satisfied with its autonomy over language policy, policy-makers in Tatarstan deplore the lack of support they receive from Moscow. For Kim Minnullin the fact “there is no one in Moscow to whom we can address our concerns and experiences regarding the implementation of bilingualism” creates a sense that the centre is disinterested (Interview with Minnullin, 2004b). Razil Valeev makes this clear: “Moscow has implemented programmes on the Russian language and Russian culture, but does not support the development of minority languages” (Interview with Valeev, 2004). The Russian government has adopted measures to assist Russian minorities outside Russia. Similarly, in 2002 Tatarstan’s introduced article 14 to its constitution, which calls on the republic to take steps to preserve the language and identity of Tatars living outside Tatarstan. This has led the republic to sign twenty-one agreements with other regions to provide Tatar-language

education. As a result, 900 schools were created in which 51,000 students receive instruction in Tatar, and 1000 schools where Tatar is taught as a subject (Lotfullin, 2004: 111). Yet as Iskhakov mentions, even simple issues like sending textbooks from Tatarstan is complicated since no mechanisms exists to transfer funds from one region to another to pay for pedagogical materials (Interview with Iskhakov, 2004). Since Russia is a multinational state, there is a feeling that it should do more support its minority cultures, and assist to create mechanisms to compensate Tatarstan's efforts. The lack of support by Moscow for minority languages has created resentment, as Renat Zakirov, the Chairman of the Executive Committee of the World Tatar Congress states: "It seems that federal authorities that concentrated all the financial resources didn't think about the preservation and development of nationalities. It turns out that Tatarstan is alone to look after it" (TBDR, 30.8.2005).

Canada, on the other hand, plays a much more active role in the support of the French language outside Quebec. One of the key findings of the Royal Commission on Bilingualism and Biculturalism was that the federal government needed to take steps to raise the status and utility of French as a way to foster a stronger sense of belonging by francophones and Quebecois (Canada, 1967). The federal government has endeavoured to increase the visibility and respect of French, especially since adopting the Official Languages Act in 1969. Since the 1970s, the federal government has provided political and financial support to Canada's official minority language communities. In practice, this led to the development of policies and programmes aimed at francophones in provinces outside Quebec, and support for the English-language minority of Quebec. Although Quebec's leaders tend to view Canada's support of its Anglophone community as interference, what is overlooked is the federal government's support of French language, media, and culture promotes the status and utility of French in Canada, which contributes to creating a context of linguistic choice. The paradox is that while Tatarstan views the support of Tatar communities in the rest of Russia as a key objective and would like to see Moscow play a bigger role, in Quebec federal policies aimed at the protection of official language minorities place the interests of French-Canadians at odds with those of French-Quebecois.

Court rulings have confirmed both the extent and limits of Tatarstan's and Quebec autonomy in language policy. The Supreme Court of Canada's rulings on the *Charte* struck down many of its more coercive provisions (e.g. on access to English language education and unilingual French signs). However, notable in the rulings such as *Ford* and *Solski*, the Court upheld the *Charte's* overall objectives – the protection of French in Quebec – but rejected only the concrete measures implemented to reach these objectives. In *Ford*, the Court concluded that the prohibition of English was unconstitutional but requiring the

predominance of French was an acceptable limit to the right to expression (SCC, 1988). Similarly in *Solski*, the Court balanced the province's policy objective requiring francophones to attend French-language school with the right to minority-language education (SCC, 2005b: par.34). Less jurisprudence exists on Tatarstan's language law. In its 2004 ruling, Russia's Constitutional Court confirmed Tatarstan's jurisdiction over language issues and its power to impose a language requirement in education. Tatarstan's policy is constitutional to the extent it conforms with the federal Law on education and the federal educational curriculum, which grant it the power to require pupils in Tatarstan learn *both* Tatar and Russian as state languages (KSRF, 2004: par.3.2). The Court warned, however, that such a requirement is constitutional only to the extent it does not discriminate against the right to freely choose the language of instruction or limit the study of Russian as a state language (Ibid. par.3.1). The Court protected Tatarstan's autonomy to devise a territorial language regime, but within that regime, it cannot offer privileged treatment to Tatar. It did not take position on the legitimacy of Tatarstan's policy objectives, ruling strictly on its competence to legislate on the language of education. Based on this ruling and the existing constitutional context, if Tatarstan changed its approach and enacted more coercive language policies there is some doubt they would survive a court challenge.

In both cases, balance appears to have been achieved over language policy. Tatarstan and Quebec, although operating within different contexts and with different objectives, are largely satisfied with the degree of autonomy they possess. Quebec is recognised as the *foyer* of the French language; the Supreme Court recognises the legitimacy of its legislative objectives to protect the vitality of French in Quebec. Russia's constitution recognises a right for Tatarstan to protect Tatar and implement language policy. In both cases, competence over language has been a means of protecting, if not recognising, difference, but it has not alleviated the persistence of claims for constitutional recognition. It is difficult to enounce a clear-cut conclusion on whether language policies have contributed to a political climate which fosters trust and consensus. Federal design is not challenged in terms of the competence it affords to the Tatarstan and Quebec governments. An institutional framework which hindered rather than supported the implementation of language policy would likely to have provoked contestation. What the persistence of Quebec's and Tatarstan's constitutional disagreements shows is that collective rights, while part of the solution to a stateness dilemma, are insufficient as a response to territorial demands for recognition and jurisdiction.

The Sources of Institutional Consensus

Analysis of the cases demonstrates that consensus on ‘mega-constitutional’ issues is lacking. In both cases, federal design does not reflect Tatarstan’s and Quebec’s claims for recognition of their status and greater autonomy. The persisting challenges to these states’ federal and constitutional design, however, has not led to paralysis. Indeed, as the policy case studies demonstrate, federalism has been successful in providing autonomy and policy-capacity in the area of language. Although the institutional design is contested, stable outcomes have resulted. What is the nature of this consensus? What are some of the factors which strengthen or weaken it?

As Cairns writes, “It is a necessary assumption of constitutional government that governments are law-abiding, not rogue elephants hostile by nature to any limitations on their conduct” (Cairns, 1992: 77). This is a crucial difference between Quebec and Tatarstan. The rise of Quebec’s claims during the Quiet Revolution occurred within the context of a long-standing institutional framework endowed with a degree of legitimacy and authority. Attempts were made to accommodate Quebec’s demands within the existing or an amended constitution. The failure to address Quebec’s demands within the constitution gave rise to intergovernmental agreements and *de facto* asymmetrical federalism as means of accommodation. However, even in the most trying conditions – in the aftermath of the 1982 patriation for instance – Quebec complied with the new provisions and constraints. The rule of law and the maturity of federal design, even if they were contested, provided continuity and stability to the relationship.

The situation in Tatarstan could not have been more different at the outset of transition. Institutional continuity was undermined by simultaneous changes and transitions at the Soviet, Russian and republican levels. The absence of consensus on the republic’s status within the nascent Russian Federation, and Tatarstan’s own refusal to acknowledge let alone acquiesce to Russia’s constitutional design fostered a context where legal nullification, instead of consensus or the rule of law, was the norm. The bilateral treaty, while it did not resolve the conflicting visions of Tatarstan’s status, conferred a degree of stability and legitimacy to Russia’s federal design. Intergovernmental bargaining and *de facto* asymmetrical power-sharing stabilised the conflict and checked each government’s earlier tendencies to act as rogue elephants. The current state of federal relations in Tatarstan and Russia confirms that a degree of consensus on federal design has appeared. While Tatarstan continues to claim special status, it largely recognises both the legitimacy and authority of Russia’s constitution. The zero-sum brinkmanship of the 1990s has ceded to more manageable claims on how to increase the responsiveness of Russia’s existing federal design

to Tatarstan's claims. While I am unable to ascertain whether the treaty and bilateral accommodation *caused* a degree of consensus on federal design, there is no doubt that the process of elite accommodation helped routinise relations and increase trust between elites.

