

THE CONSTITUTION OF PYLYP ORLYK*

MYKOLA VASYLENKO

The decision reached by Hetman Mazepa along with certain high-ranking Ukrainian officers and Cossack-Zaporozhians in 1708 to ally themselves with the Swedish King, is one of the episodes of Ukrainian history that is neither clearly understood nor thoroughly studied. Because conditions have been unfavorable, much of the background is still unknown and no research has been done. The most important documents are probably lost. Some may have been destroyed immediately by Hetman Mazepa himself as a quite understandable precaution. His negotiations with Poland and Sweden had evidently been carried on in utmost secrecy; at any moment they could have been detected by the Russian Government and have caused an official inquiry. Under such conditions no written documents that could serve as evidence would have been kept. Very important secret documents had been burnt by Piper, First Secretary of State of Charles XII, near Poltava on the eve of the day he gave himself up as a prisoner to the Russians.¹ One may guess that among these papers were the documents referring to the negotiations between the Swedish Government and the Ukraine. Piper naturally did not want these documents to fall into the hands of the Russian government and thus reveal other more important plans and intents, as well as disclose a wider circle of the officers who had participated in this plot.

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¹ Sergei Solov'yov, *Istoriya Rossii*, Obshchestvennaya Pol'za, Vol. XV, p. 1553. Pylyp Orlyk, "Vyvid prav Ukrayiny" (Deduction des droits de l'Ukraine), a manuscript found in the archives of the Dinteville family in France was published with preface and footnotes by Elie Borschack, *Stara Ukrayina*, I-II, pp. 1-10 (see English translation of Borschack's comments and the reprint of *Deduction...* in this issue).

The interests of many European states were involved in the Northern War, and the Western countries were, in consequence, greatly concerned. Mazepa's decision to join forces with Charles XII was for them the most significant event of this war, since it could help them realize their hopes of tearing the Ukraine from Russia. Many documents referring to this period of Ukrainian history have been kept in different archives, notably the Turkish, Swedish and Polish-Saxonian. Thus far, however, the Turkish archives have been almost inaccessible for research work. The studies of the Swedish archives by N. V. Molchanovsky and Dr. Alfred Jensen, and of those in Dresden by Professor N. N. Aleksandrenko, have yielded poor results. They shed light only upon the less important facts of the movement of Mazepa's followers, particularly on material relating to the fate of Pylyp Orlyk.

But this information became even less important, since the Ukrainians' plans to join Charles XII were not realized; Mazepa's followers lost their political importance and became ordinary emigrés.

The Ukrainian scholar Elie Borschak recently became interested in the fate of this first Ukrainian emigration and has made plans to write an extensive work entitled *Europe and the Ukraine*. The author says that the purpose of the work is the study of political and cultural relations between the Ukraine and the separate states of Europe. Borschak first turned his attention to France where he happened to be at the time of writing. He reports that an extensive six-volume work entitled *France and the Ukraine* is ready for publication.² In studying the relations between European countries and the Ukraine, Borschak naturally had to be concerned with the epoch of Hetman Mazepa and his decision to join Charles XII. In this connection he became interested in the fate of the Ukrainian emigration after the battle near Poltava. He has

² Borschak's report of his research work in archives of Western Europe was sent to the Ukrainian Academy of Sciences in Kiev. A copy was printed in *Zapysky Naukovoho Tovarystva im. Shevchenka*, CXXXIV, pp. 241-248.

published several articles of a preliminary character dealing with these problems,³ using for the most part diplomatic sources which add little to an understanding of the ideology of the Ukrainian emigration. Thus, even with the publication of these works by Borschak, little progress has been made in the study of the movement among the high-ranking officers, which resulted in the decision by some of them to turn to the Swedish King.

As soon as Peter I learned of Mazepa's treason he had good reason to believe that serious events would follow in its wake in the Ukraine, and he therefore immediately initiated a struggle against the traitors. The struggle was waged on two fronts: through terror, with all the cruelty of those times (destruction of Baturyn and extermination of its population by Menshikov), and through the published word. The Tsar issued manifestoes and appeals to the Ukrainian people. These proclamations were usually lengthy, incomprehensible and obscure. One point of view persisted throughout, however, and was imposed upon the people: Mazepa and his followers were pictured as entirely ambitious persons, who out of personal interest had betrayed the Tsar and sold their own people and their orthodox faith to foreigners, for the glory of which the Cossacks had always struggled. The clergy backed this view and ratified it by public damnation of Mazepa. In this way an official stigma was spread about Mazepa. With appropriate variations it was transferred to historiography. The "state" point of view, so to speak, predominated, and the events of 1708-1709 were looked upon and judged from the standpoint of "high treason" against the Russian Tsar, and the harm it might have caused the Russian State.

As for the officers who joined Mazepa, it would be wrong to view them simply as ambitious men. They had, after all, jeopardized their entire welfare for their fatherland in return for a dark and uncertain future.⁴ Judging from their deeds,

³ A guide for 25 short articles, *ibid.*, pp. 245-246.

⁴ M. S. Hrushevsky, "Shveds'ko-Ukrayins'kyi soyuz 1708 roku," *Zaŭrskyi Naukovoho Tovarystva im. Shevchenka*, 1909, Vol. XCII, Book IV, p. 20.

it cannot be denied that they were concerned with the fate of their people. In the time of Peter I the problems of Russia as a state were undoubtedly great, but the Ukrainian people and their interests should not have been ignored. The Ukraine was a living social organism. In their time the Ukrainian people had carried on an unyielding struggle against the Polish Government. To free themselves from Polish domination, the Ukrainian people had entered into an agreement with Moscow, guaranteeing their rights by means of a treaty with the Moscow Government. Then, due to special developments of their economy, they worked out a social-economic order entirely different from that of Moscow, and, quite naturally, strove to guard its principles and foundations. Meanwhile, the Muscovite government tried to impose its will upon the Ukrainian people. Just as the clash of interests of the Cossacks and the Polish nobility has brought about Bohdan Khmelnytsky's treason against Poland, so similar clashes of the Ukraine's interests against those of Moscow brought about Mazepa's treason. However, the character and extent of these events were different. During Khmelnytsky's period the social economic pressures stimulated a real national revolution, which later entirely changed the social order and economy of the country. At the time of Mazepa, however, the people as a whole—the Cossacks and the general populace—did not take part in the movement, and as a consequence Mazepa's plan failed. The reasons for this failure are to be found in the social-economic relations within the Ukraine at the end of the seventeenth and the beginning of the eighteenth centuries. By that time the pattern of the social groups had become quite distinct. A class of economically powerful officers had come into prominence in the government, exploiting the Cossacks and the populace. Since this exploitation caused serious conflicts of interest, the ways of the high-ranking officers and those of the populace and the Cossacks diverged. Therefore, when the officers tried to strengthen their position by joining Charles XII, they found no support among

other classes. Thus Mazepa's attempt to direct Ukrainian life into another channel failed. Still the failure does not diminish the great social significance of this attempt, and it stimulates interest in the study of the ideology of the officers who joined Charles XII.

In this connection, it is important to pay special attention to the treaty signed in Bendery on April 5, 1710, by Hetman Pylyp Orlyk, and the officers, Cossacks and Zaporozhians who had elected him. This agreement can be regarded as a kind of Ukrainian constitution which clarifies the political mood of the Ukrainian emigration at that time. This mood and these ideas had not come into being abroad, or all at once. They were brought by the emigration from the Ukraine where they had been born of the realities and conditions of life that obtained there. We can take for granted, then, that the ideas which Orlyk used as a basis for the treaty were held not only by the emigrés, but also by those conscientious officers who did not break their allegiance to the Moscow Government to join Mazepa.

