Does Ukraine Have a History of Liberties?
On Early Modern Ukrainian Studies

IVO CERMAN

Shortly before the Russian invasion, President Putin made a public statement on 21 February 2022 in which he labelled Ukraine as a made-up country which actually did not deserve to have an independent existence separate from Russia.¹ Putin argued: „I would like to emphasise again that Ukraine is not just a neighbouring country for us. It is an inalienable part of our own history, culture and spiritual space.”² This was a nice way of saying that Ukraine had never been a separate country. „Since time immemorial, the people living in the south-west of what has historically been Russian land have called themselves Russians and Orthodox Christians. This was the case before the 17th century, when a portion of this territory rejoined the Russian state, and after.”³ Here, Putin refers to Bohdan Khmelnytsky’s uprising, which he interprets as ‘rejoining’ the Russian state. If you ‘rejoin’ something, it means you had been a part of it before. Ukraine appears then as a lost part of Russia, which has merely been returned where it properly belongs.

In a somewhat longer article from July 2021 titled On the Historical Unity of Russians and Ukrainians, Putin maintained that Ukraine, as a state, was the product of the Soviet Communist administration which arbitrarily drew the frontiers of what was called Soviet republics and in this way also invented ‘Ukraine’.⁴ He also recalled the Soviet policy of localism of the 1920s, which sought to revive and expand local identities in an attempt to win over local elites and create the semblance of a genuine federation of states. According to Putin, it was only thanks to this short-lived policy of the early Soviet Union that Ukraine’s language and identity were expanded and the Ukrainian language superseded the multiple dialects in the south-west of Russia. According to Putin, the dissolution of the Soviet empire in 1991 was not carried out in a legally correct way, for the Soviet republics were supposed to take away only what they brought in. Ukraine took away a larger piece of the cake than she was entitled to. At the same time, Putin still insists that the Soviet republics were just a sham, which weakens his

² Ibidem.
³ Ibidem.
claim that these illusionary republics should have been recognized as real owners of something. In both speeches, Putin made repeated references to Ukrainian nationalism, alleged genocide and Nazi traditions.

In spite of Ukraine being “a part of our culture”, Putin never addressed the history of liberties in Ukraine. Putin and Russian propagandists have always been speaking only about the dark sides of Ukrainian identity, about nationalism, collaboration with Nazism and about inter-civilian violence. It appears that only adherence to Russia may save Ukrainians from the victory of lower instincts which would inevitably govern any inhabitants of this part of the world if it separates itself from Russia.

Ukrainian historiography of the post-Soviet era has made considerable efforts to justify the country’s independence, reconstruct the history of its language and the development of its separate identity. It is, however, quite another question to ask whether there was also a history of liberties. Did Ukraine participate in the early-modern European quest for a “liberal state” protecting individual rights? Based on my efforts to reconstruct similar histories for Central Europe, I believe that this question leads inevitably to the issue of secular natural law, legal reforms and institutes of higher learning. Have these issues been tackled in Ukrainian historiography?

In what follows, I will sum up what I learnt from Ukrainian historiographers about their interest in the history of freedoms and liberal state. Our Western colleagues do not appreciate this kind of historiography any more. However, for us in Eastern Europe it is essential to know that the liberties which we acquired after 1989 were not created ‘in the West’, and ‘transferred’ to the East as a foreign product. They were the product of discussions, scholarly works and legal changes of the early modern period, which occurred across Europe and both Americas. Even Central and Eastern European countries participated in these discussions. However, present-day East-Central European countries were parts of larger political entities which transcended national barriers. Whereas Bohemia, Slovakia and a part of Ukraine were parts of the Habsburg monarchy, most of Ukraine was part of the Rzeczpospolita. Contrary to what US historians are writing in their smearing histories of Eastern Europe, historiographers of these countries have learnt


6 It should be noted here that the First Rzeczpospolita has been rehabilitated even in Czech historiography, see Jan Květina, Šlechtická demokracie – Parlamentarismus v polsko-litevském státě v 16.–17. století, Hradec Králové 2011.

7 These smearing US historians and journalists are most often writing on the tragedies of the 20th century, but their books often include chapters on early history. Most often they propound the
to appreciate positively the impact of these early modern polities and abandoned the
negativism of the nationalistic historiographers of old.

My survey focuses solely on post-Soviet Ukrainian historiography, for I aim to show
which trends prevailed in Ukrainian political culture after the country achieved inde-
pendence in 1991. My focus on post-Soviet historiography is also a response to Putin’s
propaganda, which shows Ukraine as a country in which nationalism prevails. You will
see here that Ukrainian constitutional history developed a strong interest in the history
of civic freedoms and had already established a fixed historical narrative starting with
‘Khmelnitsky’s revolution’, but culminating in Hetman Pylyp Orlik’s constitution in
1710. Ukrainian historians are obsessed with freedoms. This can be best illustrated by
the words of the legal historian Ivan Terlyuk from the University of Lviv, who argues
in his dissertation: “The constant of liberties underlies the characteristic features of the
psychology of Ukrainians – libertarianism, democracy, individualism, the idea of equality,
the inadmissibility of violence by the authorities, and so on. It is substantiated that these
natural and legal mental values of Ukrainians form the basis of the process of developing
a set of political and legal ideas of Ukrainian statehood and form the basis for under-
standing the national idea of the Ukrainian people.”

In what follows, I will first of all discuss the way in which Ukrainian historiography
re-evaluates the country’s original ‘reunification’ with Russia. Then I will introduce Or-
lik’s constitution, which is considered as the culmination of an independent Ukrainian
development, before Russia prevailed. Then we will take a look at Natalya Yakovenko’s
critical concept, which puts early modern Ukraine back into the Polish context. After
that we will look deeper into the restoration of the Rzeczpospolita’s place in Ukrainian
history. In the fifth section, we will explore the ‘revisionist’ approaches of Ukrainian
constitutional historians, and in the last section we will look at the issue of rights in the
legal theories of the 18th century, after Ukraine lost its independence.

Rejecting the Thesis of ‘Rejoining Russia’
The first issue that has been revised in post-Soviet historiography is the idea that
Khmelnitsky’s rebellion was a ‘reunification with Russia’. The foundation of the modern

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simple philosophy that multinational empires before 1918 were good, whereas the nation-states of
the 20th century that succeeded them were the beginning of all evils. The paradox is that they are
themselves obsessed with issues of nationalism and never discuss the history of rights and legal
2020; Aram Bakhshian, How Nationalism overcame History in Eastern Europe, at nationalinterest.org
(https://nationalinterest.org/feature/how-nationalism-overcame-history-eastern-europe-163839,
accessed on 27 May 2022)

8 Ivan Terlyuk (І. Я. Терлюк), Українська національна державність: формування державно-
Franko University), p. 9.
unity of Ukraine and Russia was the treaties concluded between the hetman state and Russia between 1654 and 1687. According to the traditional Soviet conception, which was taught even in Czechoslovak schools before 1989, the reunification of Ukrainian Cossacks with Russia was their goal from the very start. According to this conception Bohdan Khmelnitsky started the uprising in 1648, being impelled by a mysterious inner urge to ‘reunite’ Ukraine with Russia. Thanks to undiminished support from his Russian brethren, the oppressed Ukrainian people were finally granted freedom in the Polish-Russian peace treaty of Vilnius in 1656, which made it possible for them to realize their wish and become subjects of the Russian tsar. (It should be noted that the 1656 treaty was a separate peace concluded unilaterally by Russia which actually broke its obligations towards the Ukrainian Cossacks as stipulated in the 1654 Pereiaslav treaty.) This reunification was confirmed by the truce of Andrusov in 1667. The left-bank Ukraine was reunited with Russia and its Slav Orthodox population lived happily ever after. The right-bank Ukraine was still portrayed as living under the feudal yoke of Catholic Poland because the Soviet narrative coupled the issue of Russian expansion with class struggle and national self-determination.

The traditional account usually left out the Ottoman Empire which was, however, still vying for its share of power over Ukraine. Bohdan Khmelnitsky was fighting along with Crimean Tatars, who were vassals of the Ottoman empire. After the truce of Andrusovo in 1667, the hetman Petro Doroshenko, who had reunited both Ukraines, decided to defy the partition plan and put the whole country under the protectorate of the Ottoman Empire. The treaty with the Turks was concluded in 1669 and reaffirmed in 1672. Since the Tatar and Ottoman allies did not treat the local population well, Doroshenko’s regime became extremely unpopular with the common people, and he was forced to resign. However, the Ottoman armies visited the country again due to a new war against the Rzeczpospolita and then, in 1678, due to a new war against Russia. This time, the war ended with the truce of Bakhchisaray in 1681 which confirmed the Turkish control over the right-bank Ukraine. After the Ottoman armies were defeated in Vienna in 1683, Russia joined in the war of the Holy Alliance, hoping to extend its power in the steppes and conquer the Crimea. Surprisingly, neither Russia nor the Rzeczpospolita were very successful.

