

RELIGION AND CONSTITUTIONAL DUTIES OF MAN: FROM HISTORICAL ORIGINS TO MODERN LEGAL CONFLICTS

Popovych Terezia

DOI: <https://doi.org/10.61345/1339-7915.2025.1.21>

Annotation. The article examines the complex interaction between religious beliefs of citizens and their constitutional obligations in the conditions of a modern democratic society. The historical influence of religious norms on the formation of legal systems, in particular the institution of human obligations, is analyzed. Particular attention is paid to the Christian tradition as one of the most widespread religious systems that has influenced European legal culture. The structural similarity between religious commandments and constitutional obligations is revealed, which is manifested in the presence of both positive and negative obligations. At the same time, fundamental differences between religious and legal norms are identified, which create the prerequisites for potential conflicts in a pluralistic society. Religious norms are characterized by the confessional nature of action and cover the inner world of a person, while legal norms have a universal territorial nature and regulate exclusively external behavior. The need to develop a balanced approach that would ensure compliance with the principle of freedom of conscience and the fulfillment of constitutional duties by all citizens regardless of their religious beliefs is substantiated.

Key words: religious norms, constitutional duties, freedom of conscience, legal socialization, pluralistic society.

1. Problem statement.

Modern democratic society is characterized by a complex interaction between the religious beliefs of citizens and their constitutional obligations to the state. The problem is that religious norms and prescriptions may contradict or conflict with constitutional obligations, creating a dilemma for believing citizens. In particular, questions arise regarding military service, participation in court proceedings as jurors, compliance with secular laws in the areas of education, healthcare, and family relations. The relevance of the problem is enhanced in conditions of religious pluralism, when different confessions with different doctrinal requirements coexist in one state, which can lead to legal conflicts and social conflicts. The issue of the limits of religious freedom in the context of the mandatory implementation of constitutional prescriptions becomes particularly acute. On the one hand, the principle of freedom of conscience and religion is a fundamental human right enshrined in international instruments and national constitutions. On the other hand, constitutional duties are universal in nature and must be fulfilled by all citizens regardless of their religious beliefs. This creates tension between individual rights and collective interests of society, between the principle of equality before the law and the right to religious autonomy.

The problem is complicated by the fact that different religious traditions interpret the relationship between divine and human laws, spiritual and secular authorities in different ways. While some confessions are characterized by the recognition of the autonomy of secular authorities in civil matters, others insist on the priority of religious law over state law. In modern conditions of globalization and migration processes, this problem acquires a transnational character, requiring not only national, but also international approaches to its solution. This issue is especially relevant for Ukraine, where the processes of democratization, European integration and religious revival create new challenges for balancing religious rights and civil duties.

2. Purpose of the study.

The purpose of the study is to comprehensively analyze the relationship between religious beliefs and constitutional duties of a person, to determine the mechanisms of their harmonization in the legal system.

3. The state of development of the problem.

The problem of the relationship between religion and constitutional duties was studied in the works of foreign and domestic scientists. Among foreign researchers, it is worth noting the works of J. Rawls, who developed the concept of political liberalism and public reason; R. Dworkin with his theory of equality and freedom; M. McConnell, who studied religious freedom in the constitutional law of the United States. Domestic science is represented by the studies of P. Rabinovich, V. Bondarenko, S. Golovaty in the field of constitutional law and human rights; O. Sagan, L. Vladychenko in the field of religious studies and state-church relations. However, a comprehensive study of the mechanisms of reconciling religious beliefs with constitutional obligations in the Ukrainian legal context has not been conducted sufficiently, which makes further scientific research in this area relevant.

4. Presentation of the main material.

Before proceeding to the study of the religious foundations of the institution of human duties, it is advisable to clearly distinguish the spheres of religion and law, as well as to trace the nature of religious influence on the genesis of law in general. This will allow a deeper understanding of the specifics of the religious factor in the formation of human duties as a legal phenomenon. It is worth noting that various religious doctrines, historically acting as the first regulators of interpersonal relationships, formed basic ideas about socially acceptable behavior and undoubtedly influenced the modern understanding of human obligations. Concepts of proper behavior were transformed into peculiar norms, which gradually crystallized through public approval of certain repetitive practices of interaction and, accordingly, through the rejection of those models of behavior that contradicted collective interests. These norms functioned mainly as moral imperatives, religious prescriptions and canonical rules, supported by the internal beliefs of the individual, a sense of the sacred, as well as mechanisms of social influence and condemnation.

Religiously conditioned norms gradually integrated into the structure of society, gaining more and more influence on individual and collective consciousness. Relying on transcendent legitimacy, various sacred texts laid down fundamental principles for regulating personal, property and other social relations, spreading their influence to ever wider segments of the population [3, pp. 46–50].

