

<https://doi.org/10.26565/2220-8089-2023-43-02>

УДК 32-027.21

Anna Malkina

Professor, Doctor of Political Science, Taras Shevchenko National University of Kyiv,
60 Volodymyrska St., 01033, Kyiv, Ukraine

G.m.malkina@knu.ua, <https://orcid.org/0000-0002-2307-4702>

Anton Pastukhov

Master's student, Taras Shevchenko Kyiv National University, Faculty of Philosophy,
St. Volodymyrska, 60, 01033, Kyiv, Ukraine,

antonipastukhov@gmail.com, <https://orcid.org/0000-0001-7256-521X>

THE DOCTRINE OF STATE AND LAW IN THE IDEOLOGICAL AND POLITICAL DOCTRINE OF CLASSICAL CONSERVATISM

This research paper explicates the basic doctrines of the State and law of classical conservatism, as well as the peculiarities of understanding and existence of the idea of the State, which follows from the conservative definition of the State. The characteristic components of this political institution are the categories of law, legal consciousness, political integrity, etc. The perception of understanding the conservative theory of the origin of the state, based on the social contract theory, as a logical continuation of the organic association of people to maintain social order and political stability, is crystallising. The latter principles are also the fundamental axiological determinants of the conservative ideological and political doctrine, whose manifestor and defender is the state. The author characterises the concepts of law and law, the conceptual basis of which is reduced to the moral sphere of existence. The main objective of the existence of laws is to protect rights and freedoms, as well as their institutional representation. At the same time, the author defines the peculiarities of understanding legal consciousness and political consciousness as fundamental elements of state-building processes. In turn, their fundamental features are historical and geographical locality, identity and conceptual authenticity, which are the basis for the constitution of heterogeneous forms of political systems. The tasks and structural elements of the theory of state in the ideological and political doctrine of conservatism are analysed. The author also identifies the institutional elements of social limitation of state power in the context of conservative doctrine, which include the church and civil society.

Keywords: *state, law, political ideology, ideological and political doctrine, classical conservatism.*

In cites: Malkina, Anna, Pastukhov, Anton. 2023. The Doctrine of State and Law in the Ideological and Political Doctrine of Classical Conservatism. *The journal of V. N. Karazin Kharkiv National University. Series «Issues of Political Science»* 43: 13-21. <https://doi.org/10.26565/2220-8089-2023-43-02> (in Ukrainian)

One of the classical and orthodox ideologies of the modern world, along with liberalism, socialism and nationalism, is conservatism. The ideological and conceptual dynamics of its changes, the variability of its forms in the modern world and the existence of conservative political forces in almost every country today

are indisputable facts. However, we are convinced that an important basis for the modern existence of various forms and types of conservatism is an understanding of its classical variation and the principles and political foundations that make up its ideological, political and conceptual core. It is the study of the latter that can provide theoretical and heuristic potential for the development and deepening of conservative ideological knowledge and the formation of various types

of political activity and state-building on this basis.

Another important practical component of the modern articulation of the scientific study of the ideological and political foundations of the State and law of classical conservatism is that Ukraine is currently in a state of ideological vacuum, as evidenced by the absence of specific subject-oriented ideological parties and movements in modern Ukraine. We believe that the study and clarification of the conceptual features of the ideology of classical conservatism can help to form this type of ideology in Ukraine, which will be a condition for the elimination of this situation, especially in the post-war era.

Foreign and domestic scholars have studied this issue, in particular: S. Tonsor, V. Slobodian, R. Scruton, A. Romaniuk, D. Schwarzmental, V. Yermolenko, M. Yakubovsky, A. Shahai, Y. Panchenko, V. Lisovyi, F. Kyryliuk, M. Evans, P. Shlyakhtun, S. Grabovsky, etc.

The purpose of the article is to explicate the doctrine of the State and law in the ideological and political doctrine of classical conservatism.

