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<https://doi.org/10.26881/gsp.2025.3.04>

Early Modern Ukrainian Constitutionalism: A Comparative View

To be properly understood, a national tradition of constitutional law has to be considered in a European historical, philosophical, religious, and legal context. In this way, we encounter unusual and at first sight paradoxical early modern ideas and phenomena that cannot be explained in the legal language of our late modern and partly post-modern times. This article draws mainly on my previous work in the field. Some relevant texts by me are given in the list of literature.

1. The Protestant Reformation intellectually deconstructed the human world, and reshaped its unity, moving from a vertical hierarchy to primarily horizontal ties of human communities.

The first ideas of the Reformation as an intellectual movement were not religious. Two names are important here if we are to understand the genesis of the Reformation. In 1513, Niccolo Machiavelli wrote in Italian the book *Il principe* (The Prince), in which he insists that the social world is a sphere not of morality but of utility. He writes that politics is, to a great extent, full of vices and does not conform to Christian morality; therefore violations of morality in politics should be perceived as unavoidable. Politics is a sphere of the freedom of the human will and, as such, opposes the Christian ideal of reconciliation before the Divine will: 'God does not do all himself, otherwise he would deprive us of free will and part of the glory due to us'. Machiavelli proclaims that the human world is not static, but changeable (here the category of historical time is present), and that human beings will change it.¹ Political power ceases to be sacred; it is merely a rational phenomenon open to a people cognition. A people ceases to be the mystical church "body of Christ," but is rather an objective phenomenon.

In 1514, Nicolaus Copernicus for the first time put forward a heliocentric structure of the universe. According to this theory, the Earth is not central and is not unique, and this objectively shakes the idea of the universality and sacrality of the Roman Catholic Church, *inter alia*, as a social structure. From the standpoint of the twenty-first century, Copernicus's idea that the Earth revolves around the Sun, and not vice-versa, and also

¹ N. Machiavelli, *The Prince*, trans. H. Thompson, Norwalk, Connecticut 1980, pp. 115–116.

that the Earth is merely one of several planets, and his supposition that not only the planets but also the stars are not simply white dots, but indications that beyond our solar system there exist many other universes, may seem completely irrelevant to socio-political and legal doctrines. In the sixteenth century, however, they cast doubt on the social doctrine of both the Roman Catholic and (later) Lutheran churches, as well as on the foundations of Europeans' social worldview. Theology insisted upon the uniqueness of the Earth as a creation of God. The Earth, consequently, should have been the centre of the universe and the sole planet. Copernicus's doctrine did not at all propose a denial of the idea of God and salvation, but objectively cast doubt on the possibility of a literal understanding of the text of the Bible and Christian theology which had been developed over many centuries, as well as Christian theology to be all-embracing and a universal key to any field of knowledge.

The social ideas of key church reformers were also filled with a deep social sense, which is important for this article. In *Disputatio pro declaratione virtutis indulgentiarum* (1517), Martin Luther proposes a new justification and meaning of the secular world (and this is reproduced in the Augsburg Confession of 1530 and in the Peace of Augsburg of 1555), and its main elements may be reduced to the following ideas: a) the individuality of salvation, the autonomy of the inner world of the human being, which debunked the power of church, discredited canon law, and provided for a horizontal instead of a hierocratic understanding of the social world; b) freedom of will and secular callings, which presuppose that governing is not dominance, but a profession and a limited function; c) the external world of human beings is secular and rational; it is an aggregate of communities of citizens with elected leaders in an ideal form and, in reality, is a developing State; and d) State should be based on its own laws and on rights, which includes the idea of the people's spirit and a vague variant of the people's sovereignty.² John Calvin in *Institutio Christianae Religionis* (1536) proposed some social ideas that could be summarised as follows: earthly rationality (including political rationality) is autonomous and morally neutral; it is a sphere of the freedom of the will, social integration, and self-regulation. Law can also be conceptually separated from morals.³

The base of the main social ideas of the Reformation relevant in this discussion was also the rediscovery of the Old Testament. The Samuel Book 1 clearly describe the replacement of the people's treaty with God with a social contract. One can see such a reading of the Old Testament, mostly without direct reference, in a number of early modern works, such as Baruch Spinoza's *Tractatus Theologico-Politicus* (1670).⁴

