

LAW OF THE HETMANATE (SECOND HALF OF XVII — XVIII CENTURY)



O. MYRONENKO

*Doctor of Philosophy, Professor,
Corresponding Member of the National Academy
of Legal Sciences of Ukraine,
Principal Research Scientist of the History
and Law Studies Department
(V. M. Koretskyi Institute of State
and Law of the National Academy
of Sciences of Ukraine)*

The evolution of Ukrainian law in the period here considered, having the natural rights of man as its basis, specific notions of the Ukrainian ancestors about truth, grace, and justice, moral canons, customs and traditions of the Antes, Slavins, and other Eastern slavs, «folklore constitutions»,¹ Rusyns, and mythical social contracts concerning the formation of the early Eastern Slavic States, pagan beliefs, and the dogmas of Orthodoxy, chronicles, pioneering systematized prescriptions in the form of treaties, the Russkaia Pravda, charters, instruments, «Cossack customs», accepting norms of Magdeburg Law, certain traditions of «Polish law», «Lithuanian law», and others, enriched the «precious and major phenomena of folk uniqueness».² Among these were the aspiration for direct sovereignty, preservation of «people's constitutions», that is, ancient rights and freedoms, apologies thereof, growth of peasant democracy and Cossack military democracy, aspiration for catholicity, collectivism, community land possession, equality, fraternity, freedom, independence, healthy conservatism, primitive communistic way of life of the Host, and so on.³

It is no accident that the Polish political and literary figure, Jan Szczesny Herbut (1470–1508), called the de facto Cossack constitutions, that is, customs which were carefully guarded by former impetuous, mutinous, freedom-loving fugitives and their descendants, «the best law and the mother of all laws», and the attempts of rulers to violate this law was equated to an aspiration to move the sea to Sambir or Beskydy to Gdansk.⁴ The armed struggle for the inviolability of Cossack rights and freedoms was begun by their leaders: K. Kosynskyi, S. Nalyvaiko, H. Loboda, M. Shaula, F. Polous, S. Koshka, H. Krutnevych, Ia. Borodavka, O. Holub, Ia. Lutskevych, M. Zhmailo,

¹ We refer to the «laws of the fathers» consolidated in wills, stories, legends, words, tales, teachings, byliny, myths, hymns, songs, spells, rites, and so on.

² M. Kostomarov, Полное собрание сочинений [Complete Collection of Works] (Spb., 1903), I, p. 201.

³ For details, see V. Antonovych, Про часи козацькі на Україні [On the Time of the Cossacks in Ukraine] (Kyiv, 1991); J. B. Scherer (1741–1824), Літопис Малоросії, або історія козаків-запорозжців [Chronicle of Ukraine, or History of Zaporozhian Cossacks] (Kyiv, 1994); D. I. Iavornytskyi, Історія запорізьких козавів [History of the Zaporozhian Cossacks] (Kyiv, 1990–91); O. M. Myronenko, Права і свободи людини в державницьких змаганнях українських гетьманів [Human Rights and Freedoms in State Rivalries of Ukrainian Hetmans] (Kyiv, 1995); and others.

⁴ R. Lashchenko, Лекції по історії українського права [Lectures on the History of Ukrainian Law] (Prague, 1923), p. 16.

© O. Myronenko, 2013

Ia. Ostrianytsa, and others. These statements after a brief lull grew into a general insurrection from 1648 to 1654.

During the period of the War of Liberation of the Ukrainian people against Polish-szlachta domination, and during the existence of the Hetmanate in general on modern Ukrainian lands, the sources of law, in addition to customs and traditions, remained the substantial number of acts which previously had operated in Ukraine. We refer to the Russkaia Pravda, the majority of whose prescriptions had been transformed into the three Lithuanian Statutes (1529, 1566, and 1588)¹ described above, the Magdeburg Law which from the Trans-Carpathian and Right Bank Ukraine (Hust, Vyshkovo, Tiachev, Sianok, Lviv, Kamenets-Podolsk, Lutsk, Kremenets, Zhytomyr, Mukachevo, Kyiv) first extended to Left Bank Ukraine (Lokhvytsa, Lubny, Pyriatyn, Pryluky) and in the course of time to the Hetmanate (Poltava, Novgorod-Syverskyi) and the (virtually all) cities of the Cossack State,² certain provisions of Lithuanian charter, royal and Sejm constitutions, ordinances, except for those provisions which consolidated the dominance in Polish and Lithuanian magnates in the Hetmanate.

As regards the interests, rights, and privileges of the Ukrainian feudal lords, especially those who were part of the leadership of the Cossacks, the «old sources», especially the III Lithuanian Statute, the Procedure for the rights of cities, and other collections of Magdeburg law were greatly enriched during the second half of the seventeenth and the eighteenth centuries and were adapted to social changes so that, having chosen the economic and political rights and privileges of the Polish and Lithuanian elites, they were transferred exclusively into the hands of the former and new Ukrainian szlachta and Russian governors. The clearest example was the gradual change of the status of land ownership, that is, the emergence of rank estates, rank lands, which were granted to Ukrainian landowners as a reward for serving the Russian Tsar or a particular hetman.

The systems of criminal crimes and punishments provided by the Nieszawa Statutes of Kazimierz IV Jagiellon, the Lithuanian Statutes, the collections of Bartłomiej Groicki (1519–1599) on Magdeburg law, which remained in force throughout the period here considered,³ began from the beginning of the War of Liberation of 1648 to 1654 to exclude as types of crimes and punishments attempts against the magnate-szlachta system of governing, subverting royal power and the Rzecz Pospolita, the catholic and Uniate church, and so on. Nonetheless, taking wartime into account, the group of punishments for the opponents of Khmelnytskyi became more severe (only the most senior elders, Iz. Hudolyi, S. Herasymov, M. Gładkyi, L. Mozyr, S. Pydybailo, and others were executed in 1650 to 1652) as traitors of the «insurgent

¹ *F. Leontovich*, Руська Правда і Литовський статут [Russkaia Pravda and the Lithuanian Statute] (Kyiv, 1864); *N. A. Maksimeiko*, Источники уголовного законодательства Литовского статута [Sources of Criminal Legislation of the Lithuanian Statute] (Kyiv, 1894); *Maksimeiko*, Опыт критического исследования Русской Правды [Towards a Critical Study of the Russkaia Pravda] (Kharkov, 1914); *S. V. Iushkov*, Руська Правда [Russkaia Pravda] (Kyiv, 1935); *M. N. Tikhomirov*, Исследование о Русской Правде. Происхождение текстов [Study on the Russkaia Pravda. Origin of the Texts] (Moscow-Leningrad, 1941); *P. P. Tolochko*, Киевская Русь [Kievan Rus] (Kyiv, 1996).

² For details, see *M. F. Vladimirkii-Budanov*, Немецкое право в Польше и Литве (Spb., 1868); *M. Bagalei*, «Магдебургское право в Левобережной Украине» [Magdeburg Law in Left Bank Ukraine], Журнал Министерства народного просвещения [Journal of Ministry of Public Enlightenment], no. 3 (1892); *F. V. Taranovskii*, Обзор памятников магдебургского права западно-русских городов литовской эпохи [Survey of Monuments of Magdeburg Law of Western-Russian Cities of the Lithuanian Era] (Warsaw, 1897); *R. Pich*, «Магдебурзьке право в Україні» [Magdeburg Law in Ukraine], Український світ [Ukrainian World], no. 8 (1996).

³ For details, see *M. Chubatyi*, Огляд історії українського права: історія джерел та державного права [Survey of History of Ukrainian Law: History of Sources and State Law] (Munich, 1994); *Lashchenko*, Лекції по історії українського права [Lectures on the History of Ukrainian Law] (Kyiv, 1998); *Права*, за якими судиться малоросійський народ 1743 р. [Laws by Which the Ukrainian People Are Judged 1743] (Kyiv, 1997).

Ukrainian people» for the failure to fulfill orders of the elders or their administration, for lack of valor in combat, failure to assist the wounded, plundering estates of the newly-emerged Ukrainian szlachta, and so on. Sometimes grave punishments, even capital punishment, despite wartime, were replaced by fines.

The Cossack constitutions of customs at the time of the liberation wars remained predominant in law. This was especially characteristic for the system of court proceedings, for general and regimental, hundred, and kuren courts rendered judgments, as a rule, on the basis of customary law. Accepted from «pre-revolutionary times», such forms of pre-judicial investigation as following tracks or scorification were used. In the majority of instances proceedings in courts were open. Judgments, except those rendered for crimes committed during combat, might be contested in higher instance courts.

As regards the birth of a specifically Ukrainian, that is, deeply national legal system (Ukrainian law), having its roots in the «law of ancestors», having overcome the stage of approbation in Cossack socio-economic life and virtually incessant clashes with infringers against the freedom of the Host and oppressors of Ukrainian peasants and burghers, that system commenced its own evolution from the outset of the War of Liberation of the Ukrainian people against the Polish-szlachta domination under the direction of Bohdan Khmelnytskyi, that is, from the uprising of the Cossacks in the Zaporozhian Host of 21 January 1648 and the election by the Sech of its own Hetman of Ukraine on 30 January 1648.¹

We stress once more that Ukrainian law (law of the Hetmanate) continued at this time to embrace, to adapt, to new conditions and enrich medieval Russian, Polish, and Lithuanian legal systems and many norms of Magdeburg and Russian feudal law,² but the main pivotal elements in its self-development remained «Cossack customs», Hetman constitutions (or articles), and the current Hetmanate legislation, which in official documents, especially of the Grand Duchy of Muscovy (until 1721) and the Russian Empire, were still called Ukrainian.

The early programmatic orientations of the evolution of law of the Hetmanate were formulated by Khmelnytskyi in acts of a State-constitutional character, to which one may relegate the Treaty between the Turkish Sultan and the Zaporozhian Host with the Russian people relating to trade on the Black Sea of 1648,³ the demands of the Zaporozhian Host transmitted to Jan Casimir on 7(17) August 1649,⁴ the 1649 Treaty of Zboriv,⁵ and certain other official documents.⁶ In

¹ *M. E. Slabchenko*, *Опыты по истории права Малороссии XVII–XVIII вв.* [Essays on the History of Law of Ukraine XVII and XVIII Centuries] (Odessa, 1911); *Slabchenko*, *Центральные учреждения Украины XVII–XVIII ст.* [Central Institutions of Ukraine XVII–XVIII Centuries] (Odessa, 1918); *M. Vasylenko*, *Матеріал по історії українського права* [Materials on the History of Ukrainian Law] (Kyiv, 1929), I; *A. I. Pashuk*, *Суд і судочинство на Лівобережній Україні в XVII–XVIII ст.* [Court and Procedure in Left Bank Ukraine in the XVII–XVIII Centuries (1648–1782)] (Leningrad, 1967); and so on.

² See, for example, *Судебники XV–XVI вв.* [Sudebniki XV–XVI Centuries] (Leningrad, 1952); *Российское законодательство X–XX веков* [Russian Legislation X–XX Centuries] (Moscow, 1985), II–III; *A. G. Mankov*, *Уложение 1649 г. Кодекс феодального права России* [Ulozhenie of 1649. Code of Feudal Law of Russia] (Leningrad, 1980).

³ *История Малороссии Николая Маркевича* [History of Ukraine of Nikolai Markevich] (Moscow, 1842), III, pp. 51–56.

⁴ *Документи Богдана Хмельницького* [Documents of Bohdan Khmelnytskyi] (Kyiv, 1961), pp. 130–131.

⁵ «Привілеція Короля Польского» [Privileges of the King of Poland], in *История Малороссии Николая Маркевича* [History of Ukraine of Nikolai Markevich] (Moscow, 1842), III, pp. 56–58.

⁶ We refer, for example, to the first letter of Khmelnytskyi to the Russian Tsar with a request to take Ukraine under a Russian protectorate (June 1648), negotiations of the Embassy of the Hetman in Moscow (January–February 1649), the statements of Khmelnytskyi concerning the negotiations with commissar of the Polish Government in Pereyaslav (February 1649), other negotiations with Moscow (April, June 1649), the Treaty on Alliance of Moldavia with Ukraine (September 1650), and others.

these proto-constitutional acts of the Hetmanate, which nominally was regarded as the territory of the Rzecz Pospolita, it as the Zaporozhian Host was recognized by powerful neighboring States as an autonomous political formation and granted the right of free, unobstructed navigation on the Black Sea and Mediterranean Sea, exemption («if not for 100, then for 50 or at least 30 years») from the payment of duties and taxes, exchange of ambassadors, and so on. The right was returned to the Zaporozhian Host to elect elders, and many other Cossack freedoms were restored. However, the said acts also included many anti-democratic provisions, especially the expulsion of the Jews and Jesuits from any State offices and from the Zaporozhian Host in general.¹ The power of the Hetman and Cossack self-governing institutions extended to the Kyiv, Bratslav, and Chernihov voevodstvos with the capital in the city of Chyhyryn. The Metropolitan of Kyiv was acknowledged to be the empowered representative in the Sejm of the Rzecz Pospolita. There is every reason to assert that the autonomy of the Hetmanate occurred precisely as a result of the Treaty of Zboriv, although it extinguished the flame of the liberation struggle in the western regions of Ukraine.

The territorial and legal space of activity and the size of the registered force (up to 20,000) were significantly decreased by the Treaty of Belotserkov, signed on the Ukrainian side by Khmelnytskyi, Colonels M. Gromyko and I. Krankovskiy, and General Clerk I. Vygovskiy on 28 September 1651.² The Zaporozhian Host lost virtually all rights to international relations and to the Bratslav and Chernihov voevodstvos. The Polish szlachta, just as the Jewish population, returned to their former estates, and the Hetman with his colonels was obliged to serve for life «his royal favor». Nurturing plans to create a large coalition, Khmelnytskyi persuaded the Council of Elders under the pretext of refusing to ratify the said agreements by Poland to renew combat actions against the Rzecz Pospolita. In May 1652 the Belotserkov Treaty lost force.

The Russian Land Assembly turned to Warsaw with a demand to reinstate the force of the Zboriv arrangements on 1 October 1653 and decreed «to accept Hetman Bohdan Khmelnytskyi and the entire Zaporozhian Host with cities and lands».³ The Pereiaslav General Military Council, having a truly representative character, under the old customary law on 8 January 1654 approved the decision «to choose for themselves a Lord from the four» (the Turkish infidel, the Crimean pagan, and the Polish King being rejected) and the transfer of a significant part of Ukrainian lands «under the sovereign's high hand».