Starting with the consideration of this issue, it should be noted that the State, in the context of conservative thought, can be characterised as an organic unity of many people who are bound by a common spiritual destiny and social traditions, which have integrated into political unity on the basis of spiritual culture and a special type of legal consciousness. According to S. Grabowski, «such a state should be moral, provide individuals with the necessary living conditions based on strict adherence to the law, while at the same time requiring them to participate in national life and create public wealth» (Грабовський 2015: 19). To understand the essence of the phenomenon of the state in conservatism, we must start from fundamental axiological determinants: order, integrity, organism, etc., as they serve as a metaphysical and ontological springboard for intellectual and scientific comprehension of state reality in conservative ideologies. Here are some examples of this relationship. J. Maritain, for example, considered the state to be the main institution derived from the value category of the political whole, representing and preserving it: «the state is a part - the most important part - of this whole» (Марітен 1998: 463). On the other hand, based on the conservative conception of anthropological pessimism (according to which a person is considered in an a priori negative status), the state has a characteristic feature of constructive regulation

of socio-political life, which should eliminate any potential for the growth of social entropy and chaos: «the state is an ontological force that connects, orders, and organises what is broken in darkness and sin» (Berdyayev 2015) – therefore, the state should exist not to turn earthly life into a paradise, but to prevent its transformation into hell.

It should also be positively noted that it is the state that is called upon to implement the most important political value of conservatism – order – without which no political development is possible, and therefore it is seen here as an existential springboard for future harmonious legal and social existence. It is through the introduction of order and discipline in society that the state constitutes the conditions for the development of other spheres of human activity. A fundamental characteristic of the state is the formation of immanent stability and internal peace: «the activity of a normal state is, first of all, to bring about complete pacification within the state and on its territory, to establish 'peace, security and order' and thereby create a normal situation as a factor in which legal norms can be meaningful at all, since any legal norm presupposes a normal situation, and no norm can be meaningful in a situation that is completely abnormal in relation to it» (Шмітт 2021a: 333) – states K. Schmitt. Thus, the state ensures not only order, but also normativity of its functioning, which is preserved in the context of legal norms as the main elements of state existence. G. Wills summarises this as follows: «just as a physical routine maintains the life of an individual, so there must be a certain order, discipline and system in society. This order is the state» (Вільз 1998: 317).

On this basis, only a state political entity is capable of establishing order and, as a result, the rule of law in a particular society and forming stable legal relations. Any legal norm requires a homogeneous and stable political environment, and since only the state can construct such conditions, it is characterised by the presence of a «constitutive element and a form of its own» (Шмітт 2021b: 23), which, in our opinion, form all the necessary factors for the political and legal organisation of social life. Law, in turn, in the conservative doctrine is closely related to morality, ethics, and social life, which leads to the conclusion that law and legal relations cannot exist in the pre-state state. The idea of natural rights is appropriate theoretically, in metaphysical mental constructions, but is unacceptable in reality in relation to politics and morality. Conservative thinkers, for example, E. Burke and D. Cortez,

warned against observance of abstract rights that are not anchored in reality and are not supported by life realities, preferring historical rights formed during the formation of statehood. Society should be historically prepared to accept rights and freedoms that are inherently linked to obligations, and they should be based on a specific situation of space and time «a person has only specific historical rights, acquired as a result of certain obligations» (Бєббїт 1998: 169).

Laws in the political doctrine of conservatism are seen as a formalised moral category of regulation of social and political relations, which has the imperative character of a rule: «the law itself is a virtue that acts as a rule. People have the right to live by this rule; they have the right to behave properly, for example, among their fellow citizens, whether their fellow citizens are performing public functions or are engaged in private affairs» (Бєрк 1998a: 282). As we can see, laws emerge from the moral field in order to organise the life of a particular people. Therefore, the basis of law is ethics, not metaphysics. Moreover, it is in ethics that the authentic basis for legality is found: «for as early as a hundred and fifty years ago, social critics warned us that bourgeois society was exhausting the accumulated moral capital of traditional religion and traditional moral philosophy and that when this capital was exhausted, bourgeois society would find its legitimacy increasingly problematic» (Крістол 1998: 220) – which characterises morality as the semantic and symbolic basis for the construction of legal norms. The main objective of the existence of laws is to protect rights and freedoms, and since they are always under threat from external conditions, the law is their representative and at the same time their defender. Another important aspect of the existence of laws is their social and disciplinary function, which is an important component of maintaining order in society, allowing it to develop and not to go into uncontrol, so «law is mainly a social system, and at the same time the only socially disciplining system» (Кістяківський : 2004), В. Kistyakivskyi is convinced. Thus, social discipline is formed only by law, and since the legal sphere is constructed by the state, it is from it that the ideas of discipline of social life sprout. Therefore, we can come to the syllogism that since discipline is formed and achieved only through the existence of legal norms, a disciplined society and a society with a developed legal order are identical concepts for conservatism.