² M. Luther, *The 95 Theses: A Disputation to Clarify the Power of Indulgences* [in:] *idem, The Ninety-Five Theses and Other Writings*, trans. and ed. W.R. Russell, New York 2017; *idem, On Temporal Authority: To What Extent Should It Be Obeyed* [in:] *idem, Luther's Works*, vol. 45, ed. W.I. Brandt, Philadelphia, PA 1962, pp. 92, 101, 104–105; *idem, That a Christian Assembly or Congregation Has the Right and Power to Judge All Teaching and to Call, Appoint, and Dismiss Teachers, Established and Proven by Scripture* [in:] *idem, Luther's Works*, vol. 39, ed. W.I. Brandt, Philadelphia, PA 1970, pp. 306–308.

³ J. Calvin, *Institutes of the Christian Religion*, trans. H. Beveridge, Grand Rapids, MI 1989.

⁴ B. de Spinoza, *Tractatus theologico-politicus*, trans. S. Shirley, Indianapolis 1998.

2. Early modern meanings of important terms were quite different from ours: *res publica* with a monarch, a State without sovereignty, and civil law as national law. This offers some keys for an understanding of early constitutionalism.

One of the key definitions for a new State corresponding to a localised human community is provided by the Ukrainian-Polish thinker Stanisław Orzechowski Roxolan in *Dyalog albo Rozmowa około Exequucyey Polskiew Korony* in 1563: a *respublica* is an 'assembly of fellow citizens linked by a common law and common advantage'.⁵

The basic concepts and categories linking a human community, state, and law were elaborated by Jean Bodin in 1566 in *Methodus ad facilem historiarum cognitionem* (more precisely than in the French edition of the same work and much more clearly than in *Les Six Livres de la République*). Bodin's new ideas can be summarized thus:

- 1) a new understanding of people and community: a) a natural/savage and externally determined old people (*gens*), based on ethnic origin; b) a new rational civil people based on the free will (*populi*), which form an all-State community and the highest form of social integration, one that leads to the invention of 'society' (*societate*), the meaning of this word being principally transformed by Bodin; c) a political community, based on collective will and aware of collective interests, that is, a civil society (*civili societate*);
- 2) a new understanding of the State: a) natural personified State (*imperio*) with patriarchal power based on the instinct for domination and natural private law; b) a new societal and institutionalized State (*Rei publica* or *Res publica*) with societal authority based on rational trust and positive public law (and originating with such law), having the aim of benefitting society, although forms of rule may be various; c) indications of a societal State are citizens (instead of subjects), territory, and unified law; 3) a new concept of a social contract as a basic law, the essence of which is a people's control over the authorities and the 'legal administration of the State'; 4) a new understanding of sovereignty as 'final societal authority', the self-sufficiency of the State not subordinated to anybody and anything outside itself.⁶

3. The idea of the social contract was rediscovered and 'legalized' with the assistance of the doctrinal transformation of Roman private law.

A Second scholasticism led to the idea of universalization and interpolation of Roman private contractual principles on all obligations in the sixteenth and seventeenth centuries. In such a vision, the distributive justice of a State (in the *Summa Theologiae* of St. Thomas Aquinas) could no more be only an ethics of mercy, duty, and natural law, but also a promise, binding positive custom, and consensual contract. This gave rise to the understanding of the social contract as *offero*, and the dogmatics of public law developed from private law.⁷

⁵ S. Orzechowski, *Dyalog albo Rozmowa około Exekucyi Polskiej Korony*, Kraków 1858, p. 11. The phrase is a somewhat modified citation from Cicero, *On the Republic*, Book 1, 39.

⁶ I. Bodini, *Methodus, ad facilem historiarum cognitionem; ab ipso recognita, et multo quam antea locupletior: cum indice rerum memorabilium copiosissimo*, Paris 1572, p. 9 ff.