Mazepa's historical role was ended soon after the battle near Poltava. He died on August 22, 1709, and was entombed in the Church of St. George in Galats.⁵

For more than a half year his followers were without a leader. Finally, an assembly of the General Council was called on April 5 near Bendery. Officers, Cossacks and Zaporozhians took part in this assembly and according to the ancient Cossack traditions they unanimously elected as Hetman Pylyp Orlyk,

⁵ Orlyk writes in his *Diary* that he went to the Church of St. George to visit Mazepa's tomb immediately upon his arrival in Galats, June 14th, 1721; see Elie Borschak, "Z mynuloho," *Khliborobs'ka Ukrayina*, 1922-1923, Book IV, reprint, p. 7. About Orlyk's *Diary*, see the above-mentioned Borschak article, as well as F. Rawita-Gawroński, *Studia i szkice historyczne*, Series II, Lviv, 1900, pp. 29-70; reprinted from *Biblioteka Warszawska*, 1899, Book III, pp. 389-419. Using the article by Rawita-Gawroński, V. P. Horlenko wrote a short essay, "Zapiski Filipa Orlika," *Otbleski*, St. Petersburg, no date, pp. 155-164.

who had been a *heneral'nyi pysar'* (Secretary General of the Host).

Among all the high-ranking officers who followed Mazepa Pylyp Orlyk was without doubt one of the most interesting and distinguished. The Orlyks were Czechs (Bohemians) by origin.⁶ At one time they had lived in Silesia, near the Bohemian border. They were wealthy people of noble origin. Up to the eighteenth century the Orlyks had been titled barons in Silesia. At the time of the Hussite Wars one of Pylyp Orlyk's ancestors moved to Kraków in Poland. It is not known how the Orlyks proceeded later to Lithuania and became landlords there. In Lithuania they owned a village, Kossuta, in Oszmiana County, Vilno Province. In this village Pylyp Orlyk was born on October 11, 1672 (Julian calendar).

His parents evidently belonged to the Greek-Orthodox Church and Pylyp Orlyk was baptized according to those rites. That explains why, after being taught at home or, perhaps, in a local school, he entered the Kiev-Mohyla College (Collegium). Evidently he was graduated very young from there, early in 1690. In 1692, according to O. M. Bodyansky, Orlyk was a student of philosophy.⁷

It can be supposed that Orlyk was one of the promising students in the Collegium. There was a booklet known to Bodyansky entitled in Latin *Ars Poetica ab institutionem neovatum Kijovo-Mohileanorum exposita anno militantis in carne Dei* 1709. It was in the handwriting of Mykola Danylovych Khanenko, the author of the well-known *Diariush*, the diary of Hetman Skoropadsky's last journey to Moscow in 1722. And this booklet included as samples poems in Latin, Polish and Slavonic by Teofan Prokopovych, Stefan Yavorsky and Pylyp Orlyk.⁸

The well-known Stefan Yavorsky was Orlyk's professor of

⁶ Elie Borschak, "Z mynuloho"..., p. 6. F. Rawita-Gawroński, *op. cit.*, pp. 38-39.

⁷ O. M. Bodyansky, Preface to Nikolai Khanenko, *Diariush*, Moscow, reprint from *Chteniya v obshchestve istorii i drevnostei*, 1859, p. VII.

⁸ *Ibid.*

rhetoric and philosophy in this Collegium. Orlyk highly esteemed him as a teacher, and always had great respect for him. This explains why Orlyk in 1721, in one of the hard moments of his life when apparently he thought of returning to the Ukraine, wrote a letter to Yavorsky. He tried to mitigate the bad impression of his personal participation in Mazepa's plot.⁹ The development of the plot was recounted in this letter, and the active role of high-ranking officers was stressed. Countering long-established opinion, Orlyk defined his role as a secondary one, the role of a man whose habit it was to obey the demands of his duty.

While in the Kiev Mohyla Collegium, Orlyk had made his first connections with the Ukraine. He did not return home, but at first maintained his relations with his native country. It is known at least that in 1695 he published in Vilno his eulogy to Mazepa.¹⁰ It must be said that Orlyk never considered himself a Ukrainian, but a foreigner.¹¹ It is not known when he began his career in the Ukraine. In the second half of the 1690's he was a *pyсар* (secretary) in the consistory of the Kiev Metropolitan. It shows that his first connections were made in clerical circles.¹² Later on he was in Poltava. In 1698 the daughter of the *heneral'nyi pyсар* Vasyl' Kochubey married one Colonel Obidovsky from Nizhen, and in connection with this wedding celebration Orlyk wrote a eulogy published in the printing house of the Kiev-Pechersk Monastery.¹³ Rawita-Gawroński thinks that Orlyk pushed his way up to the highest ranks by means of these panegyrics.¹⁴ But when Orlyk wrote the latter panegyric he had already entered into lasting

⁹ Orlyk's letter to Stefan Yavorsky, *Osnova*, October 1862, section "Istoricheskie akty," pp. 1-29.

¹⁰ M. A. Maksimovich, *Sobranie sochinenii*, Kiev, 1880, Vol. III, pp. 713-714. The eulogy was entitled *Alcides Rossiyski, triumfalnym laurem ukoroniwano*.

¹¹ Orlyk's letter to Stefan Yavorsky, *op. cit.*

¹² M. A. Maksimovich, *op. cit.*, p. 713.

¹³ *Ibid.*, p. 714; F. Rawita-Gawroński, *op. cit.*, p. 40. The eulogy was entitled *Hippomcnes Sarmaticus*.

¹⁴ F. Rawita-Gawroński, *op. cit.*, p. 40.

relations with the Poltava officers. On October 23, 1698, he married the daughter of Colonel Hertsyk in Poltava. Hertsyk, wealthy and influential, later became one of the outstanding participants in Mazepa's plot. A year later, on November 6, 1699, Orlyk's first daughter had been born. Her baptism was attended by prominent high-ranking officers of Poltava. Apparently Orlyk, now related to them, joined their circle, and their class interests, naturally, became his own.

Then Orlyk moved from Poltava to Baturyn. It could be suggested that close relations with Kochubey helped him. As a *heneral'nyi pysar'*, Vasyl Kochubey engaged Orlyk as the manager of his office. The Kochubeys may possibly have given Orlyk references to the Hetman. Therefore it was not accidental that at his son's baptism in Baturyn in 1702 the godparents were the Hetman himself and Lyubov Kochubey, the wife of the same Kochubey, who later became a judge and who was to be so cruelly executed by Mazepa.¹⁵ Moving to Baturyn at the beginning of the year 1700, Orlyk swiftly advanced his career in the Hetman's court, and finally, as we know, became a *heneral'nyi pysar'*, trusted by Mazepa. It is impossible to trace his career chronologically. Orlyk achieved it not by wriggling in, or through patronage, as Rawita-Gawroński thinks, but through his cleverness, energy, talents and education. In these he had always been distinguished, and these created a basis for his election as a Hetman. It should be noted that Orlyk, in building his career, continued to consider himself a foreigner. In his letter to Stefan Yavorsky he emphasized the fact that, as a foreigner and a newcomer to the Ukraine, he had never sworn to get his citizenship, nor taken an oath of allegiance to the Russian Tsar, but only to Mazepa who was his Hetman and his lord.¹⁶ Therefore he, Orlyk, never had broken his oath.

Orlyk's role in the Mazepa plot is known only from his letter to Stefan Yavorsky. His sincerity cannot be accepted.

¹⁵ *Ibid.*, p. 41; written on the basis of Orlyk's *Diary*.

¹⁶ Orlyk's letter to Stefan Yavorsky, *op. cit.*, pp. 19-20.

