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Judicial Power Development Issues in Russian Conservative Legal Ideology During the Second Half of the XIX-th Century

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***Abstract*---**The political and legal ideology of Russian conservatism becomes more and more popular in modern conditions. This scientific work is devoted to the study of the political and legal positions of Russian conservatives in the second half of the 19th century, who made a significant impact on the development of legal science. The problem of judiciary development is taken as a basis. The purpose of the study is to analyze the positions of Russian scholars and public and political figures who proposed a special concept of views regarding the place and role of the judiciary in the state mechanism of the Russian Empire during the second half of the 19th century. The hypothesis of the study is the presentation of a special approach to the consideration of conservative ideology in relation to the creation and organizational activity of the judicial system through the prism of national problems that developed in the Russian Empire during the second half of the 19th century. The methodological basis of the study

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is made up of general scientific, private, as well as special methods of cognition.

***Keywords*---**conservatism, ideology, judicial system, Russian empire, separation powers.

Introduction

Traditionally, the conservative trend in state and legal science was the broadest and most authoritative in the Russian Empire. The second half of the 19th century was no exception in this respect. Such well-known lawyers as M.N. Katkov, K.P. Pobedonostsev, L.A. Tikhomirov, N.Ya. Danilevsky, K.N. Leontiev and others were adhered to conservative legal views. It should be noted that the conservatives took an active part in the development of counter-reforms initiated by Alexander III. K.P. Pobedonostsev and M.N. Katkov influenced a lot on the change of the state ideological course and the formation of new views at the level of the supreme government (Jost, 2017; Dollinger, 2007).

Developing for a long time, with the exception of the end of the 20th century, the views on the development of the judiciary and the way of organizing it in Russia were largely based on the conservative legal doctrine, which was considered more influential. In this case, one should not equate the development of legal science and legislation. Despite the fact that these two phenomena of social life are closely interrelated, in fact, they developed in opposite directions during separate stages of state development. An active perception of liberal legal positions on the development of the judicial system and legal proceedings, characteristic of legislation and, to a certain extent, legal science in Russia at the end of the 20th century, at the same time became the basis for analyzing the concept of state structure in general and the role of the judicial system in particular (Salihu & Gholami, 2018; Grajzl & Silwal, 2020; Basabe-Serrano, 2014; Machura et al., 2014).

At the same time, the positions characteristic of the so-called "protective" ideology, which were justified at the end of the 19th century precisely, are encountered more and more often. This situation develops the interest in the stated problems. In our opinion, the significance of the topic is in the discussion of some of the most interesting positions of Russian scholars and public figures of the second half of the 19th century, based on which it is possible to consider possible regulatory changes in current realities. The purpose of the study is to analyze and compare the positions of Russian scholars and statesmen of a conservative legal orientation on the problems related to determination of the judiciary power significance, and the criteria for the independence of the judiciary power, etc. The hypothesis of the study is the presentation of a special approach to the consideration of conservative ideology in relation to the construction and organizational activity of the judicial system through the prism of national problems that developed in the Russian Empire during the second half of the 19th century (Johnston & Ollerenshaw, 2020; Becker, 2020).

Methodology

The methodological basis of the study was formed by the dialectical-materialist method, which presupposes, in the process of cognition, an appeal primarily to the phenomena of the material, objectively existing world. An important component of the scientific work methodology was the use of the systemic method, since the diversity of the considered doctrines, political programs and the comparison of conclusions regarding the subject of the study is possible only under the conditions of a comprehensive analysis, combining certain positions that make up ideological currents into a single set. The views of legal scholars were not formed in isolation. They were determined by a mass of social, cultural, and in some cases economic factors. Thus, the use of the systemic method of scientific knowledge allows us to ensure the perception integrity of the corresponding approaches (Cusatelli & Giacalone, 2014; Bjerk, 2008).

Besides, the method of historicism was used as a methodological guideline, which made it possible to study the dynamics of relations, the transformation of views on the development of the judicial system, its structure, organization order, and the general principles of legal proceedings. The history of any teaching development is a long process, where each subsequent event is inextricably linked with the chain of previous ones. Their combination into a single complex can reveal the development trends of a social phenomenon. Along with the method of historicism, other types of cognition, derived from it, were used, in particular, the historical-chronological method, the historical-system method, the historical-typological method, the specific-historical method, etc (Yamshanov et al., 2015; Elishakoff, 2021).

