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THE PARTICULARITIES OF THE FORMATION OF THE STATE IDEOLOGY IN THE UKRAINIAN HETMAN'S STATE (THE MIDDLE OF THE XVII – THE END OF THE XVIII CENTURY)

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The scientific article is devoted to the research of the state ideology through the historic prism. It characterizes the concept of the state ideology. It retraces the process of the development of the idea of the Cossack's state system as a national state idea in a chronological sequence since the middle of the XVIIth till the end of the XVIIIth century. It analyses the aspects of the state ideology formation in the years of the War of National Liberation of the middle and of the second half of the XVIIth century and in Ukrainian political and legal mind of the XVIIIth century. It analyses the influence of the state ideology of the Ukrainian Hetman's state on the development of the state and law.

Key words: state, state ideology, history, Constitution, Ukrainian Hetman's state, law.

Середа А.Н. ОСОБЕННОСТИ ФОРМИРОВАНИЯ ГОСУДАРСТВЕННОЙ ИДЕОЛОГИИ В УКРАИНЕ-ГЕТМАНЩИНЕ (СРЕДИНА XVII – КОНЕЦ XVIII ВВ.) / Запорожский национальный университет, Украина

Научная статья посвящена исследованию государственной идеологии через историческую призму. Характеризуется понятие государственной идеологии. В хронологической последовательности с середины XVII до конца XVIII в. прослеживается процесс развития идеи казацкой государственности как национальной государственной идеи. Анализируются аспекты формирования государственной идеологии в годы национально-освободительной войны середины – второй половины XVII в. и в украинской политико-правовой мысли XVIII в. Актуализируется вопрос влияния государственной идеологии Украины-Гетманщины на развитие государства и права.

Ключевые слова: государство, государственная идеология, история, Конституция, Украина-Гетманщина, право.

Середа А.М. ОСОБЛИВОСТІ ФОРМУВАННЯ ДЕРЖАВНОЇ ІДЕОЛОГІЇ В УКРАЇНІ-ГЕТЬМАНЩИНІ (СЕРЕДИНА XVII – КІНЕЦЬ XVIII СТ.) / Запорізький національний університет, Україна

Наукова стаття присвячена дослідженню державної ідеології крізь історичну призму. Характеризується поняття державної ідеології.

У хронологічній послідовності з середини XVII до кінця XVIII ст. простежується процес розвитку ідеї козацької державності як національної державної ідеї.

Державна влада в період існування Козацької держави в Україні володіла єдністю, самостійністю, необмеженістю, верховенством на території держави.

Автор визначає аспекти формування державної ідеології в роки національно-визвольної війни середини – другої половини XVII ст. та в українській політико-правовій думці XVIII ст. Актуалізується питання впливу державної ідеології України-Гетьманщини на розвиток держави і права.

Аналізується еволюція української державної ідеї від початку національно-визвольної війни (1648 р.), формування політичної програми Б. Хмельницького (1649 р.) до юридичного закріплення протекторату національної державності в межах Московської держави (1654 р.). Суспільно-політична ситуація на українських землях другої половини XVII – кінця XVIII ст. Характеризуються особливості розвитку ідеї національного державотворення в українській політико-правовій думці XVIII ст.

Визначається, що вагомий внесок у розвиток державної ідеології того часу зробили прогресивні діячі Кисво-Могиллянської академії: Лазар Баранович, Іоанікій Галятовський, Інокентій Гізель, Стефан Яворський, Михайло Козачинський, Георгій Кониський, Дмитро Туптало, Григорій Сковорода та ін.

Робиться аналіз доробок Михайла Козачинського, Феодана Прокоповича у сфері державної ідеології. Велика увага приділяється ідеям, які були закладені П. Орликом у «Пактах й Конституції прав і вольностей Війська Запорозького» (1710 р.), яка враховувала передові досягнення української та європейської політичної думки.