Orlyk's role was certainly underplayed because the purpose of his letter was to prepare the ground for his possible lawful return to the Ukraine. Orlyk was too energetic to limit himself to the passive role of a simple executor, without involving himself personally. Most likely Orlyk had played an active role in Mazepa's plot, since the old Hetman used to consult him alone on many problems. In his letter, however, Orlyk attributes great importance to the high-ranking officers with whom he belonged, and thinks Mazepa would not have decided on such a daring and hazardous step if he had not been urged to it by his officers as well as by the colonels of Myrhorod, Pryluka, and Lubni.¹⁷

The role of the officers (*Starshyna*) in Mazepa's plot had not been a casual one.

This group of high-ranking officers had been formed in the Ukraine by the end of the seventeenth and the beginning of the eighteenth centuries as a strong and economically-influential class. Legally this class did not differ from other Cossacks, but in fact all the power and influence was concentrated in their hands. The *Starshyna*, naturally, tended to secure their influence legally, too. However, the authority of the Hetman, who had a great many prerogatives, stood in their way. The officers tried to limit this power. Not all the *Starshyna* from the lowest ranks to the highest were involved in these plans and aspirations; they were for the most part those counselors closest to the Hetman, officers of the highest ranks and colonels who supervised the separate Ukrainian regiments and administrative units. Their class interests required that the Hetman's authority be limited and subordinated to their influence. These tendencies were disclosed at the time when the Hetman Mnohohrishnyi and the Hetman Samoylovych were deprived of their authority. In order to further their own interests, the officers strove to limit the Hetman's power. In the third paragraph of the

¹⁷ *Ibid.*, p. 27.

Konotop Statutes, adopted at the time of Hetman Samoylovych's election in 1672, it was specified that the Hetman was not allowed to pass judgement or to dismiss a high-ranking officer without consulting them. This measure had been taken to protect the officers from such "bondage and cruelty" as were exercised during Hetman Mnohohrishnyi's rule. Paragraph four forbade the Hetman to correspond with foreign rulers, particularly with Doroshenko.¹⁸ Decisions of the third paragraph of the Konotop Statutes became the principles of the twelfth paragraph of the Pereyaslav Statutes in 1674.¹⁹ Violation of these decisions turned out to be one of the reasons why the officers were dissatisfied with Hetman Samoylovych and deprived him of the Hetman authority, although the main charge against him was "treachery." The petition with the complaints against Hetman Samoylovych was imbued with the class interests of the officers. They had accused the Hetman of acting independently without taking counsel with them, and further, of arbitrary and wilful dismissals and nominations decided without the officers, which violated the requirements of the Konotop and Pereyaslav Statutes. He had dishonored the officers without making fair charges. Estimable and noble people had been treated highhandedly by the Hetman, who at the same time was on familiar terms with low-born people, those who had no merits. In short: "for the *Henera'l'na Starshyna* he (the Hetman) has no proper respect and they are not safe. His wrath or his praise make them feel more dead than death itself."²⁰ The officers were displeased with Samoylovych because he did not belong to the nobility; he was "low-born," yet he considered himself so much higher than everybody else that he did not want his daughter to be married to any of the officers'

¹⁸ D. N. Bantysh-Kamensky, *Istochniki malorossiiskoi istorii*, 2 vols., Moscow, published in *Chteniya v Obshchestve istorii i drevnostei rossiiskikh*, 1858, Vol. 1, pp. 243-244.

¹⁹ *Ibid.*, p. 255.

²⁰ *Ibid.*, p. 302.

sons.²¹ The officers took this as an insult against their feelings and class dignity.

Thus by the last quarter of the seventeenth century the class aspirations of the officers began to take shape. They certainly desired the Hetman to be one of them and wanted themselves to be counselors controlling people's destinies along with him. Legally the officers' participation in the national life of the Ukraine was conceived as strengthening the importance of the Council of Officers and its influence in government. It seems the officers did not think much about the more detailed forms of their participation. At any rate we have no indication that before Orlyk's constitution the *Starshyna* fought for a definite form of legal participation in the governmental life of the Ukraine.

Some guarantees of the official position of the *Starshyna* were determined by the eleventh paragraph of the statutes adopted at the time of Mazepa's election. While the officers had no right to change their Hetman, they were obliged to report to Moscow on his activities. On the other hand, the Hetman was forbidden to dismiss high-ranking officers from their duties without the approval and consent of the Muscovite Government. Had one of the officers performed any criminal act it would also have been necessary to inform Moscow and to have waited until the appropriate orders came before taking action. Such a decree placed the Ukrainian Government in a position of great dependence on Moscow, but for the officers, without any doubt, it meant a definite guarantee as regards their relations with their Hetman, because it could make them independent of the Hetman and lend them a certain feeling of being their own masters. And yet at the time of Mazepa's election the *Heneral'na Starshyna* did not introduce the question of its form of participation in the government.²²

The statutes of Hetman Mazepa placed the relation be-

²¹ *Ibid.*, p. 304.

²² *Ibid.*, p. 315.

tween the Hetman and the *Starshyna* in a precarious position. Those relations were regulated not by firm legal norms but by the political interests of the Moscow Government, which decided, clause by clause, all questions connected with the conflicts between the Hetman and the *Starshyna* with respect to possession of authority. Naturally, the Muscovite Government supported the side which could bring it profit at the moment. Only on the basis of such relations could the case of Kochubey, the *heneral'nyi suddya* (judge), have taken place. On the other hand, the Hetman also had to maneuver and maintain a balance between the *Starshyna* and the Moscow Government. Two aspects of Mazepa's activity as a Hetman may be considered. On the one hand, he was a leader of high-ranking officers and a defender of their interests. On the other, the Moscow Government considered him its loyal subject and faithful follower. Mazepa, profiting from Moscow's strength, had a strong hold over the officers. Under normal conditions, Mazepa would have succeeded in maintaining the balance between Moscow and the *Heneral'na Starshyna*. But this balance was inevitably shaken by such an extraordinary circumstance as the war in the interests of the Russian Empire. Subsequently the imperialistic aspiration of Russia and the interests of the *Heneral'na Starshyna* not only diverged, but became contradictory. Mazepa could not reconcile them. Circumstances were forcing him to take the side of one party or the other, and the old Hetman decided to cast his lot with the interests of the *Heneral'na Starshyna*, who had been closer to him than the alien interests of Moscow imperialism.

As we have learned from Orlyk's letter to Stefan Yavorsky, Mazepa was not alone in breaking his allegiance with Moscow. The Hetman would not have dared to undertake such a hazardous action had he not been urged to it by the *heneral'nyi oboznyi* Lomykovsky and the colonels of Myrhorod, Pryluka and Lubni.²³ The above-mentioned highest officers

²³ Orlyk's letter to Stefan Yavorsky, *Osnova*, October 1862, section "Istoriicheskie akty," p. 27.

had not made their decision suddenly. As may be assumed from Orlyk's letter, political discontent had existed among them before and, presumably, the question at stake was one of more precise legal forms for the political status of the Ukraine. As early as 1707 the *Starshyna* used to gather in the home of the *heneral'nyi oboznyi* Lomykovsky or of Danylo Apostol, the Colonel of Myrhorod, and read the *pacta hadziaczka*, the well-known treaty between the Ukraine and the Government of Poland, concluded in 1659, when Vyhovsky was the Hetman. According to this treaty the Ukraine, which had been under Polish domination at that time, got a more independent status. The officers would take these documents from the library of Kiev-Pechersk Monastery, where they had been kept. We do not know exactly which officers took part in reading and discussing these papers. Orlyk particularly emphasized in his letter that this used to be done in Mazepa's absence.²⁴ The reading of the treaty is evidence of the political discontent and the aspirations among the officers who had begun to think about the legal status of their native country. We cannot estimate the number of officers who had participated in the reading of these pacts, but it could not have been great because of the danger and secrecy connected with meetings of this kind. But beyond question the most conscientious and energetic statesman had been involved.