This was only an oral treaty, but despite these circumstances, the Hetman and the General Elder took the oath of loyalty to the Tsar. Written proposals relating to the conditions of political autonomy Khmelnytskyi and the Council of Elders prepared in the course of the next two months. On 13 March 1654 in the form of 23 interrogative points they were delivered to Moscow.⁴ Virtually all the petitions put forward by the Hetman and his comrades the Tsar satisfied. In the final edited vari-

¹ *The Jews* in Ukraine numbered about 100,000, of whom 6,000 to 25,000 perished in the War of Liberation as a result of pogroms. See *Історія України* [History of Ukraine], no. 34 (1998).

² D. N. Bantysh-Kamenskii (comp.), *Источники Малороссийской истории* [Sources of Ukrainian History] (Moscow, 1858), I, pp. 26–31.

³ For the text of the Decision, see *Воссоединение Украины с Россией: документы и материалы* [Reunification of Ukraine with Russia: Documents and Materials] (Moscow, 1954), III, p. 414.

⁴ For the text, see Bantysh-Kamenskii (comp.), *Источники Малороссийской истории* [Sources of Ukrainian History] (Moscow, 1858), I, pp. 53–58.

ant, they included eleven Articles,¹ and the demands not incorporated in them were taken into account in several monarchical instruments. These Pereyaslav constitutions (also known as the Khmelnytskyi Articles, March Articles, Moscow Articles) together with Imperial letters of patent to the Zaporozhian Host of 27 March 1654, a Universal letter to the judges, urban dwellers, and the entire Ukrainian szlachta, Tsarist letter to the landowners of the City of Pereyaslav of 4 March 1654 and the City of Kyiv of 16 July 1654 (the rights of the landowners of Kyiv were granted after a special appeal to the Tsar by Khmelnytskyi of 25 April 1654) may be considered the foundation of a new positive legal base, that is, constitutional base for the functioning of the law of the Hetmanate as an autonomy within Greater Rus.

The said constitutional acts determined:

(1) the rights and duties of the Cossack elite and privileged part of the Cossacks, that is, those registered: the right to autonomous self-government; the right to elect the Hetman; the right to form a body of administrative officials; the right to a Cossack court and procedure; the right to adopt a number of normative acts of local significance; the right to determine regimental and hundred division; the right to a Cossack Host of 60,000 persons; the right to permanent monetary and other maintenance; the right to land allotments and estates and the inviolability thereof; the right to inherit them; the right of heirs to the privileges of parents; the right to diplomatic relations with countries whose ambassadors arrive in Ukraine with good intentions; the right of the Hetman to tribute for the mace, that is, to the Chigirinskoe eldership with all that belonged thereto; the right to exemption from taxes and duties; the obligation of the Tsar under no circumstances to violate the privileges granted now and earlier and to defend Ukraine against Poland; the duty of the Hetman to take an oath of being a subject of and loyalty to the Tsar; the duty of the elders and registered Cossacks to serve the Tsar and give part of their revenues to the Russian treasury; the duty of the Zaporozhian Host to detain ambassadors of other States when hostile intentions are discovered; the duty not to be in intercourse with the Turkish Sultan and Polish King, and certain others;

(2) the rights and duties of the Ukrainian szlachta: the right to all privileges and freedoms which they had previously; the right to elect own estate courts; the right to court proceedings according to their customs; the right to create local agencies of self-government; the right to land possession and the inviolability thereof; the duty of the Tsar and his entourage not to violate the rights of the laity; the duty of the szlachta «to go to battle against the enemies of the Sovereign and to listen to the Sovereign's will evermore»;

(3) the rights and duties of the burghers: the right to create magistrates; the right to elect voits, bailiffs, Rada members, members of the Great Council, and other urban Cossack officers; the right to duty-free trade of Kyiv merchants in Ukrainian cities; the right to have goods storehouses and the right to customs privileges for trade in beer, honey, wine, vodka, and other foods; the right of Kyiv burghers to exemption from military service and their right to use evening and night light, «but with care»; the right to exempting Kievans from Cossack jurisdiction; the duty to ensure the receipt of monetary and grain profits in the Imperial treasury; and the duty of Tsarist

¹ See *Воссоединение Украины с Россией: документы и материалы* [Reunification of Ukraine with Russia: Documents and Materials] (Moscow, 1954), III, pp. 560–565.

voevods «not to violate the rights of burghers and not to do anything to impinge them»;

(4) religious rights and duties: the right of Kievan metropolitans to the estates which they possessed earlier; the right to the Orthodox Christian faith according to Greek law and to the Holy God of the eastern church; the duty of the Tsar not to violate the spiritual rights of clergy and the laity; the duty of Uniates «to give God's church back» and not to destroy the Orthodox church.

Khmelnyskyi and Tsar Aleksei Mikhailovich fully retained, as was done in the majority of countries in Europe of that time, the previous distribution of the population of Ukraine into privileged estates – Cossack, szlachta, burghers, and clergy, that is, the continuous inequality of people. With regard to the great majority of Ukrainian inhabitants – peasant landowners, their rights and freedoms were not mentioned in a single document. Nonetheless, it was emphasized that when «people of any rank» receive privileges, «they see amongst themselves: who is a Cossack will have Cossack freedoms, and who is a peasant will give the usual duties to his Imperial Highness, as was the case previously». In other words, the few Ukrainians of «the higher sort» had all the rights, and the overwhelming majority of them – people of a «lower sort», fulfilled all the duties.

In the Articles-Constitutions of Khmelnytskyi, Tsar Aleksei Mikhailovich was named as the Autocrat not only of Great, but also Small, Rus, and the Hetman himself, of the entire Zaporozhian Host; and the entire Russian Christian world were deemed to be subjects of the Tsar and assumed the obligation in perpetuity to serve his Imperial Majesty. These legal provisions cast doubt on the official and simple propagandistic assertions of our time about the confederative character of the then Union of Ukraine with Muscovy and even the «independence of the Hetman State». We draw attention, in the first variant of the constitutions prepared in Ukrainian lands, to the fact that the Tsar of Muscovy was called the Autocrat of all Russia, and the addition of Ukraine was made in Moscow. In speeches at the Pereyaslav Council, Aleksei Mikhailovich was named «Autocrat of All Russia and Sovereign of many States».

The complete curtailment of the rights thereof to international relations was not consistent with the principles of independence of the Hetmanate: (a) «ambassadors on good business [read: loyal to the Russian Autocrat] to receive and send», but with immediate reports concerning the content of the negotiations conducted to the Tsar; (b) ambassadors unfriendly to Muscovy were to be detained at the Hetmanate and await decisions as to their further fate from the Kremlin; (c) relations with the Sultan of Turkey and King of Poland were categorically prohibited. The Hetmanate being far from in «nominal vassal dependence» on Moscow after 1654 is shown by the fact that the autocrat carefully set down in the articles-constitutions the amount of monetary withholding of even the lowest elders and rank-and-file Cossacks, and the allowance issued to them was by «grace of his Tsarist Majesty», although at the expense of Ukrainian burghers and the Pospolita. That is why it was emphasized in Article 9 that in the event of the number of registered Cossacks exceeding 60,000, the «sovereign shall not be prejudiced by this».

There are no grounds for speaking about the Hetmanate as a «separate State organism» and the ambiguity in the March constitutions of its financial system. Article 1 emphasized that monetary and grain taxes are to be recovered by local officials, but these taxes are collected «for this Tsarist Majesty and handed over for

the Sovereign's treasury to those people who the Tsarist Majesty sends». Within the competence of the «people» sent by the autocrat was the obligation «to watch over these collectors so as to ensure correctness». These provisions cannot be understood as granting autonomy to the Hetmanate in financial affairs.

The original copy of the articles was destroyed or lost, and therefore the texts which were read aloud for the first time at the Kyiv-Pechersk Monastery only in 1659 and thereafter may have been falsified. The texts published by specialists in the nineteenth and twentieth centuries and are considered to be close to the original also give rise to doubts. Peter the Great on 16 May 1722 in an Instruction to Brigadier S. Veliaminov cited the aforesaid provision relating to the procedure for paying taxes with references to the fact that they were set out not in point 1, but in point 7, of the Khmelnytskyi constitution, the first paragraphs of which, having the same subject-matter of regulation, textually differ materially. In the same Instruction Peter I cited point 1 of the March Constitutions, which for some reason was not among the eleven articles that are considered to be close to the original; in this point there is a provision that in the event of dissatisfaction with decision of the Cossack or other courts of the Hetmanate, the inhabitants might «transfer the case to the voevod of the sovereign, and in that event the voevod of the Sovereign decides the litigation between them at his discretion». In other words, the «judicial sovereignty» of the Zaporozhian Host was doubtful.

Despite the curtailed character of autonomy and legal consolidation of a semi-autonomous, semi-colonial status of Ukraine in relations of Russia with Ukraine, the Pereyaslav Articles and monarchic instruments of 1654, containing, in the words of M. Dragomanov, «good and evil grains», objectively met the interests of both parties and played a tremendous role in the origin of the law of the Hetmanate and Ukrainian national statehood. The operation of these constitutions always was affirmed, that is, they became for a long time the focal point, the nucleus, of the constitutional status of Hetmanate-Ukraine within Russia and operated for almost a century and a half.

The next Hetman, Ivan Vyhovskyi (1657–1659; d. 1654) made several attempts from the standpoint of a vision of a future Ukraine being part of either Sweden or the Rzecz Pospolita (1657 Treaty of Korsun, 1658 Treaty of Hadiach), with the support of Tatar hordes, to change the Khmelnytskyi constitutions. The legal status of the Zaporozhian Host lost much of what Khmelnytskyi had achieved: Ukraine as a political body within the boundaries of the Rzecz Pospolita slipped back twenty years, that is, to the level of the 1638 Ordination.

Between September 1659 and October 1660 the legal status of the Zaporozhian Host was «constitutionalized» in several documents associated with Khmelnytskyi's name. Angered by Vyhovskyi's treason, the Tsar of Muscovy rejected Khmelnytskyi's offer of new constitutions in which demands were formulated for enlarging the territory of the Hetmanate and consolidating its autonomous rights, and proposed his variant of these articles through Prince A. Trubetskoi.¹

On one hand, they would have expanded the competence of the General Military Rada: this would have elected not only the Hetman and the General Elder, but also the colonels from among candidates nominated from those regiments where they were serving. It was categorically prohibited to elect colonels from Cossacks of other

¹ For the text of the New Articles decreed with Hetman Iuryi Khmelnytskyi, see Bantysh-Kamenskii (comp.), *Источники Малороссийской истории* [Sources of Ukrainian History] (Moscow, 1858), I, pp. 109–114.

regiments. The Hetman without the decision of the General Rada did not have the right to remove elected colonels from office. On the other hand, the powers of this Cossack organ of popular rule were significantly narrowed. The Rada lost the right to remove a Hetman from power without the authorization of the Tsar even if he was accused of treason. Under no conditions might the Hetmanate raise the issue of military campaigns in other States or refuse being in «service of the Sovereign». The previous right of the Cossack leadership to carry out capital punishment was abrogated. Participation in the General Government or a meeting of the General Military Rada was categorically prohibited for H. Hulianytskyi, H. Lysnytskyi, A. Zhdanov, and other adherents of Vyhovskyi. Even he who invited them to such meetings should be «hanged by the neck».

The provisions of the 1659 Pereyaslav constitutions relating to the Council of Elders also cannot be unequivocally assessed. The numerical composition was increased by introducing additional posts of general judge, general esaul, and general clerk for the Right Bank. Members of the Council of Elders calumniating Muscovy were subject to the death penalty. Capital punishment was to be applied to those elders and even ordinary Cossacks or burghers who refused to swear the oath to the Tsar or who violated these constitutions. But the right to execute these judgments with regard to elders who «serve his Tsarist majesty» was removed.¹ One had to await authorizations from Muscovy, where the ultimate fate of the convicted persons was decided. Tsarist forces headed by Russian voevods were introduced legitimately in Kyiv, Pereyaslav, Nezhyn, Chernihov, Bratslav, and Uman. Belorussian lands and the city of Staryi Bykhov were excluded from the territories of the Zaporozhian Host, and the autocrat in these articles was named not only the «Great Sovereign, Tsar, and Grand Prince of Great and Small», but also of «White Russia».

The instruction set out in Article 7 of the new Pereyaslav constitutions of the duty of the Hetman «to elect no one without the Rada and without the council of all common people as colonels and other leaders» and not to remove those elected to office somewhat enhanced the democratic nature of determining the general military «Cossack parliament» of commanders. Indeed, Article 8 influenced this democratic nature by directing that it was categorically prohibited to elect as candidates people of the non-Orthodox faith, that is, the category of «freedom of conscience» was entirely excluded from the State practice of the Hetmanate. Nor can the prohibition against the arbitrary punishing by death of the separate category of elders be assessed unequivocally: on one hand, this assisted strengthening the human right to life because it averted the unsubstantiated death penalties; and on the other, citizens of Ukraine were equated with subjects of the Tsar, deprived of their judicial immunity, and confidence in Cossack courts was undermined.

As indicated in the Preamble, the new 19 articles were introduced by Edict of the Great Sovereign and «decreed over the former articles», that is, the Pereyaslav constitutions of 1654 remained in force and were first set out in oral form at the elections of Vyhovskyi, and in written form, upon the return to the Hetmanate of Iuryi Khmelnytskyi. Thus, the «constitution» of the Zaporozhian Host (without monarchic instruments) numbered 30 articles. This detail is important: the first Pereyaslav constitutions were drawn up by the Hetman and his circle and at the end of each article the will of the Tsar was formulated with regard to those demands: the second

¹ This doubtless was caused by the violence against the Cossack elders on the part of Vyhovskyi.

Pereyaslav constitutions set out initially the prescriptions of the autocrat, and after each of them the expression of will of the Hetman, colonels, entire elders and common people in the Rada was set out, which came down to a formal expression of the type «they have heard the article and adjudged it to be as it is written».

Only Article 17 was an exception from the last rule. Its provisions concerned the duties which were placed on the burghers of the Hetmanate, that is, their duties to provide food for ambassadors and officials, feed for their horses, carts, and so on. Viyty and burmeisters were to do this only when the envoys had respective credentials or other official documents. The article affirmed the operation of the previous privileges of burghers granted by the King of Poland. The provisions characterized in the article were ratified not by the Hetman and an elder, but as a grant of the Great Sovereign, as a petition.

