

Some Kind of Liberties:

Why Did Early Russian Constitutionalism Devolve into “Sham Constitutionalism”

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Abstract

For over a decade, between 1906 and 1917, Russia was technically governed under the first-ever Russian Constitution: the Fundamental Laws of 1906. In reality, however, Tsar Nicholas II and his ministers consistently violated the Constitution and conducted affairs as if it didn't exist—resulting in Early Russian Constitutionalism devolving into “Sham Constitutionalism”. Societal indifference to these violations, especially to the dissolving of the First Duma, played a pivotal role in allowing “Sham Constitutionalism” to develop. As a result of certain social pressures—such as autocratic traditions, a lack of legal consciousness, and a divided, nascent public sphere—Russian society was too indifferent to play a pivotal role in upholding the First Constitution.

For over a decade, the Tsar and the Russian Empire were governed under the first-ever Russian Constitution: the Fundamental Laws of 1906. Despite this momentous achievement, most Russian Historians continue to overlook the period of Early Russian Constitutionalism. The minimal historiography focused on the period is often far too plain and negative to provide any beneficial lessons or consequences. This is because it is far too concerned with the intentions of the Tsar and his ministers—that is, with avoiding a revolution rather than with Russian society's interactions with the first Constitution and the Duma. Modern historiography continues to denounce the Constitution as a failure and sham from its creation. Historiography, unfortunately, continues to espouse the same conventional wisdom that minimizes the importance of the first Russian Constitution, rather than acknowledge the legal and political importance it holds to this day.

The 1905 Revolution created a world of new opportunities for Russia, forging a possible pathway for a future democracy. The 1905 Revolution not only forced the autocracy to concede the 1906 Fundamental Laws, but the revolution also played a pivotal role in the emergence of a public sphere and the institutionalization of civil liberties. The creation of various organizations that utilized public areas during the revolution, such as trade unions and political parties, allowed for a heavily repressed public sphere to finally emerge. The institutionalization of civil liberties in the October Manifesto and 1906 Fundamental Laws, was only possible with the increasing utilization of the public sphere, the emergence of mass politics, and the growth of various organizations within the 1905 Revolution. In theory, the instruments and mass participation that had existed in the 1905 Revolution should have translated well into maximizing the potential of the 1906 Fundamental Laws. In practice, though, Early Russian Constitutionalism quickly

devolved into a weak form of constitutionalism. This begs the question, why did Early Russian Constitutionalism so rapidly devolve into so-called “sham constitutionalism”?

Societal indifference to violations of the constitution, especially early on, played the most pivotal role in allowing “sham constitutionalism” to become normalized. A lack of societal backlash for violations of the constitution eventually resulted in the autocracy ignoring the constitution, governing in the same autocratic way as before the 1905 Revolution. Along with repression from authorities and fatigue from the 1905 Revolution, social pressures— such as autocratic traditions, a lack of legal consciousness, and a divided, nascent public sphere— contributed the most to societal indifference and hesitance to uphold the first Russian Constitution.

The first significant social pressure arose from autocratic traditions that had a tremendous influence on the majority of the population. For example, autocracy’s long reign and the doctrine of divine right created a reactionary base of the peasantry that aimed to restore the pre-constitutional order. What’s more, these autocratic traditions influenced the growth of reactionary and revolutionary ideologies within the Russian populace; ideologies that denounced any engagement with the Duma or the Fundamental Laws of 1906.

First, the long reign of Russian autocracy had made “peasant monarchism” dominant. Because of this naïve monarchism, the peasantry not only believed that the Tsar was pursuing justice for them but also that he was “the sovereign owner of all the land” and “the father of the whole Russian people”.¹ This widespread belief in the Tsar’s benevolence and natural legitimacy of governance was crucial in some of the peasantry’s actions towards the 1906 Fundamental Laws, as it ingrained fanatical reverence for the monarchy. Due to this respect,

¹ Mironov, Boris N. *The Social History of Imperial Russia*. Vol. II. II vols. Boulder, CO: Westview Press, 2000, p.179

some members of the peasantry were not keen on having an institution, such as a constitution, that would restrict the Tsar's power.