If the influence of the *Starshyna* in Mazepa's plot is unquestionable, then its position had to become still stronger after Mazepa's death when all his followers were left without a leader. It is known that for more than half a year their situation did not change. This occurred, presumably, because of their protracted consultations before Orlyk's election with the Cossacks who had remained on the Dnieper.²⁵ The emigres, followers of Mazepa, had not recognized Skopodsky as the Hetman. They tried, therefore, to attach an

²⁴ *Ibid.*, p. 11.

²⁵ D. N. Bantysh-Kamensky, *op. cit.*, Vol. II, p. 244.

all-Ukrainian meaning to the election of Orlyk. We should not omit the fact that up to the armistice on the Prut in 1711, these officers had been acting on their firm conviction that the time was near when they would all return to their native country and that the Swedish King would conquer Peter and free the Ukraine from his domination. This is mentioned more than once in the treaty signed by Orlyk.²⁶

The treaty had been drawn up with the firm conviction of an early return to the fatherland, where it would gain juridical status for the whole Ukraine. This treaty seemed to be very real at the moment of its composition, not the theoretical project it turned out to be later after it had become impossible for its authors to return to the Ukraine. The treaty is interesting not only because it expressed the desires and aspirations of the highest Ukrainian officers, but also because it was the first constitutional act in the Ukraine, with the help of which the ruling class independently made its only attempt to establish a legal foundation for the political system of the Ukraine.²⁷

The working out of the treaty was connected with Orlyk's election. As noted earlier, Orlyk had been elected unanimously as an outstanding, energetic statesman, just the kind needed at that uncertain time. "We elected freely and at a single vote His Excellence our lord Pylyp Orlyk as our Hetman," it is said in the introduction to the treaty, "who is worthy of the honor to be a Hetman and who, through his great wisdom and skill, is powerful enough to fulfill these responsible and

²⁶ *Ibid.*, p. 245.

²⁷ The treaty with Orlyk and the documents referring to it were printed in *ibid.*, pp. 242-257 in Russian; in Latin it was published in *Perepiska i drugiia bumagi shvedskago korolya Karla XII, pol'skago Stanislava Leshchinskago, tatarskago khana, turetskago sultana, general'nago pisarya F. Orlika i kievskago voevody Iosifa Pototskago* (Correspondence and Other Papers of the Swedish King, Charles XII, the Polish King, Stanislaw Leszczynski, the Tatar Khan, the Turkish Sultan, the Secretary General, Pylyp Orlyk, and the Kiev Voyevoda, I. Pototsky), *Chteniya v Obshchestve istorii i drevnostei rossiiskikh*, 1847, No. 1, pp. 1-19.

burdensome duties, at this hard time to rule and to tend carefully the interests of Little Russia, our Fatherland, with the help of Our Lord Almighty and the protection of His Majesty His Serene Highness the King of Sweden.”²⁸ The election of Orlyk was conducted, of course, by the *Heneral’na Starshyna*, and the Hetman, naturally, had to obey their requirements and directions. For the first time since Bohdan Khmelnytsky’s rule the officers held a free election of their Hetman without participation or influence of any foreign authority, as had obtained at the time of Moscow domination. The Swedish King did not interfere at all; he only approved the election. Although masters of the situation and highly esteeming Orlyk’s personal qualities, the officers had good reasons to fear lest he should go the way of his predecessors and try to get absolute power. This caused them to demand that the newly-elected Hetman fulfill certain obligations to them. That is presumably why the treaty came to be made.

The treaty was confirmed by the written oath of the new Hetman. It says in part: “Being elected, proclaimed and raised to the highest authority of a Hetman [I pledge] by all means at my command to fulfill completely... this Agreement and its decisions written here, decreed and confirmed in all points, commas and periods, by me and the Zaporozhian Host in the act of election; [I pledge] to love my native country, Little Russia our Mother, to be loyal and to take care of her; to strive as far as my energy, wisdom and means suffice to achieve the welfare of her population, the commonalty, the extension of the rights and liberties of the military forces; [I pledge] never to have any relations with foreign rulers or people who could cause destruction or harm to our Fatherland; to inform the appropriate *Heneral’na Starshyna*, colonels and others of attempts to bring any harm to the native country or to the rights and liberties of the military forces; to honor the eminent

²⁸ D. N. Bantysh-Kamensky, *op. cit.*, Vol. II, p. 244.

and worthy persons among the Zaporozhian Host, to love all the comrades old and young, and to give justice to those who have violated the law.”²⁹ Only the Hetman took the oath; the officers did not.

The form of the oath and the treaty reminds one of the *pacta conventa*, signed by the Polish Kings. Probably the treaty with Orlyk had been influenced by that act. On the other hand, the form of the treaty is so simple that it could have been worked out without any precedent.

There is a system in the arrangement of the material. The treaty begins with a religious formula characteristic of certain solemn juridical acts—wills, for instance: “In the name of the Father, Son and Holy Ghost, in the name of the Holy Trinity glorified.” Further on there is an interesting sentence indicating the everlasting significance of the treaty as a fundamental act, nothing temporary or transient: “Let it be for the eternal glory and memory of the Zaporozhian Host and the entire Little Russian people.” Immediately after that there is an extensive introduction, and later the sixteen articles of the treaty. First are the articles of general significance: about religion (article 1), about territory and borders (article 2), about relations with the Crimea, which at that time had particular significance for the Ukraine and her plans for the future (article 3); two articles (4 and 5) were specifically related to the interests of the Zaporozhian Host. Subsequent articles, beginning with the sixth, are concerned exclusively with the Ukraine, her administration, the solution of problems that had arisen at the time of other Hetmans. These were chiefly financial and economic problems that were painfully felt by everyone in everyday life—rent, obligatory furnishing of horses and vehicles, different kinds of taxes, etc.

On its face value, the treaty is not an act containing strictly formulated norms. In some cases they could be interpreted only after long consideration (for example, article 1, on

²⁹ *Ibid.*, pp. 254-255.

religion); in others, the question of norms was only raised for consideration, and it was left for the Hetman to decide the formulations, as for instance, in article 13, where the inviolability of the Magdeburg right of the towns had been established: the Hetman had to confirm this right and, consequently, to define its legal extents.

Therefore, from the juridical standpoint, the treaty with Orlyk was an incomplete act. Apparently, at that time the juridical thinking of the *Heneral'na Starshyna* was not sufficiently crystallized to be expressed in precise, defined statements. All the same the significance of the treaty is not lessened by this lack of clarity. The formulas of the treaty, although vague and merely descriptive, give a definite impression of the ideological aspirations of the *Starshyna*, which strove as a ruling class to play the leading role in the national life of the Ukraine after the liberation from the domination of the Muscovite Tsar.

Orlyk's election as a Hetman and the treaty were confirmed by the Swedish King in his capacity as protector of the Ukraine. He says in the act of confirmation:

The conditions, or agreements and decrees, as to the rights and liberties of the military forces, between the newly-elected Hetman, and the *Heneral'na Starshyna*, first in the ranks of Little Russian people, together with the Zaporozhian Host, approved mutually, equally by both sides, and at the time of the free election confirmed by the same Hetman on April 5, 1710,—We have seen and praised and found right; and because there is also no other purpose for us but safety and welfare of all citizens, by this writ We confirm them [conditions, agreements, etc.], think them reliable and pledge Our King's word to protect them always and to guard them from any violation.³⁰

Sweden's protectorate of the Ukraine had been established by an agreement of Charles XII with Mazepa. This is evidenced by an interesting document which Ellie Borschak found in the archives of the Dinteville family in France.

³⁰ *Ibid.*, pp. 255-257.