In the course of the work, the historical-comparative method was used, which makes it possible to study the essence of the subject of research on the basis of comparison and juxtaposition of similar objects and social ties. Taking into account the legal nature of the study, its purpose and objectives, the author used the formal-logical method, the method of comparative jurisprudence, the formal-legal method, the system-structural method, the technical-legal method, etc. In addition to the mentioned above, the author used the philosophical method, the analytical method, the method of logical analysis and synthesis, induction and deduction, the method of abstraction and ascent from the abstract to the specific (de Sarabia et al., 2000; Salzberger, 1993).

The study of problems arising in the field of administration of justice is given a lot of attention today. Thus, Habeeb Abdulrauf Salihu, Hossein Gholami studied public perception of the justice apparatus in Nigeria at the present stage, Santiago Basabe-Serrano examined the main determinants of internal judicial independence in Latin America. The issue of trust in the courts was studied by Stefan Machura, Thomas Love, Adam Dwight. Diversity as the problem of judicial activity was analyzed by Peter Grajzl, and Shikha Silwal (Grant et al., 2017; Garnov et al., 2021).

Discussion and Results

The conservative trend in state law had a very significant impact on the reforms carried out in the Russian Empire during the 1880-1890-ies of the XIX-th century. Moreover, this period is often considered to be a kind of negative phenomenon associated with the strengthening of totalitarian tendencies in the development of Russian society. Meanwhile, such a narrow view of the state structure cannot be recognized as correct, since in the context of the transformation of liberal ideas into a justification for terrorist activities and a means of undermining the legally formed regime, it was necessary to take measures to preserve law and order in the country. This task was solved, among other things, by changing approaches to the concept of the judiciary power independence on the basis of an ideological platform formed by conservative Russian scholars and publicists. To substantiate the above conclusions, it is necessary to dwell in more detail on the study of the positions of the most influential conservative scientists and public figures during the second half of the 19th century (Wong, 2021; Suryasa, 2019).

Konstantin Petrovich Pobedonostsev

K.P. Pobedonostsev did not deny that the courts are specific bodies in the system of state power which were essential for the development of law and order and, in general, are capable of influencing public processes, the people's perception of the head of state, who should head the judicial system. Moreover, the autocrat, defining the goals of management, the direction of his reforms, thereby extends his tasks to the bodies of subordinate management, to which the courts belong, even if these tasks are not fixed by the law. The courts carry out their procedural activities on behalf of the supreme authority. According to K.P. Pobedonostsev, the separation of judicial powers from the sphere of supreme government took place during the reign of Peter I, when the traditional approaches were destroyed. These approaches consisted in almost complete absorption of judicial power by the emperor.

K.P. Pobedonostsev expressed the position that the independence of the judiciary power, proclaimed in the Judicial Charters of 1864, should not be taken literally. Indeed, no one doubts the fact that only the independence of the judiciary can contribute to a more objective and high-quality consideration of cases. At the same time, the independence of the judiciary cannot be recognized as absolute in the sense that the supreme power on behalf of the emperor has the powers related to control over the activities of the courts, the establishment of the judicial system and the rules of legal proceedings (Pobedonoscev, 1923). However, the above circumstances are not capable of calling into question the independence of the courts in relation to other bodies and persons vested with power, and in this context the principle of the judiciary power independence, proclaimed by Alexander II, is implemented (Kebaituli, 2021; Nasution et al., 2021).

Meanwhile, in fact, according to K.P. Pobedonostsev, the idea of limited independence of the judiciary power was implemented on a different scale and essentially as a result of ill-considered transformations which increased the tension in relations between the supreme and the judiciary power, which

consisted in the absence of a single governing center, in the destruction of the historically established order of court subordination (Pis'ma Pobedonosceva k Aleksandru). K.P. Pobedonostsev, holding the post of chief prosecutor, saw one of his main tasks to assist the new emperor in transforming the judicial system in the context of a conservative legal ideology. In this regard, in 1885, the statesman prepared a report to the head of state "On the need for judicial reforms", in which he outlined the main idea and principles of new changes in the judicial system.