In addition to the foregoing, the new constitutions prescribed: unhindered provision of Cossack forces for State service at the instruction of the Tsar; duty of the Hetman under no conditions to be seduced by «satanic» promises and those who disseminate them should be put to death; a prohibition against Russian voevods to interfere in the process of collecting taxes from the population; relieving households of registered persons from billeting military lodgers and shifting military duties (lodging, food, provision of ammunition, and so on) to simple burghers and peasants; privileges for those registered persons for the production of and trade in wine, beer, and honey (it was prohibited to sell wine by the quart); release of all prisoners on both sides of the Dnepr; return to Kyiv of military trophies captured at the Battle of Konotop; prohibition of Ukrainians who lived on territories relegated to White Russia and Staryi Bykhov to call themselves Zaporozhian Cossacks and providing to those who wished the possibility to resettle in the Nezhyn or Chernihov regiments; mutual obligation to return deserters from the Russian voevodstva and from the Hetmanate for permanent residence under threat of the death penalty for those who concealed such deserters.¹

The further history of the evolution of the law of the Hetmanate is linked with the name of Ivan Martynovych Briukhovetskyi. After his election as Hetman at the Fourth Rada in Nezhyn (18 June 1663), Briukhovetskyi signed by his own hand on 17 November 1663 in Baturyn new constitution relating to the legal status of the Zaporozhian Host which in some sources comprise five and, in others, six articles.² The first and second Pereyaslav constitutions remained formally in force, but the competence of Cossack organs of self-government was sharply curtailed. Actually, they fell under the complete control of the Russian voevods, okolnichy, governors-general, mayors, cavalry captains, captains, reiters, dragoons, and the like. The Muscovite military men received the highest material remuneration and were ensured a generous supply of Ukrainian grain stocks at the expense of the Ukrainian population not only for the «command persons», but for the rank and file soldiers and streltsy, each of whom was guaranteed a respective norm of flour and other foodstuffs. The Cossacks and elders assumed unpleasant search and espionage obligations to find, punish, and return runaway serfs to Russian landlords. The registered

¹ О. М. Myronenko, *Історія Конституції України* [History of the Constitution of Ukraine] (Kyiv, 1997).

² *Baturin Articles* (five) decreed by Hetman Briukhovetskyi, published in Bantysh-Kamenskii (comp.), *Источники Малороссийской истории* [Sources of Ukrainian History] (Moscow, 1858), I, pp. 128–129; *Articles of Hetman Ivan Briukhovetskyi* appear in *История Малороссии Николая Маркевича* [History of Ukraine of Nikolai Markevich] (Moscow, 1842), III, pp. 197–215.

Cossacks remained at 60,000, but their maintenance in peacetime depended entirely upon Muscovy because taxation had passed almost entirely into the hands of the Russian voevods. Trade in Ukrainian grain, wine, and tobacco was severely limited. Offenders «were subjected to cruel punishment and exiled to Siberia, Astrakhan, and remote cities of Ukraine for life, and their homesteads and goods and chattels passed irrevocably to the Great Sovereign».

The Baturyn additions, which might be regarded as unique acts of official interpretation of the «constitutions of Ukraine», in fact proved to be a flagrant violation of the constitutional provisions of 1654 and 1659. The «enrichment» of Ukrainian constitutionalism through the second Moscow Articles submitted by Ivan Briukhovetskyi and his enormous retinue of colonels and generals for confirmation to the Tsar on 11 October 1665 while in Moscow was an even greater disregard of the last.¹ The Elders drew up these ten articles, having frankly ignored the General Cossack Rada. Ukraine was de facto transferred to the full power of the Tsar and his southern heirs, the Cossack forces were placed under the command of the Muscovite voevods, and finances and taxation were at the disposition of the Muscovite administration. Future hetmans were to travel after election to Moscow for confirmation. Many cities of the Hetmanate lost Magdeburg law. Briukhovetskyi assumed the obligation of the actual complete termination of international relations of the Zaporozhian Host.

For exceptional loyalty to the Russian Tsar, all the deputies of the Rada of Elders who had assembled in Moscow were generously rewarded by the autocrat. By a special act of 22 October 1665 the Russian sovereign granted Briukhovetskyi the rank of boyar, and the elders «for handing over the revenues and charges gathered in Ukraine to the treasury of the Sovereign and for the voevods and military men of the Great Russian people needed in Ukrainian cities» all without exception became nobles. This is one of the numerous examples of the cynical selling for trivialities the priceless achievements of their ancestors by the leadership of the Ukrainian Cossacks.

The constitutional foundations of the existence of the Hetmanate, not taking into account the monarchic instruments granted, although very formally, were fixed between 1663 and 1665 in 35 articles, and between 1665 and 1669, in 45 articles.

But in the end the inclination of Briukhovetskyi towards betrayal in his own interests led to his complete neglect of the new constitutional provisions which he had concluded, which was expressed in the organization by the Hetman of an uprising against the domination and arbitrariness of the Muscovite voevods in the Zaporozhian Host. The storm of popular indignation deprived him not only of the mace, but of his life.

Between 1667 and 1668, that is, before the official abrogation of Briukhovetskyi's constitutions by the Russian autocrat, Ukrainian constitutionalism acquired greater conceptual elements thanks to the oaths and articles of the Right Bank Hetman, P. Doroshenko. The own «constitutions» of his predecessors, Pavlo Ivanovich Teteria and S. Opar, were not accepted and operated solely according to the instructions of the King of Poland. Teteria after the failure, seizing many Cossack treasures and valuables, settled in Warsaw, and Opar did not last three months in power.

¹ For the Act, see Bantysh-Kamenskii (comp.), *Источники Малороссийской истории* [Sources of Ukrainian History] (Moscow, 1858), I, pp. 139–154.

Having received the mace at the Chygyryn Military Cossack Council in early 1666 and physically suppressed adherents of Briukhovetskyi, Doroshenko after the Andrusov Armistice (30 January 1667) turned out to be *de jure* under the authority of the Rzecz Pospolita and could not count upon the support of Russia. On 16 October 1667 he together with his transport wagons, judges, esauls, colonels, and hundreds, while near Pidhaytsi, took the oath to the future King of Poland, Jan Sobieski. Before the Lord God and Holy Trinity as one, before Saint Bohoroditse and all the saints, the Cossack leadership vowed forever and in perpetuity to acknowledge the «full power and leadership of the Polish kings and Polish republic as the rulers of their successors». In the name of forefathers and descendants, Doroshenko swore to serve the Crown sincerely, renounce any outside patronage, and assume solemn obligations not to enter into any foreign relations without the knowledge of Warsaw.¹

But this agreement proved to be illusory. By 10 August 1668 Doroshenko had drawn up and signed «Petitions and Supplications to the Sultan of Turkey from Hetman Doroshenko».² The Hetman requested Cossack autonomous self-government under a Protectorate of Turkey on the territories approximately within the limits of the Bratslav and Kyiv voevodstva, and other Ukrainian Right Bank lands to be fully ceded to the Sultan. From the text of Article 3 of the constitutions (of 17 in all) it followed that the power of the Hetman was assumed to be successive. The mention of the Khmelnytskyi period showed that the Doroshenko group wanted to obtain freedoms and privileges Bohdan had succeeded to wrest in the Pereyaslav constitutions. The mace, staff of the Cossack hetman, banners, and instruments for rule Doroshenko received from the Sultan, although formally the right of the Cossacks to elect the bearer remained valid.

In addition to obligations to defend Turkey against foreign enemies, the elder gave a promise not to enter into any relations with enemy States of the Sultan or any support to the Patriarch of Constantinople. The Articles provided for duties of Turkey: not to remove the Hetman from office at their will, not to disturb Orthodox churches and monasteries, to treat the Ukrainian language with respect, not to commit extortion during the sojourns of Turkish and Tatar forces on Cossack territories, but to be content with what local grandees offer them (billeting, food, carts, horses, and so on), to recognize Cossack court proceedings, not to conclude treaties with Poland or Russia in secret from the Hetman, not to change metropolitans, not to build new mosques within Cossack lands, and certain others.

From the formal point of view, Doroshenko's Articles, which operated on the Left Bank as a form of conglomerate of the Pereyaslav treaties of 1654 and 1659, a number on monarchic instruments, and the Baturyn and Moscow Articles of 1663 and 1665, did not violate the constitutions of the Zaporozhian Host. The Right Bank Ukrainian lands had been granted by Russian Tsarism to the Rzecz Pospolita. But the people, as before, filled with hatred of the «infidels», did not understand Doroshenko's efforts to recognize authority over them on the part of the Sultan of Turkey. The future desperate struggle of the Right Bank Hetman against Briukhovetskyi, Demian Mnohohreshnyi, P. Sukhovei, M. Khanenko, and Ivan Samoilovych (the last, being a general judge, sent the said articles of the constitution to Moscow in the form of a

¹ For the oath, see *История Малороссии* Николая Маркевича [History of Ukraine of Nikolai Markevich] (Moscow, 1842), III, pp. 128–129.

² For the text, see Bantysh-Kamenskii (comp.), *Источники Малороссийской истории* [Sources of Ukrainian History] (Moscow, 1858), I, pp. 208–212.

denunciation) transformed Ukrainian lands into a vast inhuman and virtually savage ruin and forced Doroshenko in 1676 to lay down the mace and renounce the office of Hetman of both banks of the Dnieper River.

In August 1669 part of the Cossack regiments on the Right Bank proclaimed the Uman Colonel M. Khanenko to be the Hetman. His contribution to Ukrainian constitutionalism as a practice of State creation was set out in the Ostrozh Treaty (1670) with Poland. This came down to a vision of a Cossack republic under the authority of the King of Poland, a significant limitation on the statehood of the Right Bank Hetmanate, and therefore was not accepted by the people. At the Cossack Rada held at Lysianka in March 1674 Khanenko renounced the Hetmanship and surrendered to Samoilovych.

On the Left Bank, after the death of Briukhovetskyi, Demian Mnohohreshnyi was elected Hetman. On 6 March 1669 the General Military Rada in Hlukhiv adopted 27 Articles sealed by the signatures of all the general elders, eight colonels, and the Archbishop of Chernihov and Novgorod, L. Baranovych, and Father Superior I. Shyrvovych in the presence of plenipotentiary Muscovite representatives, G. Romodanovskii, A. Matveev, and G. Bogdanov.¹ Formally, the 1654 Pereyaslav constitutions and Tsarist instruments of grant given previously remained in force, and the documents of the «Hetman-traitors» Iuryi Khmelnytskyi and I. Briukhovetskyi, that is Pereyaslav (1659), Baturyn (1663), and Moscow (1665) Articles, were repealed. The said Hlukhiv Articles were «added from above (constitutions of Bohdan Khmelnytskyi). In other words, the «constitutional space» of the Zaporozhian Host was reduced to 38 articles. But this act again proved to be deeply formal because the 1654 constitutions, supposedly preserved in untouched form, were in fact subjected to considerable revision, that is, a substantive review by the same public figures and organs (Tsar, Hetman, Rada of Elders, General Cossack Rada) which sometime gave them to the Hetmanate.

The Hlukhiv constitutions prohibited the Tsarist vovods from interfering in the powers of central and local Cossack Radas with regard to military-administrative, financial-economic administration, court proceedings, and the collection of taxes from the population, which were returned to the Hetmanate treasury. The «granting to the Hetman and the entire forces of this side of the Dnieper of the rights and freedoms which were their former rights» was declared, and the establishment by the General Rada of a permanent «grant by grace» and considerable payment to all members without exception of the Elders' councils and registered Cossacks and tax privileges for a number of Ukrainian cities (ten years for Pereyaslav, Nezhyn, Lubeck, Voronezh, Krolevets; and seven years for Chernihov and Oster; and three years for other cities, towns, and villages), and so on.

But in general the trend towards blocking autonomous rights and the competence of self-governing institutions of the Hetmanate was preserved. The registered Cossack force was reduced by half (to 30,000). The Tsarist vovods remained to throw their weight about in Kyiv, Chernihov, Nezhyn, Pereyaslav, and Oster. Neither the Hetman, nor the General Rada, nor the Rada of Elders had rights to enter into international relations, and the possibility set out in Article 17 of their representation in Tsarist diplomatic missions was in practice ignored on the part of Moscow.

¹ For the text, see Bantysh-Kamenskii (comp.), *Источники Малороссийской истории* [Sources of Ukrainian History] (Moscow, 1858), I, pp. 214–229.

The General Rada formally, as before, elected the Hetman, but could not, also as before, remove him from office. Military brands, banners, mace, seal and kettledrums for the Hetmanate might be obtained solely from the hand of the Tsar or on his behalf. The fate and status of Kyiv remained undetermined, and this question was farmed out to the Muscovite autocrat and the King of Poland. Nor did the constitutions resolve the problem of the location of the Metropolitan – whether in Kyiv, or Pereyaslav, or Chernihov. The decision of the Rada of Elders or the Hetman concerning the grant of villages, windmills, and other property to the Cossack elite entered into force only after its confirmation in a Tsarist instrument. The General Rada assumed the obligation to create any obstacles for Ukrainian merchants on the routes for the bringing in of wines and tobacco to Russia. The norm for relations of elders and Cossacks became comprehensive denunciations of one another, which was encouraged in several Articles of the Hlukhiv constitutions.

I. Samoilovych became the last Hetman of the Zaporozhian Host during the reign of Tsar Aleksei Mikhailovich. On 16–17 June 1672 at Konotop ten new articles-constitutions were adopted (full title – New Articles which by Edict of the Great Sovereign, Tsar, and Grand Prince, Aleksei Mikhailovich, Autocrat of all Great and Small, and White, Russia Decreed Above the Former Hlukhiv Articles).¹ They supposedly increased the «constitutional space» of the functioning of the Hetmanate to 48 articles, to which should be added several of the aforementioned monarchic instruments of grant. Hetman Samoilovych and the General Elder from themselves personally and in the person of «all ranks and ages of people and common people of the Zaporozhian Host» gave oath before the Holy Gospels «to serve to the death without fail» not only the Great Sovereign, but also his noble progeny and heirs, sires, tsarevich, and Grand Princes Ioann Alekseevich and Peter Alekseevich.

An important provision of the Konotop constitutions proved to be the interest expressed therein that the Ukrainian side, although informed about the peace negotiations of Russia with Poland and the obligation of the Tsar not to give Kyiv to the Rzecz Pospolita, which should, in accordance with the Polish-Russian arrangements, have passed to the possession of Warsaw. Taking into account the facts of the rather severe, rude for that time, treatment by Mnohohreshnyi (in Articles 3, 7, and others he was called a traitor) of the Cossack elders, the Ukrainian elite protected themselves against further Hetman arbitrariness, having determined that the degree of punishment of the elders might be established only at its own councils. For crimes committed by the leaders of the Cossacks henceforth it was necessary to bring them to responsibility not by the will of the Hetman, «but under the court and law of the Pospolita». A newly-elected hetman was prohibited without the authorization of the Tsar and without counsel with elders to maintain any relations not only with monarchs from other lands, but also with the Right Bank Hetman, Doroshenko.

