

MODERNIZATION OF THE POLITICAL AND LEGAL SYSTEM AND ITS INFLUENCE ON THE REGULATION OF SOCIAL RELATIONS

A MODERNIZAÇÃO DO SISTEMA POLÍTICO E JURÍDICO E SUA INFLUÊNCIA NA REGULAMENTAÇÃO DAS RELAÇÕES SOCIAIS*

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Abstract: The study of conservative legal values is relevant since they allow to harmoniously and gradually improve the political and legal system, as well as to ensure their own path to modernization. Effective modernization as a factor in the development of law depends on scientifically grounded conditions, procedures and methods for its implementation. Within the framework of this article, the authors used legal and special methods from the history of political and legal doctrines. As a result, they have revealed the key vectors of modernization taking into account the established social practices and legal values of Russian conservatism. It is proposed to examine draft laws for the compliance of new provisions with traditional values of the national legal system; to develop the practice of using legal customs in social regulation; to humanize law in relation to the complementary action of moral and legal values and norms due to the revision of legislation. It has been concluded that modernization should proceed both from the modern legal paradigm and from the national legal tradition, mindset and established positive social practices.

Keywords: Political and legal doctrines. Legal values. Modernization. Legal axiology.

Resumo: O estudo dos valores jurídicos conservadores é relevante, pois eles permitem melhorar harmoniosa e gradualmente o sistema político e jurídico, assim como assegurar seu próprio caminho para a modernização. A modernização efetiva como fator de desenvolvimento do direito depende de condições, procedimentos e métodos cientificamente fundamentados para sua

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implementação. Dentro da estrutura deste artigo, os autores utilizaram métodos legais e especiais da história das doutrinas políticas e jurídicas. Como resultado, eles revelaram os vetores-chave da modernização levando em conta as práticas sociais estabelecidas e os valores legais do conservadorismo russo. Propõe-se examinar os projetos de lei para a conformidade das novas disposições com os valores tradicionais do sistema jurídico nacional; desenvolver a prática do uso dos costumes legais na regulamentação social; humanizar a lei em relação à ação complementar dos valores e normas morais e legais devido à revisão da legislação. Concluiu-se que a modernização deve proceder tanto do paradigma jurídico moderno como da tradição jurídica nacional, da mentalidade e das práticas sociais positivas estabelecidas.

Palavras-chave: Doutrinas políticas e jurídicas. Valores legais. Modernização. A axiologia jurídica.

1. INTRODUCTION

Attempts at modernization as the purposeful improvement of social institutions, norms and relations are made in the process of historical development. The evolution of humankind naturally predetermines the need to modernize legal systems. Due to these steps, a new impact on the legal sphere is potentially achievable. It is obvious that modernization should provide an answer to the following question: to what extent the generally accepted paradigms are consistent with national political and legal conditions? Accordingly, decisions should be made to harmonize objective circumstances, new needs and established practices. The improvement of legal systems in the context of its modernization should aim at enhancing the regulation of social relations.

The true modernization of state implies the evolution of its social, economic, political and legal spheres. Effective modernization is conditioned by the chosen program of changes and its compliance with the civilizational matrix. Therefore, we adhere to the position of A.S. Panarin (1995, p. 59) who noted that "many of the surprises connected with our reform [...] were connected [...] with the inefficient arrangement of its general historical, philosophical cultural foundations." In the post-Soviet politics, the idea of modernization "catching up with the West" prevailed. Nowadays the problem of choosing such a direction for development seems obvious, i.e. Russia cannot belong to the West due to its civilizational specifics.

For the Russian legal science, it is still relevant to reflect on the experience of recent decades and to forecast the political and legal future of state. In this context, there are questions about the direction in which social structures will develop or what values will contribute to the consolidation of society. Modernization involves adapting old structures to new functions. First of all, modernization affects values of the entire legal system and personal attitudes.

In the context of scientific analysis, the appeal to conservative legal values can be regarded as a mechanism for protecting the Russian society from global disorganization trends. Law should protect positive social experience and prevent destructive processes (for example, anomie). It is necessary to combine individual-personal and social-collective interests and needs.

2. METHODOLOGY

The axiological approach allows to combine the evaluative and goal-setting functions of culture, when the latter is regarded as a holistic phenomenon, beyond the opposition of creativity and tradition. Values-based approaches to the essence of legal understanding proceed from the perception of law as a value-normative system that developed in specific historical conditions, within certain religious, cultural and moral attitudes, which has found recognition and embodiment in the relevant behavior. This is recognition of the continuity of legal attitudes transmitted not only through legal norms but also through values. Within this approach, values are both the method and the purpose of cognition. The consideration of law in an axiological context allows to eliminate the impersonal nature of law and to avoid excessive rationalization.