Конституція Пилипа Орлика зафіксувала відокремлення судової гілки влади, розподіл влади на три гілки, хоча, звичайно, державна влада залишалася єдиною верховною владою, яка мала здійснювати державні функції. Потреба захисту від нападу ззовні вимагала єдності цілей і консолідації, подальшої централізації держави.

Державно-правова ідея в Україні-Гетьманщині вирізнялася різноманітністю, але можна позначити цілий ряд ідей і концепцій, які повторювалися і становили свого роду каркас козацько-гетьманської правової свідомості. Державна ідеологія Війська Запорозького була не просто відображенням практики політичних відносин. Ця ідеологія створювалася для того, щоб активно впливати на цю практику, визначати характер політичної поведінки державних діячів. Політична і правова думка, створена в цей період, не зникла. Ці ідеї впливали на державну ідеологію наступних епох, вступивши в симбіоз з новими ідеями, які стали в певних випадках навіть їх основою.

Ключові слова: держава, державна ідеологія, історія, Конституція, Україна-Гетьманщина, право.

Actual situation shows absolutely evidently the huge ideology's role for the society's development. Nowadays ideology doesn't include only mental education, ideas, views, concepts etc, but it also consists of political decisions, laws, economical and social programs and other events of all the sectors of the vital activity.

The weakening of the state ideological bases and of the population's support is destructive for a state, as it causes loosing connection between a person and a state, it weakens national and state self-identification. That's why the problem of searching for a uniting national idea, able to consolidate and mobilize society is actual nowadays. It demands recognition of social needs and interests in all their diversity (material, moral, scientific and other ones) as a starting point of the state ideology and mental-theoretical activity formation.

According to the last researches of modern jurisprudence it is necessary to give a definition to the state ideology. So state ideology is a totality of scientifically reasoned theories, doctrines, concepts, views and convictions concerning the matter and strategies of the state development. There are several types of the most widespread state ideologies in the world history, they can be classified by the type of social and economic structure: slave-holding, feudal, capitalist or communist ones; the state ideologies can be also classified by the level of state interference in social activities: conservative, liberal and mixed one combining both; according to the attitude to a person, to his rights and freedoms there are human centrist (humanistic) and state centrist (statist) ones; by the level of social relations influence there are dominative (monopolistic) and alternative (pluralist) ones.

The ideology has always played a very important role in the history of humans. Domestic historical experience is precious for a more detailed problem solution. It allows to define and to systemize

gained experience, to define its positive and negatives features, but the most important thing is the fact that it allows to define some rules of the state ideology genesis and to contribute to the perfection of its development in today's Ukraine.

By the way, the interesting fact is that the ideology is divided in two main parts: the first one is historical part that consists of our opinions about the history of our nation and state formation. The historical ideas unite society by the bonds of inheritance and national and cultural unity, they allow each of us to feel being a part of eternal historical world process. From the history we get knowledge about traditions, study on achievements and mistakes of our ancestors.

The second one is a legal part that contains legal opinions, in other words all the totality of the ideas regulating citizens' activities. The legal knowledge allows all of us to use fully personal rights and duties, both in the native state and in the international scene.

The aim of this scientific article is to find out the state ideology cradle and evolution of Cossacks' and hetman's period on the base of the analysis of the historical and modern sources, scientific works.

Characterizing the theoretical base of the research, it is significant to say that great attention of state and legal ideology problems in different aspects contains in the works of such famous scientists as T. Andrusiak, V. Zhvavskij, O. Zaichuk, O. Murashin, N. Parhomenko, O. Skakun, S. Slivki, V. Tatsia, S. Timchenko, V. Tolstenko, I. Usenko, M. Tsvik, Iu. Shemshunchenko etc. The question of state and legal ideology development in different contexts was researched by such scientists as S. Alekseev, V. Lazarev, V. Korelskij, V. Aphanasiev, N. Matuzov, A. Malko etc. The important source of systematized information showing a wide circle of Ukrainian ideology problems is the research done by I. Kutashev, V. Stepankov, V. Litvinov, V. Shevchuk, V. Kononenko etc. Despite this fact, it should be noted that a complete research of the state ideology from the view of the process of its formation on different historical stages and its current state and perspectives of the development hasn't been formed yet.