⁷ D.Yu. Poldnikov, *Институт договора в правовой науке Западной Европы XI–XVIII веков*

The *mos gallicus* and *usus modernus* schools, as well as, for instance, the Polish and Ukrainian scholars of the *Akademia Zamojska*,⁸ claimed that all law has to be positive, historical, and national. Thus, it was logical when François Hotman in *Franco-Gallia* (1573) points to special laws regulating the system of State power.⁹ But the final important text here, in my opinion, is Hugo Grotius's *Inleydinge tot de Hollantsche rechtsgeleertheit* (Introduction to Dutch Jurisprudence), published in 1631, which argues that all law has a contractual character, and that the social contract is a historical *offer*, in relation to which contemporary citizens are a consensual third party.¹⁰

4. Two important keys to understand early modern European constitutionalism are: (1) the non-separability of international legal and public legal relations and (2) the collective subject-ness of social estates.

The first key was conditioned by the hierarchy of monarchical titles, the inequality of States within confessional spaces, and the non-sovereignty of rulers and States. All these were firmly embodied in the international religious, ethical, and legal orders, and this meant that the relation of localized human communities with monarchs in so-called composite States¹¹ had a twofold character, an international legal and a public legal one. The second key meant that State-building was legally embodied in the collective subject-ness of social estates.

The examples are the Peace of Augsburg of 1555–1556 and the 1648 Treaties of Westphalia, both international-legal and constitutional-legal acts of the Holy Roman Empire.

What was the nature of treaty between estates and a 'foreign' monarch? If the monarch figured in this treaty and for purposes of this treaty as a person (for a system of foreign institutions was not involved), and as an elected head of a State, and if the treaty regulates rights, duties, and the organization of authorities, then this is a constitutional treaty.

5. Ukraine has its own tradition of public-law relations and also has been deeply influenced by reformed Rzecz Pospolita constitutional formula.

Ukraine has been not just been a recipient, but an integral part of the rise of the intellectual Reformation and the development of a legal dimension of public relations in early modern times, including ideas of a self-sufficient society and the legal, contractual character of the State. These ideas and this practice provide the methodological keys

[Institution of the Contract in the Legal Science of Western Europe XI–XVIII Centuries], Moscow 2013, pp. 277–280.

⁸ V.O. Bondaruk, *Розвиток юридичної науки і освіти в Замойській академії (1594–1784 pp.): Дисертація [...] кандидата юридичних наук* [Development of Legal Science and Education in the Zamojska Academy (1594–1784): PhD dissertation], Kyiv 2016, pp. 146, 149–150.

⁹ R. Launay, *Montesquieu: The Specter of Despotism and the Origins of Comparative Law* [in:] *Rethinking the Masters of Comparative Law*, ed. A. Riles, London 2001, p. 24.

¹⁰ H. Grotius, *The Jurisprudence of Holland*, transl. R.W. Lee, Oxford 1926, pp. xiii, xv.

¹¹ *Entanglements in Legal History: Conceptual Approaches*, ed. T. Duve, Frankfurt am Main 2014, p. 11.

to distinguish and understand the evolution of Ukrainian constitutionalism during the period in question.

Ukraine had long and coherent tradition of public-law relations, which began in the (Kyiv) Rus' period (the *riad*, known as early as 862).¹² They matured in a composite State, the Grand Duchy of Lithuania, Rus, and Samogitia (the statute charters, the 'Lithuanian Statutes', etc.). Ukrainian estates took an equal part in the creation and functioning of the constitutional formula of the *Rzecz Pospolita*.

The very idea of *Rzecz Pospolita* creation lies in the framework of Bodin's concept of a new societal State. The essence of the Lublin *Unia* of 1569 can be summarized as follows:

- a) the representatives of the social estates of the historical Ukrainian lands – the Kyiv Land, Pidliashshia, Volyn, and Bratslavshchyna – voluntarily joined the Kingdom of Poland in this process;
- b) the Ukrainian estates together with others from the Kingdom of Poland and the Grand Duchy of Lithuania, Rus, and Samogitia decided to create a single unified State – the *Rzecz Pospolita* (a literal equivalent of *res publica*). The main ideas underlying these acts were: the non-validity of any determination by the monarch of the fate of States without a decision of peoples represented by the social estates; the indestructibility and mutual binding nature of treaties between the estates and monarchs; and the individual State status of the constituent parts of the union, the *Rzecz Pospolita*, and the distinctiveness of corresponding peoples.¹³