My examination of these cases has been informed by a belief that solving a stateness dilemma does not rest solely on getting "the initial constitutional rules right" but also on the development of a context and mechanisms to facilitate ongoing processes of accommodation (Hanson, 2001: 133). In both cases, federal design did not 'solve' the constitutional disagreements: the federal constitutions continue to be challenged by the governments of Tatarstan and Quebec. As Russell suggests, "constitutions can establish the broad grooves in which a [state] develops. What happens within those grooves [...] is determined not by the constitutional text but by the political forces that shape the country's subsequent history" (Russell, 1994: 35). I see the characteristics of the political forces which have developed in the constitutional grooves in Quebec and Tatarstan as indicators of the mechanisms which are in place to help provide continued accommodation of multinationalism and institutional stability. The mechanisms are similar despite contextual differences in both cases.

Federal Design and the Centrality of Intergovernmental Relations

As I examined in Chapter 2, federal design aims to promote a balance between self- and shared-rule. For Smiley and Watts, two institutional strategies contribute to fostering the capacity for finding balance:

Federal government concerns the protection and articulation of spatially delineated values and interests within a more comprehensive political community. For this protection there are two possible strategies. The first is that of interstate federalism, which confers on the states or provinces the constitutionally protected jurisdiction over matters which members of some or all of the constituent communities believe to be the most crucial to their welfare and survival. The second, the intrastate strategy, provides for the protection of these territorial particularisms within the structure and operations of the central government itself (Smiley and Watts, 1985: 29).

Intra-state and inter-state federalism are not alternatives, but complements. One of the pathologies of Canada's federalism, and a factor which exacerbates the Quebec question, is the weakness of federal design to accommodate claims within the institutions of federalism and the importance of intergovernmentalism as the main interest aggregator and conflict regulator (Watts, 1999: chap. 11). Indeed, the prominence of intergovernmental regulation emphasises the importance of the role of political elites.

Scholars of Canadian federalism have identified the imbalance between institutions of inter- and intra-state federalism as a key institutional lacuna. Watts contends that the shared institutions of the federal government are crucial in a federation, to enable common action and provide glue to hold the state together (Watts, 1999: 83). Yet institutions of

intra-state federalism in Canada are weak, many processes are informal. Canada's upper chamber, the Senate, does not live up to its role as an institution where provincial interests are articulated. The body, appointed by the federal government, is more attuned to party rather than provincial loyalties (Meekison, 1998: 109). In the federal cabinet, although efforts are made to balance regional and linguistic representation, "it is far more concerned with federal policy-making and execution than the expression and accommodation of provincial interests" (Smiley and Watts, 1985: 29). Prime ministers have designed their cabinets not with an eye to facilitating intra-state federalism, but to more effectively govern from the centre (Savoie, 1999; Meekison, Telford et al., 2003: 12). The centrality of party discipline in Canada's parliamentary politics and traditions of executive-dominated government ensure that party interests, and particularly for the party in power, the government's interests, trump regional representation. For Smiley and Watts, "The thrust of the Westminster model toward decisive and unified leadership means that minorities can be overridden and that they have relatively few resources to frustrate the will of the majority, as embodied in the policies of the incumbent government" (Smiley and Watts, 1985: 31). Efforts to reform Canada's federal institutions to increase their intra-state characteristics (notably in the Charlottetown Accord and its proposals to adopt an elected Senate to increase provincial representation) failed. As a result, political institutions at the centre tend to embody the interests of the federal government as a separate entity rather than as an aggregate entity more representative of various provincial interests.

For Bakvis and Skogstad, a federal system which does not provide sufficient scope for the expression of regional particularities undermines the legitimacy of the system (Bakvis and Skogstad, 2002: 17). In Canada's case, it is not so much the legitimacy of the federal institutions which has been the result, but the fact that inter-state federalism – "the complex process of intergovernmental meetings and agreements" (Meekison, 1998: 109) – has become the principal means for addressing and accommodating provincial interests. Gibbins links the failures of intra-state federalism to increased potential for intergovernmental conflict (Gibbins, 1982: 106). The prominence of inter-state federalism is also a consequence of Canada's division of powers, which combines jurisdictional autonomy for provincial governments with policy interdependence (Bakvis and Skogstad, 2002: 5-7). Since the federal government assumes an important role in setting and funding state-wide policies in areas of provincial jurisdiction, provincial and federal governments are locked into struggles for jurisdiction and money. Competition, however, is not necessarily disruptive. For Pierre Trudeau, "The story of Canadian federalism is one of constant intergovernmental exchange and cooperation" (Quoted in Simeon, 2002: 12). The fiscal agreements, shared-cost programmes and countless federal-provincial agreements "have

woven a tight network of cooperation and coordination” (Croisat, 1998: 62-3). Many of these agreements arise in an *ad hoc* fashion, existing outside the formal division of competences established by the constitution. But inter-state federalism is routine and institutionalised. First Ministers conferences (FMC) are the most prominent forum for federal-provincial negotiation and constitute for many the “crucial institution” of Canadian federalism (Smiley quoted in Gibbins, 1982: 92). Federal-provincial committees, advisory councils, inter-provincial conferences exist to coordinate and carry out policy. The Canadian Intergovernmental Conferences Secretariat, established in 1973 by the premiers and funded by both levels of government, oversees the coordination of intergovernmental meetings between various levels of federal and provincial leaders. In Quebec, the Secretariat for Canadian Intergovernmental Affairs is responsible for the promotion and defence of Quebec’s interests, relations with the federal and provincial governments and analysis of federal programmes’ potential effects on Quebec.

With regard to Quebec, the inability to constitutionalise its claims for recognition has exacerbated the intergovernmental aspect of federal-provincial accommodation. Federal and provincial governments express different interests and speak for different constituencies. The federal government is a representative of a pan-Canadian nationalism and national identity (Kymlicka, 1998: 166). The government of Quebec, by comparison, is the main outlet for the expression of its national particularism (Smiley, 1971: 328). As I have examined, each level of government pursues competing if not conflicting constitutional agendas and attempts to protect their respective constitutional and political visions placing the onus of mediating these competing claims on their leaders. Intergovernmentalism has proven a flexible means to ensure ongoing accommodation of Quebec’s claims. Yet its limits are clear: accommodation continues as far as political leaders are willing to keep going. As Maclure notes, “Since 1982, Quebec has been up against a quasi-systematic policy of non-recognition” (Maclure, 2003: 6). This does not presage a resolution to the province’s constitutional disagreement. Indeed, the persistence of Quebec’s demands, coupled with continued resistance to provide *de jure* recognition ensures that intergovernmental, “political federalism” will remain a principal vector of multinational accommodation.

The federal system which has emerged in Russia since 1993 is characterised by a similar reliance on inter-state federalism. Many of Putin’s federal reforms sought to remove the influence of regional leaders at the centre. As an institution, Russia’s presidential representatives constitute a barrier between federal and regional government. Russia’s Federation Council is ineffective as a chamber of intra-state representation (Gel'man, 2001). Political parties are not vehicles for regional representation (I return to this issue below).

The particularity in Russia of a 'unified system of executive rule' exacerbates the weaknesses of intra-state institutions. Especially with the return of a system of appointed leaders, the centre enjoys administrative control over regional governments. Indeed, it appears to be a system more conducive to ensuring a wide application of the president's interests in the regions, rather than mechanisms for regional representation within the centre. Although the constitution, with its long list of joint powers, creates the possibility for a great deal of policy interdependence and overlap, federal practice in these areas has tended to emphasise the supremacy of federal law. Putin's reforms to the division of powers further strengthened the hierarchical dynamic, with regional governments viewed as executors of policy. Consequently, federal institutions are viewed less as a means for providing representation to territorial difference within the federal administration than a means to strengthen federal control.

