



REVISTA INCLUSIONES

HOMENAJE A ANDRÉS DI MASSO TARDITTI

Revista de Humanidades y Ciencias Sociales

Volumen 7 . Número Especial

Abril / Junio

2020

ISSN 0719-4706

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**DIALECTICS OF RIGHTS AND DUTIES IN THE LEGAL AXIOLOGY OF RUSSIAN
CONSERVATISM OF THE 19TH CENTURY**

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Fecha de Recepción: 11 de noviembre de 2019 – **Fecha Revisión:** 05 de enero de 2020

Fecha de Aceptación: 03 de marzo de 2020 – **Fecha de Publicación:** 01 de abril de 2020

Abstract

Turning to the study of the relationship and interaction of rights and duties in the political and legal doctrine of domestic conservatism seems relevant due to the presence of problems in legal regulation due to the lack of formation of the system of legal values, the confrontation of their groups in the modern legal culture of Russia. Despite its importance, the axiological potential of duties in the conservative dimension remains little studied. An attempt is presented to analyze the phenomenon of duties, which is perceived differently in the liberal and conservative political and legal doctrines of the 19th century. The views of leading conservative thinkers of the pre-revolutionary period are examined: M.N. Katkov, the ideologists of Slavophilism I.S. Aksakova, A.S. Khomyakova, conservatives of the second half of the XIX century N.Ya. Danilevsky, K.N. Leontiev, K.P. Pobedonostseva, L.A. Tikhomirova, made an appeal to the heritage of I.A. Ilyin, related to the first quarter of the XX century, etc. It is concluded that the political and legal doctrine of conservatism in the context of the religious doctrine of human sinfulness questioned the absolutization of human rights, justified the primacy of duties over rights. Russian conservatism of the 19th century put forward the theory of moral law, raising the functional of law over state coercion, affecting the motives of legal behaviour, lying outside the fear of coercion by the authorities in this theory, the convergence of moral duty and legal duty was embodied in legal moral duty, which had attributive signs of two phenomena.

Keywords

Russian conservatism – Legal values – Rights – Duties – Feeling of duty – Moral law

Para Citar este Artículo:

Kuzubova, Angelina Yurievna; Podoksenov, Alexander Modestovich; Savvina, Olga Alexeevna; Shabalina, Evgeniya Ivanovna y Goryunova, Elena Nikolaevna. *Dialectics of rights and duties in the legal axiology of Russian conservatism of the 19th century*. Revista Inclusiones Vol: 7 num Especial (2020): 42-55.

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Introduction

The political and legal doctrine of Russian conservatism is a complex phenomenon, but outside of its knowledge, it is impossible to understand the past of Russia and its present. As researcher Peter J. Sandys notes: "As a result, Western commentators nowadays, lacking any in-depth knowledge of Russia's conservative heritage, are both unable and unwilling to place any contemporary Russian government within the correct intellectual context"¹. Consequently, the identification of the axiological dominants of Russian conservatism is relevant in terms of establishing a deep semantic connection between the modern legal theory of Russia and the conceptual tradition of domestic legal thought of the XIX century, as well as in the aspect of bringing the foreign community of researchers closer to understanding the features of Russian legal being.

On the social principles in the state, L.S. Mamut expressed himself as follows: "Society as a whole is a true creator of all rights and duties, freedom and responsibility, honour and dignity, justice, equality, etc.; it is the creator of all social values and anti-values, all social definitions that are personified in "human personalities"². A measure of the justice of the law implies a harmonious combination of rights and duties because the presence of some implies the presence of others. In the first decades of the XXI century, the existing imbalance, requiring scientific understanding and practical solutions, is becoming more and more obvious. Legal duties in their modern form have lost their internal value content, retaining only their external form in the form of an abstract feeling of duty. This, like the hyperbolization of the meaning of rights and freedoms, the popularization of desires to possess only rights, undermines the regulatory potential of law. Duties in modern realities are perceived as "inevitable evil", anti valued, something opposite to positive freedoms and rights. It is assumed that rights and freedoms are natural and stem from the nature of man, while duties are an element of state coercion. At the same time, the harmony of public relations implies not only respect for human rights but also the fulfilment of certain duties. The beginning of the 21st century demonstrates a new level of development of individualism, which manifests itself in the widespread practice of exercising one's rights and freedoms without taking into account the interests of not only society and the state, but also other people. And the Russian legal culture has the experience of social and legal consumption, expressed in bringing the idea of human rights beyond the limits of the reasonable and necessary. L.I. Glukhareva states: "Understanding the danger of proclaiming and propaganda of rights deprived of moral, social and civic content, that is, rights that are" detached "from their duties, many scientists, politicians and practitioners put forward a proposal to create the Universal declaration of the basic duties of a person or the Declaration of the duties and responsibilities of a person"³. But such an initiative, unfortunately, has not been implemented.