Ukrainian historiographers challenged the myth of the alleged reunion of 1654. Soon after the fall of the Soviet Union, the Ukrainian Historical Journal republished the classical study of the issue by the interwar legal historian Andriy J. Yakovliv (1872-1955)

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9 Andriy I. Yakovliv / Андрій Іванович Яковлів (1872-1955) was a Ukrainian legal historian and diplomat. He served as ambassador to Austria-Hungary, and after 1919 settled in Prague, where he worked at the Free Ukrainian University. His classical study was written during his stay in Czechoslovakia.
which was originally published as a book in 1934.\textsuperscript{10} The study, entitled *The Treaties between Ukraine and Moscow in the seventeenth and eighteenth Centuries*, was now republished as a series of articles which started in 1993 and ended in 1995.\textsuperscript{11} Yakovliv challenged the idea that the goal of the Cossack hetmans was a ‘reunification’ with Russia. He argued that the Pereiaslav treaty of 1654 was a legal act concluded by two equal states and was supposed to remain in force only for the lifetime of Bohdan Khmelnitsky. Actually, it should have been renewed with each new hetman. Yakovliv put the main emphasis on the fact that the Hetman Ukraine was a state which exercised all the rights of a sovereign political entity.

It goes without saying that the post-Soviet historiography renewed also its interest in the Cossacks who were supposed to be the main creators of the independent hetman state. Shortly before the fall of the Soviet Union, the Lviv publisher Svit reedited Dimytro Yavorintsiky’s *History of the Zaporozhian Cossacks* from 1892.\textsuperscript{12} This unique book revived the interest in the Cossack polity because it described not only political history, but also their way of life, material culture and the habits of the Cossacks. A more recent cultural history of the Cossack has been provided by a team headed by Valeriy Smolyi.\textsuperscript{13}

Contemporary historian Yakov Hordienko stresses that Russia was not Khmelnitsky’s first choice.\textsuperscript{14} He first tried to acquire the protection of the Ottoman Empire, then tried to retain the alliance with the Crimean Tatars, and when these two options failed, he turned to Tsar Mikhail Alexeyevich.\textsuperscript{15} Even further developments during the era of the Ruin (1657–1687) show that submission to Russia was not what the Ukrainian Cossacks wanted. In 1658 the Cossacks made an attempt to reconcile themselves with the Rzeczpospolita and then defeated Russian troops at the battle of Konotop in 1659. Yet Moscow always asserted itself and each new treaty meant further encroachment on the Cossacks’ liberties. In the second treaty of Pereiaslav in 1659, the Cossacks accepted Russian military garrisons on their territory and gave up independence in matters of foreign policy. Another treaty followed in 1669. Hetman

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\item Idem, *Українсько-московські договори в XVII–XVIII віках*, Warszawa 1934.
\item Dimytro Ivanovich Yavorintsiky (Дмитро Іванович Яворницький), *Історія запорозьких козаків*, 3 vols., Lviv 1990. The work had been originally written in Russian, but the reedition was translated into Ukrainian.
\item Valeriy Smolyi (Валерій Смоляй), *Історія українського козацтва. Нариси у двох томах*, 2 vols, Kyiv 2006.
\item Ibidem.
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Ivan Mazepa then confirmed the complete submission to Russia in a new treaty of 1687. Besides, Russia convinced the Patriarch of Constantinople to give up his powers over Ukraine, and the Metropolitan of Kyiv became subject to the Patriarch of Moscow in 1686. Paradoxically, Mazepa, who later became a rebel, started his government by completing the submission of Ukraine to Moscow.

The re-evaluation of the ‘reunification’ in contemporary historiography has also ignited a greater interest in the hetman Ivan Mazepa, who had previously been considered a traitor.16 His crime was that he made the first serious attempt to reverse the trend and cut Ukraine’s ties with Russia.17 Therefore he is seen today as the first liberator of Ukraine. Ivan Mazepa, who is now portrayed as a Ukrainian parallel to Peter the Great, received a European education at the Polish court. He travelled through Western countries and was even familiar with the natural law theories of his times. After he was captured by the left-bank Cossacks, he was brought to the court of the hetman and later became the new leader. He closely cooperated with Peter the Great and shared his policies of opening ‘Russia’ to the West. During the Great Northern War, he changed sides and concluded alliance with Charles XII of Sweden. They were both defeated in the battle of Poltava in 1709. This was the end of the first attempt at liberation from the Russian yoke.

The era of treaties with Russia became the subject of even more intense discussion after the war in Donbass in 2014 broke out. A group of Ukrainian political scientists published a radical volume in which they announced the total failure of the ‘Pereiaslav civilization project’.18 Present-day Ukrainian historiography definitely does not perceive the events of 1654 as a ‘rejoining’ with the Russians. Khmelnitsky is still admired, but no longer as a ‘rejoiner’, but paradoxically as the founder of an independent Ukrainian state.
Hetman Orlik’s Constitution of 1710

The event which is now most important for Ukrainian constitutional history only came after the battle of Poltava in 1709 when Mazepa’s Cossacks retreated from Ukraine into Moldava. Here in the fortress of Bendery (today Bender or Tighina), they sought to re-assemble their forces. Mazepa died on 9 October 1709 and the general clerk Pylyp Orlik was elected his successor as the new hetman on 5 April 1710. After Mazepa’s authoritative rule, the general starshina was eager to regain their position and Orlik had to make concessions. He also needed a strong ally, either in Sweden or in the Ottoman empire. This is how the Constitution originated.

On 5 April 1710 the new hetman Pylyp Orlik signed the *Pacta et Constitutiones* which were something like the *pacta conventa* that each successive Polish king had to accept after the election to the throne.19 It was also a treaty of alliance with Charles XII of Sweden who accepted his commitment in a Confirmatory Diploma on 10 May 1710 (*Confirmatio horum Pactorum a Rege Sueciae*). It did not have an immediate military effect because Orlik was in exile and had only a part of the former Cossack forces with him. Its content is, however, important for constitutional history. The main author of the text of ‘Pacts and Constitutions’ was Hetman Pylyp Orlik himself. He described in it the structure of the Cossack polity and stipulated the powers of each of its branches for the future. The general starshina was supposed to be the supreme legislative branch, whereas the hetman was the head of the executive and the military. Considering the despotic manners of hetman Mazepa, Article 6 of the Constitution stipulated that the hetman would not decide important affairs on his own, but in accordance with the general starshina. Even the rights of Ukrainian cities were guaranteed here. It should be noted that Ukrainian cities were administered according to the Magdeburg law and the burghers therefore enjoyed similar civil liberties to the burghers in Central Europe.20 The Church was dealt with in Article 1, where it was decided that the Metropolitan of Kyiv would no longer obey the Patriarch of Moscow, but the Patriarch of Constantinople. This article also rejected religious toleration, as it ordered that Orthodox Christianity would be the only religion in Ukraine. Jews would not be tolerated.

What is even more interesting is the preamble which gives the motives for abandoning the Russian alliance. It narrates the history of the Cossacks and glorifies their military power, which allegedly began in the time of the ancient Scythians. It glorifies Bohdan Khmelnitsky as the founder of the Cossack state, but it also bemoans the defeats and tragedies of recent times. These are interpreted as God’s punishment for

19. For the text see Miroslav Trofimuk (Миросялав Трофимук) – Valeriy Shevchuk (Валерій Шевчук) (ed.), Пилип Орлик. Конституція, маніфести та літературна спадщина. Вибрані Твори, Київ 2006, pp. 29-126 (Latin, Ukrainian and Russian versions). The text has been reprinted many times in various handbooks on constitutional law and in editions.

20. Тетяна Носенко (Тетяна Гошко-Зайцева), Нариси з історії магдебурзького права в Україні 14- початок 17 ст., Львів 2002.
discord and vanity among the Cossacks. It accuses the Russian tsar of trying to impose ‘a yoke’ on the Cossack nation and recalls the obligation of Cossacks to fight for their liberties. Further articles address the King of Sweden, but also the Khan of the Crimean Tatars, and implore both of them to protect the Cossacks.

Hetman Orlik provided even further explanation of his own political philosophy because he wrote several more tracts that were written to assert the stipulations of the constitution. He wrote instructions for negotiators sent to the Sultan of the Ottoman empire on 3 November 1711, then a Manifesto to European rulers on 4 April 1712, in which he sought to justify the Muslim alliance, and a Deduction of the Rights of Ukraine, plus a Report for Kyiv.21

Orlik’s constitution, as it is called, had already attracted attention already in the 19th century. The Latin version had in fact been published as early as in 1847.22 However, it was only after the new independence of 1991 that it began to be celebrated as the foundational document of Ukrainian liberties. After the new constitution of 1996 was approved, Orlik’s treaty received a fixed place in the new Ukrainian surveys of legal history.

Since then, Ukrainian archivists have been searching for original manuscripts of the precious document.23 The text existed in Latin and Ukrainian-language versions, and the early editions provided only the Latin text. On top of that, the Latin text was based only on a copy and not on the original manuscript. It was known that a Latin version was preserved in the National Archives of Sweden in Stockholm, and the exiled historian Ilya Borschchak (Elie Borschchak) discovered another copy in the château of Denteville in France.24 The Ukrainian version was located in the mid-19th century in the Russian State Archives of Ancient Acts (RDADA). It was discovered by Mikola Mikelayovich Bantish-Kamensky. The Ukrainian archivists tried hard to find the original versions of both


22 Osip Bodyansky (О́ сип Макси́ мович Бодя́нський) (ed.), Переписка и другие бумаги шведского короля Карла XII, польского Станислава Лещинского, татарского хана, турецкого султана, генерального писаря Ф. Орлика, и киевского воеводы, Иосифа Потоцкого, на латинском и польском языках, Moscow 1847, pp. 1-18 (= Чтения в Императорском Обществе Истории и Древностей Российских при Московском университете 3). Online at http://litopys.org.ua/rizne/orl01.htm (accessed on 28 May 2022).