Throughout the Yeltsin period, intergovernmental relations were a key feature of Russia's federal system. The *de facto* asymmetries which resulted from Yeltsin's bilateral treaty practices shifted the balance of federalism toward an almost confederal model, where regional self-rule trumped federal shared-rule. Thus, federal-regional relations were characterised by a strong degree of head-to-head, inter-elite competition. But for Nicholson, "one of the benefits of Yeltsin's approach was its elasticity" (Nicholson, 2003: 17). This elasticity provided Yeltsin a means to consolidate regional leaders' loyalties while institutionalising a process of elite bargaining. Putin's accession to power demonstrated the weak institutional foundations of the treaty practice and the extent to which Yeltsin's patrimonial federalism worked only to the extent that parties, particularly the centre, were ready to maintain it (Hughes, 2001b: 58). While the importance of bilateralism has decreased in Putin's Russia, inter-state federalism remains an important characteristic of the relations between Kazan and Moscow. The institutionalisation of the State Council provides a degree of institutional continuity to inter-state federalism in Russia. It has emerged as an important body, if not for decision-making, than at least for multilateral federal-regional negotiation and discussion.

Similar to the case of Quebec, the importance of inter-state and intergovernmental federalism emphasises the roles of Tatarstan and Russia as exponents of competing visions of the political community and of their place within the state. Intergovernmental relations were crucial for finding ways to accommodate the republic's status claims and mediate these interests. Although claims for recognition, and the constitutional disagreement persist, inter-elite negotiation has proven effective at consolidating a framework for ongoing accommodation of Tatarstan's demands and difference. For Alexseev such processes are encouraging signs: "The resilience of the Russian Federation depends not on how much

power the center holds vis-à-vis the constituent units, but on [its ability] to nurture a necessarily slow, ground-up evolution of formal and informal institutions that mediate center-periphery grievances and disputes” (Alexseev, 2001: 105). As with Quebec, the resilience of inter-state federalism as a means of multinational accommodation depends on the commitment of elites in Tatarstan and Russia to continue to engage one other.

Thus, we see that Canada and Russia exhibit a similar reliance on inter-state federalism, which places a premium on intergovernmental negotiation and mediation as means to promote an ongoing accommodation of the constitutional disagreements and Quebec’s and Tatarstan’s claims. A fundamental difference, however, is the existence of a stable “federative superstructure” in Canada. Watts defines a federative superstructure as encompassing “the central institutions that are responsible for areas of common jurisdiction and also the institutions that affect relations between the central government and the governments of the constituent units” (Watts, 1991: 309). Although constitutional consensus may be lacking, there is an acceptance in Quebec and Canada of the overall legitimacy of the “rules of the game” of politics, which in turn fosters increased institutional support of and trust in intergovernmental relations. Throughout the thesis, I have analysed the accommodation of multinationalism as requiring more than an agreement on the “constitutional rules of the game”. Intergovernmentalism and the creation of processes of elite negotiation are ways in which the disagreement on the constitutional rules of the game is bridged. I turn in the final section to examine factors on which these processes rest. In Russia, agreement on the rules of politics has emerged since 1993. But three factors – uncertainties on the role of the judicial system, territorial stability and the lack of democratic representation – constitute potential limits to the stability of the “federative superstructure”.

Limits of Institutional Stability

Role of the Courts

Courts occupy a key position within federal political systems, expected ultimately to adjudicate disputes between governments. As Tierney points out courts are not immune from politics or the politicisation of their functions:

When political disputes surrounding sovereignty and self-determination crystallize as questions of law, courts become embroiled in attempts to provide objective legal resolution to intensely disputed and heavily politicized questions. These questions test the very legitimacy of the constitutional system and threaten the continued existence of the state within which, and in defence of which, judges are expected to act (Tierney, 2003: 170).

In the disputes over status and recognition studied throughout the thesis, court rulings have played prominent roles. Watts suggests courts perform three functions: constitutional

interpretation, adaptation of the constitution to changing circumstances, and the resolution of intergovernmental conflicts (Watts, 1999: 100). On this basis, judicial institutions are all the more important in the cases of Quebec and Tatarstan, where disagreements on the constitution are prevalent and where intergovernmental relations are the main vector of accommodation. The way which the courts are viewed by regional leaders in both cases, however, could not be more different.

The Supreme Court of Canada consists of nine justices appointed by the federal government. By convention the federal government consults provincial governments on the nomination. By law three judges must come from Quebec. Overall, the Supreme Court is perceived as a legitimate and impartial arbiter. Indeed, for Quebec the legitimacy of the court as interpreter of constitutional provisions is separate from the legitimacy of the constitutional provisions it is called to interpret. René Lévesque complained in 1979 that the Court's ruling on provisions of the *Charte de la langue française* would be "another example of outside interference in Quebec affairs" (OC, 9.6.1979), but once handed down, the government complied with the ruling within days (LP, 13.6.1979).

When the federal government in 1996 asked the Supreme Court to issue a reference on the constitutionality of Quebec's unilateral secession, Quebec's Minister of Justice, Paul Bégin, reacted strongly: "the sole judge and jury of Quebec's future is the people of Quebec. No judge can prevent the democratic expression of a people" (Quoted in Quebec, 2001b: 102). Challenging the federal government's decision to proceed with the reference, the government of Quebec refused to participate in what it called a "political, not legal proceeding". The Court appointed an *amicus curiae* to argue Quebec's position. When the ruling, *Reference re Secession of Quebec* (SCC, 1998), was handed down it was greeted by both Quebec and Ottawa as a victory. The Court concluded that while no constitutional right to unilateral secession existed, the federal government must negotiate the terms of Quebec's secession after a referendum on a clear question and a clear majority. For Quebec, the Court "did not in any way diminish the National Assembly's right to decide on the question and majority" and protected the right of the Quebec people to decide on their future (Lucien Bouchard quoted in Quebec, 2001c: 104). Ottawa viewed the ruling as rejecting a right to unilateral secession. The Court left the intricacies of the political debate on what constitutes a clear question and a clear majority to the politicians. On an issue as contentious as secession, it successfully maintained the legitimacy and impartiality of its role (Rocher and Verrelli, 2003: 211-2).

Russia's Constitutional Court judges are appointed by the president and confirmed by the Federation Council. Although regions in the guise of their representatives in the Council have a greater degree of influence on the membership of the court than Canadian

provinces, this has not affected Tatarstan's view of the court. Indeed, the Russian Constitutional Court is viewed less as impartial observer than as one which upholds the interests of the federal government. For Khakimov, "the courts are simply not on our side" (Interview with Khakimov, 2004). During the 1990s, Tatarstan consistently refused to heed the Court's rulings, notably on the 1992 referendum on status. Moreover, before the referendum was even held, the Court had already struck down the constitutionality of Tatarstan's claim to special status and its 1990 declaration of sovereignty. The Court's June 2000 rulings on republican sovereignty were greeted by Tatar nationalists within the TPC as "political aggressions against the independence of republics" and as "violating the treaty and not viable" (TBDR, 21.7.2000). Again, political leaders ignored the ruling by maintaining their claim to sovereignty in the 2002 constitution. To be fair, many rulings by the Russian and Tatarstan Supreme Courts on the division of competences which have annulled Tatarstan's conflicting legislation are respected. It is mostly on issues of constitutional status and recognition that rulings are ignored. A worrisome trend is the recourse to Tatarstan's own Constitutional Court, which has issued contradictory rulings on issues of state sovereignty and status. Regarding Tatarstan's claims for status and jurisdiction, the courts are not seen as an arena for adjudication and resolution but an extension of political struggle. Contrary to Canada, the politicisation of Russia's courts ties the legitimacy of the institution to the legitimacy of the constitutional provisions they interpret. As an arbiter of intergovernmental relations, then, the effectiveness of the court system is severely hampered. The role of judicial institutions in defusing intergovernmental conflict is consequently reduced. This is a sign of ongoing institutional shortcomings, which imperils long-term stability of Russia's federal design.