The peculiarities of law in this context can be mentioned very briefly. If religion as a regulatory factor is based on the phenomenon of belief in an ideal intelligent entity or a good force of absolute significance, capable, according to the believer's expectations, of helping him in his affairs and protecting him from everything bad and dangerous, then law is a much less sentimental regulator, built precisely on the distrust of one person towards another, on the feeling of a constant risk that the expected necessary actions will remain unfulfilled (hence the need for formal guarantees). The prerequisite and basis for the emergence of law is a contradictory, conflict-prone social environment, within which subjects interact with each other regarding the mutual satisfaction of current needs, exchanging useful functions, roles, things, etc. for this purpose. Social exchange, the roots of which, as can be understood, are absolutely objective, may turn out to be unbalanced, dysfunctional; someone does not receive what is expected (necessary), and then a struggle for unsatisfied or violated interest inevitably begins, which can take on acute, sometimes destructive forms, accompanied by losses of significant vital, material and cultural values [11, p. 20].

With the emergence of the state as a new social institution, there is a need to form a holistic system of regulatory norms to regulate intrastate relations. It is at this stage that religious prescriptions become the main source for constructing the legal systems of the first state formations. Religious norms have

already been tested by social practice and proven their effectiveness, so the state authorities choose a strategy of their official recognition instead of developing fundamentally new regulatory mechanisms that could meet resistance from the population. Investigating the initial stages of law formation, we can state that religious norms constitute not just a significant, but the overwhelming part of the primary legal body. Over time, in the process of state development, the legal system is enriched with new regulatory constructs, which, however, coexist with norms of religious origin, without completely displacing them. Thus, the evolution of law is characterized by the gradual complication of its structure due to the imposition of secular legal innovations on the foundation of religious and legal tradition, which creates a complex hybrid system of regulatory regulation [4, p. 23].

A very interesting historical evidence of the contradiction between religious and legal factors of social regulation is the ancient right of refuge - an institution characteristic of numerous legal cultures of the past. In ancient times, anyone who, at the time of official persecution, found himself on the territory of a temple, other sacred building or in the area of a sacred person (the latter could coincide with an official-authoritative person), saved at least his life. In our opinion, this mechanism can be considered a manifestation of the instinctive wisdom of ancient people and those rulers who did not encroach on this right. After all, the possibility of a miscarriage of justice or a biased verdict (especially in relation to a person known as a persistent offender, or in the case of a rich person against a poor person, a powerful person against a dependent person), which deprived a person of life or maimed a person, is a well-known phenomenon. The social environment had to have minimal mechanisms for avoiding it. Ordeals (divine judgment) can also be considered a kind of variation of refuge. From a modern point of view, ordeals are something extremely naive, even curious. But from the point of view of the believers of that time, ordeals may have symbolized maximum justice. God, unlike man, cannot make a mistake. If a divine sign gives an indication, this is a manifestation of higher (incomprehensible) wisdom and justice [12, p. 187].

Analyzing the content of religious and legal norms, it is necessary to emphasize their fundamental commonality - both normative complexes determine the standards of socially acceptable behaviour, acting as instruments for regulating interpersonal and social relations, while establishing a system of sanctions for violation of established regulations. At the same time, despite the historical influence of religious tradition on the genesis of law, there are fundamental differences between these normative systems. Religious prescriptions operate within the framework of a specific confessional community, extending their effect exclusively to adherents of the corresponding faith. Legal norms have a territorial-general nature and are characterized by binding force for all subjects within the relevant jurisdiction, regardless of their ideological beliefs. This difference in the sphere of action constitutes a key distinction between religious and legal norms, determining different mechanisms for their implementation and ensuring effectiveness in social relations [7, p. 42]. Additionally, it should be noted that religious norms cover both the inner world of a person (thought processes, motivational sphere, emotional experiences) and external manifestations of activity, while legal prescriptions are limited exclusively to the regulation of behavioral acts that have an external expression. A significant difference is also observed in the methods of formal consolidation of these normative systems. Religious norms can function both in codified (written) and uncoded (oral) form, while a significant part of them exists in the form of mental constructs - concepts, doctrinal provisions, ethical principles transmitted through cultural tradition. Legal norms, on the contrary, tend to be documented and mainly exist in the form of officially approved texts of normative and legal acts. This difference in the forms of existence reflects the different nature of these regulatory systems - religious law relies more on tradition and internal conviction, while positive law requires clear formalization to ensure unambiguous application [5, p. 173]. Thus, as we see, the relationship between religious and legal norms is characterized by the dialectical unity of the common and the different. On the one hand, both normative systems perform a regulatory function in society, establishing standards of behaviour and a system of responsibility for their violation, which indicates their functional affinity as social regulators. On the other hand, fundamental differences in the sphere of action (confessional versus general territorial), the subject of regulation (the inner and outer world of a person versus exclusively external behaviour) and forms of existence (traditional-oral versus formal-written) testify to their specific nature and different mechanisms of social influence. These features determine the complexity of the interaction of religious and legal principles in modern pluralistic societies, especially in the context of the implementation of constitutional duties by persons with different religious beliefs.

