

**HISTORY OF COURT AND JUSTICE IN RUSSIA: in 9 vols / res. eds.  
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**Abstract.** The review discusses a recent publication dedicated to the history of the Russian Constitution Court, its formation and evolution. The book is one-of-a-kind in the sense that it meticulously reveals the stages of transformation of constitutional justice in Russia. The authors present a rich historical and legal material – from the Orders of Catherine II, inspired by the ideas of the Enlightenment, until the aftermath of the constitutional reform 2020 – in a lively and thrilling manner. A balanced academic approach has enabled the authors to demonstrate the whole variety of viewpoints that exist in the literature regarding various aspects of the formation, organization and performance of the Constitutional Court of the Russian Federation. Overall, the book shows the specific features of the Russian model of constitutional justice, its role in the legal order and the peculiarities of its interaction with other actors. The book raises questions regarding the meaning and consequences of numerous transformations of the system of constitutional review that have taken place in Russia. Particularly, it identifies the risks associated with the large-scale reform of 2020, and highlights the challenges that the Constitutional Court of the Russian Federation is facing in the aftermath of the latest transformation.

**Key words:** Constitutional Court of the Russian Federation, historiography of constitutional justice, the Supreme Court of the USSR, the Committee for Constitutional Supervision of the USSR, constitutional (charter) courts of the subjects of the Russian Federation, constitutional reform.

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**ИСТОРИЯ СУДА И ПРАВОСУДИЯ В РОССИИ: в 9 т. / отв. ред.  
В.В. Ершов, В.М. Сырых. Т. 9. ИСТОРИЯ КОНСТИТУЦИОННОГО  
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**Аннотация.** В рецензии представлено издание, посвященное истории становления и развития отечественного конституционного контроля. Рецензируемая книга – единственный в своем роде труд, максимально полно описывающий основные этапы эволюции конституционного правосудия в России. Живым и интересным языком авторы раскрывают богатый историко-правовой материал – от Наказов Екатерины II, вдохновленных идеями Просвещения, и до последствий конституционных изменений 2020 г. Взвешенный академический подход позволил авторам показать все многообразие позиций, существующих в науке относительно различных аспектов формирования, организации и деятельности Конституционного Суда РФ, и прийти к обоснованным выводам о специфике российской модели конституционного правосудия, её укорененности в правовом порядке и особенностях взаимодействия с иными субъектами конституционно-правовых отношений. Книга заставляет задуматься о смыслах и последствиях преобразований института конституционного контроля в России, в частности о масштабных изменениях, запущенных конституционной реформой 2020 г., и о тех вызовах, с которыми предстоит иметь дело в условиях обновленной конфигурации Конституционного Суда РФ.

**Ключевые слова:** Конституционный Суд РФ, историография конституционного правосудия, Верховный Суд СССР, Комитет конституционного надзора СССР, конституционные (уставные) суды субъектов Российской Федерации, конституционная реформа.

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The role of the constitutional review in the democratic legal order is vital. Its significance is determined by the essential role that constitutional courts play in ensuring the supremacy of the national constitution and protection of fundamental human rights from violations by the current ruling majority. A constitutional court ensures that the constitution preserves its key features (supremacy, direct effect, the basis for current legislation, etc.), and creates the prerequisites for the constitution to have a real impact on the political and legal systems. The general idea that the meaning of the basic law shall be determined by a body of constitutional review is firmly rooted in the majority of modern legal orders. However, the effectiveness of such a review model may be compromised by the existing rules of constitutional interpretation, the regulation of the powers of constitutional review bodies, the distortion of the system of checks and balances, etc.

The Constitutional Court of the Russian Federation has its specific characteristics – in terms of both formation and functioning. The Russian legal scholarship has produced many studies devoted to its operation, but, admittedly, to a great extent, they focus on the formal aspects of the Court's status (peculiarities of the formation of the Court, its powers, the role in the system of separation of powers, the status of judges) or its decisions in specific areas. The demand for academic research that looks into the essence of constitutional justice is becoming more and more noticeable<sup>1</sup>.

The book of V.A. Kryazhkov and M.A. Mityukov is one of the few fundamental works in the field of constitutional justice in Russia. It is written for the audience who strives to understand why constitutional review functions in a peculiar way in Russia, and for this purpose, connects the history of its development with its present features and challenges. The publication is unprecedented, in the sense that the authors have set and brilliantly fulfilled the task of interdisciplinary – historical and

constitutional – analysis of the origins, formation and development of judicial constitutional review in Russia.