In this connection it should be noted that the Konotop constitutions were filled with «respect» of Samoilovych and the General Elders for the 1667 Andrusov Armistice concerning the division of Ukraine along the Dnieper River. Except for the question concerning Kyiv, the Hetmanate agreed fully with all other provisions of the said treaty. Article 5, in particular, seemingly apologized to the King of the Rzecz Pospolita for the actions of Hetman Mnohohreshnyi, who had arbitrarily taken

¹ For the text, see Bantysh-Kamenskii (comp.), *Источники Малороссийской истории* [Sources of Ukrainian History] (Moscow, 1858), I, pp. 242–247.

Gomel under protection against the Poles and a number of other cities and settlements of the Rzecz and even Mozyr uezds, that is, actually added to the Hetmanate a significant part of the territories from the Right Bank not only of the River Sozh, but also the Dnieper. The Article prescribed the behest to liberate these spaces from resettlers from the Hetmanate and «thereafter any lands and tracts of his Royal Majesty not to be occupied and no disputes and protections to be made, and to live peacefully with the people of his Royal Majesty». The creation of common survey and punishment courts was suggested to resolve possible frontier disputes with Poland.

With regard to Doroshenko, the Konotop Articles were, on the contrary, clearly disloyal. They condemned the Right Bank Hetman for the aspiration for an alliance with Turkey, for preparing for war against Poland (soon this war commenced – a victory for the Sultan and the 12,000 army of Doroshenko), and formulated a strict prohibition against any assistance to the Right Bank Cossacks. With regard to other foreign relations, Article 8 declared the failure on the part of the Tsar to comply with arrangements previously reached to involve Ukrainian representatives as part of Russian delegations and repeated the promises of the autocrat thereafter to involve these representatives (in order to hear them on Ukrainian affairs). We note: the definition «Ukrainian» had virtually not been used in earlier articles-constitutions.

We stress that the new articles flagrantly violated the right of the Zaporozhian Host to international relations set out in the preceding constitutions of 1654 and 1669, which formally remained in force.

It followed that other provisions of the Konotop document should be singled out: first, the obligation of the Hetmanate not to accept or withhold soldiers, dragoons, and «other ranks of people» who fled from Russia and who do not wish to serve the Russian Tsar, and also Boyars and peasants who committed homicide, assault with intent to rob, theft, or other crimes and fled to Ukraine; second, the prohibit of any land possessors to place obstacles on waterways linking the construction of windmills, mill-ponds, and the like; third, the repeal by Article 22 of the Hlukhiv constitutions of the creation of an official repressive organ in the war, of the 1000th detachment of registered Cossacks headed by a Ukrainian colonel to suppress any disturbances among the people or speeches against the Tsar because this detachment «commits every form of ravage on the inhabitants».

Six months later, that is, in early 1673, a number of Konotop constitutional provisions were violated by Samoilovych and the Muscovite Tsar, Aleksei Mikhailovich. The Hetman persuaded the autocrat of the need and possibility to conquer the Right Bank of Ukraine by using the war of Turkey in alliance with Doroshenko against the Rzecz Pospolita. When the forces of Samoilovych and Romodanovskii entered the Right Bank, virtually all of Doroshenko's regiments crossed over to the side of the Left Bank Cossacks and Muscovite dragoons.

The inspiration of the early victories against the Right Bank persuaded Samoilovych on 19 March 1674, with the blessing of the Tsar, to assume the title of Hetman for both sides of the Dnieper and conclude in this connection new constitutions under the name «Articles Decreed in Pereyaslav with the Hetman of Both Sides of the Dnieper, Ivan Samoilovych».¹ They number twenty in all, and therefore

¹ For the text, see Bantysh-Kamenskii (comp.), *Источники Малороссийской истории* [Sources of Ukrainian History] (Moscow, 1858), I, pp. 252–258.

the «constitutional space» for the functioning of the Zaporozhian Host by 1687 had 68 articles.

But it should be noted that many of them not only were repetitive; they were inconsistent with one another because although one Russian autocrat had approved them, there were three Hetmans of the Zaporozhian Host; the historical circumstances for the conclusion of the constitutions had changed with kaleidoscopic speed. The repetitions and inconsistencies in the Pereyaslav constitutions of 1674 were not exception. Articles 1, 3, 4, 8, and 12 were repetitive respectively with Articles 1, 4, 6, 7, and 3 of the preceding Konotop constitutions. Reference was made in them to the Hetmanate being a subject in perpetuity of the Russian Tsar and his «noble sires», the prohibition of foreign relations for the General Government of the Zaporozhian Host, the categorical refusal of military assistance to the Sultan of Turkey, the prevention of abuses of the Hetman in relations with the Cossack elders and bringing of the last to responsibility only by decision of the Rada of Elders or a court, the mediate expulsion by the Hetmanate of refugees from Russian lands who had committed particular crimes there.

Only certain clarifications were made in the repetitions. The prohibition against foreign relations was accompanied by accentuating special enmity towards the Sultan of Turkey and Crimean Khan and had virtually no traditional courteous epithets addressed to the King of Poland. The Pereyaslav constitutions (Article 3) obliged the Hetman when receiving letters from foreign monarchs to immediately send them to Moscow in unsealed form. Other provisions of this document contained numerous repetitions and inconsistencies in comparison with the Hlukhiv (1669) and even with the first Pereyaslav (1654) constitutions.

The new Pereyaslav Articles devoted special attention to the legal status of the newly introduced office of Hetman of both sides of the Dnieper, who was Samoiloivych. Article 5 emphasized that if he: «having forgotten the fear of God and Great Sovereign's abundant and immutable grace», commences any disturbances, the elder should immediately notify the Tsar thereof, and not trust the Hetman in anything. But without the authorization of the autocrat, it was prohibited to re-elect the hetman (Article 6). Even in the event of Samoiloivych's death, the election of a new hetman should proceed only at the behest of the Tsar (Article 7).

The elite rights of the Cossack elders were generously written.¹ The autocrat guaranteed high rewards for service to registered Cossacks, the number of which was reduced by a third in comparison with the times of Bohdan Khmelnytskyi and by 1.5 times compared with the period of Demian Mnohohreshnyi; that is, comprised 20,000 persons. The General Driver and General Clerk, according to Article 16, received a Tsarist grant 33.5 times greater in comparison with a simple registered Cossack (general esaul – 13.5 times; general judge – 10 times; regimental esaul – 6.5 times; hundred – 3.5 times more, and so on). The arrangement of the registered host should have occurred from experienced Cossacks, and in the event of a shortage up to the limit of 20,000 – new recruits from petty bourgeois and peasant children. In the event of the attack of an adversary or the need to go on campaign, the registered Cossacks were to assemble at the Rosava River between Kanev and Korsun (Article 2).

¹ *O. M. Myronenko, Права і свободи людини у державницьких змаганнях українських гетьманів [Rights and Freedoms of People in the Statist Competitions of Ukrainian Hetmans] (Kyiv, 1995).*

The estates of the Cossack elders, their lands, fields, forests, meadowlands, lakes, windmills, and so on, after the death of the master, passed in ownership to their wives and children (Article 14). The widows of Cossacks were exempted from the payment of taxes, but if they remarried a petty bourgeois or peasant, they passed respectively into another estate and were deprived of those privileges. Article 15 established an important privilege for Cossacks: their households could not become a place for military billeting. These duties were imposed solely on the petty bourgeois and on peasants. Punishment was extended for insulting Cossacks with the words «lout», «country bumpkin», «traitor», and so on. It was provided that offenders should be «stopped and executed» (Article 10).

Having deprived the Hetmanate of the right to foreign relations, the Tsar assumed the obligation to inform the elder about the course and results of international negotiations of Russia (Article 20). The autocrat did not object to the possibility of prisoners of war in Muscovy returning to their former places of residence in Ukraine (Article 9), but he materially limited Ukrainian merchants in trading in wine and tobacco under the pretext that this disturbed the Tsarist treasury (Article 11). Under pain of severe punishment it was prohibited to take tobacco and wine out of Ukraine, except for frontier cities. The goods in these instances were confiscated without reservation.

Thereafter, the constitutional law of the Hetmanate evolved during the period of the heirs of Tsar Aleksei Mikhailovich and the final division of Ukraine between Poland and Russia along the Dnieper under the «Perpetual Peace» of 1686, providing for the de facto liquidation of the Right Bank Cossack organization, the transformation of Russia into an autocratic empire, and so on.

In 1676 the Great Sovereign and Tsar of «all Great, Small, and White Rus» died, and power passed formally to the young Fedor Alekseevich and actually to several boyar clans. One of these clans, being guided by its own mercantile interests, supported Fedor, and the others either Sofia Alekseevna or the very young progeny and heirs, Ioann Alekseevich or Peter Alekseevich. No doubt the sharp struggle for the Muscovite throne was within the range of interests of Russian boyars in the extremely ruined Right Bank Ukraine, which was reflected in the 1681 Treaty of Bakhchisarai. During the reign of Sofia Alekseevna in 1686, the Right Bank, excluding Kyiv and its nearby regions, was given «in perpetuity» to the Rzecz Pospolita, and the Zaporozhian Host passed under the «dual» subordination of Russia and the Hetmanate. The Ukrainian Orthodox Church had somewhat earlier come within the full jurisdiction of the Muscovite Patriarch. The insidious denunciation widespread in Ukraine of the General Elders against one another and own purveyors led in July 1687 to accusing Hetman Samoilovych of treason and his exile to Siberia.

The law of Hetmanate Ukraine developed at the beginning of this period under these historical conditions. On 25 July 1687, that is, immediately after Samoilovych surrendered the mace, the Kolomak constitutions were adopted. This document, comprising 22 articles,¹ was already the seventh superstructure (three of them, that is, the constitutions of 1659, 1663, and 1665 were repealed) on top of the acts of Bohdan Khmelnytskyi of 1654, which with the additions thereto of 1669, 1672, and 1674, remained in force. Thus, from 1687 to 1708 the «constitution of Ukraine» actu-

¹ For the text, see Bantysh-Kamenskii (comp.), *Источники Малороссийской истории* [Sources of Ukrainian History] (Moscow, 1858), I, pp. 305–319.

ally numbered 90 articles which to a great extent repeated, affirmed, or repealed one another, that is, this was a conglomerate of contradictory legal provisions of which the first eleven articles and monarchic instruments of 1654 were applied in practice and the articles of the last Hetman. The Kolomak constitutions had the highest legal force for more than two decades, that is, longer than all the analogous legal acts. The General Cossack Rada in the person of the «Hetman and all the elders and the Zaporozhian Host, and the people of Ukraine», on one side, and the Tsarevna and the young tsars, V. Golitsyn and dozens of Russian boyars, voevods, okolnichy, stolniki, and dummy secretaries, on the other, concluded a treaty of a constitutional character which confirmed Cossack rights and freedoms granted by Aleksei Mikhailovich.

But this was merely an outer cover for new pressure on the autonomy of the Hetmanate. The General Council actually terminated its existence and transferred its functions to the Council of Elders, who continued to intrigue in Mazepa times, inclining the Hetman towards The Porte, then Crimea, then Poland, and then Sweden. The power of the Russian rulers after the signature of the Kolomak Articles was especially felt in Kyiv, Chernihov, Pereiaslav, Nezhyn, and Oster, where many Muscovite soldiers were stationed. The special Muscovite Streltsy regiment in Baturyn, which was to be supplied solely by Ukrainian grain, effectuated supervisory functions relating to the Hetman himself and protected his residence against insidious actions of the Cossack aristocracy, that is, the Rada of Elders. Here the distrust was evident in the said self-governing institution both on the part of Moscow and of the Hetman. But Article 4 prohibited Mazepa from revoking the Tsarist grants of estate to the Elders, and Article 11 authorized the Hetman to change members of the Council of Elders, that is, the General Elder and colonels, solely with the authorization of the Tsar. The legal status of the Cossack elite was significantly strengthened, but the Council of Elders, as before, had no right to arbitrarily re-elect the Hetman. The prohibition against electing the Hetman without the prior consent of the Tsar proved to be a material innovation inflicting a sensitive blow on the self-governing Cossack organs, which had previously determined the candidacy of the leader on the basis of equal suffrage (Article 6). The freedom of elections was thus abrogated.

The numbers of Cossack registered forces were increased from 20,000 up to 30,000 persons. The level of «grant by grace» remained unchanged for elders and Cossacks from the pocket of the Ukrainian people. The boundaries of Russia opened slightly for Ukrainians, but not for trade. At the same time, the Kolomak constitutions decisively rejected the demand of the Cossack elders for even limited diplomatic relations with neighboring States, categorically prohibited trade links with Crimea, established severe obstacles on paths for moving from peasant status to being a Cossack, actually acknowledged the Polish dominance «in perpetuity» on the Right Bank, and bound the inhabitants of Ukraine under fear of death to doubtful banknotes – cheques, obliged the Hetmanate to take part in the wars of Russia against Crimea and Turkey, to build facilities on the Rivers Samara, Orel, Berestov, Korchika, and so on.

Article 19, which for the first time openly proclaimed the course towards the unification of Ukrainians and Russians into a single people, into a single common State, had considerable significance for the legal foundations of the functioning of the Hetmanate: «The Ukrainian people by all means shall combine with the Great Russian people in unbreakable and strong amity through the conclusion of a marriage

and other behavior».¹ This same Article prohibited even a mention of the fact that Ukraine was built on the basis of Hetman rule and prescribed that the inhabitants of the Zaporozhian Host «unanimously emphasize» that they are «the Ukrainian people together with the Great Russian People ... of the Tsarist Luminous Majesty of the Autocratic State».² This type of document Mazepa «accepted cordially» and swore an oath on the Bible to loyalty in perpetuity to Russian monarchs. After a brief period these prescriptions of the Hetman became the «legal foundation» not only for the destruction of Ukrainian statehood, but even for the eradication of the Ukrainian language.