Stability of Federal Territorial Design

In Chapter 2, in my discussion of the challenges of accommodating multinationality, two issues are seen to be important for successful accommodation, what O'Leary and Lustick call "right-shaping" and "right-sizing". In the thesis, I have concentrated mainly on issues of right-shaping – how federal design organises the distribution of powers and recognition. I gave less consideration to the issue of right-sizing – the "preferences of political agents at the centre of existing regimes to have what they regard as appropriate external and internal territorial borders" (O'Leary, Lustick et al., 2001: 1-14). From the point of view of the agents at the centre, the stability of the internal and external borders of the Canadian federation is secure. The potential for instability arises in discussions about the likelihood of a potential referendum on Quebec's secession. In Russia, discussions on the

territorial form of the federation occurred earlier in the transition process. The decision was taken to maintain the ethno-territorial structure, with republican status for Tatarstan.

There is increasing concern in Tatarstan that a reform of Russia's territorial structure is in the offing. Khakimov evokes discussions about a threat of amalgamating Tatarstan with Ulyanovsk, the effect of which would be to reduce Tatars to a minority in the new territory. However, he doubts this would ever pass a vote, "even Russians in Tatarstan would vote against such a proposal" (Interview with Khakimov, 2004). Discussions on the desirability of reducing the number of federal subjects or the need to equalise all federal subjects and eliminate ethno-territorial distinctions have occurred periodically. The State Duma's Committee on Federation and Regional Affairs organised a hearing on the topic of regional amalgamation in April 2004, attended by parliamentarians, representatives of the Constitutional and Supreme Courts, Presidential Administration and of forty-five subjects of the federation (*Kommersant*, 16.4.2004). At a conference in Yekaterinburg in May 2005, entitled "State Nationality Policy: Problems and Perspectives", Sverdlovsk governor Eduard Rossel argued that "the collapse of the USSR was caused by the fact that the union was constituted by national republics. We need to build Russia according to the territorial principle so we can all be citizens of Russia (*rossiyanimi*)" (*Vremya Novosti*, 27.5.2005). Although still a remote possibility, Galeev worries that the issue of territorial reform is gaining increased momentum and credibility, since even the Presidential Administration, he claims, has circulated working papers on the amalgamation of federal subjects (Interview with Galeev, 2004). The successful referendum on the amalgamation of the Taymyr and Evenk regions with Krasnoyarsk, and ongoing discussions about possible unification of Perm with the Komi-Permyak *okrug*, or Adygeia with Krasnodar show that territorial design is in evolution. Galeev views these trends with apprehension, and believes regional amalgamation "could lead to the elimination of Russia's institutions of ethnofederalism and the equalisation of all subjects" (Interview in ZP, 14.10.2004).

Putin explained his decision to eliminate elections for regional leaders by linking the failure of regional leaders to ethnicity:

"Unfortunately, in many of our subjects of the federation, especially in the national republics, people have been elected on ethnic lines. A person is elected not for his personal or professional qualities. And this does not function effectively" (RG, 19.11.2004).

Putin's reform was interpreted by some in Tatarstan, such as Tufan Minnullin, State Council deputy and United Russia member, as a confirmation of the centre's intention to eliminate ethno-republics (NG, 27.10.2004). Indeed, Dmitrii Rogozin, leader of the federal (and more nationalist) *Rodina* party, the reform took aim at the "absolutism of regionalistic clans" and at the presidents of Russia's republics who should be pursued as "separatists and enemies of

a united Russia” should they continue to try and sabotage the centralisation of power in Russia” (NG, 1.11.2004). A VTsIOM survey shows a modest rise in the view that “Russia is a multiethnic state whose citizens should have equal rights and no one should have any privileges” from 49 per cent in 2004 to 53 per cent in 2005 (VTsIOM, 2005). Discussions and insinuations about the status of Russia’s republics reveal an ongoing tension regarding the form of the Russian Federation, and the place of republics and national minorities in Russia. Indeed, Shaimiev warns a shift toward more unitary government structures, by overlooking Russia’s diversity, creates conflict potential:

“Unfortunately, until now many politicians have been unable to forego the idea of a unitary state. Certainly, under such a system it would be easier to solve certain problems. But it will be impossible to become, all of a sudden, a uni-national people. This means that the establishment of a unitary state automatically leads to the violation of individual rights, of the rights of the different peoples which live in the same country. And this creates strong tensions in the regions” (RT, 6.6.2004).

Although it is all speculative at present, the talk of equalising Russia’s federal subjects provokes palpable uneasiness in Tatarstan. A move toward the elimination of republican status would most likely provoke significant opposition, if not conflict, in the republic, particularly since Tatarstan’s competence over language policy is predicated upon that status. Moreover, such a change would constitute a clear signal that central elites will have abandoned the intergovernmental mode of accommodation which has prevailed since 1990.

Democracy and Representation

The electoral and political dynamic in Canadian federalism is substantially different than the current situation in Russia. Within the federal parliament, since 1990 the *Bloc Québécois* has become a significant political formation. Between 1993 and 1997, the party formed the Official Opposition. Created in the wake of the failure of the Meech Lake Accord, the Bloc defines itself as “sovereignist political party... which will be present on the federal political scene until Quebec sovereignty is realised” (BQ, 2000: 1-2). Its existence ensures the prominence of nationalist grievances in Ottawa. Furthermore the party defines itself as the interlocutor of Quebec’s interests with Canada, “explaining to Canadians of all regions Quebec’s intention to conclude, on the basis of mutual interests, an economic and political partnership with Canada once sovereignty is achieved” (Ibid.).

The BQ provides representation of Quebec nationalism within the federal parliament. But its representation is exacerbated by particularities of Canada’s single-member plurality electoral system. As Table 8.1 shows, over the last three federal general elections, the Bloc’s share of the seats in parliament outpaces its share of the popular vote. While BQ candidates stand only in Quebec, the party’s showing in the 1997, 2000 and 2004 general elections (10.7, 14.6 and 12.4 per cent of the national vote, respectively) provided a

disproportionate share of the seats (14.6, 12.6 and 17.5 per cent respectively). The party's prominence gives Quebec nationalists a voice at the centre, but also exacerbates the adversarial relationship between the BQ and other state-wide parties, and between Quebec nationalists and the governing party.