The book consists of seven sections, encompassing 24 chapters. The sections are devoted to the historiography of constitutional justice in Russia (Section 1); its origins in late 18<sup>th</sup> – early 20<sup>th</sup> centuries (Section 2); judicial constitutional supervision in 1924–1933 (Section 3); views, projects and institutional prerequisites for constitutional review in the 1930<sup>s</sup> – early 1990<sup>s</sup> (Section 4); the creation of the Constitutional Court of Russia and its activity during the first years (1990–1993) (Section 5); modernization of the status and the performance of the Russian Constitutional Court (1993–2000<sup>s</sup>) (Section 6); constitutional justice in the federated units of Russia (Section 7). This reasonable structure, aimed at achieving an ambitious academic task, is explained in the very beginning of the book, and the authors strictly follow their plan.

The authors have meticulously thought through the methodology of their study. Along with the formal legal method, they make use of an interdisciplinary approach which enables them to combine the research tools and apparatus of political science, sociology and psychology of law. The legal analysis is also enriched by the appropriate use of comparative and historical research methods.

As a result, the authors have managed to present an impressive coverage of the history of constitutional justice in Russia – from the Orders of Catherine II, inspired by the ideas of the Enlightenment, to the extensive constitutional reform 2020. This overview has provided the authors with the evidence that “the ideas of judicial constitutional review have taken over two centuries to form and become an integral part of Russian constitutionalism” (p. 112). The book does not simply point out, but lucidly explains the theoretical and practical significance of the constituent elements of this process: government (official) projects, constitutional ideas of the late 18<sup>th</sup> century, projects of the Decembrists and liberal constitutionalists of the late 19<sup>th</sup> – early 20<sup>th</sup> centuries, political discussion and normative design of the system of constitutional supervision in the Soviet Russia, prerequisites for the institutionalization of constitutional review in the end of the 20<sup>th</sup> century, reforms of the Russian Constitutional Court.

Noteworthy, the authors devote their attention to the struggle of ideas related to the rise of constitutional review in the country.

<sup>1</sup> See, for example: *Konstitutsionnyy Sud Rossii: Osmysleniye Opyta [The Constitutional Court of Russia: reflections on the experience] / ed. A. Medushevsky. M., 2022; Kravets I.A. Konstitutsionnoye Pravosudiye. Teoriya Sudebnogo Konstitutsionnogo Prava i Praktika Sudebnogo Konstitutsionnogo Protssessa [Constitutional Justice: Theory of Judicial Constitutional Law and Practice of Judicial Constitutional Process]. M., 2017.*

One of the most valuable features of this book is that in addition to the voices of the epochs, it reproduces the voices of specific people – scholars, politicians, judges and even ordinary citizens. It must be admitted that such an approach (presenting historical eras, large-scale phenomena, significant events through the “eyes” of actual participants) plays a special role in historical studies. Having adopted this approach to constitutional scholarship, the authors have managed to publish a volume rich in theoretical insights, as well as personal reflections and comments of the observers.

Moreover, the book presents an overview of little-known facts, observations and viewpoints. For example, the authors devote considerable attention to such topics as: attempts to maintain the participation of the Supreme Court in constitutional supervision in the preparation of the Stalinist Constitution of 1936 (p. 231); the work of the Constitutional Commission of 1962–1964 years (p. 237); the ideas of guarding the constitution during the drafting of the Basic Law of 1977 (p. 260). The volume offers an extensive and thorough coverage of the creation of the Constitutional Court of the Russian Federation in 1991 and its subsequent reforms. The relevant sections are all the more interesting to read as they refer to well-known personalities, many of whom are still alive. This transition from the past to the present reveals a stunning connection between times and constitutional ideas.

The authors maintain a balanced approach, presenting the whole variety of viewpoints and explaining the contribution of various scholars, including those who had worked under the difficult conditions of ideological restrictions (p. 236), to the development of domestic constitutional justice and strengthening the authority of the Court itself. Noticeably, the authors do not shy away from expressing their professional opinion, but at the same time leave enough space for the audience to comprehend the processes and draw its own conclusions. The authors by no means avoid the uncomfortable moments in the history of the Constitutional Court, highlighting both its strengths and weaknesses and describing the challenges it has faced.

Here are some highlights of the broad range of topics the book touches upon: the relationship between politics and law in the operation of bodies of constitutional review (p. 119 et seq.), the problematic relationship between the political regime and methods of protecting the constitutional order (p. 169, 184, etc.); the history of the struggle of various agencies in an attempt to escape from oversight (p. 343); the problem of extra-jurisdictional powers of the Court (p. 383); arguments favouring different models of constitutional justice (p. 403–405, etc.); the concept of multi-scale verification (with the involvement of international legal principles, p. 460); organization of the Court’s effective operation (p. 488 et seq.); the significance of dissenting opinions of the judges (p. 509).

