

Benjamin Constant and Carl Schmitt Go to Russia¹

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Abstract. The paper discusses the constitutional theories of Benjamin Constant and Carl Schmitt on the role of sovereign power. It then discusses the Russian 1993 constitution to show that in this respect it is closer to Schmitt's ideas rather than Constant's. Finally, the understanding of the role of supreme power in the current Russian transformation by the Western advisers is criticised and some speculative thoughts on Russia perception of authority are offered.

JEL classification: K10, H10, P50.

1. Introduction

Russia's latest constitutional efforts provide insights into the mysterious ways of liberalism and democracy.² The fundamental problem of liberalism is the justification of authority. Part of the problem is the issue of sovereignty, but perhaps the larger part of the problem is rational authority in general. These problems have been discussed endlessly and the doctrines of Benjamin Constant and Carl Schmitt stand out in terms of clarity and sharp disagreement. Constant may be seen as a quintessential liberal,³ while Schmitt's doctrine is generally recognised as one of the most penetrating criticisms of liberalism,⁴ especially where the theories of parliamentarism and sovereignty are concerned. It is interesting to see how their theories on the foundation and justification of supreme authority fare in the ongoing constitutional transformation of Russia. The work of these two authors is of especial interest for three reasons:

First, they both made the study of rational authority and specifically of supreme authority central to their theories.⁵

Second, both dealt with situations of political transformation, in Constant's case of post-revolutionary France and in Schmitt's case of post-Weimar Germany (the latter covers both a pre-revolutionary and a post-revolutionary situation).

Third, both authors had ambiguous relations with strong political leaders: Constant with Napoleon, Schmitt with Hitler. This underlines the problem that authority holds a certain attractiveness for some people, who would like to be advisors to those in power, especially in times of transformation and reform.

In this article, I will present short versions of some important teachings of Constant and Schmitt, compare them to each other, and use the conclusions thus reached to assess the current constitutional provisions and dilemmas in Russia. I will deal only with the constitutional role of the supreme authority and leave all the other constitutional and political problems aside. I will conclude with a comment on the Russian idea of authority and on how it is perceived by advisors from the West. The aim of the paper is to develop a criterion that can illustrate the role that authority plays in Russian constitutional choice.

2. The Neutral Power

“(I)nstitutions depend on times much more than on men.”

(Constant, *Principles of Politics*)

I will start with a brief discussion of Constant’s constitutional ideas focusing only on how he justifies the supreme power and the prerogatives of a constitutional monarch or president.⁶

For Constant, the supreme power is a neutral, not a sovereign power. By a neutral power, he means a balancing power, one that acts to preserve the balance of powers in a state. It is needed because this balance is required by “the spirit of the times” which regards individual liberty in the highest esteem.⁷

Every constitution, Constant maintains, works for liberty, otherwise it is not a constitution. However, modern constitutions work for individual liberty. This is achieved through the division of power. Maintaining a balance between these powers is a necessary condition, without checks and balances, democracy can lead to instability of one kind or another. The separation of powers provides the checks, and the balancing of powers is entrusted to the neutral power of the king or the president, who at the same time, is the supreme power in a state.

What is the supreme power authorised to do? The system that inspired Constant was largely a generalised version of the Westminsterian parliamentarism. He had in mind a constitutional monarchy and a representative democracy with two legislative houses (one directly elected, the other filled by the aristocracy), a responsible executive branch, and independent courts. These powers were to be competitive, not subordinated to each other. The king or the president (it is not at all clear how the latter was to be elected, I will say more on that below) was left with:

Noble, sublime prerogatives. . . To them belongs the right to pardon, a right of an almost divine nature, which repairs the errors of human justice, or those too inflexible rigours which are also errors. To them belongs the right to invest prominent citizens with the lasting distinction by placing them in that hereditary magistrature which combines the glory of the past with the solemnity of the highest political functions. To them belongs the right to nominate the instruments of the law, to ensure that society enjoys public order, and innocent citizens security. To them belongs the right to dissolve the legislative assemblies and thus to preserve the nation from the aberrations of its representatives by summoning her to new choices. To them belongs the nomination of ministers, a nomination which directs towards the monarch the gratitude of the nation when the ministers acquit themselves worthily of the mission he entrusted to them. Finally to them belongs the distribution of graces, of favours, of rewards, the prerogative to repay by a look or a word a service rendered to the state, a prerogative which confers on monarchy an inexhaustible treasurehouse of knowledge, which turns of self-interest to his service, and profits from the ambitions of others (Constant 1988: 193).