The national state ideology has its history of the development. It is important that the state ideology evolution was connected with the level of the development of the society, the state and the law.

One of the most famous historical pages of the state ideology was added by a new social stratum that undertook a role of the national guide. The name of this stratum is the Cossacks. The phenomenon of the Ukrainian Cossacks is unique. The center of the Cossacks was Zaporizka Sich, it had clear signs of an organization created on the example of European military orders with all their attributes.

The period between 1648 and the end of the XVIII th century. was turning-point and had great influence on the counties of East and Central Europe. It was the period of the Ukrainian National Revolution and of the formation of Ukrainian nation statehood. Such factors as the patriotic enthusiasm and the filling of pride after Cossack's army victories, Ukrainians role in the war, the precious state materials formation contributed to the new Ukrainian ideology development and undermining of the ideological basis of the Polish-Lithuanian Commonwealth (Pol. Rzeczpospolita) and to the removal of its power from the Naddnipyrianska Ukraine.

In 1649 B. Khmelnitsky presented his own program of the Ukrainian Cossacks State on the base of the idea the Ukrainian Unity. He synthesized the idea of ancient Knyazhs' Ukraine Rus' with a new idea of Cossacks statehood. The Hetman didn't simply set a task of creating an independent state that had to unite all the ethnically Ukrainian lands, but he did his best to do it.

The contribution to the state ideology development in Ukraine was made in XVII – XVIII century by such progressives of Kyiv-Mohyla Academy as Jossip Kononovich-Gorbatskij, Lazar Baranovich, Ionikij Galyatovskij, Inokentij Gizel, Stephan Yavorskij, Mihajlo Kazachinskij, Goergij Koniskij, Dmitro Tuptalo, Grigoriy Skovoroda etc. The Scientists of Kyiv-Mohyla Academy devoted themselves to the natural law and social agreement development. They derived state and law from a permanent human nature, but its essence stayed constant during the whole period of state and law development, taking in account the fact that state hadn't always existed.

Michail Kozachinskij (1699-1758) – a ukrainian writer, professor, philosopher, educator and religious figure is a prominent figure in the pleiad of Kyiv-Mohyla Academy professors.

His work "Public Politics" is worth of attention. The tractate is based on Ph. Aphinskij views on natural law and on the work of Yust Lipsil "Politics", where he presented the doctrine of "natural

statute” and “natural justice”. Basing on it, M. Kozachinskij studied natural justice as an integral part of human nature, that can be perceived just by human mind. M. Kozachinskij approach to human laws was interesting, he divided them into public and canonical ones. Then “public law is the law caring for a method of heredity or choice because all the governors base on these factors... Directive law is the law providing the situation [1, 341].

The motive of fair vengeance: “Natural law always permits killing the man threatening with an axe” [2, 353] is traced in the tractate of M. Kozachinskij “The Philosophy of Aristotelianstva”.

He affirmed that social or public (for him public and social have the same meaning) state is natural for a human, as just being in this state “human nature, his mind as well as his natural rights can develop most fully”. This, in essence, democratic point of view, that doesn’t stop but strengthens the natural law action in the civil law, demanded from M. Kozachinskij the denial of any possibility to separate citizens’ “natural rights” in favour of state power while creating a social agreement between subordinates and governors. M. Kozachinskij recognized the right to life, to freedom of conscience (a right to behave following own mind), to private property and to choose (where there is no choice, there is no liberty) the most important natural human right, because it is the base of any form of government. He found the action of “natural law” so obligatory and so necessary that even God couldn’t break it, or else He would contradict himself.

It would be unacceptable not to pay attention to the ideas of the authors (P. Orlick, G. Gertsik, A. Vojnarovckij) of the Constitution (1710), that took into account the advanced achievements of Ukrainian and European political mind. “The pacts and the Constitution of Zaporizka Army rights and freedoms is the “social agreement” philosophy and ideology expressed in the language of legal norms” [8, 236].