It is believed that in Russian society, legal consciousness, legal culture, prevailing forms of legal behaviour preserve and transmit traditional value orientations, which are based on religious and moral dominants. In this regard, the works of thinkers of Russian

¹ P. Sandys, *The Waning of the West: An Inconvenient Truism: The Political Philosophy of a Conscientious Dissenter* (Author Solutions Inc., 2019).

² L. S. Mamut, *The social state from the law point of view*. State and law, num 7 (2001).

³ L. I. Glukharyova, *Duties of man and citizen in the context of the theory of human rights*. History of State and Law, num 7 (2009).

conservatism are of interest, which touches on the problem of duties and internal self-restraint, the feeling of duty. The topic of the correlation of rights and duties is revealed through the study of its value component; therefore, turning to the legal axiology of Russian conservatism of the 19th century represents an urgent scientific task. The personal and socio-social value of human duties requires both special research and their separate fixing in regulatory legal acts. Of practical importance is the analysis of the axiological content of the Russian conservative political and legal doctrine, which is a repository of ideas and concepts of the formation and development of Russia, substantiating its cultural and historical identity.

Methods

The Institute of duties has a multi-thousand-year history, and more than one generation of thinkers from different regions of the world has made attempts to theoretically understand this phenomenon. Each era gave rise to its ideas about the place and role of human and citizen duties, which were determined by the type of culture, religion, state, and the role of groups and layers that dominate in this society. So, in modern times, natural-legal doctrines appeared that elevated freedom, the right to life, property, dignity, and others to the rank of highest values. At the same time, the primacy and independence of the system of rights from state power was justified, theories of limiting state interference in the rights and freedoms of individuals were developed. Liberal natural-legal theories spread on a global scale under the slogan of their universality and focus on all subjects without exception. The term "human rights" described the relationship between a person and the state, reflecting the level of state intervention in the life of its citizens. The main category of human rights concepts was individual freedom as "freedom from" and "freedom for". The first was a type of negative right, implying the absence of undesirable interference, external pressure from the state. "Freedom for" - a type of positive law governing the provision, provision of a person with any benefits. Human rights were created to guarantee the independence of a person from state power: states were obliged to not interfere in the private lives of their citizens.

The history of the formation of European civilization, based on economic individualism and the philosophy of rationality, led to the emergence of the phenomenon of personal individual responsibility, which has become a way of fulfilling duties. In the liberal doctrine, individual rights were the main element of its legal status, associated with the legal expression of freedom, or rather, with certain powers obtained for the actual exercise of freedom. As a source of human rights, its biosocial nature was considered, and they, accordingly, acted as natural and inalienable, and not granted by the rulers. A subordinate position in this concept was occupied by duties interpreted as an infringement of personal freedom, refusal of benefits in return for providing legal protection of freedoms. Liberalism justified the existence of an abstract person, autonomous from society and possessing certain "innate" rights that were not connected with duties in any way. The problem of correlation of rights and obligations in the political and legal doctrine of liberalism can be considered in the plane of the interaction of legal and moral regulators of social relations. Liberal justice comes from the idea of individual freedom as the centre of the universe, a person devoid of religious restrictions. Secularized legal awareness is focused on the law as the only regulatory and disciplining system that puts forward in the first place precisely the rights, not the duties, not their complex interaction. In the devaluation of the role of morality, the weakness of liberal doctrine is manifested. Formal law, with its detailed regulation of social relations, still cannot penetrate the depths of a person's