23 The history of the manuscript has been narrated by Olga Borisovna Vovk. See Olga Borisovna Vovk (Ольга Борисівна Вовк), Конституція Пилипа Орлика: оригінал та його історія, Архіви України 2010,№ 3-4, pp. 145-166.

language versions. Whereas the original Latin version has been discovered in Sweden, the Ukrainian version is known only in several copies. On the occasion of the jubilee of 2010, Olga Borisivna Vovk published a critical edition of the Ukrainian version based on the RDADA manuscript. In the meantime, the document has become a standard part of documentary histories of the Ukrainian constitution. Historians would certainly appreciate the slightly modernized Ukrainian version edited by Taras Chukhlib in 2011 which has rendered the fragmentary original text legible without distorting the historical content.

In Ukrainian political culture, Orlik’s Constitution has acquired a status comparable to the respect which US citizens have for the Declaration of Independence. It has been included in documentaries on the constitution and in educational material for schools, and streets have even been named after Pylyp Orlik, one of them in the besieged port of Mariupol. A monument to Pylyp Orlik was unveiled in Kyiv in 2011; its creator is the experienced Soviet-era artist Anatoly Kushch (Анато́лий Васи́льевич Кущ) who was also responsible for the Independence Monument on the Maidan in Kyiv. In the summer of 2021 Sweden submitted the original manuscript of the constitution to Ukraine. The precious monument was exhibited to the public in the National Sanctuary of Sophia of Kyiv.

The „Multi-National” Concept of Natalya Yakovenko

The quest for a new approach to early modern history received a strong impulse from an initiative by the Institute of East-Central Europe in Lublin, Poland. This institution allied itself with partners from countries which exist on the territory of the former Rzeczpospolita of the Two Nations in the early 1990s. Jerzy Kłoczowski, who was the director of the Institute and the driving force behind the initiative, had the intention of transcending “ethnocentric conceptions” of national histories and producing new alternatives. The Institute summoned its partners from Ukraine, Belorussia and Lithuania to regular conferences in Rome, where they established what they called the ‘Federacy of Institutes of East-Central Europe’. Their aim was to produce comprehensive works on the history of each participating country, which would be subsequently translated into the language of the other member countries. The philosophy of this concept was best expressed by the title of Andrzej Sulima Kamiński’s book on Poland: ‘The Rzeczpospolita of Many

References:
25 Published as an appendix to О. Б. Вовк, Конституция, pp. 155–166.
26 Appendix to Taras Чухліб (Тарас Чухліб), Ідеальна держава в Україні? Козацький проект 1710 року, Kyiv 2011, pp. 55–83.
Nations’. It was agreed that Ukrainian history would be processed by Natalya Yakovenko, who would work on the early modern period up to 1772, and Jaroslav Hrycak, who would work on the modern era up to the dissolution of the Soviet Union in 1991.

Natalya Yakovenko, born in 1942, is a classical philologist by education who was also working as an archivist during the 1980s, and from 1987 onwards had a teaching position at the University of Kyiv. After the fall of the Soviet Union, she was herself busy with reflections on the conception of history in education. The slim book with the modest title *Outline of the History of Ukraine* was published in 1997. It was an innovative work, a product of mature reflections on the errors of Soviet historiography and necessities of the present. She copes with the heritage of older Ukrainian historiography in the introduction. She rejects the nationalist conception (created by Mihailo Hrushevsky) and the „statehood” conception (created by Wiaczeslaw Lypyński). The first one was born out of a rejection of the state at a time when the Ukrainians did not have a state of their own. The second one was a conservative conception which glorified the state as an omnipotent institution. Soviet-era historiography inherited the ‘nationalist conception’ as it could not accept the idea of an independent Ukrainian state either.

Yakovenko, on the other hand, aims to write a history of people as individuals. She argues that a ‘society’ is an abstract notion which does not really have an existence of its own. A society is actually composed of individual people, and we have to ask in which ways their shared identities were built. We have to do this by studying particular cases. This emphasis on realism is the defining feature of her style. She also repeats this principle in the guidelines for history lessons in elementary schools in 2009. In this document, she stresses that a historical narrative must follow two main principles: firstly, history must be ‘peopled’ (‘zaludněnie’) by particular individuals. This principle is identical with realism, for only actually existing people and institutions should be taken into account. Secondly, the history of Ukraine must follow ‘a territorial principle’.

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30 Natalya Mikolayevna Yakovenko (Ната́ля Микола́ївна Яковенко), *Нарис історії України з найдавніших часів до кінця XVIII століття*, Kyiv 1997. (Later reedited and expanded under the title *Нарис історії середньовічної та ранньомодерної України*, Kyiv 2005). My page references in the text refer to the Polish translation, which has been completed with new references to sources and where the names of personalities have been written in Latin letters and precisely identified. Natalya Yakovenko, *Historia Ukrainy od czasów najdawniejszych do końca XVIII. wieku*, Lublin 2000.

31 Natalya Yakovenko (Наталя Яковенко) – Lyudmila Vedmіdь (Людмила Ведмідь), *Концепція та програми викладання історії України в школі*, Kyiv 2009.
This means that it must include all social groups, individuals and minorities that existed on Ukrainian territory. Pupils should then understand that a society is composed of heterogenous groups with their own interests, confessions etc. It follows that pupils should learn to distinguish an ‘Ukrainian ethnos’, which is the natural nation, from an ‘Ukrainian nation’, which has been created artificially by means of shared interests, confessions, catastrophes, etc. (Yakovenko followed her territorial principle even in her Outline which actually starts with the constitution of the territory in the middle ages.)

She rejects the conception of a ‘victim nation’ which shows Ukrainians as a suffering people which has been the victim of its neighbours. Pupils should be led towards tolerance, but the dark sides of their own history should not be hidden from them. In her discussion of the controversial uprising of Kołyszczyzna she adds: „A historian should not seek to judge, but to understand.” (p. 327) She insists that the narrative should also include the successes and positive achievements of the Ukrainians, not only catastrophes and failures.

In the introduction to the Outline of the History of Ukraine, Yakovenko concludes with the declaration that she wishes to show events which have been ignored by the nationalist and ‘statehood’ conceptions. She also proposes several ‘discussion problems’: „How should we interpret the ecclesiastical relations between Catholics and Orthodox believers, or between Orthodox and Unity believers in the 16th and 17th centuries, and what the Union of Brest meant for the people? Which role did Poland play (government, nobility, church) at the start of the Cossack wars? What was Khmelnitsky’s action – a Cossack revolution to establish a new state, a civil war, or a war for national liberation? What were the causes of the Ruin? In which forms did ‘Ukrainian identity’ show itself (if it showed itself) in the right-bank Ukraine? Since when can we speak about a national self-consciousness of the Ukrainians?” (p. 16)

Fortunately, she includes the history of law in her narrative; she also provides an almost philosophical explanation of the origin of the modern Ukrainian nation. In her exposition of the origins of the Cossacks, she explains in her realistic way how Cossack democracy was a response to the circumstances in which they lived (p. 148-149). Firstly, the necessity to be always ready for a fight drew the Cossacks together. In this community they had to treat each other as equals; they could not afford to distinguish people on the basis of their ethnicity as „ours” and „theirs”. Thirdly, the disparate groups turned into a community only when they found a strong and generally accepted leader. This figure appeared in the 1550s in the person of Prince Dymitr Wisńiowiecki, who also founded the first Cossack Sich – the fortress on the island of Khortytsia in the Dniipro river. The Sich, which means a fortified base open to all Cossacks, became the defining feature of the Cossack identity until the last Sich was destroyed by Russia in 1775.

However, Yakovenko does not believe that Ukrainian identity started only with the Cossacks. In the opening chapters she provides an unusual explanation of Ukrainian
territorial identity (p. 21-23). She claims that the term did indeed refer to a ‘okray’ borderland, but this was not the borderland of Russia but the Eastern Orthodox borderlands of the Rzeczpospolita. During the 16th century, the term was consolidated as the name of this particular country, and in the mid-17th century Guillaume le Vasseur de Beauplan in his *La Description de l’Ukraine* helped to disseminate this term in the West. Yakovenko’s claim was an affront to Ukrainian nationalist historiography, which insists on the medieval origin of Ukraine, and to the Russian imperial conception which argues that Ukraine has always meant only the ‘okray’ of Russia.

In her exposition of the early modern age, she indeed provides answers to the ‘discussion problems’. The union of Lublin of 1569 (p. 155-157) was a compromise between the federative constitution (proposed by Lithuania) and the full incorporation of Lithuania into Poland (intended by Poland). A community of two equal states within one republic was a compromise. Yakovenko stresses that this shift already gave much greater powers to the Ukrainian local elites than they used to have. The princes lost their rights to hereditary seats in the Senate, but, as representatives of their voivodeship, the princes and middle nobility acquired many more seats in the Senate than they had in the Council of the Great Principality of Lithuania. Between 1569 and 1648 there were 21 persons from the Ukrainian voivodeships in the Senate (p. 156). Contemporaries hardly noticed that Ukraine changed its sovereignty, even though some of them applauded it. Yakovenko actually implies – without saying that explicitly – that the Union of 1569 could already been interpreted as a satisfaction of Ukrainian wishes for autonomy. She emphasizes that the local power of princes in their territories actually increased, and they built huge latifundia because they were newly allowed to buy land everywhere.