Moving on to the analysis of the religious factor in the formation of the institution of human obligations, it is worth emphasizing that a specific characteristic of religious normative complexes is the dominance of mandatory prescriptions over permissive provisions. In other words, in the religious normative system, imperative and prohibitive norms prevail, while empowering guidelines occupy a secondary place. Religious obligations constitute normative criteria for the behaviour of subjects of religious legal relations and can manifest themselves both in the form of active actions and in the form of abstention from certain actions. The architectonics of religious obligations includes the following elements: a positive obligation to perform specific sacred actions for the benefit of authorized persons; a negative obligation to refrain from religious actions that may violate the rights of other believers; a compensatory obligation to bear personal or property losses in case of failure to comply with religious prescriptions. Such a structural organization of religious obligations reflects the specificity of the religious worldview, where the emphasis is on serving higher values and the collective good, rather than on individual rights [5, p. 114].

It is advisable to conduct a study of the religious influence on the formation of the institution of human obligations through the analysis of the Christian tradition as one of the most widespread religious systems in the world.

First of all, the relationship of Christianity with the legal traditions of continental Europe is manifested in those fundamental values that constitute the axiological basis of modern democratic states. In particular, the Christian concepts of freedom, equality and justice form the value foundation for the modern legal order, acquiring particular importance during the interpretation and implementation of legal norms, as well as in the process of overcoming regulatory gaps and conflicts. In addition, fundamental human rights, recorded in international and domestic regulatory and legal documents, often have religious origins. This concerns, in particular, the right to life, the right to property, the right to respect for human dignity and other fundamental rights, which are conceptually rooted in Christian anthropology and ethics [10, pp. 119–148].

Christian religious doctrines directly influenced the incorporation of human obligations into the general concept of individual rights and freedoms, which is explained by the dominance of mandatory prescriptions in the structure of religious normative systems. The correlation between religious norms and modern human obligations is manifested in the similarity of their structural construction. Analyzing such a basic religious document as the Decalogue, one can state the presence of both positive and negative obligations in religious and legal systems. Positive obligations involve the implementation of specific actions for their implementation, such as the constitutional obligation to comply with the law. Negative obligations require abstention from certain undesirable actions, an example of which is the constitutional obligation not to violate the rights and freedoms, honour and dignity of other persons.

A similar structure is characteristic of Christian commandments. On the one hand, there are positive obligations - "Remember to celebrate the holy day", "Honor your father and your mother", on the other hand, negative obligations prevail, requiring abstention from undesirable behaviour - "Do not kill", "Do not steal", "Do not bear false witness against your neighbour".

An additional common feature is the presence of sanction mechanisms for violation of established obligations in both religious and legal systems. However, the fundamental difference lies in the specificity of the sanctions applied. Failure to fulfil the duties enshrined in sacred texts is associated with a violation of the spiritual connection with the transcendental principle and the threat of its loss: the prospect of falling into hell, deprivation of divine protection during life. By their nature, such sanctions are predominantly autonomous in nature, their effectiveness is based on the level of individual consciousness and its perception of the sacred, which is a characteristic feature of religious normativity. In return, for failure to fulfil legal obligations, the state applies to a person specific negative consequences of a material or non-material nature, which are externally coercive and are implemented through the system of state bodies [6, p.124].

Special attention deserves the modern influence of religion on legal obligations, in particular on the level of their observance in society. In the context of the growing role of the religious factor in the life of even a secularized society, religion functions as an important factor in the formation of individual attitudes towards legal institutions, determining the tendency to lawful or deviant behaviour. Religious values and principles continue to have a significant impact on the ideological orientations of society,

its legal consciousness and legal culture. Religious doctrine can act as a stimulator of law-abiding behaviour through an emphasis on moral responsibility and compliance with ethical norms, and a source of conflict situations in cases where religious prescriptions contradict secular legal norms. Thus, religion remains an active agent of legal socialization, influencing the formation of legal attitudes and motivation to fulfil civic duties in a modern pluralistic society [6, p.136].