Many of the document’s positions have conceptual character and are the reflect of the particularities of the Ukrainian political mind in the begging of the XVIII century, and an example and a base for the following theoretical researches of Ukrainian political thinkers.

The Constitution began with a solemn declaration, by its form it was an agreement between the Hetman, a foreman and the whole Zaporizka army, by its content it was a document proving the rights of Ukraine on independence in political and legal concept of the period. As for an agreement, P. Orlick made a conclusion about the possibility of its retrial in case of nonfeasance by both sides, it means a right of the nation to a revolt against despotic power. This conclusion is based on the postulate saying that nation is the only competent state sovereignty bearer and transmitter.

As a political document Constitution declarative positions had the meaning of the manifest of “Mazepian” movement, in other words, the programs of fighters for the independence of Ukraine of the beginning of the XVIIIth century. The preamble and three prime paragraphs were devoted to it. The program was led down to the following positions: the state independence of Ukraine, the orthodoxy as the state religion, eternity and inviolability of set borders, setting of Swedish patronage in Ukraine (in fact a union of two states), a necessity of setting friendly and union relations with the Crimean Khanate.

P. Orlick affirmation saying that B. Hmelnitskij emancipated Ukrainians from the Polish-Lithuanian Commonwealth (Pol. Rzeczpospolita) power, returned its state status and accepted the protectorate of Moscow of his own free will hoping on keeping all the obligations taken by both sides, was very important for the ideological fight of Cossacks foreman against Moscow officials. But after hetman’s death Moscow officials began breaking ancient Cossacks rights, privileges and arrangements achieved before, it led Zaporizka Army “... had to defend the inviolability of their laws and freedoms by shedding their blood and a brave uprising, their defence was graciously supported by God, lawlessness avenger” [4].

P. Orlick said, that the revolt of Ivan Mazepa against Moscow was of the same type, he continued B. Hmelnitskij traditions fighting for nation freedom and reestablishing relation with Swedish Kingdom. The similar historical parallel had to approve ideologically I. Mazepa’s acts and show their strategic aim – state independence restoration of Ukraine and fulfilling the historic mission of Cossacks.

“All the authors of the Constitution (P. Orlick and Cossacks foreman) intended to unite fragments of their past and point the model of the society, that would contain the main achievements of the nation. The ideas given in the document are a result of a millennium political development of Ukraine, they

show a high level of self-conscience of the nation, its political culture, its creative potential. This document is a material idea of Ukrainian state – Hetman’s State and at the same time it is a perfection of the state essence comprehension of that period [5, 50].

Therefore this document is the Constitution of the independent Ukrainian state, for which I. Mazepa, P. Orlick and their supporters and followers fought. Among the main state-law ideas, that were of a great importance for the formation of the political outlook of the Ukrainians, we must note the idea of independence of Ukraine and the Ukrainians’ rights to their own state, the idea of separating juridical power, separation of power into three branches, though, state power belonged still to the supreme power, that exercised state functions and the idea that hetman had to care for “the nation wasn’t charged by excessive taxes, oppressions and demands”. By the way, “The pacts and the Constitution of the rights and freedoms of Zaporizka Army...” contain a range of democratic and progressive ideas: setting personal rights and freedoms, fair separation of public benefits, support of social undefended classes. There was one more legal principle – the supremacy of law in the state. Its fulfilling was the main hetman’s, governors’ and all the citizens’ duty.

P. Orlik’s idea of independent Ukraine wasn’t realized in that period, as Europe didn’t support its confrontation with Russia, it was a goal of the hetman-immigrant. But theoretical P. Orlik’s heritage showed a high level of his political mind and his intention to democratize the state system in Ukraine.

In general, political and legal views of such Ukrainian hetmans as Bogdan Hmelnitskij, Ivan Mazepa, Philip Orlik contributed to the national political and state ideology formation and development, to the interfering of Ukraine in the political processes of Europe, its consolidation as an equal European partner, to the strengthening its international authority.