consciousness, direct his will in the right direction, only regulators of a higher order can do it. Only moral motives can trigger complex internal processes that develop into imperative guidelines. Moral and legal norms are perceived by consciousness and embodied in the activities of people, jointly streamlining social relations. Law was initially endowed with moral properties, but their quantitative characteristics are different. Thus, liberalism minimizes the moral aspects of legal life, developing the idea of freedom from everything, including morality. In this context, it became logical to reduce the authority of duties and feeling of duty that underlie traditional morality. In the framework of conservative legal understanding, the rational dogmatism of the legal ideals of the liberal doctrine was criticized, based on the imperfect, from the point of view of conservatism, method of rational knowledge. Conservatism recognized the limitations of rationalism. Within the framework of ideology, there was a widespread belief that rationalism with its a priori foundations cannot create a full-fledged picture of legal reality. The conservative methodology of the study period was based on the Orthodox religion, which asserts the limitations of linear development. It should be noted that traditionalism and conservatism historically endowed duties with an absolute character. To substantiate the idea, both theological and historical arguments were given, respectively, the duties were either due to God's will or were accepted as the legacy of previous generations. In the XVI-XVII centuries, more sophisticated theories have appeared, suggesting conscious and voluntary awareness and acceptance of duties based on moral duty for the common good. Harmonization of rights and duties, according to N.N. Alekseeva occurred during the "Moscow period" of the development of Russia: although Moscow kings did not feel the influence of Roman law with his teachings on the fundamental principles of imperial power, however, the legitimacy of the tsar's power did not raise questions, as no one doubted that "a true, Orthodox tsar defines his power and the consciousness of moral duties lying on it"⁴.

Discussion and Results

In domestic science of the Soviet and modern period, positivistic interpretations of duties prevail. Legal obligation acts as a special type of behaviour required by the law of one obligated person concerning another, an authorized person possessing relevant subjective rights "⁵. Thus, the status of legal duties is often disclosed through the categories of "necessary predetermination", "demand for power provided by state coercion", "form of expression of responsibility", "prohibition of certain types of behaviour", etc. Such an approach improves understanding of the forms and procedures for the implementation of legal duties but does not help to clarify their status, nature and structure. Duty in the broad sense is all due that someone must fulfil or observe, while duty is an objective requirement of public morality. In the modern domestic theory of law, legal obligations are considered as due action or inaction equivalent to rights and freedoms, based on state necessity and realized voluntarily or by state coercion based on intrapersonal and legal responsibility. This is an imperious, categorical, unconditional and rigorous requirement of a certain variant of behaviour. Legal obligations are inseparable from the subjective rights of individuals, legal entities, collective entities because they contain the limits of restriction and exercise of subjective rights. The essence of obligations is expressed in the fact that they direct the behaviour of individuals in the right direction, form the proper legal awareness and legal culture, and therefore serve to strengthen the rule of law in society.

⁴ N. N. Alekseev, Russian people and the state. Agraf (2003).

⁵ M. N. Marchenko, Problems of the theory of state and law. Prospect (2018).

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A person possesses at the same time free will and the presence of certain duties to himself and others, the shift of the centre towards one of the sides of this antinomy leads to a violation of social equilibrium. After all, it is believed that duties without rights are a sign of despotism, and, conversely, rights without duties are anarchy, chaos. Only the dialectic of rights and obligations can harmonize the interests of the state, society and the individual. Moreover, the peculiarities of the formation and development of Russian civilization laid special approaches to many institutions of law. In particular, the priority of the common cause over personal interest, the cult of humility, obedience, the dominance of non-legal regulators, etc. The crisis of the phenomenon of duties that have emerged in recent decades consists of the loss by the latter of its internal value content, the reduction of only forced actions or inaction. The essential, volitional nature of self-obligation is lost, due to which the person is reduced from the subject of law to his object. Whereas guilt, conscience, and duty are necessary components of a person's internal responsibility, which determines the nature of legal duties. Elimination of negative trends and improvement of legal regulation seems possible by resorting to theories of the unity of rights and duties created by domestic conservatism.

The political and legal doctrine of Russian conservatism of the 19th century was based on the ideas of a strong autocracy, a paternalistic type of attitude of the authorities towards subjects, which were interpreted as supporting pillars of the building of Russian statehood. Paternalism in this context was expressed in the identification of the interests of society and the state, the formation of special family-informal social relations in which the autocrat paternally took care of the people, protected from mistakes and brought up "stumbled" subjects. The monarch could reason and resolve any dispute in a family-like manner; therefore, public relations did not imply a detailed legal regulation, inappropriate within the framework of the special connection between the people and the sovereign. The main hopes were associated with the identity of the autocrat, who was to personally conduct a trial of subjects. The universality of the competence of the supreme power, which includes judicial jurisdiction, stemmed from the idea of following the supreme power of higher truth. The king became the supreme judge, embodying the ideals of absolute truth on earth, all subjects could send their requests to him. Consequently, the conservative model of rights and freedoms could be realized in the personality of the autocrat.