5. Conclusions.

The study has demonstrated a deep and multidimensional connection between religious traditions and the formation of the institution of constitutional human obligations. It has been established that religious norms, being historically the first regulators of social relations, laid the conceptual foundations for understanding human obligations, which were subsequently incorporated into the legal systems of modern democratic states. The influence of the Christian tradition on European legal culture is particularly significant, where the structural similarity between religious commandments and constitutional obligations is manifested in the presence of both positive and negative obligations, as well as in the mechanisms of sanctioning their violation. At the same time, the study has revealed fundamental differences between religious and legal norms that create the prerequisites for potential conflicts in a modern pluralistic society. If religious norms are characterized by the confessional nature of action, cover the inner world of a person and are based on transcendent legitimacy, then legal norms have a universal territorial nature, regulate exclusively external behaviour and are based on state coercion. These differences are especially acute in situations where religious beliefs contradict constitutional obligations, creating a dilemma between the right to freedom of conscience and the principle of equality of all citizens before the law.

The modern stage of society is characterized by the growth of the role of the religious factor in the legal socialization of the individual, which actualizes the need to find optimal mechanisms for harmonizing religious beliefs and constitutional obligations. Religion continues to act as an important agent in the formation of legal consciousness and legal culture, influencing the motivation of individuals to fulfil civic obligations. This necessitates the development of a balanced approach that would ensure both compliance with the principle of freedom of conscience and the fulfilment of constitutional obligations by all citizens regardless of their religious beliefs, especially in the context of religious pluralism and globalization processes.

References:

1. Mayr-Harting Henry. The Coming of Christianity to Anglo-Saxon England. London: B.T. Batsford, 1972. 334 p. [in English]
2. Vyhovskiy L.A. Transformatsiia funktsionalnosti relihiinoho kompleksu yak realizatsiia yoho suspilnykh adaptatsiinykh mozhlyvostei. Relihiia v konteksti sotsiokulturnykh transformatsii Ukrainy: monohrafiia / redkol.: A. Kolodnyi ta in. Kyiv, 2009. S. 8–12. [in Ukrainian]
3. Hromovchuk M.V., Bielov D.M., Pryntsyp humanizmu, yak osnovopolozhnyi pryntsyp pobudovy suchasnoi pravovoi derzhavy. *Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriiia Pravo*. 2021. Vypusk 65. S. 46–50. [in Ukrainian]
4. Evans S St. al., God and Moral Obligation. Oxford Academic Books, 2013. 541 p. [in English]
5. Mima I.V. Relihiini normy ta yikh mistse v systemi sotsialno-pravovoho rehuliuвання suspilnykh vidnosyn. *Monohrafiia*. Varshava, 2020, 176 s. [in Ukrainian]
6. Vovk D.O. Pravo i relihiia: zahalnoteoretychni problemy spivvidnoshennia. *Monohrafiia*. Kharkiv, 2009, 223 s. [in Ukrainian]
7. Paidia Yu.Yu. Pravo ta relihiia yak rehuliatory suspilnykh vidnosyn: superechnosti doktrynalnoho kharakteru. *Naukovyi visnyk Lvivskoho derzhavnogo universytetu vnutrishnikh sprav*. №1, 2018, s. 36–46. [in Ukrainian]

8. Press D.F. Khrystyianski osnovy kontseptsii pryrodnoho mizhnarodnoho prava. *Chasopys Kyivskoho universytetu prava*. №1, 2021, s. 369–373. [in Ukrainian]
9. Mima I.V. Aksiolohichne znachennia khrystyiansko – pravovykh tradytsii dlia pravovoi systemy Ukrainy. *Natsionalnyi pravnychiy zhurnal: teoriia ta praktyka*. 2014, s. 41–46. [in Ukrainian]
10. Parboteeah P., Hoegl M. Cullen J. Religious dimensions and work obligation: A country institutional profile model. *Human Relations*. Volume 62(1). P.119–148. [in Ukrainian]
11. Manilich O.V. Spivvidnoshennia prava ta rlii yak spetsyfichnykh chynnykiv sotsialno-normatyvnoho rehuliuвання suspilnykh vidnosyn. *Pravo i Suspilstvo* № 6 / 2012. S. 20–26. [in Ukrainian]
12. Relihiieznavstvo: predmet, struktura, metodolohiia / za red. A. Kolodnoho, B. Lobovyka; NAN Ukrainy, Viddilennia relihiieznavstva In-tu filosofii. K., 1996. 240 s. [in Ukrainian]

Terezia Popovych,

Candidate of Law, Associate Professor,

*Associate Professor of the Department of Theory and History of State and Law
State University of Ukraine "Uzhhorod National University"*

ORCID: 0000-0002-8333-3921