To the «most active members» around the Hetman and the Elders of the Zaporozhian Host may be relegated such provisions of the Kolomak constitutions as the prohibition against Russian vovods, including in the «City of Kyiv saved by God», to interfere in local court proceedings and in other internal affairs, including the collection of taxes (Article 2), exemption of the highest Cossack elite from any requisitions (Article 3), preservation for them of titles of nobility previously granted (Article 4), prohibition against Tsarist ambassadors, envoys, and heralds from arbitrarily staying in the households of the Cossack elders or taking carts and horses without the authorization of a representative of the local authorities (Article 5), the obligation of Muscovy to provide military assistance in the event of a foreign attack (Article 7), not to oppose the return to their native places of former Ukrainian prisoners of war if they have not committed crimes on the territory of Russia (Article 9), leave in force the rules for the inheritance of Cossack property in the event of the death of a Cossack but without a wife and children or only with a wife (Article 15). The Tsarevna agreed to yet another official affirmation of the operation of the monarchic instruments of 1654 relating to the rights and freedoms of the burghers of Kyiv and Nezhyn (Article 18).

The entire burden of military duty (billeting, food, provision of ammunition, and so on) was placed on the burghers and peasants.³ It was prohibited to call them traitors, just as the Cossacks, under fear of punishment (Article 8). Mutineers were to be suppressed and executed, and a special military formation of a thousand Cossacks headed by a colonel should have been established to perform this under the Hlukhiv, and then the repealed Konotop, Articles, but in fact was left to and even strengthened by Samoilovych (Articles 12 and 13). At the constitutional level, denunciations were encouraged to the Hetman and the Cossack elders (Article 10). As before, the export to Russia of Ukrainian wine and tobacco entailed the confiscation of all the goods (Article 14). Soldiers, dragoons, «people of other ranks», «boyars», peasants, that is, all refugees from Russia, were ordered «not to be held and to be turned over without delay from Ukrainian cities» (Article 8). The compilers of the Kolomak constitutions did not lose sight of even the «belongings» of Samoilovych and his children: they were divided equally between the Hetman military treasury and the Tsarevna and Tsareviches (Article 21).

The transfer of military estates became a material «constitutional» innovation for the Zaporozhian Host as a problem of land ownership, that is, the lands which

¹ For the text, see Bantysh-Kamenskii (comp.), *Источники Малороссийской истории* [Sources of Ukrainian History] (Moscow, 1858), I, p. 318.

² Ibid.

³ *Myronenko*, *Права і свободи людини у державницьких змаганнях українських гетьманів* [Rights and Freedoms of People in the Statist Competitions of Ukrainian Hetmans] (Kyiv, 1995).

previously were at the disposition of the Hetman treasury and full economic management of the Muscovite throne. At the time of the adoption of the Kolomak Articles, the fund of military estates was significantly reduced because of their sale (often — elementary squandering) by the Hetman treasury, arbitrary conquest by an elder «squatter» of unsettled territories, compulsory purchase, numerous «grants» of peasant lands by the Hetman or by the Tsarist Government, transformation thereof into the inheritance of Cossack rules of the roost, and so on. Territories which remained were divided into free (general State) lands and rank (granted to an elder provisionally for the period of being in service). The quantity of free land which the *pospolita*, in fulfilling the duty to be retained in the forces and administration and payment of taxes, considered to be theirs on the basis of customary law had a tendency to decline, and rank territories, to noticeably increase.

The Kolomak constitutions-articles proved to be the first and sole document which Sofia Alekseevna «gave» to the Hetmanate. On 13 October 1687 she sent to Ivan Mazepa a Tsarist instrument of grant, but the content thereof basically was consistent with the constitutions previously adopted. Two years later the conflict between Sofia and Peter I ended with her entering a convent, and Mazepa became one of the first public figures who during the struggle for the crown met with the young victorious monarch and gained his full trust. The fact that the Hetman for many years adhered to the constitutional provisions is demonstrated by the numerous awards, estates, and other grants which he received from Peter I.

During the Battle of Poltava in 1709, Mazepa moved to the side of Charles XII of Sweden, after whose defeat the Hetman left Ukraine and soon died.

The further development of the law of the Hetmanate in the early eighteenth century was connected with the emergence of several acts — reflections of a programmatic nature set out primarily between 1710 and 1712 by the Hetman in exile, P. Orlyk, and like-minded followers from among a detachment of Cossack emigrants under the names popular at the time: «pacts», «constitutions», «manifestos», «treaties», «decrees», and even «withdrawals of the rights of Ukraine». The best known of these remains a document disseminated in modern literature under the title «Pacts and Constitutions of Laws and Freedoms of the Zaporozhian Host». Its initial title, which is most responsive to the content of this political act, is «Treaty and Decree between Hetman Orlyk and the Zaporozhian Host».¹ The draft was composed by the elite of the Cossack elders, leaders of the church and *szlachta* and is mentioned in the literature as the Bender Articles, Bender Constitutions, and, recently, also as the «Constitution of Pylyp Orlyk».

¹ For the text, see Bantysh-Kamenskii (comp.), *Источники Малороссийской истории* [Sources of Ukrainian History] (Moscow, 1858), I, pp. 242–255. At the turn of the twentieth and twenty-first centuries in emigrants' circles in Western Ukraine numerous publications appeared of the document under various titles, primarily imaginary, with numerous errors or deliberate falsifications. Under the pressure of nationalist forces even the Constitutional Court of Ukraine published one of these fakes under the title «Constitution of the Ukrainian Hetman State» as a genuine text of the document and, moreover, began with a unique article-by-article «official interpretation». See *Вісник Конституційного Суду України* [Herald of the Constitutional Court of Ukraine], no. 3 (2007), pp. 83–94; no. 4 (2007), pp. 100–104; no. 5 (2007), pp. 85–88. Of the aforesaid publications only the translation made by scholars of Kyiv University from the original Latin language original is reliable, entitled «Pacts and Constitutions of Laws and Freedoms of the Zaporozhian Host». See *Конституція України* [Constitution of Ukraine] (Kyiv, 1997). As regards disputes concerning the genuineness of the text of the treaty in the Ukrainian language supposedly found in October 2008 in the Russian State Archive of Ancient Acts, they require more careful study. We recall the M. Hrushevsky, P. Doroshenko, and a number of other well-regarded historians treated the «Constitutions of P. Orlyk» skeptically. The Latin word «constitutiones» was used at the time solely in the meaning of «decrees» or «provisions» and not as the «basic law» of a State.

From the legal standpoint it may be regarded as a contract-obligation of the Hetman to the Cossack elders in the event of election to the highest post. The Bender Articles differ from earlier but operating constitutional acts of 1654, 1659, 1663, 1665, 1669, 1672, 1674, and 1687 in that they not only determine the rights and duties of the Hetman and elders for the future, but summarize the socio-political structure of the Cossacks, which had formed on the basis of catholicity, customary law, and military democracy, that is, the «people's constitution» of the Rus during the almost century and a half existence of the Zaporozhian Host. The authors of the Bender Constitutions did not make any conceptual discoveries, did not create new State models, did not proclaim administrative principles unknown to them, but rather creatively approached the experience of their ancestors and set out on paper that which had formed in practice, was consolidated in the genetic memory of generations and undergone years of testing. They made this version on the basis of the achievements of European political and legal thought acquired by them – recognition of the natural rights and freedoms of man, ideal or natural rights of the people, contractual origin of the State, the need to limit the absolute power of the monarch, the political rights of citizens known from ancient Greece and ancient Rome to serve in the army, to participate in public life, in popular assembly, to a share in common ownership, to hold elective offices, to the defense of personal and property rights in court, to private ownership, to estate privileges, the rights of peoples to overthrow a tyrant comprehensively substantiated from the thirteenth century, and others.

The influence was felt on the creators of the Bender Constitutions of the ideas of Aristotle, Marsilius of Padua, John Locke, S. Orkhovskiy on the distribution of power, the teachings of Jean Bodin, John Calvin, Hugo Grotius, John Milton on popular sovereignty, the principles of the Magna Carta of 1215 and the 1689 Bill of Rights, concerning the limitation of arbitrariness in taxation, abolition of extraordinary courts, inviolability of the person, and others. An attempt was made in the document here considered to approximately define the territory of the Hetmanate, substantiate the rights of the Zaporozhians to a significant part of the Dnieper, determine the membership of the General Rada and the most general features of its competence, protection of Cossack property against plundering, creation of some obstacles to careerism and abuses on the part of the Hetman and colonels, and confirmation of the privileges of Kyiv and other cities. Although the document was signed by the elite for the elite and did not make provision for the participation of the people in State administration, the declarations on the inadmissibility of committing extortion, oppression, impositions, and burdens deserve attention not only with respect to the military, but also the *pospoliti*, providing assistance to Cossack children, and distribution of the burden of taxes not only among the peasants, but also the merchants and Cossacks.

The political treatises «Withdrawal of the Rights of Ukraine», «Manifesto to European Governments», and certain others may justifiably be relegated to the constitutional drafts of Orlyk.¹ Their main purpose was recognition by the international community (at the time almost exclusively Europe) of the natural rights of the «Cossack nation» to the creation of its own State in the form of a free duchy. The treatises were imbued with slogans widespread on the European continent con-

¹ *Вуєд прав України: Документи і матеріали до історії української політичної думки* [Withdrawal of Rights of Ukraine: Documents and Materials on the History of Ukrainian Political Thought] (New York, 1964), pp. 86–94.

cerning the right to protest against oppression, return to nations of the possibility to enjoy their ancient rights, the exclusive rights and privileges of estates and princes, and so on.

It followed from the general content of the political treatises that the benchmark for the «independence» of the Cossack principality, the «sovereignty» of Ukraine, for Orlyk was the Hetmanate from the period of Bohdan Khmelnytskyi, and the model for achieving this was the 1708 Treaty of Degtyarev concluded by Mazepa and Charles XII of Sweden.

Together with these constitutional projects a number of articles-constitutions by Ivan Skoropadskyi were published on the Left Bank. This preceded the fact that immediately after Mazepa's change to the side of Charles XII and the conclusion between them of the Degtyarev Treaty (30 October 1708) that Peter I issued an instrument for the election as the new Hetman the Starodub colonel, Ivan Skoropadskyi (6 November 1708) in which the «rights and freedoms and the military procedures from the former Great Sovereigns ... to the former Hetman in the articles set out» were confirmed by the Tsar. The instrument had yet another important norm of a constitutional nature, which Peter I over time simply forgot: «... Graciously concerned about the people of Ukraine, I prohibit to recover not a single penalty in the entire Ukrainian territory for the treasury».¹

On 6 November 1708 in Hlukhiv, Skoropadskyi was elected to the office of Hetman of both sides of the Dnieper, but the traditional articles-constitutions were not adopted. Proceeding from the Tsarist instrument, all 90 formally operating articles of Bohdan Khmelnytskyi, D. Mnohohreshnyi, Ivan Samoilovych, and even Ivan Mazepa retained their force. Only on 17 July 1709 did the «Resolute Edict of the Great Sovereign» appear in response to the rather modest request of Skoropadskyi written in a cart near Reshetylov (now a district center in Poltava Region). These two documents are known in history as the Reshetylov Constitutions, which consisted of fourteen articles.² From them one senses the exceptionally respectful attitude of Peter I towards Bohdan Khmelnytskyi, whom he quoted repeatedly not only in the said provisions, in also in many following acts. Formally the Tsar once more recognized for the Hetmanate the rights and freedoms of the Cossack estate at the time of his father and Bohdan Khmelnytskyi, but in the first point of the Edict stressed that the requests of Skoropadskyi concerning the «substantive articles for confirmation will be granted in the future, when time allows, since now it is impossible to do this by reason of lack of time and the campaign of His Majesty in Poland».³

The texts of the Reshetylov Articles outwardly did not deprive the Hetman, or the General Rada, or the Rada of Elders of former powers. But the new constitutions in substance made these powers unrealizable, utopian, and formal. The Ukrainian forces, weakened «by Zaporozhian imprecations through their clear treason and resistance»,⁴ were released from military campaigns for the «present summer» (a month remained until the end thereof), «except for the most urgent need» (Article 8). But in fact they were transferred to the complete command of the

¹ Bantysh-Kamenskii (comp.), *Источники Малороссийской истории* [Sources of Ukrainian History] (Moscow, 1858), III, p. 232; *История Малороссии Николая Маркевича* [History of Ukraine of Nikolai Markevich] (Moscow, 1842), III, p. 360.

² For the text, see *История Малороссии Николая Маркевича* [History of Ukraine of Nikolai Markevich] (Moscow, 1842), III, pp. 325–338.

³ *Ibid.*, III, p. 326.

⁴ *Ibid.*, III, p. 333.

Russian General Staff, that is, the command of ten dragoon and six grenadier regiments which Peter I arbitrarily introduced into Ukraine (Article 2). If the Hetman wished to renew the activity of the General Rada, he now did so only at the instruction of the Tsarist stolnik, A. Izmailov, who was situated permanently in Hlukhiv and watched over every step that Skoropadskyi took. In Kyiv these supervisory functions were performed by Voevod D. Golitsyn (Article 7), although, albeit formally, voevods were directed with regard to Ukrainians «not to violate their rights and freedoms, and not to enter into courts and litigation with them» (Article 5).

Judging from the reaction of Peter I to the request to return the town of Kotelva to the Hadyach Regiment (Article 4), the powers of the Hetman or self-governing Cossack organs to decide certain issues of administrative-territorial division of the Hetmanate had disappeared. The Tsar refused even to return the Mazepa artillery captured in battle (Articles 3 and 4). The Hetman's proposal to exempt Cossack households from military billeting also annoyed the Tsar, who replied: «The Ukrainian people without the grace of His Tsarist Majesty had and have all the privileges, freedoms, and liberties» (Article 6).¹

No doubt having in view the postulate of Peter I on the occasion of condemning the traitor members of the Host and with a view to preventing the possibility of their return to the Host and assembling mutineers, inhabitants were prohibited on the rapids to engage in hunting, fishing, salt trade, and so on (Article 9). The issue of taxes and charges the Tsar left open (Article 11).

It is evident that while apprehensive about further advances of the Cossacks, Peter I ordered the voevods to watch so that Russian soldiers did not commit arbitrary actions with regard to the inhabitants of the Zaporozhian Host, and responsibility for this was placed on Stolnik A. Izmailov and Prince Dmitrii Golitsyn (Article 7). Interference in internal affairs on the part of the voevod was permitted only in individual instances and only by agreement with the local colonels or other Cossack elder. The Hetman Serdyuks and accompanying forces were ordered to supply food in places not destroyed by war and to pay in full (Article 11).

Taking into account that many households of burghers in Chernihov had been destroyed for the materials in order to build fortifications around the city, the victims were allowed to erect new premises on land plots convenient for them, but not to occupy the fortress (Article 12). The strict instruction of the Tsar in the future to send edicts and instructions from Muscovy solely in the name of the Hetman and only from the autocrat himself, the Ukrainian Department, or from ministers «to whom these affairs are subject, and no one else», had importance for the effective management of the activity of the Hetman and the General Government (Article 13).

