Constitutions in Russia are fated, or so it seems, either to be flouted (in the spirit if not in the letter) or to be fraudulent. After years of fraudulence, the post-Soviet period has brought a return to flouting, and with it a strong sense of déjà vu. Nicholas II dissolved the Duma in 1906, and in 1907 he not only did the same again but changed the electoral system in order to avoid further confrontations. Yeltsin dissolved an obstructive Supreme Soviet in 1993 and then replaced not the electoral system but the Constitution itself, substituting, with the voters’ apparent approval, one which made president rather than parliament supreme within the political system. After its seven-decade Soviet detour, the country still appears to be stuck, in this respect, with the problems of the early twentieth century. But has Russia really made no progress towards constitutional government through the travails of the twentieth century?

First, a few words about the Constitutions themselves. The inadequacies of that of 1906 hardly need to be laboured. Yet Nicholas II made no great claims for it. Crucially, he refused even to acknowledge that Russia now had a Constitution, for he and his advisers knew perfectly well that a Constitution imposed limits and accountability upon the ruler. Since he insisted on retaining ‘the supreme autocratic power’, there could be no Constitution: there had simply been certain modifications to the Fundamental Laws. In the light of what was to happen later, liberal accusations that he had fobbed the country off with a ‘sham’ constitutionalism seem wide of the mark. Nicholas’s constitutional provisions claimed no more than they delivered. The real ‘sham constitutionalism’ came with the Bolsheviks.
Successive Soviet Constitutions were decorative and deceptive façades: they neither described the real power-relationships nor did their prescriptions do anything to narrow the gap between appearance and reality. True, now at last the country did have an acknowledged Constitution; but, while gaining a Constitution, it had moved still further away from constitutionalism – in other words, from government that was limited, accountable, open, and in strict accordance with the principles and practices laid down in a constitutional charter. The successive Constitutions ascribed supreme power to the legislature, which exercised it on behalf of, and was accountable to, a sovereign people. The reality which these airy fantasies all too inadequately hid was, of course, that real power was held by an unaccountable few and for quarter of a century by one person alone; and not until the 1977 Constitution was the Communist Party acknowledged to be ‘the guiding and directing force of Soviet society’.3

The Constitution which emerged in 1993 in the wake of the battle between president and parliament was an immense improvement on its predecessors. The sham element disappeared, and the powers now transferred to the presidency were stated in clear constitutional formulas. The very fact of transferring power from parliament to presidency might, of course, be seen as a retrogression. Yet if the president now had the upper hand, parliament by no means went back to its pre-perestroika state of impotence. Yeltsin’s powers hardly compared with those Nicholas II had from 1906, still less with the de facto powers of Soviet leaders. Moreover, the introductory sections of the 1993 Constitution – those concerned with fundamental values rather than institutions – marked a great leap forward in relation to previous Russian Constitutions. In their different ways, all its predecessors had treated the state as the embodiment of supreme value and made it the more or less unlimited arbiter of its subjects’ fates. This Constitution, by contrast, was shot through by a spirit of liberal individualism. In accordance with Article 2, ‘The person, his rights and freedoms, constitutes the highest value’. Articles 17 and 15 then declared that these rights and freedoms were inalienable and belonged to everyone from birth: moreover, the Russian legal system now acknowledged universally recognised principles and norms of international law. Previous Russian Constitutions had put a heavy emphasis on the citizen’s obligations towards the state. This one reversed that emphasis.