This consensus was disturbed by the Union of Brest in 1596. Yakovenko shows that the idea of the reunification of Eastern and Western churches had been discussed ever since the Union of Florence in 1439, but the disturbing element was the rise of the Orthodox church in Russia and the dissatisfaction of some Orthodox nobles. In 1589 the Patriarchate of Moscow was created, and it raised claims to a jurisdiction over ‘all of Russia’. Moscow claimed jurisdiction over Orthodox Ukrainians and Belorussians. The consequence was their agitation among the Cossacks and first uprisings.

What, then, was the meaning of Khmelnytsky’s uprising? Yakovenko shows the origins of his feud with Poland in a petty quarrel over the village of Subotów which was taken from Khmelnytsky by one Daniel Czapliński, a podstarost of Aleksander Koniecpolski (p. 219). It was only after Khmelnytsky failed to get his goods back by legal means that he resorted to an armed rebellion. Since the village of Subotów would not rally many Cossacks on his side, Khmelnytsky raised the slogan of the fight for the ‘Greek religion’. Yakovenko is actually one of the few Ukrainian historians of early modern age, who actually questions labels such as ‘national liberation struggle’ or ‘Cossack revolution’ (p. 215). She is perhaps the only one who includes the horrific anti-Jewish
massacres in her account of Khmelnytsky’s campaigns. It is here that her ‘territorial principle’ is applied in full. She shows with merciless accuracy how much suffering the Cossack fighting caused, which minorities were impacted, and how the violence backfired on the Cossack population. The poor Ukrainians had to reconcile themselves to the looting of their Tatar allies. Yet her narrative does not degenerate into a journalistic account of cruelties and curiosities; she also describes the inner structure of the Cossack community and the administration (p. 241–244). Even though the hetman called himself the head of the ‘Zaporoshskaya army’, the Zaporoshskaya Sich was actually an autonomous unit within the Cossack polity, with its own chief. Yakovenko describes the polity as „a naturally-grown democracy” (p. 242). Yet the failure of the Cossacks to live together caused the era of the Ruin, which Yakovenko interprets as a civil war. The ‘Turkish alternative’, opted for by Hetman Petro Doroshenko, did not work out well. Ukraine became a source for slaves, where Tatars and Turks were freely hunting people. The town of Czehryń was turned into a huge slave market (p. 263). A careful reader must also notice the declining figures of the Cossack army. Whereas Khmelnytsky could muster up to 100 000 men (even though only 40 000 were Cossacks), his successors Mazepa and Orlik could call to arms just a few thousand men. Ukraine must have experienced a devastating depopulation.

Yakovenko wrote her work before Orlik’s Constitution achieved cult status, so she does not treat this subject as the culmination of the freedom fight. She does, however, mention this event (p. 279–282) and also explains convincingly and without sentiment that Ukrainians did not support Orlik’s military campaign of 1711–1712 because they did not have a good experience of the Turkish and Tatar allies. In spite of the beautiful words of Orlik’s constitution, Orlik’s small army was totally dependent on the Turks and Tatars. They were not messengers of Western freedom, but of oriental slavery.

Faithful to her interest in cultural history, Yakovenko supports her account of the Cossack wars with a glimpse into the life of the church and scholars (p. 283–303). She shows that the Orthodox church did not help to unite the divided Ukraine because it too split. Thanks to Russian bribes, the Metropolitan of Kyiv became subject to the Patriarch of Moscow in 1685, and the writing of history also reflected the split. Yakovenko does not deny that the submission to Russia had its partisans among Ukrainian clergy. An anonymous historical tract titled Synopsis from 1674 expressed the pro-Russian conception in full. It saw Ukrainians as one of three girls: Russia, Belorussia and Little Russia. The partisans of an independent Ukraine, for their part, adopted a cultural myth about the Scythian origin of the Cossacks, which was actually an imitation of the Polish Sarmatian myth. This conception was expressed in the historical preamble to Orlik’s constitution and in Samijl Welyczki’s Litopys from 1715. Orlik, in his Deduction of Ukraine’s Rights and in his Manifest from 1712 inferred from it the „human and natural right” of Ukrainians to protest and seek freedom (p. 290). In spite of the destruction
that she describes, Yakovenko believes that the Cossack wars were also a time of cultural flowering, which is also evidenced by the beautiful Baroque buildings of the era.

**Restoring the Place of the Rzeczpospolita in Ukrainian History**

The re-evaluation of the Rzeczpospolita is indeed another important revolution in early modern studies in Ukraine. This particular change has been mainly the work of historians affiliated to the University of Lviv, which has a notable Polish past. The founding father of this school is Mikola Krikun who turned his scholarly attention to the early modern ‘right-bank Cossacks’ as early as in 1968, when his PhD thesis received criticism from a senior researcher who reminded him of unique sources in Russian archives. The most recent representative of this school, as far as the early modern age is concerned, is Oleksandr Vynnichenko, who advances very radical ideas about the significance of the Rzeczpospolita (which he refuses to call ‘Poland’) as a part of Ukrainian history.

The archivist Mikola Hrihorovich Krikun, born in 1932, whose work we will analyse here, focused originally on the right-bank Cossacks and only after 1991 began to publish on the history of the Rzeczpospolita. His studies of the underrated ‘Polish Cossacks’ focus on the period from 1660 to the reign of Hetman Ostap Gogol (1675 to 1679) in the Western Ukraine. Drawing on previously unknown archival material, Krikun managed to reconstruct the demography and administration of the Podilsk Cossack regiment and elucidate the causes of the controversial alliance of Hetman Doroshenko with the Ottoman Empire in 1669. He shed light on the Ottoman campaign in Ukraine in 1674 and on the great migration of 1710-1712 which depopulated the Polish Ukraine. Even this research was significantly different from the works of mainstream Ukrainian historians who were focusing on the mostly pro-Russian hetmanate of Ukraine on the left bank and sought to prove its statehood. Krikun's work focused on the largely forgotten Cossacks on the right bank who had been considered as a part of Poland and therefore as contributing little to the emergence of ‘independent statehood’. Krikun's articles from this long period were republished in one volume in 2006. Here he argued, “The right-bank Cossacks have, just like the left-bank Cossacks, immense merits in the defence of Ukrainian national interests.”

His interest in the Rzeczpospolita led him even further from the mainstream. Shortly after independence, he published a slim monograph on the administration of the Polish part of Ukraine from 15th to the 17th centuries. His views on the reciprocal entangle-

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32 Mikola Hrihorovich Krikun (Мико́ла Григо́рович Крику́н), Між війною і радою. Козацтво правобережної України в другій половині 17. - на початку 18. століть, Київ 2006. In the introduction to this collection of articles Krikun provides an autobiography of his scholarly evolution.

33 Ibidem, p. 11.

ment of the rzeczpospolitan and Ukrainian history have been revealed in a comprehensive manner in a huge *History of Poland* published 2002. Leonid Zashkilnik co-authored the book, but he wrote only the chapters on the 19th and 20th centuries, so the early history was entirely Krikun's interpretation.35

Even the introductory essay to this book stated some revisionist intentions. The authors regretted the tendency to see Poles as enemies, as „the other”, and rejected the stereotyped image of Poles as „aristocratic lords” and „exploiters of Ukraine”. Deeply aware of the role of historiography in shaping such stereotypes, the authors argue: „Such an image [in a book about the history of a foreign nation] is not obligated to create aversions, but to bring people together, and show whether the nation made a larger or a smaller contribution to the achievements of civilization which are now the property of mankind and from which we may benefit.”36

The most interesting parts of this work are the sections in which Krikun deals with the disruptive role of Ukrainian Cossacks during the disintegration of the Rzeczpospolita from 1648 to 1709. These were painful issues which required the Ukrainian historian to make hard choices, but Krikun created an honest historical interpretation which does not hide the negative issues. He prefers to explain the circumstances which compelled the Cossacks to make these choices. Krikun bases his conclusions on a sound political philosophy, in which he rejects the demagoguery of magnates who paralyzed the Rzeczpospolita by their insistence on „golden liberties” and similar short-sighted policies of pro-Russian opposition within the Cossack polity. Without saying that explicitly, Krikun weakens the old interpretation of inevitable ‘reunification with Russia’ by showing the pro-Russian actions of the Cossacks as results of inner struggles between opposing forces. On the other hand, he still calls Khmelnitsky’s uprising a „Ukrainian national struggle for liberation” (p. 175).