Max Weber's account of the peasantry during the 1905 Revolution highlighted the effects of "peasant monarchism" on the peasantry's politics. Weber discusses how the peasantry frequently petitioned to receive permission to hold elections for "people's representatives" who should "deal directly with the Tsar."² This indicates that because of "peasant monarchism," many peasants desired a consultive branch of government that maintained the power of the monarchy, rather than a parliament with legislative and oversight powers. This account ultimately provides perspective into the mindset of the peasantry, revealing that the long reign of the autocracy made the peasantry unwilling to back a constitution that would reduce the power of the Tsar.

The doctrine of divine right also contributed to the peasantry's subservience to the Tsar, making it sacrilegious to have an institution interfere with or restrict the power of God's supposed agent on earth. As described by Mironov, the divine right for the peasantry meant that they believed that authority "derived from God and belonged to the Tsar."³ Thus, for the peasantry, the Tsar expressed God's will and therefore inevitably acted in the people's interest.⁴ The doctrine of divine right was even ordained into the Constitution itself in Chapter 1, Article 4 arguing that "Obedience to His authority, not only out of fear, but in good conscience, is ordained by God himself."⁵ Given the intensely religious nature of the peasantry during this period, the peasantry could not find themselves supporting the Duma or the Constitution, which

² Weber, Max. *The Russian Revolutions*. Translated by Gordon C. Wells and Peter Baehr. Ithaca, NY: Cornell University Press, 1995, p.98

³ Mironov, *The Social History of Imperial Russia*. Vol. II, p.178

⁴ *Ibid.*, p.176

⁵ "The Fundamental Laws." *The Russian Legitimist*, 2015. <https://www.russianlegitimist.org/the-fundamental-laws>.

was acting in sacrilegious behavior. The doctrine of divine right helped make the peasantry naturally subservient to the Tsar, and thus unwilling to support constitutionalism and its restrictions on the Tsar's power.

These autocratic traditions, along with others, fostered the growth of far-right ideologies and naïve monarchism that allowed for the formation of the Black Hundreds –which found the constitutionalist movement objectionable and disgusting. The Black Hundred organizations, by the end of 1907, had approximately 400,000 members mainly from the peasantry.⁶ To the Black Hundreds, the Constitution was illegitimate because it was fundamentally wrong. A provisional leader of the Black Hundreds in 1916, in a program draft, explained this fundamentally erroneous constitution by arguing that “The people need the tsar, the rich need a constitution and a parliament” and that the “laboring classes” must “support the indivisibility of the sovereign power by every means.”⁷ The organization of the Black Hundreds, indicates a mass, intolerant opposition to the Constitution by the peasantry which would support the Tsar's violations of the constitution up until 1917.

The failure to let a reform ever take place without it being partially or fully reversed might have further influenced the growth of the revolutionary movement. The pattern is more eloquently described by Mironov, who states that “In moments of weakness, the autocracy made tangible concessions to society; but once it had recovered, it sought to minimize these concessions”.⁸ Those who could recognize this pattern, mostly people in intellectual occupations, found conviction in the opinion that reform would never be possible due to the entrenched, reactively autocratic Tsar. Thus, to them, the only pathway forward was revolution. This logic

⁶ Mironov, *The Social History of Imperial Russia*. Vol. II, p.180

⁷ Ibid.

⁸ Ibid., p.35

strengthened the case of revolutionaries across Russia, to the harm of the Constitutionalist movement and the emerging constitutional order. The radicalism of the revolutionary movement made the populace unenthusiastic about defending a Constitution they felt did not go far enough and would never be fully implemented.

Another social pressure that created mass indifference toward the constitution was the lack of legal consciousness within the Russian public. Legal consciousness is defined as the understanding and meanings of law circulating in social relations: or defined as what people do, as well as say about law.⁹ Without mass legal consciousness, there is no feasible way to develop and maintain a representative institution, such as a rule of law or a civil society. Most importantly, without mass legal consciousness, no one can recognize the significance of a constitution nor understand its role in upholding it.