The wife of the eldest son of Pylyp Orlyk (Hryhoriy) came from this family. The document had been written in French and titled *Deduction des droits*.³¹ It was a pamphlet written by Pylyp Orlyk around 1712 with the purpose of clarifying before Europe the rights of the Ukraine and his rights as a Hetman. This *Deduction des droits* mentions some of the points of Mazepa's agreement with Charles XII which give some idea of the juridical relations between Sweden and the Ukraine, created after the Ukrainian Hetman joined the Swedes. Charles XII had to defend the Ukraine and to send arms when demanded by the Hetman and the *Starshyna*. He guaranteed the security of the entire territory of the Ukraine. The trophies of war taken by the Swedes in the Ukraine belonged to them according to the rules of war, with exception of those possessions which had formerly been the properties of the Ukraine. The latter had to be returned to the Ukraine. The rights of the Hetman could not be violated. After the Hetman's death the *Starshyna* would preserve all their rights and liberties including, of course, the right to elect a new Hetman. The Swedish King had no right to use the title and arms of the Ukrainian Hetman. In this way, according to the agreement Orlyk refers to in the *Deduction des droits*, the Ukraine kept her independence and retained the defense and support of Sweden. This was not subjection but simply protection and meant nothing which could contradict the interests of Sweden. Thus it is quite understandable that all the most important laws of the life of the Ukraine as a state had to be approved by the Swedish Government. Such approval was essential to Orlyk's election and his treaty; it was granted because, as it is stated, they "have no other purpose but the security and welfare of the people."

Several mentions are made in Orlyk's treaty of the protection given the Ukraine by the Swedish King.³² These give

³¹ Pylyp Orlyk, "Vyvid prav Ukrayiny," see footnote 1.

³² The introduction to the treaty, also articles 1, 2, and 4.

an opportunity to define more exactly the juridical nature of this protection. The introduction to the treaty says:

The Zaporozhian Host made the decision to put themselves under the protection of His Imperial Most Serene Majesty, the King of Sweden, and are now keeping to it truly and firmly with no other purpose but the restoration and development of their violated rights and liberties.³³

The protection, at first temporary, had to develop into a permanent one. In connection with this, Hetman Orlyk was obliged to achieve an agreement with the Swedish King by which the kings of Sweden were obliged to be real protectors, to help by deed, not only by word. This was needed "to increase the strength of the Ukraine," "to maintain the rights granted her and to guard her borders."³⁴ The Ukraine was not acknowledged as an independent State and could not carry on international relations in her own name. Therefore her protector had to be concerned with the integrity of her territory, her rights and interests.³⁵ It was assumed that, at the time of peace negotiations with Moscow, the Swedish King would try to get the Ukrainian prisoners back from Moscow, would strive to persuade the people of Moscow to clear the lower Dnieper and to force them to destroy their fortifications there, and so on.³⁶ So we see that the Swedish protectorate did not make the Ukrainian people its subjects. It only secured external independance of a free Ukraine and the stability of her domestic life, as expressed by Pylyp Orlyk's election and the conclusion of a treaty with him.

The treaty with Orlyk was composed by the *Heneral'na Starshyna* and Zaporozhians, freely and voluntarily, without outside influence. That is why it has special interest in the history of the development of constitutional thought in the Ukraine.

³³ The last part of the introduction.

³⁴ Article 2 of the treaty.

³⁵ *Ibid.*

³⁶ Articles 2 and 4 of the treaty.

We shall examine it in its component articles. They are organized in a special system which should be followed in order to comprehend the essence of the treaty.

There is a rather extensive introduction to the treaty which stresses two ideas: on the one hand, the idea of an independent, unconquered Ukrainian people whose life with all its vicissitudes is described in a short account; on the other hand, an entirely negative response to the idea of absolute power is expressed. Originally the Ukrainian people had been called the Khozars and had been a vigorous and powerful people. The Khazar princes were related to the emperors of Byzantium. But later the Ukrainians lost their independence and were conquered by the Polish kings. This was a punishment sent by Almighty God who, however, later had pity on the Ukrainians and raised among them Bohdan Khmelnytsky, who liberated the Ukrainian people from the Polish yoke. Then the Ukrainian people came under the power of the Moscow Tsar, but not having the freedom they longed for they broke their allegiance to Moscow at the time of Hetman Mazepa. However, Mazepa did not succeed in bringing his cause to fulfilment. He died. At that difficult time the *Rada* (Council) in Bendery elected Pylyp Orlyk as Hetman. But, because the previous Hetmans, being under authority of an absolute monarch, were themselves infected by absolutism and thus violated the "ancient laws, the rights and liberties of the Host" and imposed burdens upon their people, the *Heneral'na Starshyna* and the *Koshevoy*, together with the Cossack-Zaporozhians, in order to guard themselves for the future, concluded a treaty with Hetman Orlyk, which was binding also for the Hetmans after Orlyk. In this way the treaty was not a temporary one, not a personal agreement by Orlyk with the Zaporozhian Host and the *Heneral'na Starshyna*, but acquired the significance of a constitution, regulating the relations between the Hetman's authority, the Ukrainian *Heneral'na Starshyna*, and the Zaporozhian Host.

The first obligation of the Hetman according to the treaty was to defend the Greek-Orthodox faith and not to let any heterodoxies, especially Hebraism, spread in the Ukraine. After the break with Moscow the Hetman had to apply to the Constantinople Church in order to secure the restoration of the *Ezarkhat*, which had existed earlier in the Ukraine. It is natural that the religious question was the first in the treaty. At the time when it had been composed questions on religion attracted special attention and were considered most essential. The struggle for their religion was of great importance in Cossack history. "Whereas," it is said at the beginning of the first article, "among the three virtues, theological faith is the first, therefore, this first article should deal with the sacred Orthodox faith of the Eastern religion." With respect to its constitutional meaning, the first article is important because it broke the bond with the Muscovite Church and stimulated the beginning of connections with Constantinople. Thus, with the establishment of the *Ezarkhat* the Ukrainian Church could gain more independence.

The Hetman had to protect the integrity and inviolability of the territory of the Ukraine. It was deemed that the borders should reach the River Sluch, as it had been established at the time of Bohdan Khmelnytsky and confirmed by the agreements with Poland and Moscow.³⁷ As for the Crimea, whose support was so important for the Ukrainians at the time they broke their allegiance to Moscow, the relations of brotherhood, military alliance and steady friendship had to be maintained. With the coming of peace and the establishment of the Hetman at his permanent residence, he would have to assume the obligation "not to let a break occur in the relations of friendship and brotherhood with the nobility of the Crimea—as might be done by some head-

³⁷ Mykola Vasylenko, "Terytoriya Ukrayiny XVIII v." (The Territory of the Ukraine of the Seventeenth Century), *Yuvileynyi Zbirnyk VUAN na poshanu akad. D. I. Bahaliya*, Kiev, 1927, pp. 112-132.

strong Ukrainians who in the past had not only broken the concord and good relations with their neighbors but had even destroyed peaceful alliances.

The Zaporozhian Host played a prominent role in the break between the Ukraine and Moscow. Its interests, therefore, assumed special importance in the treaty. The treaty says that the Muscovite State in different ways tried to prevent the development of the "military nest," i.e., *Zaporozhian Sich*. The Muscovites built their fortresses on the grounds and estates belonging to the Host. This disturbed the Zaporozhians' fishing and hunting. It caused property damage and in different ways violated the Cossack rights. It was the duty of the Hetman to try, with the help of the Swedish King, to stop all these violations and to rid the Zaporozhian territory of the Moscow fortifications. It was the Hetman's concern to combat all such harmful activity and to help the Cossack-Zaporozhians in every possible way in the future. It must be admitted that military help was meant also. The Hetman was obliged to return the town of Terekhtemyriv to the Host, also to build a home there for the aged, the indigent and the Zaporozhian invalids. A long strip of ground along the banks of the Dnieper, down from Perevolochna to Ochakiv, with fishing rights and water-mills, as well as the mills along the river Vorskla in the Regiment of Poltava, became the property of the Zaporozhian Host. All these properties were proclaimed as belonging to the Cossacks in perpetuity. The order of domestic life in Zaporizhzhya was not to be changed in any way. Not one word about any change was mentioned in the treaty, whereas the sixth article of the treaty introduces new principles for the organization of all of the rest of the Ukraine, which in the opinion of the drafters of the treaty had to be reunited very soon under the authority of the one Hetman, Pylyp Orlyk, whom they considered legitimately elected, without outside force or pressure.