Krikun’s discussion of the right-bank Cossacks starts within the section on Poland’s internal politics after 1648 (p. 136). He interprets the formation of the Cossacks as a consequence of colonization, and stresses that the Cossacks were liberated from „feudal duties”. His contribution to the Ukrainian quest for statehood is the curious remark that the Cossack leader Ivan Pidkova seized government in the Principality of Moldova as early as 1577. His narrative soon turns away from institutions to events. The rebellions of Christoph Kotsynsky in 1591 and Severyn Nalyvaiko from 1594 to 1595 were triggered by the Polish sejm’s policies, argues Krikun. The sejm sought to appease the Ottoman Empire by harsh measures against the Cossacks. The new conflicts after the death of Hetman Petro Konashevich Sahaydachny in 1622 were provoked by the succession struggles among Crimean Tatars. After several naval raids of the Cossacks against

36 *Ibidem*, p. 3.
the Turkish coasts, the Polish royal army forced the Cossacks in 1630 to renounce all further privateering activities. The Cossacks were rebelling even during the 1630s, now with the participation of the young Bohdan Khmelnitsky as the clerk, but the Poles managed to crush these riots. The significance of the Cossacks increased during the decade of peace from 1638 to 1648 when Poland did not wage wars and therefore left the military tasks to the Cossacks. In 1646 a Cossacks’ delegation in Warsaw, which also included Khmelnitsky, tried to negotiate „a territorial autonomy”. Krikun implies that the rejection of their demands triggered Khmelnitsky’s uprising. Krikun does discuss the social impact of the Union of Brest of 1596 (p. 162-163), but he does not see it as the impulse for the separatist tendencies of Khmelnitsky’s uprising. He does explain, however, that Kyiv halted the spread of the union by having several of the Orthodox eparchs secretly anointed by the Patriarch of Jerusalem, Theophanes III, who was passing through the city on his way from Moscow. These anointings were not approved by the Polish king.

Khmelnitsky’s rebellion holds a special place in Krikun’s account (pp. 175-179), but he does not try to uncover any deep religious or economic roots of the conflict. The outbreak of the rebellion seems to have been the result of light-hearted policies of the people governing Poland after the death of King Władysław IV, and the peace treaty of Zborów from 1649 seems to be the result of Chancellor Ossoliński’s wise efforts at a compromise. Krikun does not hide Khmelnitsky’s collaboration with the Crimean Khan, but he is silent on the anti-Jewish pogroms committed by the Cossack fighters. The decision of the Council in Pereiaslav to ask Moscow for protection in 1654 is simply explained as a move to balance the losses caused by the defeat at the battle of Berestechko in 1651. On the other hand, Krikun is not silent about the treacherous activities of Khmelnitsky’s Cossacks during the catastrophic Swedish War (1655-1660). However, it was only after Russia allied itself with the Rzeczpospolita in the treaty of Vilno in 1656 that Khmelnitsky joined Sweden. The alliance of Russia and Poland against the Swedish invaders is understandable, but Ukrainian historiography never fails to mention that it was also Russia’s betrayal of their commitments to the Cossacks. Abandoned by the Russian protector, Khelmitsky turned to Sweden and on 6 December 1656 concluded the treaty of Radnom, which was also the „first project on the partition of Poland” (p. 182).

It is mainly the period of Polish-Cossack cohabitation that ensued after Khmel-nitsky’s death that is meritoriously reconstructed in Krikun’s book (p. 183). The Polish-Cossack treaty of 1658 (Гадяцький договір, treaty of Hadiach) is not so famous as the Russian treaties, but it provided Ukraine with autonomy. It was, however, autonomy within the Rzeczpospolita, which was thereby transformed into „a federation of the Polish crown, the Great Principality of Lithuania and the Great Principality of Russia”
This treaty was not implemented in the end. It was also during this period that the Rzeczpospolita achieved a forgotten victory against Moscow in the battle of Konotop in 1659.

Krikun shows that it was due to the pro-Moscow opposition within the Cossack circles that this victory was not exploited. The partisans of Russia were furious about the reconciliation with the Rzeczpospolita and submitted themselves once again to the Tsar in the catastrophic second treaty of Pereiaslav in 1659. It is incredible that the Russian defeat in the battle of Konotop could result in an even greater dependency of Ukraine on Russia. Moreover, the opposition forced Hetman Yuriy Khmelnitsky to resign in 1662. After Pavlo Teteria (Paweł Morzkowski), a partisan of Poland, became the new hetman, the left-bank Cossacks rejected this choice and elected their own pro-Russian hetman Ivan Briukhovetsky. Without great comments, Krikun states that this was the beginning of the division of Ukraine into the left-bank and the right-bank parts (p. 185). It had occurred even before the Polish-Russian treaty of Andrusovo in 1667.

Considering the successes of the right-bank hetman Petro Doroshenko, who united both Ukraines, the treaty of Andrusovo was a betrayal of the Cossacks. Based on his own research, Krikun explains convincingly how this juncture compelled Hetman Doroshenko to seek the protection of the Ottoman empire. On 21-22 March 1669 Doroshenko concluded the controversial treaty of Korsunya which put the hetmanate of Ukraine under Turkish power. Due to this decision, the Cossacks played a pitiful role in the Ottoman campaigns against the Rzeczpospolita from 1672 to 1676. However, they did not join the battle of Khotim in 1673, which resulted in a major Polish victory. Jan Sobieski also solved the problem of Hetman Doroshenko’s stubborn insistence on the Turkish alliance simply by choosing a new hetman. His choice was Ostap Gogol, who led the „Polish Ukraine” from 1675 to 1679. Krikun does not fail to state that the Turks also laid siege to Lviv (p. 196), which was actually the target of many Cossack campaigns against the Rzeczpospolita. On the other hand, the right-bank Ukrainian Cossacks under Semeon Paliy (Семён Палий) participated in the campaign to relieve Vienna in 1683 (p. 197). The victorious wars against the Ottoman Empire that ensued after 1683 did not bring any strategic benefits to the Rzeczpospolita, as Krikun admits, but the „eternal peace treaty of 1686” bound the Rzeczpospolita to respect the religious liberty of the Orthodox church (p. 198). Jan III Sobieski also pragmatically confirmed Cossack freedoms and moved the sejm of 1685 to support this policy. It would seem that shortly before the catastrophe of Poltava, the Ukrainians and Poles learnt to live in harmony with each other.

37 The broader context of these events has been explored in the volume Oleg Rumyantsev – Giovan­na Brogi Bercoff (eds.), The Battle of Konotop 1659. Exploring Alternatives in East European History, Milano 2012. (online: https://books.openedition.org/ledizioni/369, accessed on 26 June 2022).
However, the battle of Poltava in 1709, which has a traditional place in Ukrainian history, concerned only the left-bank hetman state. For the right-bank Ukraine, the catastrophe was rather the Russo-Ottoman war of 1711 to 1714, which resulted in the Russian retreat and transition of the territory to the Rzeczpospolita, as stipulated in the treaty of Andrusovo. The Ottoman empire renounced its claims to the Western Ukraine. Regrettably, the Russians decided they would follow the articles of the treaty in a cunning way. They pulled their troops back from the lost territory, but before then forced the entire population to migrate to the left bank. This forced migration left the Western Ukraine depopulated and economically ruined. Krikun, who explored this forced migration in a specialized study, devotes to this issue only a passing remark in his comprehensive history of Poland (p. 204). He does, however, discuss the hadamak uprisings on the right bank of the Dnipro, in a manner that is strongly reminiscent of the Marxist approach to ‘class struggles’ (p. 210). The hadamak uprisings of 1704-1705 (p. 203), 1734, 1750 and 1768 were a reminder that the cohabitation of Ukrainians and Poles within the Rzeczpospolita was not peaceful even after the Cossacks had bad experiences with the Russians. The Ukrainian Cossacks continued to be a disruptive force and the Koliszczyna of 1768, which is treated here very briefly (p. 234), contributed to the first partition of Poland in 1772.

To sum up, the chapters on the period from 16th century to the beginning of the Saxon era in 1697 provide a unique and very useful interpretation of this era in the history of the ‘Polish Ukraine’. In no small measure, it is also a summary of Krikun’s own research. The period after this date is not tackled with such depth and precision. The latter part of his work provides only orientation points without any contextual narrative.

Oleksiy Vynnichenko represents a younger generation of historians. His research focuses on the rzeczpospolitan „sejms” (i.e. diets) in the voivodeships that represented ‘Ukrainian territory’. In this respect he elaborates on Krikun, who had also conducted research into the sejmiks of the Volyn voivodeships. Vynnichenko worked on the voivodeships of Bielsko, Chelm and Rus.

This research culminated in the multivolume history of Ukrainian parliamentarism which started in 2018 and is still in progress. It is the work of a team of historians from various backgrounds, but most of them have something to do with Polish history.

40 Vitaliy Mikhailovich (Віталій Михайліович), Oleksiy Vynnichenko (Олексій Вінниченко), Igor Teslenko (Ігор Тесленко), Petro Kulakovskyi (Петро Кулаковський), «Прикладом своїх предків...». Історія парламентаризму на українських землях у 1386–1648 роках, Київ 2018, vols 1-2.
Vitaliy Mikhailovich Mikhailovskiy wrote a chapter on the sejms in Poland and the Rzeczpospolita from 15th to the 17th centuries and Oleksiy Vynnichenko processed the period from 1569 to 1648. Igor Telesko added a chapter on the magnates from Ukrainian voivodeships. It does not discuss only the Polish sejms, but also the councils within the Cossack polity and the Cossacks’ participation at the rzeczpospolitan parliamentary life. This is the issue of the last chapter by Petro Kulakovskiy. In his chapter, Vynnichenko provides a cultural history of the sejms. He shows that the local preliminary sejmiks convened most often in churches, they were attended by many individuals and sometimes included even armed fighting (p. 142). A careful survey of their topics (pp. 144-145) shows that during the 1630s and 1640s the local preliminary sejmiks shifted towards topics of local administration. The same evolution can be observed in the evolution of the local postliminary sejmiks (p. 153). The rise of confederacies shows the emancipation of the nobility around 1600 and 1625 (p. 172).