The rights of the individual in a conservative worldview were due to inclusion in supra-individual social structures, generated by the religious and moral imperatives of a hierarchically organized society. The fundamental right of an Orthodox person was considered the right to "save the soul." Human rights in the teaching of conservatism were considered in the aspect of a strong state, stemmed from the power of the autocratic monarchy. It was believed that only autocracy was able to balance the relationship between state power, legislation, customs and internal freedom of the person. The strength of the Russian autocracy stemmed from its religious conditioning, from the idea of fulfilling the highest duty by the monarch before God, the people and history. On the contrary, the liberal concept of freedom from state power was aimed at "recapturing" the maximum of freedom from the state by restraining the arbitrariness of the ruler by individual rights.

In the conservative political and legal doctrine, the concept of duties is formulated peculiarly, with significant differences from the positivistic paradigm, which perceives duties as a measure of socially necessary human behaviour, designed to ensure, together

with rights and freedoms, to balance, stability and dynamism of legal regulation. If in a positivistic interpretation a legal duty is considered as a way of legal regulation, expressed in the form of a legislative requirement for a certain behaviour, then conservatism obligations act as incentives, carry positive qualities and are associated with the duty to perform certain actions. In the conservative doctrine, a unity of moral duty and legal duty occurred, bringing together law and morality.

Conservative ideology addresses the important issue of internal self-obligation, embodied in the process of enforcement in the form of legal duties. The status of the subject of social relations depends on the circle of his duties. In the second half of the 18th century, one of the conservative thinkers - M.M. Shcherbatov, who considered the nobility a special social stratum with its inherent qualities of historical continuity, duty and class honour. Ideally, according to M.M. Shcherbatov, the state, the activity of the power apparatus is based on the fact that officials are morally prepared to conscientiously fulfil their duties⁶. That is, there is a direct correlation between the number of duties and the social status of the subject: he is higher for the one who has more responsibilities. It was a question of a dialectical combination of rights and duties in specific historical conditions because it was precisely the inclusion in social structures that allowed, according to the conservatives, the degrees of freedom they deserved to be acquired. Representations of the natural inequality of people in their social status, level of education, needs and other qualities characteristic of conservatism are also reflected in the theory of legal inequality of duties and rights. The liberal concept of personal rights was based on ideas about the universality of rights, formal legal equality, regardless of religion, property and estate status, educational qualifications, etc. Denying the egalitarian attitude of liberalism, the conservatives insisted on their inconsistency with the traditional foundations of Russian statehood in the form of an Orthodox worldview, autocratic rule, and stratification of the social system. Legal inequality seemed to them fair, because of people different in their abilities and qualities a priori could not, in their version, have the same volumes of rights and duties. The issue of freedom belonging to the population of the empire was, according to the doctrine of conservatism, the responsibility of the autocrat. The system of class privileges and legal inequality provided by the latter ensured a balance between the diverse needs of the many-sided society of the Russian Empire.

In contrast to the liberal concept of natural law, conservatism put forward the idea of duty as a blessing. Therefore, the law itself was understood more as self-restraint and duty. The feeling of duty was considered as the inner side of the duty, a reflection of the potential of the action. The feeling of duty is a consequence of a person's internal self-esteem in the context of his ideas about the ideal, reference behaviour. This is a moral readiness to bear a certain measure of responsibility, taking into account the interests of the social community, the state and the individual. Responsibilities are based on a person's inner values, his conscience, and feelings of guilt and shame. Therefore, subjective responsibility is impossible without the interaction of the components of conscience, guilt, feeling of duty, justice. At the same time, it is a model of complex relationships between the individual, society, its parts, the state in different variations, for example, personality-personality. It was paternalism and collectivism that determined the development of the moral component in the domestic phenomenon of the feeling of duty.

⁶ M. M. Shcherbatov, *Different arguments about the Board. Works: in 2 volumes, V. 1.* Publishing house of Prince B. S. Shcherbatov (1896): 335-354.