In particular, the lawyer drew attention to the fact that after the judicial reform of 1864, the connection between the courts and other bodies of state power was lost. To overcome this problem, K.P. Pobedonostsev proposed, first of all, to introduce the courts into state institutions subordinate to the monarch, which was necessary in connection with the loss of their true status due to the declaration of the judiciary power independence. Thus, according to K.P. Pobedonostsev, the independence of any state structure from the supreme power was completely ruled out, since otherwise a non-systemic power structure would appear, the order of interaction between government departments was violated.
It is significant that the lawyer uses the term “imaginary independence”. Apparently, he believed that it was a priori impossible to implement fully the principle of absolute independence of the judiciary power fixed in the law. Any government agency must be a part of the system. According to K.P. Pobedonostsev, if opposition activities directed against the state power receive protection in court, this will lead to confrontation within society and threaten the integrity of public power.

Lev Alexandrovich Tikhomirov

From L.A. Tikhomirov's point of view, there is no reason to doubt the objectivity and impartiality of the monarch in the exercise of judicial powers, because the imperial prerogative to act according to conscience is completely unavoidable in monarchical states. The teachings by L.A. Tikhomirov also allowed the division of powers depending on the subject specialization, however, all branches of government are united under the leadership of the supreme power, which is single and indivisible. Thus, the judicial branch of government has the right to exist, as well as it has some administrative isolation from other branches of government and state structures, which makes it possible to speak of its relative independence. At the same time, it cannot receive absolute independence due to the fact that the general management of any department with the powers of authority is carried out by the monarch (Tihomirov, 1998).

In this context, L.A. Tikhomirov noted that, despite the significant development of state law science, scholars often do not take into account the division of supreme and subordinate power and the monarch is attributed those powers that are completely not inherent in his status. Thus, L.A. Tikhomirov denied the possibility of absolute independence of the judiciary power in monarchical countries. At the same time, he admitted the complete independence of the courts in democratic states, referring to the fact that such a regime already exists in certain European countries. L.A. Tikhomirov did not admit the possibility of creating a governing mechanism that would unite the democratic republican regimes of Europe and the monarchical statehood that existed in the Russian Empire.

The attempts by I.K. Bluntschly to substantiate the idea of a "modern state" based on the convergence of the monarchy principles and the democratic republic were called by Tikhomirov as amazing, fantastic and absurd. In the Russian Empire, almost the same ideas were expressed by B.N. Chicherin. In this regard, L.A. Tikhomirov dwelt on the consideration of his ideas, establishing contradictions in the scholar's approaches regarding the interaction of the supreme power and the bodies of subordinate government. Justifying this position, L.A. Tikhomirov referred to B.N. Chicherin and his definition of the supreme power as a single, permanent, continuous, sovereign, sacred, inviolable and irresponsible administrative force. A. Tikhomirov agreed with the idea that the emperor should not obey the court in any form, no matter who acts as a judge, since the monarch is "the supreme judge of all law." The limitation of the supreme power can only be moral, but not legal.

According to L.A. Tikhomirov, the theoretical proposals of some liberals are untenable as they stated the supreme power unity as a set of bodies. Without denying the possibility of collegial possession of the supreme power, the lawyer argued that in this case the departments should function according to the same principles and have a common interest. At the same time, when it comes to the existence of independent branches of government, the system of checks and balances, it is impossible to talk about the unity of the state mechanism, the unity of the supreme power, also due to the fact that each of the departments has its own interest.

Mikhail Nikiforovich Katkov

Other conservative legal scholars also criticized the independence of the judiciary power. One of these scholars was M.N. Katkov. Commenting on the above principle of the judicial system organization, he argued that the judiciary power should really be independent (MN, 2009). The supreme power on behalf of the monarch was called upon to ensure the coordination of all branches of government and administrative bodies as a whole, who can realize this task only in conditions of domination over other departments, which allows to establish proper control and maintain constructive relationships in the exercise of powers inherent in public power.

Thus, the independence of any branch of government, including judicial, was absolutely excluded, since a different approach was capable of influencing the confrontation between the power structures, which would significantly complicate the possibility of solving the tasks assigned to them. The legal scholar criticized the new procedural institution of jurors, expressing the position that Russian society is not ready to use this mechanism effectively for the benefit of the state rule of law. M.N. Katkov is called one of the main ideologists and inspirers of the reform activities by Alexander III in the field of organizing the judiciary power and administering justice.