This study is based on a substantive (ideological) criterion and the allocation of conservative legal values related to the Russian intellectual tradition of the 19th century. Legal values preserve and transmit the identity of state-legal traditions in the context of social transformations, influence the adaptation or confrontation of the received political and legal institutions. We define legal values in the political and legal doctrine of the Russian conservatism as a system of cultural and civilizational ideas about legal reality, expressed in legal consciousness and legal culture, perceived in unity with moral values and turning into a legal cultural canon of development in a dialogue discourse. Congruent moral and legal values ensure the preservation and reproduction of cultural and legal imperatives

The historical and legal nature of this study predetermined the use of special legal methods: historical, formal-logical and comparative. The specifics of this study necessitated the use of special methods from the history of political and legal doctrines: structural (including the study of the constituent parts of the concept); comparative analysis (in diachronic and synchronous terms) of various doctrines; theoretical and legal interpretation and evaluation of state-legal ideas. When conducting this scientific research, we were

guided by the fundamental epistemological principles of objectivity and comprehensiveness, the transition from abstract to concrete, the unity of the logical and historical in knowledge.

3. RESULTS AND DISCUSSION

The effective reforming of the legal sphere is conditioned by the involvement of national legal traditions and values in this process. In relation to social practices and legal values of Russian conservatism, the legal system can be modernized in different aspects. In the political and legal doctrine, a thesis was developed that legal customs were able to bring law closer to the inner truth. The ancient Russian period was characterized by the development of national law and the predominance of customary law over formal law. Legal customs played a major role at later stages. In the conditions of modern Russia, we propose to expand the practice of using legal customs as an auxiliary source of law, thereby ensuring continuity between ideas in the national legal consciousness and official law. V.N. Sinyukov argued that the Russian right-wing tradition, as a cultural feature, developed such a legal form that was not always adequate to the essence of legal disputes. Consequently, our "law as a spiritual phenomenon is more humane, merged with traditional informal regulators, social habits, due to which these informal regulators need to stimulate their continuous reproduction because the life of legal structures literally depends on their existence, which in practice is not always taken into account" (Sinyukov, 1995, p. 14). Currently, it is obvious that law needs support in the form of other sources of law, in particular, in the form of legal customs.

The functioning of an integral system of customary law in Russia, its advantages and disadvantages are little studied and practically not updated at the level of law enforcement. This is conditioned by the fact that many scholars recognize that customary law regulated social relations more flexibly and contributed to the triumph of justice in its popular understanding (Alborova, 2009, p. 28). While the legal consciousness of most population of the Russian Empire in the 19th century demonstrated a skeptical attitude towards positive law, legal customs embodied the ideals of a legal order based on religion and morality. The functioning of customary law aimed at achieving justice, adequate to the internal community and the mindset of the peasantry. According to A.S. Khomyakov (2008), only customs can take into account all the subtleties of life since they "are made up of trifles that seem to have no importance; but siliceous strongholds were erected from the microscopic

remains of the Ehrenberg ciliates, and their petty details of everyday life form the bulk of customs as the only support of the national and social structure" (p. 666).

The conservative political and legal doctrine emphasized the advantages of customary law, including its organicism, integrity, flexibility, ability to develop and adapt, commonality and unity of worldview and orientation to higher regulators. A special emphasis was placed on the comprehensibility and accessibility of customs to ordinary legal consciousness and its consistency with the system of legal values.

The legitimation of customs during the reforms of the 1860s was an attempt to combine customary and formal law. As a result, volost courts could make their decisions based on customs. However, this synthesis was hindered by such principles of legal consciousness as the community and unity of the peasantry expressed in the priority of common interests over private interests; the prevalence of community decisions over law; the institution of collective responsibility; focus on the search for higher (above law) justice (Shatkovskaya, 2009).

The diversity of legal customs ensured their potential to regulate different social relations in the context of combining religious, moral and legal norms, as well as the priority of collective principles over individual ones. In the legal consciousness of peasants, there was a difference between state and people's justice. Therefore, it was a common belief that only community or volost courts could understand the conditions of people's life and properly consider their disputes. Such forms of public justice were characterized by informality, accessibility and democracy. While considering cases, the personal qualities of parties and all specific circumstances should be taken into account. The significance of community courts was conditioned by the fact that they embodied legal values of justice close to the people, the equality of community members, collectivism and conciliarity. The main goals of justice were to reconcile the parties and restore natural justice.