The conservative political and legal doctrine focused on positive (internal), rather than retrospective responsibility, realized in the form of state coercion. In modern legal science, unfortunately, the potential for positive responsibility is not in great demand; there are problems with its terminological definition. At the same time, in some works the necessity of sharing positive and retrospective responsibility as a factor in increasing legal responsibility⁷⁸ is substantiated. So, self-obligation as a property of an individual takes on a legal form in the form of legal duties. The intrapersonal “experience” of law provides a correlation of subjective rights and legal duties. It can be stated that the idea of internal subjectivity of legal duties has developed in Russian conservatism.

In the legal theory of conservatism, duties were perceived as moral rights; rights and duties merged. As noted by one of the creators of the category “legal liability” N.N. Alekseev: “In contrast to Western life, our state has developed with the predominance of the duty beginning over the law beginning”⁹. It is with an internal, organic combination of rights and duties that a single “legal obligation” is born in law. The Russian conservative M.N. Katkov: “Russian subjects have more than political rights: they have political responsibilities. Each of the Russian subjects should stand guard over the rights of the Supreme authority and take care of the benefits of the state. Everyone is not only entitled to take part in public life and take care of its benefits but is called upon to do so by the duty of a loyal subject. Here is our constitution.”¹⁰. Stability, according to M.N. Katkov, is a product of public relations, within the framework of which political competencies and their realization stem from the internal feelings of the duty. This statement characterizes the conservative dimension of individual rights as a social ministry in the name of higher values.

In domestic conservatism, the problems of internally recognized as values of duties are developing, based more on conscience and religious ethics than on justice. To the question of what proper behaviour is desirable for society, this ideology gives an unambiguous answer - corresponding to the canons of Holy Scripture. And obligation is seen as a moral readiness to perform certain actions and bear responsibility. The conservative perception of law as debt implies the inevitable responsibility for what is done. The most important thing in the perception of the conservative ideology of duties is the understanding that self-obligation or an internal conscious obligation is the main component that triggers the action of legal duties as external manifestations of this process. Conservatism, based primarily on religious ethics, indicated the direction for further work: how to make abstract legal duties acquire the character of a person's behaviour that is conscious, accepted and desired. Conservative thinkers believed that responsibilities should be based not so much on legal regulations as on moral imperatives. Only a combination of two components: legal duty and internally conscious of a feeling of duty ensure the effectiveness of the category "duty". The nature of the obligation is connected with the functioning of the evaluation criteria, through the activity of which the choice of optimal forms of behaviour, approved by society, is carried out. Being in a conservative paradigm is moral readiness and the ability to bear responsibility.

⁷ N. V. Butusova, *State-legal relations between the state and the individual* (Moscow: Yurayt Publishing House, 2018).

⁸ D. A. Lipinsky, “Positive legal responsibility: for and against”, *Law and Politic*, num 11-12 (2005).

⁹ N. N. Alekseev, *Russian people and the state* (Agraf, 2003).

¹⁰ M. N. Katkov, *Our constitution and our political responsibilities* (1886). Available at: www.dugward.ru/library/katkov/katkov_nezawisimost.html

The category of “duties” is filled with diverse content, reflecting a synthesis of religious, moral and legal principles. Social duty - this is due to the volitional activities of people due to behaviour, due to both external influences and internal attitudes. Achievement of Slavophil political and legal thought can be considered theoretical works, considering power as a duty, linking the activities of the ruler with state of the feeling of duty. In this concept, the idea of duty prevailed over the idea of law, the moral imperative dominated the legal one. For the state-legal ideal of the Slavophiles was characterized by the theory of primacy, universality and moral conditionality of duty. Rights were secondary to duties. So, I.S. Aksakov wrote that the Russian Tsar was always morally responsible “before conscience, before the people, before the court of history ...”¹¹. The thinker of Slavophilism in his writings defined the nature of royal power as conscription, feat and service, predetermined by God. Law itself as an internal truth in the dualistic concept of legal Slavophiles was perceived as a sacred duty and moral self-restraint. It was assumed that in the Russian Orthodox worldview, thoughts and needs of fulfilling a social duty are organically present. A.S. Khomyakov associated the genesis of law with the emergence of people's internal awareness of their moral duties: “For power to become law, it must derive its borders from the law, not from an external law, which again is nothing more than a force, but from an internal law, recognized by man himself. This recognized law is a moral duty recognized by him. It and only it gives the powers of man the meaning of the law”¹².