The state ideology development forerunner of the hetman’s period was Cossacks’ chronicle existing in Ukraine since the end of the XVII th till the beginning of the XVIII th century, and was of great importance for the formation of the ideas of Ukrainian state-formation. The most famous ones are the works of Roman Rakushka-Romanovskij, Samijlo Velichko and Grigorij Grabyanka.

As I. Terluk and I. Flus say “Firstly, the chronicle of the Cossacks’ period wasn’t an act of a spontaneous formation, it had a good theoretical basis that had been achieved by the chronicles’ authors in the Kyiv-Mohyla Academy. Secondly Cossacks’ chronicle appeared as a protest against ideological reasoning of Russian and Polish centrism. Thirdly, Cossacks’ chronicle managed to propose conceptually complete schemes of ideological reasoning of the most acceptable for high society (Cossacks’ foremen) model of its relations with Russian dynasty. The political leadership established by Cossacks after National Revolt in Ukraine, particularly on the left bank of the Dniepr was put in the basis of this scheme” [6, 158].

The chronicles’ authors were the spokesmen of the Cossacks’ foremen ideology supporting Bogdan Hmelnitskij’s politics, in other words, official ideology of the Ukrainian government of the left bank of the Dniepr of the period since the end of the XVII th till the beginning of the XVIII th century. The particular features of their points of view were love to the native land, recognition Ukrainian state tradition from Kyiv Rus’, hate to foreign conquerors. But, the idea of autonomy of Ukraine, of voluntariness and agreement of joining Ukraine to Russian state were defended.

So, these chronicle works established Ukrainian state tradition as the beginning of the political mind in the Hetman’s State, based on the idea of autonomy and Ukrainian patriotism in times of constant Russian orientation. With their works they prepared the appearance of political and ideological concept of Malorossiia, characterizing its components as: underlining the voluntary and contractual character of the union of 1654; joining Malaya Russia to Velikaya Russia through a common king (tzar); mentioning ancient rights and freedoms of Malorossiia and its nation etc. The concept of Malorossiia, formed by Cossacks’ ideologists, and legal grounds of hetman’s “contractual” articles of 1669, 1672, 1687 became political and legal basis of Ukrainian autonomy limitation and its removal in conclusion [6, 159].

In the end of the XVIII th century there was a great number of examples of servility and corruption among Ukrainian elite, that because of personal benefit began to serving to Moscow tzars. Petr’s I assistant Ph. Prokopovich, apologist and theoretic of centralized empire, by the way metropolitan of Kyiv realised the imperial plan of russification of church and education in Ukraine. But despite all these facts Pheophan Prokopovich (1681-1737), a professor, a rector of Kyiv-Mohyla Academy, a famous politic and religious figure made a great contribution to the Ukrainian state ideology development.

Ph. Prokopovich devoted a range of his works: “Mental Regulations” (1721), “The Truth of Monarchic Will” (1722), “About Power and Honesty of the Tzar” and others to the problems of law. He was the first to create a variant of the theory of the enlightened absolutism, using the theory of natural law and social agreement. But analyzing the scientist’s works we begin to understand the importance of the idea of the absolutism according to the idea of the enlightenment

To Ph. Prokopovich’s mind, appearance of a state is an act of natural laws. He said that power was necessary to follow natural law in order to deter evil human passions, guard human cohabitation. “If this law didn’t exist, the Earth would be deserted, the human race would disappear. Human evil made people create a society union, uniting and defending themselves from internal and external enemies with state power, with the whole nation force, with the weapons given by God” [7, 90].

Ph. Prokopovich spoke about three main forms of state power organisation: the democracy, “all the main questions are solved by the whole nation agreement”, the aristocracy, “the state is governed neither by the nation nor by the only monarch, but by several officials elected by the nation” and the autocracy, “state power belongs to one person”. The thinker sympathized with the last one. At the same time he divided all the main forms of state power organizations into elective (no matter what it is democracy, aristocracy or monarchy) and inherited ones. Speaking about principally inherited and elective forms of state life organizations the thinker sympathized with the inherited absolute monarchy.

