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## The Modern English Legal Doctrine: The Constitutional State at a Glance

“Constitutionalism” and “constitutional state” are concepts that remain the focus of attention of many researchers across the world. The constitutional-legal doctrine is currently in the midst of a significant process of transformation: it is becoming more intertwined with other public disciplines — philosophy, political science, and social psychology. This process represents one of the consequences of both the steady complication of issues facing institutions of public rights across the world, and the evolution of those institutions.

The evaluation of ongoing changes is reflected in constitutional-legal doctrine. The book by Nicholas Barber, Fellow in Law of Trinity College, University of Oxford, which was recently published as part of the “Oxford Constitutional Theory” series, supplements the vast bibliography of modern constitutionalism. Barber’s book comprises ten sections and is designed using the problem-oriented principle. Chronologically, the book covers the period from the mid-19<sup>th</sup> century to today.

Pleasantly, the author of the book is a strong supporter of the complex system approach to reality, an approach that has received a great amount of attention and is considered a very important means of understanding the growing contradictory reality. He writes, “I have approached constitutional theory as a subject that spans the social sciences.” He further posits that “a satisfying account of social institutions as the state, citizenship, and, indeed, the law, cannot be provided from a narrow legal perspective... legalistic accounts are sometimes more misleading than illuminating. If the book contains an intellectual manifesto, it is this: a commitment to the value of, and the need for, interdisciplinary study. Such engagement—though risky—is crucial for the development of both constitutional and legal theory” (pp. xi — xii).

The academic authorities whose legacy is used by the author to build his own arguments belong to various branches of public thought. These are legal scholars who are considered pillars of constitutional law in English-speaking countries (W. Bagehot, W. Blackstone, A. Dicey, A. Jennings, J. Marshall, T. Marshall, J. Rawls, O. Phillips) and other significant philosophers, sociologists and political scientists from various Western countries. The latter cohort features German scholars: M. Weber, E. Durkheim, and K. Schmidt,

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<sup>1</sup> Book review of *Barber N.W. The Constitutional State*. Oxford: Oxford University Press, 2010. XIII, 199 p.

English-speaking scholars, starting with T. Hobbes and finishing with K. Popper, H. Hart, and E. Hobsbawm.<sup>2</sup>

The introduction of methodological improvement by one of the representatives of the British academia is clear. It is difficult to argue against the author's position, especially when you feel strongly attracted to it in any case.

The problem-oriented approach is one of the strongest aspects of the reviewed work. Barber skillfully identifies and analyses factual material that allows him the opportunity to concisely and insightfully work out a number of key problems. As can be seen in the book, the nature of government, civil society, and the institutions of the European Union (and their place and role in the legal tradition, judicial power and judicial precedent) are identified by the author as key issues. The book's prevailing idea is the continuity of the development of institutions and their interactions.<sup>3</sup>

Barber's thoughts on continuity in public and state development are compelling. Of further interest are his conclusions on the degree of accountability of those governments that have "radically altered the institutions of power", in other words, those governments that have recently completed the transition from a totalitarian means of governing to a constitutional democratic government. These governments represent different countries from Eastern and Southern Europe, Asia, Africa, Latin America, comprising in total around half of the world's population. This juridically and politically complex, and legally underdeveloped, subject area should possibly be viewed from a global comparative perspective. The author touches on this subject matter in two sections of the reviewed book — "The Responsibility of the State" and "The Mentality of the State".

According to Barber, the institutions of a constitutional state bear responsibility for the investigation of the actions of the previous regime, for the elimination of benefits and preferences available to a part of the population (even if legally) during the previous regime and for the compensation of victims of the previous regime (pp. 127, 143). The author's emphases are correct. However, it is unfortunate that the review of the problem is so brief. Additionally, the author barely reflects on the given subject matter in relation to the examples of the adoption and development of constitutional democratic states, like Germany, Italy and Japan. Meanwhile, these examples are incredibly instructive. They represent the most fertile ground for conducting a comparative juridical and historic-political analysis.