Thus, the supreme power should be authorised to:

- a. dismiss the lower house of the Parliament and call the general elections;

- b. influence the structure of the upper house by creating new peers;
- c. nominate the ministers and accept their resignation;
- d. nominate the judges;
- e. grant pardons;
- f. show appreciation.

Constant does not mention any authority that the supreme power has over the public opinion,⁸ only that the supreme power is not to be bound by it. Thus public opinion is not to be restrained in any way: the freedom of thought and that of the press are complete. Indeed, their role highlights the essential characteristic of Constant's doctrine: politics is about discovering the public interest through discussion and compromise, which the separate powers are then entrusted to turn into law, policy, and judicial judgement. In this sense, the separate powers respond to, though they are not responsible for, the public opinion which to some extent expresses and represents the general will.

But the public opinion even if discernible and taken to represent the general will, does not rule. Clear constitutional provisions institutionalise the system of representation and responsibility. The lower house is elected in general elections; the upper house is not elected at all; judges are elected for life; ministers are responsible to the Parliament. Thus, the public opinion may express, accurately or not, the general will, but the elected house in the Parliament expresses a compromise of particular interests, while the other powers respect the (constitutional) principles that no will, however general, can abrogate.⁹

Now, the crucial point: *The supreme power is not responsible for anything at all.*¹⁰ Constant had in mind a constitutional supreme power that was neutral in the sense that it did not partake in government, but only safeguarded the balance of powers. The constitutional monarch or president is not a sovereign. He is not a defender of the public interest (indeed he is free to go against it). He is neither a revolutionary nor a liberator, neither a dictator nor an emperor (a tsar), neither a transformer nor even a very timid reformer. He indeed has no legislative or executive powers, i.e., responsibilities. His only task is to see to it that the other powers do not grow out of proportion in strength and do not become irresponsible. Thus, it truly is a neutral power.

A metaphor that might be useful to economists is that Constant treats the holder of the supreme power as if he were a Walrasian auctioneer. In Walras' pure theory of economics, the equilibrium prices are arrived at and kept there through the process of *tatonnement* (groping) that is guided by an auctioneer. The intuitive idea is that the prices are set at an auction. For an auction to be carried out, an auctioneer is needed. His is the neutral power. He neither buys nor sells. All he does is announce the bids as they are made. Essentially, the traders do business through him, that is, the active powers use the neutral power of the auctioneer to establish mutually acceptable prices—to arrive at an equilibrium.¹¹

The same is the case with Constant's supreme power. He does not determine the distribution of powers. He does not influence their division. He has none of their power. And he does not make coalitions with any of them. All he does is keep the balance of powers.

That is compatible with relevant authority. First, the supreme power has the authority to see to it that the powers are kept separate (this is similar to the anti-trust authority of

the government). Second, it can regulate the political game (mainly through the threat of calling for new elections). Third, it can influence the incentives (mainly through personal appeal).

For the last Constant himself can serve as an example. He was against Napoleon all his life, but was ready to serve under him when he called on him in the short period after he was able to return to power and before his final exile. Indeed, the details of his theory of neutral power were influenced by his relationship with the Emperor. So, the allure of the supreme power is very appealing.