This lack of legal consciousness was mostly due to the refusal of the autocracy to share power with self-government institutions. Aside from the limited power of the Zemstvos (district and provisional self-government) and City Dumas (city councils), the limited roles self-governing institutions played led to the way most Russians could not understand the constitution or the role they played in upholding it. Without self-governing institutions, there was no way to understand laws and government, outside of the judicial system. Even within existing self-government institutions, the strict property prerequisites to participate in both the City Dumas and Zemstvos made these institutions able to represent only wealthy elites. According to Mironov, only around 5 percent of the entire population of Russia in the 1870s and 1880s had any voting rights.¹⁰ The lack of voting rights hindered the development of mass legal consciousness and civil society, fostering widespread political indifference due to predetermined

⁹ Cane, Peter, and Joanne Conaghan. *The New Oxford Companion to Law*. Oxford: Oxford University Press, 2008.

¹⁰ Mironov, *The Social History of Imperial Russia*. Vol. II, p.36

results. Widespread political indifference is indicated by low voting turnout for these institutions. According to Mironov, only 12 to 14 percent of people with electoral rights in the 1870s and 1880s participated in elections to City Dumas.¹¹ These numbers were but slightly improved for the Zemstvo, where only 19 percent of private landowners, 21 percent of townspeople, and 48 percent of peasants exercised their electoral rights in the Zemstvo elections in the same period.¹² The failure of the autocracy, before the creation of the State Duma, to share power with self-governing institutions made it impossible for Russian society to be fully engaged with the Duma. Most importantly, it made it impossible for Russian society to understand, and thus act as an upholder of, the Fundamental Laws of 1906 and the State Duma.

Mass illiteracy likewise impeded the development of legal consciousness. Some sources have the literacy rate as high as 35.3 percent in 1907, while others have it as low as 28.4 percent in 1917.¹³ At any rate, low literacy made it hard to develop mass legal consciousness. A lack of literacy impeded the understanding of civil liberties, the new parliament, or any other important concept relating to constitutions. The lack of literacy made the average Russian unable to understand anything relating to the Duma or the Fundamental Laws of 1906, especially the benefits of upholding both institutions.

The peasant commune, known as the Obshchina or Mir, further set back the development of legal consciousness within the peasantry. Most importantly, the judiciary of the commune was arbitrary, peasants utilized traditions and customs rather than set, common law. The bureaucratic governance of the peasant commune also harmed the development of self-government for the

¹¹ Mironov, *The Social History of Imperial Russia*. Vol. II, p.36

¹² Ibid.

¹³ Mironov, Boris N. "The Development of Literacy in Russia and the USSR from the Tenth to the Twentieth Centuries." *History of Education Quarterly* 31, no. 2 (1991): 229–52. <https://doi.org/10.2307/368437>, p.240; Grenoble, Lenore A. *Language Policy in the Soviet Union*. New York, NY: Kluwer Academic Publishers, 2003, p.35

peasantry, as well as formed a mindset of self-detachment from politics outside of the commune. All of these flaws of the peasant commune served to make the peasantry further unwilling to defend the 1906 Fundamental Laws.

The peasant commune post-emancipation had drastic effects on the development of peasant political and legal consciousness. Post-emancipation, the foundation of the peasant's life, became written law “based largely on customary law.”¹⁴ This law based on customs served to isolate the peasantry from Russian common law and, thus, further set back the development of legal consciousness within their minds. Mironov acknowledges the existence of cantonal courts, abiding by common law that became the main court of the peasantry in the early 20th century.¹⁵ This, however, still indicates only an emerging legally conscious peasantry due to the lack of history of cantonal courts’ dominating the peasant legal life. Moreover, the continued emphasis on traditional communal ownership rather than on private-property rights was another hindrance to the development of legal consciousness within the peasantry.