Vynnichenko made interesting comments on Ukrainian historiography of the early modern period in a long interview for the internet website historians.ua on 15 May 2019.\(^{41}\) It has a telling title: *Even the Rzeczpospolita became, thanks to its „mixture”, a pot, in which modern Ukraine was prepared*. He regretted that the focus on ‘statehood’ misled the old-style nationalist historiography into focusing only on the ‘hetmanate’ and disregarding the fate of the right-bank Ukraine. He actually rejects calling the early modern polity Poland because the Rzeczpospolita was more than that. The quest for the history of Ukrainian independence implied that it should be perceived solely as the road of the Hetmanate towards autonomy within the frameworks of the Russian empire. The right-bank Ukraine was regarded as being situated „in the wrong state”, whereas the „national uprisings” against the Rzeczpospolita were interpreted as „struggles for national liberation”. According to Vynnichenko, the differentiation between „Polish” and „Ukrainian nobility” is anachronistic because the most important factor for their identity was their loyalty to the ruler of the state they lived in. All nobles living under Polish government were in a way ‘Polish’, including Bohdan Khmelnitsky. Religious faith and patriotism were also important for early modern nobles, but these values did not hold the first place in their world view.

Vynnichenko admits the value of rzeczpospolitan parliamentarism, but stresses that the regional sejmiks did not have any apparatus with which they could implement their conclusions. The heyday of Polish parliamentarism was the period from 1648 to 1717. In his view, the Rzeczpospolita was not a state based on the „rule of law”, but could be called a state based on „the rule of many laws”. In terms of legal certainties,

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Vynnichenko attributes a great importance to the establishment of the Royal Tribunal for the „Polish lands” in 1578. The Ukrainians had also access to this court of justice.

Vynnichenko summed up his conception in the entry „Rzeczpospolita” for the Encyclopedia of Ukraine. In it, he argues that the Rzeczpospolita should not be considered as the precursor of modern republics, but as a „parliamentary monarchy”. In the factual survey, he does not fail to point out that Ukraine was also the place of many key events in Polish history.

A painful question which is dodged in these Ukrainian works on the Rzeczpospolita is the significance of Kolischyzyna. If we look at the hadamaks’ uprisings in the 18th century, history seems to repeat itself, as if the Ukrainians had started yet again a „national liberation struggle”. If even the leaders of the Kolyischyzyna in 1768 asked Russia for protection, then it would seem to confirm the Russian thesis about the Ukrainian wish to be ‘reunited with Russia’ which is now unanimously rejected.

Shortly after the dissolution of the Soviet Union, Kolischyzyna became the topic of a themed issue of the journal Ukrajinska kossacka drzhava. Valeriy Smoliy provided an introductory essay with a promising title: Kolischyzyna of 1768: overlooked history pages. It is based on the Polish interpretation by Władysław Serczyk. Smoliy sought to reinterpret the uprising as a social protest, in which peasants and Cossacks collaborated. The Ukrainian historian rejected the Russian argument that their invasion of Poland was necessary to save the religious dissidents, but he admitted that members of the Bar Confederation were actually firm in their conviction that there should be no concessions to the Orthodox population of Ukraine. Smoliy also stresses that the Polish freedom fighters committed atrocities against Ukrainians. On the other hand, Smoliy insists that Catherine II in her decree of 9 July 1768 rejected support for the Orthodox rebels and pronounced them to be violators of public peace. In these words, Smoliy tacitly rejects any conjectures on Russia’s role in the uprising. The leaders Zelezniak and Honta were actually arrested by Russian troops and tried in Kyiv. The Ukrainian historian saw a deeper motive for the unrest in the changes in feudal agricultural economy which compelled the landlords to exploit the peasants more than before. Rebranding the Kolischyzyna as a class struggle was actually a method already employed by Polish and Soviet Marxist historiography, but it is also a solution which does not indict either of the two nations. A similar method was applied by others in the themed volume. The most recent Ukrainian publication on the subject – a collection of documents – renounces

43 Iбидем, р. 228.
44 Valeriy Smoliy, Kolíiivščyna 1768 r.: малодосліджені сторінки історії, Українська козацька держава: витоки та шляхи історичного розвитку 1993, pp. 3-12.
45 Władysław Serczyk, Koliszcziżna, Krakow 1968.
any efforts at a new interpretation and declares its reliance on Serczyk’s Polish interpretation. Consequently, the topic has been exploited by the Russian historian Tatyana Tayrova-Yakovleva.  

However, Natalya Yakovenko in her Outline of the History of Ukraine, which we discussed above, provides a different explanation (p. 307-334). She implies that Russia was indeed the instigator of the uprising and abandoned the rebels once they attacked a town beyond the Turkish border and caused an international conflict. The Polish insurgents had been defeated by then, and the Tsarina did not need the Koliszczyzna-rebels anymore.

A Culture of Rights? The Intellectual Context

The last issue I would like to discuss is the efforts of Ukrainian historians to explore the connections between their country and the emerging science of natural law in Europe. As I noted earlier, Ukraine shared the sophisticated legal culture of the Grand Duchy of Lithuania and the Rzeczpospolita, which was based on the Magdeburg law for townspeople and on Lithuanian statues of 1529, 1566 and 1588. The eighteenth century then saw some serious efforts at codification initiated by the Russian authorities. The question here is, however, whether there was any scholarly interest in legal thought or whether Ukrainians had to borrow everything from the West. Constitutional historians have worked on this issue, and they have already developed a fixed narrative that provides a continuous line of legal thinkers which already starts with representatives of Renaissance humanism before 1648 and then follows a period of treaties between the Hetmanate and Moscow, reaching its high point in Orlik’s Constitution of 1710. However, this achievement of Ukrainian constitutionalism is also connected to the loss of independence at the battle of Poltava in 1709. For this reason, the eighteenth century is not a favourite topic for Ukrainian historians. It was a period of gradual disappearance of Ukrainian autonomy within the Russian empire, which was coupled with efforts at codification between 1728-1743. This is a paradox. When constitutional historians discuss the independent hetmanate before 1709, they portray the hetmans as legal thinkers in action, and only the loss of independence compels them to bring legal theorists on the stage again. The inherent element in Ukrainian handbooks on constitutionalism is omnipresent comments about the democratic character of the Ukrainian people, or judgements on the democratic character of this or that measure. Ukrainian constitutional historians are committed to democracy.

46 Ivan Sinyak (Іван Синяк), (ed.), Коліївщина: 1768-1769 роки у документальній та мемуарній спадщині. Том 1: Документи архіву Коша Нової Запорозької, Київ 2019. There is also a popularizing book Nazar Lavrinenko (Н.П.Лавріненко), Максим Залізняк: факти, міфи, зображення, Київ 2012.

47 Татьяна Таyrova-Yakovleva (Татьяна Таирова-Яковлева), Коліївщина. Великі ілюзії, Київ 2019; Eadem, Колиивщина в исторической памяти, Діалог со временем 66, 2019, pp. 37–53.
A glaring example of this commitment is the short *History of the Ukrainian Constitution* by Oleksandr Mikolaievich Mikolenko of 1997. This work also illustrates the wave of such histories which began to appear after Ukraine passed its first post-Soviet constitution in 1996. Mikolenko's work stands out because he was also appointed a judge of the newly established Constitutional Court. Mikolenko created a classical narrative starting with medieval privileges for the Orthodox church and various privileges for towns and nobility, continuing with treaties between Moscow and the Cossacks and reaching its high point with Orlik's Constitution of 1710. The cultural background to this development is populated with various defenders of Orthodoxy against Catholicism, such as the eponymous ‘Chrystophor Filalet (Христофор Филалет)’, to whom Mikolenko attributes „reflections on natural rights” and Kliryk Ostrozkiy (Клірик Острозький), who was supposed to defend the rights of orthodox Christians. Mikolenko does not deny that later apologists of Orthodoxy, such as Stepan Yavorskiy (Степан Яворський) and Feofan Prokopovich, were supporters of Russian samoderzhavie (i.e. absolutism). Yet Mikolenko is somewhat quick in attributing merits for inventions of natural rights to various Ukrainian authors. He believes that several Ukrainian legal thinkers writing about 1500, such as Martinus Ruthenus, „put forward their political and juristic thoughts in favour of natural law one hundred years before T. Hobbes and H. Grotius [did]”. The political goals of Khmelnitsky’s „struggle for national liberation” are interpreted as defence of democracy and division of power, in which the Cossacks „preceded Montesquieu’s conception by two hundred years”. Orlik’s Constitution of 1710 is declared to be the product of „European juristic thought which respected natural rights, liberty of persons and natural rights of nations and the contractual basis of states, inevitable limitation of the monarch’s absolute power”. Mikolenko asserts that the Cossacks drew on the resistance theories of Marsilius of Padua, John Locke, Stanisław Orzechowski, Jean Calvin and the Magna Charta of 1215 and the Bill of Rights of 1689. Reflecting on the definitive loss of autonomy in 1764, Mikolenko regrets that other happier nations, such as the United States, France and Poland, managed to


49 *Ibidem*, p. 15.