Table 8.1: Results of Federal General Elections in Quebec, by Year and Party (in % of Votes and Seats Won)¹

Year	BQ		Liberal		NDP		PC/Conservatives	
	Votes	Seats	Votes	Seats	Votes	Seats	Votes	Seats
1997	37.9	58.7	36.7	34.7	2.0	0.0	22.2	6.7
2000	39.9	50.7	44.3	48.0	1.8	0.0	11.8	1.3
2004	48.9	72.0	33.9	28.0	4.6	0.0	8.8	0.0

A similar dynamic exists in Quebec. Since 1976, the sovereigntist *Parti Québécois* and federalist Quebec Liberal Party (PLQ) have alternated in government. While in government, the PQ gains the institutional presence and resources to press Ottawa to accommodate its demands, and as was the case in 1980 and 1995, organise a referendum on the province's status within the federation. In Quebec, although the PQ's policy is to promote sovereignty, it is also the only alternative to the PLQ. The PLQ, although it is a federalist party, is also committed to obtaining the recognition of Quebec's status, without however advocating sovereignty (Pelletier, 2001). As a result, Quebec sovereignty and its constitutional claims are omnipresent in provincial politics and tightly wrapped into the electoral cycle. Each party attempts to outflank the other on its positions vis-à-vis federalism, and capitalise on perceptions that the federal government does or does not do enough to respond to Quebec's interests and demands. In Quebec too, the electoral system has tended to over-represent the parliamentary majority of the winning party, at the expense of a third party, *Action démocratique du Québec*. Thus, as Table 8.2 shows, the electoral victory of the PQ does not necessarily reveal a rise in popular support for sovereignty or secession. Victory is as much as function of the electoral system as it is a normal alternation of governing parties. Furthermore, the PQ itself is not a monolithic body: debate on the party's stance vis-à-vis sovereignty is prominent. During the party congress in June 2005, positions on the party's policy on sovereignty is divided: debate exists on whether a PQ government should conduct a referendum "immediately" after an electoral victory, "as soon as possible" after a victory, or as was the case in the late 1990s under Lucien Bouchard "when the winning conditions are present" (LP, 5.6.2005). The fact that Quebec's constitutional disagreement is always present as an electoral issue introduces a degree of instability to federal-provincial politics,

¹ Online sources accessed 15 August 2005: <http://www.elections.ca>.

at the same time as it provides a forum for the representation and democratic discussion of the province's status claims.

Table 8.2: Results of Quebec General Elections, by Year and Party (in % of Votes and Seats Won)²

Year	PLQ		PQ		ADQ	
	Votes	Seats	Votes	Seats	Votes	Seats
1994	44.4	37.6	44.7	61.7	6.5	0.8
1998	43.5	38.4	42.9	60.8	11.8	0.8
2003	45.9	60.8	33.2	36.0	18.1	3.2

There is no comparable electoral dynamic in Russia. Federal electoral law prohibits the existence of regional or national parties within the federal and regional legislatures. In the 2004 elections to Tatarstan's State Council, 85 of 100 deputies were elected under the United Russia banner. This notwithstanding, following the elections, eleven of Tatarstan's United Russia members affiliated themselves with a political movement, *Tatarstan Novyi Vek* (Tatarstan New Century, TNV) in violation of United Russia's Charter (*Molodezh' Tatarstana*, 8.6.2004). TNV was created by Farid Mukhametshin in 1999 (he remains its director) as a political movement for the expression and protection of the interests of Tatarstan. The current parliamentary leader of the group, also the Chairman of the parliamentary Committee on Economics, Investment and Industry, Marat Galeev, makes clear that TNV is not a party or a faction, but only a movement to advance Tatarstan's concerns within the party of power. For him, leaving United Russia would be tantamount to isolating Tatarstan's state interests, and abandoning all access to the levers of influence (Interview with Galeev, 2004).

The continued existence of TNV illustrates two things. First, since Mukhametshin and Galeev are prominent and active members of the parliament and political elite, the group's existence received at least tacit approval by republican leadership. Second, it questions the nature of Russia's party system and the extent to which United Russia, the party of power in Russia, is an effective vehicle for the integration of political elites. Regional candidate lists are established by regional branches of the party and subsequently approved in a party congress. But as Tatarstan's Minister of Justice points out, the party's central organs have the discretion to remove regional candidates from the list (Kurmanov, 2004). The party's centralisation is challenged by members of United Russia in Tatarstan. Following Putin's decision to abolish elections for regional governors, the Tatarstan branch

² Online sources accessed 15 August 2005: <http://www.assnat.qc.ca/fra/patrimoine/sieges.html> and <http://www.assnat.qc.ca/fra/patrimoine/votes.html>.

held a congress in November 2004 during which it strongly criticised the reform and called on Putin to amend his proposal (RT, 14.11.2004). The lack of responsiveness by the centre prompted Shaimiev, who is also the Secretary of the party's General Council, to call for a greater role of regional branches and increased attention by the party's central bodies to the opinions and suggestions which are made by the regional branches (TBDR, 15.11.2004). The absence of a means to represent republican interests *qua* regional or national interests within the centre is a factor which provokes resentment.

If in a democratic state the national interests of Russia's peoples are not given consideration, we end up with a time bomb. This feeling is especially strong in Russia's republics. Our task is to defend our interests so they are heard. This does not mean that our interests and positions must be adopted. But nevertheless, our voice must be heard (Shaimiev in RT, 20.1.2005).

For Iskhakov, the absence of national parties poses a long-term problem of "how to represent national interests within legislative institutions" (Interview with Iskhakov, 2004). As the debate over Russia's language law and the prohibition of Tatarstan's transition to the Latin script demonstrated, the neutrality of Russia's federal political parties was severely questioned: "From where does the State Duma decide to dictate its will to all the peoples of Russia?" (Valeev in V&D, 7.5.2002). The lack of institutionalised presence of nationalities within political institutions exacerbates the reliance on intergovernmental mediation. If the Federal Assembly cannot be counted on to take "impartial" decisions, such as on the Latin script, leaders in Tatarstan are likely to rely much more on intergovernmental mechanisms to ensure their interests and concerns are respected.

Within Tatarstan a similar dynamic has appeared. While Shaimiev has reiterated the importance for Russia's nationalities of having a voice at the centre, the consolidation of the republican elite has prevented the expression of difference within the republic itself. The political situation in Tatarstan is characterised by the stability of the governing elite, and particularly its consolidation around Shaimiev (Interview with Faroukshin, 2004). Most of the leading figures, such as Shaimiev, Tatarstan State Council speaker Mukhametshin (who was formerly Tatarstan's Prime Minister) have been in place since the late *perestroika* era. Control over the political agenda is provided by "the corporate solidarity of the elite, a sturdy and indivisible electoral machine, and the appointment system of local chief executives" (Matsuzato, 2001: 72). The continuity of elites has built mutual understanding and compromise between them, and since the electoral machine is monopolised by Shaimievites, "those who defy the republican leadership are quickly marginalised" (Matsuzato, 2001: 52).

Shaimiev and the republican leadership do not face a substantial opposition, and particularly little nationalist opposition. Although nationalist groups, such as the TPC and

Ittifak continue to exist, they have little overt influence. For Khakimov, “the nationalists played their role, many of their demands have been realised: we have Tatar schools, there are Tatar-language media, we held the referendum on sovereignty” (Interview with Khakimov, 2004). The republican elite co-opted much of the nationalist agenda, and many of the individuals involved in nationalist mobilisations in the early 1990s accepted positions within state institutions or left the movements (Ovrutskii, 2000; Interview with Khakimov, 2004). Consequently those nationalist organisations that continue to exist are “very weak, with little material support and even less ability to receive support” (Interview with Iskhakov, 2004).

This consolidation has also affected the ability of Tatarstan’s Russians to secure a voice in the political process. Aleksandr Salagaev, head of Tatarstan’s Russian Cultural Society (ORK), remarks that since 1990, political and economic upward mobility in the republic depends in great part on nationality (Interview with Salagaev, 2004), and “on the support of relatives and friends which are members of an elite group” (Salagaev and Sergeev, 2004: 174). There is no group within Tatarstan’s parliament that addresses the concerns of Russians (Interview with Iskhakov, 2004). Salagaev indicates it required an intervention by Putin to prompt Shaimiev to follow-up on a number of the ORK’s concerns, such as the availability of Russian-language gymnasia in the republic and protection of religious monuments (Interview with Salagaev, 2004).