In the context of modernization, it is necessary to consider the legal mindset of Russian society. Its specifics lie in the fact that values are taken from legal traditions rather than from laws. In this regard, the development of customary law, for example, in the field of civil law is quite reasonable. It can fulfill a social mission by humanizing law and eliminating conflicts between the legal ideas of society and the legislator's will. After all, customary legal norms could smooth over contradictions of formal law, popular ideas about truth and justice, and legal practice. They are able to personalize formal law in relation to individual values and beliefs, problems and needs. Therefore, it seems relevant

to use achievements of the Russian conservatism, substantiating the role and importance of customary law in maintaining public order, in modern legal conditions.

For the purposes of modernization, we need to consider the teaching of the Slavophiles and conservatives about conciliarity as a national form of social coexistence on the basis of self-government, freedom and unity while sharing common moral, religious and legal values. Conciliarity is mostly embodied in religious life but it can also bind and stabilize the socio-economic and legal spheres. This is the harmony of a free human spirit and unity, knowledge and faith, private and universal. Conciliarity should "seal" the life of society and create a universal unity of people. The unification of people cannot and should not be formal (external), otherwise, it is no conciliarity.

In the 19th century, the political and legal doctrine of Russian conservatism provided a thesis that the world could not develop due to the existence of disunited individuals. According to A.S. Khomyakov (1994), only natural and immanently present unity "is the fruit and manifestation of freedom and unity based not on scientific rationalism or arbitrary convention but rather on the moral law of mutual love and prayer" (p. 191). This living unity, institutionally and outwardly expressed in the world, community, *veche* (popular assembly) or town's meeting, harmonized personal and public, which allowed overcoming numerous misfortunes and problems of the Russian people. According to the conservatives in the post-reform period, unity implies the inseparability of "duties" in relation to the dichotomy of rights and duties.

The conservatives considered the values-based components of conciliarity in the form of solidarity and justice, which are relevant today. The individualism of the 21st century is not conducive to strengthening the idea of a welfare state. The post-industrial markets need individualistic consumers, easily managed with the help of new values and technologies for manipulating consciousness. In this context, Christian values, ideas about good and evil, truth and justice are deliberately devalued. At the same time, aggressive individualism successfully attacks family values and destroys the system of family communications.

The demand for new solidarity is due to many factors, primarily the fact that it merges moral and legal principles, orientation towards social service and commensuration of one's actions with the system of religious and normative values. Solidarity is a social phenomenon that harmonizes the divergent interests of actors on the basis of spiritual, moral and cultural unity. The potential of new solidarity lies in its ability to stabilize

elements of the social system during the process of transformation by preserving the spiritual and moral basis through such concepts as "all-unity" and "conciliarity".

At the international level, there are popular ideas that the Russian culture, with its fundamental values, community-based conciliarity and Soviet collectivism, can give civilization new models of social interaction. The conservative doctrine can become the basis for the concept of social solidarity as a tool uniting the interests of different parties, "accepting" other people's interests and forming special communities having common values.

Undoubtedly, solidarity conditions the stability of the state embodied in organic correlativity, the awareness of common interests, the unity of values, effective mechanisms of mutual assistance and cooperation, and joint responsibility. The potential of solidarity to smooth over social contradictions has not been fully studied. In a narrow legal context, solidarity can be regarded as a system of legal means that ensure social harmony and unity, as well as cooperation in the conditions of social stratification.

While addressing attendees of the 7th St. Petersburg International Legal Forum, V.D. Zorkin (2018) recalled that

the Russian philosophy of the late 19th and early 20th centuries (with teachings on conciliarity, pan-unity, pan-humanity, etc.) was characterized by the desire to combine the idea of abstract, impersonal, formal legal equality with the idea of common responsibility originated in the early Christianity not only for themselves but also for others. As experts say, it is necessary to harmonize mind and spirit, freedom and mercy, law and truth, individual and social principles within the concept of law. (p. 12).

We agree with the opinion of the Chairman of the Constitutional Court of the Russian Federation on the particular relevance of these ideas to current trends in the formation of global legal order, global law and global legal understanding. These processes should not be based on the liberal paradigm, regardless of the ideas and principles of solidarism as an ideological platform that potentially accumulates the values of global interaction. While moving towards global law, legal technologies should be developed to harmonize individual freedom and social solidarity.