The *Artykuły henrykowskie* of 1573 and later *pacta conventa* laid a foundation for two centuries of an uninterrupted Polish, Lithuanian, Ukrainian, and Belarusian constitutional tradition.¹⁴ But massive suppression of the rights of the Ukrainian population including violation of basic constitutional acts led to the legitimate relief from loyalty to king and State and the right to resistance. This legitimacy might be disputable, but only within the framework of written law, public-law customs, and concepts of that time. The resistance started in 1648 and shortly acquired the form of massive war of liberation in Eastern and Central Ukraine with later searches for a new constitutional bases for Ukrainian Statehood.

6. Active attempts to reform the *Rzecz Pospolita* constitutional formula to include the Ukrainian State in the second half of the seventeenth century were not successful.

¹² See for example: V.I. Sergeevich, *Вече и князь. Русское государственное устройство и управление во времена князей Рюриковичей* [Veche and Prince: Russian State Order and Administration in the Time of Riurikovichi Princes], Moscow 1867, pp. 67–75.

¹³ *Volumina Legum*, vol. 2, 2nd ed., St. Petersburg 1859; M. Koialovich, *Люблинская уния или последнее соединение Литовского княжества с королевством Польским на Люблинском сейме 1569 г.* [Lublin Unia or the Last Union of Lithuanian Duchy with Polish Kingdom on Lublin Sejm of 1569], St. Petersburg 1863; *Дневник Люблинского сейма 1569* [The Diary of Lublin Sejm 1569], St. Petersburg 1869; O. Halecki, *Przyłączenie Podlasia, Wołynia i Kijowszczyzny do Korony*, Kraków 1915; *idem, Dzieje unii jagiellońskiej*, vol. 2, Kraków 1920; *Akta unji Polski z Litwą, 1385–1791*, Kraków 1932; *Volumina Constitutionum*, vol. 2, Warsaw 2005.

¹⁴ *Volumina Legum*, vol. 2...

The preconditions for both a new State and a new constitutionalism in Ukraine were created by commissions to consider the complaints of the Cossacks in the first half of the seventeenth century. The results were embodied in treaties ratified by the Sejm and by royal privileges which transformed the Cossacks into a semi-privileged social estate on a certain territory.

Starting with the Treaty of Zboriv¹⁵ in 1649, these acts acquired a new essence. The Ukrainian political entity, *Viysko Zaporozke*, acted as a representative of the interests of an entire sum of personally free social estates of the Dnipro basin region. Ukrainian demands evolved and were directed mainly towards the emancipation of the Eastern Orthodox population, full recognition of the Cossack estate, and wider constitutional reform, including the creation of a Grand Duchy of Rus. These demands were never essentially satisfied; some concessions were temporary, being rather a military or political compromise than a legal one. The treaties of Zboriv (1649), Bila Tserkva (1651), Hadiach (1658–1659), Chudniv (1660), Pidgaytsi (1667), and Ostroh (1670) were of a constitutional character, but in essence were imposed on *Viysko Zaporozke*. There were also some projects to revitalize the Hadiach treaty in 1700–1708.¹⁶

The Zboriv and subsequent treaties could not, in principle, change the legal relations on the lands of the Dnieper basin region and abolish the pre-war power structures and relations of ownership, for not a single branch of power in the *Rzecz Pospolita* had the competence or the will to do this; this was equivalent to the utter breakdown of the entire legal system of the State. Without such change, the *Hetman* government and other central and local agencies of power could not perform any functions except military mobilization, estate-representative functions, and estate-judicial ones. This model did not create substantial legal foundations for the Ukrainian State.

7. In 1654, the Ukrainian State, *Viysko Zaporozke*, entered into constitutional relations with the tsar as monarch and in international-legal relations with Muscovy as a State.