The lack of internal political dynamism in Tatarstan has limited the appearance of nationalist groups and of an electoral dimension similar to Quebec’s. The absence of competition has increased the leadership’s room to manoeuvre and ensures that it can deal with Moscow largely on its own terms. However, the lack of representation of nationalities’ concerns points to a wider institutional lacuna. The persistence of TNV and calls by Tatarstan’s United Russia members for increased responsiveness to regional demands illustrates the political and party system does not currently provide a mechanism for the aggregation of their particular interests. Moreover, the institutional weakness of Russians in Tatarstan’s parliament leads to a polarisation of Russians’ and Tatars’ positions. Shcheglov points out that increasingly, Russians view republican (e.g. *Tatarstan*) institutions as defending Tatar interests: for him the Tatarstan Ministry of Education is more akin to the Ministry of Tatar education, etc. (Shcheglov, 2004) Although they remain stable, inter-ethnic relations in Tatarstan may suffer from the lack of responsiveness and voice within republican bodies of power. The lack of voice resulting from the managed democracy, which is increasingly characteristic of Russia, creates the potential for future resentment and instability. Quebec and the institutionalised presence of sovereigntist parties within federal and provincial legislatures may be at the other extreme, as representation facilitates a

permanent politicisation of the Quebec question, but representation of national interests is a crucial avenue for the expression and democratic evolution of views and platforms.

Since Shaimiev and the current elite manage to control the expressions of Tatar nationalism within the republic and address Moscow on their terms, leadership change in the republic and the resulting reconfiguration of the elites and structures, would undoubtedly affect the stability of the current patrimonial arrangements. Moreover, since the federal president is now responsible for choosing the leader of Tatarstan, a measure which was adopted to increase stability and federal control may foster increased nationalist mobilisation or instability should Putin select a leader who possesses less clout in his relations with Moscow or is less willing to protect the *acquis* of the Tatarstan model. Managed democracy, while it has provided stability, has not established a basis for democratic expression and adjudication of competing demands. The lack of voice – of Tatarstan within federal parties and the federal legislature; of Tatar nationalists and Russians within Tatarstan’s legislature – only exacerbates the place of intergovernmentalism in the adjudication of claims and issues of nationalist concern. The generational change looming in the Tatar elite in the next ten years will likely strain these relations further.

Conclusion

The comparison between Tatarstan and Quebec shows that in both cases, the accommodation of multinationality is facilitated less by a consensus over the constitution but by processes of intergovernmental negotiation. In both cases, the constitution does not provide the degree of recognition or jurisdiction which Quebec’s and Tatarstan’s leaders deem they require. Russia has been relatively more successful than Canada at addressing Tatarstan’s claim for recognition with the bilateral treaty, which provided important *de facto* recognition of Tatarstan’s status claims. This mechanism helped bridge the constitutional conflict. In Quebec, informal attempts at recognition have been unsuccessful in addressing the underlying constitutional divergences. Intergovernmental accommodation and agreements are hallmarks of both systems.

Bilateral cooperation and negotiation have engaged the parties in ongoing processes of accommodation which contribute to lend stability and continuity to the federal-regional relationships. In both cases, language policy is an example of successful federalism: both Tatarstan and Quebec possess the autonomy they require, within their specific constitutional contexts, to enact language policy. Tatarstan’s success in implementing language policies is evidence that federalism and regional autonomy can work in Russia. Analysis of both cases demonstrates that federal design can and does promote stability even in the absence of consensus on the constitution. The persistence of the constitutional

question need not lead to paralysis, as Courchene illustrates in his description of Canada-Quebec relations: they are “not flashing red, not flashing green, [but] remain forever amber” (Courchene, 2004: 1).

In both cases, I found a comparatively greater reliance on inter-state federalism than on intra-state federalism. This, consequently, puts a premium on intergovernmental relations as the main vector of multinational accommodation, accentuating the competitive relationship between governments and their respective constitutional positions. In this regard, the comparison generates two findings. First, the intergovernmental and sometimes *ad hoc* nature of accommodation does not necessarily weaken federal design. On the contrary, in both cases intergovernmentalism has institutionalised ongoing political processes which create capacity to overcome underlying constitutional disagreements.

Second, the resilience and legitimacy of Canada’s “federative superstructure” demonstrates the supporting role played by common rules of the political game. Although Quebec continues to challenge the constitution, the acceptance of these “rules” – the legitimacy of the courts, of the institutions of democratic representation and political competition – lend stability to the processes by which Quebec articulates its claims and by which accommodation occurs. In Russia’s relation with Tatarstan, one key development since 1993 has been the gradual acceptance of the republic’s place within Russia’s federal design. Although the fundamental constitutional conflicts remain unresolved, the kind of claims advanced by Tatarstan no longer challenges the integrity of the Russian state but the nature of its federal system. Intergovernmental relations have successfully fostered a stable relationship between Moscow and Kazan, albeit one which is exceedingly reliant upon elites’ readiness to continue to engage each other and which is increasingly dissociated from democratisation: claims to the rule of law are not based on a democratic regime type. As I have attempted to show, the relative weakness of supporting institutions – courts, the territorial structure and democratic representation – are elements which presage the potential for future instability. Increasingly, it appears that it is not the lack of consensus on the constitution which is most problematic in Tatarstan, but the ongoing under-development of supportive rules of the political game.

Chapter 9. Conclusion

In this thesis, I sought to test theoretical propositions about the role of federal design in the accommodation of the challenges posed by multinationalism. By employing case studies of two of the world's largest and most important federations, Russian Federation and Canada, and two of their most problematical units, Tatarstan and Quebec, my goal was to examine the nature of the constitutional disagreements – the stateness dilemmas – and analyse the institutions and mechanisms which have been developed to govern these disagreements. The general question addressed in the thesis was the following: **How does federalism and federal design come to terms with the existence of multinationalism?** In the cases of Tatarstan and Quebec, I viewed multinationalism as expressed by two kinds of claims: for recognition and jurisdiction. The federal constitutions of Russia and Canada are challenged as not providing sufficient constitutional recognition of the specificities of Tatarstan and Quebec, or sufficient guarantees of their jurisdictional autonomy.

The capacity of federal design to come to terms with these demands depends on the nature of the claims. Indeed, claims for increased autonomy are more easily accommodated within existing federal institutions than claims for secession. Particularly in the case of Tatarstan, the evolution of the nature of its demands vis-à-vis the centre is illuminative. The situation in the early 1990s was characterised by discourse in which Tatarstan's leaders positioned the republic at arms' length from Russia and advocated a confederal, bottom-up relationship with the federal government. Tatarstan's latest constitution, in contrast, clearly positions the republic within the federal institutional framework; its leaders advocate not a confederal relationship but for the need for more federalism in Russia, particularly greater protection of the republic's jurisdictional autonomy. In Quebec, demands for constitutional recognition have spurred several attempts at amending the federal constitution to take account and reflect Quebec's status. Yet recent political history in this regard is one of failure; Canada's federal and provincial governments have been reluctant to enshrine such a right in the constitution, particularly for a right to withdraw with compensation from shared programmes in areas of provincial jurisdiction. This demand has been accommodated on an *ad hoc* basis. Consequently, the ability of federal design to come to terms with multinationalism in these two cases is one of mitigated success. Tatarstan's and Quebec's constitutional disagreements persist, notwithstanding efforts made to accommodate their demands. In other words, the 'stateness dilemmas' are intact.