The excessive bureaucratization and oversight of the peasant commune destroyed the development of natural, rural self-government. Mironov states that henceforth, after emancipation, “the state vested official administrative powers in elected communal officials” with these elected officials under “exclusive supervision of the crown administration.”¹⁶ This supervision was mainly handled through the provincial governors and the land captains—some 2000 gentry members appointed by provincial governors. The land captains had an excessive amount of executive and judicial powers, enabling them to overturn the decisions of village

¹⁴ Mironov, Boris N. *The Social History of Imperial Russia*. Vol. I. II vols. Boulder, CO: Westview Press, 2000, p.328

¹⁵ *Ibid.*, p.337

¹⁶ *Ibid.*, p.329

assemblies, discharge elected peasant officials, and decide judicial disputes.¹⁷ Intense oversight and meddling from superiors meant that, between 1891 and 1894, 36,322 village elders were arrested and 14,873 were fined.¹⁸ This intense oversight negatively impacted the chances of the organic development of a rural self-governing institution and likely reduced the peasantry's appreciation of self-government. The rapid bureaucratization and obsolescence of the peasant commune ultimately stunted the development of political and legal consciousness.

The peasant commune had also fostered political isolation within the peasantry. Those in the commune frequently developed a mindset that "Everything that went on outside of the commune or *volost* had independent causes and did not depend on their will."¹⁹ Due to these regressive features of the commune, the peasantry was held back in its pursuit of legal and political consciousness.

Legal consciousness could only be developed from further experience with a powerful Duma and further education, both of which were stunted by the autocracy. The lack of mass legal consciousness contributed to social indifference to the constitution and Duma, due to the society's deficient understanding of both institutions. This mass indifference enabled the autocracy to devolve the constitutional order without mass, societal backlash.

The nascent state of the public sphere within Russia during this period was another significant negative pressure against constitutionalism. The rapidly emerging public sphere was still impeded by the autocracy, to the harm of reformist movements and constitutionalism. The continuing stoppage of public meetings, government surveillance, and political literature

¹⁷ Figes, Orlando. *A People's Tragedy: The Russian Revolution, 1891-1924*. London, UK: Pimlico, 1997, p.53

¹⁸ Mironov, *The Social History of Imperial Russia*. Vol. I, p.331

¹⁹ *Ibid.*, p.178

restrictions continued to greatly affect the population and slow down the development of the public sphere and the spread of a reformist outlook.

The autocracy's restrictions on the emerging public sphere, especially against the emerging electoral system, provided radicals ammunition against the autocracy and further polarized the masses against reform. During the 1906 State Duma elections, the autocracy frequently repressed moderate political parties, especially the *Kadet* party, only to push more people into radical circles. The various government repressions against emerging electoral campaigns aimed to destroy the public sphere, out of fear that a free public sphere would spread radical ideas. However, by continuing to impose these strict controls and repressing an emerging public sphere, they were strengthening the radical case. As Max Weber argues, the banning of political meetings had the opposite effect of what the authorities wanted, as it provided "the most effective possible advertisement for the party in question."²⁰ As such, autocracy's continued, reactionary offensive against the emerging public sphere likely was to the benefit of radicals and the detriment of the constitutionalist movement.

Terence Emmons outlines how the state regularly intervened against the *Kadet* party, in an attempt to influence the outcomes of the 1906 Duma elections. Utilizing "reinforced" and "extraordinary" legislation that provided extreme power to administrative and police authorities, the autocracy was able to shut down *Kadet* Party meetings and seize party literature.²¹ According to his analysis, there was evidence of serious government interference with *Kadet*'s efforts to hold party meetings and public meetings in "at least thirty-seven of the forty-eight provinces in which the Kadets had party organizations."²² In twelve of the thirty-seven provinces

²⁰ Weber, *The Russian Revolutions*, p.188

²¹ Emmons, Terence. *The Formation of Political Parties and the First National Elections in Russia*. Cambridge, MA: Harvard University Press, 1983, pp.184-85

²² *Ibid.*, p.186

police interference amounted to a prohibition on all *Kadet* meetings throughout the election campaign period.²³ According to Emmons, there was also a frequent prohibition of party literature, most often involving the “confiscation of said literature designated for distribution among the peasantry” and the “arrest of the people from whom it was taken.”²⁴ In addition to this, leftist parties were likely also affected by these government repressions.²⁵ Repressions ultimately worked in the favor of the opposition parties, as around 50 percent of elected State Duma delegates were ideologically center-left to left-wing, while nearly 60 percent of all elected State Duma delegates were from the *Kadets*, *Trudoviks*, and Democratic Reforms parties.²⁶

Various minor social pressures also played a role in making society unable or indifferent to upholding the constitutional order. Social pressures such as a lack of a single, coalesced constitutional party, bourgeoisie hesitancy and lack of cohesion, peasant and proletariat impoverishment, and the demographics of Russia had made the constitutional movement unlikely to achieve mass support. Thus, society could not coalesce its power and enforce the Constitution.