The recognition in the 1649 Treaty of Zboriv of *Viysko Zaporozke* as a negotiating party had profound significance, and with some legal stretch, it was seen as the legitimate representative of the Ukrainian estates. Both Ukrainians and foreign States claimed that essential violations of constitutional provisions gave a people the right to free itself from tyranny.¹⁷ From 1651, *Viysko Zaporozke* proposed that a treaty be concluded with the tsar. Muscovite diplomacy used the argument of constitutional

¹⁵ *Volumina Legum*, vol. 4, St. Petersburg 1859; L. Pritsak, *Основні міжнародні договори Богдана Хмельницького 1648–1657 pp.* [Main International Treaties of Bohdan Khmelnytsky, 1648–1657], Kharkiv 2003; *Diariusz ekspedycji zborowskiej*, ed. M. Nagielski "Przegląd Wschodni" 1991, vol. 1, issue 4.

¹⁶ O.V. Kresin, *Ukrainian Statehood in the Mid-Seventeenth to Early Eighteenth Centuries in Treaties with Foreign States: Principal Legal Models*, "Jus Gentium" 2019, vol. 5, no. 1; 2020, vol. 5, no. 2.

¹⁷ See, among others: L.V. Zaborovski, *Католики, православные, униаты. Проблемы религии в русско-польско-украинских отношениях конца 40-х – 80-х гг. XVII в. Документы. Исследования* [Catholics, Orthodox, Uniates. Problems of Religion in Russian-Polish-Ukrainian Relations at the End of 40s – 80s of the 17th Century: Documents. Studies], vol. 1, Moscow 1998.

obligations in an attempt to reconcile *Viysko Zaporozke* with the *Rzecz Pospolita* and later, in 1653, for justifying the freedom of Ukrainians.

No incorporation of *Viysko Zaporozke* into Muscovy was planned or occurred in 1654, but instead, there was a legitimisation of the Ukrainian State as an all-estate political-territorial formation and not as just a system of Cossack estate self-government (as it was considered in the *Rzecz Pospolita*).

The Pereiaslav-Moscow treaty of 1654 was a complex of foundational uncoded constitutional acts: conditions of *Viysko Zaporozke* (approved by the tsar's government without principal changes, but later falsified), and the particular charters to the Cossacks, *szlachta*, and cities. But no treaty was concluded with the Ukrainian Orthodox church (as the structure representing special social estates and the population of church lands). Later additional treaties of temporary validity and the same constitutional character were concluded: the treaties of Pereiaslav (1659), Baturyn (1663), Moscow (1665), Hlukhiv (1669), Konotop (1672), Pereiaslav (1674), and Kolomak (1687).¹⁸

The procedure of their conclusion provided for: the Ukrainian parties formed and mutually agreed their conditions, the tsar approved them or insisted on changes. The essential fields regulated with these treaties were: the rights and freedoms of social estates, the powers of the authorities, administration and court systems, finances, the tsar's credentials and obligations, etc. Constitutional treaties between Ukraine and the tsars in the second half of the seventeenth century mostly had structured content with coherent and logical sense, in spite of harsh conflicts between the parties.

From 1700, a tendency to ignore and violate the treaties on the part of the tsars became clear. This provoked an unsuccessful massive revolt and war against the tsar between 1708 and 1714. There were later acts of resistance and political emigration. Ukrainian opposition to violations of the treaties was constant and strong for several generations. With limitations and violations, this model survived until 1764 (liquidation of *Hetman* rule), 1783 (liquidation of other central authorities), and the 1830s (liquidation of the Ukrainian legal system).

8. The idea of the social contract idea and its practice in *Viysko Zaporozke* in the seventeenth and eighteenth centuries developed constantly in mutual dialogue.

Some principal concepts and their elements that can be distinguished here are as follows:

- 1) the concept of a free and unconquered people as territorially limited, politically institutionalized inter-estate corporation with inviolable rights; self-determination of the people; the contractual origin of the State; the separateness and indestructibility of the Ukrainian State;

¹⁸ A. Iakovliv, *Українсько-московські договори в XVII–XVIII віках* [Ukrainian-Muscovite Treaties in the 17th–18th Centuries], Warsaw 1934; O.V. Kresin, *Політико-правова спадщина української політичної еміграції першої половини XVIII століття* [Political and Legal Heritage of the Ukrainian Political Emigration of the First Half of the 18th Century], Kyiv 2002.