The next questions sought to identify the processes in place to respond to these ongoing constitutional disagreements. **How does federal design address Tatarstan's and Quebec's demands for constitutional change? What is the role of federal practice in the promotion of stability of federal institutions?** The failures to address the claims for recognition and jurisdiction in the constitution gave rise in both cases to mechanisms of intergovernmental regulation and informal accommodation. The 1994 bilateral treaty between Russia and Tatarstan as well as the intergovernmental power-sharing agreements were crucial instruments. Moreover, these intergovernmental agreements have helped institutionalise and routinise processes of negotiation between Kazan and Moscow, fostering greater stability and predictability in the bilateral relationship. Yet, as I examined, many elements of Tatarstan's status claims have been ruled unconstitutional by the courts, and many of the powers delegated in the intergovernmental agreements have faded. The insistence of Tatarstan's leadership for a new treaty, even if it devolves little if any specific competences to the republic, is evidence of the continuing importance of intergovernmentalism as a means of accommodating Tatarstan's status claims. In addition, the republic's demand for 'real' federalism in Russia and increased protection of regional policy autonomy is evidence that Russia's federal design continues to be challenged. In comparison with Canada, the treaty has proven more effective at responding to Tatarstan's demand for recognition than the measures adopted to respond to Quebec's claims. Intergovernmental agreements, such as the ones in the field of immigration, provide *de facto* recognition of Quebec's specificity and of the legitimacy of its objectives to recruit and integrate immigrants into its French-language culture. However, it appears unlikely that the province's claim for constitutional recognition will be resolved in the near future. The ongoing accommodation of both Tatarstan's and Quebec's constitutional disagreements are supported mainly by intergovernmentalism. Indeed, inter-elite relations, rather than formal constitutional change, have appeared as the main mode of accommodation. The stability of accommodation processes relies on the role of elites and their willingness to continue to engage one another.

The comparative dimension of this study sought to assess **what Canada's experience contributes to our understanding of federalism in Russia.** The analysis provides clues as to the potential for ongoing accommodation of Tatarstan's claims. Two elements deserve to be mentioned here. First, as I found in the previous chapter, although Canada is characterised by the persistence of its stateness dilemma regarding Quebec's constitutional disagreements, the mechanisms of accommodation are underpinned by a consensus on the 'federative superstructure' – for instance the courts, rules of democratic competition and relative stability of the federal state structure. Although consensus on the

constitution may be lacking, particularly in terms of Quebec's demands for recognition and jurisdiction, the stability and legitimacy of the institutional superstructure underpins the processes of intergovernmental and inter-elite negotiation and accommodation. The debate surrounding the Supreme Court of Canada's Reference on Quebec's Secession (SCC, 1998) illustrates the importance and legitimacy of the court's role. However, the federal government's subsequent decision to enact the Clarity Act (2000), which creates a legal threshold for the federal government's recognition of the legitimacy of a future referendum on Quebec's secession, illustrates the lack of consensus on the political rules which will underlie the struggles surrounding the results of a future referendum on sovereignty. Quebec's leaders greeted the Act as constraining its citizens' right to self-determination. As then Minister of Intergovernmental Affairs, Joseph Facal, stated, "By adhering to this federation, the people of Quebec neither renounced its right to choose another political status nor sought to subject its destiny for all time to a Parliament of which the majority of members originate from outside Quebec" (Evidence, Legislative Committee on Bill C-20, 24 February 2000). A future referendum would likely be the object of further court action and political challenges, the resolution of which will ultimately depend on the role of the federative superstructure as well as leaders' acceptance of the results.

The discussion of the legitimacy and role of institutions that underpin the practice of federalism, and particularly inter-state federalism, serves to highlight what is perhaps an over-reliance in Russia and Tatarstan on agency, and comparatively less consensus on the nature of the federative superstructure. On issues of republican status, the legitimacy of Russia's Constitutional Court continues to be challenged by Tatarstan. The lack of representation of national concerns within the political institutions at the centre and republic place considerable onus on inter-elite accommodation as a means to voice and address these demands. The bilateral relationship between Moscow and Kazan rests on the stability and consolidation of the political elite. Because of the reliance on inter-elite accommodation of Tatarstan's status claims, increased competition or leadership change carries the potential to disrupt the existing balance and jeopardise the existing processes of intergovernmental mediation. The prominence of inter-state federalism in the regulation of Tatarstan's and Russia's relationship places the future stability of its federal design on the willingness and commitment of elites to continue to accommodate one another, and is based on a comparatively weaker role of a federative superstructure and less confidence in the rules of the political game.

The second element of the comparison with Canada concerns the perception mentioned in Chapter 1 describing Tatarstan as the Quebec of Russia. Although both Tatarstan and Quebec voice similar claims for recognition and difference, the persistence of

Quebec's sovereignty movement is a crucial difference. This politicisation and the presence of sovereignist parties in Ottawa and Quebec perpetuate the political and partisan dynamic of Quebec's constitutional disagreement. In Tatarstan, on the contrary, the experiences of the 1990s and particularly since 2000 demonstrate that the nature of the republic's claims has evolved since it declared sovereignty. Tatarstan's leaders no longer adamantly claim an arms' length relationship. Their persistent demands for a status of 'united with Russia' are articulated within Russia's federal design. Thus, the republic constitutes less of a threat to the integrity of the Russian state. The bilateral treaty was particularly useful in addressing the claims for status, and although the constitutional disagreements remain, they are in a state of arrested development. This is reinforced by the lack of elite turnover and consolidation of political leadership at the centre and in the republic. Russia's federal system is not imbued with the same degree of political uncertainty regarding Tatarstan's future status. Consequently, I find the expression Quebec of Russia applies to Tatarstan only insofar as it identifies the republic as a national component of a multinational federation whose constitutional status continues to be the object of political challenges.

The Prospects of Federalism in Russia

Analysts of Russian federalism have tended to view it as a federation in form more than function (Herd, 1999: 263; Kahn, 1999: 277; Jackson and Lynn, 2002: 92-3; Petrov, 2004: 213). Particularly following Putin's federal reforms, which have given rise to a more centralised, if not unitary, interpretation of the federal constitution at the expense of its more federative provisions (Hughes, 2001a; Hughes, 2001b; Sakwa, 2004: 89-90), debates continue on the nature of federalism in Russia. For Ross (2002: 7), the absence of a democratic political culture in Russia hinders the development of "real" federalism: "Russia is a federation without federalism". Although the rise of unitary tendencies and the managed quality of Russia's democracy are worrisome trends, my study of Tatarstan shows that federalism in Russia is possible and desirable. Kurashvili notes that federalism can exist without democracy (Kurashvili, 2000: 23). Tatarstan's leadership is a consistent advocate of federalism in Russia: its demands for cooperative federalism, increased policy-making autonomy and for a renegotiated bilateral treaty promote an ideal of federal government. The republic's language policies are convincing evidence that federalism can and still does exist in Russia; it is more than federalism in form only. Indeed, autonomy over language policy has fostered a context conducive to the protection and development of minority language and culture in the republic. The way in which minority rights and diversity are protected is an indicator of the democratic qualities of Russia's political regime. Although tensions exist between republican and federal governments, Tatarstan's success in the

implementation of language policy points to the existence of a functional federalism in Russia. While federalism can exist without full-fledged democracy, the diversity inherent in the Russian state makes it unlikely that democracy in Russia can exist without federalism. Putin's centralising reforms cast doubt on the resilience of democratic rule in Russia.

Accommodating the 'Stateness Dilemma'

The comparison between Tatarstan and Quebec highlights some findings regarding the nature of 'stateness dilemmas' in multinational federations. Canada and Quebec have been unable to resolve their constitutional disagreement. However, the persistence of the stateness dilemma, the absence of a consensus on the constitution, has not led to the paralysis of the federations. Transitologists' impulse to devise a constitutional and institutional solution to eliminate the stateness claims and foster a consensus on national unity underestimate the ways in which informal accommodation, intergovernmental and inter-elite mediation can contribute to help promote governance capacity and stability. One contribution of this thesis is to show that the absence of constitutional consensus does not necessarily lead to state instability; it can be bridged. The empirical analysis fleshes out some of the limits inherent to the means used to bridge these constitutional disagreements; the reliance on inter-state federalism and inter-elite negotiation may not benefit from robust enough an institutional underpinning. The existence of Tatarstan and Quebec within the Russian and Canadian federations, as well as the persistence of their claims, are a condition of politics in these states rather than obstacles to stability which need to be resolved. Although the politicisation of their demands may exacerbate the paradox of multinational federalism, it does not necessarily hinder stable outcomes. The absence of consensus on the constitution, therefore, becomes an ongoing feature of the politics of multinational federalism, the purpose of which is focused perhaps less on solving the disagreement than identifying means to support their ongoing accommodation.