50 *Ibidem*, p. 18.

51 *Ibidem*, p. 18.


54 His philosophy has been analysed in Jan Květina, *Mýtus republiky: Identita a politický diskurz rané novověké polské šlechty*, Hradec Králové 2019.
accomplish their work on the constitution and benefited from the „victorious constitutional theory” (p. 27).

A more recent example of this approach is Anatoliy Ivanovich Kozachenko from the Legal Institute of Yaroslav the Wise’s National Legal University in Poltava who provides a rising curve of names and statutes in a History of the Development of Constitutionalism in Ukraine from 2020. It starts with humanist thinkers such as Stanislaw Orzechowski and Yosip Bereshchinskiy. Then the history continues with the plans of the Cossack rebel Severyn Nalyvaiko from 1596, which are appreciated because they promoted liberty. The period from 1648 to 1710 is filled with treaties culminating in a detailed analysis of Orlik’s constitution. In the period of autonomy within the Russian empire after 1710, Kozachenko recalls the natural law thinkers Stephan Yavorskiy and Feofan Prokopovich. In the period after 1764, Kozachenko appreciates Hrihoriy Skovoroda, who is perceived in Ukraine as the country’s greatest philosophical mind. He also mentions Yakiv Kozelskiy, who had been appreciated in the Soviet era for his alleged progressive atheistic thought. Kozachenko’s storyline is sometimes interrupted by comments trying to link Ukrainian developments to the natural rights theories of that time, but his arguments are based solely on the implication that if both developments occurred at the same time, there must have been some connection between them.

Yet historians should not satisfy themselves with the argument of simultaneous existence. Therefore we need more tangible evidence for Ukrainian interest in natural law and natural rights. Contemporary Ukrainian historians tackle this issue mainly in connection with the intellectual profiles of the anti-Russian hetmans Ivan Mazepa and Pylyp Orlik. Their method of choice is often an analysis of libraries of the era, in which they look for Western books on natural law. Content analysis of such works is rarely applied.

The most complex analysis of this sort has been proposed by Taras Chukhlib, director of Stepan Bandera’s Research Institute of the Cossacks in Kyiv and member of the Institute of the History of Ukraine at the National Academy of Sciences in Kyiv. His monograph An Ideal Statehood in Ukraine? of 2011 is based on his earlier articles in which he explored the broader cultural context of Orlik’s constitution. Chukhlib interprets Orlik’s constitution as the expression of an ideal state as early modern Ukrainian intellectuals wished it to be. This is also a nice way of saving the value of Orlik’s constitution against critics who argue that this ideal was not implemented. Chukhlib seeks to prove that Orlik and Ukraine’s orthodox scholars were familiar with Plato’s philosophy.

55 Anatoliy Ivanovich Kozachenko (Анатолій Іванович Козаченко), Історія розвитку конституціоналізму в Україні, Poltava 2020. Another more recent example is Mikhola Tomenko (Михоля Томенко), Україна: історія конституцій, Kyiv 2015.
56 Taras Chukhlib (Тарас Чухліб), Ідеальна держава в Україні? Козацький проект 1710 року, Kyiv 2011.
and therefore the constitution was really inspired by ancient Greek democracy. However, he also argues that it was inspired by modern social contract and natural law theories. Chukhlib supports his argument with hard evidence from Orlik's intellectual education and from the libraries of his time. Orlik came from Lithuania; he was born near Vilnius, and therefore near Jesuit schools. He may have received his early education at the Orthodox monastery of St. Vasilian and later may have attended the Jesuit college in Vilnius. When his mother moved to Ukraine, he attended Petro Mohyla's academy in Kyiv. At the end of his studies, in 1695, Orlik published a panegyrical poem in Latin. Orlik began to work as a clerk in Baturyn, the Hetmanate's administrative capital, where he had access to libraries.

Orlik's love for books is proved also by the correspondence from his exile, where he would ask for purchases of books. Chukhlib claims that legal works were available in the Jesuit college in Lviv, in the Kyiv-Pecherskiy monastery in Kyiv and in Kyiv-Mikhailivsko Zolotoverkhovnnyy monastery. Lipsius's *Politicorum sive civilis doctrinae libri sex* were available in the library of the clerk of the Tomashivskiy regiment (p. 52). According to the research of Olena Dzyuba, Ukrainian libraries had books by Grotius, Lipsius and Pufendorf.57

Besides, Chukhlib seeks to substantiate the influence of contemporary natural law theories by a method of analysis in which he surveys legal or political concepts that appear in Orlik's Constitution and seeks to map their broader history. Thus the defence of sovereignty compels Chukhlib to discuss social contract theories; the criticism of tyranny inspires him to an exposition on the theories of the right to resistance, the invocations of God are set in the context of early modern piety and the articles concerning powers of the hetman and the starshina provide an opportunity to discuss early modern concepts of a limited monarchy and the role of parliaments. Chukhlib sees a parallel between the English Bill of Rights and the Ukrainian Constitutions. The text of Orlik's Constitution is appended to Chukhlib's introductory text. However, if we look at the text, we may notice that Orlik's Constitution rejected religious tolerance in article 1.

Whereas most of the context provided by Taras Chukhlib is merely implied on the basis of chronological parallels and lexical similarities, his exposition on tyranny is substantiated with interesting quotes from Ivan Mazepa's correspondence. They prove that reflections on tyranny were indeed a central topic for Cossack intellectuals (pp. 42-43). After Mazepa broke with Russia and joined Charles XII of Sweden, he wrote a letter to Ivan Skoropadsky dated 30 October 1708 in which he accused the Russians of plots to put the hetman and starshina in „a tyrannical bondage“ (tiranskuyu nyevoli) and warned the Cossacks that Russian victory would inflict on them „tyrannical suffering“

(tiranskye muki). A few days later, Russian troops under Alexander Menshikov sacked the Ukrainian capital Baturyn and murdered all the inhabitants including women and children. In another letter to the Cossacks of the Poltava regiment from March or April 1709, Mazepa warned against „Moscow tyranny” (moskovskuyu tiranyu). The same argument plays a key role in Orlik’s Constitution, as Chukhlib argues, where the hetman also complains about Russian efforts to encroach on Cossacks’ liberties and put the Cossacks under a yoke. The warning against the Russian yoke is in fact repeated throughout the text of the Constitution. It is, however, questionable whether Orlik’s arguments were really rooted in the medieval theories of John of Salisbury and the monarchomachs, as Chukhlib argues.

It is now worth discussing into more detail what Chukhlib has to say about the reception of natural law in Ukraine (pp. 33–41). The question about possible links between Orlik’s Constitution and early modern natural law was posed for the first time by Oleksiy Kresin in an article from 2005 (p. 40). Kresin noticed that Orlik’s Constitution was a new phenomenon in Ukrainian political thought because it stipulated a compromise between the branches of the state, whereas previous treaties were asserting the interest of one branch or one foreign power against others. Kersin was asking where this new approach came from. Chukhlib attributes great influence to Justus Lipsius whose Politicorum...libri have been translated into Polish and whose Monita et exempla were available in the library of the Kyevan-Mohyla academy in Kyiv. In addition, Althusius’s Politica methodice digesta had also been widely known in Ukraine. Chukhlib also assumes the influence of other Western natural law theorists, but he cannot provide any evidence for their presence in Ukrainian libraries. He can only imply the knowledge of Pufendorf, whose theory of a double social contract Chukhlib analyses (p. 38–39). The evidence for the influence of Pufendorf is not based on the structure of libraries but on the fact that his De officio hominis et civis was translated into Russian. The translator was a pro-Russian Ukrainian clerk, Gavril Budzinskiy, who was exiled to Russia. According to Chukhlib, contemporaries had the choice between the absolutist social contract theory of Hobbes, and the liberal social contract theory of John Locke. However, he cannot prove any knowledge of John Locke’s Second Treatise in Ukraine. Actually, it was not a very well-known book on the European continent, so Ukraine cannot be regarded as a backward country. Considering the division of powers in Orlik’s Constitution, we may assume that Chukhlib believes that the Cossacks chose the liberal version. However, his analysis overlooks the illiberal points in the Constitution and in the Cossacks’ actions.