The fundamental purpose of the state's existence is to meet the real needs of citizens, and this is why it was created, since only in a society organised by law, law and morality can a person realise his or her natural destiny for self-development: «the purpose of the state, therefore, is to introduce order and discipline into society in order to create the necessary basis for human activity» (Вільз 1998: 319) – thus, the state was created to overcome the natural state, in which there is no room for creativity and development, and emerged as an institution of order for these activities. Another important purpose of the state is to organise and protect the territory of residence of the people, who can designate this territory as their homeland, on the basis of local systems of law, justice and political governance based on a certain type of legal consciousness. From this follows its task, which is reflected in lobbying for the ideals of community and integrity as a purposeful vector of development that this political entity gives it. Thus, every individual, as a citizen, has a common and shared civic goal that raises his or her consciousness from the level of an individual to a social or national spiritual association. A citizen, in this context, is closely related to the concept of citizenship, the essence of which is defined in the establishment and protection of the spheres of general, solidarity and common in the content of the state's functioning, and its non-mixing with the individual and particular interest of an individual. Thus, the state does not represent the class interests or political aspirations of social groups or individuals, but has a direct connection with the national interests, which allows us to interpret the state as an organism of spiritual solidarity. Here, we should refer to the category of organismism, according to which the main subject of political activity is the people. Thus, the state intensifies the existence of the people in a specific form of temporal and spatial existence and has a universal, timeless character: «it limits the interests of every generation living now and subordinates them to the great past and the great future. Not only those who live now, but also those deceased ancestors and unborn descendants act in it» (Berdyayev 2015).

Since the state is an organism, and «not a mechanism that can be freely unwound and rewound» (Шахай, Якубовський 2011: 73), which over time «acquires agency, will and identity» (Scruton 1980: 67), this gave G.-W.-F. Hegel the reason to use Kant's moral imperative in relation to the state, which meant the idea of treating the state as an end in itself, rather than

as an instrument for realising its own interests. Such a state is the embodiment of the ethical idea as «the moral spirit as an obvious, self-evident, substantial will that thinks and knows itself and does what it knows and because it knows» (Hegel 2001). Thus, according to this thinker, the state is the main manifestor of the moral idea as a factor of organic coexistence of people, which is a characteristic feature of the understanding of the state in the political doctrine of conservatism. For this reason, the state, as a moral organism, in performing its functions, should rely on the concept of justice as its own objectively justified inequality, which focuses on human individuality, but in no way imposes it. That is why many political thinkers and intellectuals have called for treating the state with the right amount of respect: «the state must be treated with far greater respect, since this partnership is not merely a matter of secondary concern, subordinated to the carnal existence of a perishable, transitory nature» (Берк 1998b: 150), but is an interaction in the realm of spiritual and value-based understanding of one's own as well as public interests.

It should be noted that the generally recognised stigma of the static nature of conservatism is also represented in the understanding of the phenomenon of the state. Thus, it is believed that the state is a static institution of society that should not change over time, but only imitate or repeat the forms that have already been created, but this is only a partial truth. Referring to E. Burke, it should be noted that for this political ideology, the state is a dynamic system that must have constitutional and substantive conditions for the potential for internal transformations, in the absence of which it loses the ability to self-preserve and improve itself: «a state deprived of the means to implement certain changes has no means of self-preservation» (Берк 1998c: 481). Therefore, two dialectical conditions should be permanently present in state processes: preservation and correction. The first is based on the understanding of imperishable political principles and reflects the traditions and wisdom of the ages in state institutions; and the second, based on the fluctuating political situation, adjusts the forms of principles to it, provided that their essence is preserved. The state system must reflect the universal law of nature, according to which improvement is not the creation of something completely new, and the preservation of valuable models is conditioned by the impossibility of their absolute obsolescence. Since those fundamental

principles or the core of state-building, which should exist as an unshakable engine of the entire political system, «are not just some conditions that have managed to establish themselves over a few years or decades, but the consensus of its civilisation, its country, achieved by centuries of reflection on the truth, the source of which is the very structure of being» (Майер 1998: 347) - that is why the conservative doctrine emphasises the preservation of not historical precedents of the state's functioning, but its substantive principles of being and existence.