Constant's neutral power can be seen to represent the individual who is making a constitutional choice. Then, as we know from social choice theory, he will choose a specific distribution of powers so as to avoid the instability inherent in any democratic decisionmaking procedure.¹² The particular arrangements are not important here. What Constant adds is a stabilising power that does not take part in the political life but, in a way, represents the original individual interest in stability. This is essentially the same as the role assigned to the Walrasian auctioneer (though, of course, there is the same problem of the election or the appointment of the auctioneer as well as of the supreme power).

How is the supreme power to be chosen? This touches on the thorny question of the relationship between liberalism and democracy. The constitutional state safeguards liberty, which requires the balance of powers equilibrated by the neutral power. Democracy, on the other hand, relies on the sovereignty of the people who choose those responsible for taking care of their affairs, that is, their representatives. Thus, if the holder of the supreme power is elected, he is an agent of the people and must be entrusted with some task, some positive, active power or responsibility. Even if his only task is to check the other powers and keep them in balance, being elected to perform this task, he would be competing with the other powers for the support of the public. That would destroy his neutrality, consequently the balance of powers also, and thus liberty. Democracy would conflict with liberty.

Constant had difficulties with elections in general.¹³ Elections can serve many purposes. He argued e.g. that a despot is better than an usurper, because the former, unlike the latter, is not elected. The usurper is like the despot in every respect, except that he induces the people to vote for him in order to acquire legitimacy. A despot, who either inherits his power or usurps it, reveals the ambiguity of democracy clearly when he asks the people to give him their vote. Because he thus uses the very mechanism of democracy against liberty.

How then is the problem of the selection of the holder of the supreme power to be solved? Constant seems to have argued that the problem can be side-stepped if, for instance, a monarch's or a president's powers were constitutionally circumscribed to being strictly neutral. Then, he implies, it does not matter how the supreme power is acquired, by birth or by poll, by adoption (as in the case of the Swedish king Charles XIV) or indeed by usurpation.

Constant envisioned a system of liberal democracy, where the constitution safeguards (individual) liberty, while democracy allows the people to use the active powers of the representative government in their sovereign interest as long as the individual liberties are not endangered. The neutral power is seen as the balancing power only.

3. The Exceptional Power

“Sovereign is he who decides on the exception.”

(C. Schmitt, *Political Theology*)

Constant's king or president is not the holder of the sovereign power, of any active power, or of public responsibility at all. The sovereignty rests with the people, but it is constitutionally constrained. This marks the difference between him and Carl Schmitt. For the latter, liberty is indecisive and thus cannot be the basis of sovereignty. Democracy is decisive, but here Schmitt agrees with Constant that in terms of representing public interest, there may be no fundamental difference between democracy and dictatorship. Thus, as sovereignty is meaningless without decisiveness, whoever makes the sovereign decisions (the people or the ruler) is the sovereign.

Which is the sovereign decision? For Constant, the sovereign is the one who decides in his own name which politically means the self-governing people. In other words, the sovereign decision is that which is made by the people. For Schmitt, the sovereign is the one who makes the sovereign decision. For this difference to have any substance, there has to be something specific about the sovereign decision. For both Constant and Schmitt, the sovereign decision is constitutional, because it is the constitution that declares who is to make what decision, including the sovereign one. But for Schmitt: *The decision is sovereign if and only if it is about that which is constitutionally exceptional.*

Thus, while for Constant, both the appointment of the sovereign and the sovereign decisions are determined by the constitution, for Schmitt only the former but not the latter are decided by the constitution. For him the sovereign decision is one that is an exception to the constitution.

Schmitt's theory of sovereignty is not easy to understand. The key to it is his idea of the exceptional. The exception that he has in mind is not the one referred to when we say that something is an exception to the rule. These exceptions can be covered either by auxiliary rules or by enumeration. For instance, in many languages that is how the irregular verbs are treated.

By exception Schmitt means something that is similar to a precedent. However, the precedent is often derivable from the existing rules. Thus, Schmitt has in mind a precedent that is to be made in what Dworkin (1986) calls “hard cases.” These are cases that are not covered by the existing rules and are thus a true exception. Of course, once they are made, they are constitutive of a rule (or a set of rules).