The various major parties of the constitutionalist movement, Octobrists, *Kadets*, Trade-Industrialists, and the Party of Legal Order, failed to bloc or merge under one party, which made them unable to withstand the pressure of the autocracy and the devolution of the constitutional order. This failure to consolidate under one party was worsened by the terrible relationship between the Octobrists and *Kadets*, caused by the early, harsh split of the constitutional coalition. Emmons's analysis of the character of *Kadet* Campaigning argues that the *Kadets* viewed the

²³ Emmons, *The formation of political parties and the first national elections in Russia*, p.186

²⁴ *Ibid.*, p.189

²⁵ *Ibid.*, p.185

²⁶ *Ibid.*, p.369

Octobrists, and other parties to their right, as their main rivals.²⁷ Emmons states that the Kadets, in general, campaigned against the Octobrists and the Trade-Industrial party by calling them “the representatives of the landlords and big capitalists.”²⁸ This was also true of the Octobrist campaign against the *Kadets*, as Emmons notes how the Octobrists positioned themselves as true monarchists, defenders of private property, and defenders of the unity and integrity of the empire in contrast to “the doubtful character of the Kadet’s position on all three subjects.”²⁹ Furthermore, Octobrists frequently asserted that the Kadets had sided with “the revolution” in an unprincipled move to seek power.³⁰ This uncompromising, combative relationship between the two parties served only to weaken the constitutionalist movement by splitting two political forces that were both wholly committed to constitutional reform.

Had the four parties united into one mass bloc, the constitutionalist movement would likely have had the capital and membership to sustain a mass movement and combat encroachments against the constitution. According to Emmons, the *Kadet* Party had the largest membership of all parties, consisting of around 100,000 members by January 1906, perhaps reaching 120,000 by the eve of the 1906 State Duma elections.³¹ However, the *Kadet* party lacked the financial support and backing received by the Octobrists and the Trade-Industrialists. Because of this lack of financial support, the Kadet Central Committee report for 1905-1907 reported various financial problems, especially that “the majority of party groups and organizations treated quite carelessly and indifferently the responsibility of providing funds to the central party organ.”³² This was mainly due to a lack of merchant and factory owner

²⁷ Emmons, *The formation of political parties and the first national elections in Russia*, p.195

²⁸ *Ibid.*, pp.195-196

²⁹ *Ibid.*, p.209

³⁰ *Ibid.*

³¹ *Ibid.*, pp.146-47

³² *Ibid.*, p.154

representation in the *Kadet* party, compared to the Octobrist bloc, which caused an overreliance on membership dues instead of fundraising.³³ Due to the parties' unwillingness to coalesce, by 1908 both parties were discussing having to "start the entire process of party building over again."³⁴ Because the constitutionalist parties refused to unite under one party or coalition, the constitutionalist movement was unable to succeed.

The bourgeoisie's lack of cohesion and hesitancy had also hindered the growth of the constitutional movement. The bourgeoisie's lack of cohesion was due to the declining membership in various corporations before the 1905 Revolution, such as the merchant associations. By 1901, only around 50 percent of merchants in the entire Russian Empire belonged to merchant associations.³⁵ Although, from 1895 to 1900, 19% of merchant associations grew, it was only due to a forced conscription of new members.³⁶ In reality, the growth of the associations lagged far behind the growth of merchants as a whole, indicating a declining unity and cohesion of the bourgeoisie.³⁷

Although the bourgeoisie was rapidly growing in Russia, it was still dependent on the continuation of various economic policies of the Tsar's government. This dependency ultimately contributed to their hesitancy to support constitutionalism. For example, industrial subsidies provided by the government were a main factor in the growth of industrialists, which made them extremely hesitant to combat the government. Furthermore, because the wealthy bourgeoisie were given the same rights and privileges as the nobility, especially in self-governing institutions, they

³³ Emmons, *The formation of political parties and the first national elections in Russia*, p.218

³⁴ *Ibid.*, p.375

³⁵ Mironov, *The Social History of Imperial Russia*. Vol. I, p.394

³⁶ *Ibid.*

³⁷ *Ibid.*

were not desperate for any political power. All of these factors made the bourgeoisie hesitant to go against the Tsar, a decision in their political self-interest.