- 2) the concept of binding constitutional treaties within the people (between social estates and agencies of power) and between the people and the monarch; the contractual character of political power; the right to resistance in cases of the violation of treaties and of tyranny;
- 3) the concept of the consistency and mutual complementarity of natural law, constitutional treaties (the basic social contract with amendments), and constitutional customs;
- 4) however, issues of the division of public and private law were not consistently resolved.¹⁹

9. The Ukrainian Constitution of 1710 arose from the earlier national tradition and was not principally influenced by other traditions.

In 1709, the death of *Hetman* Mazepa, who achieved the unsuccessful war against the tsar, raised the issue of the costs he left behind him. Were they public or private? A special arbitrage (by the Bendery Commission) on the costs revealed serious imprecision and *lacunae* in constitutional treaties and ambiguity in constitutional customs. And, of course, previous treaties of *Viysko Zaporozke* with the tsar lost their legitimacy. All this led to rectification of positions and views.

10. The Ukrainian Constitution of 1710 contained some major innovations caused by a reconsideration of the political and legal crisis.

The original draft of the Constitution was written in Ukrainian, but it also had an official translation into Latin: *Pacta et Constitutiones Legum Libertatumque Exercitus Zaporoviensis inter illustrissimum dominum dominum Philippum Orlik, neoelectum ducem Exercitus Zaporoviensis, et inter generales, colonellos, nec non eundem Exercitum Zaporoviensem, publico utriusque partis laudo conventa ac in libera electione formali iuramento ab eodem illustrissimo duce corroborata, anno domini 1710, Aprilis 5, ad Benderam*.²⁰

It was drafted and adopted by the General Council of *Viysko Zaporozke* on 5 April 1710 together with the election of a new *Hetman*, Pylyp Orlyk. It consists of a Preamble and sixteen articles. The character of the act is defined in the text as the treaty of *Viysko Zaporozke* with the *Hetman*. It had no time limit set on its validity. It was formally intended to define new legal provisions in addition to natural law and constitutional customs, but, in fact, it is codified and quite systematic. The act existed in a set with Orlyk's oath of office and a confirmation diploma from Charles XII of Sweden. He confirmed the Constitution *a posteriori*. *Pacta et Constitutiones* functioned in the Right-Bank region of Ukraine between 1711 and 1714.

¹⁹ O.V. Kresin, *Ukrainian Statehood in the Mid-Seventeenth to Early Eighteenth Centuries...*

²⁰ The Ukrainian original, the 1710 Latin translation, and a modern English translation are published in: "Пакти і Конституції" Української козацької держави [Pacts and Constitutions of the Ukrainian Cossack State], ed. V.A. Smolij, Lviv 2011.

Some of the main provisions of the *Pacta et Constitutiones* of 1710 could be generalized are:

- 1) The *Hetman's* actions were monitored and could be cancelled by a General Council or by a General Court decision. The *Hetman* had to be elected by the General Council with the formal sanction of the king. He might be removed from office by a General Court decision.
- 2) The *Hetman's* credentials were essentially limited: representing the State in relations with the king; presiding over foreign policy according to decisions of the General Council and under the control of the Cabinet of Ministers (*Heneralna Starshyna*); coordinating elections to the General Council and elections of regional authorities; chairing the Cabinet of Ministers; and supervising all administration.
- 3) Parliament – the General Council – had to be elected in its entirety; its composition was defined. Three sessions a year with fixed dates were stipulated. It had legislative and control powers, elected the *Hetman*, and appointed the Cabinet of Ministers as recommended by the *Hetman*.

Some key ideas implemented in the *Pacta et Constitutiones* of 1710 are:

- 1) the idea of an elected constitutional monarchy. The monarch as the guarantor of statehood, of the inviolability of rights, and of defense against foreign enemies. He is above the political system and no more part of it; he has no real internal credentials not a party to the social contract, but only its guarantor;
- 2) autocracy on the part of the monarch and of the *Hetman* is inappropriate. Public and private law should be clearly delimited;
- 3) two possible statuses of territories and peoples in relations with monarchs were defined: a) conquered territory and people – such relations are characterized as subjection and slavery and are unlawful; b) protection – such relations are contractual and constitutional;
- 4) the idea of a free people was refined. It was understood as a population of a certain territory that, realizing its self-determination, is self-governed and has mutually-binding contractual (constitutional) relations with the monarch. The rights of a free people were seen as inalienable.²¹