The sixth article of the treaty represents an interesting

attempt to give form to the *Heneral'na Starshyna's* political aspirations which had been initiated and matured during the second half of the seventeenth century.

The basic principle of this paragraph of the treaty was the negative, even hostile, attitude of the *Heneral'na Starshyna* toward the idea of an absolute monarch's authority. In the introduction to the treaty it is stated:

The former Hetmans, being under the absolute monarchy of Moscow, became so impudent as to take for themselves absolute power against right and justice, thus bringing great harm to the ancient customs, rights and liberties of the Host... to prevent, especially at such a time as we now have, the kind of violation of rights in the future... [the Cossacks concluded the treaty with the newly-elected Hetman].

Almost the same wording is repeated in the sixth article:

Some Hetmans of the Zaporozhian Host quite unjustly and without any right grasped absolute power, later legalizing the act themselves thus: "I wish so, and so I order." Out of this absolute power, indecent in the authority of a Hetman, there arose in our fatherland and in the Zaporozhian Host many disorders, the collapse of rights, liberties, much stress and strain, violence and bribery in military administration, and lack of respect for the *Heneral'na Starshyna*, for the colonels and other prominent personalities.

The sixth article of the treaty was established to make the Hetman's aspirations to absolutism impossible in the future. This article further says:

In states dominated by rulers with absolute power a system worthy of praise and useful for the community is kept: to call in wartime as well as in peace private and public councils when there are problems important for the welfare of the whole country. The rulers are to be present and preside at these meetings. They must not avoid presenting their own proposals for discussion and decision by their masters and councilors. Why, then, is there no such safeguard system maintained by free people although there is no doubt that such system had been maintained by the Zaporozhian Host under the rule of previous Hetmans until now?

The purpose of the treaty was to re-establish this order and to maintain it in the future: "Such rights as this... is to be preserved in Zaporizhzhya forever."

The essence of this "right" was as follows: a council would have to function together with the Hetman in order to prevent the development of his absolute authority. The Hetman could not undertake any serious step without the consent and approval of such council. The General Council would consist of the councilors. The first place in the Council would be occupied by the high-ranking officers (*Heneral'na Starshyna*) because of their high official positions and also because of their permanence in the residence of the Hetman. Then would follow the colonels who supervised the separate town regiments, to whom the agreement with Orlyk also imparted the functions of Hetman's councilors. In addition, special general councilors were to be elected, one from each regiment, from among the most outstanding, intelligent and worthy elders, if the Hetman approved them as members of the Council. The councilors would have to take a special oath according to established custom. The Cossacks of the Zaporozhian Host had their deputies as special representatives in the Council.

The periods for holding the general meetings of the Council were strictly stipulated by the treaty. There were three terms: the first one at Christmas, the second at Easter, the third on October 1st, the day of the *Pokrova* of the Holy Mother of God. All the members of the Council—the *Heneral'na Starshyna*, the colonels and the general councilors from the regiments would be obliged to come to these assemblies. The representatives from the Zaporozhian Host were to be summoned by special ordinances and were to arrive at the specified times. The Hetman, of course, was to take part in the assembly, as this was the meeting of his Council. The functions of the Council were defined only in general outline by the treaty—the councilors had to confer "on matters involving the entirety of their fatherland, the welfare of her citizens, and all the matters of public concern." The Hetman's activity

was to be subjected to control and criticism, and he was not supposed to make reprisals because of this. In general, all matters before the Council were to be decided conscientiously, not in any private interest, without hostility, and without the Hetman's authority.

In addition to these general assemblies of the Council, there were also to be meetings of the Hetman and the *Heneral'na Sttarshyna*. These should take place in the periods between the terms appointed for the general assemblies, when it would be necessary to decide important matters without delay or to correspond with foreign countries. The Hetman would be obliged to present all foreign correspondence to the *Heneral'na Starshyna* who thus would control foreign relations.

The *Heneral'na Starshyna*, colonels and general councilors would be obliged to treat the Hetman with full respect. Similarly, on his part, the Hetman would treat the councilors as his comrades, not as his servants and workers, not to humiliate them publicly, and not to compel them to remain standing without necessity, etc.

The general councilors elected by the regiments would be also important in the local administration. Together with the colonels they were to have the right to keep an eye on the entire order of the regiment and to govern it in mutual agreement, remove injustices and alleviate the burdens of the people. In this way too, though somewhat vague in form, a sort of public control would be created over the colonels in the regiments.

The legal authority of the Hetman would also be limited. When offended he had no right to pass judgment himself but had to turn the case over for judgment to the general court. The *Heneral'na Starshyna* would now take a relatively more independent position with respect to their Hetman. They also would have the right to report to the Hetman on their respective responsibilities.

Still further restrictions of the Hetman's authority were

planned in the financial domain. The Hetman was completely side-stepped in disposing of the Host's treasury. He had to be satisfied once and for all with the income stipulated for him, and the same applied to the colonels. To supervise the treasury and all the incomes and expenses of the Zaporozhian Host, the special post of General *Podskarbiy* (Treasurer) was established, independent of the Hetman. It was to be filled by election from among the prominent, estimable, well-to-do and trustworthy people. The general treasurer took a special oath and was obliged to live wherever the Hetman made his residence. The regiment treasurers, two in each regiment, were subordinated to the general treasurer. They also were elected from among worthy people of means, and had to take the oath, too. Evidently, being well-to-do was demanded as a condition for election of treasurer in order that losses and embezzlements, if they occurred, would be paid out of the treasurer's property. The regiment treasurers collected income and sent it to the general treasurer. They were obliged to render an account to him. The colonels as well as the Hetman were not to have any connection with finances in any way and had to be satisfied, as has already been noted, with the incomes and estates strictly fixed as their allowances.

The Hetman still had charge of general surveillance over the administration. He was obliged not to tolerate any abuse or oppression of the people, of the Cossacks and the deputies. In consideration of the Hetman's previous practise of making the highest appointments attainable through bribery, the treaty with Orlyk specifically forbade bribery, and established official positions as elective. "Military as well as civil officers, especially colonels," we read in the tenth article of the treaty, "should be elected by free vote." However, the election could take place only when approved by the Hetman and confirmed by him. The same rules applied to the regiment posts. The colonels were forbidden, too, to appoint the *sotnyks* (captains) and other officers without a free election

by the whole *sotnya* (a unit of Cossacks). Dismissal from duty by the Hetmans of colonels at their personal discretion was also limited, though there were no precise rules in the treaty as to this question.

Rightly speaking, there are all the treaty decisions relating to international relations and internal regime of the Ukraine. Articles eleven-sixteen dealt with those details which were dictated by living conditions and therefore were important for the way of life itself. The eleventh article confirms the old principle of the Ukrainian common law, according to which widows and wives of Cossacks, as well as their orphans, were exempted from general taxes and obligations in token of respect for the military service of their husbands and fathers. Article twelve dealt with control of rights of landlords who were granted estates with populations, as well as with establishment of regulations concerning such grants. Of course, all questions connected with this were to be decided not by the Hetman's authority, but by the General Council. Further in the treaty there was a confirmation of the rights and privileges of Kiev; also a prohibition of abuse of the obligation to furnish horses and vehicles. The question of leases had to be referred to the General Council, but the Hetman through administrative orders regulated the question of excessive levies at the fairs.