In and of themselves, the Reshetylov points of Skoropadskyi are a unique constitutional protest set out in the form of a declaration of intent, which had no legal force. But the instructions under seal of the Tsar in the form of the Reshetylov Edict for each of these points in aggregate entered into force and were transformed into ordinary fourteen additions to the formally operating 90 articles of the «Constitution of Ukraine», that is, the conglomerate of Hetman points of 1654, 1669, 1672, 1674, and 1687 and a number of Tsarist instruments of grant.

¹ In the primary sources quoted above of the Articles of Skoropadskyi published by Markevych, there is an obvious error of the Tsarist Chancellery, in that in Peter's reply the figure 6 is given as 7, and the figure 7 is given as 6.

Skoropadskyi's aspiration to restore certain rights of the Hetmanate did not stop with the aforesaid constitutions. An error common in the literature identifies the «Reshetylov Articles» with the «Skoropadskyi Articles». The Hetman sent to the Tsar requests in the form of articles almost to the end of his life, and taken together they in volume and content exceed the Reshetylov constitutions. A year after the last had entered into force, Skoropadskyi requested that Peter I cease the plundering on the part of the Muscovite forces, which generated the rather substantive Manifesto of the Tsar on 11 March 1710.¹ The same positive reaction of the Russian autocrat was the outcome of the «petitioning points» of the Hetman concerning the excessive requisitions of the voevods on Ukrainian lands.²

But the constituting of the autonomy of the Zaporozhian Host within the Russian Empire was exhausted by this «service». Thereafter, his actions and inscribed and «resolute» edicts were almost entirely directed towards destroying the autonomous rights of the Hetmanate.

After the formation in 1722 of the Ukrainian College and Skoropadskyi's death, the «constitution of Ukraine», which at that time represented a distinctive mixture of 104 formally operating articles of Bohdan Khmelnytskyi, D. Mnohohreshnyi, I. Samoilovych, Ivan Mazepa, Ivan Skoropadskyi, and a number of monarchic instruments and edicts, was transformed for five years into a «dormant act» because the operation thereof was actually suspended by the clearly «unconstitutional» Instruction to Brigadier S. Veliaminov, confirmed by Peter I on 16 May 1722.³ The efforts of the punished Hetman, P. Polubotko, to protest ended with his confinement and death in Peter and Paul Fortress. The demands of the remnants of the Rada of Elders headed by the Myrgorod Colonel, D. Apostol, in the form of «Komomak Petitions» relating to the restoration of the activity of the General Rada in order to elect a new Hetman also failed and led to new repressions. The transfer of the affairs of the Hetmanate from the College of Foreign Affairs to the Senate, that is, a cynical demonstration of the attitude to the Zaporozhian Host as an internal province of Russia and not as an autonomous State, was yet another flagrant ignoring of the «constitution of Ukraine».

Some advances in this regard emerged only after the deaths of Peter I and Empress Catherine I. Apostol's insistence led in 1727 to the abolition of the Ukrainian College, his election of Hetman of Ukraine, and revival of the activity of the Rada of Elders. The enmity between A. Menshikov and S. Veliaminov was taken advantage of, who did not share Ukrainian estates between themselves, and the actual inactivity of the young Emperor, Peter II, and with the participation of certain General Elders, colonels, and staff associates of the Hetman, Apostol sought on 27 July 1728 new constitutions for the Hetmanate, which have come down in history as the «Resolute Points».⁴ At first they were drafted in the Supreme Privy Council, and then sent to the elders for the formulation of additional explanations, and then returned once more for study by the Privy Council.

With a reference to the Articles of Bohdan Khmelnytskyi, the activity of the General Cossack Rada was formally reinstated in the Zaporozhian Host, for which

¹ For the text, see Bantysh-Kamenskii (comp.), *Источники Малороссийской истории* [Sources of Ukrainian History] (Moscow, 1858), II, pp. 262–264.

² *Ibid.*, II, pp. 264–266.

³ *Ibid.*, II, pp. 322–325.

⁴ See *История Малороссии Николая Маркевича* [History of Ukraine of Nikolai Markevich] (Moscow, 1842), III, pp. 344–390.

the powers were generated «to elect the Hetman by free vote», but only with the authorization and consent of the monarch (Article 2). The Rada of General Elders might be formed from elected senior government officials, colonels, and hundreds, but from among two or three candidates agreed with the Hetman and the Emperor (Article 3). An important innovation was the guarantee of the Hetman that foreigners might become deputies of this Rada, that is, Russians. On one hand, the legal status of the elected elders was solidified by equated colonels to Russian major generals and promises to grant lands and estates for services, and, on the other, Rada members became deeply dependent upon the Hetman because Tsarist instruments for ownership now were to be issued only at his personal request and primarily only for the time of service (Articles 10 and 12).¹

The role of the Rada of Elders was materially enhanced in judicial matters (Article 1). The old principle was reinstated «where there are three Cossacks, two of the three must be tried». The category «Ukrainian law» (Preamble) was used for the first time in the text of the constitutions. Ordinary Cossacks were to be tried by kuren and other atamans, the *pospolita* by rural atamans, and the burghers by voits «according to their articles and by their people». The courts of hundreds and cities were the next instance, and thereafter, regimental courts. The General Court, which now consisted of three Ukrainians and three Russians, was not the highest arbitrator because its decisions might be appealed to the Hetman (as the President of this court). If the Hetman had doubts relating to the judgment, he assembled the Rada of Elders — «general persons and colonels to approve by a general investigation». The Rada of Elders had the powers not only to vacate the decision of the General Court, but also to fine the judges to the benefit of the person unfairly punished. Elders dissatisfied with the decree of the Hetman or Rada of Elders had the right to «petition his Imperial Highness in the College of Foreign Affairs».

The last provision, confirmed in a special Edict of the Emperor, had considerable importance not only for the certain enhanced authority of self-governing organs of the Hetmanate, but also for acknowledging the autonomous status of the Zaporozhian Host: «Moscow had again noted its “foreignness”». In the other provisions of the constitutions here considered there should be noted the official «augmentation» of the Rada of General Elders by a Russian appendage, which together with its College from among Ukrainians was to watch over the collection of taxes, make payments, and prevent abuses on the part of colonels and other Cossack atamans (Article 7). Apostol’s undoubted merit was to significantly expand the powers of the Councils of Elders in the domain of organizing trade and crafts (Article 15), the effort to place obstacles on ways of buying up for nothing or openly seizing Ukrainian lands by Great Russians (Articles 16 and 19), legislative consolidation of the principle of making up certain military units on a voluntary basis (Article 6), withdrawal of Serbian forces from the Hetmanate (Article 5), raising the issue of moving the capital from Hlukhiv to a place more convenient for Ukraine (Article 11), and so on. Some demands of the Hetman (new status of refugees from Russia, banishment of schismatic from Ukraine) the young Emperor rejected, one article (on the property of elders) was left without reply, and another (on boundaries with the inhabitants of

¹ This was caused by the fact that rank military estates were conferred everywhere by an avaricious elder, and the quantity of free land rapidly declined.

the Sloboda) was carried over for future consideration. But for the absolute majority of them, albeit sometimes with reservations, the behest stood: «Let it be so».

On the whole, despite certain indulgent comprises in relations with Russia, an openly hostile attitude towards the Jews (Article 15), and assistance in furthering the serfdom of the peasantry, Apostol did much to restore the activity of the Rada of Elders, prevent the complete russification thereof, consolidate Ukrainian society, and slow down the process of the deformation of the Hetmanate as a political body. However, with the confirmation of the Resolute Points, at the initiative of the Hetman intensive work commenced in Glukhov to codify Ukrainian law, the main purpose of which became to substantiate the core constitutional idea relating to the autonomous status of Ukraine, rights to self-government, and so on. An undoubted contribution of Apostol to forming the constitutional foundations of the functioning of the Hetmanate became his further instructions and universals directed towards improvement of the activity of the judicial system and court proceedings, rejection of the Empire's introduction of new types of taxation, protection of the rights of Ukrainian cities, restoration of a Ukrainian administration, putting land possession and land use in order, and others.

The law of the Hetmanate made the last round in its evolution in the eighteenth century from 1750 to 1764, that is, during the sojourn of K. Razumovskii in the highest State office. The reason for such a brief upsurge was the renewed attention with A. Razumovskii's assistance of the Empress Elizabeth Petrovna to the constitutions of Bohdan Khmelnytskyi and the Tsarist instruments of grant to the Hetmanate by her grandfather, Aleksei Mikhailovich. On 18 December 1749 the Empress issued an instrument which emphasized that «Her Imperial Highness is pleased to promise by her Imperial word to the newly-elected Hetman and all true subjects of the Ukrainian people all freedoms, rights, and privileges which they had since the time of the acceptance by the Russian State to inviolably keep Bohdan Khmelnytskyi with the Zaporozhian Host and all the Ukrainian people».¹ The rule of the Hetman Government was eliminated, and at an expanded session of the Rada of Elders under the guise of an Assembly of the General Military Rada in Hlukhiv, a 22-year old descendant of an ancient Cossack family, K. Razumovskii, was elected as the Hetman of Ukraine. Traditional articles-constitutions were not confirmed in so doing. All 123 points of the constitutions of 1654, 1669, 1672, 1674, 1687, 1709, and 1728 remained formally in force, and in fact in the official documents the Empress and the Hetmanate recalled only the Pereyaslav articles of Bohdan Khmelnytskyi.

But the young Hetman rarely visited Hlukhiv, and the General Military Rada did not assemble, as had been true during the first half of the eighteenth century. This created conditions unprecedented for the Hetmanate of an increased role for the Rada of Elders, which under the actual leadership of the Hetman driver, S. Kochubei, became the actual leader on Ukrainian lands, administering «all military and civil affairs on the basis of military rights, former customs, and established points in ... Ukrainian rights confirmed by edicts to the Ukrainian people».² This provision from the Universal of K. Razumovskii shows formal recognition of all articles-constitutions of the former Hetmans not repealed at various times.³

¹ For the text, see *Хрестоматія з історії Української РСР* [Anthology on the History of the Ukrainian SSR] (Kyiv, 1959), I, pp. 503–504.

² *Ibid.*

³ See *O. M. Myronenko, Історія Конституції України* [History of the Constitution of Ukraine] (Kyiv, 1997).

The absence of «second Hlukhiv» articles from 1750 to 1764 enabled both the Empress and K. Razumovskii to interfere without hindrance in the «constitutional space» of the Hetmanate, to change it, and to add to it by monarchic instruments and by Hetman universals those texts were actually prepared by Kochubei. Another distinctive feature of the law of the Hetmanate during the period here considered was the return to Ukraine of the *pospolita szlachta* spirit which prevailed at assemblies of the Radas of Elders and the aspiration to provide to these assemblies many features of the Sejm of the *Rzecz Pospolita*.

A significant constitutional achievement of the Rada of Elders of the Hetmanate might be considered to be the temporary return of Ukraine to the jurisdiction of the College of Foreign Affairs, extension of the powers of the Hetman to the Zaporozhe, reformation of the armies to the traditions of the former unwritten «Cossack constitutions», the rearming thereof, raising questions relating to the restoration of diplomatic ties of the Hetmanate, and so on. Radical proposals were prepared, but not realized, relating to changes in the constitutional status of the Hetmanate. It should have been transformed into a constitutional monarchy with the capital at Baturyn, where the Razumovskii dynasty would have reigned, limited by a strong parliament.

But the Empress and her retinue stood in the path of these plans. Elizabeth Petrovna, alarmed by her «democratism» with regard to Ukraine, by means of forming a new Serbia, Slavonic Serbia, and other artificial administrative entities, actually commenced the elimination of the regimental structure and abolished the customs boundary between the Hetmanate and Great Russia, which strongly undermined the financial state of Ukraine because the profits from customs charges had gone to the Hetman treasury, and financial control over the Hetmanate was intensified; in time all requests of K. Razumovskii and the Rada of Elders for limited diplomatic relations were decisively rejected. As regards military estates, they all during the last Hetman were appropriated and inherited by that Cossack elder whose avaricious mood was accurately characterized by S. Velichko: «For silver and gold not only would each of them close his eyes, but their brothers and fathers were shown no mercy; how would a ruined Ukraine bestow a womb». Free producers – *pospolita* – virtually did not exist at this time because all lands of the general State fund had been plundered.

Catherine II placed the final full stop in the evolution of the law of the Hetmanate in the seventeenth and eighteenth centuries. The Ukrainian elite rendered considerable «assistance» to the Empress in this cause, for it, being guided by solely mercantile interests, once again betrayed the Ukrainian people.¹ The formal grounds for abolishing the autonomy of Ukraine was a memorandum of K. Razumovskii's educator, the head of his personal chancellery, State-secretary of the Empress, G. Teplov, under the title «Most Secret Notes on the Present State of Ukraine». The thoughts of the leading Ukrainian scholars, N. Kostomarov, P. Kulysh, A. Lazarevskiy, A. Efimenko, A. Markovych, and others in this regard may be summarized in the definition of the Hetmanate as a «rotted tree which should fall to the ground by itself, being undermined by its own inner defects».²

¹ For renouncing the Hetmanship, K. Razumovskii received 50,000 rubles annual pension, the city of Hadyach and suburbs, and other enormous estates.

² D. I. Doroshenko, *Огляд української історіографії* [Survey of Ukrainian Historiography] (Kyiv, 1996), p. 44; also see B. E. Nolde, *Автономія України з історичного погляду* [Autonomy of Ukraine in Historical Perspective] (Kyiv, 1995).

Thus, the Hetman Articles (or Constitutions) were the cornerstone, the focal point of the systematized (or written) national legal system in the second half of the seventeenth and eighteenth centuries. Instruments, manifestos, and other acts of the Russian tsars and emperors which bound the Ukrainian Hetmanate to their own vision of its legal status were, as noted, as certain addition thereto, as were the acts of the Ukrainian Department (1663–1722), Russian residents attached to the Hetman Government (from 1709), and voevod, Ukrainian College (1722–1727, 1764–1786), Board of the Hetman Government (1734–1750), a number of international treaties of Russia (1667, 1672, 1686, and others), numerous Hetman universals which reflected the concentration in the hands of the «Supreme Ruler and Master of Our Fatherland» of legislative, executive, and judicial power, acts of the General Government, General Elders, colonels, and regimental Radas, magistrates, hundred and city elders, rural atamans, and others. The operation of a number of provisions of the Third Lithuanian Statute was repeatedly affirmed in the Hetman constitutions, as well as collections of city and Kholm (Chelm) law,¹ and beginning from the eighteenth century, a broad path was opened for the penetration into Ukraine of general-State Russian law, which gradually displaced the system of Hetman law. The south of Ukraine was the first to cede place to Russian law, and then the Sloboda inhabitants, and finally, the entire territory of the Left Bank. As regards Right Bank Ukraine, there until virtually the end of the eighteenth century acts of the central authority of the Rzecz Pospolita remained rather influential as a source of law (in addition to customary, Lithuanian, and Magdeburg), which ensured (for example, the Cardinal Rights of 1768–1775) the complete domination of the szlachta and the Catholic Church in all spheres of law and complete lack of peasant rights.