I am certain that any reader of this book will distinctly perceive the author's aspiration and ability to logically examine a contested issue from a point of view of different branches of juridical science — constitutional law and international law, constitutional and administrative law.

Some facts used by Barber are revealing without any authorial commentary. For instance, the book informs us that the existing UK Ministerial code, published in 1992, in many ways reflects the rules for ministerial behaviour created by the Labour cabinet in 1945 (p. 99). It appears that the post-war setting required that the executive, the parliament

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<sup>2</sup> It is important to note that only one Russian source is mentioned: V.I. Lenin's "State and Revolution" (p. 7), and then it is only mentioned once. This fact forces one to reflect on the state of the Russian academy in the field of constitutional law and other humanities disciplines and their place in the world of modern global scholarship.

<sup>3</sup> Barber does not consider traditional institutions of constitutional law, such as the means for adopting and amending the constitution, forms of government, the electoral process, the institutions of direct democracy, and the branches of power. This distinguishes his book from classical multi-edition works of *Lake-man J., Lambert W., Wade O., Weir K., Phillips O.* and other English-speaking academics.

and the community concentrated exclusively on the “restoration of the national economy that had been destroyed by the war”. Britain’s losses from air raids and the naval blockade were extensive. However, the British constitutional state found it reasonable to simultaneously improve what we know as the “selection and placing of personnel” and “accounting and control”, which, I would say, benefited the concepts of the supremacy of the law and democracy, as well as the restoration of the economy.

The author’s constructive approach merits further commendation. He has no answer ready for every question. He doesn’t just offer platitudes, but rather offers discussion of contested subjects. His numerous references to the work of others, including those who do not agree with his point of view, are gratifying. In a number of instances, Barber aggregates the contradicting views and analyses of several other academics, compares them and then offers the most optimal evaluations (pp. 75-78, 148-156, etc.) The author selects examples for the most discussed issues. Similar unbiased methods of evaluating legal and political-philosophical material and reporting of results of scholarly analysis to third parties are inherent in social thinking of rule-of-law democratic states. Such methodological premises train the readers to consider and substantiate conclusions using a system of arguments.

Quite rightly, the author of the book points to the preserved ambiguities in the subject of constitutional theory and the goals of that discipline, as well as the deepening discordance in its fundamental terminology.<sup>4</sup> “Constitutional law suffers from an identity crisis,” he notes (p. 1), albeit without a prediction that the given science will soon disappear or be subsumed by other branches of knowledge.

Here are a few recommendations to the author. Barber clearly perceives (and demonstrates to us) the evolution of constitutionalism as a component of modern civilization. At the same time, he does not use all research possibilities available to him. The analysis of the successes and difficulties in founding a constitutional state in Russia at the turn of the century would have enriched the work both factually and analytically, making it even more topical.

The book also does not analyse (with the exception of a few lines on p. 119) the “failures” involved in building constitutional and democratic states during the previous century, specifically in Germany, Spain, Italy, Chile, China, Japan, Egypt and Mexico. As such, it appears as if the author, who assigns great importance to the continuity of public development, in large part underestimates the difficulties involved in the progress towards full-blown constitutionalism, as well as the dangers for countries that approach constitutionalism only nominally.

Barber’s light and natural style must be commended.<sup>5</sup>

The compact, but substantive, book by an Oxford researcher is a marked contribution to the evaluation of multidimensional problems that faced and continue to face constitutional theory and, more importantly, the modern constitutional democratic state. The only thing remaining is to wish the author further successes in his work in this field.

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<sup>4</sup> According to his calculations, there are around 150 definitions of the concept of “state” across the humanities disciplines.

<sup>5</sup> In examining cases, the author frequently uses humorous anecdotes from modern TV comedies. For instance, in the “Responsibility” section, Barber examines the questions of responsibility of the central character of a famous Hollywood TV series “Alf” for the material damage that resulted from his sudden arrival from space (p. 125).