Returning to the analysis of the shortcomings of the judicial reform of 1864, it should be noted that the publicist named a high level of publicity of trials, proposing to limit it reasonably for the administration of justice, and avoid setting unnecessary goals (Katkov, 1905). M.N. Katkov called the existence of a strong

state power, projected, among other things, on the judiciary, as well as the establishment of a rule of law as the main criteria ensuring a high level of protection of citizen rights and freedoms. In this sense, the procedure for administering justice itself was only of a secondary nature, since things of a more abstract and higher level acted as guarantees for the implementation of the right to judicial protection.

M.N. Katkov adhered to the traditional view that the judiciary is the highest form of protection of legal rights and interests. For this reason, the format of the administration of justice was of great importance, i.e., the use of certain principles, and mechanisms that allow to promote properly the implementation of the rights established by law (Katkov, 2002). Thus, the conservatives proceeded from the fact that there is no state in which monarchical, aristocratic or democratic principles are embodied in their pure form. In all states, these principles of statehood are interconnected. However, this does not in the least speak about the possibility of the rule of justice over the monarch. In turn, such a statement can be true in relation to any other subject, except for the supreme power bearer.

The conservatives saw the contradictions in the thoughts of lawyers regarding the idea of democracy by the people in the fact that if the exercise of control powers is inherent in the subjects of the supreme power, therefore, it is quite appropriate to assume that the supreme power is in the hands of the subjects, and not in the hands of the state-power structure. Thus, subjects called to serve the state begin to dominate it. The jurists believed that the fashionable political tendencies about freedom as the basis for building a state administrative system were absolutely ill-considered and far from practical realities. Implementation of power separation principle is dictated by the vital necessity and variety of legal relations in need of settlement. Meanwhile, the condition of the primary source of power, of one-man management must remain unshakable in the management process.

Given the nature of a man, he is a subject to various vices and passions. At the power level, his negative impact is leveled by the system of subordination of state institutions. The absence of this necessary condition can give rise to a conflict between the autocrat, on the one hand, and the bodies with public power, on the other. The very possibility of the courts of justice comes from the supreme power. In essence, the emperor delegates part of his powers to a lower level of government in the form of a system of courts created by him. At the same time, the monarch does not distance himself from the performance of functions inherent in the judiciary power, while retaining the status of the supreme judge, i.e., he has the right to participate personally in the administration of justice. However, the powers of the head of state in this area are not limited to this.

Conclusion

A proper legal order in the state is possible only within the conditions of strong state power, which is possible only as a result of its consolidation in one center, and not by the delegation of powers inherent exclusively to the monarch to a lower level of the power vertical. This ideological trend is characterized by the denial of the claims that autocracy excludes people's freedom actively spread by

the liberal-minded public in the second half of the 19th century. On the contrary, the conservatives argued that the monarchical form of government is precisely the guarantor of freedom. The ideological platform of "protective" statehood supporters was based on the postulate of the need to form an original legal system, also in the administration of justice. Mechanical copying of progressive Western institutions in the conditions of the Russian reality that has been forming for centuries is not capable of giving identical results.

From the point of view of conservatives, the independence of any branch of government, incl. judicial, was absolutely excluded, since a different approach was capable of influencing the confrontation between the power structures, which would significantly complicate the possibility of solving the tasks assigned to them. The supreme power has the signs of universality and absoluteness, so it must fully concentrate all powers in its hands, being able to delegate them when necessary. The recognition of the independence of the judiciary is intended to challenge this most important principle of the monarchical structure of the state and to call into question the primary source of power as such.

References

Basabe-Serrano, S. (2014). Some determinants of internal judicial independence: A comparative study of the courts in Chile, Peru and Ecuador. *International Journal of Law, Crime and Justice*, *42*(2), 130-145.

Becker, J. C. (2020). Ideology and the promotion of social change. *Current Opinion in Behavioral Sciences*, *34*, 6-11. https://doi.org/10.1016/j.cobeha.2019.10.005

Bjerk, D. (2008). On the role of plea bargaining and the distribution of sentences in the absence of judicial system frictions. *International review of law and economics*, *28*(1), 1-7. https://doi.org/10.1016/j.irle.2007.12.005

Cusatelli, C., & Giacalone, M. (2014). Evaluation indices of the judicial system and ICT developments in civil procedure. *Procedia Economics and Finance*, *17*, 113-120. https://doi.org/10.1016/S2212-5671(14)00885-5

de Sarabia, E. R. F., Gallego-Juárez, J. A., Rodríguez-Corral, G., Elvira-Segura, L., & González-Gómez, I. (2000). Application of high-power ultrasound to enhance fluid/solid particle separation processes. *Ultrasonics*, *38*(1-8), 642-646. https://doi.org/10.1016/S0041-624X(99)00129-8