Schmitt has in mind such constitutional exceptions. In his view, they always exist. Not because there is some imperfection or incompleteness in the rules, but because of the nature of the political life where there are always threats to the security of the state and thus there is a need for a sovereign decision. The decision is that of a sovereign power and cannot be, by definition, obliged to follow any rule or set of rules. Therefore, if rationality is defined in terms of congruence with certain rules, the sovereign power is essentially irrational.¹⁴

That is where the difference between Constant and Schmitt lies. Constant's whole thrust was to devise a constitutional order for normal times, those that exclude or constrain the exceptions. If exceptions dominate, this permits arbitrary power. Schmitt, on the other hand, saw every constitutional provision from the point of view of the exception. Constant wanted to safeguard liberty in post-revolutionary circumstances; Schmitt wanted to found security in

unstable pre- or post-revolutionary situations. Constant dreaded the tyranny of the arbitrary power, Schmitt relied on the arbitrary sovereign power to deter and repel the enemies of state's security. One can hardly find a better criticism of Schmitt's sovereign power than that in Constant's treatment of usurpation;¹⁵ however, Schmitt's criticism of the indecisiveness of liberalism strikes at the essence of Constant's neutral power (see Schmitt 1985b).

The main problem with Constant's neutral power is that it has no responsibilities; the main problem with Schmitt's exceptional power is with determining what its responsibilities are? To answer that question, Schmitt developed a political theory that is even more controversial than his theory of sovereignty. He argued that the main categorical distinction in politics is that between friend and enemy (foe) (see Schmitt 1933 and 1976). The legal system works for and obliges those who have put aside their animosities, i.e., those who are political friends. Beyond that, sovereign power reigns. It cannot be legally restrained, because its use is prompted by the existence and the actions of the enemies, i.e., those who are by definition outside the state law.

The problem with this theory is not when the power is to be used defensively, but when it is to be used positively. What determines the rationality of the use of the sovereign power to declare animosity toward others? This is where Schmitt's theory runs into trouble. If the sovereign is to use his authority in defense of the state only, there is nothing exceptional about that. But if he is entrusted with the authority to undertake positive political tasks, then these exceptional powers allow for irrational decisions that are founded on nothing else but the judgement of the sovereign. Indeed, the sovereign, rather than guarding against legal revolutions (that was, according to some, Schmitt's main concern),¹⁶ could very well prove to be a revolutionary himself.

That the sovereign power is strictly irrational comes out clearly in Schmitt's fascination with Hobbes' *dictum* that *autoritas, non veritas facit legum* (see Schmitt 1985a:33). He interprets this to mean that:

- (a) laws have no authority over the law-creating authority, and that
- (b) the supreme authority is not founded on argument, i.e., reason, and is thus by definition irrational.

This is not to say that the supreme authority has no political aims. Indeed, the legitimacy of the supreme power lies in its representing public interest. That interest, however, cannot be found through discussion and argumentation, either in public debate or in Parliament, but through conflict with the enemy. In that conflict, there are no rules that constrain the supreme power in its attempts to further the public interest as it sees and defines it. But it is not the discernment of the free public interest that gives authority, it is the authority that determines what the true public interest is.

4. The Transforming Power

One way to see the issue that Constant and Schmitt disagreed about is to look into the new Russian constitution. The prerogatives of the President of the Russian Federation are similar to those envisaged by Constant for the neutral supreme power (though they are not altogether comparable). However, they are to be used for exceptional purposes, namely to

facilitate a social transformation, and are thus similar to those advocated by Schmitt. In fact, they exemplify the irrationality of the doctrine of a reformist supreme power.

In this section, I will deal with the justification of the powers of the Russian President, with his specific prerogatives, and with some of the irrationalities that result from this.¹⁷

4.1. *The National Interest*

If Constant had advised the authors of the Russian constitution, he would have ensured that the supreme, as well as any other state power, not be based on any particular or general interest. On the other hand, Schmitt's advice would have been to base the legitimacy of authority on some version of the furtherance, or safety, of the public interest. And it is Schmitt's approach that is to be found in the Russian constitution.