The representative of the post-reform conservatism K.N. Leont'ev considered social strata legally formed and endowed with unequal rights and privileges to be a guarantee of stability of states. The philosopher warned of the danger of democratization of not only vices but also virtues. The thinker justified his position as follows: certain positive feelings, such as, for example, self-esteem, in people of different backgrounds, upbringing and education give rise to different, often harmful to society, consequences. Even more negative results bear the similarity of “vices, bad tastes, weaknesses and sins”¹³. Reforms of the 60s upset the balance of Russian society, confirming once again the correctness of Plato's dictum quoted by K.N. Leontiev: “For some, wisdom is needed, for others, courage, for most, obedience!”¹⁴. A person, according to the teaching of conservatism, must correlate his aspirations, first of all, with the interests of the communities to which he belongs. And, in turn, the authority granted should be correlated with the assigned responsibilities, and only those rights that are necessary for the implementation of the debt should be granted. In the work “Russia and Europe” N.Ya. Danilevsky emphasized the property of any social community to impose on its members a variety of duties as “constraints that have to be borne; duties for which many have to sacrifice.”¹⁵.

The philosophy of conservatism proceeded from the ideas of inequality and hierarchy, stratification, the national identity of society, therefore, it considered incorrect to pose the question of universal and abstract human rights and duties. According to the remark of K.P. Pobedonostsev: “Philosophers of the school of J.-J. Russo did a lot of evil to humanity. This philosophy took possession of the minds, and yet it was all built on one

¹¹ I. S. Aksakov y Works. T. V. Printing house of M. G. Volchaninov (1887).

¹² A. S. Khomyakov. The opinion of foreigners about Russia. Available at: www.dugward.ru/library/homyakov/homyakov_mnenie_inostran.html

¹³ K. N. Leontyev, Fruits of national movements in the Orthodox East. Blooming Difficulty: Fav. Articles. Young guard (1992): 261-262.

¹⁴ K. N. Leontyev, Fruits of national movements in the Orthodox East. Blooming Difficulty: Fav. Articles. Young guard (1992): 262.

¹⁵ N. Ya. Danilevsky, Russia and Europe, De'Libri (2015).

false idea of the perfection of human nature and the complete ability of every one to comprehend and fulfil those principles of the social system that this philosophy preached.¹⁶ At the same time, conservatism has always insisted on the individualization of approaches to the personality as a specific person with a certain culture, religion, traditions, due to the surrounding social reality. Therefore, generalizations and the construction of global institutions of rights and obligations are unacceptable, since humanity on a global scale cannot be united into a single community. About this K.P. Pobedonostsev wrote that collective communities do not imply the original unity of their will, therefore any public gatherings are capable of accepting the opinion expressed by one person or several people. And faith "in the general principles is the great error of our age"¹⁷. The thinker spoke about the duty of the legislator to educate the character of the people and affirm the personal responsibility of everyone. K.P. Pobedonostsev considered continuous service, representing self-sacrifice, as a matter of power. He insisted on the idea of power as a vocation and consciousness of dignity: the authority criticized by the philosopher was deprived of consciousness of his duty, acting formally, not for the good of society and the state.

In the political and legal doctrine of L.A. Tikhomirov's theme of rights and duties is examined through the prism of the nature of monarchical power. The thinker insisted on the need for parity of rights and duties, since "the consciousness of law everywhere follows from the consciousness of the duty of duty"¹⁸. In the context of the religious-moral worldview, the philosopher noted, a person has almost no rights, but only duties and the law itself is the result of mutual duties. Personal freedoms, according to L. A. Tikhomirov, are derived from collective freedoms, the rights of those public associations in which the individual is included. L.A.Tikhomirov in his work "The Sole Power as a Principle of State Building" very accurately expressed the approach of conservatism to the problem of the interdependence of duties and rights: "In the Supreme Power itself, the law was already flowing out of duty, from its mission. Only for the fulfilment of this mission, for the opportunity to fulfil the duties stipulated by it, the Supreme Power received its rights not from people but God. He people, therefore, belonged to the definition of the boundaries of these rights. The moral religious idea, shared by the nation and expressing the will of God according to its faith, limited the king's rights not to the rights of subjects, but only to their duties of the highest category, namely, their duties towards God. This idea does not know any other rights of the subjects concerning the Tsarist authority, except those which are given by our duties concerning God. Obedience to the Supreme Power ends only where it violates its duty. Both in power and subjects, the right is determined by the obligation, the right is the only formula of the conditions necessary for the fulfilment of the duty"¹⁹. The exercise of human rights to the maximum extent, in the theory of the thinker, is possible only under the conditions of monarchical power, the only one capable of embodying the supremacy of a moral ideal. After all, the very nature of the monarchy, according to L.A. Tikhomirov, concluded in duty, by which subjects should proceed from the predominance of duties over rights. L.A. Tikhomirov believed that public-law duties do not come from legislative provisions, they are based on a legally recognized sense of duty towards the

¹⁶ K. P. Pobedonostsev. The great lie of our time. K.P. Pobedonostsev: pro et contra, RKHGI (1996).