Ph. Prokopovich was an apologist of the idea of caesaropapacy, ideologically reasoning submission the church to the tzar’s will, he prepared “the Mental Regulations” throwing away the idea of church autonomy from state power and turned it in one of empire’s instruments.

Absolutism’s and imperial grandeur’s apologetics of Pheophan Prokopovich, despite political engagement, had complete sequential character.

During the period since 1764 till 1785 Ukrainian autonomy was liquidated, Ukraine found itself depending on Russian and Austro-Hungarian Empires Ukrainian society was penetrated by the atmosphere of national humiliation, political and economical oppression. Aristocratic ideology reinforced by imperial centralism’s ideas and practice forced out the ideology of governing of the nation. The other side of this process was amalgamation of Ukrainian aristocratic idea with common imperial discourse, that’s why it stopped existing as a separate phenomenon.

Administrative and ideological politics of Russian Empire led step by step to the loss by the Hetman’s state its former name “Malorossiia”. These and other factors contributed to the formation of Malorussian ideology and identity in Ukraine.

Malorussian ideology was divided into two branches: Malorussian separatism and Malorussian absorption. The last one can be considered as one of the factors of later theories of “the only Russian nationality” and xenophobic ideas about the Ukrainian statehood as a spoiled form of Russian ones. Besides, after Cossacks foremen joining to Russian nobility and its descendants’ sequential russification in the end of the XVIIIth century, appears an idea about Ukrainians as rural population, these factors contribute to the inferiority complex [8, 180].

Despite all these facts, Hetman’s state incorporation to the Russian Empire was passing slowly and took more than a century, it shows quite a strong ideological and legal reasoning of state formation, interior solidarity of foremen as its main class, its high level of self-consciousness.

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ЕФЕКТИВНІСТЬ ЗАКОНОДАВСТВА ЯК ФОРМИ ПРАВА

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У статті обґрунтовується необхідність дослідження ефективності законодавства не тільки з точки зору змісту, але й форми. Зроблено висновок про те, що дослідження дієвості різних форм права допоможе розробити та вжити заходів, спрямованих на підвищення ефективності законодавства як найважливішої форми права в Україні.

Ключові слова: ефективність законодавства, законодавство, закон, законодавчий акт, підзаконний нормативно-правовий акт, нормативно-правовий акт, нормативний договір, правовий звичай.

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В статье обосновывается необходимость исследования эффективности законодательства не только с точки зрения содержания, но и формы. Сделан вывод о том, что исследование действительности различных форм права поможет разработать и принять меры, направленные на повышение эффективности законодательства как важнейшей формы права в Украине.

Ключевые слова: эффективность законодательства, законодательство, закон, законодательный акт, подзаконный нормативно-правовой акт, нормативно-правовой акт, нормативный договор, правовой обычай.

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This article contains the evident of importance legislation searching efficiency not only from the side of content but also including its form.

The author makes next deductions: at first, analysis of making different forms of legal orders noting gives the reason to claim, that such legal forms, as custom, normative contract, or sub legislative law normative act are more useful, contain more ability and influence power on conscience and behavior of person, so they are more effective than laws, and its characteristic characterize exactly legal forms, but not its content. However it doesn't matter, that law should be banned, as less effective legal form. Searching of ability of different legal form helps to develop and make actions directed on increasing legislation efficiency as the most important legal form.

At second, high-quality legal-theory analysis and practical decision of efficiency problem of legislation is impossible in matter of wide using definition "legislation", because in such situation laws and other legal forms or laws and other law normative acts are mixing. Each legal form contains specific, special features of its forming and functioning, and it influences on efficiency level of its action. Also, the wide understanding of legislation decreases the law role in state and society life, and doesn't fulfill the main principles of power distribution and supremacy of law, makes it equal with sub legislative law normative acts, as a result makes it less effective. It should be pointed out, that law authority as the main legislation form had been undermining during centuries – it was long-term absolute power in Russia, which had established the single understanding of law as monarch will and period of soviet law understanding, which had begun from denial of law as legal source.