Such is the general outline of the treaty with Orlyk. We see the Ukraine, although under the protectorate of the Swedish King, entirely independent in her domestic affairs. The Zaporozhian Host maintains its organization and its internal administration, and is bound to the Ukraine politically, having a common agency with her in the general council, to which it sends its deputies in order to act in concert with it—for "listening and complaining," as it is put in the treaty. The Hetman's authority is greatly limited. He has to carry out international agreements confirmed by the Council as, for example, the agreements with the Crimea (which are the subject of the third article of the treaty). His

political activity is under the control of the General Council which decides all the most important matters. The Hetman is obliged to obey unconditionally the decisions of the Council.

Was the General Council a legislative organ? It is not directly referred to as such. At that time there had not yet been the theory of separation of authority. The Hetman was not forbidden to issue *Universals*, but since the General Council was charged with matters concerning the common welfare, it must be surmised that the Council also was considered a legislative body, not merely an organ for control of the authority of the Hetman. If we accept it as so, then the Hetman's authority was considerably limited in this respect. The strict carrying into effect of the principle of elections, although with the consent of the Hetman, unquestionably limited his authority to a great degree and constricted his influence, while exclusion from his office of financial administration and revision of the right of possession of estates further placed the Hetman in the position of just the highest executive officer—and that only. Thus the important basic idea of the treaty with Orlyk becomes clear as a struggle with the arbitrariness and the absolute power of the Hetmans, who more than once put into practise the principle: "I wish it so, and I command it!" The primary purpose of the treaty was, without doubt, subordination of the Hetman to the authority of the *Heneral'na Starshyna* and its main body, the General Council, which was comprised of representatives of the most influential and wealthy class of that time.

Unfortunately, Orlyk's treaty was not put into practise. Circumstances at that time prevented it. The victor of the war was not the protector of the Ukraine, the Swedish King Charles XII, but Peter I—the enemy of Orlyk and the Zaporozhians. From the time of the Peace at Prut in 1711, all hope of the émigrés for return to their fatherland was lost. Their situation became still more hopeless after the Nystad Peace had been concluded in 1721. Orlyk himself thought then about returning to his native country, not as a Hetman, of

course, but as a repentant émigré. Under the above circumstances, the agreement with him could not have had real meaning. It remained only as an interesting memorial of the constitutional thinking of the Ukrainian officers at the beginning of the eighteenth century, a product of their class consciousness.

The *Starshyna* still strove to subjugate the Hetman's authority at that time but the circumstances were not favorable for it. The authority of the Hetman met in Peter I and the Russian Government in general an enemy stronger than the *Starshyna*. They were the enemies of the entire Ukrainian national order, including the *Starshyna* who desired to be the stronghold of this order. By the beginning of the 1720's, due to measures taken by the Russian Government, the Hetman's authority no longer existed. The *Starshyna* was weakened by the introduction of such alien elements as foreigners and Great-Russians into their midst. The weak opposition of the Ukrainian officers against the new course of Russian Government policies brought, we know, very sad results for the oppositionists—Polubotok and others. After the most energetic elements emigrated, the *Starshyna*, disorganized by the treachery of Mazepa, could not have been strong enough to support the opposition. True, in a short time political consideration forced the Russian Government to re-establish the authority of the Hetman, but greatly reduced. Danylo Pavlovych Apostol, a decrepit colonel of Myrhorod who, according to Orlyk, had been one of the outstanding participants in Mazepa's plot, was elected as Hetman in 1728. We know that the officers had often come together in Apostol's home to read and discuss the *Hadyats'ki pakty*. More recently, at the time of Polubotok, the name of Apostol had been involved in the composition of the so-called *kolomats'ki chelobytni* (Kolomak petitions). But Apostol achieved the authority of a Hetman when he was very old and incapable of leading political movements even if they had arisen. But such movements were not manifested outwardly, though the

ideas expressed in Orlyk's treaty were kept alive by the *Starshyna* class during the entire eighteenth century.

L. A. Okinshevich, a young Ukrainian law historian, while doing his research work in the Moscow Archive, succeeded in finding among papers referring to the rule of the Hetman Skoropadsky and Apostol a rough copy, unsigned and undated, of a very interesting document³⁸ concerning, in this author's opinion, the last years of Skoropadsky. This can be inferred because in the document there is repeated reference to the Hetman's misuse of his authority for the sake of his relatives. And this was well known to be characteristic of Hetman Skoropadsky's rule. Mention is also made in this document of the necessity for establishing the post of treasurer (*podskarbiy*) which could also refer to Skoropadsky's time, because treasurers already existed at the time of Apostol.

This document introduces the subject of the importance of the high ranking officers (*Heneral'na Starshyna*) to the Hetman's court. They were to be properly respected, to carry weight in various affairs, to be free to vote at conferences and to possess real power. The same position was to be held by the colonels. If the *Starshyna* and the colonels were to notice the Hetman acting improperly, contrary to military orders, they should point it out to him. The Hetman had to appreciate such comments and not to construe them as irritation or hostility, because everyone doing his duty was obliged to observe that there be order and well-being among the "people of Little Russia." If we compare these ideas with those in Orlyk's treaty we find them very similar, with some changes, of course, according to the time and new po-

³⁸ The original, without signature or date, written in Ukrainian, is kept in the book No. 79-1806 of the *Malor. Eksped. Senat* in the Moscow Archive (among the documents of Skoropadsky-Apostol's time), pp. 193-195. A copy in Russian writing is kept with it (pp. 196-199), but it is extremely inaccurate. This document was published in the supplement to the Report about L. A. Okinshevich's mission in *Pratsi Komisiyi dlya vyuchuvannya zakhidno-rus'koho ta ukrayins'koho prava pry Ukrains'kii Akademiyi Nauk*, 1927 Vol. III, pp. 361-362.

litical circumstances. In Orlyk's treaty it was thought, for instance, that the *Heneral'na Starshyna* should be elected, with the consent of the Hetman. Yet this document speaks of the appointment of the officers, after the election, by the decree of His Imperial Majesty, and so on.

The appointment of the *Starshyna* and *sotnyks* (captains) was to be made only by the Hetman together with the *Heneral'na Starshyna* on the recommendation of candidates for the regiments. They could be dismissed or their estates could be confiscated only after abuses had been investigated by the general court. These juridical guarantees were assumed for the *Starshyna*. The *Heneral'na Starshyna* had to play a special role in the appointment of a Hetman's relatives to certain posts or in granting them estates. This could be carried on only after proper attestations and with the approval of the *Heneral'na Starshyna*. It was necessary to control the rights to possession of estates so that there would be enough for the officials. The Hetman had to be satisfied with the amount of goods allotted to him and dared not collect more than was allowed, or to exploit the labor of the citizens for his own profit. We met similar determinations in Orlyk's treaty, as well as the limitation of the legal authority of the Hetman. This document provided for application to the highest authority for a special decree prohibiting the Hetman from imposing any punishment upon nobles, respected persons, "Little-Russians," and officers, without trial or inquest. All cases had to be tried in court "according to the just Little-Russian laws, acting without severity or anger. The Hetman had no right to alter the court's decision. This right belonged to the general court only. The legal procedure of appeals had to be strictly followed.

Special attention, as in Orlyk's treaty, was paid to financial problems in this document. To collect taxes and to keep accounts, special treasurers (*podskarbiyi*) were to be established in the residence of the Hetman as well as in the regiments. Expenses were permitted only upon the request of

the Hetman and the *Heneral'na Starshyna* submitted in writing. The regimental treasurers had to render an account to the general treasurers. In this way the Hetman's authority over financial matters was supposed to be limited.