This is clear from the Preamble to the Constitution.¹⁸ It reads (my translation):

We, the multi-ethnic people of the Russian Federation,
 united by our common destiny on our land,
 securing human rights and liberties, civic peace and accord,
 keeping the historically created state unity,
 relying on generally accepted principles of equal rights
 and the right of self-determination of peoples,
 remembering our ancestors who entrusted us with the love of our
 Fatherland, with the sacred faith in good and justice,
 constituting the sovereign state of Russia and making its
 democratic foundation indestructible,
 aiming to secure the well-being and flourishing of Russia,
 recognising our responsibility for our Russia before the
 past and future generations,
 recognising ourselves as a member of the international community,
 accept the
 CONSTITUTION OF THE RUSSIAN FEDERATION.

It is easy to see that it is the interests of Russia that dominate. The constitution is to serve the Russian national interests, not individual liberty. Indeed these interests are referred to in so many ways, that there is no doubt that they take precedence over any other consideration.

This can be seen from the curious treatment of the human rights and liberties as well as of democracy which are the only elements in the Preamble that are not directly related to the national interest. Arguably, "the multi-ethnic people" must be interested in Russia being a federation, because this will secure their rights and liberties. However, the federal element is not referred to in any way in the Preamble, except through the name of the state. Also, democracy is stronger where the non-contractual obligations are weaker. However, in the Preamble, the latter are omnipresent. Indeed, the acceptance of the constitution is put not as a right, but as an obligation towards the Fatherland, the Homeland, the ancestors, the posterity, and essentially towards the greatness of Russia. The aim of the constitution is not individual freedom and welfare but "the well-being and flourishing of Russia." So, the sovereign interest is the interest of Russia, it is not the democratic interest.

4.2. *The Prerogatives of the President*

The Russian President has exceptional rights. There are some formal similarities between his and the powers of Constant's king or president. However, there is a huge substantive distinction, which can also serve to highlight the difference between Constant's and Schmitt's idea of authority. Constant's supreme power is neutral, that is, it has none of the prerogatives of the other powers. It cannot legislate, execute or adjudicate. Schmitt's president can have all these powers if the national interests so demand it. In accordance with that, the Russian President has extensive executive powers and significant legislative powers. However, the most extraordinary power that the President has is to be found in the ease with which he can create an exceptional situation. An example can illustrate this.

The constitution gives the President the right to nominate the Prime Minister. The Parliament may or may not confirm the President's choice. If it rejects the President's choice three times, the President dissolves the Parliament. In the interim, he governs alone. A curious situation emerges in the first year of the Parliament, when the President cannot dismiss the Parliament. Then, according to President Yeltsin's interpretation, the government that he nominates is not to be confirmed at all. Thus, the Parliament either agrees with the President, or there is no Parliament. The disagreement with the President is enough for an exceptional situation to emerge.

4.3. *The Guarantor*

(a) The President is defined as a guarantor of rights and liberties.

The multi-ethnic people of Russia are the ones that accept the constitution; they should be the sovereign power in Russia. However, the rights and liberties that they give themselves through the constitution can be suspended by the president as guarantor of these very rights and liberties in exceptional circumstances. As the current Russian President, Boris Yeltsin, sees himself as the rightful interpreter and guarantor of the actual political and economic reform process, he also is the one who can decide what the exceptional circumstances are.

(b) The President can violate rights and liberties even in normal times.

He can do this in the following way. If the Federation issues a law that restricts some rights and liberties, and a subject of the Federation (a federal state, province, county, or town) issues a law that accords with these rights and thus conflicts with the federal law, the law of the subject of the federation is to be followed, if the President of Russia agrees. However, this decision is entirely his own.

(c) The President is treated as an exception in the constitution.