Conclusions

The idea of a localized self-governed society gradually emerged in Europe with the intellectual movement partly embodied in the Protestant Reformation. The idea of the social contract was rediscovered with the interpretation of the Old Testament, reformulated by European thinkers, and 'legalized' with the generalization and

²¹ O.V. Kresin, *Політико-правова спадщина української політичної еміграції...*; *idem*, "Пакти й конституції законів і вольностей Запорізького війська..." 1710 р. ['Pacts and Constitutions of Laws and Freedoms of Viysko Zaporozke' of 1710], "Український історичний журнал" [Ukrainian Historical Journal] 2005, no. 2.

interpolation of Roman private law doctrine. Two important keys to understand early modern European constitutionalism are the inseparability of international legal and public legal relations, and the collective subject-ness of estates. Ukrainians had a long and quite coherent tradition of public law relations that began in the (Kyiv) Rus' period. They took part in the creation of the *Rzecz Pospolita* constitutional formula as a new type of societal State, but finally found no special place for themselves within this formula as a people equal with Poles and Lithuanians. The Ukrainian State, *Viysko Zaporozke*, from 1654 to 1764 formed its own constitutional tradition internally and in relations with the tsars. However, this constitutional development was repeatedly violated, limited, and then wiped out by Russian imperialism. Features of Ukrainian constitutionalism between 1654 and 1764 were: its uncoded character (a basic fragmented social contract with massive amendments) with codifying trend; the substantive role of ideas of natural law and constitutional customs; and unresolved issues of public and private law separation. The Ukrainian Constitution of 1710 arose primarily from the earlier national tradition and contained major innovations: a more codified character, more institutionalized public relations, and a reduction of monarchical powers, etc.

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Summary

Oleksiy V. Kresin

Early Modern Ukrainian Constitutionalism: A Comparative View

The author trying to consider the Ukrainian constitutional tradition in the wider European context of ideas, concepts, categories, acts, and practices of the sixteenth and seventeenth centuries. He analyses the genesis of the idea of social contract, its main elements, and their realization in international legal and public legal relations. He traces the genesis of Ukrainian constitutional acts of seventeenth and early eighteen centuries from both national, trans-national, and all-European conditions. One of them were shortcomings of the *Rzecz Pospolita* constitutional formula the provided no equal place for Ukrainian people within it. The author shows

that Ukrainian State *Viysko Zaporozke* from 1654 to 1764 formed own constitutional tradition, and discloses its main features. Special attention is devoted to the Ukrainian Constitution of 1710 and its principal innovations features.

Keywords: legal history, history of constitutional law, constitutionalism, Ukrainian law, the Early Modern period.

Streszczenie

Oleksiy V. Kresin

Wczesnonowoczesny ukraiński konstytucjonalizm – perspektywy porównawcze

Autor podjął próbę analizy ukraińskiej tradycji konstytucyjnej w szerszym europejskim kontekście idei, pojęć, kategorii, aktów i praktyk XVI i XVII w. W opracowaniu przedstawiono genezę idei umowy społecznej, jej główne elementy i ich realizację w stosunkach prawno-międzynarodowych i publiczno-prawnych. Ponadto prześledzono genezę ukraińskich aktów konstytucyjnych XVII i XVIII w. w kontekście zarówno narodowych, transnarodowych, jak i ogólnoeuropejskich uwarunkowań. Jednym z nich były niedociągnięcia formuły konstytucyjnej Rzeczypospolitej, która nie zapewniała równego miejsca dla narodu ukraińskiego. Autor pokazuje, że ukraińskie państwo Wojsko Zaporoskie (Hetmanat) od 1654 do 1764 r. ukształtowało własną tradycję konstytucyjną i ujawnia jej główne cechy. Szczególną uwagę w artykule poświęcono ukraińskiej konstytucji z 1710 r. i jej głównym innowacjom.

Słowa kluczowe: historia prawa, historia prawa konstytucyjnego, konstytucjonalizm, prawo ukraińskie, wczesnonowoczesny.