The economic ruin and impoverishment of the peasantry and proletariat made them desperate to find a quick and easy solution to their problems. Because of the aforementioned lack of legal consciousness and their lack of political consciousness, they were easily manipulated into supporting whichever party would promise them a better economic standard. This short-term mindset was explained by one peasant observer, as follows: “Democratic rights and constitutional guarantees on a national scale have no meaning for peasants. Let power be organized by whomever, any which way, as long as it does not touch the material interests of the peasantry too painfully.”³⁸ This mindset contributed to the growing radicalism of the peasantry and proletariat, with revolutionaries promising better economic conditions and a utopia.

This short-term mindset could be seen in the philosophy of the All-Russian Peasant Union in the 1905 Revolution. Although the petitions of the all-Russian peasant unions to the tsarist government contained political demands, including advocacy for a constitution, they mainly focused on and emphasized peasant economic issues such as land hunger and high taxes.³⁹ The loose coalition of zemstvo liberals, Third Element, and peasant activists in the 1905 Revolution appeared to be mainly out of convenience and economic considerations, with the peasants likely believing that the political reforms would allow for land reform and peasant political needs. As soon as it was apparent that the State Duma could never meet the peasantry’s needs, especially with land reform, the peasantry quickly turned to radical political parties—such as the Socialist Revolutionary Party—and ignored the Constitution.

³⁸ Mironov, *The Social History of Imperial Russia*. Vol. II, pp.53-54

³⁹ Seregny, Scott J. “A Different Type of Peasant Movement: The Peasant Unions in the Russian Revolution of 1905.” *Slavic Review* 47, no. 1 (1988): 51–67. <https://doi.org/10.2307/2498838>, p.56

The demographics of Russia were a major hindrance to the development of a mass constitutionalist movement. In 1897, only 11.3% of the population lived in urban areas while 85.9% of the population lived in rural areas⁴⁰. As the constitutionalist movement was almost entirely consisting of urban members of the population, especially professional urban occupations, this meant that it was extremely limited in its possible membership. The extremely high rural population also made it difficult to organize a mass, unified political movement and likely made the rural population isolated from politics. Had the urban population been higher, there would have been a high possibility of a stronger constitutionalist movement that could have maintained the power of the 1906 Fundamental Laws.

Ultimately, due to these various social pressures, the constitutionalist movement was weak and society did not care nor understand the Fundamental Laws of 1906. Thus, society did not bother to combat the autocracy's overreaches against the newly established constitutional order, thereby allowing the autocracy to eventually ignore the Fundamental Laws of 1906.

However, even though the Fundamental Laws of 1906 was a flawed document, it was an undeniably irreversible step in the democratization of Russia. It allowed for the first-ever national elections for the first-ever national legislative branch. From the 1906 Fundamental Laws onwards, each Russian Government was forced to have a constitution and a nationally elected legislative branch.

I maintain that teaching this content is important because it provides a great lesson on democracy. Modern democracy cannot just spring out of nowhere spontaneously; there are pre-conditions, such as a civil society and prior self-governing institutions. Furthermore, democracy

⁴⁰ Mironov, *The Social History of Imperial Russia*. Vol. I, p.255

cannot just be created and then ignored by society; it needs society to continue to be engaged, committed, and devoted to democracy.

Ultimately, the conventional way of teaching this decade of Russian History is fatally flawed. Solely teaching the role that autocratic traditions and institutional flaws played in the devolution to weak constitutionalism fails to recognize society's collective role in upholding constitutionalism. It fails to provide a meaningful lesson about democracy and constitutionalism in general. Most importantly, the failure to teach the various social pressures of the period meaningfully and the 1906 Fundamental Laws have made the subsequent 1917 Revolutions incompletely understood. Thus, more focus should be given to this period, as it fundamentally altered the path of Russia.

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