Agreement on the rules of the game, posited to be a pre-requisite of stability, is a factor of successful accommodation. Keeping this metaphor, the condition of politics in Russia and Canada has made it exceedingly difficult to define the format of the game which pleases all participants. The appearance of new players changes the nature of each side's field position and demands. As long as the constitutional entrenchment of claims for recognition and jurisdiction – the trophy – is out of reach, players continue to play the game. The paradox in the cases of Quebec and Tatarstan is that while leaders in both cases continue to aim for the trophy and demand constitutional change, it appears unlikely the federal and other component governments will accede to these demands. Thus, although the finality of the game and its rules may be in a state of flux or uncertainty, the game –

accommodation and politics – continues. Although the rules are sometimes bent and ambiguities overlooked, sometimes enforced more stringently, the stability of the game depends on players' willingness stay on the field, and on an *accoutumance* to the process and eventually to the overall rules of the game. Governance capacity emerges as part of the process itself – the politics of multinational accommodation – rather than solely from establishing a prior consensus on the rules and purpose of the game.

For Gagnon and Erk, it is the ongoing character of accommodation that is the pre-eminent characteristic of multinational politics. “When there are two divergent and essentially incompatible conceptions of the political community and, by extension, legitimacy, there is no magic formula to solve the problem. The way forward, therefore, lies in the acknowledgement of the permanence of this disagreement” (Gagnon and Erk, 2002: 321). The study of federal design and multinational accommodation as open-ended processes is a fruitful avenue of exploration. This thesis confirms the Hughes' and Sasse's findings that successful federalisation and accommodation of multinationality do not guarantee that successful democratisation will follow (Hughes and Sasse, 2001: 229-33). In Russia and Tatarstan, the stability of the federal regime remains distinct from the democratic quality of this regime.

This thesis demonstrated that the politics of accommodation in Quebec and Tatarstan, though they do not solve underlying constitutional disagreements and the stateness dilemma, nevertheless create a degree of governance capacity. Yet as I show, this capacity is underpinned by an acceptance of the legitimacy and desirability of the institutions of politics – the federative superstructure. Many studies of multinational accommodation (for instance, Tully, 1995; Gagnon and Tully, 2001; Requejo, 2003; Tully, 2005) are based on a limited number of cases such as Canada, Spain and Catalonia, Belgium, and Scotland. This thesis shows that these theories are helpful to make sense of the Russian case but with one major caveat: the assumptions regarding the institutional basis of accommodation (that which facilitates the “acknowledgement of disagreement” (See above, Gagnon and Erk, 2002: 321)) must be more explicitly acknowledged. This basis is constituted by institutions, elites, and on an overarching consensus on the rules of the political game. Theories of multinational accommodation would be strengthened by their application to a greater number of cases and contexts, with an eye to identifying in greater detail the variety of roles played by elites and institutions (formal and informal) that facilitate or hinder accommodation.

A Future Research Agenda

In this thesis, I concentrated mostly on institutional factors, signalling the importance of elites in processes of accommodation. One dynamic which was left aside is the question of the motivation of political leaders. It would be instructive to further probe the factors which prompt elites to engage one another. Having a better idea of what motivates elites – whether it is out of self-interest; to ward off secessionist threats; gain or consolidate power; or a genuine desire to accommodate and engage in dialogue about difference – is likely to help in assessing the resulting stability of the accommodation processes. Indeed, I would surmise that accommodation which is the result of elites' desire for self-preservation would be comparatively less stable and durable than if it based on a genuine commitment to justice and recognition of difference. Such a shift in analysis would further highlight leaders' roles and their motivations. Moreover, integrating the issue of elite interests, particularly economic and material interests in the case of Tatarstan and Russia, might reveal additional factors which keep leaders at the negotiating table.

My discussion of the effectiveness of Russia's federal design at providing a basis for the accommodation of multinationalism was limited to the case of Tatarstan, a prominent case of successful accommodation in literature on post-Soviet transitions and Russian federalism. Yet the case of Chechnya is a glaring example of the opposite. Such a counter-example helps demonstrate that the nature of elites' demands – Chechnya's claim for outright independence rather than 'sovereignty' – as well as the relative willingness of leaders to engage in accommodation, are key elements in the creation of capacity for accommodation. Its also helps contextualise the results of the present study. Although Quebec and Tatarstan are viewed as persistent problems within the Canadian and Russian federations, they are cases of non-violent constitutional crises, where the nature of the claims and the political and institutional responses have facilitated peaceful solutions and accommodation. These findings invite further research and cross-case comparisons within Russia, particularly between Tatarstan and other republics. Does the Tatarstan model of federal-regional relations continue to play a role in the configuration of the relations between the federal and governments of other federal subjects? Gorenburg's (2003) comparative study of nationalist mobilisation in Russia's republics identified the bases for successful nationalist movements during the early 1990s. Useful would be similar comparative studies of reactions in the republics to Putin's federal reforms, in order to see how the bilateral treaties and intergovernmental mediation, the hallmark of the Yeltsin administration's approach to Russia's ethno-territorial subjects, have fared. Importantly,

such studies could generate evidence of whether the mode of accommodation prevalent in Tatarstan is unique to the republic or practiced in other cases.

Minority language rights are another area of prospective research. There is a gap in scholarship and empirical studies on the way in which language rights are protected in Russia's regions. The constitutional status which facilitates the protection of language in Tatarstan serves to restrain it in others. The constitutional asymmetry created by article 68 enable Tatarstan to adopt measures to protect the Tatar language is used in other republics as a means to block the recognition and protection of minority language rights. Indeed, in many republics, constitutional autonomy in the field of language does not guarantee the protection of language rights of the titular group let alone those of minority or non-titular groups within the same territorial unit. The federal government has adopted a personal language regime, guaranteeing a right to members of linguistic minorities to use and protect their language. But in regions such as Bashkortostan, this right is often subject to limitations by a territorial language policy adopted to give preferential treatment to a titular ethnicity. The analysis must be extended to other republics, and importantly, to cases of non-territorialised linguistic minorities in order to assess the extent to which Russia's federal design and federal practices help or hinder the protection of minority rights and languages.

In conclusion, this thesis found that 'successful' accommodation of multinationalism in Russia and Canada is contingent on several factors: the nature of Tatarstan's and Quebec's claims for recognition and jurisdiction, the ability of federal design to respond to these claims, and political elites' willingness and ability to engage one another to bridge and accommodate conflicting demands. The challenge is to keep developing and strengthening the institutional basis and the goodwill and mutual understanding on which accommodation rests. In a nutshell, the findings are twofold. First, process matters: federal institutions are supported and strengthened by the role and activities of political elites. Asymmetry is not unstable *per se*, as it was useful in these cases to establish a process of ongoing accommodation and negotiation. Second, this process helps reinforce the regime in place, but as the examination of the case of Tatarstan shows, it is not necessarily conducive to a consolidation of democratic governance. In terms of possible directions of federal development in Russia, although Putin's reforms centralised power, they have not led to the development of greater institutional solidity. The fact that federal design and federal practices rest on a relatively weak institutional foundation serves to undermine their legitimacy and prospective endurance. For the time being however, multinational federalism, although it can be a risky and uncertain venture, has proven capable in Russia and Canada to provide a framework for stable governance and outcomes.

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