We note that during the Hetmanate (from the second quarter of the eighteenth century) the codification of national law commenced that, on one hand, was the result of the aspiration of Ukrainian feudal lords to equate themselves in rights with the Russian nobility and, on the other – the «jumble» of numerous legal sources which often were not only contradictory, but even refuted one another. The Russian autocracy, hoping as rapidly as possible to fully incorporate Ukraine into the legal sphere of Russia, assisted the codification processes.² The «first impulse» for this proved to be the Emperor's Edict of 28 August 1728, the result of which was the 1743 «Laws by Which the Ukrainian People are Judged» and the appended «Steppe Ukrainian Military Rank of the Procedure for the Hetman», instructions to the codification commission, and an alphabetical index. The text was not officially introduced into force, but played an exceedingly important role in the evolution of Ukraine law not only for the Cossack period, but in future times. Although the «Laws» granted privileges of nobility to the Cossack ruling group, formulates norms for the defense thereof, and created conditions for a merciless exploitation of the Ukrainian peasants,

¹ During the period of the Hetmanate the understanding significantly expanded of the aforementioned «procedure for City Rights», practical manuals were published on the application of Magdeburg Law, such as the *Краткий указатель магдебургского права по книге Порядка* [Concise Indices of Magdeburg Law according to the Book of Order], *Коротенькие извлечения из «Порядка»* [Brief Extracts from the «Order»], and others translated from works in the Latin and Polish languages by M. Iasker, B. Groicki, P. Kushevych, P. Shcherbych, and so on.

² For details see A. F. *Kistiaykovskiy*, *Права, по которым судится малороссийский народ* [Laws by Which the Ukrainian People Are Judged] (Kyiv, 1879); *Кодифікація права на Україні у XVIII столітті* [Codification of Law in Ukraine in the XVIII Century] (Lviv, 1958); V. D. *Mesiats*, *История кодификации права на Украине в первой половине XVIII в.* [History of the Codification of Law in Ukraine in the First Half of the XVIII Century] (Moscow, 1964); A. P. *Thach*, *Право Украины* [Law of Ukraine] (Kyiv, 1992); O. M. Myronenko (ed.), *Права, за якими судиться малоросійський народ 1743 р.* [Laws by Which the Ukrainian People are Judged] (Kyiv, 1997).

and so on, the right of the Left Bank to self-government was rather precisely substantiated, that is, to an autonomous status within the Russian Empire.

This «Comprehensive Collection of Laws of the Zaporozhian Host» (the term of A. Iakovlev) included provisions not only of State, but also of administrative, civil, and criminal law and court organization and court procedure, summarized Cossack de facto constitutions, and so on. The Code existed «without movement» until 1759 and was dropped by K. Razumovskii without a report on it to the Empress.

Another noteworthy monument of the translations here considered was the collection «Court and Punishment in Ukrainian Laws», compiled by a candidate for membership of the General Military Court, F. Chukevych from 1750 to 1758 on behalf of the Hetman, K. Razumovskii.¹ The work collected the rules for a civil proceeding, court organization, and individual elements of inheritance and land law. In particular, the collection systematized provisions relating to the ownership of feudal lords to land, estates, the enserfment of peasants; an effort is sensed to restore statute courts, which would have furthered ensuring the complete independence of the courts of the Hetmanate from Russian courts; reduces the vertical appellate instances, excluding the Senate from them; partially reinstated the judicial system which operates under the Lithuanian Statutes. A private codification by V. Kondratev, «Book of Statutes and Other Ukrainian Laws and Others», was prepared in 1764.²

In 1767, on behalf of the Second Ukrainian College, the secretary thereof and judge of the General Court, and the future chancellor of Russia, A. Bezborodko, with a view to restoring to the Hetmanate the «old law», collected in the archives of the General Military court, the General Accounts Commission, and the General Treasury Chancellery the principal legal acts which operated in Ukraine and created the collection «Extract of Ukrainian Laws», which together with the «Statute on Provinces» of 1775 became the basis for reworking the «Extract from Edicts, Instructions, and Provisions», completed in 1786.³ Individual sections were taken from the 1767 Extract which incorporated provisions that already had lost force in connection with the destruction of the Hetmanate and materials were added relating to the history of Ukrainian law, the sources thereof, acts adopted between 1767 and 1786, including Russian legislation. The 1786 Extract was confirmed in this form by the Senate and circulated for practical application.

The core of the civil law of the Hetmanate remained, as before, the right of possession and ownership of land as the foundation of feudal economic management. These rights were acquired through purchase-sale, inheritance, grant (including rank lands), seizure of lands by Polish magnates, exploitation of virgin lands, and so on. The feudal lords (elders) received land both «in perpetuity» (ownership) and «for kindness of service» (rank lands). The last might be granted by the tsar or the emperor or by the Hetman, or by colonels, depending upon the office and assessment of services. The status of rank lands gradually approximated the legal regime of ownership. The process of transition from privately-owned possession to a right of

¹ A. P. Tkach, *Історія кодифікації дореволюційного права України* [History of the Codification of Prerevolutionary Law of Ukraine] (Kharkov, 1961). The primary source has not been found, but a manuscript copy of 1791 is kept in the Manuscript Division of the Russian National Library in St. Petersburg.

² See *Книга* Статут и прочия права молороссийския и другие, служащая к тому, переписки, трудов и собрания Василя Петрова сына Кондратьева. Also see M. P. Vasylenko, *Матеріали до історії українського права* [Materials on the History of Ukrainian Law] (Kyiv, 1929).

³ See N. P. Vasylenko, *Экстракт из указов, инструкций и учреждений с разделением по материалам на девятнадцать частей 1786 года* [Extract from Edicts, Instructions, and Institutes with Division by Materials into Nineteen Parts 1786] (Chernihiv, 1902).

ownership intensified especially after the conducting of the «General Investigation of Estates» from 1729 to 1730 and the general survey of 1765–1766.¹ Razumovskii already had distributed Ukrainian lands solely «in possession for perpetuity and by descent». All this completely met the interests of large Ukrainian feudal lords and the Russian autocracy. The Cossack leadership, being guided by profoundly mercantile considerations, received from Petersburg «full compensation» for the destruction of the Hetmanate and its legal system.

As regards the Ukrainian peasantry, it during the second half of the seventeenth century retained the right to dispose of land by means of «loan», or «squatting» (or occupation), of land which had not yet become the ownership of an elder. But throughout the next century this right was taken away from them, and in 1783 their legal enserfment occurred.

Virtually all norms of family, inheritance, contract, and other spheres of civil law were received by the legal system of the Hetmanate and incorporated in its positive legislation. These provisions have been described above.

No doubt the most characteristic feature of the criminal law of the Zaporozhian Host was as aspiration for the solemnity of justice, the systematization of its prescriptions, and an improvement of the definitions of individual crimes. Among the last were not only infringements against life, health, honor, and property of the person, but also crimes against the «interests of the State», which included treason, divulgence of State secrets, surrendering cities and other settlements, weapons, and other property without resistance, to the enemy. Crimes against the community, religion, morality, and the family were actually beginning to be isolated. The forms of guilt were not identified terminologically, but the crimes themselves were separated into intentional, unintentional, negligent, and accidental; the «main criminals» and accessories were distinguished, as were those which mitigated and aggravated responsibility.

The type of punishment was determined, depending upon this. The death penalty was most widely used for them during the Hetmanate, especially for crimes against the State, society, religion, and morality. The death penalty was accompanied by extreme cruelty and often augmented by tortures beforehand. «Corporal punishment» meant «public beating» or mutilation. The number of punishments over time was increased in the form of deprivation of freedom (confinement in a «high prison», confinement in a «low prison», exile for a time or for life, arrest), or deprivation of honor and rights. The basic punishment often was accompanied by supplementary ones (request for forgiveness, repentance in church, retraction of insult, expulsion from the community, and others). Decapitation continued to be widely used, according to custom, with a significant difference in the «evaluation of the head» of the person killed or injured.²

¹ For details, see *K. A. Nevolin*, *История российских гражданских законов* [History of Russian Civil Laws] (St. Petersburg, 1848–1851); *P. Beliaev*, *Крестьяне на Руси* [Peasants in Rus] (Moscow, 1860); *A. Lazarevskii*, *Малороссийские посполитые крестьяне* [Ukrainian Pospolita Peasants] (Chernigov, 1866); *S. V. Pakhman*, *История кодификации гражданского права* [History of the Codification of Civil Law] (St. Petersburg, 1871); *V. O. Holobutskiyi*, *Запорізька Січ в останні часи свого існування 1734–1775* [Zaporozhian Host in the Last Days of its Existence. 1734–1775] (Kyiv, 1861); *I. Budzylovych* and *A. Iurchenko*, «Оренда землі в Україні (історико-правовий нарис)» [Lease of Land in Ukraine (Historical-Legal Survey)], *Право України* [Law of Ukraine], no. 10 (1994); and others.

² For details, see *Документи-процессы-исследования* [Documents-Trials-Studies] (St. Petersburg, 1877); *A. Skalkovskiyi*, «История Новой Сечи. Как судили и рядили в Сечи Запорожской» [History of the Modern Host. How They Judged and Decreed in the Zaporozhian Host], *Киевская старина* [Kievan Antiquity], vol. XIV (1886); *A. D-skiyi*, «Система карательных мер в Запорожье (историко-юридический очерк)» [System of

A general characterization of the law of the Hetmanate requires a brief analysis of the evolution of Ukrainian court proceedings and the law of procedure during the second half of the seventeenth and eighteenth centuries. From 1648 to 1763 several varieties of Cossack courts dominated – State (provincial and central), city, rural, dominial, and clerical. State provincial courts represented a hierarchy from the lowest collegial courts of atamans (decided petty civil and criminal cases of ordinary Cossacks), hundred courts (within the limits of the power of hundred governments headed by a sotnik and on a collegial basis considered more complex disputes), mixed Cossack-burgher courts (decided disputes between Cossacks and burghers), and regimental courts headed by the colonel (decided cases at first instance for elders, and at second instance decided appeals against decisions of hundred courts). Over time, courts had a regimental chancellery with a judicial division with regimental competence.

The General Military Court attached to the residence of the Hetman, the General Military Chancellery as an appellate instance for the General Military Court, and first instance for a general elder, colonels, staff of Cossack hetmen societies, and the Hetman Court headed by the Hetman as the supreme judge of the State became part of the system of State central Cossack courts. The competence of the last were not appealed; the judgment of the Hetman at his personal discretion was considered to be final and not subject to appeal.

The system of city courts included magisterial, rathaus, and city courts and, compared with the earlier «pre-Hetman» period had not changed. Unlike them, «kopnye» peasant courts fell into decline. Rural courts decided disputes of peasants. As regards the rather authoritative dominial courts, with the outset of the War of Liberation from 1648 to 1654, their activities virtually froze following the consolidation of a new division into estates – supposedly revived, but they did not acquire significant weight. Clerical courts functioned during the Hetmanate. But the State significantly limited their competence, especially in criminal and important civil cases.

The period from 1763 to 1783 noted a gradual decline of the Cossack courts and their replacement at the initiative of K. Razumovskii by statute courts – land, regimental, and feed courts with a single appellate instance – the General Military Court. Thus, the judicial system took an important step towards separating judicial power from executive power. The last did not happen only within the Zaporozhian Host: the courts of the kuren atamans and the palanca colonels were considered to be the lowest there, and the highest were the courts of the military judge, koschevoi ataman, and Host Rada. We note that the court of the koschevoi ataman, because his decision under certain circumstances might be contested in the Host Rada, was more democratic than the Hetman court.¹

Punitive Measures in Zaporozhia (Historical-Legal Survey)], Киевская старина [Kievan Antiquity], vol. XL (1893); S. Naryzhnyi, «Судівництво і кари на Запоріжжі» [Proceedings and Punishments in Zaporozhia], Збірник Українського наукового інституту в Америці [Collection of the Ukrainian Scientific Institute in America] (Prague, 1939); Іа. Padokh, Нарис історії українського кримінального права [Survey of the History of Ukrainian Criminal Law] (Munich, 1951); and others.

¹ For details on court organization of the Hetmanate, see O. Miller, «Очерки из истории и юридического быта старой Малороссии. Суды земские, городские и подкоморские в XVIII в.» [Essays from the History and Legal Life of Old Ukraine. Land, City, and Feed Courts in the XVIII Century], Сборник Харьковского исторического и филологического общества [Collection of the Kharkov Society of History and Philology], no. X and XVIII (1896); A. Lazarevskii, «Суды в старой Малороссии. Замечания на монографию О. П. Миллера: Суды земские, городские и подкоморские в XVIII в.» [Courts in Old Ukraine. Comments on O. P. Miller's Monograph: Land, City, and Feed Courts in the XVIII Century], Киевская старина [Kievan Antiquity], vol. LXII (1898); M. Slabchenko, Малорусский полк в административном отношении [Ukrainian Regiment in the Administrative Aspect]

With regard to the law of procedure of the Hetmanate, its sources were virtually the same at the procedure analyzed above when Ukrainian lands were part of Poland, Lithuania, and the Rzecz Pospolita until the cardinal changes in court organization of the eighteenth century, which entailed not only the concentration of judicial and administrative authority in the hands of the Hetman and the elders, but also aggravated the proceedings by a multiplicity of appellate instances. As before, both forms were used – accusatory-adversarial and inquisitorial. But a trend could be seen towards separating a civil from a criminal proceeding, that is, civil disputes were decided primarily in an accusatory-adversarial setting, and criminal case in inquisitorial forms.¹

We note that whereas in the Hetmanate throughout the second half of the seventeenth and the eighteenth centuries law was increasingly «positivized», Cossack customary constitutions remained in the Zaporozhian Host the cornerstone of Ukraine law until its downfall in 1775. After this, the «Cossack customs» as the principal source of law migrated to the Zaporozhian Host, and after unsuccessful efforts to transform them into the rights and freedoms of Cossacks on foreign lands, whether Turkey or Austria-Hungary (Banat), they continued to evolve on various territories (Butskoe Cossack Host, Host of the Upper Black Sea Cossacks, Black Sea Cossacks, Azov Host, Kuban Cossack Host, Free Cossacks). Attempts continued to revive customary Cossack law in modern independent Ukraine, but do not find a broad response under the new circumstances and are being transformed into folklore games of a narrow group of devotees of the past.²

The aggregate of the canons of Orthodoxy, which in the Zaporozhian Host as in Russia, unlike Catholic Europe, became an element of canon law in general, were a material component of the law of the Hetmanate. The last remained not only the basis for legislation on marriage, family, and inheritance, but as the faith was acknowledged to be the ideological banner of the War of Liberation from 1648 to 1654. The provisions on crimes against the faith and church, murder of relatives, as well as rape, abortion, adultery, sexual depravity, and the like established by the canons of Orthodoxy provided that the clergy and other «church people» were subject to the jurisdiction of church courts, even in the seventeenth and early eighteenth centuries. But with the entry into force of the Spiritual Reglment in 1721, the group of such cases began to narrow significantly. Cases concerning the deeming of a marriage to be invalid, divorce, attempted suicide, violation of duties by a clergyman, and some others remained within the jurisdiction of the church.