There has never been any doubt that the current Russian Constitution was tailor-made for the current Russian President Boris Yeltsin. This is almost written down in the constitution. For this reason it cannot be expected to be closely followed. But that does not mean that it will be insignificant. It creates incentives for all those who are attracted by the power of the exceptional.

5. Conclusion

In the conclusion, I want to refer to the close similarity of the type of authority enshrined

in the Russian constitution with that advocated by some of the advisors of the current Russian government. Finally, I want to make a speculative note on the Russian perception of authority.

In the important Lipton and Sachs (1992) paper, the authors analyse the authority structure necessary for the Russian reforms to work. They go through a brief review of the history of Russian reforms and conclude that the current government should follow the Stolypin reforms. This is why they think the reforms will succeed this time around:

While Stolypin's reforms depended heavily upon the support of Nicholas II, who was protective of autocratic power, the Russian government reformers are backed by Russia's first freely elected leader, Boris Yeltsin, a genuinely popular politician attuned to Russia's needs for economic and democratic modernisation. Yeltsin's support, of course, is of decisive importance at this stage, as the legitimate democratic force that can resist the paralysis inherent in the legislative stalemate. Like the U.S. president, the Russian president is a democratic lightning rod of the society.¹⁹

From what they say about the failure of Stolypin's reforms, it seems that Lipton and Sachs believe that the Russian structure of authority can be thus represented: at the bottom are the people that crave for liberty and democracy, they are represented by conservative legislators; at the top there is either an autocrat or a democrat; finally, there are pro-Western reformers, who fail if supported by the autocrat against the conservative legislature, but who are bound to succeed if supported by the democrat even against a conservative legislature, albeit if the going does not get too tough (thus they recommend that the West should foot the social bill).

Thus, Lipton and Sachs disregard both what is known about Stolypin's reform²⁰ and what is known in political science about presidential systems in time of political reforms;²¹ not to mention what is known about facade constitutions world-wide and in Russia in particular.²² A curious Schmitt advice comes to mind that relies on exceptional powers of a president to shock his subjects with a constitution in the hope that they will immediately start to follow it in their daily lives. Schmitt went on to argue that the fact that events proved him wrong only showed that he had, in fact, been right all along. The present day supporters of Yeltsin's constitution sound like all those who wrote papers and treatises arguing that Stalin's constitution was glorious, its only drawback being that it was not implemented.

A more important question is whether the Lipton and Sachs description of the Russian authority structure is accurate. It is of course very difficult to say anything definitive on the Russian perception of authority, either supreme, aristocratic, or representative. However, every element of the power structure described by Lipton and Sachs can be, not without merit, evaluated differently along the conservative/liberal, or conservative/reformist axis. For instance, there is an influential view associated with both the slavophiles and their opponents, that may even be called Tolstoyan, which views the Russian people as the bearers of conservatism, *sabornost*, and anti-liberalism, rather than the *boyars* or the aristocracy in general. There is also an important historical argument to the effect that the autocrat is not that important, and that all Russian autocrats were essentially unsuccessful in their reformist undertakings.²³ And of course the character of the Russian intelligentsia and their role in the process of Westernisation is a prominent subject.²⁴

The best treatment of the Russian perception of authority may still be found in Dostoevski's "Notes from the Underground." There he discusses the peculiar Russian feeling of resentment of authority, that both attracts and repels the ordinary man. He is envious of his betters, but he does not know how to imitate them and thus turns to violence in order to show authority. He does not want the authorities to be his representatives, because his perception of authority is not utilitarian. He wants them to be great. But he resents them because he is small. Thus, he turns against the helpless in as violent a manner as he can master. If that perception has any truth in it, the problem of Russia's transformation is indeed one of political and economic modernisation. But although it is not peculiarly Russian to look to a supreme authority to achieve that, as both Constant's and Schmitt's flirtation with the great and exceptional men testifies, the goal is out of reach.