The study of V.A. Kryazhkov and M.A. Mityukov enriches our understanding of the models and types of constitutional review and allows to step outside the usual scheme which includes the American and European (with Austrian and French varieties) models. The problems and challenges of the Court’s configuration and performance identified in the book have not only historical significance, but are still relevant and will remain vital in the coming years.

The authors’ theoretical findings rely on a broad range of judgments, including decisions adopted by the Supreme Court of the USSR during the period when it had the verification powers (until 1933), decisions of the Committee for Constitutional Supervision of the USSR and judgments of the first Constitutional Court (1992–1993). Undoubtedly, the actual powers of

the “prototypes” of the bodies of constitutional control that existed in difficult historical circumstances were, to put it mildly, quite modest. The authors demonstrate this idea in relation to the Committee of Constitutional Supervision of the USSR by referring to discussions about its inefficiency, partisanship, imperfection of the procedure and mechanism for the execution of decisions. Institutional features and the political context inevitably put this body “far from being considered a “third power” in the country” (p. 304). And yet, the experience of predecessors demonstrates a huge potential for the protection of human rights, which, in principle, is accessible to the bodies of constitutional review and which has been at times implemented in Russia.

The authors ask themselves and the reader questions that may be viewed as starting points for further research. One of the fundamental issues prompting a genuine academic interest is the question of the periodization of the organizational and substantive transformations of the Constitutional Court and its practice in post-Soviet Russia (p. 108, 109). Since the “transitional” stage that preceded the adoption of the Constitution of the Russian Federation in 1993, the Constitutional Court has gone through periods of stabilization and reform. Nowadays, in the aftermath of constitutional reform 2020, we are witnessing a qualitative transition to a new stage directed towards an uncertain future.

Chapter 22 quite specifically outlines the risks of recent large-scale changes in the foundations of the organization of the Constitutional Court, as well as some stages of constitutional proceedings, related to the complication of access to the Court, the reduction of guarantees for its independence, openness and impartiality. In an effort to “improve ... [the Court], to fit [it] into the changing political and legal context” (p. 539), the legislator – consciously or unconsciously – distorted the fragile balance that generally allowed the Russian Constitutional Court to serve as a check and fill one of the “corners” in the triangle of public power. The leveling of the dissenting opinions of the justices, the transition to a predominantly written procedure, the addition of powers that provoke the Court’s involvement in political processes, the arbitrary reduction in the number of judges (from 19 to 11), the growing hierarchy within the justices of the Court and some other “modifications” call into question the very possibility of maintaining high standards of constitutional justice in Russia today and in the future. The extensive review of the constitutional and subsequent legislative changes presented by the authors provides food for thought and leads to pessimistic intermediate conclusions, which are increasingly confirmed in the post-reform practice of the Court.

Thus, after reading the book, the scholar is left with a full range of emotions – from optimistic satisfaction about the successes in the development of constitutional justice in Russia to a strange, poignant feeling of the constant vulnerability of the idea of constitutional review in the past and at present. The authors do not speak directly about the crisis of constitutional justice; rather, this revelation becomes evident from the systemic interpretation of the ideas discussed in the book. The path of the Constitutional Court of the Russian Federation was not strewn with roses. At virtually no point in time has constitutional justice been mainstream. It has rather been a tiny stream making its way through the environment either completely unsuitable, or only conditionally suitable for it. It developed during the times of global upheavals and serious transformations, that often occurred during a constitutional revolution, when “social, political, economic, ideological and legal values faced a radical change” (p. 370).

In the light of the above, a lot about constitutional justice in Russia becomes comprehensible from new angles. Firstly, the history of constitutional justice in Russia described in the book is

a story if not of unconditional success, then at least of noticeable progress. There are some questionable trends and controversial decisions of the Court, but in the long term, the development, implementation and rooting of a number of valuable constitutional ideas in Russia are quite evident. Then, the role of all subjects of constitutional relations becomes multidimensional and vital for the successful functioning of the body of constitutional review. Constitutional review, as the authors rightly point out, is vulnerable to political influence. It is important to take this aspect into account and be fully aware of it to achieve positive change. And finally, the key idea is that the society needs to preserve the Constitutional Court of the Russian Federation, so that it does not become “an outgoing reality”, and does not follow the path of the constitutional (charter) courts of the federated units of Russia. The Constitutional Court of Russia is a rooted reality, and the authors of the book have done a fantastic job to prove this statement.

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