¹⁷ K. P. Pobedonostsev, Diseases of our time. K.P. Pobedonostsev: pro et contra, RKHGI (1996): 144.

¹⁸ L. A. Tikhomirov, Monarchist statehood. Oblizdat; Alir (1998): 578.

¹⁹ L. A. Tikhomirov, Sole power as a principle of state-building (1943). Available at: www.legitimist.ru/lib/ideology/016_l_tihomirov_edinolichnaya_vlast_kak_princip_go.pdf

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Church, community, people, and state. The creator of the theory of monarchist statehood insisted on securing only those individual rights that are needed to fulfil a duty.

Author of works on problems of legal understanding I.A. Ilyin emphasized that legal consciousness as a category of legal science is not reducible to a person's recognition of his rights. By granting authority, the right determines the forms and methods of performance of the debt. "People who do not know their duties," wrote I. A. Ilyin, "are not able to observe them, do not know their limits and are powerless against extorting a "voivode", a usurer and a robber; people who do not know their authority arbitrarily exceed them or cowardly give way to force; people who do not know their prohibitions easily forget all retention and discipline or are doomed to legal insanity"²⁰. Rights were interpreted by conservatives as a tool for the discharge of duties. I.A. Ilyin, like M.N. Katkov, noted the specifics of national justice, in which public law duties were perceived as rights, and, conversely, powers as duties.

Conclusions

The significance of the results of the study is predetermined by the following. Legal science at various stages of its development continuously turns to the value substantiation of state-legal phenomena. The depth of philosophical and legal understanding of the categories of "law" and "obligation" affects the quality of legal reality. This is in demand, in particular, in the context of improving the mechanisms of formation and development of legal awareness, in creating programs and methods of legal education. The evolution of the legal field is impossible without using the achievements of domestic legal thought, reflecting the archetype of the national legal culture and demonstrating the specifics of the institutionalization of legal values. In the doctrine of conservatism, in contrast to the liberal-humanist theories that raise the podium of human rights, the ethic of duty was idealized. The sinfulness of human nature, due to the freedom of choice between good and evil, did not allow conservatives to be social optimists. Within the framework of the course, there was an understanding of the "gravity" of performing certain duties, their inability to deliver joy and pleasure. The correlation of the categories "freedom", "duties", "responsibility" was considered through the concept of sin as unreasonable, something that should be avoided. The moral and religious experience of man, in the teaching of conservatism, predetermined free choice and responsibility. Responsibility, in turn, reflected the level of perception by a person of moral and legal values, willingness to act, understanding the consequences of their actions.

The conservative ethics of duty proceeded from the denial of the pursuit of personal happiness; instead, it was proposed to follow models of behaviour aimed at the collective good. The dominance of public interests over private interests in the context of the fulfilment of duties was mediated by the category of "social good". It must be what society needs. And in this vein, there is a differentiation of the political and legal ideology of conservatism. The Slavophiles proceeded from the primacy of organic socio-cultural communities - communities carrying and transmitting traditional folk values. Conservative statesmen saw the starting point in the autocracy, from which the principles of political expediency (N.M. Karamzin, L.A. Tikhomirov). Religious thinkers of the beginning of the XX century I.A. Ilyin, S.N. Bulgakov was based on the Orthodox ethics of duty.

²⁰ I. A. Ilyin, About the essence of legal awareness, "Rarog" (1993): 24.

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In the conservative doctrine, there was a theoretical justification for the difference in responsibilities as legal and moral values. As a legal category, duties acted as an institutional value, realized under external coercion, focused on the interests of the state, and having a concrete result. Responsibilities in the moral dimension are a universal value that provides an opportunity for free choice when following a moral ideal, which has a universal and timeless character. "No matter how diverse the moral concepts of various peoples are," pointed out N. Trubetskoy, "they all agree among themselves that a person should sacrifice some personal interests for the sake of the common good, limit his arbitrariness for the sake of his neighbours... And there is no doubt that it is in this principle of universal human solidarity that it is not the passing point of view of one or another historical era that is expressed, but the eternal immutable law of good ..."²¹. This dictum proceeds from the understanding of good as a form of manifestation of supra-individual moral and religious values of truth, justice, mercy, attainable through the restriction of personal freedom and duty.