The complete dominance of Orthodoxy, displacement of Uniatism, actual and legal incorporation of the church into the system of the military-administrative

(Odessa, 1909); *I. Cherkaskyi*, «Слiди домініяльного (панського) суду на Лівобережній Україні наприкінці XVII і початку XVIII в.» [Traces of the Dominal (Gentry) Court in Left Bank Ukraine at the End of the XVII and Beginning of the XVIII Centuries], in *Праці Комісії з історії українського права* [Works of the Commission for the History of Ukrainian Law] (Kyiv, 1926), III; *Ia. Padokh*, *Міські суди на Україні-Гетьманщині після 1648 р.* [City Courts in Hetman Ukraine after 1648] (Munich, 1948); and others.

¹ For details, see *M. Slabchenko*, «Судівництво на Україні XVII–XVIII ст.» [Court Proceedings in Ukraine, XVII–XVIII Centuries] (Kharkov, 1919); *N. Myrza-Avakians*, «Нариси з історії суду на Лівобережжі до половини XVII ст.» [Essays on the History of the Court on the Left Bank in the First Half of the XVII Century], *Зап. Харк. дослід. катедри* [Notes of the Kharkov Research Cathedral], no. 2–3, 4 (undated).

² The evolution of customary Cossack law has been analyzed in *O. S. Dobrov*, «Правоутворення без законодавця» [Law-Making without a Legislator], *Праці Комісії для вивчення звичаєвого права України* [Works of the Commission for Research on the Customary Law of Ukraine] (Kyiv, 1926), issue 2; *A. Iakovlev*, *Українське звичаєве процесуальне право* [Ukrainian Customary Law of Procedure] (Prague, 1931); *Правовий звичай як джерело українського права IX–XIX ст.* [Legal Custom as the Source of Ukrainian Law IX–XIX Centuries] (Kyiv, 2006); and others.

organization, subordination of the Ukrainian Orthodox Church to the Moscow Patriarchate, actual direction of the Synod and many dioceses in Russia by refugees from Ukraine, and so on became distinctive features of Ukrainian canon law in the period here considered. The legal status of the clergy was equated to the status of the szlachta, and from April 1794 Ukrainian metropolitans and other senior clergy received all the rights and privileges of the respective Russian clergy.¹

The significance of Ukrainian theology for the origin and evolution of the law of the Hetmanate is difficult to overstate. In the absence of a system of knowledge of the objective natural laws of the development of State and law and their place and role in social life, that is, legal science, the theologians proved to be the conceptual source of the Cossack legal system. One should enumerate in this connection: I. Vyshenskyi, Christopher Filaret, Iu. Rohatynets, I. Boretskyi, I. Kopinskyi, Z. Kopystenskyi, the brothers S. and L. Zyzaniev-Tustanovskiy, K.-Trankvilion Stavrovetskyi, P. Mohyla, I. Hizel, L. Baranovych, I. Halyatovskiy, F. Safonovych, A. Vyshovatyi, Afanasyi Beresteiskiy, M. Tokarevskiy, I. Krovkovskiy, I. Maksymovych, D. Tuptal, S. Iavorskyi, F. Prokopovych, I. Kulchytskyi, I. Horlenko, M. Znachka-Iavorskyi, and others.²

To be sure, Orthodox canon thought was not the sole conceptual source of the legal system of the Hetmanate. A ideology of political and legal «intelligent secular representatives» had been created, that is, secular thinkers who also became the doctrinal foundation of the gradual constitutionalization of the mental moral, ethical, and legal postulates of the Rus in the Cossack constitutions of the Hetmanate period, a unique conserving therein of the «truths and virtues» of their ancestors.

During the rise of the Zaporozhian Host (Hetmanate), the world, especially Europe and North America, entered a new era of human history, the evolution of constitutionalism as practitioners at the stage of theory and advance (Hugo Grotius, B. Spinoza, Thomas Hobbes, John Locke, John Lilburne, Samuel Pufendorf, Christian Wolff, Giambattista Vico, and others). The first written and unsystematized constitutions entered into force of San Marino, the United States of America, England, Sweden, and so on. The doctrinal foundations of the national law of the Hetmanate long before the emergence of Ukrainian legal science were followed by the humanists Iu. Dhohobych, P. Rusyn, Lukash from the New City, Martyn from Zhuravyts,³ and elaborated by S. Orykhovskiy, I. Peresvetov, A. Kurbskii, K. Ostrozhskiy, A. Rymsh, V. Maliushitskyi (Surozhskiy), D. and S. Nalyvaiko, K. Sakovych, M. Kozachynskiy, S. Dilovych, and the authors of the Ostrog, Lviv, Khmelnytskyi, Hustyn, and Mezhygorskyi chronicles, and their worthy successors, Samovynets, H. Hrabyanok, S. Velychko, and indeed the first Ukrainian thinker of world standard,

¹ See V. Antonovych, Нарис становища православної церкви на Україні від половини XVII до кінця XVIII ст. [Essay on the Origin of the Orthodox Church in Ukraine in the Second Half of the Seventeenth to the End of the Eighteenth Centuries] (Lviv, 1900); Antonovych, Розвідки про церковні відносини на Україні XVI–XVIII ст. [Intelligence on Church Relations in Ukraine XVI–XVIII Centuries] (Lviv, 1900); E. Golubinskii, История Русской церкви [History of the Russian Church] (Moscow, 1900–1901); M. Chubatyi, Правове становище церкви в козацькій державі [Legal Status of the Church in the Cossack State] (Philadelphia, 1925); O. Lototskyi, Українські джерела церковного права [Ukrainian Sources of Canon Law] (Warsaw, 1931); V. Tsypin, Церковное право [Canon Law] (Moscow, 1996); Християнство [Christianity] (Moscow, 1996); Iu. V. Tikhomirov, Судебное религиоведение [Judicial Religious Studies] (Moscow, 1998); Академічне релігієзнавство [Academic Religious Studies] (Kyiv, 2000); and others.

² On the contribution of each of these thinkers, see O. M. Myronenko, Проблема прав і свобод людини в українській богословській думці доби середньовіччя [Problem of Human Rights and Freedoms in Ukrainian Theological Thought of the Middle Ages] (Kyiv, 1995).

³ Українські гуманісти епохи Відродження [Ukrainian Humanist Era of the Renaissance] (Kyiv, 1996). 2 vols.

H. S. Skovoroda, the founders not only of Ukrainian but also of Russian jurisprudence, the Circassian Ia. Kozelskyi and the Nezhyn native, S. Desnitskii, the first classic of Ukrainian literature, I. Kotliarevskii, the poet V. Kapnyst, the doctor of law and philosophy, A. Shafonskyi, and other Ukrainians from the intellectual and clerical elite of Petersburg and Moscow of the eighteenth century (A. Bezborodko, Ivan Khmelnytskyi, V. Ruban, P. Zavadskyi, A. Chepa, P. Simonovskiy, O. Rihelman, and others).¹

The legal system of Hetmanate Ukraine (Zaporozhian Host) of the seventeenth and eighteenth centuries, having imbibed the best traditions of the aggregate of social regulators of pre-State Eastern Slavonic society, customs, and symbols of the Antes and Sclavins, combined Slavonic principalities, oral and written social rules and norms of the Principality of Ukraine-Rus, nomadic and Christian (especially Orthodox) beliefs and canons, enriched by the reception or compilation of German (Magdeburg), Polish, and Lithuanian law, fully assimilated by the rather perfected de facto Cossack constitutions of the fourteenth to the first half of the seventeenth centuries, gave birth to a truly national law together with the outbreak of the War of National Liberation of the Ukrainian people against the Polish szlachta domination and for the renaissance of national spirituality.

Throughout the next almost century and a half, the law of the Hetmanate, existing in the form of customary «Cossack usages», that is, unwritten social regulators, which were protected by the power of their State and the traditions of the fathers, manuscript judicial acts and decrees, inter-State treaties with Turkey, the Rzecz Pospolita, Crimean Khanate, Moldavia, Russian sovereigns, Hetman articles or constitutions, general and special, land, military, service, protective, and immunity universals, instructions, privileges, and other acts of the supreme military, and local authorities of the Hetmanate, collections of laws, Orthodox canons, and tsarist or imperial instruments and manifestos were revolutionized and achieved their highest development in the early eighteenth century. The legal system of the Zaporozhian Host at this time was orientated towards the Romano-Germanic continental legal family, which was then considered as the best in the world, and approached codification, that is, the most developed stage of the systematization of legislation, and relied on considerable foreign legal experience and the powerful Ukrainian intellectual potential.

After the advances of Mazepa from 1707 to 1709, a period of stagnation commenced in the development of Ukrainian law, and soon its decline as a result of the

¹ On the place and role of all the mentioned and other scholars and political and public figures in the protection of the Cossack constitutions and the doctrinal enrichment of the law of the Hetmanate, see *O. M. Myronenko*, Проблема прав і свобод людини в українській світській політико-правовій ідеології доби феодалізму [Problem of Human Rights and Freedoms in Ukrainian Secular Political and Legal Ideology under Feudalism] (Kyiv, 1995); *Myronenko*, «Духовні джерела оборони менталітетних традицій “козацьких конституцій”» [Theological Sources of the Defense of Mental Traditions of the «Cossack Constitutions», Вісник Конституційного Суду України [Herald of the Constitutional Court of Ukraine], no. 3 (1999); *Myronenko*, «Суб'єкти політичного «конституційного контролю» в Україні-Гетьманщині» [Subjects of Political «Constitutional Control» in the Ukrainian Hetmanate], Вісник Конституційного Суду України [Herald of the Constitutional Court of Ukraine], no. 4 (1999); *Myronenko*, «Конституції українських гетьманів XVII–XVIII століть як об'єкти офіційного тлумачення, захисту і грубих порушень» [Constitutions of the Ukrainian Hetmanate of the XVII and XVIII Centuries as Objects of Official Interpretation, Defense and Flagrant Violations], Вісник Конституційного Суду України [Herald of the Constitutional Court of Ukraine], no. 5 (1999); *Myronenko*, «Раціоналістичне (юснатуралістичне) праворозуміння на Україні у другій половині XVII століття як первісний концептуальний фундамент вітчизняної конституційної юстиції майбутнього [Rationalist (Natural Law) Legal Concepts in Ukraine in the Second Half of the XVII Century as the First Conceptual Foundation of Fatherland Constitutional Justice of the Future], Вісник Конституційного Суду України [Herald of the Constitutional Court of Ukraine], no. 1 and 2 (2000); and others.

imperial aspirations of Russian Tsarism. For the destruction of penates of Ukrainian spirituality – the Zaporozhian Host in 1709 – Ukraine awaited the appointment of Tsarist residents to be attached to its governments, Russian vovods, abolition of the Hetmanate, artificial slowing down of the codification of laws, elimination of the Cossack regiments, the New Host, the regimental-hundred structure, legal enserfment of the peasants, imposition of general imperial legislation and own agencies of administration by Ukrainian governors-general and governors.

The heirs of the glorious hetmen and Cossack elders, being guided by mercantile interests, rather rapidly were transformed into loyal subjects of the Emperor – Ukrainian nobles. The Hetmanate sank into oblivion, but elements of its legal system had so penetrated the consciousness not only of the people, but certain ruling circles, that it was not eradicated until almost the mid-nineteenth century.

Myronenko O. Law of the Hetmanate (Second Half of XVII – XVIII Century)

Abstract. The article is devoted to the legal system of Ukraine-Hetmanate (Zaporizhzhia Host) of XVII–XVIII centuries, which, having absorbed the best traditions of the whole of social regulators of East Slavic pre-state society, customs and symbols of the Ants and Slavins, associations of Slavic principalities, verbal and written social rules and norms of the Principality of Ukraine-Rus, pagan and Christian beliefs and canons, Polish, Lithuanian law, and fully assimilated by the rather perfected de facto Cossack constitutions of the fourteenth to the first half of the seventeenth centuries, gave birth to a truly national law.

Key words: sources of law, Cossack customs, Polish law, Lithuanian law.

Миرونенко О. М. Право Гетьманщини (друга половина XVII – XVIII ст.)

Анотація. Статтю присвячено правовій системі України-Гетьманщини (Війська Запорозького) XVII–XVIII століть, яка, ввібравши найкращі традиції сукупності соціальних регуляторів додержавного східнослов'янського суспільства, звичаїв і символів антів і склавинів, об'єднань слов'янських князівств, усних і писаних соціальних правил і норм княжої України – Русі, язичницьких і християнських вірувань і канонів, польського, литовського права, повністю сприйнявши довершені фактичні козацькі конституції XIV – першої половини XVII ст., народилася вже як істинно національне право.

Ключові слова: джерела права, козацькі звичаї, польське право, литовське право.

Миرونенко А. Н. Право Гетманщины (вторая половина XVII – XVIII в.)

Аннотация. Статья посвящена правовой системе Украины-Гетманщины (Войска Запорожского) XVII–XVIII вв., которая, впитав наилучшие традиции совокупности социальных регуляторов догосударственного восточнославянского общества, обычаев и символов антов и склавинов, объединений славянских княжеств, устных и писанных социальных правил и норм княжеской Украины–Руси, языческих и христианских верований и канонов, польского, литовского права, полностью восприняв совершенные фактические казацкие конституции XIV – первой половины XVII вв., родилась уже как истинно национальное право.

Ключевые слова: источники права, казацкие обыкновения, польское право, литовское право.