The similarity of some decisions in Orlyk's treaty to the ideas expressed in this anonymous document, probably written either at the end of the 1720's or early in the 1730's, is beyond all doubt. That contrary to Orlyk's treaty this anonymous document does not concern itself with the basic questions of governmental structure of the Ukraine, the Hetman's authority, and that of the Council, is quite understandable. This was impossible to do officially at the time of the reign of Peter I, with the policy of the Russian Government being already determined as regards Little Russia. The fate of Polubotok who insisted upon election of the Hetman is well known. The similarities between the treaty and this anonymous document are, of course, not accidental. It is evidence of the wider currency of the ideas and the proposed measures advocated by the whole *Starshyna* class, both those who joined Mazepa and those who remained loyal to the Russian Government. It is impossible to determine more precisely the interrelations of the ideas of the treaty and the document from the standpoint of just how much influence one exerted over the other. But the possibility of such influence cannot be excluded. Orlyk's treaty as well as all the documents connected with it were, without doubt, known in the circles of the *Heneral'na Starshyna* of the Left-Bank Ukraine. Publishing them in the first book of *Chteniia v Obshchestve istorii i drevnostei rossiskikh* in the year 1847, O. M. Bodyansky emphasizes in his introduction that these documents had been written in the fine handwriting of Mykola Khanenko, who had been employed at the office of Hetman Skoropadsky and had accompanied him on his last journey to Moscow in 1722; Khanenko left a very interesting diary of this journey.

Having been conceived and even taken definite form,

the idea expressed in Orlyk's treaty of the limitation of the Hetman's authority by the authority of the *Starshyna* did not disappear among the Ukrainian officers in the course of the whole eighteenth century. It did not even disappear with the transformation of the *Starshyna* into the *shlyakhetstvo* (gentry) when the former governmental structure of the Left-Bank Ukraine was replaced by the Russian order, during which the absolutist principles, it seemed, could not give way to republican ideas. Hryhoriy Andriyevych Poletyka, the well-known publicist of the Ukrainian nobility in the second half of the eighteenth century, had a negative attitude toward the Hetman's authority as it had been developed in the Ukraine. He wrote in one of his notes:

I do not know if any one of the noble Little-Russians, well-intentioned and understanding his rights, would ever desire to have a Hetman, because everybody knows that they (Hetmans) have misappropriated and stolen all the authority and rights of the nobility, and kept them for themselves by bribery of persons in high positions. But had the Hetman been held within bounds, as had been requested more than once by the Little-Russian officials, they might have been harmless for Russia and not burdensome for Little Russia.³⁹

In the opinion of Poletyka expressed in one of his notes, Little Russia had had a republican form of government under Polish rule. The Little-Russian nobility, including its clergy, enjoyed even more rights than the Polish; they had the rights to make the laws at their *seymiks* and had only to pass them on to the General Sejm for confirmation by the King. "In short, the Little-Russian nobility took part in both the ranks of the senators and the knights, which together with the King governed the Polish Republic."⁴⁰

³⁹ Mykola Vasylenko, "Zbirka materialiv do istoriyi Livoberezhnoyi Ukrayiny ta ukraïyn'skoho prava XVII-XVIII v. v.," *Ukrayins'kyi Arkheohrafichnyi Zbirnyk*, 1926, Vol. I, p. 142.

⁴⁰ G. A. Poletika, "Istoricheskoe izvestie na kakom osnovanii Malaya Rossiya byla pod respublikoyu pol'skoyu, i na kakikh dogovorakh otdalas' rossiiskim gosudaryam, i patrioticheskoe rassuzhdenie kakim obrazom mozno by onuyu

When the Ukraine joined Moscow all the "rights, privileges and customs" they had had under the Polish rule were confirmed by the charters (*hramoty*) granted to the Hetman and to the various social classes. But the Hetmans "subjugated the whole of Little Russia, governed her in unauthorized and unlawful ways according only to their own will and whim, and had no limit to their power." Thrusting the nobility aside, they even appropriated a monarch's authority, disposed of the national treasury, made arbitrary grants and confiscated estates. There was only one way to keep them in check. This was through the General Military Council, which convened when something important happened and was composed of the *Heneral'na Starshyna*, the colonels, other officers and deserving persons. To decide less important matters, the Hetmans were obliged to convoke the *Heneral'na Starshyna* and the colonels. All the Host came together to elect their Hetman. The councils usually made decisions concerning the whole community—imposed taxes, granted villages in reward or conferred some rank according to general selection, demanded that tax-collectors render them accounts, etc.⁴¹

It is regrettable that here the fragment of this interesting note by H. A. Poletyka is interrupted and it is not known what direction and what form his thoughts would have taken. But even from this fragment it is evident that Poletyka endorsed the government of the Ukraine headed by a Hetman, and considered it necessary only that his authority be "held within limits," in other words, limited by the authority of the *Starshyna* which had already become a gentry at the time of Poletyka. This idea, as we know, was not a new one. It had been in Orlyk's treaty. Poletyka only imparted a new formulation to it, borrowing from the Polish constitution, taking into consideration the changes in the social life of the Ukraine which had taken place in the past half-century. In

nyne uchredit' chtoby ona polezna mogla byt' rossiiskomu gosudarstvu bez narusheniya prav ee i vol'nostei," *ibid.*, pp. 147-161.

⁴¹ *Ibid.*, pp. 151, 158-161.

this connection he already understood the word *Starshyna* to mean not a class but a nobility, an hereditary group which had certain rights in the State. Poletyka's essential point was that before joining Russia the Ukraine had been a republic with the nobility at the head. This thought could not be expressed openly because of the circumstances of that time. It appeared only in the aforementioned document, but it was emphasized in all Poletyka's speeches at the Catherine Commission. In his written opinion, in which Poletyka presented his objection to the project of the rights of the nobility,⁴² he considered that in addition to the Tsar's authority, the Ukraine should be administered by the nobility. The nobility would have the right to issue, cancel or correct their laws and to ask the monarch's confirmation of them; imposition and abolition of taxes as well as of different kinds of assessments was to depend on the nobility; and that only Ukrainians by origin would be elected as officials by a free vote. The person of a nobleman was to be defended by law. He had the right to try and to punish his peasants, the right to go freely to foreign countries, etc.

Thus, according to Poletyka, the legislative and executive authority had to be in the hands of the nobility, as a matter of course. The judicial authority belonged to them too. This prerogative had been established by the Lithuanian Statute applied in the Ukrainian courts. Poletyka must have found his ideas, borrowed from the Polish law, useful in his projects and opinions about the Ukraine because, apparently, he found suitable grounds for it in the Ukrainian society of the time. These grounds unquestionably existed and had developed not from simple imitation of Poland, as might be understood from Poletyka's notes, but out of the natural process of state consciousness in Ukrainian society; as early as the seventeenth century, the *Heneral'na Starshyna* became a ruling class in whose hands extensive land properties had been concentrated, which served as a material base for pow-

⁴² *Sbornik Russkago Istoricheskago Obshchestva*, Vol. XXXVI, p. 355.

er. Such was the *Starshyna* when the treaty with Orlyk was composed; they started to become the nobility in Poletyka's time.

In acknowledging the existence of traces of republican ideas in Ukrainian officer circles throughout the eighteenth century, it is necessary to note the difference in the character of the approach at the beginning and at the end of the century. Orlyk's treaty appeared as a result of the struggle for authority between an economically-strong class of the *Starshyna*, newly-formed in the Ukraine, and the Hetman's power. The treaty is the result, so to speak, of a victory won by this class over the Hetman. The republican ideas of this class acquired an active character and, had political circumstances been favorable, they might have seriously influenced the character of the further development of the Ukraine's governmental structure. What we see at the end of the eighteenth century is quite different. No struggle existed then. The republican ideas were based not upon struggle but upon historical recollections misunderstood and misinterpreted. Thus they were more theoretical, and are interesting not as a banner for the struggle for reorganization of the Ukraine, but as material for study of the development of the political thought of Ukrainian society at the end of the eighteenth century; this was material of purely theoretical character. The republican ideas in the Ukraine by the end of the eighteenth century were not translated into a practical program. The Polish state based on the authority of the gentry, referred to by Poletyka, could not command serious attention. It was the eve of its downfall.