Legal Reforms of the Enlightenment Era

The period after the loss of independence is not considered as a glorious one in Ukrainian historiography. If Ukrainian historians still do focus on the decline of autonomy within the Russian empire, they rather neglect research into the legal reforms conducted by Russia. The changes in higher education during the 18th century are discussed, but it is not a frequent topic either. Another notable feature of the historiography of this era is the decline in interest in the study of serfdom and a spike in studies on nobility.60

The brief government of Hetman Danylo Apostol (from 1728 to 1734) meant a short revival of Ukrainian autonomy. Thanks to the influence of Prince Alexander Menshikov, who followed his own financial interests, the Little Russian Collegium was abolished in 1727, and a new election of hetman was allowed. Danylo Apostol, who was also supported by Menshikov, was elected. He safeguarded his position by negotiating a new treaty known as Twenty-Eight Confirmed Articles. In this treaty Tsar Peter II promised that the Ukrainian people would judge themselves on the basis of their own laws. Since the Russian officials did not know the Cossack laws, it was necessary to collect them, have them translated into Russian, and systematize them in a new code in Russian. This is why a new commission of theologians, officials and lawyers was established in Hlukhiv in 1728, which was assigned the task of drafting this code. The fascinating project of a Ukrainian code of laws, which really preceded similar attempts in European countries by several years, was discovered and described as early as the mid-19th century, but the last monograph devoted to the subject was written by the exiled legal historian Yakovliv in 1949.61 He also reconstructed its political history.62

The codification was nevertheless a great achievement which deserves the attention of Ukrainian historians. Since the aim of this project was to assemble earlier Ukrainian laws that were actually practised, it also sheds light on their previous independent development in the Hetmanate. According to the original instructions from 1728, the codification should have drawn on the Magdeburg law, on the Lithuanian statues of 1588, on the hetman’s orders and on the treaties with Moscow. The new Tsarina Anna ordered the commission to move from Hlukhiv to Moscow in 1735 and perform a systematic codification.63 Her instruction also made a more precise specification of the sources that were supposed to be used. It added, for example, the German Constitutio Criminalis Carolina of 1532 and collections of local laws from various places in Ukraine. In 1741 the commission was moved back to Hlukhiv, and in 1743 it presented

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60 The most successful work was Natalya Yakovenko, Українська шляхта з кінця XIV до середини XVII століття. Волинь і Центральна Україна, Kyiv 1993.

61 А. Яковлів (A. Яковлів), Український Кодекс 1743 року ”Права по которым судился малороссийский народ “, Munich 1949.


63 Ibidem, pp. 21-22.
the Tsarina Elizabeth Petrovna with a draft code. The Ukrainian Code project is an
tangible part of the Enlightenment’s codification efforts. Yet, no standard work on
codification mentions it.64 It would certainly reshuffle the standard interpretation of the
Codification movement, which usually focuses on Germany. Eastern Europe should not
be excluded from the interpretation of such general processes.

Ukrainians also made an important contribution to the famous Legislative Com-
misson of Tsarina Catherine II. When this huge Commission was summoned in 1767,
a Ukrainian autodidact, Yakiv Kozelskiy (Яков Павлович Козельский), published
highly interesting Philosophical Propositions (Философические предложения), in which
he summed up the teachings of the French Enlightenment, and tried to enlighten
the commission members about current opinions on natural law and natural rights.

Besides, he also authored a highly critical essay on the position of the serfs which he also
addressed to the deputies. His name was often mentioned in textbooks published during
the Soviet Union because he was ranked among so-called ‘progressive personalities’. The
reason was his focus on French materialist thinkers, such as Helvétius, but also his criti-
cism of the church and of Russian serfdom. Even though he was living in St Petersburg
at the time of his philosophical emergence, he came from Ukraine and he also returned
there as a clerk of the Little Russian Collegium. Today, he is considered a Ukrainian, but
in spite of that he has not inspired any new research projects in his home country.66

The abolition of the hetmanate in the Russian part of Ukraine in 1764, coupled with
the full integration of the Ukrainian administration in 1781 and the first partition of
Poland in 1772, inaugurated a new era even for Ukraine. What is interesting for the
history of liberties is the impact of the new era on the institutions of higher learning.
Of course, there had been institutions of higher learning even before then. The Petro
Mohyla Academy in Kyiv was open to Western languages and philosophy, and the col-
legia in Kharkiv and Chernihiv were also trying to catch up with Europe. In the Polish
part, the University of Krakow exercised the greatest attraction even for young men
from Ukrainian and Belorussian areas. The competition between confessions instigated
the establishment of the Jesuit college in Lviv and the orthodox academy in Ostroh,

64 Franz Wieacker, Privatrechtsgeschichte der Neuzeit unter besonderer Berücksichtigung der deutschen
Entwicklung, Göttingen 1952; Peter Stein, Roman Law in European History, Cambridge 1999;
65 All his printed works were republished during the Soviet era in an anthology of Russian Enlight-
enment thinkers. Ivan Yakovlevich Shchipano (Ива́н Я́ ковлевич Щипа́но) (ed.), Избраннные
66 He has been the object of research of the circle around Tatyana Artemyeva in St. Petersburg, which
has now resulted in a comprehensive work on Enlightenment metaphysics. Tatyana Artemyeva –
Mikhail Mikeshin, Интеллектуальная культура эпохи Просвещения в России, St. Petersburg
2020.
established by Prince Konstantin-Wasil Ostrogski in 1576. However, the chairs of secular natural law and other modern sciences were introduced only at the new universities established by the state during the late Enlightenment.

In the Habsburg part of Poland, Joseph II made a bold decision and founded a new university in Lviv in 1784, in place of the old Jesuit college. He also introduced there all the new sciences which had been introduced at other Habsburg universities during the reign of Maria Theresa. The first holder of the chair of natural law was Anton Pfleger who was teaching the same concept as other natural law professors in the Habsburg Erblande. The Russian empire established a university in Kharkiv in 1804-1805. Since natural law was forbidden after the horrors of the French Revolution, there was only a Faculty of Moral and Political Sciences there. Tsar Alexander I invited German scholars to this university because he did not have enough confidence in a homegrown intelligentsia. The chair of theoretical and practical philosophy was given to a certain Johann Baptist Schad (1758-1834) who was very supportive of Romantic revolutionary ideas. He celebrated the Russian victory over Napoleon in a public address with the suspicious title De libertate Europae vindicata. Apart from that, he published two textbooks, Institutions philosophiae universae and Institutiones iuris naturae, in 1814. Regrettably, he was denounced by his French colleague Degurov over the last textbook. After a short investigation, Schad was expelled from the university on 8 December 1816. Another notable Enlightenment scholar at Kharkiv was Ferdinand L. Schweikhardt who accepted the chair of legal history in 1810. As a disciple of Gottlieb Hufeland, he was a follower of Kant’s philosophy, but he did not feel comfortable in an environment of rising reaction. In 1817 he fled Kharkiv. The expulsions of Schad and Schweikhardt were a severe blow to the development of liberal thought in Kharkiv.

**Conclusion**

Early modern studies in Ukraine are certainly not trapped in nationalist interpretations. Even though the controversial uprising of Bohdan Khmelnitsky is perceived as the foundational event of independent Ukraine, the liberal constitution of Hetman Pylyp Orlik is today perceived as the liberal result of the Cossack revolution. In present-day Ukrainian political culture, it has achieved cult status. Besides, Natalya Yakovenko has

67 The issue of competition is dealt with nicely in the Russian work on the history of universities, Andrey Andreyev (Андрей Андреев) et alii, Университет в российской империи 18. – первой половины 19. века, Moscow 2012, pp. 93–97.


70 Ibidem, pp. 256–258.
provided a self-critical interpretation of the Cossack wars. Her *Outline of the History of Ukraine* from 1997 is a landmark study based on a specific philosophy of realism. The anti-nationalist tendencies of Ukrainian historiography are also proved by the efforts of Ukrainian historiography to put their country into the proper historical context of the early modern Rzeczpospolita. In this respect, the Lviv school of historiography represented by Mikola Krikun and his disciples is very influential. It is mainly constitutional historiography where the focus on a history of rights has been applied with the greatest consistency. However, the best work on the intellectual context of Orlik’s constitution has been provided by the historian Taras Chukhlib. He also sought to prove links between Orlik’s constitution and early modern European natural law. However, what is neglected is the development of the realm of law after 1709, i.e. under Russian autonomy. In spite of that, there was the great codification project of 1728-1743; there was also Yakiv Kozelskiy’s philosophical work on French natural law, and there were also the chairs of natural law at the newly founded universities in Lviv and Kharkiv which deserve scholarly attention.
Does Ukraine Have a History of Liberties?
On Ukrainian Early Modern Studies

Abstract
The present review article explores the question of whether the post-Soviet Ukrainian historians have shown any interest in the history of liberties in their own country, and if so, what have they discovered on the subject. Firstly, I discuss the way in which Ukrainian historiography re-evaluates the country’s original ‘reunification’ with Russia during Khmelnitsky’s uprising (1648-1654). The uprising is today interpreted as the foundation of an independent hetman state. However, the main change has occurred in the evaluation of what is called Hetman Orlik’s constitution of 1710. It is considered today as the culmination of independent Ukrainian development. It has achieved cult status and is regarded as the first constitution, which introduced the separation of powers and safeguarded the Cossacks’ liberties. The critical interpretation of early modern history by Natalya Yakovenko is appreciated here; because she put early modern Ukraine back into the Polish context, she also developed a specific realistic method of history-writing and critically evaluated the impact of the Cossack wars. The Rzeczpospolita’s place in Ukrainian history has been further defended in the works of Mikola Krikun and Oleksandr Vynnichenko from the University of Lviv. However, it is in the realm of constitutional history that a fixed rights-centred historical narrative has been developed. In the last section, we recall some topics of the era after the loss of independence which are neglected in the Ukrainian research. These are the codification of 1728-1743 and the philosophical work of Yakiv Kozelskiy connected to the Legislative Commission of 1767.

KEYWORDS: Ukraine; Rzeczpospolita; Cossacks; natural law; Pylyp Orlik; Natalya Yakovenko; Yakiv Kozelskiy.