In the context of legal modernization, legislators should focus on the historically established features of the Russian legal consciousness and legal mindset. The Russian scholars address this topic more and more often. Thus, A.I. Ovchinnikov emphasized that Russia is inclined towards the values-based and rational legitimation of power and law, unlike the European legal culture that is formally rational. As a result, spiritual and moral

values that determine the historical fate of Russia, its political and legal status play completely different roles. Values-based preferences in law are not always subject to analysis, logical substantiation and rational justification, i.e. a choice has often a sensory-emotional nature. Therefore, A.I. Ovchinnikov (2016) proposed to define public morality at the level of law as a set of "traditional values, spiritual and moral ideas of the peoples of Russia about the good of society, family and individual, mercy, compassion, respect for others, tolerance, truth and justice" (p. 104).

The rules of behavior can be legitimized when obligations have a rationally incomprehensible ability to change social reality by pursuing certain goals. One should regard internal moral law as the main social regulator. Without its influence, any regulatory legal acts are doomed to failure. It is morality that is called upon to isolate and comprehend the individualism of the choice made. For a religious person (Christian), this moral imperative comes from the Gospel and does not require any explanation or discussion since it was given by Jesus Christ. For secular consciousness, the limits of permitted actions are mostly determined by law.

Nowadays the global secularization of society and growing fragmentation of moral values has become quite obvious. The transition to secular models of regulation is conditioned by the fact that there is no accumulation and transmission of spiritual experience and supreme values are not reproduced in such conditions. At the same time, certain legal values (for example, equality and human dignity) originated in the Christian culture. Religion has been a source of spirituality and morality for several millennia, streamlining social interactions. The loss of religious unity, commandments and values caused destructive changes in the form of anomie, the loss of goals and meanings. Social utopias, magic cults, rituals, myths, superstitions, etc. rushed in to fill the created gap.

Morality is a multidimensional phenomenon, i.e. a generally recognized system of values embodied in the form of behavioral patterns, ideas of honor, duty, justice, good and evil. On the contrary, it is a set of social relations that reflect the norms and rules of behavior, ideas, traditions, and views that exist in a particular society in a certain period. It is a well-known postulate that law is based on morality, while morality cannot be based on law by virtue of its nature.

The generalization of the moral experience accumulated by society is relevant in the process of creating bills. The moral examination of draft laws is crucial to building effective law enforcement mechanisms, which is impossible unless these documents correspond to the existing values. The effectiveness of a legislative act is predetermined by its correlation

with technical-legal, political, economic, administrative, social and ethical criteria. As a rule, the form of assessing the quality of bills and legislative acts is an examination conducted by the authors of bills, experts, legislative initiators, deputies, specialized committees (commissions) of legislative authorities, scientists and other parties.

Currently, it is necessary to develop measures for the creation and regulation of scientific, moral and ethical examinations of draft laws. Members of expert commissions should have the required competences that predetermine a special assessment of draft laws for their compliance with the needs of society in the context of the civilizational matrix, connection with the past through the established traditions, taking into account the harmony of goals and means to achieve them. The humanization of legislation, which implies maintaining a balance between public and individual interests, as well as ensuring equality and justice in the field of law enforcement, should be extended not only to the sphere of criminal law and criminal proceedings. A large number of social relations that are subject to regulation require moral and ethical assessment. Unfortunately, the values-based substantiation of law-making acts is still a challenge: society meets the introduction of some legal acts with rejection.

The need to form a comprehensive image of a person and society predetermines the need to study law and morality in their connection and interaction. The Russian conservative doctrine exaggerated the moral foundations of legal consciousness, considered legal and moral phenomena in their close interconnection. Thus, F.M. Dostoevsky emphasized the unity of legal and moral values. In his opinion, "there are no social civil ideals that are not organically connected with moral ideals, but existing in themselves. They have never existed, and cannot exist!" (Dostoevsky, 1984, p. 165). One can also recall the teachings of I.A. Ilyin (1994), who considered law "a preparatory stage and support" (p. 76-77) of morality, while the latter was the highest measure.

In the Russian conservative political and legal doctrine, special attention was paid to the national heritage and traditions. The succession of traditions in the national culture and statehood seemed quite natural due to the connection between the present and the past. Real values can be created over time and carefully passed on to future generations as a guarantee of social integration. In this regard, we need to highlight A.A. Korolkov's statement: "It is necessary to master and assimilate the traditional moral and legal structure of Russia in order to preserve the health of the nation, build up sovereignty for centuries until it stumbles on attempts to cultivate the Western ideas of social order onto the Russian soil" (Korolkov, 1997, p. 5).