Conservative thought is based on the theory of the social contract in its organic form – «society is indeed a contract» (Берк 1998b: 149) – so the state already presupposes certain acquired rational virtues in people, which led to the intention of building a state entity. That is why the state in the ideology of conservatism should rely on them in its essence, as a self-organising and creative principle, and not guillotine manifestations of human consciousness or agency. That is why an important condition for its functioning is the existence of a state-political mindset in society, which gives it an accretion of organicity and unity, under which the state is characterised not as a sum of atomistic and disparate wills, but as a natural unity of people with a common political goal and purpose. Here, this political institution is a special state of people's consciousness, and is also «the political status of a people organised in territorial isolation» (Шмітт 2021a: 308), which, through a special self-awareness, forms an institutional and normative system. It is as part of this system that a person should be aware of the state as a living legal unity and participate in it through the development of general legal awareness. The structural elements of this awareness are the spiritual features of human compatibility in the social sphere, such as: the most important of all – solidarity, which is realised in the formation and achievement of a common goal and is the real basis for the existence of the State; correlation, which is closely related to the previous category and is a condition for the correlation of human activity and consciousness; mutuality, which is understood in the context of mutual recognition of the other as a citizen, one's friend, not an enemy, if we use the categorical apparatus of K. Schmitt. That is why it is the state that synthesises the above elements that helps to build the sphere of the political, since without it all other social relations remain at the level of the social.

And since this concept of political mindset and legal consciousness is local, or in other words, each nation has its own essentially separate one and manifests itself at different times, the actualisation of retrospective conditions of state formation is a very important factor demonstrating organic traditions of state-building, which were laid down at the time of the beginning of the construction of the state organism and form the ideological political and legal constitution of the people. Each nation has a certain deterministic set of beliefs, customs, traditions, convictions and prejudices that show tendencies towards different forms of state government, structure, etc: «it is more than a law, it is the embodiment of peculiar ideas that have been held by a people for centuries... it is these that raise peoples to the level of states and endow states with constitutions» (Newman 2007). This perception is based on the rejection of general and abstract ideas for all, as well as the value factor of ontological diversity of conservatism. The conservative doctrine emphasises this fundamental factor because it reflects the reason for the heterogeneity of political systems in different nations, which is based on political archetypes and historical events. In other words, it is legal consciousness that constitutes a particular form of political system.

As we have seen, an important component of the ideal existence of the state system is the presence of a special type of political and legal consciousness, so a logical continuation would be to consider this aspect of the ideology of political conservatism. G.-W.-F. Hegel wrote that «the state as a reality of substantial will, as it has itself in its universality by a special *self-consciousness*, is in itself and for itself reasonable» (Hegel 2001) – which states the importance of the state's self-awareness, which, in our opinion, is based on a special type of legal consciousness of citizens as an essential characteristic of the state's existence. It is a matrix of political and legal ideas of a particular nation which tries to systematise and organise political life according to a certain ideal legal principle. Moreover, like the state, it reflects the specific features of a particular nation: «all legal ideas in the minds of each individual nation receive colour and their own shade» (Кістяківський 2004). It is this category that forms ideally understood concepts of justice, freedom, property, etc. and formalises them based on the traditional foundations of a particular nation's existence, its temporal and geographical variables. In other words, legal consciousness constitutes a particular form of

political system, since the tradition of law must be convergent with the tradition of popular sentiment. Legal norms, as we have pointed out, are a product of social consciousness, but they are more than moral principles related to the external component of regulation of social life, since being expressed in articles of laws or applied in life, they acquire features of external existence. This is the main feature of the difference between law and morality in the ideological and political doctrine of conservatism.

As we have indicated above, an important aspect is that a person, as a rational being, forms the state by himself, by reasoning to himself that its existence is imperative. The excesses of the French Revolution taught conservatives to treat the claims of state power with great caution, as they believe that a state that ignores the role of primary social groups - family, church, corporation, etc. - turns into an unbridled tyrant that aspires to become an absolute hegemon not only of the political, but also of the social and personal spheres. This is due to the decline of the internal regulating moral and religious essence of man, i.e. internal self-regulation; thus, when the religious barometer rises, the barometer of state control falls, and vice versa, when the religious barometer falls, the political barometer, i.e. state control and tyranny, rises. In other words, the state, since it is called upon to implement an omnipresent internal order, begins to extrapolate its stabilising and calming functions to the personal life of people, and turns into a total political institution of coercion, provided that moral or religious internal constraints erode. This, in turn, leads us to the conclusion that the concept of centralism or totalitarianism tendencies should be negatively perceived, since the state has an explicit ontological dimension that undoubtedly affects a person, but its influence should be limited and not extend to the spiritual and individual sphere of a person, since «centralisation causes apoplexy in the centre and on the periphery» (Нісбет 1998: 401). If the state emerges through the social spiritual instinct of man (the imperative of understanding man as a social animal striving for organic unification is a fundamental component of conservatism), then by not allowing for the development of other spiritual spheres of human life, it undermines its own foundations. Therefore, a directive plan for a model of existence imposed from above is not desirable for conservative ideology: «we conservatives want the dominance of the future to be first and foremost in the individual home