Notes

1. The paper grew out of some general considerations on constitutional choice in transformation politics reported in Gligorov (1992) and out of a note on the draft of the Yeltsin's constitution, Gligorov (1993a).
2. For an optimistic opinion see Ackerman (1992).
3. Hayek (1948) put Constant among the "true liberals." See also his comments on Schmitt in Hayek (1944). On Constant see Holmes (1984).
4. A claim made for instance in Sartori (1989).
5. In what follows I give interpretations of Constant's and Schmitt's theories but I do not claim that they are not controversial. The secondary literature on both authors is vast and highly polemical. Therefore, I go only into those aspects of their thought that might prove to be the least controversial. For Constant, see Holmes (1984); for standard interpretations of Schmitt, see Schwab (1970) and Bednarsky (1983); for recent discussions of Schmitt's central political ideas, see Sartori (1989), Miller (1991), Holmes (1993), Bellamy and Baehr (1993), Cristi (1993), and Scheuerman (1993). For works that might help to understand some of Schmitt's ideas, see Freund (1965) and Heidenheimer (1986). For the argument that a liberal state does not have to be neutral, see Galston (1991), while the argument that liberal neutrality is powerless to face the problem of justice, is developed in Sandel (1982).
6. I will rely mainly on Constant (1988). For a thorough study of Constant's ideas, see Holmes (1984).
7. See "The Liberty of the Ancients Compared with that of the Moderns" in Constant (1988).
8. Which is the fifth power in a state according to him; the other four being: legislative, executive, judicial, and the neutral power itself.
9. On Constant's relation to Rousseau see Holmes (1984).
10. In that sense, it is not representative. This being the case, Constant faced the problem of incorporating an unrepresentative supreme power into the system of representative democracy. Small wonder that he was not altogether successful.
11. For good discussions of the problems with the Walrasian *tatonnement* see Fisher (1976), and Gevers (1986).
12. See Gligorov (1985); Bernholz (1986) and (1991); Hammond and Miller (1987); Lijphart (1989), (1992a), and (1992b); Ordeshook (1992), (1993), and (1995); and Sartori (1993); there are also references to Eastern Europe.
13. His tractatus on *The Spirit of Conquest and Usurpation and Their Relation to European Civilization* testifies to that; see Constant (1988).
14. It is interesting to note that the metaphor used by Lipton and Sachs in the above quotation is similar to the one used by Heidegger and Schmitt when referring to the leader. Heidegger used to say that a leader is like a lightning, clearing the sky for the truth to emerge. Indeed, that is how an exception has to be seen. If you have to take something on someone's authority, that means that you could not have arrived at the conclusion yourself. That is the same as saying that there were no rules to follow: you had to see the light.

15. See Constant, *The Spirit of Conquest and Usurpation and Their Relation to European Civilization* in Constant (1988).
16. See Schmitt (1987) for a self-defense to the same effect.
17. Works on the new Russian constitution include Cohen (1993); Holmes (1993–1994); Thomson (1993); Tolz (1993a) and (1993b); and Ordeshook and Shvetsova (1995).
18. More on this in Gligorov (1993a).
19. Lipton and Sachs (1992:255). However, they add immediately: “Yeltsin’s continued support for radical reforms will likely depend on his judgment of their social sustainability. In the end, the point that we have stressed—that living standards do not fall sharply because of price liberalization—may well prove decisive. President Yeltsin must judge whether the reform path is socially tolerable and adequately supported.” On the problems with their general approach to transformation politics see *inter alia* Murrell (1993) and (1995), and Gligorov (1993b).
20. See Mosse (1992) for a recent review.
21. See Linz (1990) for an authoritative statement; also Linz and Stepan (1992).
22. See an interesting overview of the spread of constitutionalism in Arjomand (1992). For the use of “facade constitution” and “facade democracy” in Russia, see Weber’s essays on Russia reprinted in Weber (1980).
23. For two recent articles on two famous 19th-century Russian historians, see Byrnes (1993) and Bassin (1993).
24. See Berlin (1978).

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