“In Russia, people always searched for the truth and were not satisfied with the ideas of usefulness and speculativeness. The truth cannot come to purely legal regulation of civil behavior. The truth is the desire for justice, the genuineness of human relations, goodness and perfection. Being a legal monument discovered by V.N. Tatishchev and written in ancient Russia, "Russkaya Pravda" testifies to the deep merging of legal, moral and religious categories in Russia" (Korolkov, 1997, p. 6-7).

The National Security Strategy of the Russian Federation, approved by Decree of the President of the Russian Federation No. 400 (2021), provided an important thesis: "The Russian Federation considers its basic spiritual, moral and cultural-historical values, code of conduct and ethical roadmaps, which have been forming over centuries of the national history as the basis of the Russian society that preserves and strengthens the sovereignty of the Russian Federation, building the future and reaching new heights in the development of society and individuals". In this regard, legal norms should be nothing more than a refraction of the moral and ethical views of legislators. Only the unity of legal and moral values, synthesized by the legislator's will, has the potential for a truly high level of legal development.

The analysis provided the following proposals to modernize the Russian legal system:

1) It is necessary to examine draft laws to ensure that their provisions comply with traditional values of the Russian legal system;

2) To enshrine the main ideological guidelines that do not contradict the Constitution of the Russian Federation at the level of the federal constitutional law. These can be used as guidelines for the corresponding work of civil society institutions. We consider it appropriate to legitimize the basic values of "justice", "solidarity", "morality", "civic duty", etc.;

3) To expand the use of legal customs, dating back to traditional forms of culture, life and morality in social regulation. In the context of conflict resolution, the potential of legal customs holds its rightful place in the system of sources of law;

4) Within the inevitable implementation of international law, the legislator needs to prevent the loss of traditional legal values inherent in the national legal system. At the legislative level, it is necessary to avoid the standardization of the axiological module of national legal consciousness;

5) Steps are required to humanize law and increase the role of moral and legal values and norms in the context of revising the existing legislation and social practices.

Catch-up modernization is unacceptable since models of improvement should be developed with due regard to certain achievements of foreign states. This idea was expressed by V. Solovev (1988), who predetermined effective reforming not just by borrowing positive experience but by "understanding other people's forms, recognizing and assimilating the positive essence of the alien spirit and morally uniting with it in the name of the highest universal truth" (p. 314).

It is necessary to synthesize historical heritage in the form of ideas, achievements and traditions of the Russian political and legal doctrine, positive legal practice and inevitable evolutionary changes in order to have a new impact on the legal life of society. The driving forces of such processes should be social justice, stable society, human development and cultural specifics. The study of Russian conservatism allows concluding that the depreciation of traditions is unacceptable because the past is crucial for the present and future. The aspiration of modernization to the future does not exclude the need to adopt the experience of the past.

4. CONCLUSION

The significance of the study results is predetermined by the following facts. The revival of Russian conservatism will fill the existing state-legal sphere with moral and legal content. At the same time, the axiological core of conservatism can become the basis for restoring the values-based sovereignty of Russia in the two-sided interaction of positive law with the supra-legal values of justice, truth, responsibility and freedom.

The improvement of legal systems in the context of its modernization should aim at enhancing the regulation of social relations. The effective reforming of the legal sphere is due to the involvement of national legal traditions and values in this process. Considering the social practices and legal values of Russian conservatism, the legal system can be modernized in different aspects. It is necessary to examine draft laws for the compliance of new provisions with traditional values of the national legal system; to enshrine the main ideological guidelines for the corresponding work of civil society institutions at the federal level; to develop the practice of using legal customs in social regulation; to humanize law in relation to the complementary action of moral and legal values and norms due to the revision of legislation.

The modernization of the national legal sphere with due regard to achievements of the legal axiology of the Russian conservatism implies the congruence of moral and legal values, the organic convergence of tradition and innovation in the existing civilizational matrix. A retrospective analysis puts forward a hypothesis that the Russian legal culture does not idealize positive law typical of Western Europe: a prerogative in the context of panmoralism is given to moral regulators, which is why the Russian philosophy of law is often called the philosophy of values. Law without values remains an empty form, meaningless and not used for its intended purpose. The concept of "living law" implies the joint action of law with other phenomena of public life, primarily with morality. The unity of legal and moral values, which has received theoretical justification in the Russian conservative political and legal doctrine, can bring achieve a truly high level of legal development.

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