and family» (Черчіль 1998: 546), states Winston Churchill. As a result, a logical question arises about the factor of quantisation of state influence, provided that there is a normal role of internal self-regulation in society, and the answer to it is the functioning of the civil society institution as a self-disciplining principle. In order to prevent such tragic abuses of power by the state, there must be an internal disciplining institution of society based on the division of functions between the state and this institution, in our case, civil society, when: the state maintains general order and stability, but does not try to suggestively implement ideas of justice or virtue in society.

G.-W.-F. Hegel identified the importance of separating civil society from the state and creating conditions that eliminate any possibility of their interpenetration and integration: «the history of totalitarianism aptly confirms two main concepts of Hegel's political philosophy: the theory that the state and civil society can flourish only when they do not mix; and the theory that the state in its proper form is identical to the legal person and has the corresponding authority» (Скрутон 2022: 68). However, it should be noted that the institutions of the state and civil society should not be opposed to each other, but should coexist harmoniously as two structural elements of the political whole, in the context of which the state is a representative of the national whole and represents an exogenous interest, and civil society emanates this interest from itself, which characterises it as an immanent aggregate unit of the political system. In general, the understanding of the features, as well as the role and place of civil society in the political system, according to the political doctrine of classical conservatism, is based on the axiological landscape of this ideology, in particular, the value parameters: freedom, order, integrity, etc. Thus, we can distinguish three characteristic features of the civil society phenomenon in this context, namely: functional autonomy, decentralisation and traditions. The first one eliminates the omnipresent influence and control of a single political entity (state, government, etc.) and postulates «the ability of each important part of the social order to operate with the greatest possible freedom and to perform its intended function» (Нисбет 1998: 403); the second, in turn, is closely related to the first, and aims to formalise the conditions for the optimal implementation of the principles of functional autonomy, based on the principles of plurality of authorities and federalism, as those that oppose political

dictatorship and state absolutism. Tradition, as the third feature of the phenomenon of civil society functioning, is manifested in the fact that it partially delegates certain informal regulatory functions from the central government vertical, which results in a decrease in state control and an increase in self-regulation of society. F. Hayek wrote that «for the functioning of an individualistic society, traditions and customs that develop in a free society and establish flexible regulatory principles that are generally followed and make possible a high degree of predictability of human behaviour play an important role...» (Гаск 1998: 396). Thus, it is stated that in a society where these customary and traditional norms contribute to a high level of predictability of human behaviour, state coercion is gradually minimised, social order remains at the proper level, and individual freedom, on the contrary, increases, while maintaining moral imperatives for each member of society. Thus, traditions also play a fundamental role in the existence of the civil society institution.

The conservative view is that every large organisation, including the state, is formed on the basis of a network of informal and voluntary small organisational structures. The sum of individually small components constitutes the larger structure of the whole. It is the latter social institutions that have the ability to form a free social initiative that will not give the state the right to monopolise all spheres of human existence: «it comes from groups, neighbourhood associations, local committees and voluntary associations, whose interests people want to live by and do live by, at least as far as the acquisitiveness of modern society allows them» (Нисбет 1998: 407). That is why, for example, Nisbet called for the revival of the category of the social, which will balance another important category - the political. These two concepts should form the socio-political ideal of calocalcitanian, which will be manifested in the harmonious coexistence of the political (or state) and social (or civil society) spheres. This idea further intensifies the principles of organicity and integrity in the doctrine of conservatism. That is why dialectical reconciliation and integration of contradictions is a measure of a healthy socio-political organism, and the formation of a multitude of mutually incompatible and warring social structures that exist but are unable to stimulate development is an aberration.

Thus, conservative ideology pays attention to and emphasises the functionality of

intermediate social institutions or agencies that link individuals to the state and help society and the state to coexist as interrelated factors. In this way, it helps to reduce the alienation of civil society from the state and encourages these two institutions to cooperate to achieve the general welfare of the people, thus maintaining the stability of the political system: «the natural institutions of an organic society (churches, trade unions, universities, newspapers, bar associations, farmers' associations, businessmen's clubs) play a special role in mediating between the citizen and the state. By increasing the strength of these institutions, they also increase the stability of the state» (Шуттінгер 1998: 24). By playing this mediating role, these institutions not only stimulate the constructive dispersion of central power, but also increase the authority of the state as an institution that helps the free development of citizens' personal interests.