Dollinger, S. J. (2007). Creativity and conservatism. *Personality and Individual Differences*, *43*(5), 1025-1035. https://doi.org/10.1016/j.paid.2007.02.023

Elishakoff, I. (2021). Stephen Timoshenko's Life During Last Five Years in the Russian Empire: From the Letters of His Son Gregory. *Mechanics Research Communications*, 103691. https://doi.org/10.1016/j.mechrescom.2021.103691

Garnov, A. P., Garnova, V. Y., Prodanova, N. A., Danko, T. P., Arhangel'skaya, T. A., & Kostova, S. G. (2021). Academic inbreeding and mobility in higher education: problems, analysis and prospects. *Linguistics and Culture Review*, *5*(S1), 901-911. https://doi.org/10.21744/lingcure.v5nS1.1474

Grajzl, P., & Silwal, S. (2020). Multi-court judging and judicial productivity in a career judiciary: Evidence from Nepal. *International Review of Law and Economics*, *61*, 105888.

Grant, L. S. ., Gode, B. S. ., & Amstrong, M. G. . (2017). Ideology of translation concept approach on determining a decision by the translator. *Linguistics and Culture Review*, *1*(1), 1-12. https://doi.org/10.21744/lingcure.v1n1.1

Johnston, C. D., & Ollerenshaw, T. (2020). How different are cultural and economic ideology?. *Current Opinion in Behavioral Sciences*, *34*, 94-101. https://doi.org/10.1016/j.cobeha.2020.01.008

Jost, J. T. (2017). Working class conservatism: A system justification perspective. *Current opinion in psychology*, *18*, 73-78. https://doi.org/10.1016/j.copsyc.2017.08.020

Katkov, M. N. (1905). O samoderzhavii i konstitutsii. *About autocracy and the constitution].—M.*

Katkov, M. N. (2002). *Imperskoe slovo*. Zurnal Moskva.

Kebaituli, G. . (2021). The issue of expression of human wishes in language. *International Journal of Linguistics, Literature and Culture*, *7*(4), 287-292. https://doi.org/10.21744/ijllc.v7n4.1843

Machura, S., Love, T., & Dwight, A. (2014). Law students' trust in the courts and the police. *International Journal of Law, Crime and Justice*, *42*(4), 287-305.

MN, K. (2009). Ideologiya okhranitelstva [The ideology of conservatism]. *Moscow, Institut Russkoy Tsivilizatsii Publ.*

Nasution, I., Surbakti, A., & Sebayang, V. A. (2021). Development of art, culture, and literature attractions for millennial generations. *International Journal of Linguistics, Literature and Culture*, *7*(6), 517-524. https://doi.org/10.21744/ijllc.v7n6.1982

Pobedonoscev, K. P. (1923). *KP Pobedonoscev i ego korrespondenty: pis' ma i zapiski s predisloviem MN Pokrovskogo*. Gosudarstvennoe Izdatel'stvo.

Salihu, H. A., & Gholami, H. (2018). Mob justice, corrupt and unproductive justice system in Nigeria: An empirical analysis. *International Journal of Law, Crime and Justice*, *55*, 40-51.

Salzberger, E. M. (1993). A positive analysis of the doctrine of separation of powers, or: Why do we have an independent judiciary?. *International Review of Law and Economics*, *13*(4), 349-379. https://doi.org/10.1016/0144-8188(93)90029-5

Suryasa, W. (2019). Historical Religion Dynamics: Phenomenon in Bali Island. Journal of Advanced Research in Dynamical and Control Systems, 11(6), 1679-1685.

Tihomirov, L. A. (1998). Monarhicheskaja gosudarstvennost'. *M.: GUP «Oblizdat», TOO «Alir.*

Wong, Y. Z. (2021). Written, scratch and spelling languages. *Macrolinguistics and Microlinguistics*, *2*(1), 51–65. Retrieved from https://mami.nyc/index.php/journal/article/view/15

Yamshanov, I., Goryunov, V., & Murgul, V. (2015). Neogothic Park Pavilions and Utility Constructions in the Russian Empire XIX Century. *Procedia Engineering*, *117*, 675-684. https://doi.org/10.1016/j.proeng.2015.08.232