Russian conservatism saw in a secularized Western society a chaotic mixture of individuals, each of whom strove to achieve personal good. The legal doctrine of conservatism shifted emphasis to the collective status of "we," emphasizing the need for unity based on shared values. In the teaching of conservatism, much attention is paid to the categories of "duty" and "humility." The latter was considered as the first human need, expressing recognition of oneself and one's fate being in power stronger than your strength and more reasonable than your mind. Conservative legal thinking proceeded from the conditionality of rights and duties of belonging to certain social communities. A person can be a subject of law only through social identification. Conservatism seemed organic to the presence of the person's innate responsibilities towards God, the state, people, and the community, while in liberal doctrine everything proceeded from the naturalness of the existence of human rights as part of the civilized world.

Conservative approaches to rights, freedoms and duties should not be personified with a denial of the value of the human person, its dignity, and the derogation of rights. A wide range of ideas of the ideologists of conservatism offered different concepts for understanding the problems, but, in general, he proceeded from Orthodox anthropology. We share the concept of the primacy of service concerning rights by almost all ideologists of Russian conservatism. The idea of legal duties put forward and substantiated by a conservative political and legal doctrine corresponded to the Orthodox understanding of rights and obligations, the Christian principles of being and the sociocentric value system of Russian society. The merger of rights and duties into a single modus seemed organic and consistent, and the state built on such an idea was considered as a social ideal. Such a system of legal regulation was an antinomy to a liberal "free" law, proceeding from the autonomy of the individual and the mechanical, external relations between rights and duties.

The problem of the correlation of rights and duties was solved in the context of anthropological ideas of conservatism about the imperfection and sinfulness of man. Such approaches made it necessary to limit free will through mechanisms of public law influence on an individual. The doctrine of conservatism questioned the absolutization of human rights, justified the primacy of duties over rights. The granting of rights should have been

²¹ E. N. Trubetskoy, Works on the philosophy of law. Publishing House of the Russian State Art Institute of Arts (2001): 311-312.

adequate to the ability of the people to manage them for the benefit of themselves and society, which implied the existence of appropriate legal orientations. The population had to be adapted to the use of these freedoms. At the same time, Orthodox ethics proceeded from the principles of voluntary, conscious fulfilment of duties. The political and legal doctrine of Russian conservatism has created a theory of moral law that raises the functional of law over state coercion, affecting the motives of legal behaviour that can only be reduced to fear of punishment by the authorities. The moral duty and legal duty in the teaching of conservatism are combined into a legal duty, which has attribute attributes of two phenomena. Discipline and the rule of law are based on the fulfilment by members of the society of their duties. The evolution of responsibilities is a reflection of the level of society's ascent from biological to socio-legal. Each person must not only fulfil the moral and legal requirements but also contribute to the strengthening and dissemination of the positive attitudes that he shares. Otherwise, society is faced with a situation of degradation, mistrust, a decline in the authority of moral regulators, and an escalation of evil. The threat to a secularized modern society is not human rights as a legal value, but an unnatural expansion of their limits. A reasonable balance of rights, freedoms, duties and responsibilities is necessary, without diminishing or unjustifiably increasing any institution. An interesting statement by Paul Robinson regarding the prospects of the West's understanding of the ideological specifics of Russia is: "But the point here is not whether liberal-conservatism is the right choice for Russia. Rather, the issue is that we in the West fail to recognize this ideology for what it is ... Our relations with Russia would be greatly improved if we were to acknowledge and engage with this reality instead of tilting at irrelevant caricatures of a police state"²². Indeed, nowadays one should avoid both the prevailing simplified perception of the legal culture of Russia and primitive interpretations of legal duties as a specific behaviour provided by the threat of state coercion. Responsibilities should become an important element of the social status of moral worth to bear their personality, which was described more than a century ago by the ideologists of Russian conservatism. The convergence of law and morality, the balance of rights and duties can translate into practice the regulatory potential of law.

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²² P. Robinson Putin's Philosophy. The American Conservative (2012). Available at: www.theamericanconservative.com/articles/putins-philosophy/

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