Another balancing factor for conservative ideology is the religious and church sphere of society. E. Burke considered religion to be the foundation of civil society and the source of all that is good and consoling as something that helps to form and maintain state institutions and sanctify them morally and spiritually. That is why the church is an important social institution, whose power partially balances and neutralises the power of the state - this is how the essence of religious attribution in the socio-political system is postulated. However, an important condition for the church's activity is its actual independence from the state, but with the obligation to obey the general rules of internal order and stability, since the church-state conflict is the most tragic for the ideology of conservatism, since the state then loses the spiritual legitimation of its power. Therefore, S. Tonsor believes that «without a strong religion that is outside the power structures and independent of them, civil liberty is unimaginable» (Тонсор 1998: 194). Thus, religion plays an important role in political life, performing a unifying and integrative function, maintaining discipline and morality in society. While agreeing with the need to establish secular government, for the ideology of classical conservatism, the inseparable connection of the church with the state and society is obvious. While the social is based on the rational, the political on the wise and traditional, the church on the spiritual, and all these interconnected social spheres are imperative for the existence and activity of an ideal society.

This article has updated the conservative doctrine of the State and law, which has its own semantic framework of understanding based on the value determinants of this ideology. The state emerges as a result of rational intentions of people through a social contract and is an institution that implements the fundamental goals of maintaining order, forming the rule of law and the legal framework of society. An important aspect of the emergence of the state is a special type of political and legal consciousness of the people. In the political doctrine of conservatism, laws are viewed as a formalised moral category of regulation of social and political relations, which has the imperative character of a rule. The fundamental purpose of the state and law is to regulate social relations. Since all political phenomena in the political doctrine of conservatism are imbued with the idea of morality, the phenomena analysed here also have their roots in this area. The authors have shown that for the classical ideology of conservatism, the deification of the state and the general ethatisation of social and political life is an aberration. Therefore, they also identified two main counterbalancing institutions of state power: the church and civil society.

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The article was received by the editors 05.04.2023

The article is recommended for printing 08.05.2023.

Ганна Миколаївна Малкіна

професор, доктор політичних наук,
Київський національний університет імені Тараса Шевченка,
вул. Володимирська, 60, 01033, м. Київ
G.m.malkina@knu.ua, <https://orcid.org/0000-0002-2307-4702>

Антон Володимирович Пастухов

магістрант, Київський національний університет імені Тараса Шевченка,
вул. Володимирська, 60, 01033, м. Київ
antonipastukhov@gmail.com, <https://orcid.org/0000-0001-7256-521X>

ВЧЕННЯ ПРО ДЕРЖАВУ І ПРАВО В ІДЕЙНО-ПОЛІТИЧНІЙ ДОКТРИНІ КЛАСИЧНОГО КОНСЕРВАТИЗМУ

У цій науковій роботі есплікуються базові вчення держави і права класичного консерватизму, а також особливості розуміння та існування ідеї держави, що впливає з консервативної дефініції держави. Характерними складовими цієї політичної інституції виступають категорії закону, правосвідомості, політичної цілісності тощо. Кристалізується перцепція розуміння консервативної теорії походження держави, що ґрунтується на теорії суспільного договору як логічним продовженням органічного об'єднання людей для підтримки соціального порядку та політичної стабільності. Останні принципи виступають також фундаментальними аксіологічними детермінантами консервативної ідейно-політичної доктрини, маніфестатором та захисником яких виступає держава. Характеризується поняття права та закону, концептуальна база яких редукується до моральної сфери буття. Головним завданням існування законів є захист прав та свобод, а також їх інституціональна репрезентація. Разом із цим визначаються особливості розуміння правосвідомості та політичної свідомості як фундаментальних елементів державотворчих процесів. У свою чергу їх фундаментальними особливостями виступають

історична та географічна локальність, самобутність та концептуальна автентичність, які є підґрунтям конституювання гетерогенних форм політичних систем. Аналізуються завдання та структурні елементи теорії держави в ідейно-політичній доктрині консерватизму. Також визначаються інституціональні елементи суспільного обмеження державної влади в контексті консервативного вчення, до яких відносяться інститут церкви та громадянського суспільства.

Ключові слова: *держава, право, політична ідеологія, ідейно-політична доктрина, класичний консерватизм.*

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Стаття надійшла до редакції 05.04.2023

Стаття рекомендована до друку 08.05.2023